al-Shāfiʿī's RISĀLA

Treatise on the Foundations of Islamic Jurisprudence

TRANSLATED WITH AN INTRODUCTION, NOTES, AND APPENDICES

by Majid Khadduri

al-Imām Muḥammad ibn Idris al-SHĀFI'I'S

al-RISĀLA

FĪ UṢŪL AL-FIQH

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of Islamic Jurisprudence

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SECOND EDITION

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Preface

THE PART OF THE world in which Islam grew up is renowned for possessing the oldest legal systems known in recorded history, and Islamic law, more than a millenium old, is relatively new in comparison with other systems. In Islamic legal theory the law preceded society and is considered to be as eternal as God. Tradition has it that God revealed himself through a divine law, communicated to men by His Prophets, either written by God's own finger on tablets made of stone, or sent down to the nearest Heaven to be available for revelation by Angel Gabriel.

Originating from so high a source, law always held a paramount place in the eyes of peoples who lived under divine guidance. It is no wonder that the prestige of the divine law among peoples in that world is without parallel in history. For the law was not only founded on religion and sanctioned by God, but in it the whole spirit of the faith may be said to be epitomized.

Islamic law has preserved its basic character since its formative period. In modern times the greatest challenge has come from the West, and Islamic law is bound to feel the impact. Many a Muslim country has adopted legal concepts from abroad without regard to their suitability for the social milieu. Muslim and Western legal systems have often operated side by side and conflicts between them have been inevitable. But the new law has not been able to command the respect of the public nor has the old law met the necessities of modern life. However, the advocates of the traditional system have had

little to offer in the way of a constructive legal reform which might adapt Islamic law to modern conditions of life. In the second and third decades of the twentieth century critics of the two systems keenly felt that the widening gulf between them should be bridged.

Following World War II a revival in the study of Islamic law set in, stemming partly from the rise of several Islamic countries to statehood. Some of the new states stressed the Islamic creed, and the older states declared Islamic law to be a source of legislation. The most constructive approach to modernizing Islamic law is reflected in the new civil codes, notably in the law of contract and property, which Dr. 'Abd al-Razzāq al-Sanhūrī has drafted for Egypt, Syria, 'Irāq, and Libya. As a result, a growing interest in the study of Islamic jurisprudence has become noticeable in the Muslim world, in an effort to gain a deeper understanding of the nature of legal reform.

The Muslim world today is facing a problem of legislation not unlike that which faced it in the first two centuries of its existence. During that time Islam expanded rapidly and absorbed new elements of culture and tradition. As a result, the Muslim world abounded in legal doctrines, the advocates of each vying for supremacy over the others. It was Shāfi'ī who provided in the ninth century of the Christian era a systematic legal method by which to synthesize the various legal doctrines into a coherent system. A thorough study of that system will explain how legal problems were resolved in the formative period as well as the approach and the method of reasoning employed in their solution. It is impossible to understand the implications and the trends in modern Islamic legal reforms without an appreciation of the nature and development of classical Islamic jurisprudence.

I have been assisted by important suggestions and comments made on the work as a whole or in part. I should like to thank in particular Shaykh Muḥammad Abū Zahra and Dr. 'Abd al-Ḥalīm al-Najjār for their valuable assistance, and Dr. 'Abd al-Razzāq al-Sanhūrī and Dr. Chafīk Cheḥata for

helpful suggestions. Comments on one part of the work or another have been gratefully received from Sir Hamilton Gibb, Emil Lang, Nabia Abbott, Leo Strauss, and Marshall G. D. Hodgson. Above all I should like to thank Edwin E. Calverley and Harold Glidden for their invaluable assistance and suggestions. Finally, I wish to acknowledge the aid given by the School of Advanced International Studies of The Johns Hopkins University, and the grant extended by the Rockefeller Foundation, which enabled me in 1958 to work in Cairo and Damascus on manuscripts and other works connected with this study. None of these persons and institutions, however, is responsible for any errors which may be found in the volume or for the views expressed in it.

May, 1961 MAJID KHADDURI

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ISLAMIC JURISPRUDENCE
SHĀFI'Ī'S *RISĀLA*

CORRIGENDA

Page	*Line*	*For*	*Read*
31	10	al Khabar	Khabar
31	21	a variety	equated with
127	14	the [tradition relating to]	[the tradition relating to]
150	28	t ogo	to go
256	24	Ubayn-Allah	ʿUbayd-Allāh
288	14	decision	ruling
"	15	"	"
289	3	precedent	ruling
289	12	decision	ruling
"	28	"	"
290	2	decisions . . . decisions	rulings . . . rulings
290	17	decisions	rulings
"	18	"	"
"	19	"	"
291	1	"	"
313	9	sold	bartered
347	15	mother's near relatives	uterine brothers
"	30–31	" "	" "
"	34	" "	" "
348	7	" "	" "

Translator's Introduction

THE HISTORICAL BACKGROUND OF THE RISĀLA

Islamic Jurisprudence before Shāfiʿī

LAW IS A SYSTEM of social control established for the purpose of maintaining an ordered society among men. Different societies develop different legal systems, but every matured system reveals the ways in which the society from which it sprang endeavors to protect what it honors. Islamic law, the product of Islam's centuries of stored experience, is the embodiment of the Islamic ideal life. It is the framework of Islam itself. For although religion describes what the ideal life should be, the law indicates the right road to follow (indeed the term sharīʿa bears this meaning) in order to arrive at the ideal life. Thus the law of Islam, the sharīʿa, has the character of a religious obligation; at the same time it constitutes a political sanction of religion. As a consequence, the sharīʿa has greater practical importance to Muslims than the creed, and its study is ranked higher than a supererogatory prayer by Shāfiʿī, the founder of a school of law and the author of the Risāla.

In Islamic legal theory the sharīʿa is derived from a high divine source, embodying God's will and justice. Unlike positive law, it is regarded as the ideal legal order; but, like positive law, it mirrors the character of the society in which it

developed. The idealization of the sharī'a as the perfect legal system was the product of legal speculation which occupied the minds of jurists for generations; but the one who for the first time laid down a systematic legal reasoning for such an idealization was Muḥammad b. Idrīs al-Shāfi'ī. The impress of his systematic method, which has never been superseded in Islam, has remained permanent.

In what circumstances did Shāfi'ī develop his system?

The Founder of Islam, whose main preoccupation was with religious reform, had, perhaps, little reason to alter the sunna, the customary law prevailing in Arabia.[1] Muḥammad's opponents argued, however—not without good reason—that he had violated the established law of the land. Notwithstanding Muḥammad's reiteration that he merely intended to replace false idols by Allāh, the repudiation of idolatry itself implied the violation of the sunna, since idolatry was part of the customary law of Arabia. Law and religion were so closely intertwined in primitive societies that an attack on religion was a violation of law at the same time. Muḥammad's call to abandon idolatry in favor of the Deity resulted inevitably in the establishment of the supremacy of God's law—as communicated in the Qur'ān—over "idolatrous" law. Thus the Qur'ān became the basic source of legislation. The sunna, though it continued to supply raw material for legislation, took second place in the eyes of the Muslim community.

Muḥammad's death, though coinciding with the sudden expansion of Islam, brought prophetic legisation to an end.[2] The administrative decrees issued by the early caliphs (successors to Muḥammad) supplied answers to many legal problems; but disputes and legal questions relating to purely local matters were bound to be settled on the basis of the custom

[1] The sunna was the common law of Arabia before Islam, and it comprised legal and moral principles. The sunna grew out of the custom of the forefathers and its enforcement by practice established its legal validity. See I. Goldziher, "The Principles of Law in Islam," *The Historians' History of the World* (New York, 1907), Vol. VIII, pp. 294-304.

[2] Muḥammad is regarded as the last of the prophets (Q. XXXIII, 40); thus divine legislation came to an end by his death.

and precedent of each locality. Tribal customary law existed in Arabia before Islam, just as laws and customs in Syria and 'Irāq were inherited from earlier civilizations. Roman (Byzantine) and Persian (Sasanian), to say nothing of earlier Babylonian and Aramaic, laws must have supplied the Muslim jurist with raw material on the strength of which he issued opinion whenever an authoritative text failed to provide an answer.[3]

Several centers for legal study developed, stemming from local differences in legal traditions and social conditions, but the two principal centers which radiated their influence to other parts of the empire were those of 'Irāq (Kūfa and Baṣra) and the Ḥijāz (Madīna and Makka). The 'Irāqī jurists seem to have won the reputation of exercising personal reasoning more than the Ḥijāzī jurists, and Abū Ḥanīfa (d. 150/767), founder of a school of law, as well as his followers were credited with the liberal use of analogy as the basis for their legal reasoning. Abū Ḥanīfa's method of reasoning, reputed to have been applied more extensively than those of other jurists, was in fact the common method used by the 'Irāqī jurists, while the Ḥijāzī jurists, who claimed to follow the tradition more consistently, actually used personal reasoning no less than their 'Irāqī contemporaries. The Ḥanafī jurists in fact paid more attention to traditions than their contemporary critics claimed despite their reputation that they were unacquainted with these traditions. Opinions of early 'Irāqī jurists, such as Ibrāhīm al-Nakha'ī (d. 95/713) or Ḥammād b. Abī Sulaymān (d. 120/737) were invoked on the strength of traditions traced back to the Prophet Muḥammad through a transmitter like Ibn Mas'ūd or Caliph 'Alī.[4] These tradi-

[3] For a discussion on the influence of foreign laws on Islamic law, see J. Schacht, "Foreign Elements in Ancient Islamic Law," *Journal of Comparative Legislation and International Law*, 3rd series, Vol. XXXII (November, 1950), pp. 9-17; and S. V. Fitzgerald, "The Alleged Debt of Islamic to Roman Law," *Law Quarterly Review*, Vol. 67 (1951), pp. 81-102.

[4] See Shāfi'ī's *Risāla*, paragraphs 650-52, below; Muḥammad b. al-Ḥasan al-Shaybānī, *Kitāb al-Aṣl*, ed. Chehata (Cairo, 1954), Vol. I, pp. 1-2. See also J. Schacht, "Pre-Islamic Background and Early Development of Juris-

tions may have included the sunna of the Prophet as well as traditions from his Companions. But the attempt to justify the adoption of local custom on the strength of traditions was as much a recognition of the overriding authority of an authoritative text as it was an unconscious effort to Islamize the developing body of law in the newly conquered territory.

The re-assertion of the sunna after Muḥammad's death was probably more visible in the Ḥijāz than elsewhere. For in Arabia it was customary that the sunna, whether laid down by forefathers or by an individual of some weight, should be binding on the community. When Muḥammad first introduced Islam, he was denounced as the violator of the sunna for attacking traditional idolatry. But when Islam was established, the Prophet as the spokesman of the community was cited to provide guidance for legal decisions. After his death Muḥammad's sayings and decisions became precedents on the strength of which jurists made decisions. These precedents constituted the sunna of the Prophet and provided the substance of traditions.[5]

Against such a background the Ḥijāzī jurists could claim that their school represented the school of tradition. They resided in the cradle of Islam, where the sunna was better known, and they set forth the doctrine that the sunna was an overriding authoritative source. Thus the Mālikī school, known as the school of tradition, claimed that its legal opinion represented the Islamic tradition more closely than the Ḥanafī school. It criticized the 'Irāqī jurists for their use of personal opinion and analogy on the grounds that their knowledge of the Prophet's sunna was palpably lacking. However, a close examination of Mālik's opinions indicates that he made use of

prudence," in M. Khadduri and H. J. Liebesny (eds.), *Law in the Middle East* (Washington, D. C., 1955), Vol. I, pp. 45-46.

[5] After the rise of Islam the term sunna came to mean the sayings, acts, and decisions of the Prophet Muḥammad; later on the substance of the sunna, in addition to the authorities who transmitted it, was called ḥadīth or tradition. See Chaps. IX and X, below. See also I. Goldziher, *Étude sur la tradition Islamique*, tr. Léon Bercher (Paris, 1952); and Alfred Guillaume, *The Traditions of Islam* (Oxford, 1924).

personal opinion no less than his Ḥanafī contemporaries. One may even discern that Mālik had departed from the Prophet's sunna in favor of personal opinion. A case in point is Mālik's insistence that a contract, once concluded by an offer and acceptance, regardless of the khiyār al-majlis (right of option of the parties to a contract as long as they have not separated), was binding on the two parties.[6] Mālik's opinion was based on local practice; but sound though it may seem from a legal viewpoint, it conflicted with the doctrine of the Mālikī school that the authority of tradition was always overriding.[7]

The place occupied by Shāfi'ī in Islamic legal history is determined largely by the character of the age in which he lived. In a later age, once the gate of ijtihād (personal reasoning) had closed, he would have been a great jurist with a moderate view as to the development of the law. But in his age a great jurist was necessarily drawn into ikhtilāf (disagreement), or the controversy between the schools of tradition and personal opinion. What was to be the position of tradition in relation to the Qur'ān and other sources of the law? What was to be the position of opinion and analogy in relation to the Qur'ān and tradition? At a time when scholars were raising such questions, a man profoundly learned in the tradition, and passionately convinced of its significance, was compelled to take part in the controversy between the advocates of tradition and the advocates of opinion in order to defend the former's claim to supremacy. At first, Shāfi'ī aroused those in favor of tradition, giving them leadership and supplying methods of defense against the advocates of opinion. Later on, after settling in Egypt, Shāfi'ī seems to have felt more strongly the need to strike a balance between the two schools of thought, and he sought to find a common ground of agreement.

[6] See Chap. X, section 7, below; and Mālik, *al-Muwaṭṭa'*, ed. M. Fu'ād 'Abd al-Bāqī (Cairo, 1951), Vol. II, p. 671.

[7] The tradition concerning khiyār al-majlis, however, might have been circulated after Mālik's death. See J. Schacht, *Origins of Muḥammadan Jurisprudence* (Oxford, 1950), pp. 159-60.

Shāfi'ī's Life

It was in this milieu that Shāfi'ī played so significant a role in resolving the conflict between the two schools of law. Growing up in the Ḥijāz, the home of tradition, he became a follower of Mālik and then went to 'Irāq, where he was exposed to the legal reasoning of the 'Irāqī jurists. In the latter part of his life, in Egypt, where he could reformulate his legal opinions with detachment and rewrite his books, he founded a new school of law by synthesizing the two other schools. Shāfi'ī's career falls, therefore, into three well-marked periods. The first, the period of apprenticeship, begins with his study of the law in Makka and Madīna, where he was given a thorough training in the traditions, and extends to his deportation to 'Irāq. The second, in which he was exposed to the legal reasoning of the 'Irāqī jurists, ends with his departure for Egypt; and the third lasts from his settlement in Egypt, where he became the "master," to his death.

A number of biographical accounts of Shāfi'ī have come down to us, although the very earliest are apparently lost. Even in biographical sketches written by Dāwūd al-Ẓāhirī (d. 270/884) and Zakarīya b. Yaḥya al-Sājī (d. 307/920), reproduced in later accounts, a great deal of legend had already crept into the story of Shāfi'ī's life. The chronology presents great difficulties, as the conflicting narratives about Shāfi'ī's visits to 'Irāq and his return to Madīna indicate.

The biographical account by Abū Muḥammad 'Abd al-Raḥmān b. Abī Ḥātim al-Rāzī (d. 327/938) is the earliest that has reached us.[8] Rāzī's work is scarcely more than a collection of oral reports dealing with certain aspects of Shāfi'ī's life and character, some of them reproduced from earlier biographical sketches such as those of al-Ẓāhirī and al-Sājī. But this source is quite inadequate as a complete account. Later writers, who dealt more fully with the subject, have often drawn heavily

[8] Ibn Abī Ḥātim al-Rāzī, *Kitāb Ādāb al-Shāfi'ī wa Manāqibuh*, ed. Muḥammad Zāhid b. al-Ḥasan al-Kawtharī (Cairo, 1953).

on Rāzī's biography and have reproduced many of the legends that had gathered around Shāfi'ī's life. The great works of Abū Nu'aym [9] and al-Khaṭīb al-Baghdādī [10] add very little to Rāzī's account. The first full story is given by al-Bayhaqī (d. 458/1065) [11] and reproduced in a well-organized and attractive manner by al-Fakhr al-Rāzī; [12] inevitably, it includes a great deal of legend. Later biographers, notably Ibn 'Abd al-Barr,[13] Subkī,[14] Ibn Ḥajar,[15] and Nawawī,[16] add but little to earlier accounts. More recent sketches by Ibn Kathīr [17] and Murtaḍa al-Zabīdī,[18] draw heavily on earlier authorities. There are also several unpublished biographical accounts [19] which add practically nothing new. A full critical study of Shāfi'ī's life has not yet been written.[20]

The earliest authorities disagree as to whether Shāfi'ī was born at Gaza, a small provincial town on the Mediterranean Sea, or at 'Asqalān (Askelon), a larger town not far away, in

[9] Abū Nu'aym al-Iṣfahānī, *Kitāb Ḥilyat al-Awliyā' wa Ṭabaqāt al-Aṣfiyā'* (Cairo, 1938), Vol. IX, pp. 63-163.

[10] al-Khaṭīb al-Baghdādī, *Ta'rīkh Baghdād* (Cairo, 1931), Vol. II, pp. 56-73.

[11] Abū Bakr Aḥmad b. al-Ḥusayn b. 'Alī al-Bayhaqī, *Kitāb Manāqib al-Imām al-Shāfi'ī* (MS, including a sequel, in 312 folios).

[12] al-Fakhr al-Rāzī, *Kitāb Manāqib al-Shāfi'ī* (Cairo, n. d.).

[13] Ibn 'Abd al-Barr, *al-Intiqā'* (Cairo, 1350/1932).

[14] Tāj al-Dīn al-Subkī, *Ṭabaqāt al-Shāfi'īya al-Kubra* (Cairo, 1324/1907), Vol. I, pp. 100-107.

[15] Ibn Ḥajar al-'Asqalānī, *Tawālī al-Ta'sīs bi-Ma'ālī Ibn Idrīs* (Cairo, 1301/1883).

[16] Abū Zakarīya al-Nawawī, *Kitāb Tahdhīb al-Asmā'* (Biographical Dictionary), ed. Ferdinand Wüstenfeld (Göttingen, 1842-45), pp. 56-86.

[17] Ibn Kathīr, *Kitāb al-Bidāya wa al-Nihāya* (Cairo, 1352/1932), Vol. X, pp. 251-254.

[18] Murtaḍa al-Zabīdī, *Sharḥ Iḥyā' 'Ulūm al-Dīn* (of al-Ghazzālī), Vol. I, pp. 191-201.

[19] In addition to Bayhaqī's *Manāqib*, there is at the Institute of Arabic Manuscripts of the Arab League in Cairo a photographic copy of Quṭb al-Dīn b. Sulaymān al-Khaydarī, *Zahr al-Riyāḍ fī Radd mā Shanna'ahu al-Qāḍī 'Iyāḍ 'ala al-Imām al-Shāfi'ī* (MS, No. 181). There are three MSS on Shāfi'ī's life at the Zāhirīya Library of Damascus; one of them is by Shahrazūrī, and the other two are extracts from earlier sources which add no new material.

[20] For works on Shāfi'ī's life and jurisprudence, see Select Bibliography, pp. 356-363.

the year 150/767.[21] Probably Shāfi'ī's mother, shortly after Shāfi'ī's father died, spent some time in Palestine among the Yamanite tribes—to whom her ancestors (the Azd tribe) belonged—before she and her son arrived at Makka, for the authorities state that Shāfi'ī was scarcely two years old when he left Gaza, but that he had reached his tenth year when he arrived at Makka.[22] We know little about Shāfi'ī's early life, except that he was brought up in Makka in poor circumstances and that from his youth he was devoted to learning. Traditional stories, legendary for the most part, give an account of his early devotion to poetry, chivalry, and legal studies. Such traditions have him learning the Qur'ān by heart at the age of seven, committing Mālik's *al-Muwaṭṭa'* to memory at the age of ten, and being declared fit to give legal opinions at the age of fifteen.[23]

Certain facts about his parentage may conceivably have affected the future course of his life.[24] His father belonged to the tribe of Quraysh, the tribe of the Prophet Muḥammad, and his grandfather al-Muṭṭalib was a brother of Muḥammad's grandfather. The descendants of al-Muṭṭalib took an active part, on both sides, in the struggle between Muḥammad and the Makkans, but they all supported Muḥammad after his first victory at Badr in 2/624. This history may have given Shāfi'ī prestige, arising from his belonging to the tribe of the Prophet and from his great grandfather's kinship to the Prophet. It also may have inspired him with the idea that to him was bequeathed the mantle of the Prophet's tradition and

[21] The tomb of the ancestor of the whole clan, Hāshim, can still be visited at Gaza. Apparently it was to southern Palestine that some of the Banū Hāshim went with the conquering Arab armies in the early days of the expansion of Islam.

[22] Ibn Abī Ḥātim al-Rāzī, p. 26; Abū Nu'aym, Vol. X, pp. 67-68; al-Khaṭīb al-Baghdādī, Vol. II, p. 59; al-Fakhr al-Rāzī, p. 8; Ibn Ḥajar, *Tawālī al-Ta'sīs*, pp. 49, 50.

[23] Ibn Abī Ḥātim al-Rāzī, pp. 39-40; Abū Nu'aym, p. 70; Bayhaqī, folio 23; Ibn 'Abd al-Barr, p. 71.

[24] Shāfi'ī's full name and that of his family is: Muḥammad b. Idrīs b. al-'Abbās b. 'Uthmān b. Shāfi' b. al-Sā'ib b. 'Ubayd b. 'Abd Yazīd b. Hāshim b. al-Muṭṭalib b. 'Abd Manāf.

that he should stand to defend it. These facts made him, like other descendants of the same clan, a beneficiary of the Prophet's share of one-fifth of the spoils of war.[25]

After spending some time among the Beduins, Shāfi'ī returned to Makka to study law under Muslim b. Khālid al-Zanjī (d. 180/796), Muftī of Makka, Sufyān b. 'Uyayna (d. 198/813), and others.[26] Although he was declared qualified to practice law by al-Zanjī, Shāfi'ī desired further legal training and set out to study under the leading jurist of the Ḥijāz, Mālik b. Anas (d. 179/796). He was probably twenty years old when he left Makka for Madīna.

There are several accounts of how Shāfi'ī became the disciple of Mālik. The traditional story is that he went to the Governor of Madīna, armed with a letter of introduction from the Governor of Makka, and requested an audience with Mālik. After some hesitation, the Governor made his way to Mālik's house in the company of Shāfi'ī. Mālik seems to have been impressed by Shāfi'ī's intelligence, and he allowed him to read *al-Muwaṭṭa'* under his guidance. As a follower of Mālik, Shāfi'ī remained in Madīna until Mālik's death, by which time he had already gained distinction as a brilliant jurist.[27]

Shāfi'ī had the good fortune to attract the attention of the Governor of al-Yaman, who was on a visit to the Hijāz, and who was impressed by his learning and industry. He helped Shāfi'ī to enter the service of the state at about the age of thirty and to rise rapidly in it. This service was short-lived, however. Shāfi'ī proved to be a just administrator, but he was soon entangled with local interests and factional jealousies, which brought him not merely dismissal from his post but

[25] al-Fakhr al-Rāzī, p. 7. For the legal position of the Prophet's one-fifth share from the spoil, see Khadduri, *War and Peace in the Law of Islam* (Baltimore, 1955), pp. 121-22.

[26] For the names of jurists under whom Shāfi'ī studied at Makka, see al-Fakhr al-Rāzī, pp. 11-13; Ibn Ḥajar, *Tahdhīb al-Tahdhīb* (Hyderabad, 1326/1909), Vol. IX, p. 25; and *Tawālī al-Ta'sīs*, pp. 79-82.

[27] Traditional accounts differ on whether Shāfi'ī visited 'Irāq before Mālik's death or whether he went to al-Yaman as a judge. See Abū Nu'aym, p. 29.

also deportation in chains to 'Irāq, on the alleged charge that he was a secret follower of the Zaydī Imām Yaḥya b. 'Abd-Allāh, a pretender to the caliphate and an opponent of the ruling dynasty in Baghdād.[28]

Shāfi'ī appeared before Caliph Harūn al-Rashīd at al-Raqqa ('Irāq) with other conspirators in 187/803. The other conspirators were put to death, but he was pardoned when he eloquently defended his loyalty to the caliph on the ground that he was the descendant of a great grandfather who was related to the great grandfather of the caliph himself. Some authorities state that the famous Ḥanafī jurist, Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/805), who was present at the court when Shāfi'ī appeared before the caliph, defended him and said that he was a well-known student of the sacred law.[29] Most authorities agree that the caliph was delighted with Shāfi'ī's conversation and became his patron.[30] This incident brought Shāfi'ī into close contact with Shaybānī, whose books he had copied, and impelled him to devote the rest of his career to legal studies, never again to seek government service.

The contact with Shaybānī's circle had a great impact on Shāfi'ī's legal reasoning. Until that point, as a follower of Mālik, he had been exposed to the teaching of only one school of law. He had, it is true, known of the opinions and arguments of the 'Irāqī jurists, but he had not heard them at first hand. We are told that he took an active part with Ḥanafī jurists in discourses and arguments, that he strenuously defended Mālik's position, and that he seems to have earned the reputation of being the Upholder of Traditions for his efforts to establish the supremacy of traditions.[31] But those discus-

[28] Another account places the story of the deportation in Makka, where Shāfi'ī had returned from al-Yaman. He may have been there on a short visit from al-Yaman. See Ibn 'Abd al-Barr, pp. 95-96. For Shāfi'ī's difficulties during his tenure of office in al-Yaman, see Bayhaqī, folio 24; Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 69.

[29] Bayhaqī states that Shaybānī's intercession on Shāfi'ī's behalf took place after Shāfi'ī was thrown into prison in 'Irāq. See Bayhaqī, folio 26.

[30] al-Fakhr al-Rāzī, pp. 22-27; Ibn 'Abd al-Barr, pp. 94-98.

[31] Ibn Abī Ḥātim al-Rāzī, pp. 170-82; Bayhaqī, folios 24-26; Abu Nu'aym, p. 107; and al-Khaṭīb al-Baghdādī, Vol. II, p. 68.

sions must have made him aware of the weaknesses of the Mālikī school, which Shāfi'ī began to appreciate after settling in Egypt, as well as the points of strength in the legal reasoning of the 'Irāqī jurists. Some authorities stress the difficulties encountered by him in his arguments with the Ḥanafī jurists, and one declares that Shāfi'ī was driven out of 'Irāq by them.[32] Most authorities, however, believe that Ḥanafī followers complained to Shaybānī of Shāfi'ī's criticism, but that Shāfi'ī, though avoiding a stand against Shaybānī directly, determined to stand on his own in his legal reasoning. Some authorities state that Shaybānī, upon hearing the complaints of his followers, invited Shāfi'ī to a debate on the points of difference between them;[33] they also state that Shāfi'ī emerged triumphant over Shaybānī, although Ḥanafī sources insist that Shāfi'ī was defeated.[34] These circumstances must have been difficult for Shāfi'ī, who, as protégé of Shaybānī, may have tried honestly to avoid an open conflict with him, as some authorities indicate.[35] Nor was Shāfi'ī's position strong enough to take an open position against Shaybānī, an influential man at the court, and his followers.

This uncomfortable situation must have influenced Shāfi'ī in the decision to leave 'Irāq in 188/804 and to settle elsewhere. He went via Ḥarrān and Syria to Makka, where he had begun his early legal studies. As a disciple of Mālik, he was well received and began to lecture at the Sacred Mosque. His teachings, however, revealed unexpected differences with Mālik, for his thorough grasp of the Mālikī and Ḥanafī legal opinions made him aware of the shortcomings of both. He made a deep impression on many students of law, including Aḥmad b. Ḥanbal (d. 241/855), who was studying in Makka at that time, but his influence in the Ḥijāz must have been limited. His departure from Mālik's opinions disappointed

[32] See Ibn al-Bazzāz al-Kirdarī, *Manāqib al-Imām al-'Azam* (Hyderabad 1321/1904), Vol. II, p. 153.

[33] Ibn Abī Ḥātim al-Rāzī, p. 160; Abū Nu'aym, Vol. IX, pp. 71-72; al-Fakhr al-Razi, pp. 32, 31.

[34] al-Kirdarī, Vol. II, p. 153.

[35] Bayhaqī, folio 25.

many a Mālikī admirer at a time when Shāfi'ī had not yet won the reputation of the "master."[36]

Shāfi'ī returned to Baghdād in 194/810. His legal reasoning had matured, and his stature as a jurist had grown sufficiently to permit him to follow an independent line of legal speculation. It was during this period that he accumulated the material for the legal system that was destined to leave so deep a mark upon Muslim law. After a span of three or four years, Shāfi'ī decided to leave Baghdād for Egypt. It is not quite clear why he made this decision. The authorities state that while in Baghdād he attached himself to 'Abd-Allāh b. Mūsa, who invited him to settle in Egypt. We are told that the Caliph al-Ma'mūn (d. 218/833) offered him the position of a judge, but he declined it.[37]

Shāfi'ī's departure from 'Irāq took place in 198/814. It was the same year that the Caliph al-Ma'mūn established himself in Baghdād, having defeated his brother al-Amīn a year earlier and inaugurated a regime in which the rationalist philosophy of al-Mu'tazila assumed a predominant position. In 213/827 the Caliph officially proclaimed the doctrine of "the creation of the Qur'ān" in opposition to the Orthodox view of its eternal nature as co-existing with God. In 218/833 he decreed that no qāḍī who did not subscribe to this doctrine could hold an office in the state, and an inquisition for the trial of those who rejected the doctrine was instituted.[38] This anticipated atmosphere of intolerance to orthodox views, it has been suggested by a recent writer,[39] drove Shāfi'ī to settle in Egypt. At the age of fifty Shāfi'ī seems to have made his final choice between his love for power and his love for the law, and he

[36] Ibn Abī Ḥātim al-Rāzī, pp. 165, 168.

[37] Some of the sources state that such a position was offered to him toward the end of his life after he settled in Egypt. See Bayhaqī, folio 38; Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 84.

[38] For an account of the history and ideas of the Mu'tazila and their influence on Caliph al-Ma'mūn, see De Lacy O'Leary, *Arabic Thought and Its Place in History* (London, 1922), Chap. 5; A. J. Wensinck, *The Muslim Creed* (Cambridge, 1932), passim; Zuhdī H. Jār-Allāh, *al-Mu'tazila* (Cairo, 1947).

[39] Abū Zahra, *al-Shāfi'ī* (Cairo, 1948), p. 28.

decided to settle in a place where he could concentrate on legal speculation in relative quiet.

Remote from the center of court intrigues, and on good terms with the Governor of Egypt, Shāfiʿī found himself in a congenial position. During the five years he lived in Egypt, he devoted all his time to teaching and to dictating his works to his students. We are told that his leading disciples—al-Rabīʿ b. Sulaymān al-Murādī (d. 270/880), Abū Yaʿqūb al-Buwayṭī (d. 231/845), and Abū Ibrāhīm Ismāʿīl b. Yaḥya al-Muzanī (d. 274/877), to mention but three—were in the habit of writing down Shāfiʿī's spoken words, and that Shāfiʿī would correct the text when it was read aloud before him.[40] Thus, Shāfiʿī's disciples in Egypt were responsible for all of the books that are known to us now, whether copied or dictated from his original writings. Doubts have been raised as to whether some of Shāfiʿī's writings—such as the *Kitāb al-Umm*—were not actually composed by a disciple.[41] If some of his words have been changed or rephrased, however, the contents of the books must comprise Shāfiʿī's own legal reasoning and ideas, for Shāfiʿī's biographers agree that his books were handed down to us as recorded by his students and one of the students, who wrote a *Summary* (Mukhtaṣar), agrees with Shāfiʿī's fundamental opinions as recorded in his collected works.[42]

Shāfiʿī had difficulty persuading his opponents to accept his opinions. He followed an independent line of legal reasoning, often disagreeing with leading jurists, among them his great master Mālik. The disagreement aroused Mālikī opponents, who presented themselves to his circle to take issue with him, but his great abilities as an attractive teacher and skillful debater silenced them. One authority asserts that in an argument with Fityān, a Mālikī follower in Egypt, Shāfiʿī triumphed, but the intemperate loser, failing in persuasion, resorted to abuse. The Governor, a patron of Shāfiʿī, ordered that Fityān

[40] Ibn Abī Ḥātim al-Rāzī, p. 71; Ibn Ḥajar, *Tawālī al-Taʾsīs*, p. 77; Bayhaqī, folio 49.

[41] Zakī Mubārak, *Kitāb al-Umm* (Cairo, 1934).

[42] Cf. Muzanī's *Mukhtaṣar* with the relevant parts in *Kitāb al-Umm*.

be punished by being paraded through the streets of the city bearing a plank and stating that this was the penalty for abusing a descendant of the Prophet's near of kin. Enraged by this degrading punishment, Fityān's followers turned upon Shāfi'ī after one of his lectures and resorted to violence. Shāfi'ī, badly injured, was taken to his house, where he died a few days later.[43] The incident gives us a picture of the consequences which heated controversies between rival schools of thought could generate.

It is possible that Shāfi'ī's death was not caused entirely by his opponent's attack. Shāfi'ī was known to suffer from a serious intestinal illness which kept him frail and ailing during the latter years of his life. He died on the last day of Rajab, 204 (20 January 820), in Fusṭāṭ (Old Cairo), and was buried in the vault of the Banū 'Abd al-Ḥakam, near Mount al-Muqaṭṭam. The qubba (dome), still in existence, was built by al-Malik al-Kāmil, the Ayyūbid Sulṭān, in 608/1212. It has always been a prominent place of pilgrimage, and it was still impressive and revered by many a Shāfi'ī admirer when visited by the present writer in 1958.

Shāfi'ī's Personality and Character

Tradition paints Shāfi'ī as a handsome man who paid attention to his appearance. When his hair turned grey in later years, he was in the habit of dyeing it dark red. He was tall and slender with an attractive face and a pleasing voice.[44] He was a man of impressive personality, respected for his straightforwardness and revered for his piety. Although a man of meager resources, gaining little remuneration from his study of the law, he was generous with his friends as well as with the poor. That generosity became the favorite theme of many

[43] Yāqūt, *Mu'jam al-Udabā*, ed. D. S. Margoliouth (London, 1931), Vol. VI, pp. 394-95; Ibn Ḥajar, *Tawālī al Ta'sīs*. p. 86; cf. Muḥammad Zāhid al-Kawtharī, *Maqālāt al-Kawtharī* (Cairo 1373/1953), pp. 463-66.

[44] Nawawī, p. 83; Ibn Ḥajar, *Tawālī al-Ta'sīs*, pp. 60-61.

later biographers, who described him as giving away to the poor everything that his hands had acquired.[45] His will shows his concern for the emancipation of his slave, as well as for the welfare of all his relatives and associates.[46]

From early childhood Shāfi'ī seems to have displayed a sharp intelligence and a good memory. We are told that at an early age he had memorized a great deal of ancient Arab poetry, in addition to the Qur'ān and Mālik's *al-Muwaṭṭa'*. Eloquent in speech and an expert in the Arabic language, his interest in poetry and language preceded his interest in law. Only when he was reminded, as one authority puts it, that it was more dignified to become a jurist than a poet, did he turn to the study of the law.[47] Whether or not this story was invented afterwards to account for Shāfi'ī's legal pursuit, he did grow up in a center where the legal profession tempted many a Muslim scholar. He certainly chose a field in which he distinguished himself not only as a great thinker and a skillful jurist, but as an expositor of the sharī'a without equal.

Although the study of law was Shāfi'ī's main concern, his early biographers state that he was acquainted with other branches of Islamic learning. Later biographers tend to depict him as a scholar whose knowledge was encyclopedic. One of these stories, related by al-Balawī, paints him as discussing with Caliph Harūn al-Rashīd, in his first audience with that caliph, almost every conceivable branch of knowledge, including Greek medicine and philosophy in their original language.[48] The early sources of his life give the impression that he was opposed to theology and prohibited discourse on it in his presence.[49]

Traditional accounts seem to give contradictory impressions

[45] Ibn Abī Ḥātim al-Rāzī, pp. 126-28; Abū Nu'aym, p. 77; Ibn 'Abd al-Barr, pp. 93-94; Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 55.

[46] For full text of his will (dated February 203/819), see Shāfi'ī, *Kitāb al-Umm* (Cairo, 1322/1905), Vol. IV, pp. 48-49.

[47] It is also stated that al-Zanjī, Muftī of Makka, persuaded him to study law. Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 51; Nawawī, p. 59.

[48] al-Fakhr al-Rāzī, p. 26; Ibn Ḥajar, *Tawālī al-Ta'sīs*, pp. 51, 62, 66.

[49] Ibn Abī Ḥātim al-Rāzī, p. 188.

of Shāfi'ī's loyalties. He is depicted as a man who gave secret support to an 'Alid pretender to the caliphate, but who, upon appearing before Caliph Hārūn al-Rashīd, demonstrated that his loyalty was to the 'Abbāsid rather than to the 'Alīd house.[50] When reproached afterward for betraying a certain sympathy for the 'Alīds, Shāfi'ī did not deny it, on the ground that he was a distant kinsman of theirs. Proof that he took an active part in a conspiracy against the central authority appears insufficient. At any rate, Shāfi'ī seems to have removed himself completely from politics and palace intrigues and never again accepted a position in the service of the state. His single-mindedness and straightforwardness prompted him to stay above factional differences and personal jealousies.

Nor was he ready to compromise with the fellow members of his profession. He did not shrink from showing disagreement with the Ḥanafī jurists in 'Irāq, despite Shaybānī's intercession with the caliph to secure his pardon, because Shāfi'ī's differences with Ḥanafī doctrines were genuine legal differences. When he lectured afterward in Madīna, he showed just as much legal disagreement with Mālikī followers, although he never ceased to pay high tribute to his great master Mālik. He betrayed, perhaps, a certain inflexibility in his relations with rival schools because he maintained so high a standard of legal reasoning that his disagreement with others appeared sharp and uncompromising. He was too much of a scholarly perfectionist for his contemporaries.

Tradition also depicts him as a great debater who emerged triumphant from every argument with his rivals. Ibn 'Abd al-Ḥakam, one of his disciples in Egypt, pays high tribute to the ability of his master in the art of defeating his critics.[51] The Mālikī jurist Fityān, it will be recalled, resorted to violence because his tongue failed him when he sought to challenge Shāfi'ī's persuasive argument. Although Ḥanafī jurists reject Shāfi'ī's ability to withstand a discussion with Shaybānī, early accounts state that Shāfi'ī conducted debates with Ḥanafī

[50] Ibn 'Abd al-Barr, pp. 91, 95-98.
[51] *Ibid.*, pp. 73, 78.

jurists with great skill.[52] Both the *Risāla* and the *Kitāb al-Umm* bear witness to Shāfi'ī's scholastic ability in pursuing an argument to its logical conclusion. A great portion of the *Risāla* is, in fact, written in the form of a debate between Shāfi'ī and an interlocutor, who, in most cases, is a disguised critic of Shāfi'ī's doctrines.

THE COMPOSITION AND STRUCTURE OF THE RISĀLA

Composition of the Risāla

MOST AUTHORITIES are agreed that the *Risāla* was written after Shāfi'ī resided in 'Irāq.[53] It was perhaps one of his earliest works, although we are told that before he left 'Irāq he had composed another book, entitled *Kitāb al-Ḥujja*, and perhaps others, which have failed to reach us.[54]

Traditional accounts state that the *Risāla* was originally written at the request of 'Abd al-Raḥmān b. Mahdī [55] in order to explain the legal significance of the Qur'ān and the sunna. While an invitation from a leading 'Irāqī traditionist to Shāfi'ī, who had made a reputation as the Upholder of Traditions, seems quite conceivable, the earliest extant sources on Shāfi'ī's life are silent on the point. Neither Ibn Abī Ḥātim al-Rāzī (d. 327/938) nor Abū Nu'aym al-Iṣfahānī (d. 430/1038)

[52] Ibn Abī Ḥātim al-Rāzī, p. 42.

[53] Few of them hold that the *Risāla* was written when Shāfi'ī was still in Makka. See al-Khaṭīb al-Baghdādī, Vol. II, pp. 64-65; and Yāqūt, *Mu'jam al-Udabā'*, Vol. VI, pp. 388-89.

[54] Nawawī, p. 61; Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 76. Cf. Ibn al-Nadīm, *Kitāb al-Fihrist*, ed. G. L. Flügel (Leipzig, 1871), pp. 295-96.

[55] A leading traditionist in Baṣra (d. 198/813). See Ibn Abī Ḥātim al-Rāzī, *Taqdimat al-Ma'rifa li-Kitāb al-Jarḥ wa al-Ta'dīl* (Hyderabad, 1952), pp. 250-62; and Abū Nu'aym, Vol. IX, pp. 3-63.

gives the slightest suggestion that the *Risāla* was written at Ibn Mahdī's request. Abū Nu'aym merely states that Ibn Mahdī once remarked that al-Shāfi'ī was "an intelligent young man"[56]—a statement which may mean that Ibn Mahdī had read either the *Risāla* or any one of Shāfi'ī's other books and concluded that he was an intelligent man; it does not necessarily suggest that the *Risāla* was written at Ibn Mahdī's request.

Nor do the sources mention that Ibn Mahdī and Shāfi'ī ever met. A tradition related by Shāfi'ī on the authority of Ibn Mahdī, recorded in one of his books,[57] was sharply contradicted by al-Sarrāj al-Bulqīnī, on the ground that the two men had not met; but al-Bulqīnī accepted the traditional story that the *Risāla* was sent by Shāfi'ī to Ibn Mahdī. That the two men may never have met does not weaken the possibility that Ibn Mahdī had requested Shāfi'ī to write the *Risāla*; but it does raise doubts as to the reliability of later reports that such a request had been made.

The first authority to state that Shāfi'ī composed the *Risāla* in response to Ibn Mahdī's request was Bayhaqī. One of his narratives, based on information transmitted by Mūsa, son of 'Abd al-Raḥmān Ibn Mahdī, states that Mūsa's father had complained to Shāfi'ī that Mālik's legal opinions had been distorted in Baṣra, and that Shāfi'ī responded by writing the *Risāla* to Ibn Mahdī. Mūsa, moreover, claims that he had seen the text of the *Risāla* written in Shāfi'ī's own hand.[58] Bayhaqī also reports a narrative, on the authority of al-Ḥārith b. Surayj al-Naqqāl, to the effect that al-Ḥārith, who earned the name of al-Naqqāl (the carrier) because he carried the *Risāla*, had himself delivered the work to Ibn Mahdī.[59] Later authorities repeat virtually the same version of the story that Ibn Mahdī had invited Shāfi'ī to write the *Risāla*.[60]

[56] Abū Nu'aym, p. 93.
[57] Shāfi'ī, *Kitāb al-Um*, Vol. I, p. 117.
[58] Bayhaqī, folio 46.
[59] *Ibid.*; Ibn 'Abd al-Barr, p. 72; Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 118.
[60] al-Khaṭīb al-Baghdādī, Vol. II, pp. 64-65; al-Fakhr al-Rāzī, p. 18; Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 55.

Perhaps Ibn Mahdī made known to Shāfi'ī his desire for a book in support of the authoritative sources of the law and against the prevailing tendency to use personal opinion. It was unlikely that Shāfi'ī could produce a work as original as the *Risāla* virtually on the spur of the moment, the impression given us by the sources. The theme of such a work must have been in Shāfi'ī's mind for a long time, and the book was either ready when Ibn Mahdī asked for it, or it was simply a matter of putting into writing what had already crystallized in Shāfi'ī's mind. A methodical legal reasoning, inferior in quality though it may have been in the first version of the *Risāla*, must have been in preparation for a long while. It is even conceivable that the narrative concerning Ibn Mahdī's request may have been circulated after he had seen or received the *Risāla* from Shāfi'ī. How Shāfi'ī conceived the idea of writing a book dealing with the subject of uṣūl (sources of the law) in a completely novel manner is exceedingly difficult to determine. But the age in which he lived and his involvement in the controversy between two opposing schools of thought must have given him the external stimulus to reflect on the subject. His keen intellect and extensive knowledge of the law made him eminently qualified to search fruitfully for the interrelationship of the sources which separated rival schools of law. But the structure and arguments of his reasoning must have evolved in his mind after long study and reflection.

The Old and the New Risāla

Shāfi'ī's treatise on jurisprudence has become universally known as *Kitāb al-Risāla Fī Uṣūl al-Fiqh*, often abridged as *Kitāb al-Risāla* or simply *al-Risāla*. The word risāla, which means an epistle, or a communication in writing made to an absent person, came to be used as a result of the traditional story that this book had been sent in the form of an epistle to 'Abd al-Raḥmān Ibn Mahdī, who had asked Shāfi'ī to write a treatise on the authoritative sources of the sharī'a. Thus the

book at first acquired the unofficial title of *al-Risāla*, and this later became the formal title in all the manuscripts that have been preserved or published. Most of the writers who refer to this treatise, whether in the original or the revised form, call it *Kitāb al-Risāla* or *al-Risāla*. Thus the *Risāla* has become for all students of Islamic law the recognized title of Shāfi'ī's book on jurisprudence.

Internal evidence shows that Shāfi'ī himself never called his treatise by this name. More than half a dozen times, Shāfi'ī refers to it either as "Our Book," "My Book," "this Book," or simply the "Book."[61] These references demonstrate that the title of *al-Risāla* became current after Shāfi'ī's death and that Shāfi'ī himself, if the name was current in his time, did not recognize it as the proper title of his book.

The authorities are agreed that Shāfi'ī composed two treatises on jurisprudence, both referred to as *al-Risāla*; the old one was composed in 'Irāq and the new in Egypt.[62] The old *Risāla* is described as a book in which Shāfi'ī set forth a systematic study of the Qur'ān, including its general and particular rules and its abrogating and abrogated communications, and of the sunna as the authoritative sources of the law. Some authorities state that it also dealt with ijmā' (consensus) and qiyās (analogy).[63] Since the text of the old *Risāla* has failed to reach us, except perhaps for a few passages reproduced in some later authorities,[64] it is difficult to define precisely its scope and arguments. We are told, however, by some authorities who were acquainted with both versions that the new *Risāla* was superior in quality to the old.[65]

It is likely that the old *Risāla*, dealing as it did with the

[61] See paragraphs 22, 109, 131, 149, 173, 182, below.

[62] Bayhaqī cites the two works as two separate books (folio 50). Ibn Ḥajar states that Aḥmad b. Ḥanbal possessed a copy of both the old and the new *Risāla*, which were regarded as two different works (Ibn Ḥajar's *Tawālī al-Ta'sīs*, p. 77).

[63] al-Fakhr al-Rāzī, p. 55.

[64] See Bayhaqī, folio 98.

[65] For a statement to this effect by Aḥmad b. Ḥanbal (d. 239/855), a student of Shāfi'ī and founder of a school of law, see Ibn Abī Ḥātim al-Rāzī, p. 60; Abū Nu'aym, p. 97.

authoritative sources, must have been in the nature of an apologia for the school of tradition, owing to Shāfi'ī's preoccupation during his first residence in 'Irāq with arguments against Ḥanafī jurists. Although the old *Risāla* may have dealt with Shāfi'ī's opposition to personal opinion and the free use of analogy, it is inconceivable that it dealt with Shāfi'ī's differences with Mālik, as expounded in the new *Risāla*, since in 'Irāq Shāfi'ī had taken the position of a supporter of Mālikī doctrine against the criticism of Ḥanafī jurists. In the brief quotation which Bayhaqī cites from the old *Risāla*, there is evidence that Shāfi'ī clearly supported the position of the Ḥijāzī traditionists, who held that the narratives of the Prophet's companions were authoritative, since they had been in close association with the Prophet and understood the meanings of his sunna. He also accepted the opinions of the Successors, if there was agreement among them.[66]

The new *Risāla*, however, reflects the mature thinking of Shāfi'ī after he settled in Egypt, and as its substance and arguments indicate, it deals with the whole subject of the sources as they were reconstructed in his mind in his later years. Internal evidence not only bears witness that the new *Risāla* was composed in Egypt, since it contains cross references to books which were written or dictated by Shāfi'ī after he settled there,[67] but it also demonstrates that in its present form the new *Risāla* was written or revised toward the end of its author's life.[68] Thus it reflects his mature legal speculations at the height of his career as a leading jurist.

The new *Risāla* is a compact treatise composed in a style which demonstrates that its author was an expert in the Arabic language. However, his use of a new terminology and new legal concepts often compelled him to repeat or redefine his terms and arguments. This is specially noticeable in his discourse with an interlocutor who demands explanation or repetition of ideas which Shāfi'ī may already have discussed

[66] Bayhaqī, folio 98.
[67] See paragraph 1184, below.
[68] See paragraph 1173, below. Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. VI, p. 77.

in other sections of the book. Moreover, the problem of proper cross-referencing, which confronted other scholars, was not always satisfactorily solved,[69] and compelled Shāfi'ī at times to repeat his ideas. Often he refers the reader to other sections of the *Risāla* without a precise indication as to which section he means.[70]

However, the *Risāla's* structure seems fairly sound and logical, and Shāfi'ī's arguments are set forth in a systematic manner and carried to their logical conclusions. The author begins his subject with a discussion of general topics in jurisprudence, supported by detailed examples, and then takes up the authoritative sources of the law. He pays particular attention to the sunna and traditions, not only because of the complexity of the subject, but also because he sought to establish their overriding authority. Finally, he discusses rather briefly the two other sources of the law, consensus and analogy, and concludes with a critical evaluation of certain other methods of reasoning such as istiḥsān (juristic preference) and ikhtilāf (disagreement). From this logical order the author makes some three or four digressions in which he discusses certain topics which belong more appropriately to other sections of the book.[71]

Shāfi'ī's knowledge of ancient Arabic literature assisted his literary style. In those days no one could be a great scholar unless he was a master of the Arabic tongue. He must also have had the gift of lucid and eloquent expression and the ability to quote freely from the Qur'ān and from ancient Arabic poetry. It is precisely these qualities of exactness and eloquence which are characteristic of his style. He could, moreover, arrest attention by a turn of expression, or a fine classical phrase, and he could sum up a point of law tersely in a maxim. Though he had all these gifts, Shāfi'ī's style is at times discursive and, in the *Risāla* in particular, too com-

[69] Cf. F. Rosenthal, *The Technique and Approach of Muslim Scholarship* (Rome, 1947), pp. 37-39.

[70] E.g., paragraphs 16, 22, 28, 135, 166, 168, etc.

[71] E.g., Chaps. III and VIII, below.

pact for clarity and, not infrequently, obscure. In comparison with other jurists, however, his style rises to eloquence.

The Order and Sources of the Risāla

Since the structure and substance of the old *Risāla* are not known to us, it is extremely difficult to state precisely to what degree the text of the new *Risāla* was based on the old. Both internal evidence and the narratives of the authorities seem to indicate that Shāfi'ī had, perhaps, composed the second *Risāla* anew. Once asked about Shāfi'ī's books, Ibn Ḥanbal replied: "The books Shāfi'ī wrote in 'Irāq were far from perfect; after settling in Egypt, they were rewritten and perfected."[72] Bayhaqī, as well as other authorities, endorse the idea that the *Risāla* was rewritten in Egypt, and they give the impression that the old and the new editions were two different books.[73] Internal evidence suggests that not all of Shāfi'ī's earlier works were at his disposal after he settled in Egypt. In Chapter X of the new *Risāla*, Shāfi'ī states that the transmitters of some of the traditions that he cited were omitted because not all his earlier books were with him.[74] In his *Kitāb Ikhtilāf al-Ḥadīth* Shāfi'ī again apologizes for the fact that he did not have the first version of the book.[75] These statements indicate that some of the works Shāfi'ī composed in 'Irāq, perhaps including the old *Risāla*, were no longer available to him after he settled in Egypt.

Finally, we may raise the question of the sources from which Shāfi'ī drew inspiration and information. This is not an easy question to answer specifically, since Shāfi'ī makes no reference in the *Risāla* to books which he may have consulted. In his other works, the *Kitāb al-Umm* in particular, he devotes whole

[72] Ibn Abī Ḥātim al-Rāzī, p. 60.
[73] Bayhaqī, folio 47; al-Fakhr al-Rāzī, p. 57.
[74] See paragraph 429, below.
[75] Shāfi'ī, *Kitāb Ikhtilāf al-Ḥadīth*, on the margin of *Kitāb al-Umm*, Vol. VII, p. 252. See also Ibn Ḥajar, *Tawālī al-Ta'sīs*. p. 78.

sections to discussions with other jurists—such as Awzā'ī, Mālik, Abū Ḥanīfa, Abū Yūsuf and Shaybānī—which clearly indicate that he had studied the works of these eminent jurists with care.[76] His biographers give the impression that Shāfi'ī was acquainted with almost all scholarly works.[77]

Traditional accounts portray Shāfi'ī as taking an early interest in learning. He committed the Qur'ān to heart at seven and Mālik's *Muwaṭṭa'* at ten. These two books undoubtedly left a great impression on his mind and supplied indispensable sources for his legal training and speculation. The Qur'ān served the double purpose of supplying raw material for legislation, as the basic source of law, and an inspiring ideal for the scholar who aimed at shaping his system of law in harmony with that model. There are 220 Quranic citations in the *Risāla*, given either as specific rules of law or as examples for formulating principles or maxims of law.

Next to the Qur'ān, Shāfi'ī stressed the Prophet's sunna. We are told that the old *Risāla* was written mainly to defend the viewpoint of traditionists concerning the overriding authority of the sunna. In the new *Risāla*, not only does Shāfi'ī study the sunna as a source of law, but he also draws heavily on it in formulating his rules and maxims of law. Over a hundred traditions are cited in the *Risāla*, several of them repeated as examples at various points. Most of these traditions, it seems, Shāfi'ī related on the authority of the masters under whom he studied in Makka and Madīna. His two greatest authorities are, of course, Mālik, from whom he quotes thirty-eight traditions,[78] and Sufyān b. 'Uyayna, from whom he quotes thirty-five traditions.[79] From his other masters, he cites six traditions from 'Abd al-'Azīz al Darāwardī (Madīna),[80] four from Ibn

[76] Shāfi'ī, *Kitāb al-Um*, Vol. VII, pp. 87 ff., 177 ff., 277 ff., 303 ff.

[77] See Ibn Abū Ḥātim al-Rāzī, pp. 136 ff.; and al-Fakhr al-Rāzī, pp. 19-21.

[78] See paragraphs 86, 112, 113, 119, 120, 142, 145, 148, 149, 161, 223, 231, 233, 255, 266, 271, 306, 318, 319, 322, 328, 332, 336, 337, 338, 346, 417, 419, 428, 435, 438, below.

[79] See paragraphs 6, 64, 94, 121, 129, 139, 144, 154, 161, 199, 223, 281, 310, 311, 321, 332, 338, 344, 346, 348, 413, 417, 420, 428, 440, 443, 483, 533, 647, 740, below.

[80] See paragraphs 92, 97, 413, 420, 551, below.

Abī Fudayk (Madīna),[81] four from Muslim b. Khālid al-Zanjī (Madīna),[82] three from Sa'īd b. Sālim al-Qaddāḥ (Makka),[83] two from Ibrāhīm b. Abī Yaḥya (Madīna),[84] and one from 'Abd al-Majīd b. 'Abd al-'Azīz (Makka).[85] From al-Yaman he quotes five traditions on the authority of Yaḥya b. Ḥassān, to whom he refers as the "trustworthy authority" without mentioning his name,[86] and from 'Irāq he relates three traditions on the authority of 'Abd al-Wahhāb b. 'Abd al-Majīd al-Thaqafī.[87] A few other traditions either are related without authority or are cited with an incomplete list of authorities.

From the viewpoint of legal speculation we are inclined to believe that Shāfi'ī's main inspiration was derived from the intense debate with Ḥanafī jurists in 'Irāq to which he had been subjected. He not only had to study their works, Shaybānī's in particular, which he copied, but also to reflect on the underlying principles separating him from those jurists. His arguments with the Ḥanafī jurists must have had greater influence on his legal speculation than his biographers indicate. After settling in Egypt, Shāfi'ī acknowledged his indebtedness to the Ḥanafī jurists and paid high tribute to the contributions of Abū Ḥanīfa and Shaybānī to the sharī'a.[88]

Much of his legal material and many of his ideas Shāfi'ī owed to the teachings of his masters, which he stored in his memory. His debates with his rival scholars and his discussions of legal questions with colleagues and disciples must have contributed greatly to his knowledge and to the final formulation of his opinions. To be specific on these matters is difficult, however, for even if a disciple did contribute his share in a discussion, it was customary for the disciple to record the account in his notes on the authority of his master.

[81] See paragraphs 120, 148, 226, below.
[82] See paragraphs 148, 344, 438, 440, below.
[83] See paragraphs 348, 450, below.
[84] See paragraph 447, below.
[85] See paragraph 338, below.
[86] See paragraphs 122, 258, 319, 348, 474, below.
[87] See paragraphs 122, 129, 230, below.
[88] Ibn Abī Ḥātim al-Rāzī, pp. 204-207, 210-11.

SUBSTANCE AND ARGUMENT OF THE RISĀLA

The Vocabulary of the Risāla

THE VOCABULARY of the *Risāla* raises questions not only of legal nomenclature, but also of literary and philosophical terminology. Shāfi'ī rarely defines his terms, assuming that his followers and readers will be familiar with the general and technical words from the context of his writings or from the common usage of the time. Thus before we proceed to the fundamental ideas embodied in the *Risāla*, it may be useful to discuss briefly the meaning of some of its cardinal terms and expressions. Four sets of terms deserve particular examination.

In the first set, there are general terms which need elucidation, such as 'ilm (knowledge), al-bayān (declaration), and 'adl (justice). By 'ilm, Shāfi'ī always means legal knowledge derived from the authoritative sources of the law; some rules are obligatory for men individually (farḍ 'ayn), such as prayer and fasting, and some are obligatory for them collectively, such as the jihād. He equates knowledge with certainty and states that it is the duty of the jurist to seek the truth in his legal reasoning.[89] By al-bayān, which Shāfi'ī applies to Quranic communications, he means a clear declaration embodying a rule or a principle of law. The term is frequently used in the *Risāla* either in the sense of mere declaration, embodying a rule of law, or in clarifying the meaning of a certain rule of law.

The term 'adl is used either in the general sense of justice, which implies conformity with the law, or as the necessary qualification for a witness. Although no precise definition is

[89] See Chap. III, below; cf. Sharīf 'Alī al-Jurjānī, *Kitāb al-Ta'rīfāt*, ed. G. L. Flügel (Leipzig, 1845), pp. 160-62.

given by Shāfi'ī, the term 'adāla, the quality of 'adl, is described by al-Māwardī, a Shāfi'ī jurist, as a state of moral and religious perfection.[90] Thus the term 'adl signifies probity or justness of character. This is the sense in which it is frequently used in the *Risāla*. The witness must be 'adl (just in character), and the minimum requirement is that he must display justness at the time when his testimony is given. It is possible, Shāfi'ī argues, that the witness may not be 'adl at another time. The testimony of one witness of just character must be supported by another witness of just character, and the justness of character of each witness must be confirmed by another person of just character.[91]

The second set of terms is made up of those which Shāfi'ī uses in his discussions of the Qur'ān. The terms "general" and "particular" as applied to rules, which are familiar to modern students of the law, were introduced to Islamic jurisprudence for the first time by Shāfi'ī.[92] The precise meaning of these terms will be explained in the following section. He also introduced the terms "explicit" and "implicit," the first being equivalent to the literal meaning of the communication and the second to the meaning implied either in the text or in the context of the communication. Shāfi'ī also uses the term al-naskh or the abrogation of divine legislation, which is well known to contemporary jurists as the repeal of legislation. The term as well as the principle of abrogation are to be found in the Qur'ān (Q. XVI, 103), but Shāfi'ī argues that a Quranic communication can be abrogated only by another Quranic communication and that neither does the Qur'ān abrogate the sunna, nor the sunna the Qur'ān. It is true, he goes on to argue, that a sunna can be superseded by

[90] al-Māwardī, *Kitāb al-Aḥkām al-Sulṭānīya*, ed. M. Enger (Bonn, 1853), p. 108; and paragraph 16, below.

[91] See paragraphs 364-367, below.

[92] Ibn Abī Ḥātim al-Rāzī, p. 57. Ibn Ḥanbal is reported to have said that he had not understood the rules of the Qur'ān until he heard Shāfi'ī's classification of these rules into general and particular, etc. See Abū Nu'aym, p. 97.

a Quranic communication, but not until the sunna is first abrogated by another sunna laid down by the Prophet.[93]

In the third set of terms, there are certain words used in connection with Shāfi'ī's discussion of the sunna and ḥadīth (tradition). Although sunna and ḥadīth mean the same thing in practice, in pre-Islamic Arabia *sunna* meant usage or custom and it formed the common law observed by the Arabs. After the rise of Islam, the term sunna was applied to the sayings and decisions of the Prophet Muḥammad, and ḥadīth meant the communication of the sunna, or the Prophet's custom. In the words of Wensinck, "ḥadīth is the external, sunna the internal side of tradition; ḥadīth is the form, sunna the matter."[94] The sunna is reported in the form of a general statement—usually short—preceded by a chain of authorities or transmitters (isnād), cited to prove the authenticity of the report. The isnād begins with the latest authority and goes back to a Companion who relates the Prophet's custom (i. e., his saying or decision). This transmission must be uninterrupted and must be made on the authority of an eye or ear witness, and all the transmitters must be thoroughly reliable. Thus, the criticism of Muslim scholars was restricted to a thorough examination of the isnād (transmission), and the scholars were satisfied if the tradition passed such an external test.

The traditions were collected in the third century (ninth century of the Christian era) in a number of digests, and six digests became recognized as authoritative. These are the two *Ṣaḥīḥs* of al-Bukhārī (d. 256/869) and Muslim (d. 261/874), and the four *sunans* of Abū Dāwūd (d. 275/888), Tirmidhī (d. 279/892), Ibn Māja (d. 283/886), and al-Nasā'ī (d. 303/915). Other digests of traditions, well known to students

[93] See Chap. V, below. For a full discussion of the rules of abrogation, see Abū Ja'far (surnamed al-Naḥḥas) Muḥammad b. Aḥmad b. Ismā'īl al-Ṣaffār, *Kitāb al-Nāsikh wa al-Mansūkh* (Cairo, 1323/1905); and al-Ḥāzimī, *al-I'tibār Fī al-Nāsikh wa al-Mansūkh Min al-Āthār* (Cairo, 1346/1927).

[94] A. J. Wensinck, "The Importance of Tradition for the Study of Islam," *Moslem World*, Vol. XI (1921), p. 239.

of the sharī'a, are by Ibn Ḥanbal (d. 241/856), al-Dārimī (d. 255/869), al-Dāraquṭnī (d. 385/996), al-Bayhaqī (d. 458/1065), and others. Although Shāfi'ī is critical of narratives transmitted by unreliable authorities, and is unwilling to accept traditions from authorities unknown to him, he himself cites in the *Risāla* several traditions without isnād.[95] Such traditions are known to traditionists as mursal, or traditions lacking some or all the names of the transmitters. Shāfi'ī also accepts some traditions that were transmitted by a single authority. Such traditions are called al-khabar al-wāḥid, or the single-individual tradition.[96]

In the fourth set of terms, words such as ijtihād, qiyās, ijmā', and istiḥsān are used in the exercise of legal reasoning. Literally, ijtihād means the exercise of effort. Originally it was used as the exercise of discretion and personal opinion, but in Shāfi'ī's time the term was narrowed down to mean the discretion of the scholar. Shāfi'ī limited ijtihād to the use of qiyās (analogy), prohibiting the exercise of personal opinion unless it were based on a precedent. Ijtihād, Shāfi'ī says, is the method of reasoning, based on certain indications, leading to the correct decision.[97] Qiyās is a variety of ijtihād of which Shāfi'ī approves, provided there is a relevant text in the Qur'ān or tradition on the strength of which analogy could be applied. It is generally defined as the method of legal reasoning by which a decision is made on the strength of a precedent in which a common reason, or an effective cause, is applicable.[98] Shāfi'ī's conception of analogy perhaps may be best seen in the following statement:

> Analogy is of various kinds. . . . They differ from one another in the antecedence of the analogy of either one of the two, or its

[95] See paragraphs 7, 19, 82, 112, 124, 133, 196, 239, 333, 713, 869, below.
[96] See Chap. X, below.
[97] See Chap. XIII, below.
[98] Sarakhsī, *Uṣūl*, Vol. II, p. 121. For the possibility of deriving this concept from Hebrew or Aramaic sources, see J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 99; and S. G. Vesey-Fitzgerald, "Nature and Sources of the Sharī'a," in M. Khadduri and H. J. Liebesny (eds.), *Law in the Middle East* (Washington, 1955), Vol. I, pp. 96-97.

sources, or the source of both, or the circumstance that one is more clear than the other. The strongest kind [is the deduction] from an order of prohibition by God or the Apostle of the small quantity that the equally strong or stronger order of prohibition of the great quantity shall be applicable owing to the [compelling] reason in the greater quantity. Similarly the commendation of a small act of piety implies the presumably stronger commendation of a greater act of piety; and similarly the order of permission of a great quantity would render permissible that of a smaller quantity.[99]

By ijmā' (consensus) Shāfi'ī does not mean merely the agreement of a few scholars of a certain town or locality, as the Ḥijāzī and 'Irāqī jurists seem to have held, but the majority of leading jurists in Muslim lands. He also universalized ijmā' on matters of fundamentals to include agreement of the Muslim community.[100] On matters of fundamentals arrived at by consensus, Shāfi'ī argues, there should be no disagreement (ikhtilāf), but on matters of detail for which there may be two answers, one answer might be chosen by istiḥsān (discretion or preference). The earlier jurists seem to have permitted a greater degree of discretion than Shāfi'ī was inclined to accept.[101]

Fundamental Ideas of the Risāla

A brief summary of the content of the *Risāla* hardly does justice to it, for only a complete translation of the text, such as is provided in the following pages, can present a full expression of the ideas and the method of reasoning of its author. However, a description of the *Risāla*, its fundamental ideas and problems, may serve the reader as a guide.

The *Risāla* opens with an introductory chapter on the re-

[99] See paragraph 387, below.

[100] See Chap. XI, below; and al-Ghazzālī, *al-Mustaṣfa Min 'Ibn al-Uṣūl* (Cairo, 1356/1937), Vol. I, pp. 115-21.

[101] See Chap. XV, below.

ligious basis of Islamic jurisprudence. After the usual homage and expressions of gratitude to God, Shāfi'ī points out that at the time Muḥammad was charged with his prophetic mission, mankind was divided into two classes. There were those who did not believe in God and who worshipped idols and stones and other natural objects, and there were the "People of the Book,"[102] who believed in God and in the teachings of His earlier prophets, but who had changed God's commands and forged falsehood by their tongues, mixing it with the truth that God had revealed to them. Because of this state of misbelief, God decided to send forth the last of his prophets, Muḥammad, to repair and reconstruct the world into a God-fearing community. Thus Muḥammad's mission, embodied in the term "Islām," was to provide mankind with the final and definitive religion.

Shāfi'ī discusses briefly the place of the Qur'ān in the Islamic religion and the duty of the Muslims to obey the orders of Muḥammad, and concludes that it is the duty of all those who seek legal knowledge to gain it by constant appeal to God's Book as communicated to the Prophet. For "no misfortune will ever descend upon any of the followers of God's religion for which there is no guidance in the Book of God to indicate the right way."[103]

The Qur'ān, Shāfi'ī points out, is the basis of legal knowledge. Its provisions constitute a "perspicuous declaration" (Q. III, 132) on all matters, spiritual and temporal, which men are under obligation to observe. The second chapter of the *Risāla* is therefore devoted to a discussion of the nature of the legal provisions of the Qur'ān under the title "al-bayān" (perspicuous declaration). "*Al-bayān*," Shāfi'ī says, "is a collective term" which includes general principles of law as well as detailed rules. The term al-bayān has been discussed by

[102] Ahl al-Kitāb, the people who possess a scripture, include Christians, Jews, Magians (Zoroastrians), Samaritans, and Sabians. For a discussion of their status in Islam, see my *War and Peace in the Law of Islam*, Chap. 17.

[103] See paragraph 11, below.

several leading jurists. Some say that it merely means a declaration, embodying certain legal provisions; others argue that it not only declares them, but also makes them clear.[104] Shāfi'ī, however, seems to emphasize the legal content of the provisions on the grounds that all Quranic communications are clear, "although some are more sharply clarified than others," and only to those who are ignorant of the Arab tongue do some communications seem less clear than others. He then divides al-bayān into five categories. The first consists of a specific legal provision in the text of the Qur'ān, such as the basic duties that are owed to God (credal witness, prayer, payment of alms, fasting, and pilgrimage). The second includes certain provisions, whose modes of observance are specified by an order of the Prophet Muḥammad (such as the number of prayers each day and the amount of alms to be paid). The third consists of broad legal provisions which Muḥammad particularized. The fourth includes all the legal provisions laid down by Muḥammad in the absence of a specific Quranic text. The fifth and final category is comprised of rules which are sought by the exercise of ijtihād (personal reasoning) by means of qiyās (analogy).

Although in his chapter on al-bayān Shāfi'ī discusses certain characteristics of the Qur'ān, that chapter is, apparently, intended to be only an introduction to a fuller treatment of the Qur'ān, from a juridical viewpoint, in subsequent chapters. At the end of chapter II, on al-bayān, he discusses the Arabic eloquence of the Qur'ān—one of its distinguishing features—which, to the Muslims, is the chief evidence of the miracle (i'jāz) of this Book.[105]

[104] For a discussion on the meaning of al-bayān see al-Ghazzālī, *al-Mustaṣfa*, Vol. I, pp. 304-66; Abū Isḥāq al-Shāṭibī, *al-Muwāfaqāt*, ed. 'Abd-Allāh Durāz (Cairo, n. d.), Vol. III, pp. 308-14; Sayf al-Dīn al-Āmidī, *al-Iḥkām Fī Uṣūl al-Aḥkām* (Cairo, 1347/1928), Vol. II, pp. 121-34.

[105] The doctrine of the miracle of the Qur'ān has been discussed by several Muslim scholars. For a full exposition of the doctrine, see al-Bāqillānī, *Kitāb I'jāz al-Qur'ān*, ed. Aḥmad Ṣaqr (Cairo, 1954); 'Abd al-Qāhir al-Jurjānī, *Dalā'il al-I'jāz*, ed. M. Tawit (Tetuan, n. d.), 2 vols. For a survey of works dealing with the question of i'jāz, see Na'īm al-Ḥimṣī, *Ta'rīkh Fikrat I'jāz al-Qur'ān* (Damascus, 1955).

Shāfiʿī's critical study of the Qurʾān from a juridical viewpoint led him to the keen observation that the Quranic rules and principles fall into various categories. To begin with, he divides them into general and particular rules. Some of the general rules, he observes, are intended to be general, in which the particular rules are included. There are general rules in which both the general and particular rules are included, and there are general rules which are intended to be particular rules.

Then Shāfiʿī divides the Quranic legislation into a different set of categories. There are, he observes, general rules the meaning of which may be clarified by the context, and there are those only the wording of which indicates the implicit meaning. There are general rules, he adds, which only the sunna can specify as general or particular.

Shāfiʿī's classification of the Quranic legislation into the foregoing categories was not only novel but was hailed as a great contribution to the understanding of the Qurʾān as a source of law. His distinction between the general, which embodies general rules and principles of law, and the particular, which means specific rules, clarified for his contemporaries the way toward a deeper understanding of the sources and principles of Islamic law. Shāfiʿī's contribution elicited high praise. To cite but one example, al-Karābīsī told Aḥmad b. Ḥanbal—founder of another school of law—that he had understood the precise meaning of the Qurʾān only after he had read the *Risāla*.[106]

Shāfiʿī's specific reference to the sunna, the Prophet's sayings and decisions, to clarify the meaning of a particular piece of Quranic legislation or an ambiguous text, brings the sunna into the field of Islamic legislation and indicates its specific role as a source of law. It is in his discussions of the sunna and traditions that we find one of Shāfiʿī's greatest contributions to Islamic jurisprudence. For although the school of tradition laid sufficient emphasis on the sunna, in opposition to the school of opinion, in which Shāfiʿī himself took an active

[106] Ibn Abī Ḥātim al-Rāzī, p. 57; al-Fakhr al-Rāzī, p. 20.

part in his early career, it was Shāfi'ī who made it clear that only an authentic tradition from the Prophet is binding and constitutes an authoritative source of legislation. Both the Hijāzī and the Irāqī jurists often accepted traditions that were based on local custom or embodied a personal opinion as valid for legislation. Shāfi'ī made a distinction between an authentic tradition from the Prophet and a narrative which embodies the opinion of a Companion or a leading jurist; the latter may be useful in clarifying the meaning of a text, but it should not be as binding as a tradition from the Prophet.

Shāfi'ī goes on, in the following chapters, to discuss the principle of abrogation, by virtue of which a Quranic communication was repealed by a later one. Here he indicates again the role of the sunna in its relation to the Qur'ān, pointing out that the sunna merely states which of the Quranic communications are the abrogating ones and which are the abrogated, but he rejects the Ḥanafī doctrine which states that the sunna can abrogate the Qur'ān. The Qur'ān does not abrogate the sunna directly nor does the sunna abrogate the Qur'ān; the Prophet, says Shāfi'ī, always provided a new sunna, in conformity with Quranic legislation, when the Quranic legislation contradicted an earlier sunna. Thus although he stresses the significance of the sunna, he gives it a precise definition as a second, authoritative source of law in its relation to the Qur'ān.

The sunna includes Muḥammad's sayings and decisions. It is, therefore, not on the same level as the infallible Quranic communications. However, Shāfi'ī argues, God had imposed on men the duty of obedience to His Prophet as well as to Him, and he goes on to give evidence that God regards disobedience to the Prophet as disobedience to Him. Accordingly, in practice the sunna of the Prophet is a source of legislation as valid as the Qur'ān.

But since Shāfi'ī emphasizes the rule that only an authentic sunna, transmitted by reliable authorities, constitutes a valid source of law, he devotes a large portion of the *Risāla* to a study of what constitutes an authentic tradition, who are the

reliable transmitters, and why certain authentic traditions are contradictory to one another. This latter category, to which he pays attention, is as novel as his distinction in the Quranic legislation between the general and particular.

To Shāfi'ī there are no contradictory traditions. They appear contradictory only to those who do not know the circumstances in which they were laid down and who do not realize that certain traditions merely qualify others. Shāfi'ī's contribution to this field of legal reasoning, although it may raise certain doubts as to the historical evidence of his interpretation, resolved a serious problem for the jurists who were faced with a great mass of contradictory traditions. Shāfi'ī's method of reconciliation, called al-ta'wīl (interpretation),[107] encouraged the acceptance of many a tradition which otherwise would have been in danger of being rejected. Thus his solution supplied further material for legal development, but for the critical historian it rendered more difficult the problem of separating the historical elements from the mass of traditions which Muslim publicists accepted without question.

The latter part of the *Risāla* deals briefly with ijmā' (consensus), qiyās (analogy), ijtihād (personal reasoning), istiḥsān (juristic preference), and ikhtilāf (disagreement). Although these are important jurisprudential subjects, Shāfi'ī devotes much less space to them than to the Qur'ān and sunna.

Shāfi'ī's doctrine of consensus, as Schacht rightly points out, develops continuously in his writings.[108] It begins as the consensus of a few scholars in a certain locality, following Mālik's method,[109] and becomes a concept that includes the entire Muslim community. If the view that the new *Risāla* was written or revised as the last of Shāfi'ī's writings is correct, his doctrine of consensus as defined in this work should represent his final formulation. In various parts of the *Risāla*, Shāfi'ī

[107] Ta'wīl became the subject of further study by many Muslim scholars. See Ibn Qutayba al-Dīnawarī, *Kitāb Ta'wīl Mukhtalaf al-Ḥadīth* (Cairo, 1326/1909).

[108] J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 88.

[109] Mālik, however, recognized the ijmā' of the scholars of his own locality—Madīna.

refers to the consensus of the scholars as a method of expounding the law acceptable to contemporary jurists, but in his references to the consensus of the community at large, specially in the chapter on consensus,[110] he undoubtedly tends to invest it with higher authority. Shāfi'ī ends his chapter on consensus by asserting: "He who holds what the Muslim community holds shall be regarded as following the community, and he who holds differently shall be regarded as opposing the community he was ordered to follow. So the error comes from separation. . . ."

The concept *vox populi, vox Dei,* embodied in a tradition which states "My people will never agree on an error," is not cited by Shāfi'ī in this form, a fact which perhaps indicates that it was circulated after his time. But the concept does appear in the *Risāla,* which may well be the source of the final formulation of the principle embodied in the tradition ascribed to the Prophet Muḥammad.[111] Shāfi'ī's doctrine of the community at large was opposed by other scholars, including his own followers, although Ghazzālī (d. 1111) tried to confine the agreement to fundamental principles, leaving matters of detail to the consensus of the scholars.[112] The fundamental weakness in the doctrine of the consensus of the community was procedural—the lack of an adequate method which would provide means for the community to arrive at an agreement.[113]

Shāfi'ī discusses ijtihād (personal reasoning) and qiyās (analogy) at greater length than consensus, because he tried to limit the use of personal reasoning, in the wide and unrestricted sense, to the use of analogy. He often uses the terms

[110] See Chap. XI, below.

[111] Goldziher has suggested a possible Roman influence on the Islamic doctrine of consensus, but a primitive form of consensus was not new to the Arabs. See J. Schacht, *Origins of Muhammadan Jurisprudence,* pp. 83, 91.

[112] Ghazzālī, *al-Mustaṣfa,* Vol. I, p. 115.

[113] The lack of a method by which to arrive at an agreement remained the perennial weakness of the doctrine of consensus, and no adequate solution was provided by jurists who came after Shāfi'ī. See remarks on this point in my *War and Peace in the Law of Islam,* pp. 33-34.

qiyās and ijtihād interchangeably, but obviously he permits personal reasoning only through analogy. "Analogy is of two kinds," says Shāfiʿī, "the first, if the case in question is similar to the original meaning [of the precedent]. . . . The second, if the case in question is similar to several precedents, analogy must be applied to the precedent nearest in resemblance and most appropriate." [114] He tried, however, to limit the use of analogy to matters of detail; it cannot supersede an authoritative text. Neither should it be based on a special or an exceptional precedent; analogy must conform to the spirit and the general rules and principles of the law. In taking such a position Shāfiʿī established a balance between those who used analogy extensively as a source of law and those who rejected it altogether. As to istiḥsān, which the ʿIrāqī jurists used as a method for rejecting one precedent in favor of another, it is declared unacceptable by Shāfiʿī because it permits virtually unlimited use of discretion and personal reasoning. Only one form of personal reasoning is acceptable to Shāfiʿī—analogy. Even this method is regarded as a weak instrument. In summing up the sources of the law at the end of the *Risāla*, Shāfiʿī says: "Although I have made decisions [on the basis of consensus and analogy] just as I have made decisions on the basis of the Book and the sunna, [in the case of consensus and analogy] the principle on which I made my decision varies." [115]

Finally, the *Risāla* ends with a discussion of ikhtilāf (disagreement). Although the jurists before Shāfiʿī seem to have tolerated a greater freedom in the use of disagreement, the trend toward the sytematic use of the sources as defined by Shāfiʿī set in motion the movement to limit disagreement. Shāfiʿī states that there are two kinds of disagreement. The one is prohibited and the other permitted. He goes on to say:

> On all matters concerning which God provided clear textual evidence in His Book or [a sunna] uttered by the Prophet's tongue, disagreement among those to whom these [texts] are known is

[114] See paragraph 497, below.
[115] See paragraph 821, below.

unlawful. As to matters that are liable to different interpretations or derived from analogy, so that he who interprets or applies analogy arrives at a decision different from that arrived at by another, I do not hold that [disagreement] of this kind constitutes such strictness as that arising from textual [evidence].[116]

Thus Shāfi'ī restricts disagreement only on matters on which the scholars may exercise personal reasoning (ijtihād) and on which each may take a decision which is right in his own way. A case in point is the search for the qibla, the direction of the Sacred Mosque. Everyone will have to determine his own qibla, by ijtihād, and although each may take a slightly different position from another, everyone is right in his own way.

SIGNIFICANCE OF THE RISĀLA

Shāfi'ī as the Founder of the Science of Islamic Jurisprudence

THE RISĀLA, a novel work in the literature of Islamic law, gave Shāfi'ī a name as the founder of the science of uṣūl al-fiqh (roots or sources of the law). The uṣūl had been the subject of study by other jurists as attested by the fact that Abū Yūsuf (d. 182/798) discusses certain aspects of it in his *Kitāb al-Kharāj*,[117] and Shaybānī, one of Shāfi'ī's early friends in 'Irāq, is reputed to have written a book on uṣūl. But this term had not yet acquired the technical meaning of a science dealing specifically with the sources of the law which Shāfi'ī had attached to it. No other jurist seems to have discussed the subject in so coherent and systematic a manner, and the

[116] See paragraph 721, below.

[117] Abū Yūsuf, *Kitāb al-Kharāj* (Cairo,1352/1934). Abū al-Mu'ayyad b. Aḥmad al-Makkī regards him as the first who wrote on the subject of uṣūl from a Ḥanafī point of view. See Makkī's *Manāqib al-Imām al-A'ẓam* (Hyderabad, 1321/1904), Vol. II, p. 245.

Risāla appears to be the first complete and well-organized survey of the uṣūl, their interrelationship, and how the detailed rules and decisions were derived from the authoritative sources. It proved to be so excellent a guide of the sharī'a that it was always referred to as the leading work on the subject.[118] Some of the subjects of this book, such as istiḥsān (juristic preference) and 'ilm (legal knowledge), are dealt with more fully in the *Kitāb al-Umm*,[119] and a separate work is devoted to the study of the Qur'ān;[120] but the *Risāla* is the only comprehensive treatise dealing with the subject of uṣūl which Shāfi'ī had written.

The *Risāla*, however, is not a complete work on jurisprudence dealing with the nature and principles of law, although the reader may well form an idea about Shāfi'ī's conception of the nature of law since several sections are devoted to an exposition of the broad principles and rules of the sharī'a. The *Risāla* is in the main a treatise on the nature and use of the sources of the sharī'a. It was written originally as an apologia for the supremacy of traditions, but after its fundamental ideas and arguments had been reformulated in Egypt, it represented a systematic and critical study of all the sources of the law.

The significance of the *Risāla*, therefore, lies not so much in the detailed matters it discusses, although these have had their influences on Muslim jurists, as in the comprehensive view of the whole subject of uṣūl and in the logical and systematic method Shāfi'ī provided for legal reasoning. The originality of the book lies in its new departure in the study of jurisprudence.

From Shāfi'ī's time onward, the *Risāla* became a textbook for students of Muslim jurisprudence. It has been carefully

[118] 'Abd al-Raḥmān Ibn Khaldūn, *al-Muqaddima*, ed. E. M. Quatremère (Paris, 1858), Vol. III, p. 22; trans. F. Rosenthal (London, 1958), Vol. III, pp. 27-28; and M. Z. al-Kawtharī, *Bulugh al-Amānī Fī Sīrat al-Imām Muḥammad b. al-Ḥasan al-Shaybānī* (Cairo, 1355/1937), p. 67.

[119] Shāfi'ī, *Kitāb al-Umm*, Vol. VII, pp. 250-65, 267-303.

[120] Shāfi'ī, *Kitāb Aḥkām al-Qur'ān*, ed. M. Z. al-Kawtharī (Cairo, 1371/1951), 2 vols.

studied by Shāfi'ī's followers as well as by the followers of other schools of law. Al-Muzanī, one of Shāfi'ī's disciples, said that he had read the *Risāla* five hundred times; from each reading he had derived a fresh thought.[121] Ibn Ḥanbal often suggested the *Risāla* to his followers and ranked it in his mind among the best of Shāfi'ī's writings. It became a model for both jurists and theologians who wrote on the subject. Al-Ghazzālī, perhaps the greatest Muslim theologian, wrote a work on jurisprudence in which he elaborated the theme of the *Risāla* and set forth a study of the sources of law in a highly logical and systematic manner in accordance with the Shāfi'ī school of law.[122]

The *Risāla* became a favorite subject for commentaries written by later jurists. Although none of the commentaries has been found, we are told by some authorities that at least five were composed. One of them was by Abū Bakr al-Ṣayrafī (d. 330/932), who was hailed by al-Subkī, a Shāfi'ī follower, as the greatest writer on jurisprudence since Shāfi'ī himself. Other commentators were al-Naysābūrī (d. 349/960), al-Shāshī (d. 365/976), al-Jawzaqī (d. 378/989), and al-Juwaynī (d. 438/1046). These commentators were all learned in the law and theology, and their books were highly regarded in Islamic lands.[123]

The Islamization and Idealization of Law

By providing a precise method of legal reasoning, Shāfi'ī achieved two important results. First, he rationalized on an Islamic basis all the law that earlier generations had handed down. Not only did he reject the use of sources that were not

[121] Bayhaqī, folios 47-48; Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 77.

[122] al-Ghazzālī, *al-Mustaṣfa*. He also devoted two other volumes to an exposition of the law according to the Shāfi'ī school, entitled *Kitāb al-Wajīz* (Cairo, 1317/1900), 2 vols.

[123] Subkī, Vol. II, pp. 169-70. See also Ibn al-Nadīm, p. 300; and Ḥajjī Khalīfa, *Kashf al-Ẓunūn*, ed. G. L. Flügel (Leipzig and London, 1835-58), Vol. II, p. 873.

Islamic, such as custom and personal opinion, but he also defined the method by which legal reasoning was restricted within the framework of the authoritative sources. Although historically the law was derived from both Islamic and non-Islamic sources, the process of Islamizing the law was perhaps an unconscious movement set in motion from the very beginning of Islam. It was Shāfiʿī, however, who consciously laid down a method of jurisprudence that was intended to confine legal reasoning within the framework of Islamic sources. To achieve the purpose he inevitably narrowed the free use of legal reasoning, and the tendency toward *taqlīd* (literally, imitation, i. e., to follow the doctrine of a recognized authority) may be said to have begun at that time. In the following century, taqlīd became the dominating rule.

Furthermore, Shāfiʿī's logical method led him to assume that the decisions and actions of the Prophet had always been consistent and rational. In making use of the Prophet's sunna as a source of law, he always assumed that there was no contradictory sunna; if one was ever found, either it must be lacking in authenticity or, Shāfiʿī argued, the circumstances in which the contradictory sunna had been provided were not the same. In following this line of reasoning, Shāfiʿī subordinated positive rules to the sunna and rejected old legal doctrines, even though based on sound legal reasoning, whenever they contradicted the authority of the sunna.

Shāfiʿī's method of jurisprudence was concerned less with developing the law that existed in his age than with systematizing a body of law that had already reached a high degree of growth. Thus in the *Risāla* Shāfiʿī paid less attention to the problem of developing new principles of law than to the problem of how to demonstrate that all the principles and rules that existed in his time were derived from recognized Islamic sources.

Closely associated with the Islamization of law, perhaps the inevitable result of it, was the tendency to idealize the sharīʿa as the perfect legal order. It is true that Quranic legislation was regarded as divine from the very beginning, but pre-

Islamic law, customary or otherwise, that was not repealed by divine legislation was incorporated into Islam after a long process of synthesis. All the early Muslim jurists unconsciously contributed to the harmonizing of the law with the spirit of divine legislation by making decisions in the form of answers to practical questions. Thus the idea of regarding as divine not only Quranic legislation, but all Islamic law, may be said to have begun in early Islamic history. The philosophical elaboration of this idea, however, had not yet been fully achieved until Shāfiʿī's time. One of Shāfiʿī's main preoccupations, it will be recalled, was his constant disputations with fellow jurists against the use of sources which might infuse into the law elements of human legislation. The development of the sharīʿa after Shāfiʿī's time tended to become gradually divorced from the practical needs of the individual and oriented toward the common interests of Islam, embodying its ethical and religious ideals.

Not unlike the idea of natural law in medieval Christendom, Islamic law was regarded as transcendental and perfect. In contrast with positive law, Islamic law was revealed in a supernatural way and for a supermundane purpose. The *jus divinum* was regarded as the ideal, eternal and just, designed for all time and characterized by its universal application to all men.[124] The ideal life was the life led in strictest conformity with this law.

In theory the divine law preceded the state and was independent of man's own existence. The state was created to enforce the law, but if it fails to do so—and in such a case the state forfeits its *raison d'être*—the individual still remains under an obligation to observe the law even in the absence of anyone to enforce it. The sanction of the law, which is distinct from the validity of that law, need not exist. For the object of the law is to provide for the individual the right path (sharīʿa), or the ideal life, regardless of the existence of the proper authority to enforce it.[125]

[124] See Q. XVIII, 27; XXXIII, 6.
[125] al-Shāṭibī, Vol. II, pp. 8 ff.

The need for a rational justification of such a system is so great that man often seeks to justify it by mere self-conviction.[126] Shāfi'ī's legal reasoning supplied a rationale for the Islamic legal order. Deriving his system from the Qur'ān, the very word of God, and from the model conduct set forth by God's Prophet, Shāfi'ī demonstrated how every rule of law can conform in letter or in spirit to the norms provided by the authoritative sources. In the final formulation of the classical system of Islamic law Shāfi'ī's impress remained permanent.

Shāfi'ī's Influence

It is not difficult to understand the reason for Shāfi'ī's pre-eminence. His vast capacity for work, his extraordinary knowledge of the law as well as his broad knowledge of Islamic studies, his powerful intellect and his eloquent and lucid exposition were devoted exclusively to the study of law. No less favorable for his great success were the circumstances in which he played his role as the founder of a new school of law. He appeared at a time when two rival schools of law were competing for supremacy. There is a saying related by a Muslim scholar that the reason Shāfi'ī's life was relatively short was that there was still need for some differences of opinion, and had he lived longer, no differences would have survived.[127] Shāfi'ī probably never intended to found a school of law after his name. His biographers often quote him as saying that he merely wished to teach the truth and had no desire to have his name cited as an authority.[128] Shāfi'ī's precise legal methodology, however, inevitably limited the number of schools

[126] Submission and self-conviction are urged in many a Quranic communication: Q. II, 2; IV, 136; VI, 155; VII, 204; VIII, 8; XXXIX, 41, etc.

[127] See Muṣṭafa 'Abd al-Rāziq, *Tamhīd li Ta'rīkh al-Falsafa al-Islāmīya* (Cairo, 1944), p. 237.

[128] Ibn Abī Ḥātim al-Rāzī, pp. 91, 93; Ibn 'Abd al-Barr, p. 84; Muzanī's *Mukhtaṣar* (on the margin of *Kitāb al-Umm*, Vol. I, p. 2); Ibn Ḥajar, *Tawālī al-Ta'sīs*, p. 62.

of law that were developing and led to the establishment of a separate school of law.

After Shāfi'ī's death, many legends surrounded the story of his life and his iufluence. A tradition from the Prophet has it that at the end of every century a great reformer from his house would appear. It has been held that 'Umar b. 'Abd al-'Azīz (d. 101/720), the eighth Umayyad caliph, was the religious reformer who appeared at the end of the first century of the Islamic era; at the end of the second, it was Shāfi'ī. Other traditions have been related to prove that Shāfi'ī's legal doctrine was anticipated and approved by the Prophet.[129] Later accounts of his life abound with similar stories which raised him to the highest saintly position. Although these stories lack historical foundation, they should not be dismissed as without value, because for centuries they influenced the minds of generations that followed.

Yet Shāfi'ī's role as the founder of a new school of law was not the product of a hero cult arising after his death, as in the case of Ibn Ḥanbal; nor was he, like Abū Ḥanīfa, the titular head of a group of distinguished jurists who all contributed to Ḥanafī law. His was the active career of a jurist who provided the foundation of a new school of law. Shāfi'ī's influence as the founder of a school of law began after he settled in Egypt, and it rose steadily. Among the leading disciples who were already active in spreading his earlier doctrines in 'Iraq were men such as Abū 'Ubayd al-Qāsim b. Sallām (d. 224/838),[130] al-Za'farānī (d. 260/873),[131] Abū Thawr (d. 240/854),[132] Aḥmad b. Ḥanbal (d. 241/856),[133]

[129] al-Khaṭīb al-Baghdādī, Vol. II, p. 69.

[130] Ibn 'Abd al-Barr, p. 107; Subkī, Vol. I, pp. 272-74; Ibn Khallikān, *Wafayāt al-A'yān*, ed. Muḥammad al-Ḥamīd (Cairo, 1948), Vol. III, pp. 225-27.

[131] Ibn 'Abd al-Barr, pp. 105-106; Ibn Khallikān, *Wafayāt al-A'yān*, Vol. I, pp. 356-57; Subkī, Vol. I, pp. 250-51.

[132] Ibn 'Abd al-Barr, p. 107; Subkī, Vol. I, pp. 227-31.

[133] Ibn al-Jawzī, *Manāqib al-Imām Aḥmad b. Ḥanbal* (Cairo, 1349/1931); W. M. Patton, *Aḥmad Ibn Ḥanbal and the Miḥna* (Leyden, 1897); Abū Zahra, *Aḥmad Ibn Ḥanbal* (Cairo, 1947).

and al-Karābīsī (d. 245/860).[134] In Makka, he had been followed by Abū Bakr al-Ḥamīdī (d. 219/835),[135] Abū Isḥāq al-Shāfi'ī (d. 237/852),[136] and others.[137] In Egypt his leading disciples were al-Buwayṭī (d. 231/845),[138] al-Muzanī (d. 264/877),[139] al-Rabī' b. Sulaymān al-Jīzī (d. 256/869),[140] al-Rabī' b. Sulaymān al-Murādī (d. 270/833),[141] and others.[142] These jurists not only recorded Shāfi'ī's words and expounded his legal doctrines, but they also spread his teachings to other countries and bequeathed his collected writings to succeeding generations.

Cairo and Baghdād, and to a lesser degree Makka, were the chief centers from which Shāfi'ī's doctrines first radiated. Within a century after his death, the Shāfi'ī school gradually spread into Madīna, Syria, and Central Asia. Shrinking in Egypt under Fāṭimid rule (909/1171), it again became predominant under Ṣalāḥ al-Dīn (d. 564/1169). In the last centuries before the occupation of the central lands of Islām by the Ottoman sultans, the Shāfi'ī school had become the most widespread. Adopting the Ḥanafī school as official, the Ottoman government helped to establish this school in Constantinople and in many other Islamic centers. With the rise of the Ṣafawī dynasty at the opening of the sixteenth century, Persia gradually adopted the Shī'ī system. However, the Shāfi'ī school

[134] Ibn 'Abd al-Barr, p. 106; Ibn Khallikān, *Wafayāt al-A'yān*, Vol. I, p. 399; al-Khaṭīb al-Baghdādī, Vol. II, p. 57; Subkī, Vol. I, pp. 251-56.

[135] Ibn 'Abd al-Barr, p. 104; Subkī, Vol. I, pp. 263-64.

[136] Subkī, Vol. I, pp. 225-27.

[137] Ibn 'Abd al-Barr, p. 105; and Subkī, Vol. I, pp. 186 ff.

[138] Ibn 'Abd al-Barr, pp. 109-10; Subkī, Vol. I, pp. 275-79.

[139] Ibn 'Abd al-Barr, pp. 110-11; Ibn Khallikān, *Wafayāt al-A'yān*, Vol. I, pp. 196-97; Subkī, Vol. I, pp. 242-44.

[140] Ibn Khallikān, *Wafayāt al-A'yān*, Vol. II, pp. 53-54; Nawawī, pp. 242-43.

[141] Ibn 'Abd al-Barr, p. 112; Ibn Khallikān, *Wafayāt al-A'yān*, Vol. II, pp. 52-53; Nawawī, pp. 243-44; Subkī, Vol. I, pp. 259-63.

[142] Some members of the 'Abd al-Ḥakam family, especially 'Abd-Allāh b. 'Abd al-Ḥakam (d. 214/830) and his sons. See Ibn 'Abd al-Barr, pp. 113-14; Subkī, Vol. I, pp. 223-25.

remained predominant in Egypt, Syria, the Ḥijāz, South Arabia, parts of the Persian Gulf, East Africa, the Malay Archipelago, Daghistan, and parts of Central Asia.

THE TEXT OF THE RISĀLA

Manuscripts

THERE ARE two manuscripts of the *Risāla* at the Dār al-Kutub, the National Library in Cairo. No others have been discovered. The first, known as the manuscript of Ibn Jamāʿa, consists of 124 folios. The other, known as the manuscript of al-Rabīʿ, is the older and by far the more interesting. In its present form, it consists of 78 folios; 62 constitute the text, and the rest, of more recent vintage, presumably, consist of the certificates of readers—persons who had read or heard the reading of the original text. The size of the manuscript is $5\frac{1}{2}$ x $10\frac{1}{4}$ inches. On the whole the writing is clear, although not as legible as the manuscript of Ibn Jamāʿa. Rarely, however, is it obscure or impossible to read.

The manuscript of al-Rabīʿ is divided into three parts, each forming a juzʾ (tome). This artificial division should not be taken to mean that the *Risāla* was originally divided into three volumes, since a juzʾ is more likely to end abruptly in the middle of a paragraph rather than at the end of a chapter. Such a division was necessitated by the use of three sets of notebooks, each set called a juzʾ and consisting of some twenty folios. The copying of books in separate sets of notebooks seems to have been a practice common among Muslim writers. The artificiality of this division seems to make it advisable not to follow it in the present translation.

The so-called al-Rabīʿ manuscript, alleged to have been the text written by al-Rabīʿ himself rather than one copied from

an older text of al-Rabī', has become a subject of controversy among several scholars. Moritz held that it was written in the middle of the fourth century (the latter part of the tenth century A. D.).[143] He gave no explanation as to how he arrived at this date of the manuscript, but Shaykh Aḥmad Shākir (d. 1958), an editor of the *Risāla*, with whom the present writer had the opportunity of discussing this problem shortly before his death in Cairo, pointed out that probably Moritz arrived at this conclusion on the basis of a statement in the margin of the Ibn Jamā'a manuscript in which it was stated that the latter was compared with an older one—the Rabī' manuscript—copied in the year 358 of the Hijra.[144] Shākir is of the opinion that the Rabī' manuscript must have been about a century earlier, at least shortly before the death of al-Rabī' in 270/883.

Although the difference between Moritz and Shākir in the dating of the Rabī' manuscript is less than a century, Shākir's opinion raises a number of problems. If the date were shortly before 270/883, the manuscript would probably have been written on papyrus rather than on paper, which had just been introduced into Egypt. Moreover, the style of writing, except the titles of each juz', which are in Kufic, is a cursive book hand. To these objections Shākir replied that paper had already been introduced into Egypt in the late second century of the Islamic era and the shift of style from Kufic to cursive had already begun. He quoted a statement from al-Qalqashandī maintaining that although it is commonly accepted that Ibn Muqla (d. 328/939) was the first to introduce the new style of writing, it had already been in vogue since the second century of the Islamic era.[145] Furthermore, he pointed out

[143] See B. Moritz, *Arabic Palaeography* (Cairo, 1905), Vol. II, plate 117.

[144] See the introduction to Shākir's edition (Cairo, 1940), pp. 22-23.

[145] Abū al-'Abbās Aḥmad al-Qalqashandī, *Kitāb Ṣubḥ al-'Asha* (Cairo, 1922), Vol. III, p. 15; Shākir's introduction, pp. 18-19. For a critical evaluation of the commonly accepted fact that Ibn Muqla was the first to introduce the new Arabic style, see Nabia Abbott, "The Contribution of Ibn Muqlah to the North Arabic Script," *American Journal of Semitic Languages and Literatures*, Vol. LVI (1939), pp. 70-83; and *The Rise of the North Arabic Script* (Chicago, 1939), pp. 33 ff.

that there is at the Dār al-Kutub in Cairo a papyrus dated 195/810, which resembles the Rabī' manuscript in style. However, this apparent resemblance, which Shākir advanced in support of his argument, can be very misleading to nonexperts in paleography. Finally, he asserted that the certificates of readers often refer to this manuscript as belonging to al-Rabī', which, in Shākir's view, was evidence of its being al-Rabī''s own copy.

There seems to be no conclusive argument in favor of the viewpoints of either Shākir or Moritz on the strength of internal evidence alone. The manuscript would probably have been on papyrus were it written in al-Rabī''s time, although this argument cannot be regarded as conclusive evidence against its having been one of the first books written on paper in Egypt.[146] The style of the manuscript, which became the common style only a century after the time of al-Rabī', tends to support the viewpoint of Moritz. Professor Nabia Abbott, an expert in Arabic paleography (with whom the writer discussed the problem of style on the basis of photographic copies of samples of the manuscript), is inclined to accept a fourth-century dating.

As internal evidence fails to support either viewpoint, we must call upon external evidence for a more conclusive argument. The present writer has examined the manuscript and the condition of its paper in particular. The paper, though undoubtedly ancient, can give us no final answer on the basis of its present condition. A revealing external examination may be conducted on the strength of a chemical analysis of the paper and ink, an examination which the authorities of the Dār al-Kutub seem unprepared to undertake at the present moment. Until that is done, an expert opinion on whether

[146] There are books written on paper in the third century of the Islamic era, but not from Egypt. Professor Abbott states that "while one might expect a few paper documents to come out of the third-century Egypt, no one would ever expect the Egypt of the early third century to produce a paper book on any subject whatsoever" (Nabia Abbott, "A Ninth-Century Fragment of the 'Thousand Nights'," *Journal of Near Eastern Studies*, Vol. VIII (1949), p. 144.

the manuscript was written in the third or the fourth century of the Islamic era cannot be formed.

Editions

Of the four known editions of the *Risāla*, only two deserve serious consideration, the Būlāq and the Shākir editions. The other two are inferior in quality and at any rate are based on no other known manuscript.

The Būlāq edition is based on the Ibn Jamā'a manuscript and constitutes some eighty-two pages of the first volume of the *Kitāb al-Umm*, published by the Būlāq Government Press in Cairo in 1321/1904. The editor did an extremely competent piece of work in examining the manuscript, but he confined himself, unfortunately, to one manuscript only. With all its merits, this remains an uncritical edition of the *Risāla*, lacking, among other things, any comparison with the Rabī' manuscript.

The Shākir edition, published in Cairo by the Ḥalabī Press in 1358/1940, is a more elaborate work running to some 670 pages and including an introduction, notes, and eight appendices. The erudition and competence of the late learned Shaykh, universally recognized by scholars, have rendered possible not only the publication of the *Risāla* in a separate volume, but also the editing and the publication of several other works.

Shākir's edition is based on the so-called al-Rabī' manuscript. Shākir confines himself to that text rather than seeking to reproduce a reconstruction of the two manuscripts. He indicates in the footnotes, however, the verbal differences between the Būlāq edition and the al-Rabī' manuscript. His edition is enriched by a number of linguistic and historical comments with virtually full references to the Quranic communications. His references to ḥadīth digests are less full and often incomplete. He seldom explains Shāfi'ī's terms and legal concepts. Nor is the bibliography (pp. 609-610) satisfactory;

indeed some of the references in the footnotes are more helpful than the bibliography. In comparing the original manuscript with the Shākir edition, it is evident that Shākir has usually avoided the incorporation of corrections and comments on the original text, and that when he did incorporate them in certain instances in the belief that they would improve the text, he has indicated them by parentheses. But Shākir's edition is far from being critical; and the need for a more complete and scholarly edition continues to exist.

The Translation

To the present writer's best knowledge, a complete translation of the *Risāla* has not been made into any foreign language. A brief summary of it is available in Dutch,[147] but this lays no claim to completeness of translation.

Written in broad and often abstract terms, the *Risāla* presents a number of difficulties to the translator. A translation of the meaning only serves to deprive the reader of the spirit and significance of the original text; a closely literal translation may render the broad abstract concept in the English language more specific than the author intended. Shāfiʿī is often fond of expressing his ideas in terse or incomplete sentences which would probably become meaningless in another language. The present writer has, therefore, provided the equivalent in English in as close and literal a translation as possible, with occasional words or sentences added in parentheses to complete the meaning of a sentence or to clarify an abstract concept. No attempt was made to recast the original in a completely modern style. The definitions of basic terms and concepts and the supplementary material in the notes may help to explain the meaning of the text in translation. The notes are also intended to indicate the principal sources available for the material dealt with in the *Risāla*.

[147] L. I. Graf, *al-Shāfiʿī's Verhandeling over de Wortelen van den Fikh* (Leiden, 1934).

Although the original text of the *Risāla* has undergone several revisions and the rewriting of certain portions, some of Shāfi'ī's ideas have been repeated over and over again, though in different forms, and no attempt has been made in this translation to omit repetitions. Two chapters of the *Risāla* do not appear to fit into the logical order of the book. These are the chapters "On the Nature of God's Orders of Prohibition and the Prophet's Orders of Prohibition" and "On Legal Knowledge." In the original text they follow the chapter "On Traditions," which may have been inserted to answer certain points raised by an interlocutor. As the chapter on legal knowledge consists of a discussion of a general jurisprudential nature, it was deemed necessary to transfer it so that it follows the chapter "On al-Bayān"; and the chapter on the nature of God's orders of prohibition and the Prophet's orders of prohibition was transposed to the position preceding the discussion on traditions. The latter portion of the chapter on al-Bayān, dealing with the Arabic character of the Qur'ān, has been shifted to form the first section of the chapter "On the Book of God." In order to preserve the character and the general scheme of the book which the author laid down, no other attempts have been made to change or completely recast the structure of the work.

Neither the original Arabic texts nor the Būlāq edition were divided into subdivisions in addition to the basic divisions into chapters. The Shākir edition, however, is subdivided into numbered paragraphs. Shākir's system, artificially divides the book into so many paragraphs that it has been abandoned here. The present writer, accordingly, has followed a different method in subdividing the chapters into paragraphs.

POSTSCRIPT

COMPARED with the Ibn Jamā'a manuscript, the al-Rabī' manuscript is relatively free from the frequent citations of blessings which may be found in abundance in later classical writings. Although most of the blessings in the text of al-Rabī' have been rendered into the nearest English equivalents, it did not seem essential to retain all of them.

References to such works as the *Encyclopaedia of Islam*, Brockelmann's *Geschichte der Arabischen Literatur*, and leading dictionaries, which are well-known to students of Islam, have been considered unnecessary.

The abbreviations most frequently used are the following:

The letter b., if inserted between two names, stands for ibn or bin, which means "the son of."

Q is the abbreviation for Qur'ān.

1/632 cites the date according to the Hijra and the Gregorian calendars.

B and S stand for the Būlāq and Shākir editions. They appear in the margin of the translation to indicate the end of the corresponding pages of the Būlāq and Shākir editions.

Translation of Shāfiʿī's Risāla

Chapter I

[INTRODUCTION]

IN THE NAME OF GOD, the Merciful, the Compassionate.

Abū 'Alī al-Ḥasan b. Ḥabīb b. 'Abd al-Malik, on the authority of al-Rabī' b. Sulaymān al-Murādī, from al-Imām Muḥammad b. Idrīs . . . al-Shāfi'ī, said: [1]

1. Praise be to God (Allāh) who created the heavens and the earth, and made the darkness and the light; yet the unbelievers attribute equals to their Lord.[2] Praise be to God to whom gratitude for one of His favors cannot be paid save S 7
through another favor from Him, which necessitates for the giver of thanks for His past favors to repay it by a new favor which [in turn] makes obligatory upon him gratitude for it. Those who describe Him cannot attain to the utmost of His greatness, which is as He has described Himself [in the Qur'ān] and above what His creatures can attribute to Him. I praise Him with such praise as is obligatory on account of His kindness and the might of His majesty. I ask help of Him: The help of one save in whom there is no power or might at all. I ask Him for His guidance: The guidance whereby no one who takes refuge in it will ever be led astray. I ask Him for His forgiveness for whatever [offence] I have already com-

[1] Būlāq ed., p. 2. The first few lines of the Rabī' MS are not legible. The Būlāq edition is filled with blessings, especially after such names as those of God and the Prophet

[2] Cf. Q. VI, 1.

mitted and for what I have deferred—with the pleading of one who confesses himself in a state of servitude[3] and who knows that none but He can forgive his offence and save him from it. I bear witness that there is no god but God alone, who has no associate whatever, and that Muḥammad is His servant and Apostle.[4]

2. *He [God] sent him [to mankind] at a time when men were divided into two groups.*

One of them being the People of the Book,[5] who had changed some of its rules, and misbelieved in God, since they forged falsehood fashioned by their tongues and mixed it with the Truth that God had revealed to them. For God, Blessed S8
and Most High, mentioned to His Prophet[6] some of their B2
misbelief, saying:

> Among them there is a party that twist their tongues with the Book, in order that you may reckon it to be a part of the Book, and they say: 'It is from God,' although it is not from God; and they speak falsehood against God knowingly [Q. III, 72].

[3] I. e., in the service of the Lord.

[4] The recital of this formula, called the profession of faith, constitutes the first of the Five Pillars of Islam (al-arkān al-khamsa), and it is the duty of every Muslim to recite it whenever it is deemed necessary or commendable. Any individual who desires to become a Muslim must first recite it. The other four pillars are: prayer, payment of alms, fasting of the month of Ramaḍān, and pilgrimage. See Shāfi'ī's *Risāla*, Chap. VI. For a detailed discussion of this subject, see Shāfi'ī, *Kitāb al-Umm*, Vols. 1-2.

[5] Ahl al-Kitāb—People of the Book—are those who possess a Scripture. They include Christians, Jews, Samaritans, Sabians, and Magians (Zoroastrians). For a discussion on their status in Islamic law, see Majid Khadduri, *War and Peace in the Law of Islam*, Chap. 17.

[6] Although Shāfi'ī uses the terms "Apostle" (rasūl) and "Prophet" (nabī), no distinction is made between the two, and they seem to him to be synonymous. Muslim publicists, however, have distinguished between the two terms: A Prophet is a man who receives divine revelations; an Apostle is a man who not only receives divine revelations but also communicates them to men. Thus every Apostle is a Prophet, but not every Prophet is an Apostle. See Nasafī's *Creed* (with a commentary by al-Taftazānī), ed. E. E. Elder (New York, 1950), p. 21; Ṣadr al-Dīn b. 'Alī b. Abī al-'Izz, *Sharḥ al-Ṭaḥāwiya*, ed. Aḥmad Muḥammad Shākir (Cairo, 1373/1954), pp. 95-96; A. J. Wensinck, *The Muslim Creed* (Cambridge, 1932), pp. 203-204. For a broad philosophical treatment, see F. Rahman, *Prophecy in Islam* (London, 1958).

And He said:

> So woe to those who write the Book with their hands and then say: 'This is from God,' that they may sell it for a little price. Woe to them for what their hands have written, and woe to them for their earnings [Q. II, 73].

And He, Blessed and Most High, said:

> The Jews say: ''Uzayr[7] is the son of God,' and the Christians say: 'The Messiah is the son of God'; that is the utterance of their mouths, conforming to what was formerly said by those who had previously disbelieved—God oppose them! How they are perverted! They have taken their rabbis and their monks as lords rather than God, although the Messiah is the son of Mary, and they were commanded to worship only one God. There is *no* God at all but Him. Exalted is He above what they associate [with him] [Q. IX, 30-31].

And He, Blessed and Most High, said:

> Didst thou not see those who have received a portion of the Book believing in the idol and the vain thing and saying to those who misbelieved: 'These are better guided than those who have 89
> believed [in the revelation of the Qur'ān]'? Those are they whom God cursed, whomsoever God curses shall never find for himself any defender [Q. IV, 54-55].

The other [group] was that of those who misbelieved in God and created [something] that God did not permit. They set up with their hands stones and wood and images that they found pleasing and gave them names that they forged and called them gods and worshipped them. When they were pleased with [something] other than what they worshiped, they cast [the latter] away and set up with their hands that other [thing] and worshiped it—those were the Arabs.[8]

[7] Although the Jews can hardly think of Ezra as the son of God, 'Uzayr has been generally identified with Ezra. See Ṭabarī, *Tafsīr* (Cairo, 1958), Vol. XIV, pp. 201-205; J. Walker, "Who is 'Uzayr," *Moslem World*, Vol. XIX (1929), pp. 303-306; and 'Uzayr in *Shorter Encyclopedia of Islam*, p. 617.

[8] Shāfi'ī refers to the religious practices of the Arabs before the rise of Islam.

3. A group of the Persians followed their path in this respect and in the worship of whatever they pleased, whether fish or beast or star or fire or something else.

Wherefore God mentioned to His Prophet one of the answers of some of this sort [of men] who worshiped other than Him, quoting from them:

> We, indeed, found our fathers forming a community, so we follow in their footsteps [Q. XLIII, 21].

And He, Blessed and Most High, quoted their saying:

> Do not abandon your gods; do not abandon Wadd or Suwā', or Yaghūth and Ya'ūq, or Nasr.[9] Thus they led many astray [Q. LXXI, 22-23]. S 10

And the Most High said:

> And mention Abraham in the Book; surely he was a trusty man, a prophet, when he said to his father: 'Father, why worshipest thou that which neither hears nor sees, nor avails thee anything?' [Q. XIX, 42-43].

And He said:

> And recite to them the story of Abraham. When he said to his father and his people: 'What do you serve?' They said: 'We serve idols, and to them we continue cleaving.' He said: 'Do they hear you when you pray, or profit you or harm?' [Q. XXVI, 69-73].

Concerning this group, reminding them of his favors, and warning them all of their erring, and His favor to those of them who believed, He said:

> Remember the favor of God to you when you were enemies; for He brought your hearts together and by His favor you became brothers. You were on the brink of a pit of fire and He delivered you from it. Thus God makes His signs clear for you, perchance you will let yourselves be guided [Q. III, 98-99].

[9] Wadd, Suwā', Yaghūth, Ya'ūq, and Nasr were idols worshipped by the Arabs before Islam. See Hishām b. al-Kalbī, *Kitāb al-Aṣnām*; English translation by Nabih Faris, *Book of Idols* (Princeton, 1952), pp. 8, 9, 10. These idols, according to Bayḍāwī, were originally the names of saintly persons whom the Arabs raised to the level of divinity. See Bayḍāwī's *Tafsīr* (Cairo, 1305/1887), p. 762.

4. [Shāfi'ī] said: Before His deliverance of them by Muḥammad, God's blessing and peace be upon him, they were misbelievers, individually and collectively, having in common the gravest of things: The disbelief in God and committing what S11
He does not permit. God is High above what they profess. There is no God other than He, exalted be He with praise of him, Lord and Creator of all things. Whoever of them is alive is as [He] described his state: living, working, speaking under the anger of his Lord, increasing his disobedience. Whoever has died is as [He] described his word and his work: He has gone to his punishment.[10]

5. When [the revelation embodied in] the decree of the heavenly Book reached its appointed time and the Providential order became a reality through the manifestation of His religion, which He chose, after the predominance of disobedience to Him, which He disapproved—He opened the gates of His heavens by His mercy, just as His Providential order did not cease to be executed in His foreknowledge at the time of the revelation of His law in the past centuries. For He, Blessed and Most High, said:

> The people were one nation; then God set forth the prophets as bringers of good tidings and warners [Q. II, 209].

The One whom He chose for His revelation, the Elect One for His message, the One favored above all His creatures through the gift of His mercy and the sealing of His prophecy and the most universal of whatever He sent any messenger with previously, was Muḥammad, His servant and His Apostle. Mention of him is upraised together with mention of Him in this life. He is the intercessor whose intercession is looked for S12
in the next life. He is the purest of His creatures in soul; the One who combines most fully every character that is pleasing to Him in spiritual and temporal life. He is the best [in mankind] in ancestry and family.

And He acquainted us and all mankind with his [Muḥam-

[10] Cf. Q. III, 185; and XI, 19.

mad's] special graces and their universal benefit for religion and the life of this world.[11] For of him He said:

> *There has come to you an apostle from among yourselves; grievous* unto him is the difficulty you have experienced,[12] who is watchful over you, and who is gentle and compassionate with the believers [Q. IX, 129].

And He said:

> . . . That you might warn the Mother of Cities and those around it [Q. XLII, 5].

The Mother of Cities is Makka, the city of his [Muḥammad's] people.

And He said:

> And warn thy clan, thy nearest kin [Q. XXVI, 214].

And He said:

> Surely it is a reminder to thee and to thy people, and assuredly you will be questioned [Q. XLIII, 43].

6. *Shāfi'ī said: Concerning* [God's] *saying,* "*Surely it is a* reminder to thee and to thy people," [Q. XLIII, 43] [Sufyān] S13
b. 'Uyayna, on the authority of Ibn Abī Najīḥ from Mujāhid, told us: It has been asked: "To whom did the man [Muḥammad] belong?" "To the Arabs," was the reply; and it was asked: "To what [tribe] of the Arabs?" "To Quraysh," was the reply.

7. Shāfi'ī said: Mujāhid's comment on [God's saying] is so clear in the text [of the Qur'ān] that it needs no explanation.

God, praise be to Him, specified [Muḥammad's] people and his nearest of kin in [the message of] warning—and included all mankind in it after them—and raised the Apostle's renown through the Qur'ān;[13] furthermore, He distinguished his S14
people in the message when He commissioned him to warn, B3

[11] Cf. Būlāq ed., p. 3.
[12] See Lane's *Lexicon*, p. 2168.
[13] Cf. Q. XCIV, 4.

in accordance with His saying [in the Qur'ān]: "Warn thy clan, thy nearest of kin" [Q. XXVI, 214]. S 15

A few of those who are learned in the Qur'ān have asserted that the Apostle said:

> Men of 'Abd-Manāfī [14] God has sent me to warn my nearest of kin, and you are those nearest of kin.

8. Shāfi'ī said: [Sufyān] b. 'Uyayna told us from Ibn Abī Najīḥ from Mujāhid who [in giving the meaning of God's saying]: "And we have raised for thee thy reputation" [Q. XCIV, 4], said: "Whenever I [God] am mentioned, you [Muḥammad] are mentioned too" [e.g., in the word of witness]: "I profess that there is no god at all but God and that Muḥammad is the Apostle of God." [15]

9. [Shāfi'ī said]: This means (but God knows best) the inclusion of [Muḥammad's] name in [pronouncing] the profession of the faith and in the calling of the believers to prayer. It may also mean mentioning his name in reading the Qur'ān, in acts of obedience and avoiding disobedience.

May God bless and give peace to our Prophet whenever his name is mentioned by those who may remember, or omitted by those who disregard him. May God bless him among the first and the last generation, with the most favorable, most abundant and most gracious blessing that He has bestowed upon any of His creatures. May He grant you and us virtue by His blessing upon Him more than he granted to any of his nation by His blessing and peace. May His peace and mercy and blessing be upon [Muḥammad]. May God reward him on our behalf with the most abundant reward bestowed on any messenger sent on behalf of those to whom he was sent. For God has delivered us from falsehood [16] through him and made us members of the best community established for men

[14] Descendants of 'Abd-Manāf b. Quṣayy of the tribe of Quraysh. See Ibn Hishām, *Kitāb Sīrat Sayyidinna Muḥammad*, ed. Ferdinand Wüstenfeld (Göttingen, 1858-60), pp. 68-75; Mus'ab b. 'Abd-Allah al-Zubayrī, *Kitāb Nasab Quraysh*, ed. Levy Provençal (Cairo, 1953), pp. 14-17.

[15] See Q. XXXVII, 34; XLVIII, 29.

[16] Which in turn leads to death (Tahlika).

by following His religion with which he was well-pleased, He chose for us and by virtue of which [religion] He made pure His angels and those of His creatures He favored with it. S 16 No blessing—hidden or visible—has ever descended upon us, through which we obtained spiritual or temporal gain or by which spiritual or temporal hurt was dispelled, but Muḥammad was the cause of its dispatch, the leader to its benefit and guide to its right way; he is the defender against falsehood and [dissipator of] the sources of evil, which oppose righteousness, and warner against whatever causes falsehood, and he is ever ready with advice for guidance and warning [against evil]. May God's blessings be upon him and his family as His blessings were upon Abraham and his family. Thou [God] art praiseworthy and glorious!

10. God revealed to him His Book, of which He said:

> And verily it is a Book sublime, falsehood comes not to it from before or from behind; a revelation from One who is All-wise and Praiseworthy [Q. XLI, 41-42].

[By virtue of this Book] He brought forth [Muḥammad's people] from misbelief and ignorance [17] into the light and guidance. He made clear to them [in the Book] what He permitted—showing favor by permitting His creatures—and what He prohibited, as He knows best what pertains to their felicity by avoidance of it in this world and in the hereafter. He tested their obedience by placing them under obligation in word and deed, and by enjoining abstinence from forbidden things from which He has warded them off, and He rewarded them for their obedience by granting eternal life in Paradise S 17 and deliverance from His vengeance, whereby His bounty was made abundant. Praiseworthy is He. And He taught them what He made due [as punishment] for those who disobey Him, in contrast to what He made due [as reward] for those who obey Him.

And He admonished them by calling their attention [to the experiences] of former people who had more property and

[17] Literally: "blindness."

children and who lived longer and left [behind them] more memorable deeds. They enjoyed their fortune during their earthly life. When He made His judgement, death took them suddenly for their lapses and they received [God's] punishment at the end of their terms of life so that they take prior warning of future happening and understand [God's commands] as stated clearly [in the Qur'ān] in order to be awake before being taken by surprise, and perform [their deeds] before the end of the period when an offender is not reproved and a ransom is not taken "on the day when each soul will find brought before it the good and the evil that it has done, it will wish that there were a far distance between it and that 818
day" [Q. III, 28].

All that [God]—glorified be His praise—has revealed in His Book is a mercy [from Him] and an evidence [for His existence]. Whoever knows [the Book], knows it; and whoever is ignorant of it, is ignorant of it. He who is ignorant of it, does not know it, and he who knows it, is not ignorant of it. For the public is divided into classes with regard to knowledge. Their status in learning is according to their rank in knowledge of it.

It is obligatory upon him who seeks knowledge to exert his utmost energy in increasing his knowledge, to be patient with every obstacle that may stand in his way, and to be sincere to God in understanding His knowledge—whether [to be found] in the text [of the Book] or [obtained] by deductive reasoning—and to appeal to God for help, for nothing good is obtainable save by God's help.

For he who has obtained knowledge of God's commands from His Book, whether as [provided] in the text or through istidlāl (inductive reasoning), and—had God's help in word and deed in whatever he learned of it—attains virtue in his spiritual and temporal [life], doubt leaves him, wisdom enlightens his heart and is entitled to the position of imāma: leadership in religious matters.

We pray to God—who offers His blessings ere we deserve them and who continues to do so in spite of our negligence to our obligatory gratefulness to Him, and who made us the best

nation on earth—to provide us with an understanding of His Book, of the sunna of His Prophet, and word and deed which would fulfil for us our obligation to Him, and makes obligatory upon us supererogatory [service]. S19

11. Shāfiʿī said: No misfortune will ever descend upon any of the followers of God's religion for which there is no guidance in the Book of God to indicate the right way. For God, Blessed and Most High, said:

> A Book we have sent down to thee that thou mayest bring forth mankind from darkness to light, by the permission of their Lord, to the path of the Almighty, the Praiseworthy [Q. XIV, 1].

And He said:

> And we sent down to them the reminder, that thou mayest make clear to mankind what was sent down to them; and so haply they may reflect [Q. XVI, 46].

And He said:

> And we have sent down to thee the Book as a clarification for everything and as a guidance and a mercy and good tidings to the Muslims [Q. XVI, 91].

And He said:

> And we have revealed to thee a spirit of our bidding. Thou didst not know what the Book was, nor the faith; but We made B4
> it a light by which We guide whomsoever We will of our ser- S20
> vants. And, verily, thou shalt be a guide unto a right[18] path. [Q. XLII, 52].

[18] Literally: "straight."

Chapter II

[ON AL-BAYĀN (PERSPICUOUS DECLARATION)] [1]

What is al-Bayān?

12. Shāfi'ī said: Al-Bayān is a collective term for a variety of meanings [2] which have common roots but differing ramifications. The least [common denominator] of these linked but diverging meanings is that they are [all] a perspicuous declaration for those to whom they are addressed, and in whose tongue the Qur'ān was revealed; [3] they are of almost equal value for these persons, although some declarations were made emphatically clearer than others, though they differed [in clarity] to persons ignorant of the Arab tongue.

13. Shāfi'ī said: The sum-total of what God has declared to His creatures in His Book, by which He invited them to worship Him in accordance with His prior decision, includes various categories.

[1] Al-bayān may mean either the substance of a certain Quranic communication or making clear the meaning of that substance. The nearest equivalent for the first is speech or declaration; for the second, making lucid or perspicuous. Since both meanings are often implied in Shāfi'ī's usage, the combined terminology "perspicuous declaration" has been chosen. For the meaning of al-bayān, see al-Ghazzālī, al-Mustaṣfa, Vol. I, pp. 153-54; al-Bāqillānī, *I'jāz al-Qur'ān*, ed. Aḥmad Ṣaqr (Cairo, 1954), pp. 69-70, 319-320; and the Translator's Introduction pp. 33-34, above.

[2] Ma'ānī (singular: Ma'na) may signify either an intention or an expression of meaning or reason. The English equivalent of meanings, in the sense of ideas, is used here.

[3] I. e., the Arabs.

One of these is what He has declared to His creatures by texts [in the Qur'ān], such as the aggregate of duties owing to Him: That they shall perform the prayer, pay the zakāt (alms tax), perform the pilgrimage, and observe the fast. And that He has forbidden disgraceful acts[4]—both visible and hidden—and in the textual [prohibition of] adultery, [the drinking of] wine, eating [the flesh of] dead things and of blood and pork; and He has made clear to them how to perform the duty of [the major] ablution as well as other matters stated precisely in the text [of the Qur'ān]. 6 S21

A second category consists of [those duties] the obligation of which He established in His Book, but the modes of which He made clear by the tongue of His Prophet. The number of prayers [each day] and the [amount of] zakāt and their time [of fulfilment] are cases in point; but there are other [similar] duties which He has revealed in His Book.

A third category consists of that which the Apostle of God established by example or exhortation, but in regard to which there is no precisely defined rule from God [in the Qur'ān]. For God has laid down in His Book the obligation of obedience to His Apostle and recourse to his decision. So he who accepts [a duty] on the authority of the Apostle of God accepts it by the obligation imposed by God.

A fourth category consists of what God commanded His creatures to seek through ijtihād (personal reasoning)[5] and by it put their obedience to the test exactly as He tried their obedience by other duties which He had ordered them [to fulfil], for the Blessed and Most High said:

> And We shall put you to the trial in order to know those of you who strive and endure, and We will test your accounts [Q. XLVII, 33]. S22

[4] Al-fawāḥish.

[5] Ijtihād literally means personal effort to understand the meaning implied in a certain rule of law in order to form an opinion. It implies personal legal reasoning which should be exercised by applying analogy (qiyās) to an authoritative text such as the Qur'ān or tradition. For a discussion on the use of ijtihād, see Chap. XIII, below; and J. Schacht, *Origins of Muhammadan Jurisprudence*, pp. 105 f., 127 f., 132.

And He said:

> And that God might try what was in your breasts and sift out what was in your hearts [Q. III, 148].

And He said:

> Perchance your Lord will destroy your enemy, and will make you successors in the land, that He may see how you will act [Q. VII, 126].

14. Shāfi'ī said: [God ordered the performance of prayer] in the direction[6] of the Sacred Mosque[7] and said to His Prophet:

> Sometimes We see thee turning thy face about toward the heaven. So We will turn thee to a direction that will satisfy thee. Turn thy face in the direction of the Sacred Mosque, and wherever you are, turn your faces in its direction [Q. II, 139].

And He said:

> And from whatever place thou hast gone forth, turn thy face in the direction of the Sacred Mosque; and wherever you may be, turn your faces in its direction [Q. II, 145].

Thus [God], glorified be His praise, guided [men]—should they be at a distance from the Sacred Mosque—by using the reasoning powers which he has implanted in men and which S 23
discriminate between things and their opposites and the landmarks which [He] set up for them when the Sacred Mosque, towards which He commanded them to turn their faces, is out of sight. For God said:

> For it is He who has made for you the stars, that you might be guided by them in the darkness of land and sea [Q. VI, 97].

And He said:

> And by landmarks and by the stars they are guided [Q. XVI, 16].

[6] The qibla, i.e., the facing of Makka while performing the prayer ritual.

[7] The Sacred Mosque is at Makka. In the center of the Mosque is al-Ka'ba, the sacred shrine of Islam.

15. Shāfi'ī said:[8] Such landmarks may be the mountains, the nights and the days, which have winds of known names though they blow from different directions, and the sun and the moon and the stars whose risings and settings and whose places in the sky are known.

Thus [God] prescribed to men the use of personal reasoning in turning in the direction of the Sacred Mosque by means of guidance to them, which I have described, and so long as men use their personal reasoning they will not deviate from His command, glorious be His praise; but He did not permit them to pray in any direction they wished if the Sacred Mosque were out of sight. And He also instructed them about His will and providence and said: "Does man think that he will be left roaming at will?" [Q. LXXV, 36]. "Left roaming at will" means one who is neither commanded nor prohibited. S24

16. [Shāfi'ī said]: This [communication] indicates that no one—other than the Prophet—is allowed to make a decision except by istidlāl in the way that I have described concerning these matters and concerning justice and penalties in hunting; nor should any man make use of istiḥsān[9] (juristic preference), for to decide by istiḥsān means initiating something himself without basing his decision upon a parallel example.

God commanded men that they should call as witnesses two men of just character.[10] Just character means acting in obedience to God. Thus was the path showing the knowledge

[8] Būlāq ed., p. 5.

[9] Istiḥsān is the method of legal reasoning through which the jurist seeks an opinion for which there is either no authority in the tradition or for which there are two authorities, one of them being preferred. For Shāfi'ī's arguments against istiḥsān, see Chap. XIV, below; and *Kitāb al-Umm*, Vol. VII, pp. 267 ff.

[10] Two men of just character ('adl) constitute the minimum number of witnesses required in testimony (shahāda). The witness must be 'adl—equitable, just, well-known for telling the truth—therefore it means the possession of a character which renders his testimony valid. The nearest equivalent therefore is the combination "just character." See Ibn Farḥūn, *Tabṣirat al-Ḥukkām* (Cairo, 1302/1884), Vol. I, pp. 173, 204; and E. Tyan, *Histoire de l'organisation judiciaire en pays d'Islam* (Paris, 1938), Vol. I, pp. 349-72.

of justice or injustice. This [subject] has been dealt with in its proper place,[11] and I have cited examples which I hope have indicated [the meaning] of others not dealt with in S 25
parallel situations.

al-Bayān I

17. Shāfi'ī said: [12] With respect to visitation [of the Ka'ba],[13] God, Blessed and Most High, said:

> Whoever makes use of the minor pilgrimage in order to perform B 5
> the [great] Pilgrimage, shall bring as an offering what he can easily afford; but if he finds none, then a fast of three days in the course of Pilgrimage, and seven upon your return, that is ten altogether; that applies to those whose families are not present at the Sacred Mosque [Q. II, 192].

Thus it was clearly understood by those to whom this communication was addressed that the three-day fasting during Pilgrimage and the seven-day [fasting] after the return [from Pilgrimage] make ten days altogether. For God said: "These are ten altogether" [Q. II, 192]. This communication was either intended to state precisely [the meaning] or to instruct S 26
men that if three are added to seven the total is ten. And He said:

> We had an appointment with Moses for thirty nights, and We completed them with ten [more] so that the full period of his Lord's appointment was forty nights [Q. VII, 138].

[11] See Chap. XIII, below.

[12] Būlāq ed., p. 5.

[13] There are two kinds of pilgrimages: the major and the minor; the first (al-ḥajj) is the fifth of the five pillars (arkān) of Islam (see Chap. I, note 4; and paragraph 155, below), which must be performed at the tenth of the month of Dhū-al-Hijja, during the 'Id al-adha; the second ('Umra) is the minor or lesser pilgrimage which might be performed at any other time. The major pilgrimage is a duty to be performed by those who are able, at least once in a lifetime; the other is supererogatory. See paragraph 156, below.

So it was clearly understood by those to whom this communication was addressed that thirty and ten nights make forty.

Shāfi'ī said:[14] God's saying: "Forty nights" may either mean the same as the foregoing communication, namely, that if thirty are added to ten the total is forty, or it may have been intended to specify more clearly the meaning.

18. Shāfi'ī said:[15] God said:

> Fasting is prescribed for you as it was for those before you; perhaps you will show piety. A certain number of days [of fasting], but if any of you be sick or on a journey, then a number of other days [Q. II, 179-180].

And He said:

> The month of Ramaḍān in which the Qur'ān was sent down as guidance for the people and as clear signs of the guidance and the salvation[16] (furqān)—so let those of you who witness [the arrival of] the month fast it; but if anyone is sick or on a journey [let him fast] a number of other days [Q. II, 181].

Thus [God] laid down the duty [for men] to fast, specifying that it shall be for a month; and the month, according to [the Arabs] is the period between two [successive] crescents, which may be either thirty or twenty-nine [days]. The guidance implied in this legislation, as well as in the two foregoing ones, is to state more clearly the total number. 82

The most likely interpretation [of this communication] is that it specifies the total number of seven and three, and thirty and ten, that is, to state more precisely the meaning, since men surely must have known these two numbers and their totals just as they have known the month of Ramaḍān.

[14] Būlāq ed., p. 6.

[15] *Ibid.*

[16] The meaning of this word in the various communications of the Qur'ān cannot always be precisely determined. It may mean salvation, separation, proof, or simply a communication. See Jurjānī, p. 111; Nöldeke and Schwally, *Geschichte des Qorans* (Leipzig, 1919), Vol. I, p. 34; and Richard Bell, *Introduction to the Qur'ān* (Edinburgh, 1953), pp. 136-38.

19. Shāfi'ī said: [17] God, Blessed and Most High, said:

> When you stand up for the Prayer, wash your faces and your hands up to the elbows, and wipe your heads, and your feet up to the ankles; and if you are polluted, purify yourselves [Q. V, 8-9].

And He said:

> Nor [when you are] polluted, then purify yourselves, unless you be travellers on the road.[18] S 28

Thus God's Book has provided a precise definition of [the duty of] ablution, which must be distinguished from cleansing with stones (istinjā'), and purifying from pollution.[19]

It has been laid down that [the duty of] washing the face and the limbs must be performed by a minimum of one [washing] for each, and it may mean more than once. The Prophet has specified that [the duty of] ablution shall be performed once, but he himself performed it three times. It follows that the minimum requirement in performing [ablution] is to wash the limb once. The minimum requirement for [complete] washing is likewise once. Since only once is [the legal] requirement, the three [washings] are optional.

The sunna laid down that three stones are required to perform cleansing (istinjā'), and the Prophet indicated what constitutes ablution and complete washing. He also indicated that the ankles and the elbows should be included in the washing, for the text [in the Qur'ān] may mean washing [the

[17] Būlāq ed., p. 6.

[18] Q. IV, 46. The latter part of this communication is not given by Shāfi'ī.

[19] For the meaning of ablution, see Chap. VII, section 2, below. Cleansing with stones after defecation is istinjā', and cleaning from janāba (pollution) is prerequisite for purification. See Shāfi'ī's *Kitāb al-Umm*, Vol. I, pp. 18, 38.

body], either excluding the two limits (the ankles and elbows) or including them. Since the Apostle of God said: "Woe to the [unwashed] heels from the fire of hell," he obviously specified washing rather than wiping.

20. Shāfi'ī said: [20] God said:

> His parents receive, each of them, a sixth of what he has left, if he has children; but if he has no children and his heirs are his parents, then his mother receives a third; if, however, he has brothers, his mother receives a sixth [Q. IV, 12]. S29

And He said:

> A half of what your wives leave belongs to you if they have no children; but if they have children, a fourth of what they leave belongs to you, after any bequests they may have made or debts [have been paid]. . . . If a man—or a woman—whose property is inherited has no direct heirs, but has a brother or a sister, each of the two receives a sixth; if they be more than that, they share in a third, after any bequests he may have made or debts [have been paid], without prejudice one to the other—a charge from God; verily God is All-knowing, All-gracious [Q. IV, 13, 15-16].

These textual legislations [in the Qur'ān] have rendered other narrative unnecessary. God, however, made a condition that [an estate should not be distributed] until bequests are executed and debts are paid. Thus the narrative indicates that S30
a bequest should not exceed one third [of the estate].[21]

al-Bayān III

21. Shāfi'ī said: [22] God, Blessed and Most High, said:

> Verily the Prayer has become for the believers a thing prescribed for stated times [Q. IV, 104].

[20] Būlāq ed., p. 6.
[21] See Ṭabarī, *Tafsīr*. Vol. VIII, pp. 30 ff.
[22] Būlāq ed., p. 6.

And He said:

> Observe the Prayer and pay the alms tax (al-zakāt) [Q. II, 40; and other similar communications].

And He said:

> And perform the major (ḥajj) and minor ('umra) pilgrimages to God [Q. II, 192].

Then He specified clearly by the tongue of His Apostle the required number of prayers, their times and the modes of their performance; the amount of zakāt and the times of its payment; the performance of the major (ḥajj) and minor ('umra) pilgrimages and when these duties are required or not required and when [the Prophet's] sunnas are in agreement or contradictory with each other. Other parallels may be found in the Qur'ān and the sunna. S 31 B 6

al-Bayān IV

22. Shāfi'ī said: [Al-Bayān] includes all that the Apostle has provided in the sunna concerning which there is no [legislation in the] Book. There is in this book,[23]—concerning God's favoring mankind [with the ability] to understand the Book and Wisdom—a proof that Wisdom is the sunna of the Apostle of God.[24]

Included in what I have stated concerning God's command to His creatures ordering obedience to the Apostle and speci-

[23] See paragraph 87, below.

[24] In a broad sense al-ḥikma is synonymous with the Truth and it includes, legally speaking, all the orders of prohibition and permission. See Jurjānī, pp. 96-97; and al-Muṭarrazī, *Kitāb al-Mughrib* (Hyderabad, 1328/1911), Vol. I, p. 133. Shāfi'ī, however, uses the term specifically for legal orders derived from the sunna, distinguishing it from legal orders based on divine communication. His opinion is based on the following Quranic communications; Q. II, 123, 231, 146; IV, 113; XXXIII, 34; and LXII, 2, in which wisdom follows the Qur'ān and is interpreted to mean the sunna. See paragraphs 160-62, 192-95; and Ṭabarī, *Tafsīr*, Vol. III, pp. 86-88.

fying the place it has in religion,[25] is a proof of the precise definition of the duties stated in the Qur'ān, which consists of the following categories:

The first category is what the Book has laid down with such clarity that nothing further—in addition to revelation (tanzīl)—was needed.

The second category consists in what is clearly stated in the obligation imposed [by God] ordering obedience to the Prophet. The Apostle in his turn precisely stated on the authority of God what the duties are,[26] upon whom they are binding, and in what circumstances[27] some of them are required or not required, and when they are binding. 832

The third category consists in what [God] has specified only in the sunna of His Prophet, in the absence of a textual [legislation in the] Book.

23. Shāfi'ī said:[28] Everything [in the sunna of the Prophet] is a clear explanation for the [divine communication in the] Book of God.

So he who accepts the duties to God [laid down] in His Book should accept the sunna of the Apostle by God's command ordering His creatures to obey the Apostle and to have recourse to his decision. For he who accepts [a duty] on the authority of the Apostle accepts it from God, since God has imposed the obligation to obey [the Prophet].[29]

The acceptance of [all the duties] laid down in both the Book of God and the sunna of the Apostle means the acceptance of each one as imposed by God, despite the differing reasons for the acceptance of what He permitted or prohibited, commanded, or punished in various ways as He pleased, glorified be His praise. For He said "He will not be questioned about what He does, but they will be questioned" [Q. XXI, 23]. 833

[25] See paragraph 88, below.
[26] Singular in the Arabic text.
[27] Literally: "at what time."
[28] Būlāq ed., p. 7.
[29] See Chap. VII, below.

al-Bayān V

24. Shāfi'ī said: [30] God, Blessed and Most High, said:

> And from whatever place thou hast gone forth, turn thy face in the direction of the Sacred Mosque; and wherever you may be, turn your faces in its direction [Q. II, 145].

Thus [God] laid down the duty that wherever men may be they must turn their faces in the direction [of the Sacred Mosque].[31]

The [use of the] term "direction" means that if the object [the Sacred Mosque] is seen, then [the prayer] in that direction is determined [by sight]; but if [the Mosque] is out of sight, the direction is determined by ijtihād (personal reasoning) — that is all that one is required to do. S 34

God said:

> It is He who has appointed for you the stars, that by them you may be guided through the darkness of land and sea [Q. VI, 97].

And He said:

> And by landmarks and by the stars they might be guided [Q. XVI, 16].

Thus [God] has set landmarks [for men to be guided by] and erected the Sacred Mosque in whose direction they were ordered to turn their faces [in prayer]. Their turning in that direction [is determined either] by the landmarks set up by Him or by the reasoning powers which He implanted in them to recognize the landmarks. All this is a clear declaration and a favor from Him, glorious be His praise.

25. And He said:

> And call in as witnesses two persons of just character from among yourselves [Q. LXV, 2].

[30] Būlāq ed., p. 7.

[31] Part of paragraph 105 to the end of paragraph 110 [Shākir's ed.] are omitted because they merely explain the literal meaning of the words shatr, and jiha, equivalent to "toward" or "direction" (i.e., of the Sacred Mosque in Makka).

And He said:

> Such witnesses as you approve of [Q. II, 282].

[God] specified that [the person] of just character is he who acts in accordance with [the command to obey God]. Thus any one who seemed to be acting in accordance with [the command to obey God] was regarded as of just character, and any one who acted contrary [to the command to obey God] was regarded as lacking in just character.

26. [God], glorified be His praise, said:

> Do not kill game when you are in pilgrim sanctity; whoever of you kill it intentionally, there shall be compensation equal to what he has killed from [his] flocks, as two persons of just character among you shall decide—an offering to be delivered at the Ka'ba [Q. V, 96]. S38

Equal compensation in kind literally means the nearest in size to the body [of the game killed]. The viewpoints of the Companions of the Apostle who expressed an opinion on game are at one that compensation should be the nearest in size to the body of the game. We should therefore examine the game killed, and whatever of the livestock is found to resemble it in size should be paid in compensation.

Equal compensation in kind for the livestock does not mean compensation in price save in a far-fetched interpretation. Of the two meanings, the literal is the more appropriate. This [literal meaning] is sought by ijtihād, which any man B7
who makes a decision should apply in [determining] equal compensation.

27. This kind of [legal] knowledge is an example of what I have already discussed, [namely], that no one at all should [give an opinion] on a specific matter by merely saying: It is permitted or prohibited, unless he is certain of [legal] knowledge, and this knowledge must be based on the Qur'ān and the sunna, or [derived] from ijmā' (consensus) and qiyās (analogy). The subject dealt with in this chapter belongs to analogy, on the strength of which the right direction in

prayer, just character, and equal compensation are to be determined. S39

Analogy is [the method of reasoning] through which indications are sought from parallel precedents in the Qur'ān or the sunna—since these are the authoritative sources of the truth—in determining what I have already stated such as the direction in prayer, just character, and equal compensation. [Analogy's] conformity [to precedent] should be based on two conditions:

The first is that God or His Apostle have either prohibited a certain act[32] by an [explicit] text [in the Qur'ān and the sunna] or permitted it by an [implied] reason. If such a reason is found in the absence of a specific text in the Book or the sunna, the act should be prohibited or permitted in conformity with the [implied] reason of permission or prohibition.

[The second] is that we may find a certain act analogous to only one aspect of a certain precedent and analogous to another aspect of another precedent, but neither the latter nor the former provides a close analogy. In such a case, analogy should be applied to the closest one as I have stated [in] the example of the killing of game.

28. Shāfi'ī said: There are two [categories of] viewpoints concerning [legal] knowledge: one of them is ijmā' (agreement) and the other is ikhtilāf (disagreement). These will be dealt with elswhere [in this book].[33] A case in point of our knowledge of the Book of God is that the entire Book of God has been revealed in the Arab tongue. And [our] S40 knowledge of the abrogating and abrogated [communications] of the Book of God,[34] the duties imposed [by God] through His revelations, the ethics [of the Book], guidance and permissibility [as provided in the Book]. And knowledge of the position in which God has placed His Prophet as it is precisely defined in the commands of His Book and in the utterances of His Prophet; and of what He meant by the sum

[32] Shāfi'ī uses the broad term shay' which means, literally, a thing.

[33] See Chaps. XI and XV, below; and *Kitāb al-Umm*, Vol. VII, pp. 250-65.

[34] For al-nāsikh wa al-mansūkh, see Chap. V, below.

total of the duties imposed by Him and upon whom [*they are* binding], whether upon all His creatures or only upon some of them, rather than others; and [the obligation] laid down by God ordering obedience to His Prophet and recourse to his decision; and knowledge of the parables demonstrating obedience to God and indicating how to avoid disobedience to Him as well as how to avoid missing one's own fortune and how to increase supererogatory favor [are all provided in *the Book of God*].

It is the duty of those who have [legal] knowledge never to express an opinion unless it is based on certainty. There are cases where men have discussed matters relating to [legal] knowledge when, if only they had abstained from so doing, abstention would have been more appropriate and safer, I trust. S 41

Chapter III

[ON LEGAL KNOWLEDGE][1]

29. *Someone asked me:* [2] *What is [legal] knowledge and* how much should men know of it?

30. Shāfi'ī replied: Legal knowledge is of two kinds: one is for the general public, and no sober and mature person should be ignorant of it.

31. He asked: For example?

32. [Shāfi'ī] replied: For example, that the daily prayers are five,[3] that men owe it to God to fast the month of Ramaḍān, to make the pilgrimage to the [Sacred] House whenever they are able, and to [pay] the legal alms in their estate; that He [God] has prohibited usury,[4] adultery, homicide, theft, [the drinking of] wine, and [everything] of that sort which He has obligated men to comprehend, to perform, to pay in their property, and to abstain from [because] He has forbidden it to them. S 357

This kind of knowledge may be found textually in the Book

[1] The heading is not in Shākir's edition, but may be found in the Būlāq edition, p. 50. This section, moved from its place following the chapter on traditions, deals with a broad jurisprudential subject, not on traditions as a source of the sharī'a. The subject matter of this chapter has been dealt with more fully in Shāfi'ī's *Kitāb al-Umm*, Vol. VII, pp. 250-65; edited and published in a separate booklet by Aḥmad Muḥammad Shākir under the title *Jumā' al-'Ilm* (Cairo, 1940).

[2] The opening statement, "Shāfi'ī said," is omitted.

[3] Būlāq ed., p. 50.

[4] Būlāq ed., p. 50.

of God, or may be found generally among the people of Islam. The public relates it from the preceding public and ascribes it to the Apostle of God, nobody ever questioning its ascription or its binding force upon them. It is the kind of knowledge which admits of error neither in its narrative nor in its S 358
interpretation; it is not permissible to question it.

33. He asked: What is the second kind?

34. Shāfi'ī replied: It consists of the detailed duties and rules obligatory on men, concerning which there exists neither a text in the Book of God, nor regarding most of them, a sunna. Whenever a sunna exists [in this case], it is of the kind related by few authorities, not by the public, and is subject to different interpretations arrived at by analogy.

35. He asked: Is [legal knowledge of] this kind as obligatory as the other, or is it not obligatory so that he who acquires such knowledge performs a supererogatory act, and he who neglects it falls not into error? Or, is there a third kind, S 359
derived from a narrative (khabar) or analogy?

36. [Shāfi'ī] replied: There is a third kind [of knowledge].

37. He asked: Will you explain it, give its source, and state what [portion] of it is obligatory, and on whom it is binding and on whom it is not binding?

38. [Shāfi'ī] replied: The public is incapable of knowing this kind of knowledge, nor can all specialists obtain it. But those who do obtain it should not all neglect it. If some can obtain it, the others are relieved of the duty [of obtaining it]; but those who do obtain it will be rewarded.

39. He asked: Will you cite a narrative or any other relevant information as a basis for [using] analogy? S 360

40. [Shāfi'ī] replied: God has imposed the [duty of] jihād as laid down in His Book and uttered by His Prophet's tongue. He stressed the calling [of men to fulfil] the jihād [duty][6] as follows:

> God has bought from the believers their selves and their possessions against [the gift of] Paradise. They fight in the way of God;

[6] For the legal meaning of jihād, see M. Khadduri, *War and Peace in the Law of Islam*, Chap. 5.

they kill, and are killed; that is a promise binding upon God in the Torah and Gospel and the Qur'ān; and who fulfils his covenant better than God? So rejoice in the bargain you have made with Him. That is the mighty triumph [Q. IX, 112].

And He said:

Fight the polytheists totally as they fight you totally;[6] and know that God is with the godfearing [Q. IX, 36].

And He said:

Slay the polytheists wherever you find them, and take them, and confine them, and lie in ambush for them everywhere. But if they repent and perform the prayer and pay the zakāt, then set them free. God is All-forgiving, All-compassionate [Q. IX, 5].

And He said:

Fight those who do not believe in God nor in the Last Day, who do not forbid what God and His Apostle have made forbidden, and who do not practice the religion of truth, of those who have been given the Book, until they pay the jizya out of hand and have been humbled [Q. IX, 29]. S 361

41. 'Abd al-'Azīz b. Muḥammad al-Darāwardī[7] told us from Muḥammad b. 'Amr b. 'Alqama from Abū Salama [b. 'Abd al-Raḥmān] from Abū Hurayra, who said that the Apostle of God said:

I shall continue to fight the unbelievers until they say: 'There is no god but God,' if they make this pronouncement they shall be secured their blood and property, unless taken for its price, and their reward shall be given by God.[8]

And God, glorified be His praise, said:

O believers, what is the matter with you, that when it is said to

[6] Bell's substitution of the word "continuously" is fitting in this communication, but it alters the literal meaning of the text. See Richard Bell, *The Qur'ān*, Vol. I, p. 178.

[7] Būlāq ed., p. 50.

[8] See Abū Dāwūd, *Sunan* (Cairo, 1935), Vol. III, p. 44.

you: 'Go forth in the way of God,' you sink down to the ground?. 7
Are you so content with this present life as to neglect the Hereafter? The enjoyment of this life is little in comparison with the Hereafter. If you do not go forth, He will inflict upon you a painful punishment, and instead of you He will substitute another people; and you will not hurt Him at all, for God is powerful over everything [Q. IX, 38-39].

And He said:

Go forth, light and heavy! Struggle in God's way with your possessions and yourselves! That is better for you, did you but S 362
know [Q. IX, 41].

42. [Shāfi'ī] said: These communications mean that the jihād, and rising up in arms in particular, is obligatory for all able-bodied [believers], exempting no one, just as prayer, pilgrimage and [payment of] alms are performed, and no person is permitted to perform the duty for another, since performance by one will not fulfil the duty for another.

They may also mean that the duty of [jihād] is a collective (kifāya) duty different from that of prayer: Those who perform it in the war against the polytheists will fulfil the duty and receive the supererogatory merit, thereby preventing those B 50
who have stayed behind from falling into error.

But God has not put the two [categories of men] on an equal footing, for He said:

Such believers who sit at home—unless they have an injury—are not the equals of those who fight in the path of God with their possessions and their selves. God has given precedence to S 363
those who fight with their possessions and their selves over those who sit at home. God has promised the best of things to both, and He has preferred those who fight over those who sit at home by [granting them] a mighty reward [Q. IV, 97].

The literal meaning of this communication is that the duty is obligatory on all men.[9]

[9] Cf. Būlāq ed., p. 51, which incorporates this statement with the question of the interlocutor. See Shākir's comment in the *Risāla*, p. 364, n. 2.

43. He asked: Where is the proof for your opinion that if some people perform the duty, the others would be relieved of punishment?

44. [Shāfi'ī] said: It is in the communication [that I have just cited].

45. He asked: In what part of it? S 364

46. [Shāfi'ī] replied: God said: "Yet to each God has promised the best of things."

Thus God has promised "the best of things" for those who stayed behind and could not go to the jihād, although he clearly specified his preference for those who went to the jihād over those who stayed at home. If those who stayed at home were in error, while others were fighting, they would be committing a sin, unless God forgives them, rather than receiving "the best of things."

47. He asked: Is there any other [proof]?

48. [Shāfi'ī] replied: Yes, God said:

> It is not for the believers to go forth all together, but why should not a party of every section of them go forth, to become learned in religion, and to warn their people when they return to them, perhaps they will beware [Q. IX, 123].

[When] the Apostle went to battle he was accompanied by some of his companions while others stayed at home; for 'Alī b. Abī Ṭālib stayed at home during the battle of Tabūk. Nor did God ordain that all Muslims were under obligation to go to battle, for He said: "Why should not a party of every S 365 section of them go forth?" So He made it known that going into battle was obligatory on some, not on all, [just] as knowledge of the law is not obligatory on all but on some, save the fundamental duties which should be known to all men. But God knows best.

49. Shāfi'ī said:[10] In like manner are other duties,[11] the fulfilment of which is intended to be collective; wherever

[10] Būlāq ed., p. 51.
[11] Singular in the Arabic text.

they are performed by some Muslims collectively, those who do not perform them will not fall in error.

If all men failed to perform the duty so that no able-bodied man went forth to battle, all, I am afraid, would fall into error (although I am certain that this would never happen) in accordance with [God's] saying:

> *If you do not go forth, He will inflict upon you a painful punishment* [Q. IX, 39].

50. He asked: What is the meaning [of this communication]? S 366

51. [Shāfi'ī] replied: It means[12] that it is not permissible that all men should fail to "go forth"; but that if some go forth, so that a sufficient number fulfils [the collective duty], the others do not fall into error, because the going forth by some would fulfil the [duty of] 'going forth.'

52. He asked: Are there examples other than the jihād?

53. [Shāfi'ī] replied: [Yes, such as] the funeral and burial prayers, the performance of which should not be neglected; but men are not all under the obligation to attend to their performance, for those who perform them will relieve those S 367
who do not from falling into error.

In the same [category falls the duty to] reply to a salutation. For God said:

> When you are greeted with a greeting, respond with a better one, or return it. Verily God keeps account of everything [Q. IV, 88].

The Apostle of God said:

> He who is standing shall greet him who is sitting. If [only] one replies to a greeting, he would fulfil [the duty] on behalf of the others.[13]

These are merely intended to mean that a reply must be made. So the response of the few fulfils the duty for all who are obligated to reply, for the [collective] response is sufficient.

[12] Literally: "The indication in it."

[13] Mālik, *al-Muwaṭṭa'*, ed. M. F. 'Abd al-Bāqī (Cairo, 1951), Vol. II, p. 959; Abū Dāwūd, Vol. IV, p. 351.

So far as I have been informed, the Muslims have continued to act as I have stated, from the time of the Prophet to the present. Only a few men must know the law, attend the funeral service, perform the jihād and respond to greeting, while others are exempt. So those who know the law, perform the jihād, attend the funeral service, and respond to a greeting will be rewarded, while others do not fall into error since a sufficient number fulfil the [collective] duty. S 368 S 369 B 51

Chapter IV

[ON THE BOOK OF GOD]

[*Arabic Character of the Qur'ān*][1]

54. One of them said: There are in the Qur'ān Arabic and foreign [words]. 84

55. Shāfi'ī replied:[2] The Qur'ān indicates that there is no portion in the Book of God that is not in the Arab tongue. He who expressed such an opinion [concerning foreign words in the Qur'ān] may have found some [men] who accepted it by [sheer] submission (taqlīd)[3] to his authority, leaving the matter of proof up to him and to those who have disagreed with him. However, by mere submission they have neglected [their duty]; God forgiveth them and us.[4] But, perhaps, he who expressed the opinion that there are in the Qur'ān [words] which are not of the Arab tongue—and his opinion was accepted by others—meant that there are certain particular [words] which are not understood by some Arabs.

Of all tongues, that of the Arabs is the richest and the most extensive in vocabulary. Do we know any man except a

[1] This section constitutes the latter part of the chapter on al-bayān. Cf. Shākir's ed., paragraph 133.

[2] Būlāq ed., p. 8.

[3] Literally: "imitation." This word is used as the opposite of ijtihād or the exercise of personal reasoning.

[4] For Shāfi'ī's warning against taqlīd, see Muzanī's *Mukhtaṣar* (margin of the *Kitāb al-Umm*, Vol. I, p. 2).

prophet who apprehended all of it? However, no portion of it escapes everyone, so that there is always someone who knows it. Knowledge [of this tongue] to the Arabs is like the knowledge of the sunna to the jurists (fuqahā'): We know of no one who possesses a knowledge of all the sunna without missing a portion of it. So if the knowledge of all the scholars is gathered together, the entire sunna would be known. [However], if the knowledge of each scholar is taken separately, each might be found lacking in some portion of it, yet what each may lack can be found among the others. S 42

They [the scholars] may be divided into various classes: Those who possess the greater portion [of the sunna], although they may have lacked some of it, and others who know less than the others. The little of the sunna which may not be known to [the scholar] who possesses the greater part of it is not evidence that knowledge of it should be sought from [scholars of] another class, but that what is lacking should rather be sought from among his colleagues [of the same class] until the entire sunna of the beloved Prophet[5] is gathered by each scholar separately. They [the scholars] vary as to the degree of their comprehension [of the sunna]. S 43

In like manner is the [knowledge concerning the] tongue of the Arabs by the scholars[6] and the public: No part of it will be missed by them all, nor should it be sought from other [people]; for no one can learn [this tongue] save he who has learned it from [the Arabs], nor can anyone be as fluent [in this tongue] as they unless he has followed them in the way they learned it. He who has learned it from them should be regarded as one of the people of that tongue.

Those who have adopted [tongues] other [than the Arabic], have done so because they have neglected [this tongue]; if they return to it, they will belong to its people.

Knowledge of the [Arabic] tongue is more widely spread among the majority of Arabs than knowledge of the sunna among the scholars.[7]

[5] Literally: "Whom I love more than my father and mother."
[6] al-Khāṣṣa literally means the few, i.e. the scholars.
[7] Būlāq ed., "Among the majority of the scholars," p. 8.

56. If someone says: May we not find some foreigners who [are capable of] uttering some [words] in the Arab tongue?

This may be explained, as I have said, by the possibility of learning them from [the Arabs]; otherwise [8] none could [possibly] utter more than a few [words]. And he who has uttered a few [words] will be [regarded as] belonging to the Arabs.

But we do not deny that [there may exist] in foreign tongues certain words, whether acquired or transmitted, which may be similar to those of the Arab tongue, just as some words in S44
one foreign tongue may be similar to those in others, although these [tongues are spoken in] separate countries and are different and unrelated to one another despite the similarity in some of the words.

57. Someone may ask: What is the proof that the Book of God was [communicated] in a pure Arab tongue, unmixed with others?

58. [Shāfi'ī replied]: The proof is [to be found] in the Book of God [itself], for God said:

> We never sent any messenger save with the tongue of his people B8
> [Q. XIV, 4].

59. But if someone says: [Each of] the messengers before Muḥammad was sent to his own people, while Muḥammad was sent to all mankind. This may either mean that [Muḥammad] was sent with the tongue of his people and that all others must learn his tongue—or whatever they can learn of it—or that Muḥammad was sent with the tongues of all [mankind]. Is there any evidence that he was sent with the tongue
of his own people rather than with foreign tongues? S45

60. Shāfi'ī replied: [9] Since tongues vary so much that different [people] cannot understand one another, some must adopt the language of the others. And preference must be given to the tongue which others adopt.

The people who are fit to receive such a preference are those

[8] Literally: "For if he were not of those who learned it from them."

[9] Būlāq ed., p. 9; Shāfi'ī's reply begins with the statement: "The evidence for it is to be found in the Book of God."

whose tongue is their Prophet's tongue. It is not permissible—but God knows best—for the people of [the Prophet's] tongue to become the followers of peoples whose tongues are other than that [of the Prophet] even in a single letter; but rather all other tongues should follow his tongue, and all the peoples of earlier religions should follow his religion. For God has declared this in more than one communication of His Book. He said:

> Verily it is the revelation of the Lord of the worlds, brought down by the Faithful Spirit, upon thy heart, that thou mayest be of those who warn, in a clear Arabic tongue [Q. XXVI, 192-195].

And He said:

> Thus have We sent it down as an Arabic Law [Q. XIII, 37].

And He said:

> And so We have revealed to thee an Arabic Qur'ān in order that thou mayest warn the Mother of the Towns and the people of its vicinity [Q. XLII, 5]. S 46

And He said:

> Ḥā' Mīm [10]
> By the clear Book
> Behold, We have made it an Arabic Qur'ān, perchance ye will understand [Q. XLIII, 1-2].

And He said:

> An Arabic Qur'ān with no crookedness in it, perchance they will be Godfearing [Q. XXXIX, 29].

61. Shāfi'ī said: Thus [God] has given evidence in each of the [foregoing] communications that His Book is Arabic, and He confirmed this by His disavowal—glorified be His praise—of any other tongue than the Arab tongue in two [further] communications of His Book.

[God], the Blessed and Most High, said:

[10] These are some of the obscure letters that are found at the beginning of certain Quranic chapters.

> We know well that they say: 'It is only a human being who teaches him'; the tongue of him they hint at is foreign, but this is a clear Arabic tongue [Q. XVI, 105].

And He said:

> If We had made it a foreign Qur'ān, they would have said: Why are not its communications made distinct? What, foreign and Arabic [Q. XLI, 44]?

62. Shāfi'ī said: He [God] has made us cognizant of the significance of His favors [11] by virtue of the [Prophet's] place with which He has favored us. For He said:

> There has come to you a messenger from among yourselves, *grievous to him is your suffering, watchful he is over you, and* with the believers, he is gentle and compassionate [Q. IX, 129]. S 47

And He said:

> It is He who has raised up among the untutored people a messenger from among them to recite to them His signs, and to purify them, and to teach them the Book and the Wisdom, though they were hitherto in manifest error [Q. LXII, 2].

Among those favors which [God] made His Prophet cognizant of, is what He said [to him]:

> It is assuredly a reminder to thee and thy people [Q. XLIII, 43].

Thus [God] has favored the [Prophet's] people by associating their name with his name in His Book.

And He said:

> And warn thy clan, thy nearest kin [Q. XXVI, 214].

And He said:

> In order that thou mayest warn the Mother of the Towns and those around it [Q. XLII, 5].

The Mother of the Towns is Makka,[12] the city [of the

[11] Būlāq ed., p. 9.

[12] All Muslim commentators are agreed that the Mother of Towns is Makka. Richard Bell, however, suggests that it is probably Madīna. See Richard Bell, *The Qur'ān*, Vol. II, p. 484, n. 3.

Prophet] and of His people. Thus [God] mentioned them in His Book as a special [people] and included them among those who were warned as a whole, and decreed that they were to be warned in their Arabic tongue—the tongue of the [Prophet's] people in particular.

It is obligatory upon every Muslim to learn the Arab tongue to the utmost of his power in order [to be able] to profess through it that "there is no God at all but God and Muḥammad is His servant and Apostle," and to recite in it [i. e., the Arabic tongue] the Book of God, and to utter in mentioning what is incumbent upon him, the takbīr,[13] and what is commanded, the tasbīḥ,[14] the tashahhud [15] and others. S 48

Whatever is additional of the language which God made to be the language of him [Muḥammad] by whom He sealed His prophethood and by whom He revealed the last of His Books—is for his [man's] welfare, just as it is his [duty] to learn [how] to pray and recite the dhikr [16] in it, to visit the [Sacred] House [17] and perform its duties, to turn [in prayer] in the direction to which he should turn,[18] and to be a follower [in the performance] of the duties imposed upon him or recommended to him, [rather] than to be followed. S 49

63. Shāfi'ī said: [19] [The reason] I began to explain why the Qur'ān was communicated in the Arab tongue rather than in another, is that no one who understands clearly the total meanings of the [legal] knowledge of the Book of God would be ignorant of the extensiveness of that tongue and of the various meanings [of its words] to be found [just as] there are various words for a certain meaning. Doubts which occur

[13] Calling "God is greatest."

[14] "God be praised."

[15] The recital of the salutation and the formula of the profession of the faith: "There is no god at all but God and Muḥammad is the Apostle of God."

[16] The dhikr is the recital of the praise and glorification of God and of his remoteness from every impurity or imperfection. See Lane, *Lexicon*, p. 969.

[17] al-Ka'ba. See paragraph 14, above.

[18] I. e., facing the Sacred Mosque in prayer (al-Qibla).

[19] Būlāq ed., p. 9.

to one who is ignorant of [the Arab tongue] will disappear from him who knows it.

Calling the attention of the public to the fact that the Qur'ān was communicated in the Arab tongue in particular is [a sincere piece of] advice to [all] Muslims. This advice is a duty imposed upon them which must not be put aside and is the attainment of a supererogatory act of goodness which no one will neglect except him who makes himself foolish and who abandons the field of good fortune. Included in faithfulness is that the truth [20] shall be explained to them. Both the fulfilment of what is right and faithfulness to the Muslims are [embodied in our obligation of] obedience to God. And obedience to God embraces all good.

64. Shāfi'ī said: [21] Sufyān b. 'Uyayna told us from Ziyād b. 'Ilāqa, who said: I have heard Jarīr b. 'Abd-Allāh saying: "I have paid homage to the Prophet that [I will be] faithful to every Muslim." [22] S 50

Ibn 'Uyayna [also] told us from Suhayl b. Abī Ṣāliḥ from 'Aṭā' b. Yazīd [al-Laythī] from Tamīm al-Dārī, that the Prophet said: "Religion is faithfulness," repeated three times. "To whom?" the Prophet was asked.[23] "To God, to His Book, to His Prophet and to all the Muslims, their leaders and their public," he replied.[24]

65. Shāfi'ī said: God has addressed His Book to the Arabs in their tongue in accordance with the meanings known to them. Included [in the words] "in accordance with the meanings they know" was the extensiveness of their tongue. S 51

It is [God's] divine disposition to express something, part of which is literally general which is intended to be obviously

[20] Al-Ḥaqq is what is right or the truth in terms of law and religion. See Jurjānī, p. 61; al-Muṭṭarrazī, Vol. I, p. 132; and "Ḥakk," in *Shorter Encyclopaedia of Islam*, pp. 126-27.

[21] Būlāq ed., p. 9.

[22] Muslim, *Ṣaḥīḥ* (Cairo, 1347-49/1929-30), Vol. II, pp. 36-39; Abū Dāwūd, Vol. IV, p. 286.

[23] Būlāq ed., p. 9.

[24] Bukhārī, Vol. I, p. 23; Muslim, Vol. II, pp. 36-39; Abū Dāwūd, Vol. IV, p. 286; Ibn Ḥanbal, *al-Musnad*, ed. Aḥmad Muḥammad Shākir (Cairo, 1956), Vol. 15, pp. 99-100.

general with the first part [of the phrase] not needing the second. [Something] "literally general" means that [the concept of] the particular is included in the general; that is indicated by some [of the words] expressed. Also "literally general" means [only] what is particular, with the word B 9
literally recognized in its context to mean what is not literally so. Knowledge of all of this is to be found either in the beginning of what is said or in the middle or at the end.

[The Arabs] may begin the subject of a speech whose first word makes the last clear; and they may begin a speech whose last word makes the first clear. And they may speak about [a certain] subject, in which they indicate the meaning—just as gestures indicate—without clarifying it with words. To them this [kind of speech] is of the highest order which only their learned understand, not those who are unlearned. They [also] call [a certain] object by several names, and one word may have several meanings.

All these [categories of] meanings which I have discussed are known to the scholars, although the things they know may S 52
vary: [some] having knowledge of some quite well, while others are ignorant of that part of the [Arab] tongue—in which the Book of God was communicated and the sunna uttered—are unfamiliar with them. Whoever undertakes, therefore, to speak in the language they [the Arabs] know, undertakes something part of which he does not know. And whoever was in error without excuse whenever he spoke about something of which his knowledge did not embrace the difference between what was wrong and right.[25]

[25] Since the Qur'ān contains quite a few foreign words, the question has often been raised whether these do not qualify the Arabic character which the Qur'ān stresses. There are two schools of thought concerning this question. The early school, whose best exponents were Ibn 'Abbās (d. 68/687), leading authority in Makka, and Shāfi'ī, argued that although the Arabic language was rich in its vocabulary, it was bound to have certain words in common with other languages. A later school of thought maintained that foreign words had been adopted by the Arabs in an early age, before the Qur'ān was communicated, and had become an integral part of the Arabic language. Thus when the Qur'ān was revealed in "the Arabic language," those words had already been Arabicized.

General Declaration of the Book Intended to be General in Which the Particular Is Included

66. Shāfi'ī said: [26] God, Blessed and Most High, said:

> God is the creator of everything, and He of everything is a guardian [Q. XXXIX, 63].

And [God], Blessed and Most High, said: S 53

> It is God who hath created the heavens and the earth [Q. XIV, 37].

And He said:

> There is not a living creature [27] in the earth but God is responsible for its sustenance [Q. XI, 8].

These are examples of general declarations in which no particular is included.

67. Shāfi'ī said: Everything, including the heaven and the earth, things having living spirit, trees and the like—God has created them all. And God is responsible for the sustenance of every living creature and He knows its lodging place and its repository.[28]

And God said:

> It is not for the people of Madīna or for the Beduin round about them to tarry behind the Apostle of God or to prefer their own lives to his [Q. IX, 121].

Al-Shāṭibī (d. 790/1388) argues that there is no question that the Qur'ān contains foreign words but that, generally speaking, the Book was communicated in the Arabic language and that it cannot be understood save in the way the Arabic language is understood. See al-Shāṭibī, Vol. I, pp. 64-66; al-Ghazzālī, Vol. I, p. 68; al-Suyūṭī, *al-Itqān Fī Ulūm al-Qur'ān* (Cairo, 1370/1951), Vol. I, pp. 135-40; and Arthur Jeffery, *Foreign Vocabulary of the Qur'ān* (Baroda, 1938).

[26] Būlāq ed., p. 10.

[27] Dābba, incorrectly rendered as beast, is any living creature including man (Cf. Richard Bell, The *Qur'ān*, Vol. I, p. 205).

[28] A citation from Q. XI, 8.

The meaning implied in this communication is like the previous one; it specifies those men who [take part] in the jihād, whether they are able to fulfil the jihād [duty] or not, and that none should put himself before the Prophet. There is in this communication a general as well as a particular [declaration].

And [God] said:

> And the oppressed—men, women and children—who say: Our Lord, take us out of this city of wrong-doing people [Q. IV, 77]. S 54

In the same [category] falls God's saying:

> So . . . until when the two of them came to the people of a city, they asked the people for food, but they refused to receive them hospitably [Q. XVIII, 76].

There is an indication in this communication that not all the people of the town were asked for food. So this communication has the same meaning [as the preceding one].

Moreover, there is in it as well as in [the communication concerning] the "city of wrong-doing people," a particular [declaration], since not all the people of the town were wrong-doing; there lived among them Muslims [too], but they were a few among many others.

There are [several] other examples in the Qur'ān, but these are sufficient, I trust; and there are examples in the sunna cited in their proper places [of this book]. S 55

The Explicit General Declaration of the Book In Which the General and the Particular Are Included

68. Shāfi'ī said: [29] God, Blessed and Most High, said:

> O ye people, We have created you male and female and made you peoples and tribes, that you may know one another. Verily,

[29] Būlāq ed., p. 10.

> the noblest among you in the sight of God is the most godfearing of you [Q. XLIX, 13].

And [God], Blessed and Most High, said:

> O ye who have believed, fasting is prescribed for you as it was for those before you; perhaps you will be godfearing. A certain number of days; but if any of you be sick or on a journey, then a number of other days [Q. II, 179-80].

And He said:

> Verily the Prayer has become for the believers a thing prescribed for stated times [Q. IV, 104].

69. [Shāfiʿī] said: It is evident from the Book of God that general and particular [declarations] are included in the two [foregoing] communications.

As to the general, it is in God's saying: S 56

> We have created you male and female and made you peoples and tribes, that you may know one another [Q. XLIX, 13].

For all souls addressed by this communication, whether in the time of the Prophet or before or after him, were created male or female, and [made] peoples and tribes.

The particular may be found in God's saying:

> The noblest among you in the sight of God is the most God-fearing [Q. XLIX, 13].

For fear of God is obligatory on [the person] who can comprehend it and who belongs to those who are mature of the descendants of Adam, excluding the beasts, the lunatics and children who have not yet come of age, including those who can comprehend what fear of God means.

No one should be regarded as god-fearing—or not god- B 10
fearing—unless he is capable of comprehending [its meaning] and belongs to [the class of] God-fearing people; if he acts contrary to it, he belongs to another class. The Book as well as the sunna bear witness to what I have discussed. For the S 57
Prophet said:

No obligation is imposed on three: the one asleep, until he awakes; the child, until he comes of age; and the lunatic, until he recovers.[30]

Divine legislation concerning fasting and prayer belongs to the same [category]: They are obligatory upon the mature and the sane—excluding those who are not mature or who are mature but insane—and menstruant women during the period of menstruation.

The Explicit General Declaration of the Book Intended To Be All Particular

70. Shāfi'ī said:[31] God, Blessed and Most High, said:

Those to whom the people said: 'The people [i. e., the enemy] have gathered against you, so be afraid of them.' But it increased them in faith, and they said: 'It is on God that we count, and a good guardian is He' [Q. III, 167]. S 58

71. Shāfi'ī said: Since there were with the Apostle people other than those who gathered against them [i. e., his people], and those who informed [his people] were people other than those who gathered or were with him—these [also] were certain people—the evidence of the Qur'ān[32] is, therefore, clear from what I have stated that [the Prophet] has gathered for them certain people, excluding others.

[Legal] knowledge conveys certainty that the whole people did not gather against them, nor inform them, nor were they [i. e., the informed] the whole of the people.

Since the term "people" may either be applied to [a minimum of] three persons or to all the people or to any number between three and all, it is correct in the Arab tongue to say S 59

[30] This tradition was transmitted on the authority of 'Ā'isha and 'Alī. For the transmission from 'Ā'isha, see Abū Dāwūd, Vol. IV, pp. 140-41; and for the transmission from 'Alī, see Ibn Ḥanbal, Vol. II, pp. 188, 197, 279, 335, 348-49.

[31] Būlāq ed., p. 11.

[32] Būlāq ed. p 11.

that "those to whom the people said" may constitute [only] four persons, and that "the people who have gathered against you," are those who have departed, from [the battle of] Uḥud.[83]

Yet these are not too many people [despite the fact that] those who gathered are different from those who gathered against, and those who informed are different from both. But the greater number of the people are those [who remained] in their towns who are other than those people who gathered, those who gathered against and those who informed.

72. [Shāfi'ī] said: And He [God] said:

> O ye people, a parable is coined, so listen to it: Verily those to whom you pray, apart from God, will not create a fly, even if they were to join together to do it; and if a fly were to snatch anything from them, they would never rescue it from him. Feeble indeed are the beseecher and the besought [Q. XXII, 72].

The[84] meaning commonly implied by this word [i.e., people] is general, applying to all people. But it is clear to those learned in the Arab tongue that the meaning implied [here] is some of the people, excluding others. For no other [people] were addressed by this communication except those who worship other gods than God—exalted be He over what they say—since there are among them believers who are lunatics and minors who do not worship [other] gods than Him.

73. [Shāfi'ī] said: The meaning implied in this text falls in the same category as the foregoing one, according to those who are learned in the Arab tongue; but the former seems to be clearer to persons who are not among the learned, owing to several [clear] indications in it.

74. Shāfi'ī said: God, Blessed and Most High, said:

> Then pour forth from where the people have poured forth [Q. II, 195].

[83] The people who gathered against the Prophet were the Makkans, who fought Muḥammad at the battle of Uḥud in 3/625. See Ṭabarī's *Tafsīr*, Vol. VII, pp. 404-405. For the battle of Uḥud see Ibn Hishām, Vol. II, pp. 555-56; trans. Guillaume, pp. 370 ff.; W. Montgomery Ward, *Muḥammad at Medina* (Oxford, 1956), pp. 21-29.

[84] "Shāfi'ī said" is omitted.

It is certain that not all the people had been present at 'Arafa [35] in the time of the Apostle, and that it was [only] the Apostle and those who had been with him were those to whom this communication was addressed. But it is correct in the Arab tongue to say: "Pour forth from where the people have poured forth," meaning [only] some of the people.

75. Shāfi'ī said: [36] The meaning of this communication falls in the same category as the two foregoing ones, and is so regarded by the Arabs. The first communication is clearer than the second to those who are ignorant of the Arab tongue, and the second is clearer to them than the third; but to the Arabs there is no difference in clarity among the three, since the one possessing the least clarity is as adequate [for comprehension] as the one that is clearest to them. For the one who listens wants only to comprehend the [meaning of the] saying of one who speaks: the least [meaning] that makes him com- S 61
prehend would be sufficient.

76. [Shāfi'ī said]: God, glorious be His praise, said:

> People and stones [37] are its fuel [Q. II, 22].

The Book of God indicates that [only] some of the people would be the fuel, in accordance with God's saying:

> Verily those to whom the best [reward] has already [been decreed] by us—they from it will be far removed [Q. XXI, 101].

[35] After performing the circumambulation of the Ka'ba and the sa'ī (course) from Ṣafa to Marwa, the pilgrims halt at the outlying sanctuaries at places called 'Arafa, Muzdalifa and Minā.

[36] Būlāq ed., p. 11.

[37] Probably brimstone (see Richard Bell, *The Qur'ān*, Vol. I, p. 5, n. 3).

Category [of Declaration] the Meaning of Which Is Clarified by the Context

77. Shāfi'ī said: [38] God, Blessed and Most High, said:

> And ask them about the town which was bordering the sea, when its inhabitants transgressed the sabbath. Their fish came to them on the day of their sabbath, right to the shore, but on the day when they did not keep sabbath, they did not come to them. Thus were we trying them for their ungodliness [Q. VII, 163].

[God], glorious be His praise, has at first mentioned the subject concerning the town that was bordering the sea; but when He stated "they transgressed the sabbath," He obviously S 62
meant the people of the town, since the town [itself] can neither transgress nor deviate from the sabbath or other B 11
[matters]. Thus by transgression [God] meant the people of the town whom He tried for their violation [of the Sabbath].

And He said:

> How many a town which was doing wrong have We broken up, and set up after it another people. When they sensed Our power, there they were from it running [Q. XXI, 11-12].

The meaning implied in this communication falls in the same category as the previous one. [God] mentioned the town which was broken up, but when He said it was doing wrong, it is evident that those who were doing wrong were only the people [of the town], not the houses, which [obviously] have nothing to do with wrongdoing. And when [God] mentioned the people who were established after its destruction and their sense of power of Our [i. e., God's] attack, it is [quite] certain that he who can sense [Our] power can only be a human being S 63
who knows what power is.

[38] Būlāq ed., p. 11.

Category [of Declaration] the Wording of Which Indicates the Implicit, not the Explicit [Meaning]

78. God, Blessed and Most High, citing the saying of Joseph's brothers to their father, said:

> We testify only to what we know, and against the unseen we could not guard. Ask the town in which we have been, and the caravan with which we have come; verily we speak the truth [Q. XII, 81-82].

[The meaning of] this communication [falls in the same category] as the previous one, on which those learned in the [Arab] tongue do not disagree, that [Joseph's brothers] spoke to their father about a matter which touches the people of the town and those of the caravan, since the town and the caravan [by themselves] cannot tell what the truth was.

General [Declaration] Which the Sunna Specifically Indicates Is Meant To Be Particular

79. God, glorious be His praise, said:

> And his parents each receive a sixth of what he has left, if he has children; but if he has no children and his heirs are his parents, then his mother receives a third; if, however, he has brothers, his mother receives a sixth [Q. IV, 12].

And He said: S 64

> And half of what your wives leave belongs to you if they have no children; but if they have children, a fourth of what they have belongs to you, after any bequests may have been made or debts [have been paid]. . . . To them belongs a fourth of what you leave, if you have no children; if you have children, an eighth of what you leave belongs to them, after any bequests you may have made or debts [have been paid]. If a man—or a woman—whose property is inherited has no direct heirs, but has a brother

> or a sister, each of the two receives a sixth; if they be more than that, they share in a third, after any bequests you may have made or debts [have been paid], without prejudice one to the other; a charge from God; verily God is knowing, gracious [Q. IV, 13, 15-16].

Thus, [God] made it plain that fathers and wives are among those He named in various circumstances, the terms being general; but the sunna of the Prophet indicated that this is intended to mean only some fathers and wives, excluding others, provided that the religion of the fathers, children and wives is the same [i. e. Islam] and that each heir is neither a killer nor a slave.[39]

80. And He said:

> After any bequests he may have made or debts [have been paid] [Q. IV, 15].

The Prophet made it clear that bequests must not exceed one third [of the deceased's estate], and the heirs receive the two-thirds; and he [also] made it clear that debts take prece- S65
dence over bequests and inheritance and that neither the bequest nor the inheritance [should be distributed] until the creditors are [first] paid.[40]

Thus if it were not for the evidence of the sunna and the consensus of the people, there would be no inheritance until after the bequest [was paid] and the bequest would not fail to take precedence over the debt, or be on equal footing with the debt.

81. And God said:

> When you stand up for Prayer, wash your faces and your hands up to the elbows, and wipe your heads, and your feet up to the ankles [Q. V, 8].

[God], glorious be His praise, meant that the feet are intended to be washed [in the same manner] as the face and the hands. The literal meaning of this communication is that the

[39] See Ṭabarī, *Tafsīr*, Vol. VIII, pp. 51-68.
[40] *Ibid.*, pp. 64-68.

[duty of the washing of the] feet cannot be fulfilled save by what fulfils [the duty of washing] the face or wiping the head. However, what was meant by the washing or the wiping of the feet, was not all—but [only] some—of those who perform the [duty of] ablution.[41]

Since the Apostle [himself] wiped his shoes and ordered those who wore their shoes in a state of purification to do so, the sunna of the Apostle indicated that [the duty of] the washing or the wiping of the feet meant that [it was obligatory on] some of those who [perform] the duty of ablution, not others.

82. God, Blessed and Most High, said:

> As for the thief, male and female, cut off their hands as a retribution for that with which they have charged themselves—a chastisement from God [Q. V, 42]. 866

The Apostle decreed that "Hands should [neither be] cut off [for the stealing] of fruits nor the spadix of a palm tree, and that the hand [of the thief] should not be cut off unless the price of the [thing] stolen is a quarter of a dinār[42] or more."[43]

83. And God said:

> The fornicatress and the fornicator—scourge each of them with a hundred stripes [Q. XXIV, 2].

And He [God], concerning slave-women, said:

> If they, having been taken under iḥṣān,[44] commit an indecency, they shall be subject to half the punishment to which those under iḥṣān are subject [Q. IV, 30].

Thus the Qur'ān indicated that scourging with a hundred

[41] *Ibid.*, Vol. X, pp. 7-81.

[42] From the Greek *denarion*, the gold unit of currency. A dinār was the equivalent of ten, later more, silver dirhams.

[43] See Mālik, Vol. II, p. 839; Abū Dāwūd, Vol. IV, pp. 136-37; Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. VI, p. 118.

[44] Iḥṣān is a term applied to a woman who abstains from what is not lawful or from what induces suspicion. A married woman, having a husband, possesses both of these significations. See Lane, *Lexicon*, p. 586.

stripes is intended [only] for the free, not the slave-women. And when the Apostle stoned rather than scourged the thayyib[45] adulterer, the sunna of the Prophet specified that the hundred stripes are [the penalty] for the free fornicatress and fornicator; and that the cuting off of the hand of the thief was intended to be [the penalty] for one who steals [a thing] from a secure place[46] and that the price [of the theft] should be [at least] a quarter of a dinār, excluding other things covered under the terms "theft" and "adulterry."

84. God said:

> And know that if you have taken anything as a spoil, one-fifth belongs to God and to the Apostle, and to the near of kin, and to orphans, and to the poor and to the wayfarer [Q. VIII, 42]. S57

Since the Apostle [is reported to] have given the Banū Hāshim and the Banū al-Muṭṭalib the portion of the share belonging to "the near of kin,"[47] the sunna of the Apostle gave evidence that the "near of kin"—whom God made partakers of the one-fifth share—were the Banū Hāshim and the Banū al-Muṭṭalib, not others. B11

Indeed the whole [tribe] of Quraysh is related [to the Prophet]. The [clan of the] Banū 'Abd Shams is related [to the Prophet] equally with the [clan of the] Banū al-Muṭṭalib, for they were all the descendants of the same father and mother, although some members of the Banū al-Muṭṭalib were distinguished by having been descendants from the Banū Hāshim [too], in distinction from others.[48]

Since the portion of the share [belonging to the near of kin]

[45] The thayyib is a woman who is not a virgin, or a woman whom a man has gone into, or a woman who has become separated from her husband in any manner (by death or divorce).

[46] I.e., the thing which is well protected, not liable to be picked up by people. See a tradition to this effect in Abū Dāwūd, Vol. IV, p. 138.

[47] The term qurba, literally meaning "way of approach to God," refers in this Quranic verse, as Shāfi'ī points out, to the Banū Hāshim and the Banū al-Muṭṭalib. See Bayḍāwī, pp. 240-41.

[48] For a study of the Prophet's family relationship with other clans, see Ibn Muṣ'ab al-Zubayrī, *Kitāb Nasab Quraysh*, ed. E. Lévy-Provençal (Cairo, 1953).

was not given to all who belonged to the Banū al-Muṭṭalib, excluding those whose descent from the Banū Hāshim did not give them a portion of the share, this indicated that they [the Banū Hāshim] obtained a special portion which others did not, only because of their relationship to the stock of [the Prophet], although they supported the Prophet—as they always did—when they entered into his pass (shi'b).[49] Yet, God, glorious be His praise, did not specify [anything] special for them. S 68

Most certainly [the clan of] the Banū Hāshim belonged to the [tribe of] Quraysh, but none of them was given a share from the one-fifth on account of their descent. The Banū Nawfal [enjoyed] the same [blood] relationship, although they were distinguished on the grounds of their descent from a different mother. S 69

85. [Shāfi'ī said]: God said:

> And know that if you take anything as spoil, one-fifth belongs to God and to the Apostle [Q. VIII, 42].

Since the Apostle decreed that the booty belongs to the slayer in an attack, the sunna of the Prophet indicated that the spoil, which is subject to the [deduction of the] one-fifth share provided in the Qur'ān, is different from booty, provided that the booty was taken in a battle of attack, in distinction from booty taken otherwise. But the booty taken in [fighting] other than an attack is subject to the one-fifth share in accordance with the sunna, in the same manner as other spoils.[50] S 70 S 71

Had it not been for the evidence of the sunna and our decision on the [basis of the] literal [meaning of the Qur'ān], we should have been in favor of punishing everyone to whom the term stealing applies by the cutting off [of the hand]; and S 72

[49] This is a reference to the counter-alliance of the clans of the Banū Hāshim and the Banū 'Abd al-Muṭṭalib against the boycott of the tribe of Quraysh and its attempt to force the Prophet and his followers to abandon Islam. See Ibn Hishām, Vol. I, pp. 230-34. Guillaume, in his translation of Ibn Hishām's *Life of Muḥammad*, uses "alley" for shi'b, p. 159.

[50] Mālik, Vol. II, pp. 454-55; Bukhārī, *Ṣaḥīḥ*, ed. L. Krehl (Leiden, 1862-1908), Vol. II, p. 286; Shāfi'ī, *Kitāb al-Umm*, Vol. IV, pp. 66-67.

of scourging every free thayyib adulterer with a hundred stripes; and of giving the share of the near of kin to everyone related to the Prophet—which might have been extended to many sections of the Arabs, owing to the [Prophet's] blood relationship with them—and of regarding the booty subject to the one-fifth [rule] in the same manner as a spoil, by treating it like other spoils.

Chapter V

[ON THE OBLIGATION OF MAN TO ACCEPT THE AUTHORITY OF THE PROPHET]

A Declaration Concerning the Duty Imposed by God, as Laid Down in His Book, [Ordering Men] To Follow the Prophet's Sunna

86. Shāfi'ī said: God has placed His Apostle—[in relation to] His religion, His commands and His Book—in the position made clear by Him as a distinguishing standard of His religion by imposing the duty of obedience to Him as well as prohibiting disobedience to Him. He has made His merits evident by associating belief in His Apostle with the belief in Him. For God, Blessed and Most High, said:

> So believe in God and His Apostles, and do not say: "Three." Refrain; [it will be] better for you. God is only one God. Glory be to Him. His having a son is something alien to him [Q. IV, 169]. S 75

And He said:

> The believers are only those who have believed in God and His Apostle, and who when they are with him on some common affair do not go away until they ask his permission [Q. XXIV, 62].

Thus [God] prescribed that the perfect beginning of the faith, to which all other things are subordinate, shall be the belief in Him and then in His Apostle. For if a person believes only in Him, not in His Apostle, the name of the perfect faith[1] will never apply to him until he believes in His Apostle together with Him.[2]

So the Apostle laid down the sunna [of reciting the Prophet's name together with that of God] for testing the faith of every man [as the following tradition indicates]:

Mālik b. Anas told us from Hilāl b. Usāma from 'Aṭā' b. Yasār from 'Umar b. al-Ḥakam, who said:

> I went to the Apostle of God with a slave-girl and I asked him: 'I have taken an oath [to free a slave]; may I free her?' 'Where is God?' the Apostle asked her. 'In heaven,' she answered. 'And who am I?' asked he. 'You are the Apostle of God,' S 75
> she answered. 'You may free her,' [the Prophet] said.[3]

[The transmitter's name, 'Umar b. al-Ḥakam]—Shāfi'ī says—should read Mu'āwiya b. al-Ḥakam, for Mālik, I believe, has not correctly reported the name, as others did.

87. Shāfi'ī said: God has imposed the duty on men to obey His divine communications as well as the sunna of His Apostle. For He said in His Book:

> O our Lord, raise up amongst them an Apostle, one of themselves, to recite to them Thy signs and to teach them the Book and Wisdom and to purify them. Verily Thou art All-mighty, S 76
> All-wise [Q. II, 123].

And He, glorious be His praise, said:

> And also we have sent among you an Apostle, one of yourselves, to recite to you our signs, and purify you, to teach you the Book and the Wisdom, and to teach you what you did not know [Q. II, 146].

[1] I.e., Islam.
[2] Cf. Ṭabarī, *Tafsīr*, Vol. IX, pp. 422-23; Bayḍāwī, pp. 137-38, 474-75.
[3] Mālik, Vol. II, pp. 776-77.

And He said:

God bestowed a favor upon the believers when He raised up amongst them an Apostle, one of themselves, to recite His signs to them, to purify them and to teach them the Book, although they had formerly been in manifest error [Q. III, 158].

And He, glorious be His praise, said:

It is He who has raised up an Apostle among the untutored people, one of their number to recite to them His signs, to purify them, and to teach them the Book and the Wisdom, though formerly they had been in manifest error [Q. LXII, 2].

And He said:

But remember the goodness which God has shown you and how much of the Book and the Wisdom He has sent down to you to admonish you thereby [Q. II, 231].

And He said:

God has sent down to thee the Book and the Wisdom, and has taught thee what thou did not know before; the bounty of God towards thee is ever great [Q. IV, 113].

And He said:

And call to mind the signs of God and the Wisdom which are recited in your houses; verily God is gentle, well-informed [Q. XXXIII, 34]. S 77

So God mentioned His Book—which is the Qur'ān—and Wisdom, and I have heard that those who are learned in the Qur'ān—whom I approve—hold that Wisdom is the sunna of B 13
the Apostle of God. This is like what [God Himself] said; but God knows best! For the Qur'ān is mentioned [first], followed by Wisdom; [then] God mentioned His favor to mankind by teaching them the Qur'ān and Wisdom. So it is not permissible for Wisdom to be called here [anything] save the sunna of the Apostle of God. For [Wisdom] is closely linked to the Book of God, and God has imposed the duty of obedience to His Apostle, and imposed on men the obliga-

tion to obey his orders.[4] So it is not permissible to regard anything as a duty save that set forth in the Qur'ān and the sunna of His Apostle. For [God], as we have [just] stated, prescribed that the belief in His Apostle shall be associated with the belief in Him. S 78

The sunna of the Apostle makes evident what God meant [in the text of His Book], indicating His general and particular [commands]. He associated the Wisdom [embodied] in the sunna with his Book, but made it subordinate [to the Book]. Never has God done this for any of His creatures save His Apostle.

God's Command Ordering Obedience to the Apostle Is Both Associated with Obedience to Him and Ordered Independently

88. [Shāfi'ī said]: God said:

> When God and His Apostle have decreed a matter, it is not for a believing man or a woman to exercise a choice in a matter affecting him; whoever opposes God and His Apostle has deviated into manifest error [Q. XXXIII, 36].

And He said:

> O you who believe, obey God and obey the Apostle and those in authority among you. If you should quarrel about anything, refer it to God and the Apostle, if you believe in God and the Last Day. That is better and fairer in the issue [Q. IV, 62].

Some scholars have held that "those in authority" [means] the commanders of the Apostle's army. That is what more than one commentator has told us. But God knows best.[5] S 79

This is in accord with what [God] said, for the Arabs who

[4] See paragraph 22, above.

[5] Ṭabarī adds that it may mean the leaders in matters of religion and law. See Ṭabarī, *Tafsīr*, Vol. VIII, pp. 495-504; Bayḍāwī, p. 115.

had been around Makka knew nothing about command, and [the idea of] some submitting to the command of others was repugnant to them.

When, however, they submitted to [the authority of] the Apostle, they did not think that [such an authority] was fit to reside in any hands other than the Apostle's.

So they were commanded to obey "those in authority"—the ones whom the Apostle appointed, with conditional but not absolute obedience, concerning their rights and duties. However, [God] said: "If you should quarrel about anything, refer it to God," that is, in the event of disagreement.

89. Shāfi'ī said:[6] This [i.e., the meaning implied in the latter command] is, if God will, as He said about "those in authority," namely, that "If you should quarrel" (but God knows best), they [the people] and the commander whom they were ordered to obey—should "refer it to God and the Apostle" for a settlement on the basis of what God and His Apostle said, if they know it. If you do not know what God's com- S 80
mands are, you should ask the Apostle, if you are able to reach him,[7] or any one of you who is able to do so. For this is an obligation concerning which there should be no disagreement, in accordance with God's saying:

> When God and His Apostle have decreed a certain matter, it is not for a believing man or a woman to have a choice in a matter affecting him [Q. XXXIII, 36].[8]

As to the disputes that happened after the Apostle's [death], the matter was decided in accordance with God's judgment [as laid down in the Qur'ān] and then that of His Apostle [as laid down in the sunna]. But if a text were not applicable, the matter was decided by analogy on the strength of a precedent sought [either in the Qur'ān or the sunna] in the same manner as I have [already] explained concerning the qibla,

[6] Būlāq ed., p. 14.
[7] Ṭabarī, *Tafsīr*, Vol. VIII, pp. 504-505.
[8] See Bayḍāwī, p. 558.

[witnesses of] just character, equal compensation, and whatever God has prescribed in parallel cases. For He said:

> Those who obey God and the Apostle are with the prophets and the veracious and the martyrs and the upright upon whom God has bestowed favor. Good company are these [Q. IV, 71]. S 81

And He said:

> O you who have believed, obey God and His Apostle [Q. VIII, 20].

God's Command Ordering Obedience to His Apostle

90. [Shāfi'ī said]: God, glorious be His praise, said:

> Verily, those who swear allegiance to thee swear allegiance really to God; the hand of God is above their hands. So whoever breaks his oath, breaks it only to his own hurt, and to him who fulfils what he has pledged to God, He will grant a great reward [Q. XLVIII, 10].

And He said:

> Whoever obeys the Apostle has obeyed God [Q. IV, 82].

So God instructed [men] that their homage to the Apostle is homage to Him, and their obedience [to him] is obedience to Him.

And He said:

> But not by thy Lord, they will not become believers until they make thee judge in their disputes and do not afterwards find difficulty in Thy decisions, but surrender in full submission [Q. IV, 68]. S 82

This verse, we have been told, was revealed in connection with a land dispute between al-Zubayr and another man in which the Prophet gave a decision in favor of al-Zubayr. This

decision is a sunna laid down by the Apostle, not a command in the text of the Qur'ān.[9]

The Qur'ān indicates what I have just stated; for if this decision were a Quranic decision, it should have been prescribed in the text of the Book of God.

But if men fail to accept a decision based on a clear text of the Book of God, they undoubtedly cease to be believers, for they are rejecting a decision based on divine legislation. For God, Blessed and Most High, said:

> Do not put the Apostle's calling on you for aid on the same B 14
> footing amongst you as your calling on each other. God knows
> those of you who slip away secretly, so let those who go against S 83
> His command beware lest a trial befall them, or a painful punishment [Q. XXIV, 63].

And He said:

> When they are called to God and to His Apostle that he may judge between them, lo, a party of them avert themselves. But if they are in the right, they will come to him in submission.
>
> Is there sickness in their hearts, or are they in doubt, or do they fear that God and His Apostle may act unjustly towards them. Nay, but they are the evildoers.
>
> All that the believers said when they were called to God and His Apostle that he might judge between them was: 'We hear and obey.' These are the ones who prosper.
>
> Whoever obeys God and His Apostle, and fears God and shows piety—these are the ones who attain felicity [Q. XXIV, 47-51].

[9] Yaḥya b. Ādam, in *Kitāb al-Kharāj*, reports the case as follows: "One of the Helpers from among the Banū Umayya had a dispute with al-Zubayr concerning a creek (sharj) in the ḥarra, and the Prophet said: Irrigate, O Zubayr, and then leave the water alone. Said the man of the Banū Umayya: Justice, O Prophet, even though he is the son of your aunt! And the face of the Prophet changed so that the man knew that what he had said had hurt the prophet. Then the Prophet said: O Zubayr Shut off the water till it reaches the height of two ankles—or he said: —[till it] reaches the fence—and then let the water flow. It was revealed [then]—or he said: recited—: "No, by thy Lord, they do not believe until they make thee judge in the tangles . . ." [Q. IV, 68]. Yaḥya b. Adam, *Kitāb al-Kharāj*, ed. A. M. Shākir (Cairo, 1347/1929), pp. 106-107; English translation by A. Ben Shemesh, entitled *Taxation In Islam* (Leiden, 1958), p. 74. See also Ṭabarī, *Tafsīr*, Vol. VIII, pp. 519-23.

Through this communication, God instructed men that their recourse to the Apostle to judge among them is a recourse to God's judgment, for the Apostle is the judge among them, and when they accept his judgment they do so only because of an obligation imposed by God.

And He instructed them that the [Prophet's] judgment is His judgment, for his judgment is imposed by Him and by His established knowledge—rendering him a man of destiny and assisting him by preserving him from error and [worldly] success—and by testifying that He guides him and causes him to obey His order.

So God imposed the obligation upon His creatures to obey His Apostle, and He instructed them that [obedience] to him is obedience to Him.

The sum-total of what He instructed them is the duty to obey Him and His Apostle, and that obedience to the Apostle is obedience to Him. He [also] instructed them that He imposed the duty on His Apostle to obey His order, Glorious be His praise.

The Obligation Made Clear by God to His Creatures That He Imposed upon His Apostle to Follow What He Revealed to Him, and What He Testified to of His Obeying His Commands, His Guidance, and That He Is the Guide of Any Who Follow Him

91. Shāfi'ī said: God, Glorious be His praise, said to His Prophet:

> O Prophet, fear God, and obey not the unbelievers and the hypocrites. Verily God is All-knowing, All-wise. But follow what is revealed to thee from thy Lord. Verily God is aware of the things you do [Q. XXXIII, 1-2].

And He said:

Follow what has been revealed unto thee from thy Lord—there is no god but Him—and turn thou away from the polytheists [Q. VI, 106]. S 85

And He said:

Then we set thee upon an open way of the Law; therefore follow it, and follow not the whims of those who do not know [Q. XLV, 17].

So God instructed His Apostle that He has favored him with His established knowledge and that he will preserve him from mankind, for He said:

O thou Apostle, proclaim what is sent down to thee from thy Lord—if thou dc it not thou hast not delivered His message—and God will defend thee from the people [Q. V, 71].[10]

92. Shāfi'ī said: [11] And [He], glorious be His praise, certified [the Prophet's] firm belief in what He commanded him, and in Guidance to himself and to whoever follows him. For He said:

Thus We have revealed to thee a spirit belonging to Our affair. Thou didst not know what either the Book or the Faith were. But We have made it a light by which We guide whoever We please of Our servants, and verily thou shalt guide unto a straight path [Q. XLII, 52].

And He said:

Had it not been for the bounty and mercy of God toward thee, a party of them would have proposed to lead thee astray; but they lead only themselves astray; they do not hurt thee at all. God has sent down to thee the Book and the Wisdom, and He has taught thee what thou didst not know; God's bounty to thee is ever great [Q. IV, 113]. S 86

[10] See Ṭabarī, *Tafsīr*, Vol. X, pp. 467-72. Previously the Prophet was safeguarded by a few of his followers.

[11] Būlāq ed., p. 15.

Thus God declared that He commanded His Prophet to obey His order, and certified what he proclaimed on His behalf as well as what he certified for himself.[12] We [also] certify for him in order to draw near to God by our belief in Him, and we make entreaties to Him by belief in His words. [For] 'Abd al-'Azīz [b. Muḥammad al-Darāwardī] told us from 'Amr b. Abī 'Amr—the freed slave of al-Muṭṭalib—from al-Muṭṭalib b. Ḥanṭab that the Apostle of God said:

> I have left nothing concerning which God has given you an order without giving you that order; nor have I neglected anything concerning which He has given you a prohibition without giving you that prohibition.[13]

93. Shāfi'ī said: What God has informed us of in His established knowledge and in His final and irrevocable judgment—a favor and a blessing from Him—is that He prevented those who attempted to lead [the Prophet] astray, and informed him that they could not hurt him at all. S87

In certifying that [the Prophet] guides mankind along a straight-forward path—the path of God—and that he delivers His message and obeys His commands—as we have stated before—and in ordering obedience to him and in emphasizing all [of this] in the [divine] communications just cited—God has given evidence to mankind that they should accept the judgment of the Apostle and obey his orders.

94. Shāfi'ī said: Whatever the Apostle has decreed that is

[12] Ṭabarī, *Tafsīr*, Vol. IX, pp. 199-201; Bayḍāwī, pp. 126-27.

[13] This is the first part of a tradition, the second part of which Shāfi'ī cites in paragraph 97. In his *Kitāb al-Umm* (Vol. VI, p. 209, margin) the two parts are cited as one tradition. Transmitters have related the tradition in a variety of wordings, but all agree on the substance. See al-Suyūṭī, *al-Jāmi' al-Ṣaghīr* (Cairo, 1352/1933), Vol. I, p. 305. For a discussion on the transmission of this tradition and on al-Muṭṭalib b. Ḥanṭab, Companion of the Prophet, see Shākir's edition of the *Risāla*, pp. 93-102, note 8. This Companion should be distinguished from a Successor by the same name who transmitted traditions on the authority of 'Ā'isha, Abū Hurayra, and Anas b. Mālik (See Ibn Ḥajar, *al-Iṣāba* [Cairo, 1358/1939], Vol. III, p. 404). See also J. Schacht, *The Origins of Muhammadan Jurisprudence*, pp. 53-54.

not based on any [textual] command from God, he has done so by God's command. So God instructed us in His saying:

> And verily thou wilt guide [mankind] to a straight path, the path of God [Q. XLII, 52-53].

For the Apostle has laid down a sunna [on matters] for which there is a text in the Book of God as well as for others concerning which there is no [specific] text. But whatever he laid down in the sunna God has ordered us to obey, and He regards [our] obedience to him as obedience to Him, and [our] refusal to obey him as disobedience to Him for which no man will be forgiven; nor is an excuse for failure to obey the S 88
Apostle's sunna possible owing to what I have already stated and to what the Apostle [himself] has said:

Sufyan [b. 'Uyayna] told us from Sālim Abū al-Naḍr—a freed slave of 'Umar b. 'Ubayd-Allāh—who heard 'Ubayd-Allāh b. Abī Rāfi' relate from his father that the Apostle had said:

> Let me find no one of you reclining on his couch,[14] and when confronted with an order of permission or prohibition from me, say: 'I do not know [whether this is obligatory or not]; we will S 89
> follow only what we find in the Book of God.'[15] S 90

95. Shāfi'ī said:[16] The sunnas of the Apostle together with B 15
the [communications of the] Book of God fall in two categories: First, for every textual [communication] in the Book

[14] In both the Būlāq and Shākir editions there is a statement following this tradition to the effect that Shāfi'ī explained the word arīka (a couch) to mean *a bedstead* (sarīr); but this statement is perhaps spurious, as Shākir himself suspected, since it is written on the margin of the MS, possibly by one of the readers.

[15] Abū Dāwūd, Vol. IV, p. 200. This tradition is followed by a statement, paragraph 296 (Shākir's edition), which reads: "Sufyān [b. 'Uyayna] said: '[This ḥadīth] was related to me by Muḥammad b. al-Munkadir, who transmitted it from the Prophet without citing the names of [other] authorities'." Such a tradition, lacking the names of other transmitters, is called ḥadīth mursal. Shāfi'ī, however, seems to have depended on the authority of 'Ubayd-Allāh b. Rāfi', the son of Abū Rāfi', a freed slave of the Prophet, who transmitted the tradition from his father (See Ibn Ḥajar, *al-Iṣāba*, Vol. I, p. 488).

[16] Būlāq ed., p. 16.

the Apostle laid down [a similar sunna] in conformity with divine communication. Second, for any [ambiguous] command the Apostle laid down on God's behalf [a sunna] clarifying the meaning implied by God and specifying what [kind of] duty God imposed, whether general or particular, and how man should carry it out. In both categories [the Prophet] followed the Book of God.

96. [Shāfi'ī] said: I know of no scholar who does not agree that the sunna of the Prophet falls in three categories, two of which were agreed upon unanimously. These two categories agree [on certain matters] and differ [on others].

First, for whatever acts there is textual [legislation] provided by God in the Book, the Apostle [merely] specified clearly what is in the text of the Book. Second, as to any [ambiguous] communication in the Book laid down by God, [the Prophet] specified the meaning implied by Him. These are the two categories on which scholars do not disagree.

The third category consists of what the Apostle has laid down in the sunna and concerning which there is no text in the Book.

97. Some [scholars] have said: God empowered [the Prophet], by virtue of the duty He imposed [on mankind] to obey Him and his success in obtaining [God's] approval in accordance with His established knowledge, to provide sunnas [for matters] on which there is no text in the Book. Others said: No sunna was ever laid down [by the Prophet] unless there was a basis [17] for it in the Book, such as the sunna which specified the number of prayers [each day] and [the modes of] their performance, based on the general duty of prayer. In like manner, [the Prophet] laid down sunnas dealing with sale [of property], as well as others. For God said:

> Do not consume your property among you uselessly [Q. IV, 33].

And He said:

> God has permitted sale and forbidden usury [Q. II, 277].

[17] Literally: "Foundation," i. e., a fundamental principle or a precedent.

Whatever God has provided by [way of] permission or prohibition, he has specified on God's behalf as he did in [the case of the duty of] prayer.

Others said: [The Prophet] received a message from God confirming the sunna by a command from Him. S 92

Still others said: [The Prophet] was inspired with all that he had laid down. The sunna is [divine] Wisdom inspired by God, and so whatever He inspired him with [constitutes] sunna. [For] 'Abd al-'Azīz [b. Muḥammad al-Darāwardī] told us from 'Amr b. Abī 'Amr from al-Muṭṭalib, who related that the Prophet said:

> The trustworthy spirit [Gabriel] has inspired me [with the thought] that no soul will ever die until it will receive its full provision. Be, therefore, moderate in your request.[18] S 93

98. Shāfi'ī said:[19] Among the things with which [the Prophet] was inspired is his sunna. This [sunna] is the Wisdom which God mentioned [in His Book], and whatever He sent down to him is a Book—the Book of God—all of these have been given to him as favors from God and by His will. These favors are either embodied in one Favor[20] or take different forms. We pray God for protection from error and success. S 94-103

In whatever form it may take, God made it clear that He imposed the duty of obedience to His Apostle, and has given none of mankind an excuse to reject any order he knows to be the order of the Apostle of God. God has rather made men have need for him in [all matters of] religion and He has given the proof for it by providing that the sunna of the Apostle make clear the meanings of the duties laid down in His Book, so that it might be known that the sunna—whether in the form specifying the meaning of God's commands as provided in the text of the Book which they can read or in the form of legislation in the absence of such a text—in either form represents God's command and is in [full] agreement S 104

[18] See note 13, above.
[19] Būlāq ed., p. 16.
[20] I. e., the Message.

with that of His Apostle; both are [equally] binding in all circumstances. This has been confirmed by the Apostle in the tradition of Abū Rāfi' which has already been cited.[21]

99. Shāfi'ī said: [22] I shall explain what I have already said about the sunna, [whether] it specifies the Book of God or provides [additional legislation] for matters on which there is no text in the Book, such examples as may clarify the meaning of the subject that was discussed.

The first one I take up will be [a discussion] on the sunna based on the Book of God. I shall discuss by means of istidlāl (deductive reasoning) the sunna relating to the subject of the nāsikh (abrogating) and the mansūkh (abrogated) passages in the Book of God. Next, [I shall] state the duties provided in the text [of the Book] and the sunna which the Apostle has laid down on the basis of the Book; the general duties which the Apostle specified for its modes and its times of fulfillment; next, the general [commands] which were intended to be general and the general [commands] which were intended to be particular; and [finally] the sunna [of the Prophet] for which there is no text in the Book.

[21] See note 15, above.
[22] Būlāq ed., p. 16.

Chapter VI

[ON THE ABROGATION OF DIVINE LEGISLATION]

The Abrogating and Abrogated [*Communications*]

100. Shāfiʿī said: God indeed created mankind for whatever His established knowledge desired in creating it and for whatever [its destiny] should be. There is no reversal at all of His judgment, He being swift of reckoning.[1] And he revealed to them the Book that explains everything, as a guide B 16
and a mercy.[2] In it He laid down some duties which He confirmed, and others which He abrogated, as a mercy to His people so as to lighten their burden and to comfort them in addition to the favors which He had begun to bestow upon them. For the fulfilment [of the duties] He confirmed, He rewarded them with Paradise and with salvation from His punishment. His mercy has included all of them in what He confirmed and what He abrogated. Praise be to Him for His favors.

101. Shāfiʿī said:[3] God has declared that He abrogated [communications] of the Book only by means of other communications in it; that the sunna cannot abrogate [a text in] the Book but that it should only follow what is laid down in

[1] This is a citation from Q. XIV, 51.
[2] Cf. Q. XVI, 91.
[3] Būlāq ed., p. 17.

the Book, and that the sunna is intended to explain the meaning of communications of general [nature] set forth [in the Book]. For God said:

> When Our signs are recited to them as Evidences, those who do not look forward to meeting us, say: Bring a Scripture other than this or change it. [You O Muḥammad] say: It is not for me to change it of my own accord; I only follow what is revealed to me; verily I fear, if I go against my Lord, the punishment of a mighty day [Q. X, 16-17]. S 106

Thus God informed [men] that He had commanded His Prophet to obey what was communicated to him, but that He did not empower him to alter [the Book] of his own accord. For there is in His saying: "It is not for me to alter it of my own accord" [Q. X, 16], an evidence for what I stated, that nothing can abrogate the Book of God save His Book. Since [God] is the originator of His [own] commands, He [alone] can repeal or confirm whatever of it He wills—glorious be His praise—but no one of His creatures may do so. For He also said: "God repeals what He wills, or confirms; with Him is the Mother of the Book" [Q. XIII, 39].[4]

Some scholars have maintained (but God knows best) that there is in this communication an evidence that God has empowered His Apostle to set forth rules by [God-given] aid [for matters] on which He provided no communications in the Book. But God knows best.[5]

It is held that [God's] saying: "God will repeal what He

[4] The Mother of the Book is the original copy of the Qur'ān which exists or co-exists with God in Heaven (See Bayḍāwī, p. 334). "The original of the Qur'ān," says Bell, "is thought of as a book preserved in (the seventh) heaven in the presence of God This is assumed to be what is meant by the preserved tablet, lawḥ maḥfūẓ, spoken of in Q. LXXXV, 22. Sometimes it is thought of as having been sent down to the nearest heaven on the night of power, lailat al-qadr, described in Q. XCVII, so as to be available for revelation to the Prophet by the angel Gabriel" (Richard Bell, *Introduction to the Qur'ān* [Edinburgh, 1953], p. 37). See also 'Abd al-Qāhir al-Baghdādī, *Kitāb Uṣūl al-Dīn* (Istanbul, 1928), Vol. I, pp. 106, 108; and Abū al-Ḥasan al-Ash'arī, *al-Ibāna 'An Uṣūl al-Diyāna* (Hyderabad, 2nd ed., 1367/1947), pp. 19-35.

[5] Cf. Bayḍāwī, p. 334.

wills," means that He repeals and confirms the duties which He wills. This resembles [the meaning in] the foregoing [statement]; but God knows best. However, the evidence against it is in the Book of God, in which He said: S 107

> For whatever We abrogate or cast into oblivion to forget, We bring a better or the like of it. Knowest thou not that God is powerful over everything? [Q. II. 100].

Thus God has informed men that the abrogation or the deferment of any communication cannot be made valid save by another [Quranic] communication. For He said:

> When we substitute one communication for another—God knoweth best what He sendeth down—they say: 'Thou [Muḥammad] art only a forger' [Q. XVI, 103].[6]

In like manner the sunna of the Apostle of God states: Nothing can abrogate it except [another] sunna of the Apostle. If God were to address to His Apostle [a communication] on a matter on which he [Muḥammad] had provided a sunna different from what God had addressed to him, he [Muḥammad] would provide a sunna in conformity with whatever God had communicated to him, so that he would make clear to men that he had provided a sunna that abrogated one earlier or contrary to it. This is [well] stated in the sunna [of the Prophet], God's blessing and peace be upon him.[7]

102. Someone may ask: The evidence that a Quranic [communication] can abrogate another [of equal status], may be found in the Qur'ān itself, because there is nothing at all to match the Qur'ān; however, can you find such [an evidence] in the sunna [concerning its abrogation by another sunna]?

103. Shāfi'ī replied: The evidence lies in my [earlier] state- S 108

[6] For the significance of this communication as an evidence that God permitted the repeal of His commands by others, see Abū Ja'far al-Naḥḥās, *Kitāb al-Nāsikh wa al-Mansūkh* (Cairo, 1323/1906), pp. 2-3; Ibn Ḥazm, *Kitāb al-Iḥkām fī Uṣūl al-Aḥkām* (Cairo, 1345/1927), Vol. IV, p. 65.

[7] For a discussion on the doctrine that the Prophet's sunna can only be abrogated by another sunna, see al-Ḥāzimī, *al-I'tibār fī al-Nāsikh wa al-Mansūkh Min al-Āthār* (Cairo, 1346/1927), p. 16.

ment concerning God's commands ordering men to obey the order of the Apostle that the sunna was accepted [as emanating] from God and that he who obeys it does so by [an order in] the Book of God.[8] For there is no other textual order which God has made obligatory upon mankind save that which is in His Book and in the sunna of His Prophet. If the sunna is taken as such, that nothing else by a human being is equal to it, nothing can [therefore] abrogate it save another of equal status. *Nothing is equal [to the sunna] save the sunna of the* Apostle, since God has never given to any other human being [the power] He gave [to the Prophet]. He commanded men to obey him and made his orders binding upon them. Thus all men are his followers: He who follows shall never disobey what he was ordered to obey, and he who is under obligation to obey the sunna of the Apostle shall not refuse to obey it, for he is not empowered to abrogate any part of it.

104. Someone may ask: Is it possible to assume that there was a transmitted sunna which was abrogated while the abrogating sunna was not transmitted?

105. [Shāfiʿī replied]: That is impossible. For how could the transmitted sunna be possibly abrogated while the one which is binding was abandoned? Were this permissible the whole sunna might be abandoned by men, for they would [then] say: "Perhaps it was abrogated." No duty has ever been abrogated unless it was replaced by another. The abrogation of the qibla [i. e., prayer in the direction] of Jerusalem by another [in the direction] of the Kaʿba is a case in point. For S 109
whatever has been abrogated in the Book or in the sunna must have been [replaced by] something else.

106. Someone may ask: Can the sunna be abrogated by the Qurʾān?

107. [Shāfiʿī] replied: If a sunna were abrogated by the Qurʾān, another sunna must have been laid down by the Prophet making clear that his earlier sunna was abrogated so as to demonstrate to men that an act can be abrogated only by something of equal status.

[8] See Chap. V, above.

108. He may ask: Where does the evidence lie for your opinion?

109. [Shāfi'ī replied]: [The evidence lies] in what I have discussed in this book in its [proper] place, where it was made clear that the duties imposed by God—[both] the general and the particular—implied that [the Prophet] makes no pronouncement unless it is based on God's command. If God abrogates any of His commands, the Apostle would also have to abrogate his sunna by another [in conformity with God's new command].

Were it permissible to hold that what the Apostle has laid down in the sunna was abrogated by the Qur'ān and that he has transmitted no abrogating sunna, it would be permissible B 17
to hold a similar view concerning the [tradition relating to] the prohibition of all kinds of sale [of property], by holding that [the Prophet] had prohibited them before [God] had laid down [the rule] that "God has permitted sale and forbidden usury" [Q. II, 276]. The same might be held about [the tradition concerning] the stoning of adulterers, namely, that stoning may be regarded as abrogated in accordance with God's saying: "The fornicatress and the fornicator—scourge each one of them with a hundred stripes," [Q. XXIV, 2] and that [the S 111
tradition concerning] the wiping of the shoes may also be regarded as abrogated by the communication of ablution. It would also be possible to hold that the cutting off of the hand of the thief should not be dropped even if the stolen article were kept securely or if its value was less than a quarter of a dinār in view of God's saying: "The thief, male and female, cut off their hand" [Q. V, 42], for the term "theft" is binding upon whomever steals, regardless of the value of the stolen article or of its security. It would be possible to reject all the traditions of the Apostle by saying: "He did not say this [or that]," if they were found to be not in accordance with divine legislation Thus it would be permissible to reject the sunna on one of two grounds: either if it were in conformity with the general principles of the Book, but its wording were different in certain respects from the wording [of the Book],

or if its wording were phrased at greater length than that in the divine communication, although they might be different in some respects. The Book of God and the sunna of His Apostle, however, provide [ample] evidence in contradiction of this opinion and in support of the one I have stated earlier.

The Book of God [contains] perspicuous declarations by virtue of which blindness[9] will be healed. In it also will be found evidence concerning the position of the Apostle in relation to the Book of God and His religion, [the Apostle's] submission to God, and his clarification [of God's word] on behalf of Him. S 112

The Abrogating and the Abrogated, of Which The Book [of God] Indicates Some and the Sunna Others

110. Shāfi'ī said: I have heard some scholars who related that God had imposed a certain duty for prayer before He laid down that for the five prayers. For He said:

S 113

> O thou enwrapped in thy robes,
> Stay up the night, except a little,
> Half of it, or a little less
> Or a little more,
> And chant the Qur'ān distinctly [Q. LXXIII, 1-4].

God abrogated this [duty] by another, which may be found in the same chapter [of the Book], and it reads as follows:

> Thy Lord knows that thou remainest up nearly two-thirds of the night, or half of it, or a third of it, and a party of those with thee likewise, and God determines the night and the day. He knoweth that ye will never count it up, so He has turned towards you with mercy. So recite what may be convenient [for you] of

[9] I. e., ignorance.

> the Qur'ān; He knoweth that some of you will be sick and others journeying about in the land, seeking the bounty of God, and others fighting in the cause of God. So recite what is convenient of it, and observe the Prayer, and pay the alms [Q. LXXIII, 20].

For after God laid down His order "Stay up the night . . . half of it . . . or a little more," He added: "Nearly two-thirds of the night, or half of it, or a third of it, and a party of those with thee," He [merely] shortened it and said: "He knows that some of you will be sick . . . so recite what is convenient of it. . . ."

111. Shāfi'ī said: So it is evident from the Book of God that: "Thou remainest up nearly two-thirds of the night, etc. . . ." S 114
has been abrogated by: "So recite what is convenient of it."

God's saying: "So recite what is convenient of it" may mean:

First, it is a confirmed duty which superseded another.

Second, it is an abrogated duty superseded by another, just as it itself had superseded a previous one in accordance with God's saying:

> And as for the night, keep vigil a part of it, as a work of supererogation for thee; it may be that thy Lord will raise thee up to a laudable position [Q. XVII, 81].

For His saying: "And as for the night, keep vigil a part of it, as a work of supererogation for thee" may mean that "to keep vigil" is a duty in addition to that "to recite what is convenient of it."

112. [Shāfi'ī] said: [In such a case] it is obligatory to seek the evidence of the sunna for [determining] which of the two meanings [is valid]. The sunna of the Apostle of God, however, has indicated that no duty other than that of the five prayers is obligatory. We therefore hold that only the [duty of] five [prayers] is obligatory and that any earlier prayers have S 115
been abrogated by that sunna in accordance with God's saying: ". . . keep vigil a part of it, as a work of supererogation for thee," and that this has abrogated the one [stipulated in] the "rising up at night, half of it, or a third of it or recite what is convenient of the Book. . . ." This does not mean at all

that we recommend abandoning the recital of what is convenient of the Book in the performance of prayer, for the more the recital is prolonged the more we like it. [For] Mālik [b. Anas] told us from his uncle Abū Suhayl b. Mālik from his father who heard Ṭalḥa b. 'Ubayd-Allāh say:

> A tribesman from Najd, excited and crying, whose voice was hardly intelligible until he came near [the Prophet's company], was really inquiring about Islam. 'Islam [imposes the obligation of] five prayers [every] day and night,' the Prophet said. 'Am I under any other [obligation]?' he asked. 'No, not unless you volunteer,' replied [the Prophet] and he mentioned the fasting during the month of Ramaḍān. 'Am I under any other [obligation]?' asked the tribesman. 'No, not unless you volunteer,' replied the Prophet. The tribesman departed, while murmuring: 'By God I shall neither add to nor drop any of these [obligations].' So the Apostle said: 'If [this man] will fulfil his promise, he will be successful [as a Muslim in his life].'[10] S 116

This [tradition] has also been related by 'Ubāda b. al-Ṣāmit from the Prophet as follows: B 18

> Five prayers have been made obligatory on mankind by God. He who fulfils them without neglecting or treating lightly any one of them, has a covenant with God that He will let him enter into Paradise.[11]

[10] Mālik, Vol. I, p. 175; Bukhārī, Vol. I, pp. 19-20; Muslim, Vol. I, pp. 166-68.

[11] Mālik, Vol. I, p. 123; Abū Dāwūd, Vol. II, p. 62.

The Duty of Prayer [the Performance of Which] the Book of God and the Sunna Indicate to Whom it Might Not Apply Owing to [a Valid] Excuse, and Against Him Whose Prayer Is Not Accredited Because of [Some Act of] Disobedience

113. God, Blessed and Most High, said:

> They will ask thee about menstruation; say: It is harmful; so withdraw from women in menstruation, and come not near them until they are clean; but when they have purified themselves, come to them as God has commanded you. Verily, God loves those who turn continually in penitence, and loves those who keep themselves pure [Q. II, 222].

Shāfi'ī said: By means of ablution and washing away pollution, God imposed [the duty of] purity on him who prays, so no prayer will be lawful save for him who is purified. When God mentioned menstruation, He commanded withdrawal from women until they are purified; when they are purified, they become lawful [to men]. We conclude that purification by water shall be performed after the end of menstruation, and that purity cannot be attained by a menstruating woman [merely] by the use of water, since water is always available in towns. But God mentioned purification [by water] only after [women] have become purified, which can be attained only at the ending of menstruation, as stated in the Book of God and the sunna of His Apostle.

Mālik [b. Anas] told us from 'Abd al-Raḥmān b. al-Qāsim from his father from 'Ā'isha, who related that she was menstruant during her visitation [of the Sacred Mosque] with the Prophet. So [the Prophet] ordered her to perform the duty in the same manner as a pilgrim "but do not circumambulate [the Ka'ba] until you are purified." [12] S 118

[12] Mālik, Vol. I, pp. 410-11; Bukhārī, Vol. I, pp. 393-94; Muslim, Vol. XIII, pp. 141-44. Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 51.

So we concluded that God meant that the performance of the duty of prayer is obligatory on those who have achieved purity by ablution and [complete] washing. Since menstruant women [13] cannot become purified by either [ablution or washing]—as menstruation is a natural occurrence beyond their free will to constitute disobedience—they are excused from prayer during menstruation and they need not make up for what they neglected after the end of their menstruation.

114. Shāfi'ī said: [14] By analogy with the menstruant women, we hold that he who is [either] unconscious or insane, whose mind has become sick by an order of God and not by his own fault, is excused from [the duty of] prayer; for he cannot comprehend it as long as his state makes him incapable of comprehension.

It is generally agreed among the scholars that the Prophet did not order menstruant [women] to perform the [duty of] prayer; but they are agreed that they should fast. We have therefore made a distinction between the two duties on the strength of the evidence I have just stated on the authority of the scholars and their agreement [on this matter].

Fasting must be distinguished from prayer in the case of the traveller, since he can postpone it until after the month of Ramaḍān, but to neglect the travel-prayer is not permitted for a single day. Fasting is obligatory but one month in twelve, and is not obligatory in the other eleven months, but no man who is capable of prayer is excused from it.

115. [Shāfi'ī said]: God said:

> Draw not near to prayer when you are drunken until you know what you are saying, nor [when you are] polluted, unless you be travelling on the road, until you have washed yourselves [Q. IV, 46].

Some scholars have said: This communication was revealed before the one which prohibited the [drinking of] wine.[15]

[13] Singular in the Arabic text.
[14] Būlāq ed., p. 19.
[15] See Ṭabarī, *Tafsīr*, Vol. VIII, pp. 375-79.

The Qur'ān gives evidence (but God knows best) that the duty of prayer should not be performed until the drunkard can comprehend the things he recites, because the prohibition of prayer [to the drunkard] is stated first and then the person who is in a state of impurity (junub). So the scholars are agreed that he who is in a state of impurity shall not pray at all until he is purified.[16] S 120

Since the [performance of] prayer by the drunkard was prohibited before [the drinking of] wine was prohibited, [the performance of prayer by] the drunkard would be more appropriately prohibited after wine was prohibited, for [the drunkard] would be doubly disobedient: First, because he prays in a state [of drunkenness] which was prohibited, and secondly because he drinks wine.[17]

Prayer [must be performed] by word and deed and by abstention [from forbidden acts]. If [he who prays] cannot comprehend the words, the deed, and the abstention, and cannot perform the prayer as ordered, [the duty] is not fulfilled and he must make up for it after he recovers.

He who is insane by God's order and who is in a state beyond the control of his free will must be distinguished from him who is a drunkard, since the latter has himself caused the drunkenness and must make up for it, while he who is insane did not inflict upon himself the disability which caused him to be disobedient.

116. [Shāfi'ī] said:[18] God has commanded the Apostle to turn in the direction of Jerusalem in prayer. Before this direction was abrogated it was not permitted to turn in any other direction. But it was abrogated and [the Apostle] was ordered to turn in the direction of the [Sacred] House: It became S 121 unlawful in accordance with a textual command to turn either in the direction of Jerusalem or to any other direction than that of the Sacred House.

[16] Only by a major ablution (ghusl) can the state of impurity (junub) be transformed into a state of purity. See Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 33.

[17] See Abū Ja'far al-Naḥḥās, pp. 39 ff.

[18] Būlāq ed., p. 19.

117. [Shāfi'ī] said: Each [direction] was valid in its time: The turning toward Jerusalem—when God ordered His Prophet to turn to it—was obligatory; but after it was abrogated it B 19 became obligatory to turn only toward the Sacred House, and no other direction is permitted by law, except in the event of fear [of danger] or in a supererogatory prayer in travel as indicated in the Book and the sunna.

The same applies to whatever God has abrogated, for the [word] abrogate means to repeal His command, [the obedience to] which was right in its time, but its repeal rendered its S 122 abandonment right, [too]. He who was aware that [God's] command was abrogated must obey the [new] command and abandon the abrogated one, but he who is not aware of it should continue to obey the abrogated duty. For God said to His Prophet:

> We may see thee turning thy face about toward the heaven. So We shall put thee in possession of a qibla that will satisfy thee. Turn thy face in the direction of the Sacred Mosque, and wherever you may be, turn your faces in its direction [Q. II, 139].

118. Someone may ask: Where does the evidence lie [in this communication] that [men] have been ordered to change [the direction] from one qibla to another.

119. [Shāfi'ī replied]: It is in God's saying:

> The fools among the people will say: 'What has turned them from the qibla which they have been observing?' Say: To God belongs the East and the West; He guideth whom He willeth to a straight path [Q. II, 136].

Mālik [b. Anas] told us from 'Abd-Allāh b. Dīnār from 'Abd- S 123 Allāh b. 'Umar, who said:

> When men were [performing] the dawn prayer in [the Mosque of] Qubā',[19] a messenger arrived and said: Quranic communica-

[19] Qubā', situated on the outskirts of Madīna, was the residence of the tribe of the Banū 'Amr b. 'Awf, among whom the Prophet passed a few days after he migrated to Madīna (1/622) before he moved into the town. A mosque known by the name of this place was erected later where the Prophet and his followers prayed. See Ibn Hishām, Vol. I, pp. 317, 333; Guillaume's translation, pp. 215, 226-27.

tion was revealed to the Prophet last night by virtue of which he was ordered to turn toward the qibla [the direction of the Ka'ba]. So while they were [praying] in the direction of al-Shā'm, they [immediately] turned their faces toward the Ka'ba.[20]

Mālik [b. Anas] told us from Yaḥya b. Sa'īd from Sa'īd b. al-Musayyib, who said: [After he migrated to Madīna], the Prophet prayed for sixteen months in the direction of Jeru- S 124
salem ere the qibla was changed two months before [the battle of] Badr.[21]

120. [Shāfi'ī] said: The evidence of the Book concerning prayer in a state of fear may be found in God's saying:

If you fear [danger], pray either on foot or mounted [Q. II, 240].

So it is not permissible in accordance with the text [of the Book] to pray when mounted unless one is in fear [of danger]; S 125
but [in such a case] God did not mention the qibla.

Concerning prayer in [a state of] fear, ['Abd-Allāh] Ibn 'Umar related from the Prophet a tradition in which he said:

In the event there is a serious fear [of danger] you may pray on foot or mounted, regardless of the direction of the qibla.[22]

The Apostle prayed supererogatory prayers while riding his camel, facing the direction in which she was travelling. This

[20] Mālik, Vol. I, p. 195; Bukhārī, Vol. I, p. 113; Muslim, Vol. V, p. 10; Shawkānī, *Nayl al-Awṭār* (Cairo, 1952), Vol. II, p. 172. The change of the Qibla from Jerusalem to Makka, as the traditions indicate, was the result of the Prophet's quarrel with Jews. At first, it seems, he prayed toward Jerusalem because of the veneration in which he saw it was held by the Jews. It was also his desire to convert the Jews or reach an agreement with them. Failing to achieve either conversion or a lasting alliance, he decided to break with them. The change of the qibla, the first manifestation of this decision, meant that Muḥammad wanted to substitute Makka for Jerusalem as the center of his world. For the events leading up to the change of the qibla, see Ibn Sa'd, *Ṭabaqāt*, eds. Eugen Mittwoch and Edward Sachau (Leiden, 1905-40), Vol. I, pp. 241-44; Tabarī, *Ta'rīkh*, Series I, pp. 1279-81; al-Maqrīzī, *Kitāb Imtā' al-Asmā'*, ed. A. M. Shākir (Cairo, 1941), Vol. I, pp. 59-60.

[21] Mālik, Vol. I, p. 196; Bukhārī, Vol. I, p. 112; Muslim, Vol. V, p. 10.

[22] Mālik, Vol. I, p. 184; Bukhārī, Vol. III, p. 209; Shawkānī, *Nayl al-Awṭār*, Vol. II, pp. 176-77. Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. I, 197.

[tradition] was transmitted by Jābir b. 'Abd-Allāh, Anas b. Mālik and others.[23] [The Prophet, however], never performed the required prayer while travelling except on the ground and in the direction of the qibla.

Ibn Abī Fudayk told us from Ibn Abī Dhi'b from 'Uthmān b. 'Abd-Allāh b. Surāqa from Jābir b. 'Abd-Allāh, who said:

> During the campaign of the Banū Anmār[24] the Prophet, mounted on his camel, prayed in the direction of the east.[25] S 126

121. Shāfi'ī said:[26] God said:

> O thou prophet, stir up the believers to fight: If there be twenty of you who endure, they will overcome two hundred, and if there be a hundred of you, they will overcome a thousand of those who have disbelieved, because they are a people who do not understand [Q. VIII, 66].

He [God] then declared in His Book that He relieved them of the obligation calling for one believer to fight ten [unbelievers] and confirmed the one which imposed the obligation that one believer should fight two unbelievers in accordance with His saying:

> Now God has made it lighter for you and knows that there is weakness in you. So if there be a hundred of you who endure, they will overcome two hundred, and if there be a thousand of you, they will overcome two thousand, by the permission of God. God is with those who endure [Q. VIII, 67].

Sufyān [b. 'Uyayna] told us from 'Amr b. Dīnār from Ibn 'Abbās, who said:

[23] Bukhārī, Vol. I, p. 279; Ibn Ḥajar, *Bulūgh al-Marām*, ed. R. M. Riḍwān (Cairo, 1954), p. 25; cf. Shawkānī, *Nayl al-Awṭār*, Vol. II, pp. 177-78.

[24] This was an abortive campaign (A. H. 4/A. C. 626), for when the news reached the Prophet that the Banū Anmār b. Baghīd and the Banū Sa'd b. Tha'laba b. Dhubyān b. Baghīd were preparing for war in Najd, an expedition, headed by the Prophet, proceeded to the east but found that the enemy had already left. It was during this campaign that the Prophet prayed, mounted on his camel, in the direction of the east. For an account of this campaign, see al-Maqrīzī, Vol. I, pp. 188-89.

[25] Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 84.

[26] Būlāq ed., p. 20.

When the divine communication: 'If there be twenty of you who endure, they will overcome two hundred' was revealed, it became obligatory upon the twenty [believers] never to retreat [in battle] before two hundred [unbelievers]; and when God revealed: 'Now God has made it lighter for you and knows that there is weakness in you—If there were twenty of you, etc.'—it became obligatory on a hundred [believers] never to retreat before two hundred [unbelievers].[27] S 127

[Shāfi'ī] said: This is in conformity with the opinion of Ibn 'Abbās. But God made this so clear in [His] communications that it needs no explanation.[28]

122. [Shāfi'ī said]: God said:

Those of your women who commit indecency—seek four witnesses against them, and if they testify, confine them to their houses until death takes them or God appoints for them a way out. And when two of you commit [indecency] punish them both; but if they repent and reform, then desist from them. Verily God always has been relenting, compassionate [Q. IV, 19-20]. S 128

God, however, abrogated [the penalty of] confinement and *the inflicting of harm [by another communication] in which* He said:

The fornicatress and the fornicator—scourge each of them with a hundred stripes [Q. XXIV, 2].

Thus the sunna specified that the scourging of a hundred stripes should be [inflicted] on the unmarried fornicators.

'Abd al-Wahhāb [b. 'Abd al-Majīd al-Thaqafī] told us from Yūnus b. 'Ubayd from al-Ḥasan from 'Ubāda b. al-Ṣāmit that the Apostle said:

Take it from me [repeated twice], God has decided on a way [for their punishment]: For [the fornication of] the unmarried couple [the penalty] shall be scourging with a hundred stripes and banishment for a year; for [the adultery of] the married couple, scourging with a hundred stripes and stoning [to death].[29]

[27] Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. IV, p. 92; and Ṭabarī, *Tafsīr*, Vol. XIV, pp. 50-58.

[28] Shāfi'ī, *Kitāb al-Umm*, Vol. IV, p. 92.

[29] Abū Dāwūd, Vol. IV, p. 144; Abū Ja'far al-Naḥḥās, p. 97; Ibn Ḥajar,

We are told by the trusted authority [30] from Yūnus b. 'Ubayd S 129
from al-Ḥasan from Ḥiṭṭān al-Raqāshī from 'Ubāda b. al-Ṣāmit S 130
from the Prophet a similar [tradition].

123. [Shāfi'ī] said: The sunna of the Apostle specified that the penalty of scourging with a hundred stripes for [fornication on the part of the] free unmarried couple was confirmed, but that it was abrogated concerning the married; and that the penalty of stoning for [adultery on the part of the] free married couple was confirmed.[31] For when the Apostle's ruling: ["Take it from me, etc."] was laid down, it abrogated S 131
the [penalty of] banishment and scourging for the adulterers. B 20

Since the Prophet ordered the stoning of Mā'iz [b. Mālik al-Aslamī] rather than scourging him, and he ordered Unays [b. al-Ḍaḥḥāk al-Aslamī] to inquire from the wife of Aslamī and to stone her if she confessed adultery—this [precedent] indicated that the scourging of the free married adulterers was abrogated and that [the penalty of] stoning was confirmed, since this was a later decision [which superseded an earlier S 132
one].[32]

But the Book of God and the sunna of the Prophet indicate that slave-adulterers are excluded from this [punishment].

Concerning slave-women, God, Blessed and Most High, said:

Bulūgh al-Marām, p. 153; Shāfi'ī, *Kitāb al-Umm*, Vol. VI, p. 119, and Vol. VII, p. 252 (margin).

[30] It is held, on the authority of al-Rabī' al-Murādī, that Shāfi'ī applied the term "trusted authority" to Yaḥya b. Ḥassān (see Bayhaqī, *Manāqib*, folio 278); but it is obvious that in this instance the trusted authority must be someone else, since Yūnus was born in 144/761 after Ḥassān had died in 139/756.

[31] There is in the Būlāq edition part of a tradition cited by Shāfi'ī in the following paragraph which adds nothing but verbal changes. This addition, as Shākir has pointed out, is spurious. See *al-Risāla*, Shākir's ed., p. 131, n. 3.

[32] Cf. Shāfi'ī, *Kitāb Ikhtilāf al-Ḥadīth* (*Umm*, Vol. VII, p. 251). Shāfi'ī's citation of the name of the wife of "Aslamī" is perhaps an error, as other hadith digests do not cite the name of the woman. Traditions indicate that Mā'iz confessed in the presence of the Prophet four times to his having intercourse with the woman and the Prophet ordered him to be stoned to death. See Abū Dāwūd, Vol. IV, pp. 145-51; and Shawkānī, *Nayl al-Awṭār*, Vol. VII, pp. 100-106. Cf. Mālik, Vol. II, pp. 820-21.

If, then, having been taken under iḥṣān,[33] they commit an indecency, they shall be subject to half the punishment to which those under iḥṣān are subject [Q. IV, 30].

It is evident that half [the punishment] cannot be executed except in scourging—which it is possible to divide—while stoning, which leads to death, cannot be halved, for he [who S 133
is subject] to stoning might die either by the first stone cast on him or by a thousand or more. So it is impossible [to determine] what half [of the punishment] is. The [limit of such] penalties is specified by the destruction of life, and the destruction of life is dependent on the number of strokes and the size of the stones. Obviously no half of such a limit can S 134
be determined.[34]

124. Shāfi'ī said:[35] The Apostle of God said:

If it is proved that the slave-women of any one of you has committed adultery, she should be scourged.[36]

But [The Prophet] did not say that she should be stoned. Nor did the Muslims differ on [the dictum that] slaves who commit adultery are not subject to stoning.

The taking of a slave-woman under iḥṣān is performed by accepting Islam. We hold this [opinion] on the strength of the evidence of the sunna and the agreement of the majority of the scholars.

Since the Apostle decreed: "If the slave-woman of any one of you, etc." without stipulating: "Whether she was taken under iḥṣān or not," we concluded that God's saying concerning slave-women [which runs as follows]: "If then, having been taken under iḥṣān, they commit an indecency, they shall be subject to half the punishment to which those under iḥṣān
are subject," [Q. IV, 30], must mean: If they [the slave-women] S 135
have become Muslims, not that if they were taken as wives

[33] For the meaning of this term, see paragraph 83, n. 44, above.

[34] Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. VI, pp. 75, 122, for slight verbal changes. These changes may have been made by copiers. See Shākir's edition of the *Risāla*, pp. 134-35, notes 2-3.

[35] Būlāq ed., p. 21.

[36] Cf. Mālik, Vol. II, pp. 826-27, for a different wording.

and the intercourse were performed in marriage, nor if they were freed although the intercourse was not performed [in marriage].[87]

125. Someone may ask: Does it not appear that you give iḥṣān a variety of meanings?

126. [Shāfiʿī] replied: Yes, for the aggregate meaning of iḥṣān is that there should be a bar against forbidden acts. Islam may be one of them;[88] freedom [from slavery] is another; the taking [of the woman] as a wife and the performance of intercourse [through marriage] are still others; and finally detainment in the house. [As a rule] anything that may prevent [indecency] constitutes iḥṣān. For God said:

> We taught him the making of garments for you to protect you from each other's violence [Q. XXI, 80].

And He said:

> They will not fight against you all together, except in fortified towns [Q. LIX, 14].

[The term fortified] means protected [towns].

127. [Shāfiʿī] said: The first and the last part [of the communication] indicate that the meaning of iḥṣān—which is stated in general [terms] in [this] place, not in others—is Islam, not intercourse or freedom or confinement or chastity. These are the various [possible] meanings of iḥṣān.

[87] For the meaning of iḥṣān in this communication, see Ṭabarī, *Tafsīr*, Vol. VIII, pp. 195-202.

[88] I. e., a bar against one of the forbidden acts.

The Abrogating and Abrogated [Communications] Which Are Indicated by the Sunna and Consensus

128. [Shāfi'ī said]: God, Blessed and Most High, said:

> Prescribed for you, when death draws nigh to one of you, and he leaves behind some property, is the making of a testament in favor of his parents and relatives who are reputable—an obligation on the God-fearing [Q. II, 176].

And He said:

> And those of you who die, leaving wives, let them make testament for their wives, provision for a year without expulsion; but if they go forth, there is no fault in you what they may do with themselves honorably. God is All-mighty; All-wise [Q. II, 241]. S 137

Thus God provided [legislation] for the inheritance of parents as well as for near relatives whether together with them or as successors, and for the inheritance of the husband from his wife and the wife from her husband.

The two [foregoing] communications may be interpreted either to confirm bequests for the parents and the near relatives, bequest for the wife, and inheritance together with bequests, so that inheritance and bequests are lawful; or that [the legislation concerning] inheritance abrogates [that concerning] bequests.[39]

Since both interpretations are possible, as we pointed out, it is obligatory upon the learned to find an evidence in the Book of God [as to which of the two is valid]; if nothing is S 138
found in the text of the Book of God they should try the sunna of the Apostle. If such an evidence is found, it should be accepted from the Apostle, as [if] accepted from God by virtue of God's command to obey His [Apostle].

We have found that those learned in legal interpretation and the authorities in the campaigns [of the Prophet]—whether

[39] Cf. Ṭabarī, *Tafsīr*, Vol. III, pp. 384-96; V, pp. 250-62.

from [the tribe of] Quraysh or other [tribes]—are agreed that in the year of the capture [of Makka (8/630)] the Prophet said:

> No bequest to a successor [is valid], nor shall a believer be slain for [the blood of] an unbeliever.[40]

This tradition has been transmitted from those who have heard it from the authorities on the [Prophet's] campaigns. So this is a transmission by the public from the public and is therefore of greater authority than the transmission of one [individual] from another. Further, we have found that the scholars are agreed [on the acceptance of this tradition]. S 21

129. [Shāfi'ī] said: Some of the Syrian [transmitters] have related [this] tradition [with an isnād or authorities] which those who are learned in traditions do not confirm, because some of the transmitters are unknown.[41] So we have related this tradition [directly] from the Prophet as an interrupted [tradition].[42] S 139

We have accepted this tradition, as I pointed out, on the authority of those learned in the [Prophet's] campaigns and the agreement of the public, just as we have already related it on the authority of all those who are learned in the campaigns and the agreement of the public. [For] Sufyān [b. 'Uyayna] told us from Sulaymān al-Aḥwal from Mujāhid that the Apostle said: "No bequest to a successor [is valid]."[43] S 140

We have concluded that the Prophet's ruling: "No bequest for a successor [is valid]," as I have stated, [means] that [the legislation on] inheritance has abrogated that on bequests for the parents and the wife, on the strength of the information related by those learned in matters concerning the [Prophet's]

[40] Abū Dāwūd, Vol. III, p. 113; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 43; Shāfi'ī, *Kitāb al-Umm*, Vol. IV, pp. 27, 36, 40.

[41] I. e., this tradition, well-known to those learned in traditions in the Ḥijāz, was related without the names of the transmitters; but it was related by Syrian authorities with the names of the transmitters.

[42] An interrupted tradition is a tradition reported without the full chain of transmitters.

[43] See Shāfi'ī, *Musnad*, Vol. II, p. 189; and note 40, above.

campaigns, interrupted traditions from the Prophet, and the agreement of the public.

A great number of the public also have held that the [legislation concerning] bequests for relatives was abrogated and is no longer obligatory; for whenever they are entitled to inherit, they are so by virtue of the [law of] inheritance; but when they are not entitled to inherit, it is not obligatory that they should inherit by a bequest. S 141-142

Ṭāwūs [b. Kaysān] and a few other [authorities], however, held that the [legislation concerning] bequests for parents has been abrogated, though it was confirmed for relatives not entitled to inherit. So it is not permissible for him who bequeaths to do so [to persons] other than relatives.

Since it is possible to maintain with Ṭāwūs that [the legislation] affecting relatives is [still] valid—in as much as the tradition transmitted by the authorities on [the Prophet's] campaigns merely states that the Prophet said: "No bequest for a successor [is valid]," it is deemed obligatory upon scholars to seek an evidence either in support or against Ṭāwūs's opinion.

We have found that the Apostle made a decision [concerning] six slaves owned by a man who possessed no other property and who had set them free at the time of his death. The Prophet divided them into three groups, freeing two [slaves] and leaving four in slavery. This [tradition] had been related to us by 'Abd al-Wahhāb [al-Thaqafī] from Ayyūb al-Sakhtiyānī from Abī Qilāba from Abī al-Muhallab from 'Imrān b. Ḥuṣayn from the Prophet.[44] S 143

130. [Shāfi'ī] said: Thus the indication of the sunna, as provided in the tradition of 'Imrān b. Ḥuṣayn, is that the Prophet's decree to free [the slaves] at the time of death constitutes a bequest. Since the person who freed the slaves was an Arab—and the Arabs own foreign [slaves] with whom they had no blood relationship—the Prophet allowed a bequest to them to be valid. This [precedent] indicates that if a bequest S 144

[44] Abū Dāwūd, Vol. IV, p. 28; Shāfi'ī, *Kitāb al-Umm*, Vol. IV, pp. 24, 27; Vol. VII, pp. 370-71 (margin).

in favor of persons other than relatives were void, it would be void concerning the freed slaves [too], as they were not blood relatives of [the man] who set them free.

It also indicates that the bequest of the deceased cannot exceed one third of his estate; that what exceeds one third is illegal; that bequests in favor of freeing slaves [already] earning money for their freedom (istis'ā')[45] are void; and that [the choosing of two freed slaves out of six] by dividing them [into three groups] is confirmed [on the basis of] the casting of lots.[46]

Bequests to parents are no longer valid, since their [right to] inheritance as successors is confirmed. A bequest made by a deceased [person] to anyone—if he is not a successor—is valid. It is commendable—in my opinion—if [the deceased] leaves a bequest to his relatives.

131. Shāfi'ī said:[47] There are in the Qur'ān other [examples] concerning abrogating and abrogated [legislation], which may be found in their [proper] places, in the *Kitāb Aḥkām al-Qur'ān*.[48] I have discussed only some of the general principles on the strength of which the meaning of other examples may be sought. I am satisfied that these examples suffice for others hitherto not dealt with. May I ask God [for His] protection [from error] and for success [in following the right]. I have dealt with the duties imposed by God, the general and S10

[46] This term is applied to the slave who is partially freed provided he pays out of his labor the price of the remaining portion in slavery.

[46] On the strength of a tradition related by 'Imrān b. Ḥusayn the Ḥanafī school permitted istis'ā', on the ground that the freeing of one third of the six slaves means that one third of each one of them can be freed and the remaining two thirds might be freed by istis'ā'. Thus the Ḥanafī school does not permit dividing the slaves into three categories or the casting of lots in determining such division. The Shāfi'ī school, however, rejects this interpretation and holds that the meaning of the tradition is clear, that the Prophet permitted the freedom of only two slaves out of six (constituting one third of the bequest), and that his division of the six into three groups meant that he permitted such a division and, finally, that his choice constitutes the casting of lots. For this reason istis'ā' is rejected, and the division into categories and the casting of lots were accepted.

[47] Būlāq ed., p. 22.

[48] Shāfi'ī, *Kitāb Aḥkām al-Qur'ān*, Vol. I, pp. 149 ff.

the specified, together with the sunna of the Apostle, so that those who have knowledge of the Book will know the place in which God has placed His Prophet in relation to His Book, His religion, and the followers of His religion. They will also know that to obey his orders means to obey God, and that his sunna is in conformity with what God revealed in His Book and that it is not contradictory to it at all. And he who comprehends this book knows that [God's] declaration is of various forms—not just one—, the common feature of which is that to the learned it is either clear or vague; but to those lacking in [legal] knowledge, the declaration varies in vague- S 146
ness [in accordance with their degree of comprehension].

Chapter VII

[ON DUTIES]

The Duties Laid Down in the Text [of the Qur'ān]

132. God, Glorious be His Praise, said:

> Those who accuse women under iḥṣān [of unchastity] and do not then bring forward four witnesses, scourge them with eighty stripes, and do not ever accept any testimony of theirs again; they are the ungodly [Q. XXIV, 4]. B22

Shāfi'ī said: The women under iḥṣān in question are those who are freewomen and have come of age. This indicates that iḥṣān is a collective term covering a variety of meanings.[1] [God] said:

> Those who accuse their wives and have no witnesses except themselves—let one of them testify by God four times, that he is of those who speak the truth. And a fifth time, that the curse of God shall be upon him, if he should be of the liars. It shall avert the punishment from her if she testify by God four times that he is of the liars. And a fifth time, that the wrath of God S147
> shall be upon her, if he should be of the truthful [Q. XXIV, 6-9].

Since God has distinguished between the ruling [relating to the accusation] of the husband and [the ruling relating to]

[1] According to Ibn Qutayba, the woman under iḥṣān is a free and mature woman, in possession of her faculties and who has had sexual intercourse in a legal marriage. See Ibn Qutayba, *Kitāb Ta'wīl Mushkil al-Qur'ān*, ed. Aḥmad Ṣaqr (Cairo, 1373/1954), p. 391. See also paragraph 83, n. 44.

any one who may accuse other [than the husband]—punishing the one other than the husband, unless he produces four witnesses in support of his accusation, and excluding the husband from punishment by virtue of the li'ān [2]—this indicates that those who accuse women under iḥṣān, who are subject to scourging [as a punishment], are those who accuse free and mature women, not wives.

This is [another] example of what I have already explained that the Qur'ān [was revealed] in Arabic and that some of its communications are explicitly general, intended to have particular [meaning], not that one of the two communications meant to abrogate the other but that each is valid in the manner indicated by God. So a distinction should be made between the two [communications] in the manner God made the distinction and the two be joined together in the manner He united them.

So, if li'ān were invoked, the husband would not be punished, just as a party [in a dispute] is acquitted by witnesses; if he refuses to invoke the li'ān, he shall be punished if his wife is a free woman and mature of age.

133. [Shāfi'ī] said: The communication concerning li'ān was revealed in connection with [the case of 'Uwaymir] al-'Ajlānī and his wife and the Prophet executed the procedure of the li'ān between them. This [precedent of] li'ān was related by Sahl b. Sa'd al Sā'idī and Ibn 'Abbās; but neither Ibn 'Umar, S 148
who witnessed its execution, nor the others related the [actual] words pronounced by the Prophet on the li'ān.

These [authorities] related [other] decisions taken by the Apostle, not to be found in the Qur'ān, such as the cancellation [of the marriage contract] between the two parties in the li'ān, voiding [the blood relationship of] the child [to the accusing father], and his pronouncement: "If [the mother] gives birth to the child and it possesses [the physiognomy] indicated [by

[2] Li'ān is an oath by virtue of which a husband may accuse his wife—without evidence—of adultery without becoming liable to punishment under qadhf by stoning. The marriage is dissolved and the husband can deny the paternity of the child borne by the wife.

the accusing father], it belongs to the accused person." So if the child proves to possess after birth similar resemblances [to the accused person], he [the Prophet] said: "the child's status is clear [that it belongs to him who is accused], for has not God laid down the rule [in the Qur'ān]," [that such a case must be decided by li'ān, i. e., the cancellation of the marriage contract and the voiding of the blood-relationship of the child].[3] Ibn 'Abbās [also] related that the Prophet, [on hearing the oath of accusation repeated for the fifth time], said: "Stop him [the husband], for this means punishment [for the wife]."[4]

134. Shāfi'ī said:[5] We conclude that [the authorities] do not relate certain needed portions of the tradition and relate others, for had they known the portion concerning how the Prophet executed the li'ān [between husband and wife] they would have related it. They only knew that whoever was versed in the Book of God knew that the Prophet executed the li'ān in accordance with God's communication. They [the authorities] were merely satisfied with what God provided for li'ān, such as the number of oaths and that both could bear witness [as stated in Q. XXIV, 6-9] without citing the Apostle's decision on how he executed the li'ān [between husband and wife]. §149

135. Shāfi'ī said: There are in the Book of God fully adequate [communications] concerning li'ān and the number of oaths; but some [of the authorities] have related [traditions] from the Prophet concerning the cancellation [of the marriage contract between the two parties in the li'ān] as I have already said. Such traditions from the Apostle, which are in agreement with the Book of God, have already been discussed.[6] §150

[3] See Shāfi'ī, *Kitāb al-Umm*, Vol. V, p. 114; and *Kitāb Ikhtilāf al-Ḥadīth* (margin of the *Kitāb al-Umm*, Vol. VII, pp. 305-306).

[4] Should the husband pronounce a fifth oath, beyond the number necessary for li'ān, his accusation of adultery, if not counter-acted by the wife, would entail punishment of the wife by stoning to death. If the husband's fifth oath were false, he would be punished by fire after death for a false oath. See Shāfi'ī, *Kitāb al-Umm*, Vol. V, p. 111.

[5] Būlāq ed., p. 23.

[6] See Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 110-22.

136. God said:

Fasting is prescribed for you as it was for those before you; perhaps you will show piety. A certain number of days [Q. II, 179-180].

And He specified the month by saying:

The month of Ramaḍān, in which the Qur'ān was sent down as guidance for the people and as evidences of the guidance and Furqān; so whoever of you is present during the month let him fast in it; but if anyone is sick or on a journey [let him fast] a number of other days. God desires ease for you, and desires not hardship for you; and [it is] in order that you may complete the [full] number of [days], and that you may magnify God for the guidance He hath given you; perhaps you will be thankful [Q. II, 181].

Shāfi'ī said: I have known of no authority who related a tradition from the Prophet specifying that the month for fasting was the month of Ramaḍān—which falls between Sha'bān and Shawwāl—owing to certainty as to the place of Ramaḍān among the other months; for men have been satisfied that God imposed the duty. S 151-15

They [men] have obligated themselves to observe fasting during travel, and when they may break it, and they knew how to make up for this duty as well as others on which there is no explicit text in the Book [of God]. Nor have I known anyone besides the scholars who needed [to know] which month was Ramaḍān or whether [fasting in this month] was obligatory. The same may be said about other prescribed duties: That [men] must perform the prayer, [pay] the alms and—for those who can manage it—perform the Pilgrimage; that adultery, homicide, and similar acts are forbidden.

137. [Shāfi'ī] said: Certain traditions have come from the Apostle on these matters for which there are no specific texts in the Qur'ān, but the Apostle has specified on God's behalf the meaning intended by Him, while the Muslims provided a number of derivative rules on which the Apostle laid down no specific sunna. S 158

For instance, concerning the man who divorces his wife by pronouncing the third declaration [of divorce],[7] God said:

> If he divorces her, she shall not be lawful to him after that, until she marries another husband. If he divorces her, then it is no fault for them to return to each other [Q. II, 230].

God's saying: "Until she marries another husband" may mean either until she [formally] marries another husband—this was the meaning accepted by those to whom the communication was addressed and she was regarded as married once the marriage contract was concluded—or until she [actually] had intercourse with another husband, for the term nikāḥ may include both intercourse and the marriage contract.[8] So when the Apostle once said to a divorced woman, whose divorce was pronounced three times by her husband and who was then married to another man: "You will not be lawful [to your first husband] until you have tasted the sweetness [of the second husband] and he has tasted yours,"[9] he meant that she must have intercourse with another husband, and S129
that nikāḥ [includes] intercourse.

138. Someone may ask: Will you cite a tradition from the Apostle in support of your statement?

139. [Shāfi'ī] replied: Sufyān [b. 'Uyayna] told us from Ibn B23
Shihāb [al-Zuhrī] from 'Urwa [b. al-Zubayr] from 'Ā'isha, who said:

> The wife of Rifā'a [al-Qurazī] once came to the Prophet and S130
> said: 'Rifā'a has divorced me [complete divorce] and 'Abd al-Raḥmān b. al-Zabīr married me, but [the latter's organ] is as limp as cloth's nap.' 'Do you want to go back to Rifā'a?' asked the Apostle, [and he stipulated]: 'No, not until you taste his sweetness and he tastes yours.'[10]

[7] Būlāq ed., p. 23.

[8] Literally nikāḥ means intercourse, but the legal meaning is marriage contract, which may or may not include intercourse. See Jurjānī, p. 167; and al-Muṭarrazī, Vol. II, p. 229. For the meaning of nikāḥ in the Quranic communication, see Ṭabarī, *Tafsīr*, Vol. IV, pp. 385-590; Bukhārī, Vol. III, p. 463.

[9] The figurative meaning of the word 'usayla is used in the Arabic text. See Lane, *Lexicon*, p. 2046.

[10] Bukhārī, Vol. III, p. 477; Abū Dāwūd, *Sunan*, Vol. II, p. 294. See also

140. Shāfi'ī said: So the Apostle made it clear that God made her lawful to the husband who pronounced her divorced thrice [only] after another marriage [was consummated] with nikāḥ, that is, if the nikāḥ was followed by intercourse with the other husband.

[*Quranic*] *Duties for Which the Apostle Provided Sunna*

141. God, Blessed and Most High, said:

> When you stand up to pray, wash your faces, and your hands up to the elbows, and wipe your heads, and your feet up to the ankles. If you are polluted, purify yourselves [Q. V, 8-9]. S 161

And He said:

> Do not perform the prayer . . . when you are polluted—unless you are travellers on the road—until you wash yourselves [Q. IV, 46].

So [God] made it clear that cleanliness from junub (pollution) must be performed by complete washing (ghusl), not by ablution.[11]

142. Shāfi'ī said: [12] The Apostle laid down sunna for ablution in conformity with God's communication: So he [the Prophet] washed his face, and his hands to the elbows; wiped his head; and washed his feet up to the ankles. [For] 'Abd al-'Azīz b. Muḥammad [al-Darāwardī] told us from Zayd b. Aslam from 'Aṭā' b. Yasār from Ibn 'Abbās from the Prophet that the latter performed the ablution [by washing] each limb once.[13]

Shāfi'ī, *Kitāb al-Umm*, Vol. V, p. 229; Vol. VII, p. 314 (margin); and Ṭabarī, *Tafsīr*, Vol. IV, pp. 590-96.

[11] See Ṭabarī, *Tafsīr*, Vol. VIII, pp. 379-84; Vol. X, p. 82.

[12] Būlāq ed., p. 24.

[13] Bukhārī, Vol. I, p. 47; Abū Dāwūd, Vol. I, p. 34; Tirmidhī, *Sunan*,

Mālik [b. Anas] told us from 'Amr b. Yaḥya [al-Māzinī] from his father who asked 'Abd-Allāh b. Zayd, the grandfather of 'Amr b. Yaḥya, "Are you able to show me how the Apostle performed ablution?" "Yes," replied 'Abd-Allāh b. Zayd, and he asked for water. He poured it over his hands and washed twice; he rinsed [his mouth] and sniffed [water into his nose] thrice; he washed his face thrice, and washed his hands up to the elbows twice [each time], and wiped his head with his hands moving them from the front and brought them back—he began with his forehead until he carried them to his neck, then he brought them back to the place from which he had started—and [finally] he washed his feet.[14]

The literal [meaning] of God's saying: "Wash your faces" is that the minimum requirement for washing is once [each time], but it may [also] mean more [than once]. So the Apostle decreed that ablution must be performed by washing once [each time], in conformity with the literal [meaning] of the Qur'ān. This is the minimum requirement for washing,[15] but it may mean more than once since [the Prophet] performed it twice and three times.

Since [the Prophet] washed once [also], we have concluded that if once does not fulfil [the duty], he would not have performed it once before prayer. More than one ablution is [therefore] optional—not obligatory—and that less than that, [i. e., once] does not fulfil [the duty].

This is in conformity with what I have already said concerning other duties, namely that if the traditions were lacking, the Book would be satisfactory without them; but if traditions were found about them, they indicate that they should be in conformity with the Book of God.

143. [Shāfi'ī said]: It may be that the authorities have related traditions to indicate that although the Apostle ordinarily performed the ablution three times, they were intended

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ed. A. M. Shākir (Cairo, 1356/1937), Vol. I, p. 60; Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 27.

[14] Mālik, Vol. I, p. 18; Bukhārī, Vol. I, pp. 59-60; Shāfi'ī, *Kitāb al-Umm*, Vol. I, pp. 23, 27.

[15] Būlāq ed., p. 24.

to be optional, not obligatory, so that the performance of less than that number would not be regarded as failure to fulfil the duty. However, since certain traditions specify that "he who performs the ablution thrice before prayer—and performing a two-cycle prayer twice—without any distracting thought [mixed with the prayer], his [sins] would be forgiven," [men] desired to increase the [number of] ablutions, but such increase is supererogatory.

In the performance of ablution, the Apostle washed his [hands] including the elbows, and [the feet] including the ankles. The [Quranic] communication [concerning washing] may either mean washing including [the elbows and ankles] or washing without them. It was perhaps for clarifying the meanings of this [communication] that the [two] traditions were related. The one closest to the literal meaning of the S 165
divine communication specifies that [the elbows and ankles] should be [included] in the washing. For this [washing] is made clear in the sunna as well as in the Qur'ān. But though this as well as the other [declarations] in the Qur'ān are clear enough to the scholars, to others the clarity in both is not the same.

The Apostle laid down a sunna that washing to free one's self from pollution includes the washing of the genital organs, the ablution—like the ablution before prayer—and the complete washing (ghusl). We recommend that [his example] be followed.

I know of no scholar from whom I have learned who has disagreed that any washing should be satisfactory, provided that it is complete, although men prefer otherwise [i. e., ablution and complete washing]. For [the Qur'ān] prescribes washing [only] without any specifications as in the case of ablution.

The Apostle laid down sunnas regulating [the circumstances that call for] ablution, and the [kinds of] pollution which must be washed away, for such matters have not been dealt with in the Book [of God]. S 166

[*Quranic*] *Duties Which the Sunna Specified are Intended To Be Particular*

144. God, Blessed and Most High, said:

> They will ask thee for a pronouncement. Say: God pronounces to you concerning the indirect heirs. If a man perishes and has no children, but he has a sister, she shall receive a half of what he leaves and he is her heir if she has no children [Q. IV, 175].

And He said:

> To the men belongs a share of what parents and near relatives leave, and to the women belongs a share of what parents and near relatives leave, whether it be little or much, a share prescribed [Q. IV, 8]. B24

And He said:

> And to his parents, to each one of the two belongs a sixth of what he leaves, if he has children; but if he has no children and his heirs are his parents, a third to his mother, or, if he has brothers, to his mother a sixth, after any bequests he may bequeath or any debts [have been paid]. As to your fathers or your sons you do not know which of them is the most advantageous to you. So God apportions; verily, God is All-knowing, All-wise. S16
>
> A half of what your wives leave belongs to you, if they have no children; but if they have children, a fourth of what they leave belongs to you after any bequests they may bequeath or debts [have been paid] [Q. IV, 12-13].

And He said:

> To them belongs a fourth of what you leave, if you have no children; but if you have children, an eighth of what you have belongs to them, after any bequest you may bequeath or debts [have been paid] [Q. IV, 14].

The sunna [merely] specified what God has provided for those who are eligible to inherit: Brothers, sisters, children, and the near relatives, parents, spouses, and all those who are

eligible to inherit in accordance with [the text of] the Book, provided that the legator and the legatee [either] profess the same religion [i. e., Islam] and belong to the people of the lands of Muslims[16] or are [non-Muslims] in treaty relations with Muslims [by virtue of which] their lives and property are secured.[17] If they are polytheists, they are eligible to inherit in accordance with their [own law of]/polytheism. For S 168
Sufyān [b. 'Uyayna] told us from al-Zuhrī from 'Alī b. Ḥusayn from 'Amr b. 'Uthmān from Usāma b. Zayd who related that the Apostle said: "The Muslim cannot inherit from a non-Muslim, nor the non-Muslim from the Muslim."[18] S 169

Furthermore, the legator and the legatee must be freemen and Muslims. [For] Ibn 'Uyayna told us from Ibn Shihāb [al-Zuhrī] from Sālim [b. 'Abd-Allāh] from his father that the Apostle said: "He who sells a slave possessing property, the property belongs to the seller unless the buyer stipulated otherwise."[19]

145. [Shāfi'ī] said: It is evident in the sunna of the Apostle that the slave cannot own property, that what he owns belongs to his master, and that ascribing to him title to property—which may be [found] in his hands—merely means that it is added to him [as an additional property], and not that he possesses it, for [the slave] cannot be an owner [so long as] he is incapable of possession, rather he himself is possessed; he may be sold, given in gift, or bequeathed [as a chattel]. For God [made lawful] the transfer of the property of the dead to the living who can own what the dead had owned. So if S 170
the slave were to inherit property whether as a father or in

[16] Dār al-Muslimīn or Dār al-Islām is the territory of Islam. It may be defined, broadly speaking, as the territory whose inhabitants observe Islamic law, or, strictly speaking, the territory under Islamic rule. See M. Khadduri, *War and Peace in the Law of Islam*, pp. 155-57.

[17] Non-Muslims who accepted Muslim rule by virtue of a treaty or a charter are called *ahl al-dhimma* or scriptuaries. See *ibid.*, Chap. 17.

[18] Mālik, Vol. II, p. 519; Muslim, Vol. XI, pp. 51-52; Abū Dāwūd, Vol. III, p. 125; Shāfi'ī, *Kitāb al-Umm*, Vol. IV, pp. 2-3; and Shāfi'ī, *Musnad*, Vol. II, p. 190.

[19] Abū Dāwūd, Vol. III, p. 268; Ibn Ḥanbal, Vol. I, pp. 305-306; Shāfi'ī, *Kitāb al-Umm*, Vol. IV, p. 3.

any other capacity his share of the inheritance would be owned by his master on his behalf, [even though] the master is neither the father of the deceased nor an heir entitled to a share in the inheritance. So if the slave were given the right of inheritance as a father, it means the master will have the right of inheritance and we would have given such a right [to a person] to whom God has not given it. For that reason, as I have pointed out, we do not favor giving [the right of] inheritance to the slave, nor to any one who is not in possession of freedom and [the faith of] Islam and who is not devoid of homicidal intent so that he is not regarded as a criminal. For Mālik [b. Anas] related from Yaḥya b. Sa'īd from 'Amr b. Shu'ayb that the Apostle said: "He who kills [another] cannot inherit [from him]." [20]

146. Shāfi'ī said: [21] So we hold that he who kills [another] will not inherit from him. For the minimum [penalty] for a killer with a criminal intent is to deprive him of [the right of] inheritance, since he is disobedient to God and incurs His displeasure. There is no disagreement among the learned whom I have known, whether in this country or in another, that the Muslim cannot inherit from another unless he is a freeman and clear of criminal intent. Their agreement—on what I have just stated—is a binding evidence on them that they should never disagree on any of the sunna of the Apostle. For if the sunna on matters for which there are textual communications has the same place as these communications, and is as binding [on men] as the Qur'ān, it indicates that for whatever else the sunna provided—for which there are no divine communications—it should be as binding [as the Qur'ān]. The scholars should be the last to have doubts as to its binding force, and should know that God's commands and those of His Apostle are not contradictory, but follow the same pattern. [For] God, Blessed and Most High, said:

> Do not consume your property among you in vanity, although there be trading by mutual consent on your part [Q. IV, 33].

[20] Mālik, Vol. II, p. 867; Ibn Ḥanbal, Vol. I, pp. 305-306.
[21] Būlāq ed., p. 25.

147. [Shāfi'ī said]: [22] And He said:

> That is for their having said: Sale is just the same as usury, though God hath permitted sale and forbidden usury [Q. II, 276].

Moreover, the Apostle prohibited certain [kinds of] sale, mutually agreed upon among partners—which become unlawful—such as [the exchange of] gold for gold except in equal quantities, and gold for silver, whether in cash or credit,[23] or S 173
whatever is implied in their meaning provided the exchange involves [neither] risk nor the concealment of anything [concerning the sale] from the buyer by the vendor.

So the sunna indicated that God made lawful sales [of every kind] which are not forbidden, except those which He has forbidden through His Prophet's tongue.

Moreover, the Apostle provided sunna for other [kinds of] sale, such as the following: S 174

1. [If] a slave is sold with a defect concealed by the vendor [in order] to deceive the purchaser, the latter has the right to return [the slave] and keep any profits [arising from the slave's employment].[24]

2. If a person sells a slave who possesses poperty, the property belongs to the vendor unless stipulated otherwise [in the contract of sale].[25]

3. If a person sells a pollinated palm tree, the fruits belong to the vendor unless stipulated otherwise [in the contract of sale].[26]

These [traditions] are binding on men for God imposed the S 175
obligation that they should obey [the Prophet's] order. B 25

[22] *Ibid.*

[23] Nasī'a literally means deferred payment.

[24] Abū Dāwūd, Vol. III, p. 284.

[25] Mālik, Vol. II, p. 611; Bukhārī, Vol. II, p. 81; Shāfi'ī, *al-Musnad*, Vol. II, p. 148; and *Kitāb Ikhtilāf al-Ḥadīth* (margin of *Kitāb al-Umm*, Vol. VII, p. 332); Ibn Qutayba, *Kitāb Ta'wīl Mukhtalaf al-Ḥadīth*, p. 286.

[26] Mālik, Vol. II, p. 617; Bukhārī, Vol. II, p. 35; Muslim, Vol. X, pp. 190-92.

General Duties:
[*Prayer*]

148. God, Blessed and Most High, said:

Verily prayer has become for the believers a thing prescribed [to take place at] stipulated times [Q. IV, 104].

And He said:

Observe the prayer and pay the zakāt (legal alms) [Q. II, 40, 77, 104 etc.].

And He said to His Prophet:

Take of their wealth a ṣadaqa (free-will alms)[27] to cleanse and purify them thereby and pray for them [Q. IX, 104].

And He said:

Pilgrimage to the House is a duty to God from the people, whoever is able to make his way there [Q. III, 91].

God has laid down in the Qur'ān the duties of prayer, zakāt and pilgrimage and specified the modes [of their performances] through His Prophet's tongue. S 176

So the Apostle specified that prayers [each day] shall number five; that the number of cycles[28] in the noon, 'aṣr[29] and the evening prayers shall number four repeated twice in the towns; and that cycles at the sunset prayer shall number three, and at the dawn prayer two.

He decreed that in all [the prayers] there should be recitals

[27] Shāfi'ī seems to use zakāt and ṣadaqa interchangeably, although the two are not strictly speaking synonymous terms. Ṣadaqa, a free-will alms, may be called a poor-rate. Thus ṣadaqa is included in the zakāt, but the latter is imposed for broader purposes of state, including expenditure for military operations. See G.-H. Bousquet and J. Schacht, *Selected Works of C. Snouck Hurgronje* (Leiden, 1957), Chap. 3 on zakāt.

[28] The rak'a (cycle) include standing, bowing, prostration and sitting. See Edwin E. Calverley, *Worship in Islam* (London, 1958), p. 72, n. 1.

[29] 'Aṣr is the mid-afternoon.

from [the Qur'ān], audible in the sunset, evening, and dawn prayers, and silent recitals in the noon and 'aṣr prayers.

He specified that at the beginning of every prayer there shall be the takbīr [declaration that God is great] and at the ending the taslīm [salutations on the Prophet and his house] and that each [prayer] consists of the takbīr, the recital, the bowing, and two prostrations after each inclination, but beyond these nothing is obligatory.

He decreed that prayer while one is on a journey can be shorter—if the traveller so desires—in the three performances that have four cycles, but he made no change in the sunset and dawn prayers when the prayer is performed in town. However, all prayers must be [performed] in the direction of the qibla [facing Makka], whether one is in town or on a journey, except in the case of prayer of fear.[30] S 177

He decreed that supererogatory [prayers] must be performed in the same manner; They are unlawful without the purification or the recital or any other requirements for obligatory [prayers] such as the bowings, prostrations and the qibla whether performed in the towns or in the country or on the ground during travel. In a supererogatory prayer, however, the rider may pray in any direction that his animal may be moving. [For] Ibn Abī Fudayk told us from Ibn Abī Dhi'b from 'Uthmān b. 'Abd-Allāh b. Surāqa from Jābir b. 'Abd-Allāh that in the campaign against the Banū Anmār the Apostle was [seen] praying while riding his camel toward the east.[31] A similar tradition was transmitted by Muslim [b. Khālid al-Zanjī] from Ibn Jurayj from Abū Zubayr from Jābir; but I do not know whether the name of the Banū Anmār was mentioned or whether the tradition [merely] stated that [the Prophet] prayed during travel.[32] S 178

The Apostle also decreed that in the feast- and rain-prayers the number of bowings and prostrations must be the same;

[30] Prayer of fear may be performed in case of a threat or an attack in war. See Shāfi'ī, *Kitāb al-Umm*, Vol. I, pp. 83-84.

[31] See paragraph 120, above.

[32] Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 84.

but he added a cycle to the eclipse-prayer, raising the number [of bowings and prostrations] in each cycle to two. So we are told by Mālik [b. Anas] from Yaḥya b. Sa'īd from 'Amara [daughter of 'Abd al-Raḥmān] from 'Ā'isha from the Prophet. The same [tradition] was related by Mālik [b. Anas] from Hishām from his father from 'Ā'isha from the Prophet; and from Mālik b. Anas from Zayd b. Aslam from 'Atā' b. Yasār from Ibn 'Abbās from the Prophet. The wording of the Prophet's prayer, related by 'Ā'isha and Ibn 'Abbās, may be somewhat different, but all are agreed that [he performed] the eclipse-prayer in two cycles, each one [repeated] twice.[33] S 179

Concerning prayer, God said:

> Verily the prayer has become for the believers a thing prescribed for stated times [Q. IV, 104].

The Apostle specified on God's behalf the time [of each prayer]. He performed [each] prayer at its specified time, except that when he was besieged in the battle of al-Aḥzāb[34] he could not [perform each] prayer on time for that reason; so he delayed [the prayers] until [he was able to perform] the noon, the 'aṣr, the sunset, and the evening prayers at the same time.

Muḥammad b. Ismā'īl b. Fudayk told us from Ibn Abī Dhi'b from al-Maqburī from 'Abd al-Raḥmān b. Abī Sa'īd from his father who said:

> We were withheld from performing prayer during [the battle of] the Trench for a long while, till [late at] night, but when we were relieved from fighting—as God said: 'God relieved the be- S 180
> lievers of fighting, for God is strong, and mighty' [Q. XXXIII,

[33] Mālik, Vol. I, pp. 186-88; Bukhārī, Vol. I, pp. 264-65; Shāfi'ī, *Kitāb al-Umm*, Vol. I, pp. 214-15.

[34] The battle of al-Aḥzāb or al-Khandaq (The Trench) was waged by the Makkans (the Confederates) against the Prophet in 5/627 to revenge their defeat at Uḥud the year before. This battle figures in the Qur'ān, XXXIII, 9-27, under the name of al-Aḥzāb and in the Arab annals as al-Khandaq. See Ibn Hishām, Vol. II, pp. 669 ff.; Guillaume's translation, pp. 450 ff.

25]—the Apostle ordered Bilāl[35] [to call believers to prayer], and they performed the noon-prayer as fully as if it were at its time, and then performed the 'aṣr, the sunset and the evening prayers in like manner. This [incident] took place before the communication concerning the fear-prayer was revealed, which runs as follows: 'If you fear [danger] pray either on foot or mounted!' [Q. II, 240].[36]

149. [Shāfi'ī] said: So Abū Sa'īd made it clear that [the practice of deferred prayers] preceded the communication to the Prophet concerning fear-prayer. The communication in which the fear-prayer is stated runs as follows:

When thou art journeying in the land, there is no fault in you if you shorten the prayer, if you fear the unbelievers may molest you. Verily the unbelievers are for you a manifest enemy. S 181

When thou art amongst them and hast set up the prayer for them, let a party of them stand with thee, and let them take their weapons, and when they prostrate themselves, let them be behind you; and then let another party who have not prayed come and pray with thee, taking their precautions and their weapons [Q. IV, 102-103]. B 26

Mālik [b. Anas] told us from Yazīd b. Rūmān, from Ṣāliḥ b. Khawwāt from those who prayed with the Apostle the fear-prayer during the campaign of Dhāt al-Riqā' said:

A company [of believers] stood in rank [for prayer] with [the Prophet] while another watched the enemy. He performed one cycle with those who stood with him and remained standing until the company completed [the prayer]. Having thus taken the position of those facing the enemy, another company stood [with the Prophet], who performed the other cycle and remained sitting while the company completed their prayer until he [uttered] the salutation with them.[37] S 182

[35] Bilāl was the son of an Abyssinian slave-woman, whom the Prophet called "the first fruit of Abyssinia," and to this day he is known as the Prophet's mu'azzin, or the one who calls to prayer. See Ibn Hishām, Vol. I, p. 205; Vol. II, pp. 822, 917; Guillaume's translation, pp. 144, 554, 616.

[36] Ṭabarī, *Tafsīr*, Vol. XV, pp. 237-50; Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 75.

[37] Mālik, Vol. I, pp. 183-84; Bukhārī, Vol. III, pp. 100-102; Ṭabarī, *Tafsīr*, Vol. IX, pp. 141-62; Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 186.

The same tradition has been related by 'Abd-Allāh b. 'Umar b. Ḥafṣ from his brother 'Ubayd-Allāh b. 'Umar from al-Qāsim b. Muḥammad from Ṣāliḥ b. Khawwāt from his father Khawwāt b. Jubayr from the Prophet.[38]

It is evident from these [traditions]—as I have already stated in this book—that whenever the Apostle laid down a sunna S 183
inspired by God in order to abandon or abrogate another, he laid it down as an evidence given to men that they should obey this sunna, not the earlier one.

So God abrogated [the communication concerning] the deferment of prayer in the event of fear and [replaced it] by another—as both God and His Prophet have laid it down—directing that it should be [performed] at its [specified] time. The Apostle abrogated his sunna concerning the deferment of this prayer in accordance with God's command by another sunna, and the Apostle [himself] performed this prayer at its specified time, as I already have pointed out. [For] Mālik S 184
[b. Anas] told us from Nāfi' from Ibn 'Umar, who stated concerning fear-prayer that the Prophet said:

> If there is a serious fear [of danger], you may pray on foot or mounted regardless of the direction of the qibla.[39]

A similar tradition was related by a certain man on the authority of Ibn Abī Dhi'b, from al-Zuhrī from Sālim from S 185
his father from the Prophet.

150. [Shāfi'ī] said: So the sunna of the Apostle indicated, as I have already said, that [facing] the qibla is at all times obligatory except when it is impossible to perform the prayer in the specified direction, such as at the time of sword-play, flight [from battle], or equivalent situations in which it is impossible to pray in the direction [of the qibla].

Thus the sunna was confirmed that the prayer must not be deferred beyond its specified time, but that [it should be performed] in whatever direction the person is able to do it.

[38] Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. I, pp. 186-87.

[39] Mālik. Vol. I, p. 184; Bukhārī, Vol. III, pp. 101, 209; Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 179.

The Zakāt (Legal Alms)

151. God said:

Observe the prayer and pay the zakāt [Q. II, 40, 77, 104]. S 186

And He said:

And the observers of the prayer and the payers of the zakāt [Q. IV, 160].

And He said:

So woe to those who pray, who of their prayer are careless, who make a show, but withhold charity [Q. CVII, 4-7].

Some of the scholars said: [These communications refer to] the duty of zakāt.

God said:

Take of their goods a freewill offering to cleanse and purify them thereby, and pray for them; thy prayers are comfort for them. God is All-hearing, All-knowing [Q. IX, 104].

The reference of this communication is to goods in general, but it may [also refer] to certain goods to the exclusion of others. So the sunna specified that the zakāt should be paid on some goods, not on all.

Since goods are of various categories—such as the cattle—the Apostle ordered the payment [of alms] on camels and S 187
sheep, and indicated—as we are told—that it should be paid on cows in particular from among the cattle, and a certain percentage has been specified by God through His Prophet's tongue.[40] Since men possessed cattle consisting of horses, donkeys and mules and others which the Apostle exempted from payment—for he laid down the sunna that horses were

[40] The Prophet ordered Mu'ādh b. Jabal, governor of al-Yaman, that the zakāt should be paid on cows: a calf for every thirty cows and one cow for every forty. See Shāfi'ī, *Kitāb al-Umm*, Vol. II, pp. 7-8; Shawkānī, *Nayl al-Awṭār*, Vol. IV, pp. 141-42; Abū Dāwūd, Vol. II, pp. 101-102; Ibn Ḥanbal, Vol. VI, p. 4.

exempt from alms—it is evident that alms must be paid only on what [the Prophet] specified, not on all.

As to men who possess sown and planted products such as palm-dates and grapes, the Apostle ordered payment of alms on both on [the basis of] a rough estimate [of the value of each tree]. The rate of payment was one-tenth [of the total value] if [the land] were watered by rain or from a spring and half of the one-tenth if it were watered by wells.[41]

Some of the scholars held by analogy to palm-trees and grapes that [alms] on olive trees [should be one-tenth as well].

Since men possess crops of varied produce other than palm-dates, grapes and olives, such as walnuts, almonds, figs, and others, which the Apostle has exempted from payment, we concluded that God imposed the payment of alms on some crops, but not on all.

152. Shāfi'ī said: [42] Men have produced wheat, barley, millet and similar products, on which, we are told, the Apostle ordered the payment [of alms]. By analogy of wheat and barley, alms have been paid on grain, sult [kind of barley],[43] 'alas [kind of wheat],[44] rice, and all other products which men have produced and eaten, such as bread, 'aṣīda, sawīq, udm,[45] chick-peas and qaṭṭānī [general term for lentils, etc.] which may be made into flour or bread, etc., in the same way as the Prophet ordered the payment of the alms on similar products which men produced for food.[46]

Men have produced other products on which neither the Apostle, nor those who succeeded him, ordered payment [of alms], for they do not fall in the category of products on which [the Prophet] imposed alms, such as thufā', asbiyūsh, kusbara

[41] Abū Dāwūd, Vol. II, p. 108; Shawkānī, *Nayl al-Awṭār*, Vol. IV, pp. 149-50.

[42] Būlāq ed., p. 27.

[43] Sult is a species of barley, having no husk, which means either beardless or smooth. Lane, *Lexicon*, Part IV, p. 1401.

[44] 'Alas is a certain kind of wheat, having two grains in one husk, and sometimes one grain or three. Lane, *Lexicon*, Part V, p. 2130.

[45] 'Aṣīda, sawīq, and udm are species of flour made into various kinds of moisted food. Lane, *Lexicon*, S. V.

[46] Shāfi'ī, *Kitāb al-Umm*, Vol. II, pp. 30-31.

[coriander], 'uṣfur [47] and others. So these are [all] exempt from alms. This indicates that alms are [obligatory] on some products, but not on all.

153. Shāfi'ī said: [48] The Apostle ordered the payment of alms on silver, and the Muslims followed his precedent on gold, either [on the strength of] a narrative which was not S 192
transmitted to us [49] or on [the strength of] analogy that gold and silver are measures of price which men used to hoard or pay in exchange for goods in various countries before the rise S 193
of Islam and after it.

Men possess other [kinds of] metal such as brass, iron, and lead on which neither the Apostle nor those who succeeded him imposed alms. They are exempt on [the strength of] precedent and they should not, by analogy with gold and silver, be subject to alms, for gold and silver are used as standards for prices in all countries, and all other metals may be purchased by them on the basis of a specific weight at a certain time.

Although ruby and chrysolite are more precious than gold and silver, neither the Apostle nor those who succeeded him have imposed alms on them as far as we know. Since they are possessed by a special [class] and are not used as a medium of exchange—because they are not measures of price—they are S 194
exempt [from alms].[50]

154. Shāfi'ī said: [51] According to what the public have related from the Apostle concerning the alms on the cattle and measures of price [i. e., gold and silver], he ordered its payment once a year. For God said:

> Give the due portion of it on the day of its harvesting [Q. VI, 142].

So the Prophet decreed the payment of alms on the produce

[47] Species of spices. See Lane, *Lexicon*, S. V.
[48] Būlāq ed., p. 28.
[49] See Mālik, Vol. I, pp. 246-47; Abū Dāwūd, Vol. II, pp. 100-101; Shāfi'ī, *Kitāb al-Umm*, Vol. II, p. 34.
[50] Mālik, Vol. I, pp. 250-51; Shāfi'ī, *Kitāb al-Umm*, Vol. II, 34-36.
[51] Būlāq ed., p. 28.

of sowing and planting, in conformity with God's communication, at the time of the harvest, not at other times. And he specified that [the alms] on rikāz [natural and hidden treasures] shall be one-fifth, to be paid on the day they are produced, not at other times.[52] For Sufyān [b. 'Uyayna] told us from al-Zuhrī from [Sa'īd] b. al-Musayyib and Abū Salama from Abū Hurayra that the Apostle said: "One-fifth [shall be paid] on rikāz."[53]

If it were not for the evidence of the sunna, all goods would have been treated on an equal footing on [the basis of] the literal meaning of the Qur'ān, and the alms would have been imposed on all, not on some only.

[*Pilgrimage*]

155. [Shāfi'ī said]: God imposed the duty of al-ḥajj (Pilgrimage) on all who can perform it.[54] It has been related from the Prophet that the means (al-sabīl) consists of the necessary provisions and transport (i.e., donkey or camel).[55] And he [the Prophet] specified the time of Pilgrimage, how to pronounce the formula of fulfilling [the duty],[56] and what is decreed [as recommended acts], and what should be avoided in the wearing of garments and the use of perfumes as well as other procedural matters [such as the halts] at the [sanc-

[52] Shāfi'ī, *Kitāb al-Umm*, Vol. II, pp. 31-32.

[53] Mālik, Vol. I, pp. 249-50; Bukhārī, Vol. I, pp. 381-82; Ibn Ḥanbal, Vol. IV, pp. 312-13; Shawkānī, *Nayl al-Awṭār*, Vol. IV, pp. 156-58; Shāfi'ī, *Kitāb al-Umm*, Vol. II, pp. 37-38.

[54] Literally: "On all those who have the means" (al-sabīl). Cf. Q. III, 91: "It is the duty of all men toward God to come to the House of Pilgrims, if they are able to make their way there."

[55] In the *Kitāb al-Umm*, Vol. II, pp. 96-98, Shāfi'ī defines the capacity to fulfil the duty of ḥajj in broader terms, including physical fitness in addition to the availability of the means of transportation. See also Ṭabarī, *Tafsīr*, Vol. VII, pp. 37-46.

[56] The formula "labbayk Allahumma" is uttered by all pilgrims while performing the duty. See Ṭabarī, *al-Qira Li-Qāṣid Umm al-Qura* (Cairo, 1367/1948), pp. 141-48.

tuary] of 'Arafa and the [passing of the night at] Muzdalifa, and the throwing [of the stones at Minā], the shaving [of the head], the circumambulation [of the Ka'ba] and other matters.[57]

If someone was unaware that there was a sunna for matters on which there was a text in the Book of God except what I have already stated concerning the sunna laid down by the Apostle [specifying] the meaning implied in God's general S 197
communication, and that [the Prophet] merely explained God's prescribed acts, prohibited or permitted that I have mentioned, and all other matters connected with them, including their time of fulfilment as well as other matters not dealt with [in God's communications], it became obligatory on men that if the sunna of the Apostle confirms [and explains] God's communication in one or more instances it shall do so always.

It is evident that the [Prophet's] sunna never contradicts the Book of God, and that his sunna—even in the absence of legislation in the Book—is binding, as I have already stated here and elsewhere, in accordance with God's command to obey His Apostle. [For] it is obligatory on men to know that God has not given any other [person] such power save His Apostle, and that the word and deed of every person should be in conformity with the Book of God and the sunna of His Apostle. And the words and deeds of every one should conform to the Book of God and the sunna of His Apostle, and that should the opinion of a certain scholar be contradictory S 198
to the sunna of the Apostle, one should abandon that opinion when he becomes aware of the contradiction and should obey the sunna of the Prophet; for if one does not do so he is not excused. For what is more obligatory on men than that they should obey the Prophet, an obligation indicating the B 28
place in which [God] placed him in relation to His revelations, His religion and the followers of His religion?

[57] For a general discussion on the performance of the ḥajj duty in Shāfi'ī's law, see Shāfi'ī, *Kitāb al-Umm*, Vol. II, pp. 93-112; and Muzanī, *al-Mukhtaṣar* (on margin of *Kitāb al-Umm*), Vol. II, pp. 39-46. For a detailed account of the ḥajj, see the work of a leading eleventh-century Shāfi'ī jurist, Aḥmad Ibn 'Abd-Allāh Muḥibb al-Dīn al-Ṭabarī, *al-Qirā Li-Qāṣid Umm al-Qurā*; Bousquet and Schacht, *Selected Works of C. Snouck Hurgronje*, Chap. 4.

[*The 'Idda or Waiting Period*]

156. God said:

> Those of you who die, leaving wives, let them keep to themselves for four months and ten days [Q. II, 234].

And He said:

> Divorced women shall keep to themselves for three periods [Q. II, 228].

And He said:

> For those of your women who have despaired of [further] menstruation, if you are in doubt, their period of waiting shall be three months, as it is for those who have not menstruated as yet. For those who are pregnant, their term is when they are delivered of what they bear [Q. LXV, 4]. S 199

Some of the scholars said: Since God has obligated the woman whose husband dies to wait four months and ten [days], and has specified the period of waiting for the pregnant [woman] to last until she has been delivered, [it follows that] if the husband dies and the woman is pregnant she is bound by the two periods concurrently just as she would be bound to fulfil any other two duties combined together.[58]

157. [Shāfi'ī] said: But since the Apostle said to Subay'a, daughter of al-Ḥārith, who gave birth to a child a few days after her husband's death: "You are lawful [for marriage] and you may get married," this indicates that the 'idda—whether in the case of death or divorce to be fulfilled by [the expiration of] the required months—was intended to [bind] women who are not pregnant; but if they are pregnant the 'idda is dropped.[59] S 200

[58] This is the opinion of Ibn 'Abbās and, perhaps, 'Alī. See Shawkānī, *Nayl al-Awṭār*, Vol. VI, pp. 306-307.

[59] See Mālik, Vol. II, pp. 589-90, Abū Dāwūd, Vol. II, p. 293; Shāfi'ī, *Kitāb al-Umm*, Vol. II, pp. 205-206; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 305.

[*Forbidden Women*]

158. God said:

> Forbidden to you are your mothers and daughters, your sisters, your aunts, paternal and maternal, your brother's daughters, your sister's daughters, your mothers who have given suck to you, your suckling sisters, your wives' mothers, your stepdaughters who are in your care being born of your wives you have been in to—but if you have not yet been in to them, it is no fault in you—and the spouses of your sons who are of your loins. And it is forbidden for you to take two sisters together, unless it be a thing of the past; God is All-forgiving, All-compassionate; and wedded women except what your right hand has possessed. So God prescribes for you. And it is lawful for you to seek what is beyond that by means of your wealth in wedlock and not in debauchery; those of them whom you enjoy thereby pay their hire as stipulated, and it is no fault in you in regard to anything you may give them by mutual agreement beyond the stipulated amount. Verily God is All-knowing, All-wise [Q. IV, 27-28].

This communication may have two meanings: [it may mean] that the women whom God has [specifically] forbidden shall be [regarded as] forbidden, and that those whom He has S 201
not specifically forbidden, shall be lawful on the ground that He is [both] silent about them and by His saying: "And [it is] lawful for you to seek what is beyond that" [Q. II, 28]. This may be regarded as the literal meaning of the communication.[60]

But it is evident in this communication that the prohibition concerning the taking of [the two sisters] together as wives must be distinguished from the prohibition of taking mothers [as wives]. So what God specified as lawful shall be lawful; what He specified as forbidden shall be forbidden; and what He prohibited concerning the taking of the two sisters together [as wives] shall be prohibited.

God's prohibition of the taking [of two sisters] as wives is an evidence that He has [merely] forbidden taking them together, but that taking each one separately is lawful in S 202

[60] See Ṭabarī, *Tafsīr*, Vol. VIII, pp. 141-79.

principle while the taking of mothers, daughters, and paternal and maternal aunts is unlawful in principle.

The meaning implied in the communication: "And [it is] lawful for you to seek what is beyond that" is to specify those women who are in principle forbidden as well as others of S 203
equal status related by suckling—these can only be married in accordance with [the prerequisites of] lawful marriage.

159. Some one may ask: What is the evidence for that?

160. The answer is:[61] Since [the maximum number of] women who may lawfully be taken as wives is four, the taking of a fifth [would be unlawful] and the marriage contract would have to be dissolved. For no [woman] shall be lawful unless taken in accordance with a valid marriage contract. The taking of a fifth woman, like the taking of a single one, is lawful in accordance with God's saying: "And [it is] lawful for you what is beyond that," provided she is taken in a lawful manner and in circumstances making the marriage lawful and not forbidden in principle.

But marriage between a man and a woman will not, under any circumstances, forbid other marriages to her paternal or maternal aunts—as God has forbidden his marriage to the wives' mothers—so her paternal and maternal aunts may be included in the category of who may lawfully be married. S 204-2
Just as it is lawful for a man to marry another woman if one of his four wives is separated from him [by death or divorce], so the maternal aunt becomes lawful, if the daughter of her brother is separated [from her husband].[62]

[*Forbidden Food*]

161. God said to His Prophet:

> Say: I do not find, in what is revealed to me, anything forbidden to one who eats of it, unless it be a dead animal, or blood out-

[61] Būlāq ed., p. 29.

[62] For further discussion on forbidden women, see Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 2-5.

poured, or the flesh of swine, for it is an abomination, or an impious thing over which the name of a god other than God has been invoked [Q. VI, 146].

This communication may have two meanings: First, that nothing is forbidden at all except what God has [specifically] excluded. This is the clearest and the broadest meaning and any one presented with it will understand at once that nothing is forbidden except what God has specifically forbidden. If it S 206
means otherwise, the scholars are under obligation to accept no other meaning save what the sunna of the Prophet specifies and they should say: "This is the meaning intended by God, Blessed and Most High."

Nothing in the Book of God nor in the sunna [of His Prophet] is regarded as a particular [communication] unless there is a specific [evidence] in either one or in both, and nothing is regarded as particular unless the divine communication is intended to mean particular. So what is not intended to be a [particular] communication, must never be so regarded.

So God's saying: "Say: I do not find, in what is revealed to me, anything forbidden to one who eats of it . . . ," may S 207
mean that the Apostle was asked [to specify] a certain thing to the exclusion of others. And it may [also] mean [nothing forbidden] in what you were eating. This [may be] the appropriate meaning in accordance with the evidence of the sunna. For Sufyān [b. 'Uyayna] told us from Ibn Shihāb from Abū Idrīs al-Khawlānī from Abū Tha'laba [al-Khushnī] that the Prophet prohibited "the eating of beasts having fangs."[63] And Mālik [b. Anas] told us from Ismā'īl b. Abī Ḥakīm from 'Abīda b. Sufyān al-Ḥaḍramī from Abū Hurayra from the S 29
Prophet who said: "The eating of any of the beasts which S 208
have fangs is forbidden."[64]

[63] Muslim, Vol. XIII, pp. 81-83; Abū Dāwūd, Vol. III, p. 355; Shawkānī, *Nayl al-Awṭār*, Vol. VIII, p. 120; Shāfi'ī, *Kitāb al-Umm*, Vol. II, p. 219.
[64] Mālik, Vol. II, p. 496.

[*Women's Abstention during the 'Idda of Their Husbands' Death*]

162. God said:

> Those of you who die, leaving wives, let them keep to themselves for four months and ten [days]; when they reach the end of their term, then it is no fault in you what they may do with themselves honorably. God is aware of what you do [Q. II, 234].

So God specified that [women] who [suffer] the death [of their husbands] are under obligation of the 'idda [four months and ten days] and that upon the expiration of the term they shall be free to do honorably with themselves whatever they may wish, but He mentioned nothing else to be avoided during the 'idda.[65]

The literal meaning of the divine communication is that [the widow] should abstain only from getting married during the 'idda and that she should stay in her house.

[The communication] may [also] mean that [the widow] should [not only] abstain from marriage, but also from certain other things which were not forbidden to her before the 'idda, S 209
such as [the use of] perfume and [the wearing of] ornaments.

Since the Prophet decreed that the widow must abstain from the use of perfume and the like, she is under obligation to do so [by virtue] of the duty imposed by the sunna, but her abstention from marriage and her stay in the house of her [deceased] husband are [imposed on her] by the Book and the sunna.

The sunna's role here as elsewhere is [merely] to specify on God's behalf what [the widow] should abstain from doing, just as it specifies [the duties of] prayer, alms, and pilgrimage. B 30
The sunna [also] provides [rules] laid down by the Apostle S 210
[for matters] on which there is no divine communication.

[65] Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 205-208; Ṭabarī, *Tafsīr*, Vol. V, pp. 77-94.

Chapter VIII

[ON THE NATURE OF GOD'S ORDERS OF PROHIBITION AND THE PROPHET'S ORDERS OF PROHIBITION][1]

163. He [the interlocutor] asked: Will you explain to me the sum-total of God's orders of prohibition and the Prophet's orders of prohibition generally, leaving nothing [unexplained]?

164. Shāfiʿī replied: [God's] orders of prohibition fall in two [categories] of meanings:

First, the act prohibited must be in itself unlawful, never to be lawful except by a particular indication laid down by God in His Book or [specified] by His Prophet's tongue. Thus if the Apostle prohibits a certain act it shall be regarded as unlawful, and no particular act is permitted unless it falls [in the category of] a certain meaning [of permission] as I have already explained.

165. He said: Explain to me this kind of prohibition which you have just stated by an example which indicates the like meaning. S 343

166. [Shāfiʿī] replied: All women are forbidden [to men] except in one of two ways: Either by nikāḥ (marriage), or

[1] This chapter has been moved from the latter part of the *Risāla* (see paragraphs 926-960 of Shākir's edition), because it deals with a broad jurisprudential subject. The heading is borrowed from Shāfiʿī's *Kitāb al-Umm* (Vol. VII, pp. 265-67) where the same subject is briefly discussed; cf. *Jumāʿ al-ʿIlm*, ed. Shākir (Cairo, 1359/1940), pp. 125-34.

waṭī' (intercourse with a slave-woman) by virtue of possession. These are the two ways made lawful by God [in His Book]. The Apostle laid down in the sunna the modes in which the nikāḥ makes previously forbidden women lawful, [such as] the need for a guardian, [the testimony of] witnesses and the consent of the thayyib woman.[2] The Prophet's stipulation concerning the woman's consent is an evidence that [prior] consent of the [two] spouses is a prerequisite without distinction between them. Thus if the marriage [contract] fulfils four conditions—consent of the thayyib woman and the man, [presence of the] guardian who arranges the marriage for the woman, and the witnesses—it would be lawful, except in certain cases which I shall cite later. But if it lacks any one of the four conditions, it becomes fāsid (invalid), because it would not be in accordance with the sunna laid down by the Apostle for a valid marriage. If a ṣadāq (bride-price) were added [as an additional condition] it would be commendable; but the marriage [contract] would not be fāsid without it, for God's stipulations concerning marriage do not include mahr (dowry).[3] (This subject has been treated elsewhere).[4] These conditions are as equally [applicable] to honorable as to dishonorable women, for each one is equal to the other in all matters that are lawful and unlawful, obligatory or unobligatory, punishable or unpunishable.

167. Shāfi'ī said:[5] The circumstances in which marriage is permissible—in accordance with what I have described—are those in which marriage is not prohibited, for if marriage is made in accordance with the prohibited circumstances, it would be regarded as void by the orders laid down by God in His Book and by the Prophet's tongue. For example: [Marriage is void] if a man marries his wife's sister, because God prohibited the taking of two sisters as wives; or if a man

[2] The thayyib woman may either be a widow or a divorcee, or not a virgin. See Lane, *Lexicon*, p. 363.

[3] See Q. II, 237.

[4] See Shāfi'ī, *Kitāb al-Umm*, Vol. V, p. 51.

[5] Būlāq ed., p. 48. The statement "Shāfi'ī said" in the previous paragraph of Shākir's edition is omitted.

takes a fifth woman as wife, because God permitted only four [at a time] and the Prophet made it clear that God prohibited S 346
the taking of any additional one; or if one marries his wife's aunt, paternal or maternal, since this is prohibited by the Prophet; or if one marries a woman during her 'idda. All these marriages are not lawful, for they are all prohibited, and no disagreement exists among scholars about them. B 48

168. Shāfi'ī said: In like manner the Prophet prohibited [such marriages as] al-shighār,[6] and mut'a.[7] He [also] prohibited the pilgrim, [whether man or woman] from marrying or getting married [during the performance of Pilgrimage]. We hold that all such marriage [contracts] in the circumstances in which he [the Prophet] prohibited them, must be dissolved, just as other marriages which we have already cited must be S 347
dissolved. Some [scholars] may disagree with us on this matter, but we have discussed this elsewhere.[8] Similarly, the marriage in which the woman is married without her prior consent [must be dissolved]. She may give her consent later—which is not permissible—but the contract was void at the time it was concluded.

Similarly the Apostle prohibited the gharar sale,[9] the sale

[6] Shighār is a mode of marriage which existed in Arabia before Islam by virtue of which a person may marry the sister or daughter of another person, and the latter reciprocating in like manner, so that neither one will need to collect the mahr (dowry) from the other. For Shāfi'ī's further treatment of the subject, See *Kitāb al-Umm*, Vol. V, pp. 68-69.

[7] Mut'a is a form of temporary marriage; its period is fixed, and the contract is dissolved automatically at the end of the period. This form of marriage, practiced in Arabia before Islam as well as in the early Islamic period (Q. IV, 24), was later declared abolished. The contradictory traditions reflect the controversy among early jurists as to its validity until it was rejected by the Sunni schools. It is still valid in Shī'ī law. For Shāfi'ī's further treatment of the subject, see *Kitāb al-Umm*, Vol. V, pp. 71 f.; and J. Schacht, *Origins of Muḥammadan Jurisprudence*, pp. 266-67.

[8] See Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 68-72; and *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 238-41, 254-57).

[9] The gharar is a kind of sale in which uncertainty is involved, such as the sale of fish or birds before they are actually caught or produced by the vendor. See Shāfi'ī, *Kitāb al-Umm*, Vol. III, p. 75.

of dry dates for ripe dates except the sale of al-'arāya,[10] and others. For in principle one's own property is forbidden to another save in a lawful manner and by [the kinds of lawful] sale the Apostle did not prohibit, but no sale prohibited by the Apostle which is unlawful in principle renders one's property lawful to another. Disobedience of a prohibition of sale does not make lawful what was unlawful, for in principle the unlawful will not become lawful except in acts which S 348 constitute no disobedience. These [examples] fall in the category of [legal] knowledge for the public.

169. Someone may ask: What is the kind of [orders of] permission that is prohibited to men [only] in specific cases and is different from the kind of [orders of] prohibition which you have just stated?

170. [Shāfi'ī replied]: It is like the Apostle's order of prohibition against wearing a single robe by a person who folds it on one side leaving uncovered a certain private area of his S 349 body while a lad is eating before him. [The Prophet] prohibited eating from the top of the dish; he is reported to have prohibited—although this is not certain—eating two dates together, exposing the inside of the date [prior to eating], and halting on the road for rest.[11] Since the wearing of the robe, the eating of food (as much as one desires), and [walking on] S 350 the earth (which belongs to God, and all men are equally entitled to use it) are all lawful acts, the Prophet's order of prohibition refers to particular acts which are different from those he permitted. For the [Prophet's] order of prohibition [is limited] only to the wearing of the robe if it were folded in such a way that it leaves uncovered a certain part—the 'awra (private parts)—but if the 'awra were covered by the cloth, the prohibition against uncovering the 'awra should S 351 not include the wearing of the robe, since one can wear it without uncovering the 'awra. [Similarly] the Prophet's orders

[10] The 'arāya sale, a transaction on dates, although permitted by the Prophet, may be said to fall in the same category as the muzābana sale. See paragraphs 346-347, below.

[11] See Bukhārī, Vol. III, p. 507; Muslim, Vol. XIII, pp. 228-29; Abū Dāwūd, Vol. III, p. 362; Vol. IV, p. 256.

against the [lad's] eating of the food [before an uncovered 'awra] and eating from the top of the dish, which are permissible, are merely orders of etiquette, for it is more appropriate on behalf of the host to observe them while eating with his table-companion, instead of eating voraciously. [The Prophet] prohibited eating from the top of the dish because God's blessing descends on the top and it should continue descending on it. So once he has eaten the food on the sides, it would be permissible to eat the top. If one is permitted to walk along a road, he does so because it is permissible [in principle], since nobody owns it, to forbid others from passing; S 352
but the Prophet prohibited halting for a certain specific reason, for he said: "It is the shelter of insects and a passage for snakes," not because halting is unlawful. He also prohibited halting if the road were narrow and crowded, for if one halts [for rest] others' right of passing would be encroached upon.

171. Someone may ask: What is the difference between this [kind of prohibition] and the other?

172. [Shāfi'ī] replied: He to whom the proof is established [concerning the validity of these orders] must know that the Prophet prohibited [the acts] which I have just explained, and he who acts contrary to them, despite his awareness of them, would be regarded as disobedient and should ask God's forgiveness and never repeat them again.

173. He may ask: Such [a man] is disobedient, and since you have already called [the man who violates] the marriage S 353
and sale [contracts] disobedient in this [your] book, on what ground have distinguished between the two?

174. [Shāfi'ī] replied: I made no distinction between the two on the ground of disobedience, since I have regarded both as disobedients, although certain acts of disobedience may be greater than others.

175. He may ask: On what ground have you not regarded as disobedient the man who wears the robe, eats from the top of the dish and halts on the road, while you regarded as disobedient the man who violates the marriage and sale [contracts]?

176. [Shāfi'ī] replied: The first has been ordered to obey an order of permission and has done so, so I have regarded as lawful what was permitted and unlawful what was prohibited. His disobedience to what was permitted would not render it unlawful in all circumstances; but it prohibited him from committing an act of disobedience.

177. He asked: For example?

178. [Shāfi'ī] replied: A man having a wife and a slave-woman is prohibited from intercourse with them whenever they are menstruating or fasting; if he did, the intercourse would be unlawful. However, neither is forbidden in other circumstances, for they are in principle lawful to him. S 354

179. Shāfi'ī said: [12] One's own property is forbidden in principle to be taken by another, except in a lawful manner which permits another to do so. [Similarly], women are forbidden to men except by marriage or ownership. So if one B 48 makes a marriage contract with a forbidden [woman] or enters into a sale transaction concerning forbidden [goods], such contracts would be invalid, for what is forbidden cannot become lawful by an unlawful act. The act which is in principle forbidden remains so unless there is a specific text in the Book or a sunna or consensus or the like [which make it lawful].

180. Shāfi'ī said: [13] I have already given examples of [the kind of] prohibitions which were not intended to be [on the same footing as those] unlawful orders [specified] by indications which I do not want to repeat here. May God protect S 355 us against error and grant us success. B 50

[12] Būlāq ed., p. 49.
[13] Būlāq ed., p. 50.

Chapter IX

[ON TRADITIONS]

Defects in the Traditions

181. Shāfi'ī said: Someone has asked me: We find that among the traditions from the Apostle some are in conformity with the Qur'ān; others are in conformity only with the general meaning of the Qur'ān; and [still] others provide either specifications additional to those of the Quranic text or legislation on matters on which the Qur'ān is silent. S 210

Further, there are certain traditions which agree with one another, and others which are contradictory to one another; the abrogating and the abrogated traditions are clearly distinguished [in some of them]; in others the traditions which are abrogating and abrogated are not indicated.

There are [certain traditions], consisting of orders of prohibition by the Apostle, the obligation of which you have regarded as binding, while there are others, consisting equally of orders of prohibition, the obligation of which you have regarded as optional.

We have noted that you have accepted certain contradictory traditions but not others; and that you have applied analogical deduction on the strength of some of them only. Your [method of] analogy, however, was discriminatory, for you have applied it in some [cases] but not in others. On what ground have you been applying analogy to some while S 211

abandoning it in the case of others? Furthermore, you have been disagreeing with other scholars—some of you have abandoned certain traditions in favor of others of equal or even weaker status.

182. Shāfiʿī said: I have replied as follows:

The sunna which the Apostle has laid down on matters for which a text is to be found in the Book of God is always in full agreement with that text and clarifying on God's behalf a general text; the [Apostle's] specification is more explicit than the text. But as for the sunna which he laid down on matters for which a text is not found in the Book of God, the obligation to accept them rests upon us by virtue of the duty imposed by God to obey the [Prophet's] orders. As to the abrogating and abrogated sunnas—like the abrogating communications laid down by God to abrogate orders—they are in like manner laid down by the Apostle so that each sunna may be abrogated by another. And I have given him [the interlocutor] other examples which I have already discussed in this book, in explanation of what I have just described. 821a

As to contradictory traditions where no indications exist to specify which is the abrogating and the abrogated, they are all in accord with one another and contradiction does not really exist among them. [For] the Apostle of God, being an Arab by tongue and by country, may have laid down a general rule intended to be general and another general rule intended to be particular, as I have already pointed out in my discussion on the Book of God and the sunna of His Apostle. Or a certain question may have been asked to which he gave a certain concise answer, leading some of the transmitters to relate the tradition in detail and others in brief, rendering the meaning of the tradition partly clear and partly vague. Or [it may happen] that the transmitter of a certain tradition related the answer he heard [from the Prophet] without knowing what the question had been, for [had he known] the question he would have understood the answer clearly from the reasoning on which the answer was based. 821

He [the Prophet] may have likewise laid down a sunna

covering a particular situation and another covering a different one, but some of those who [related what they] heard failed to distinguish between the two differing situations for which he had laid down the sunnas. And he may have laid down a sunna on a certain matter in conformity with the text [of the Qur'ān]—transmitted by one authority—and another in one form in agreement with the text and in another contradictory to it—owing to changes in the circumstances—transmitted by another authority. Hence the transmission by one authority appeared to many as contradictory to the other, while [in reality] no contradiction existed at all. He may have also provided a sunna consisting of an order of permission or prohibition the wording of which was general, and he may have provided a second specifying sunna which made evident that his order of prohibition was not intended to prohibit what he made lawful, nor that his order of permission made lawful what he had prohibited. For all possibilities of this kind parallel examples exist in the Book of God, which we have already described [in this book].

[Whenever] a certain sunna was abrogated by another [the Prophet] never failed to indicate in the abrogating sunna what 8 214
he had intended to abrogate. If certain transmitters have 8 30
overlooked some information concerning the abrogating and abrogated sunnas, [at least] one must have transmitted what the others did not, so that information concerning abrogations was never entirely lacking.

All such matters, as I have already explained, were accepted in accordance with what the sunna laid down and [men] knew how to distinguish between the sunna in the same way that [the Prophet] did, for obedience to his ruling distinguishing the sunnas one from the other was obligatory and no one had ever questioned that [the Prophet] did distinguish between one sunna and another. For if anyone says that the Prophet made no distinction between one [sunna] and another he would be ignorant [of what the Prophet said] or, what is 8 215
worse, doubtful of it. Surely, obedience to God [imposes the duty] of obedience to [the Prophet's orders].

The contradictory sunna is due either to incomplete transmission rendering it contradictory, as I have explained before, although what was lacking can be known from other [traditions], or it is the product of the transmitter's imagination. No contradictory tradition [from the Prophet] is known to us for which a possible explanation is lacking or the category to which it belongs is not known, as I have already pointed out.

We may find [the answer], on the other hand, by the indication as to which of the contradictory traditions is the most reliable; for if two contradictory traditions exist, they cannot possess equal validity and only the reliable or authentic tradition should be accepted. The evidence as to which tradition is authentic may be found either in the Book of God or in the Prophet's sunna, on the strength of which we accept the tradition for which the strongest evidence exist. However, we have known of no two contradictory traditions for which we could find neither explanation nor evidence as to which is the authentic one, [either on the ground of] its conformity 8 216
with the Book or with other traditions or any other kind of evidence.[1]

Hence whatever the Apostle has prohibited is unlawful unless an evidence is found specifying that [his prohibition] was not intended to condemn the matter as unlawful.

Finally, [Shāfi'ī] said, analogy [on the basis] of the sunna falls into two categories, each subdivided into various forms.

183. He [the interlocutor] asked: What are they?

184. [Shāfi'ī] replied: God has imposed the obligation of obedience upon men through His Book and His Prophet's tongue, in accordance with the obligation of obedience set forth in His established judgment that men shall obey His will without challenge to His command.[2] The Apostle specified the meaning of what God made obligatory [in the tradi-

[1] For a discussion on this subject, see Ibn Qutayba al-Dīnawarī, *Kitāb Ta'wīl Mukhtalaf al-Ḥadīth* (Cairo, 1326/1909).

[2] "Lā mu'aqqib li ḥukmih," a Quranic expression (Q. XIII, 41) which Shāfi'ī borrows, has been differently translated by different writers. Cf. Richard Bell, *The Qur'ān*, Vol. I, p. 234; and A. J. Arberry, *The Koran Interpreted* (London, 1955), Vol. I, p. 272.

tion] or in any narrative transmitted from him so that nothing is left unexplained and the scholars are under obligation to regard this narrative [as authentic] as other traditions if it expresses the identical meaning.[3] This [category of traditions] is subdivided into many forms. S 217

The second category of traditions consists of a general order of permission qualified by a particular order of prohibition. Men should regard [all acts under] the general order of permission as lawful and [the specific act under] the particular order of prohibition as unlawful. But in so doing they should not apply analogy to a particular order of prohibition, for the general rule is that an order of permission and analogy must be applied ordinarily on the general, not on the particular rule. The same [rule] must apply if the general order is one of prohibition and the particular order is one of permission, or if [God] imposes a [general] duty and the Apostle qualified it by a permission that is particular. Thus analogy is valid to us [only] on the evidence of the Book, the sunna and precedents. S 218

To have given an opinion contrary to an authentic tradition from the Apostle is something, I hope, for which I shall never be reproached. Nor has anyone the right to give such an opinion. However, a man ignorant of a certain tradition may give an opinion contrary to it by oversight or by a wrong interpretation, without having intended to do so.

185. [Shāfi'ī] said: Someone may ask me: Give me an example for each of the categories you have described, embodying in a concise statement[4] all that I have inquired about, beginning with the abrogating and abrogated sunnas of the Prophet, citing some of it together with the Qur'ān, even though you may be repeating some of what you have already discussed. S 219

186. [Shāfi'ī] replied: God ordered His Apostle to turn in prayer first toward Jerusalem. So Jerusalem became the qibla and as long as the Apostle faced that direction, to face any other was unlawful. But ever since God abrogated the qibla

[3] Būlāq ed., p. 34.

[4] Literally: "Avoiding a detailed treatment that I might forget."

toward Jerusalem and ordered the Apostle and men to turn toward the Ka'ba, the latter became obligatory in accordance with the text [of the Book] and no other qibla should be faced, save in case of fear [of danger]. It became absolutely unlawful to turn toward Jerusalem. Each [qibla] was valid in its time: Jerusalem from the time when the Prophet turned toward it until he was ordered to change, and the Sacred House [Ka'ba] from thence forward until the Day of Resurrection. All the other abrogated [communications], whether in the Book of God or the sunna, have in like manner been laid down.

187. [Shāfi'ī] said: Such [a process of] abrogation is an evidence that whenever the Prophet laid down a sunna which God ordered him to revise, he laid down another sunna which men were ordered to obey in place of the earlier one so that they would no longer obey the abrogated sunna. Thus no one, except those unversed in the Arab tongue and in the [legal] knowledge concerning the place of the sunna in its relation to the Book (that it specified the meaning of the Book), should ever suppose [from the internal evidence of the sunna] that the Book abrogates the sunna.[5]

188. He asked: Would it be possible for the sunna to contradict the Book [of God]?

189. [Shāfi'ī] replied: Impossible! For God, glorified be His praise, imposed on men the obligation [of obedience to the law] through two avenues—the origin of both is in the Book—His Book and the sunna: [The latter is binding by virtue of] the duty of obedience laid down in the Book that it should be followed. So it was not permissible for the Apostle to allow the sunna to be abrogated [by the Book], without [the Apostle himself] providing another sunna to abrogate it. The abrogating sunna is known because it is the later one, while most of the abrogating [communications] of the Book can be known only by [indications provided in] the Sunna of the Apostle.

So if the sunna [itself] indicates what the abrogating [communications] of the Book are and distinguishes between the

[5] See Chap. VI, above.

abrogating and the abrogated, it cannot be abrogated by the Qur'ān unless the Apostle himself provides another sunna—in conformity with the Qur'ān—which would abrogate an earlier sunna. Thus no doubt should ever remain in the minds of men that God has imposed the duty of obedience [to the Prophet].

190. He asked: Someone may say: If we find in the Qur'ān an explicit general meaning which a certain sunna may either make specific or to which it may give an implicit meaning that is contradictory, do you [not] agree that the sunna [in such a case] is abrogated by the Qur'ān?

191. [Shāfi'ī] replied: No scholar should ever hold such an opinion!

192. He asked: Why?

193. [Shāfi'ī] replied: Since God has imposed on His Prophet the duty to obey His communications to him, and He testified to his [right] guidance and imposed on men the duty to obey him, and since the Arab tongue—as I have already explained—may give a variety of meanings [for each word] so that some of the communications of the Book are general and intended to be particular and others particular and intended to be general, and some are general duties which the Apostle specified [in the sunna]—a function which the sunna fulfils in its relation to the Book, the sunna cannot be contradictory to the Book of God, but will always follow the Book of God, in conformity with His divine communication, and clarify on God's behalf the meaning intended by God. Thus [the sunna] always follows the Book of God.

194. He asked: Will you give an evidence in support of your opinion from the Qur'ān?

195. [Shāfi'ī replied]: I quoted for him a part [of the argument] embodied in [my] book "*The* [*Conformity of the*] *Sunna to the Qur'ān,*"[6] that God has imposed the duties of prayer, alms, and pilgrimage; but the Apostle specified the modes of performing the prayer, the number of prayers and

[6] This is a reference to a book which has not come down to us, but none of Shāfi'ī's biographers have mentioned it either.

the time for performing them each day and the rules [governing performance]; he specified the amount of the alms to be paid, the time of payment and the commodities exempted therefrom; and [he specified] the performance of pilgrimage and the rules as to what is permitted and what should be avoided. I have also cited to him God's saying:

> As for the thief, male and female, cut off their hands [Q. V, 42].

And:

> The fornicatress and the fornicator—scourge each one of them with a hundred stripes [Q. XXIV, 2].

And I pointed out that since the Apostle laid down in the sunna that cutting off the hand is the penalty for theft if the amount exceeds a quarter of a dīnār, and that the penalty of scourging [for fornication] on the part of unmarried free and adult persons—not free married or slave married persons—the sunna indicated that God implied [in the text of the Qur'ān] a particular [category of] adulterers and thieves despite the fact that the literal [meaning of the] communication is apparently general concerning the [penalty for] thieves and adulterers. §223

196. He said: I am in agreement with what you have just explained; but can you give an evidence against those who related a saying on the authority of the Prophet which runs as follows:

> Compare whatever is related on my authority with the Book of God; if it agrees with it, I have said it, but if it does not agree, I have not said it.[7] §224

197. [Shāfi'ī] replied: This tradition was not related by one whose authority on any matter, significant or insignificant, has been recognized so as to constitute a proof for what he related.

[7] This tradition has been transmitted in a variety of forms and is regarded as weak. For a critical evaluation, see Ibn Ḥazm, *Kitāb al-Iḥkām Fī Uṣūl al-Aḥkām*, Vol. II, pp. 76-82. See also Shākir's edition of the *Risāla*, p. 224, n. 4; and J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 28.

Besides, that is an interrupted transmission from an unknown person and is unacceptable to us.

198. He asked: Was anything related on the authority of the Prophet in support of your opinion?

199. [Shāfi'ī] replied: Yes. For Sufyān [b. 'Uyayna] told us from Sālim Abū al-Naḍr from 'Ubayd b. Abī Rāfi' from his father that the Prophet said: S 225

> "Let me find no one of you reclining on his couch, who, when confronted with an order of permission or prohibition from me, says: 'I do no know [whether this is obligatory or not]; we will follow only what we find in the Book of God.'[8]

So[9] the Apostle urged men never to reject his orders, on the grounds that God imposed the duty that they should obey his orders.

200. He asked: Will you give an example of general communications on which the scholars, or the majority at least, have agreed with you that the sunnas, together with the Book, give an indication that such a communication is intended to be particular, although its literal meaning is general?

201. [Shāfi'ī] replied: Yes; it is as I have already discussed in this book.

202. He asked: Repeat some portion of it.

203. [Shāfi'ī] replied: God said:

> Forbidden to you are your mothers and daughters, your sisters, your aunts, paternal and maternal, your brothers' daughters, your sister's daughters, your mothers who have given suck to you, your suckling sisters, your wives' mothers, your step-daughters, who are in your care being born of your wives you have been into—but if you have not yet been into them, it is no fault in you—and the spouses of your sons who are of your loins, and that you should take to you two sisters together, unless it be a thing of the past; God is All-forgiving, All-compassionate; and wedded women except what your right hands possess. So God prescribes for you. And lawful for you is what is beyond that [Q. IV, 27-28]. S 226

[8] See paragraph 94, n. 15, above.
[9] "Shāfi'ī said" is omitted.

So * God stipulated what He prohibited and added: "Lawful for you is what is beyond that"; but the Apostle specified that no woman together with an aunt, paternal or maternal, shall be taken as a wife.[10] I know of no one who has disagreed with that specification. B 32

There are two indications in that [tradition]: First, that the sunna of the Apostle can contradict the Book of God in no circumstance, but can only specify the general and particular communications of that Book. Second, that [the scholars] have accepted that [tradition] on the authority of a single transmitter. But I know of no transmitter other than Abū Hurayra who correctly related it on the authority of the Prophet.[11] S 227

204. He asked: Would it be possible in your opinion to regard this tradition as contradictory to any literal meaning in the Book [of God]?

205. [Shāfi'ī] replied: Neither this [tradition] nor any other [can be contradictory to the Book of God].

206. He asked: What is, therefore, the meaning of God's saying: "Forbidden to you are your mothers," in which he stipulated the prohibition, and then added: "Lawful for you is what is beyond that" [Q. IV, 27]? S 228

207. [Shāfi'ī] replied: God stipulated the instances [of women] forbidden in all circumstances, such as mothers, daughters, sisters, aunts—paternal and maternal—, the brother's daughters and the sister's daughters; those forbidden in all circumstances on the basis of kinship and suckling; and those forbidden to be taken with others, although if each were taken separately it would be lawful. So God's saying: "Lawful for you is what is beyond that," means that any woman is lawful in permissible circumstance; for the stipulation "lawful etc.," means marriage in a lawful manner, not taking a wife in an

* "Qāla" is omitted.

[10] See Mālik, Vol. II, p. 532; Bukhārī, Vol. III, pp. 422-23; Muslim, Vol. IX, pp. 190-93; Ibn Ḥanbal, Vol. V, p. 3530; Shawkānī, *Nayl al-Awṭār*, Vol. VI, pp. 156-59.

[11] For further discussion on this tradition, see Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 4-5.

illegal marriage, or the taking of a fifth wife in addition to the other four, or the taking of two sisters or any other [woman] who is in a forbidden category. S 229

I have also given him the [example of the] duty of ablution laid down by God, and the Prophet's [precedent of] wiping the shoes, and the agreement of the majority of the learned on the acceptance of wiping.

208. He asked: Is [the Prophet's] wiping contradictory to any [textual communication] in the Qurʾān?

209. [Shāfiʿī] replied: In no circumstance can the sunna contradict the Qurʾān.

210. He asked: How would you explain it?

211. [Shāfiʿī] replied: Since [God] said:

> When you stand up for the prayer, wash your faces and your hands up to the elbows, and wipe your heads and your feet up to the ankles [Q. V, 8].

The sunna specified that whoever is in a state of purity, and who has not [subsequently become] polluted, is under no obligation to fulfil this duty [of washing the face, etc.] when he stands up in prayer; it also specified that the duty of washing the feet is obligatory only on him who had not worn the two shoes in complete purity. S 230

I have also given him the [example of the] Prophet's prohibition of [eating the meat of] beasts possessing fangs. For God stipulated:

> Say; I do not find, in what is revealed to me, anything forbidden to one who eats of it, unless it be a dead animal or blood outpoured, or the flesh of the swine—for it is abomination—or an impious thing over which the name of a god other than God has been involved; but if one is compelled, not willingly or transgressing—then verily thy Lord is All-forgiving, All-compassionate [Q. VI, 146]; and specified what He prohibited.[12]

212. He asked: What is the meaning of this [communication]?

213. [Shāfiʿī] replied: The meaning of "Say: I do not find . . . forbidden, etc. . . ." is that nothing was forbidden

[12] See also Q. VI, 147-48.

of what men were accustomed to eat save a dead animal, etc. . . . but what was regarded as forbidden should not be forbidden unless God or the sunna so stipulated in accordance with God's saying: "Making lawful for them the good things and unlawful the corrupt things" [Q. VII, 156]; so it is not just forbidden because the food was spoiled. S231

214. [Shāfi'ī] said: Further, I cited to him God's saying:

> God has permitted sale and forbidden usury [Q. II, 276].

And His saying:

> Do not consume your property among you in vanity, except there be trading by mutual consent on your part [Q. IV, 33].

The Apostle of God, however, has forbidden certain kinds of sales, such as the exchange of [gold] dīnārs for [silver] dirhams for a specified time as well as others, and the Muslims, following the Apostle of God, have forbidden them, too, although these [transactions] and others are not contradictory to the Book of God.

215. He asked: Define for me the meaning of what you have said in a more comprehensive and concise manner.

216. [Shāfi'ī] replied: Since it is evident in the Book of God that God placed His Apostle in the position of a mouthpiece [and an interpreter] on God's behalf and imposed on men the duty to obey his orders, therefore when He said: "God has permitted sale and forbidden usury," He meant that He permitted the [kind of] sale which was neither forbidden in His Book nor through the tongue of His Prophet. In like manner His saying: "And lawful for you is what is beyond that" [Q. IV, 28], means that God permitted the taking of women in lawful marriage as well as "what your right hand possesses" in accordance with His Book;[13] it is S232 not an unqualified permission. This is clear Arabic speech.

217. Shāfi'ī said:[14] [In my reply] I have added the fol-

[13] Milk al-yamīn, in the singular, is a citation from the Qur'ān concerning the taking of four lawful wives and what "your right hands possess" [Q. IV, 3].

[14] Būlāq ed., p. 33.

lowing: If it were permissible to abandon a tradition in place of the opinion of those who are ignorant of its place in relation to the Book, we would have abandoned the wiping of the shoes—which we have already explained—and we would have permitted everything that comes under sale, as well as taking as wives a woman together with her paternal and maternal aunts, and the eating of beasts possessing fangs and the like. It would also have been permissible to hold the opinion that the Prophet laid down the sunna concerning the cutting off of the thief's hand if the value of the stolen article exceeds a quarter of a dīnār before the divine communication: "The thief, male and female, cut off their hands" [Q. V, 42] was revealed. So everyone in this category would have his hands cut off.

In like manner it would be permissible to maintain that the Prophet decreed the stoning of the thayyib woman [as penalty for adultery] before he received the communication: "The fornicatress and the fornicator—scourge each one of them a hundred stripes" [Q. XXIV, 2], which meant that [the S 233
penalty] for the unmarried and thayyib women would have been scourging, not stoning to death.

It would also have been permissible to maintain that all [the kinds of] sale forbidden by the Apostle had been forbidden before the divine communication "God has permitted sale and forbidden usury (al-riba)" was revealed, and that thereafter they became lawful. Usury [may be found] when B 33
a man is indebted to another, and the debt is due, and [the second] says [to the first]: Would you pay the debt or pay [in addition] the usury? Payment would be postponed, [in the latter event,] but the debt would grow larger.

Other examples parallel to it might be given. However, he who holds such an opinion would invalidate most of the sunnas of the Apostle; but such an opinion betrays ignorance indeed!

218. He said: That is correct.

219. [Shāfiʿī said]: The sunna of the Apostle is [obligatory] as I have already explained, and he who holds an opinion

different from what I have stated, betrays a lack of knowledge about the sunna mixed with a false opinion on a subject in which he is ignorant.

220. He asked: Will you cite another example of a sunna abrogated by another?

221. [Shāfi'ī] replied: The abrogating and abrogated sunnas may be found in various places [of this book] and to repeat them here would take a long time. §234

222. He asked: Perhaps a few would be enough; will you cite them briefly and clearly?

223. [Shāfi'ī] replied: Mālik [b. Anas] told us from 'Abd-Allāh b. Abī Bakr b. Muḥammad b. 'Amr b. Ḥazm from 'Abd-Allāh b. Wāqid from 'Abd-Allāh b. 'Umar who said:

> The Apostle of God prohibited the eating of the meat of sacrifice after three days [from the first Day of Sacrifice].[15]

'Abd-Allāh b. Abī Bakr said that he cited this [tradition] to 'Amra, daughter of 'Abd al-Raḥmān,[16] who said: That is true, I have heard 'Ā'isha say:

> A few people from the desert came [to Makka] during the Day of Sacrifice in the time of the Prophet, who said: 'You may preserve [the meat of sacrifice] for three days and give the rest to the poor.' She said [a year] later the Prophet was asked: 'O Apostle of God! men were accustomed to make use of their sacrifices: They took its fat and used its [skins] to carry water.' So the Apostle inquired: 'Why not?.' You have prohibited pre- §235
> serving the meat of the sacrifice after three days,' they replied. 'I have prohibited that only for the sake of those who came [to the city] during the Day of Sacrifice. Surely you may eat of it; give to the poor and preserve the rest.'[17]

We are also told by [Sufyān] b. 'Uyayna from [Sa'd b. 'Ubayd] al-Zuhrī from Abī 'Ubayd, freed-slave of Ibn Azhar, who said:

[15] Sacrifices begin on the first day of the Great Feast. For the rules governing sacrifices, see Shāfi'ī, *Kitāb al-Umm*, Vol. I, pp. 187-91.

[16] Būlāq ed., p. 34.

[17] See Mālik, Vol. II, pp. 484-85; Muslim, Vol. XIII, pp. 130-31; Shawkānī, *Nayl al-Awṭār*, Vol. V, pp. 134-37. Cf. Bukhari's version in *Ṣaḥīḥ*, Vol. III, p. 64.

I have witnessed the Feast [of Sacrifice] with 'Alī b. Abī Ṭālib whom I have heard saying: 'Nobody should eat from the meat of Sacrifice after three days.' [18]

And we are told by the trusted authority [19] from Ma'mar from al-Zuhrī from Abū 'Ubayd from 'Alī who said: S 236

The Apostle of God said: 'Nobody should eat from the meat of Sacrifice after three days.' [20]

Ibn 'Uyayna also told us from Ibrāhīm b. Maysara who said:

I have heard Anas b. Mālik say: We were accustomed to slaughter our sacrifices and preserve the remaining portion of it [for our journeys] to Baṣra.[21]

224. Shāfi'ī said: These traditions include many meanings [from which we may draw several conclusions]. [First,] the tradition transmitted by 'Alī from the Prophet is in agreement with that of 'Abd-Allāh b. Wāqid concerning the Prophet's prohibition against keeping the meat of sacrifice after three days. [Second,] there is an indication that 'Alī heard the order of prohibition from the Prophet and that this order reached 'Abd-Allāh b. Wāqid. [Third,] there is an indication that the Prophet's permission failed to reach both 'Alī and 'Abd-Allāh b. Wāqid, for had it reached them, they would have ceased to relate the order of prohibition, which was abrogated, and would have followed the order of permission which had become the abrogating [order]. [For if] the abrogated order of prohibition were known to them they would not have disregarded the abrogating order [of permission]. [Finally,] the opinion of Anas that they were accustomed to enter Baṣra S 237

[18] This tradition is regarded as weak owing to interruption in the chain of authorities, but its content is in agreement with similar traditions. See Ibn Ḥanbal, Vol. II, p. 297, no. 1235.

[19] I. e., Yaḥya b. Ḥassān.

[20] Shāfi'ī fails to mention the name of his authority, but Ibn Ḥanbal gives the name of 'Abd al-Razzāq. See Ibn Ḥanbal, Vol. II, p. 282. In another version of the tradition he gives the name of Muḥammad b. Ja'far. *Ibid.*, Vol. II, p. 280; al-Ḥāzimī, p. 120.

[21] al-Ḥāzimī, p. 121.

with the meat of the sacrifices may mean either that Anas had heard the order of permission but not the earlier order of prohibition—thus he acted on the order of permission without knowing the order of prohibition—or he may have heard both, but since the order of prohibition was abrogated, he failed to mention it. So each one of the two conflicting transmitters related what he had known. Thus it is obligatory on everyone who has heard anything from the Apostle of God, or related on his authority, to transmit what he had heard for the in- S 238
formation of others.

225. Shāfi'ī said: Since 'Ā'isha related from the Prophet first the order of prohibition concerning the keeping of the meat of sacrifice after three days and then the order of permission, and the Apostle's [reason] that he gave the order of prohibition for the sake of those who came from the desert—the complete tradition related by 'Ā'isha from the Prophet is that which should include the first and the last parts, as well as the reason for the orders of prohibition and permission. It is obligatory on all who have known about it to follow it.

'Ā'isha's tradition is one of the clearest examples of the abrogating and abrogated sunnas. It also illustrates how a tradition may be split so that only a portion of it—not all—was related by one authority and another portion by others, each relating what he had remembered.

The order of permission concerning the keeping of the meat of sacrifice, eating it, and giving it to the poor may have only one of two meanings, each depending on one of two circumstances: Whenever the people of the desert enter [the city], the order of prohibition concerning the keeping of the meat S 239
after three days becomes obligatory; but if none should come, the order of permission is valid concerning eating, preserving, giving to the poor, and carrying it [on a journey]. It may also B 34
mean that the order of prohibition concerning the keeping of the meat after three days was abrogated—despite any [special] circumstance—so men can keep a portion of the meat after S 240
three days or give another to the poor.[22]

[22] Shāfi'ī seems to have adopted one interpretation at one time and

[*Categories of*] *Abrogating and Abrogated Traditions*

[A. First Category]

226. [Shāfi'ī said]: Muḥammad b. Ismā'īl b. Abī Fudayk told us from Ibn Abī Dhi'b from al-Maqburī from 'Abd al-Raḥmān b. Abī Sa'īd [al-Khudrī] from Abū Sa'īd al-Khudrī who said: S 241-242

> We were withheld from performing prayer in [the battle of] the Trench for a long while, till [late at] night, but when we were relieved from fighting—as God said: 'God relieved the believers of fighting, God is All-strong, All-mighty' [Q. XXXIII, 25]—the Apostle ordered Bilāl [to call the believers to prayer] and performed the noon-prayer as fully as if it were performed in its time, and performed the 'aṣr, the sunset, and the evening prayers in like manner. This [incident] took place before the communication concerning fear-prayer was revealed which runs as follows: 'If you fear [danger], pray either on foot or mounted.' [Q. II, 240].[23]

227. Shāfi'ī said: Since Abū Sa'īd related that the Apostle's prayer in the battle of the Trench was performed before the communication on fear-prayer (if you fear, etc.) was revealed, we concluded that the performance of fear-prayer took place after that time, for Abū Sa'īd was present [at the battle] and related the tradition concerning the deferment of prayers after their usual times[24] and stated that this [case] took place before the communication on fear-prayer was revealed. S 243

228. [Shāfi'ī] said: Thus in no circumstances shall fear-prayer be deferred from its usual time in the town, nor in

another at another time. See his *Ikhtilāf al-Ḥadīth* (on the margin of the *Kitāb al-Umm*, Vol. VII, pp. 136-37, 247-48). Thus the matter was left undecided for further interpretations and the schools vary on this matter. See Shākir's ed., pp. 240-41, n. 3.

[23] See paragraph 148, n. 35, above.

[24] 'Āmm·ūha means the times of all the prayers.

performing [two] prayers at one time in travel, whether [men are] in fear [of danger] or not. Prayers must always be performed in the same manner as performed by the Apostle of God.

Our opinion concerning fear-prayer is based on what Mālik [b. Anas] told us from Yazīd b. Rūmān from Ṣāliḥ b. Khawwāt from men who performed the fear-prayer with the Apostle in the campaign of Dhāt al-Riqā' who said:

> A company [of believers] stood in rank [for prayer] with [the Prophet] while another watched the enemy. He performed one cycle with the company who stood with him and remained standing until the others completed [the prayer]. Having thus taken the position of those facing the enemy, the other company stood [with the Prophet], who performed the other cycle and remained sitting while the company completed their prayer until he uttered the salutation with them.[25]

229. [Shāfi'ī] said: We have been told by men who heard 'Abd-Allāh b. 'Umar b. Ḥafṣ relating on the authority of his brother 'Ubayd-Allāh b. 'Umar from al-Qāsim b. Muḥammad from Ṣāliḥ b. Khawwāt b. Jubayr from his father from the Prophet a similar tradition. It[26] has also been related that the Prophet performed a fear-prayer differently from what Mālik had stated. We have, however, accepted [Mālik's] version, because it is more consistent with the Qur'ān and more deceptive to the enemy. This subject and the contradictory traditions related to it have been discussed in the *Kitāb al-Ṣalāh* [Book of Prayer].[27] We have dispensed with opposing views on this tradition since they are scattered in [the various chapters of] our books.

[25] See paragraph 148, n. 36, above.

[26] Qāla (he said) is omitted.

[27] See Shāfi'ī, *Kitāb al-Umm*, Vol. I, pp. 186-203. Cf. Shāfi'ī's *Kitāb Ikhtilāf al-Ḥadīth* (margin of *Kitāb al-Umm*, Vol. VII, pp. 221-26). Shāfi'ī's reference to his *Kitāb al-Ṣalāh* may well be to another book which is not in the *Kitāb al-Umm* (see Shākir's edition of the *Risāla*, p. 245, n. 4).

[B. Second] Category

230. [Shāfi'ī said]: God, Blessed and Most High, said:

> Those of your women who commit indecency, call four witnesses against them, and if they testify—then detain them in their houses until death takes them, or God appoints for them a way out. S 245
>
> And when two of you commit indecency, punish them both; but if they repent and reform, then let them [Q. IV, 19-20].

The punishment for the two adulterers, according to this communication, was detainment and suffering; but since God has communicated to His Apostle that the penalty for fornication shall be: "The fornicatress and fornicator—scourge each one of them with a hundred stripes" [Q. XXIV, 2], and for the slave-woman shall be: "If then, having been taken under iḥṣān, they commit an indecency, they shall be liable to half the punishment of freewomen" [Q. IV, 30], detainment as a punishment for adulterers has been abrogated, but punishment [by suffering] was confirmed.

As to the communication concerning the punishment of slave-women that "they shall be liable to half the punishment of freewomen," God has obviously drawn a distinction between the punishment of slave- and free-women: He made it evident that half [of the punishment] cannot be other than scourging, for only scourging can be halved by the number of stripes while stoning to death cannot be halved, since death might be caused either by the casting of one or by a thousand stones. So what is incapable of being halved cannot be regarded as penalty, and death certainly cannot be halved by dividing the S 246
number of stones cast at the person.[28]

God's communication: "The fornicatress and the fornicator—scourge each one of them with a hundred stripes" [Q XXIV, 2] may either mean as a penalty to all free adulterers, or to some to the exclusion of the others; but the sunna of the B 35
Apostle specified who is liable for such a penalty. For 'Abd al-Wahhāb al-Thaqafī told us from Yūnus b. 'Ubayd from al-Ḥasan from 'Ubāda b. al-Ṣāmit that the Apostle of God said:

[28] See paragraph 123, above.

Take it from me [repeated twice] God has decided on a way [for their punishment]: For the fornication of the unmarried couple [the penalty] is scourging with a hundred stripes and banishment for a year; for [the adultery of] the married couple, scourging with a hundred stripes and stoning [to death].[29]

231. [Shāfi'ī] said: The Apostle's saying that "God has decided on a way [for their punishment]" indicates that this was the first penalty imposed on adulterers in accordance with God's communication "until death takes them or God appoints for them a way out" [Q. IV, 19].[30] S 247

Since the Apostle ordered the stoning of both Mā'iz and the wife of al-Aslamī rather than scourging them, the sunna made it evident that scourging [as a penalty] for fornication by the unmarried was abrogated.[31] For no such distinction in the penalty of freemen was ever made before except in the case of women under iḥṣān whether by marriage or otherwise. But the Prophet's saying that "God has decided on a way for their punishment, etc. . . ." is an indication that the first [penalty] abrogated was banishment, and that any other kind of punishment must have been imposed later, since the penalty of banishment was imposed first. [For] Mālik [b. Anas] told us from Ibn Shihāb al-Zuhrī from 'Ubayd-Allāh b. 'Abd-Allāh b. 'Utba from Abū Hurayra and Zayd b. Khālid who said: S 248

Two men submitted a dispute to the Apostle of God. One of them said: 'O Apostle of God! Will you settle our dispute on the basis of the Book of God?' The other, who was more knowledgeable in the law, said: 'I concur, O Apostle, but I beg you to let me speak [first].' 'You may speak,' replied [the Prophet]. He said: 'When my son was in the employment of this [the plaintiff] he committed adultery with his wife. I was told that my son's penalty was stoning [to death]; but instead I paid a ransom of one hundred sheep and a slave-woman. Upon inquiry from those who are learned in the law, I have found that my son's penalty was a hundred stripes and banishment for a year, while the penalty for his [the plaintiff's] wife was stoning.' 'By

[29] See paragraph 122, above.
[30] Ṭabarī, *Tafsīr*, Vol. VII, pp. 72-81.
[31] See paragraph 123, above.

Him in whose hand is my soul, I shall give my judgment on the basis of the Book of God: your sheep and slave-woman should be given back to you,' ruled the Apostle of God, and ordered that the son should be scourged by a hundred stripes and banished S 249
for a year. He also ordered Unays al-Aslamī to cross-examine the [plaintiff's] wife and to stone her if she admitted adultery. The woman confessed and was stoned [to death].[32]

Mālik [b. Anas] told us from Ibn 'Umar that the Prophet ordered the stoning of two Jews for committing adultery.[33]

232. [Shāfi'ī] said: Thus the scourging of a hundred stripes and banishment were confirmed [as a penalty] for fornication on the part of the unmarried, and stoning for the married. But if punishment by scourging is imposed [on the two fornicators,] it should not be enforced together with stoning since the latter was abrogated; for if [the culprits] were regarded as married—therefore not liable for scourging—their penalty S 250
should be that imposed on married adulterers.[34]

[The communication concerning] the penalty of stoning for the two married adulterers was revealed after that concerning scourging according to the Apostle, who made that [clear] on God's behalf. This is the meaning most consistent [with the Book of God] and most appropriate in our opinion. But God knows best!

[C. Third] Category

233. Mālik [b. Anas] told us from Ibn Shihāb al-Zuhrī from Anas b. Mālik, who said:

> The Prophet, riding on horseback, was thrown and his right side was scratched. Thereupon he performed one of his daily prayers sitting and we performed ours behind him sitting, too. After prayer the Prophet said: 'The imām [prayer leader] [35] is expected

[32] Mālik, Vol. II, p. 822; Muslim, Vol. II, pp. 205-207; Cf. Abū Dāwūd, Vol. IV, pp. 145-46.
[33] Mālik, Vol. II, p. 819; Muslim, Vol. II, pp. 208-209; Abū Dāwūd, Vol. IV, p. 153; Shawkānī, *Nayl al-Awṭār*, Vol. VII, p. 97.
[34] See Shāfi'ī, *Kitāb al-Umm*, Vol. VI, pp. 119-21

to be followed; if he performs the prayer standing, you should stand, too; if he bows you should bow; if he raises his hands, you should raise them; if he says: 'God listens to him who praises Him,' you should say: 'Praise be to you, Our Lord'; and *if he performs his prayer sitting, you should perform yours sitting,* too.'[36] S 251

Mālik [b. Anas] told us from Hishām b. 'Urwa from his father from 'Ā'isha, who said:

When the Apostle was sick, he performed his prayer sitting in his house; but when the men behind him performed their prayer standing, he ordered them to sit. After prayer, [the Prophet] said: 'The imām is expected to be followed; if he bows, you should bow; if he raises his hand, you should raise yours, too; if he sits, you should sit all together.'[37]

This tradition, related by Anas [b. Mālik], is like the previous one, but the meaning of Anas' tradition is clearer.

Mālik [b. Anas] told us from Hishām b. 'Urwa from his father, who said:

The Apostle of God went out [from his house] while still sick [to perform his prayer in public]. While leading the prayer, Abū Bakr stepped aside [in favor of the Prophet], but the latter ordered him to continue and sat beside him: Abū Bakr followed the Apostle [in his prayer], and men followed Abū Bakr.[38] S 252

Shāfi'ī said that he was in favor of the opinion expressed in this tradition.[39]

234. [Shāfi'ī] said: A similar tradition has been related by

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technique of prayer to perform the formalized recitals and postures. See Edwin E. Calverly, *Worship in Islam* (London, 1957), Chap. 4.

[36] Mālik, Vol. I, p. 135; Bukhārī, Vol. I, p. 180; Muslim, Vol. IV, pp. 130-31; Abū Dāwūd, Vol. I, p. 164; Shawkānī, *Nayl al-Awṭār*, Vol. III, pp. 148, 180-81.

[37] Mālik's version omits the statement "in his house" (see *al-Muwaṭṭa'*, Vol. I, p. 135). See also Bukhārī, Vol. I, p. 180; Muslim, Vol. IV, p. 132.

[38] Mālik, Vol. I, p. 136; Bukhārī, Vol. I, p. 177; Muslim, Vol. IV, pp. 135-38; Shāfi'ī, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 99-100).

[39] This statement is an expression of Shāfi'ī's opinion, perhaps inserted by al-Rabī' as he heard it from Shāfi'ī; probably it was not part of the *Risāla*. See Shākir's edition, p. 253, n. 2.

Ibrāhīm al-Nakha'ī from al-Aswad b. Yazīd from 'Ā'isha from the Apostle and Abū Bakr to the effect that the Prophet performed his prayer sitting while Abū Bakr, [leading the prayer,] followed the Prophet and men followed Abū Bakr standing.[40] S 253 B 36

235. [Shāfi'ī] said: Since the Prophet performed his prayer during his death-sickness sitting while men performed it standing behind him, we concluded that his previous order permitting men to perform prayer sitting at the time of his fall from the horse was abrogated by his later order that they may perform prayer standing, because they [should] sit when the imām sits.[41]

Thus the evidence of the sunna and the consensus of the people [i. e., of the scholars] indicate that prayers should be performed standing when men are able to stand, and sitting when they are unable to stand; but those who can perform it standing by themselves should never do so sitting. S 254

Although the Prophet's sunna ordering men to perform their prayer behind him standing while he performed it sitting during his [death] sickness abrogated his previous sunna, it is in conformity with his sunna concerning the prayers of healthy and sick men, as well as the consensus of the people, that each man should fulfil his [prayer] duty in accordance with the rule stipulating that the sick man can perform his prayer sitting behind a healthy imām who performs the prayer standing.

So we maintain: [If sick,] the imām performs his prayer sitting, but the healthy men behind him should perform theirs standing. So each one fulfils his duty in his own way, although it is more appropriate if the imām deputizes another person [whenever he is sick].[42]

236. One scholar[43] held: "Nobody after the Prophet shall

[40] Cf. Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 156; and *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 100); and Shawkānī, *Nayl al-Awṭār*, Vol. III, p. 180.

[41] See Bukhārī, Vol. I, p. 180; and Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 151.

[42] For further discussion, see Shāfi'ī, *Kitāb al-Umm*, Vol. VII, p. 184.

[43] This implicit criticism is alleged to have been levelled against the followers of Muḥammad b. al-Ḥasan al-Shaybānī; but in reality it was

lead the prayer sitting"; but the tradition which he cited in support of his opinion was an interrupted one related by an unreliable authority, and therefore cannot be accepted as binding. [The text of this tradition runs as follows]: "Let no one after me [the Prophet] lead the prayer sitting."[44]

237. [Shāfi'ī] said: There are other parallel examples concerning the abrogating and abrogated sunnas which provide evidence in support of this viewpoint. There are likewise parallel examples in the Book of God; some have been described in this book and others scattered in their proper places in this book and in [the chapters on] the Qur'ān and the sunna.[45]

[*Contradictory Traditions*]

238. [Shāfi'ī] said: He asked: Give examples of contradictory traditions in which no indications are to be found concerning the abrogating and abrogated [sunnas] and the reason for accepting some and rejecting others?

239. [Shāfi'ī] replied: I have already cited a tradition to the effect that the Apostle performed the fear-prayer in the campaign of Dhāt al-Riqā', in which he performed one cycle with one company while the other watched the enemy, etc. However,[46] Ibn 'Umar related from the Prophet that he [the Prophet] performed the fear-prayer somewhat differently as follows:

> He [the Prophet] performed one cycle with one company while another stood [for protection] between him and the enemy. The company that stood in rank [for prayer] replaced the one which had not prayed, taking a position between him [the Prophet] and

against all the Ḥanafī and Mālikī jurists. For differences between Shāfi'ī and Mālik, see Shāfi'ī, *Kitāb al-Umm*, Vol. VII, pp. 184-86.

[44] For further discussion, see Shāfi'ī, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 100-102).

[45] Cf. Būlāq ed., p. 37.

[46] "Shāfi'ī said" is omitted.

the enemy. He performed the final cycle with this company, and uttered the salutation. Thus all performed the prayer together.[47]

Abū 'Ayyāsh al-Zuraqī related:

The Prophet performed a [fear]-prayer in the campaign of 'Usfān [48] while Khālid b. al-Walīd [and his army] stood between him and the qibla [watching the enemy]. He [the Prophet] stood in rank for prayer and performed one cycle [with his men]. When he bowed, one company bowed with him and the other S 260
watched the enemy. When he stood, the company that watched the enemy bowed. Thus all completed the prayer together.[49]

Jābir related [a tradition] the meaning of which is nearly identical to that one.[50] Other [51] contradictory traditions may be cited, but they are unreliable.

240. Someone has asked me: Why have you accepted [the tradition concerning] the Prophet's prayer in the campaign S 261
of Dhāt al-Riqā' to the exclusion of others?

241. [Shāfi'ī] replied: I would accept the tradition of Abū 'Ayyāsh and Jābir concerning fear-prayer if the reason given there for the Prophet's prayer were the same as that in the other [i. e., the tradition of Dhāt al-Riqā'].

242. He asked: What is it?

243. [Shāfi'ī] replied: The Apostle had under his command 1,400 men, while Khālid b. al-Walīd had only 200. Far away in the desert, [Khālid] was secure from attack owing both to the few under his command and the many under the Apostle's command. For if the enemy attacked [Khālid], they could be seen [by the Prophet] while performing the bowing as he was in such a position that they were always seen by him. However, if the enemy consisted of only a few and were at a dis-

[47] Cf. paragraph 149, above.

[48] 'Usfān, a place on the route between Makka and Madīna. The expedition to 'Usfān, dispatched against the Banū Liḥyān, took place in 5/627. See Ibn Hishām, Vol. II, pp. 718-19; Guillaume's translation, pp. 485-86.

[49] See Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 191; and *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 225). See also Abū Dāwūd, Vol. II, pp. 11-12.

[50] See Shawkānī, *Nayl al-Awṭār*, Vol. III, pp. 338-39.

[51] Qāla (he said) is omitted.

tance, and no company stood between them [and those who performed the prayer], I am of the opinion that fear-prayer should be performed in such circumstances, as I explained before.

244. He asked: I realize that owing to changes in circumstances the tradition concerning the prayer of Dhāt al-Riqā' is in agreement [with your opinion]; why are you opposed to the tradition of Ibn 'Umar?

245. [Shāfi'ī] replied: [The tradition of Dhāt al-Riqā'] was related by Khawwāt b. Jubayr. A not very different one was related by Sahl b. Abī Ḥathma. Moreover, 'Alī b. Abī Ṭālib was reported to have performed the fear-prayer in the Night of al-Harīr,[52] in accordance with the tradition related by Khawwāt b. Jubayr from the Prophet. Finally, Khawwāt was an old and early companion of the Prophet.

246. He asked: Is there any evidence [for accepting Khawwāt's tradition] stronger than his [age and] early companionship? S 263

247. [Shāfi'ī] replied: Yes, it is its consistency with the meaning of the Book of God, as I have already explained. B 37

248. He asked: What part of it is consistent with the Book of God?

249. [Shāfi'ī] replied: God said:

> When thou art with them and hast set up the prayer for them, let a party of them stand with thee, and let them take their weapons. When they bow, let them be behind you; and then let another party who has not prayed come and pray with thee, taking their guard and their weapons. The unbelievers wish that you should neglect your weapons and your baggage, then they would fall upon you all at once. There is no fault in you, if rain molests you, or you are sick, to lay down your weapons, but keep your guard [Q. IV, 103].

And He said:

> When you feel secure again, observe the prayer. Verily, the

[52] The Night of al-Harīr, known also as the Day of al-Harīr, was one of the days in the battle of Ṣiffīn (A.D. 657) between the Caliph 'Alī and Mu'āwiya, then governor of Syria.

prayer has become for the believer a thing prescribed for stated times [Q. IV, 104].

The meaning implied [in these texts] is that when men are secure, they should perform their [usual] prayer. But God knows best!

Since God has distinguished between fear and secure prayers in order to protect the followers of His religion from a sudden attack, we have found that by comparing the tradition of Khawwāt b. Jubayr with others contradictory to it, Khawwāt's S 264
tradition seems to be more appropriate to follow for precautionary [considerations]. It is recommended that the two parties should participate equally [in performing the prayer and in guarding against the enemy], for the party that performs the prayer first with the imām should be well guarded by the other which does not perform the prayer. The guarding party—relieved of the duty of prayer—should be fully occupied [in watching the enemy], whether standing or sitting, turning left or right, and prepared to defend should the enemy attack, giving warning whenever the enemy suddenly attacks and being ready to fight if necessary, never moving from their position between the enemy and the party performing the prayer. The imām should quickly perform the prayer if he fears a sudden attack by the enemy, upon a warning from the guarding party.

250. [Shāfi'ī] said: Both parties are equally right in fulfilling their duties, for in accordance with the tradition of Khawwāt, both are equally responsible. Each one, after it has performed its prayer, guards the other; thus each takes the place of the other fulfilling its duties. Such [a division of responsibility] is just.

251. [Shāfi'ī] said: The tradition contradictory to that of Khawwāt does not provide for such precaution, since one of the two parties protects the other only during one cycle while the other takes the place of the first in order to guard it before completing its prayer, so that when they were performing their prayer together they did not have any protection at all. So S 265
the only one who fully performed his prayer was the imām,

who did not take part in guarding nor could he be strong enough to guard [against the enemy]. This [kind of performance] is inconsistent with the order of precaution and preparedness against the enemy. Yet God has made it plain that He distinguished between the fear-prayer and other prayers so that the followers of His religion should not be exposed to a sudden atack by the enemy and that neither party should be held responsible more than the other. We note that God made no stipulation that either the imām or the two parties should perform substitution prayers. This indicates that the imām and the men following him have equally fulfilled their duty. This is [clearly shown] in Khawwāt's tradition, but not in the one contradictory to it.

252. He asked: Is there any other meaning in the tradition unacceptable to you which you have not described?

253. [Shāfi'ī] replied: Yes. [The tradition] may mean that if it is permissible to perform the fear-prayer in a manner different from other prayers, it should be permissible to perform it in whatever manner is possible, depending on the circumstances in which [the Muslims] or the enemy happen to be, provided the number [of cycles] is completed, even though [the mode of] performance may be different, but all [such performances] fulfil the duty.

Another Kind of Contradictory [Traditions]

254. Shāfi'ī said: Someone has asked me: Traditions relating to the tashahhud [53] have been differently transmitted from the Prophet. Ibn Mas'ūd related that he [the Prophet] instructed men how to recite the tashahhud just as he instructed them to recite a portion [54] of the Qur'ān, beginning with the three

[53] The tashahhud is the recital of the salutations to the Prophet and the formula of the profession of the faith.

[54] Literally: "The sūra [chapter] of the Qur'ān."

words: Salutations to God.[55] Which [tradition of] tashahhud have you accepted?

255. Shāfi'ī replied: Mālik [b. Anas] told us from Ibn Shihāb from 'Urwa [b. al-Zubayr] from 'Abd al-Raḥmān b. 'Abd al-Qārī who heard 'Umar b. al-Khaṭṭāb on the pulpit instructing men how to recite the tashahhud say:

> Say: Salutations to God. Sanctities belong to God. Goodness and prayers to God. O Prophet, peace is upon you and God's blessings and mercies to you. Peace is upon us and upon all good servants of God. I profess that there is no god at all but God, and I witness that Muḥammad is His servant and Apostle.[56]

256. Shāfi'ī said: This is the tradition in which our learned predecessors have instructed us in our early age. We have known that tradition, including the names of authorities who related it, as well as others contradictory to it; but we know of no other transmission, whether it agrees or disagrees with it, which is more reliable than that one, although there are other reliable traditions also. For we are of the opinion that 'Umar did not instruct men from the pulpit in the presence of other companions of the Apostle save in what the Prophet S 268
himself had instructed. So any other tradition related to us by other companions which confirms this tradition is acceptable to us.

257. He asked: What tradition?

258. [Shāfi'ī] replied: We are told by the trusted authority—Yaḥya b. Ḥassān—from al-Layth b. Sa'd from Abū Zubayr al-Makkī from Sa'īd b. Jubayr and Ṭāwūs from Ibn 'Abbās, who said:

> The Apostle instructed us how to recite the tashahhud in the same manner as he taught us to recite the Qur'ān. He said: B 38
> 'Blessed greetings and good prayers to God. O Prophet! Peace and God's mercies and blessings be upon you. Peace be upon us S 269
> and upon all good servants of God. I profess that there is no god at all but God and that Muḥammad is the Apostle of God.[57]

[55] See Abū Dāwūd, Vol. I, p. 254; Shawkānī, *Nayl al-Awṭār*, Vol. II, pp. 280, 287.

[56] Mālik, Vol. I, pp. 90-91.

[57] For Shāfi'ī's remarks on this tradition as the dearest to him, see

259. Shāfi'ī said: He asked: Why does the transmission [of these traditions] from the Prophet vary? For Ibn Mas'ūd, Abū Mūsa and Jābir have related different versions, each varies from the other in certain words, and [the Caliph] 'Umar has instructed men differently. Moreover, the tashahhud of 'Ā'isha and Ibn 'Umar vary in wording; one of them includes a few words additional to the other. S 270

260. [Shāfi'ī] replied: The matter is quite clear.

261. He said: Explain it to me.

262. [Shāfi'ī] replied: The recitals glorifying God instructed by the Apostle were committed to memory by men in words varying from one person to another, from the time of [the Prophet's] instruction. The main concern [of the transmitters] was the change in meaning, not the words; but whenever the change in wording resulted in a change of meaning such a change was not permissible. For it is possible that the Prophet himself permitted each man to recite what he had learned provided that there was no change in the meaning of his recital. So the transmitters in turn regarded as permissible the variations in the wording of the recitals but not in their meaning.[58]

263. He asked: Is there any evidence making permissible what you have described?

264. [Shāfi'ī] replied: Yes! S 272

265. He asked: What is it?

266. [Shāfi'ī] replied: Mālik [b. Anas] told us from Ibn Shihāb from 'Urwa [b. al-Zubayr] from 'Abd al-Raḥmān b. al-Qarī, who said: I have heard 'Umar b. al-Khaṭṭāb say:

> I have heard Hishām b. Ḥakīm b. Ḥizām reciting the sūra of the Furqān [Q. XXV] differently from my recitation—which the Prophet himself had instructed me how to recite—so I almost quarrelled with him, but I waited until he completed the recitation, whereupon I wrapped his mantle around his neck and

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Kitāb al-Umm, Vol. I, p. 101; and *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 63). See also Abū Dāwūd, Vol. I, p. 256.

[58] For further discussion on such variations in the wording of the tashahhud, see Shāfi'ī, *Kitāb al-Umm*, Vol. I. pp. 103-105.

dragged him to the Prophet, and I said: 'O Apostle of God! I have heard this man recite the sūra of the Furqān differently from what you have instructed me.' 'Recite it,' said the Prophet to the man; and he recited it the way I had heard it from him. 'This is the way it was revealed [to me],' said the Apostle; and he asked me to recite, which I did in the way he had instructed me to recite it. 'This is the way it was revealed [to me],' said the Prophet and added: 'The Qur'ān has been revealed in accordance with seven modes[59] and you may recite what is convenient of it.'[60] S 273

267. [Shāfi'ī] said: Since God, owing to His sympathy toward man and His recognition of the weakness of his memory, has permitted various recitals of His book in accordance with seven modes—provided no change in the meaning is made—variation in the wording of other books should be all the more permissible as long as the meaning is not affected. So changes in the wording of any text, save that of a divine communication, is permissible if the meaning is not changed. S 274

268. A Successor said: I have heard some of the Companions [relating traditions from the Apostle] agreeing in meaning but disagreeing in wording. I have taken up this matter with one of them, who said: "It is permissible unless the meaning is changed."

269. He asked: Since there is nothing in the recital of the tashahhud but the glorification of God, changes in the wording should be permissible, since, as you pointed out, [no change is made in the meaning]. Similarly, as you said [an argument might be advanced in favor of] fear-prayer, so that as long as S 275 it was performed as fully as related from the Prophet, it should fulfil the duty, since God has distinguished between that kind of prayer and others. But on what ground have you made your choice of the tradition related by Ibn 'Abbās on tashahhud to the exclusion of others?

[59] This is an ambiguous expression in the Qur'ān, the meaning of which scholars have not agreed upon. "Modes" seems to be the nearest word to aḥruf. See Ṭabarī, *Tafsīr*, Vol. I, pp. 58-72; and Suyūṭī, *al-Itqān Fī 'Ulūm al-Qur'ān*, Vol. I, pp. 46-48.

[60] Mālik, Vol. I, p. 201; Bukhārī, Vol. II, pp. 90-91; Muslim, Vol. VI, pp. 98-99.

270. [Shāfi'ī] replied: Since I have found that tradition comprehensive enough, comprising more words and meanings than others, and transmitted by reliable authorities from Ibn 'Abbās, I have decided to accept it without any reflection on others who have accepted other reliable traditions.

Contradictory Transmission of Traditions Different From Other Kinds

271. [Shāfi'ī said]: Mālik [b. Anas] told us from Nāfi' from Abū Sa'īd al-Khudrī that the Apostle said:

> Let no one exchange gold for gold save in equal quantities, or increase one quantity against the other. Let no one exchange silver for silver save in equal quantities, or increase one quantity against the other. Let no one exchange anything at hand for another not in evidence.[61] S 276

Mālik [b. Anas] told us from Mūsa b. Abī Tamīm from Sa'īd b. Yasār from Abū Hurayra from the Apostle, who said: B 39

> The [gold] dīnār [shall be exchanged] for a [gold] dīnār and the [silver] dirham for a [silver] dirham; there shall be no increase in the one against the other.[62]

Mālik [b. Anas] told us from Ḥumayd b. Qays from Mujāhid from Ibn 'Umar, who said:

> The dīnār [shall be exchanged] for a dīnār and the dirham for a dirham; there shall be no increase in the one against the other. This is the order of our Prophet to us and ours to you.[63]

272. Shāfi'ī said: 'Uthman b. 'Affān and 'Ubāda b. al-Ṣāmit related [other] traditions from the Apostle to the effect that

[61] Mālik, Vol. II, pp. 632-33; Bukhārī, Vol. II, p. 31; Muslim, Vol. XI, pp. 8-12. Cf. Abū Dāwūd, Vol. III, p. 249.
[62] Mālik, Vol. II, p. 632; Muslim, Vol. XI, p. 15.
[63] Mālik, Vol. II, p. 633

he prohibited the increase of gold for gold as the transfer of ownership takes place immediately.[64] S 277

We[65] accept these traditions, since there are others identical in meaning related by leading Companions and jurisconsults throughout the land.

Sufyān [b. 'Uyayna] told us that he heard 'Ubyad-Allāh b. Abī Yazīd say: I have heard Ibn 'Abbās say: Usāma b. Zayd told me that the Prophet said:

Al-ribā (usury) is to be found in al-nasī'a (deferred payment).[66] S 278

Ibn 'Abbās[67] and some of his followers in Makka and elsewhere have accepted this [tradition].

273. Someone has asked me: Is not this tradition contradictory to earlier ones?

274. [Shāfi'ī] replied: It may be regarded as both contradictory and not contradictory.

275. He asked: In what respect is it in agreement?

276. [Shāfi'ī] replied: Usāma may have heard someone ask the Apostle about [the exchange of] two different kinds of property such as gold for silver, dates for wheat, or any other different property the transfer of which was to take place immediately, and the Prophet said: "Ribā is in nasī'a." Or he may have been absent when the question was asked, but heard only the answer. So he related the answer without the question. Or he may have guessed [what the question was], for there is nothing in Usāma's tradition which is not in agreement with other traditions. S 279

277. He asked: Why do you maintain that [Usāma's tradition] may be regarded as contradictory to others?

[64] Literally: "As it passes from one hand to the other." See Mālik, Vol. II, p. 633; Muslim, Vol. XI, p. 11. Cf. Abū Dāwūd, Vol. III, p. 248, for a different wording.

[65] "Shāfi'ī said" is omitted.

[66] Muslim, Vol. XI, pp. 25-26; Abū Muḥammad al-Dārimī, *Sunan* (Damascus, 1349/1930), Vol. II, p. 259; Shāfi'ī, *Ikhtilāf al-Ḥadīth* (margin of *Kitāb al-Umm*; Vol. VII, p. 241).

[67] "Shāfi'ī said" is omitted.

278. [Shāfi'ī] replied: Because Ibn 'Abbās, who related it differently, said:

> There is no ribā in a sale if the transfer of ownership takes place immediately; but ribā is in nasī'a.[68]

279. He asked: On what ground have you abandoned this tradition, notwithstanding its contradiction of earlier ones?

280. [Shāfi'ī] replied: Although those who related traditions contradictory to Usāma's were not as well-known experts as he, they were in the meantime no less reliable than he. However, 'Uthmān b. 'Affān and 'Ubāda b. al-Ṣāmit were earlier Companions and more intimately connected [with the Prophet] than Usāma. As to Abū Hurayra, he was regarded as one of the senior Companions and the most reliable transmitter of tradition in his time. S 280

Since a tradition literally related by two authorities is likely to be more accurate and reliable than one related by one only, a tradition related by older and a greater number of authorities (e. g., five) should be the more acceptable than a tradition related by one only. S 281

Traditions Regarded as Contradictory [by Others], But Not by Us

[A. First] Category

281. [Shāfi'ī said]: [Sufyān] b. 'Uyayna told us from Muḥammad b. al-'Ajlān from 'Āṣim b. 'Umar b. Qatāda from Maḥmūd b. Labīd from Rāfi' b. Khadīj that the Apostle said:

> Start your dawn-prayer at day-break,[69] and [its performance] at that time is the most rewarding to you.[70] S 282

[68] See paragraph 147, n. 23, above; Shāfi'ī, *al-Musnad*, ed. Muḥammad 'Ābid al-Sindī (Cairo, 1369/1950), Vol. II, p. 159; and *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 241).

[69] Būlāq ed., p. 40.

[70] Tirmidhī, Vol. I, pp. 289-91; Dārimī, Vol. I, p. 277.

Sufyān b. 'Uyayna told us from al-Zuhrī from 'Urwa from 'Ā'isha, who said:

> They, the believing women, were in the habit of performing the dawn-prayer with the Prophet; then they went their way in the half-light, wrapped up in their robes and unrecognized by anyone.[71]

The Prophet's rising in the dawn was likewise related by Sahl b. Sa'd and Zayd b. Thābit and other Companions in traditions identical in meaning to 'Ā'isha's.

282. Shāfi'ī said: Someone has said to me: We hold that we should perform the dawn-prayer at daybreak, in accordance with the tradition of Rāfi' b. Khadīj—which we regard as meritorious—while you maintain that it is permissible to choose one of the two contradictory traditions [on this matter]. Your [discretion] in our opinion, is contradictory to 'Ā'isha's tradition. S 283

283. [Shāfi'ī] replied: If there is a tradition contradictory to 'Ā'isha's, it would be obligatory on both of us to accept her tradition rather than another, for her tradition should be the standard according to which you and I make our choice. So whenever traditions are found to be contradictory, we should choose the one for which there is valid reason which makes us believe that it is more reliable than others.[72]

284. He asked: What would that reason be?

285. [Shāfi'ī] replied: It is that one of the two traditions should be more consistent with [the meaning of] the Book of God, for consistency with the Book of God is an evidence [of reliability].

286. He said: So we hold, too. B 40

287. [Shāfi'ī] said: If there is no relevant text in the Book of God, we shall choose the more reliable of the two [traditions], the one related by an authority better known as an expert in transmission and who has a greater reputation for S 284

[71] Mālik, Vol. I, p. 5; Bukhārī, Vol. I, p. 223; Muslim, Vol. V, pp. 143-44; Abū Dāwūd, Vol. I, p. 115; Tirmidhī, Vol. I, pp. 287-88.

[72] See Shāfi'ī's *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 208, 219, 222, 234, etc.).

knowledge, or better memory; otherwise we choose the tradition related by two or more authorities in preference to one related by one authority, or the one which is more consistent with the general meaning of the Book or with the other sunnas of the Apostle, or more acceptable to the scholars, or validated by analogy, and [finally] the one followed by the majority of the Apostle's Companions.

288. He said: So we hold, as do all other scholars.

289. [Shāfi'ī] said: 'Ā'isha's tradition is more consistent with the Book of God [than others], for God says: "Be you watchful over the prayers, and the middle prayer is included" [Q. II, 239]. So he who performs the prayer at the early time is the one who performs it more in keeping [with the duty of prayer]. S 285

Furthermore, the authorities who related 'Ā'isha's traditions are all reputed to possess reliability and better memory. For in addition to 'Ā'isha there are three authorities who related a similar tradition; they are: Zayd b. Thābit and Ibn Sa'd.[73] It is likewise more consistent with the Prophet's sunnas than Rāfi' b. Khadīj's tradition.

290. He asked: What sunnas?

291. [Shāfi'ī] replied: The Apostle of God said: "To pray at the early time means that one receives God's satisfaction; to pray late [i. e., later than the proper time] means that one must ask His pardon."[74] S 286

He [the Prophet] does not prefer anything to God's satisfaction. As to pardon, it may either imply pardon for negligence or for allowable [action]. Permission means that favor will be given for the fulfilment of its opposite [i. e., prayer at the early time], because there is no order to abandon the opposite [action] which is permissible in the former.[75]

[73] The third authority was perhaps left out by an error, for Shāfi'ī gives the name as Anas b. Mālik in his book, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 207).

[74] See Shāfi'ī, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 209). Doubt has been raised on the authenticity of this tradition. See Shākir's commentary on Tirmidhī, Vol. I, pp. 321-22.

[75] See Calverley, *Worship in Islam*, p. 6 f.

292. He asked: What do you mean by that? S 287

293. [Shāfi'ī] replied: Since we are not permitted to abandon the performance of prayer at the scheduled time, only to delay the time of its performance, it is therefore meritorious to fulfil the duty at the scheduled time, although delay would be regarded as negligence that can be exercised. For the Apostle has made that clear in an answer to a question which he was asked: "What is the most meritorious act?" "Prayer at the scheduled time," he replied.[76] He [the Prophet] certainly will not abandon meritorious acts, nor will he order men to do otherwise. No scholar is ignorant that the performance of prayer at the scheduled time is most meritorious, but men are apt to be busy, forgetful, and [may suffer from] illnesses. That is the meaning which is more consistent with S 288
the Book of God.

294. He asked: In what part of the Book?

295. [Shāfi'ī] replied: God said: "Be you watchful over the prayers, and the middle prayer is included" [Q. II, 239]. So he who performs the prayer at the scheduled time is more in keeping [with his duty] than are those who delay its performance. We have noted that men prefer to perform their obligatory and voluntary prayers as nearly on time as they can, for they are liable to be busy or forgetful or suffer from other illnesses [which may cause postponement]—these are matters which are understandable. [Furthermore], the tradition related by Abū Bakr, 'Umar, 'Uthmān, 'Alī b. Abī Ṭālib, Ibn Mas'ūd, Abū Mūsa al-Ash'arī, Anas b. Mālik and others concerning the prompt performance of the dawn-prayer at the scheduled time is a reliable tradition.

296. He asked: Was it by the prolongation of the recital that Abū Bakr, 'Umar and 'Uthmān began their prayer in the half-light and completed it at day-break. S 289

297. [Shāfi'ī] replied: They prolonged the recital [at one time] and shortened it [at another]; but the performance at the scheduled time is determined by when it begins, not by

[76] Bukhārī, Vol. I, p. 143; Muslim, Vol. V, pp. 147-50; Dārimī, Vol. I, p. 278. Cf. Shākir's commentary on Tirmidhī, Vol. I, pp. 325-26.

when it is completed. For they all began at half-light, and the Prophet completed [his prayer] at half-light [while the others completed theirs at day-break]. Thus you have disagreed with a reliable tradition from the Apostle which it was binding on you to accept; and you have disagreed with others by maintaining that one may begin the performance of his prayer at daybreak and complete it at daybreak, and that he can shorten the recital. So you have disagreed [with all the traditions] on the time of the beginning of the prayer and on the shortening of the recital as well as with the tradition that [the Prophet] completed his prayer at half-light.

298. He asked: Would you regard Rāfi'ʿ's tradition as contradictory to 'Ā'isha's?

299. [Shāfi'ī] replied: No!

300. He asked: In what respect do they agree?

301. [Shāfi'ī] replied: Since the Apostle urged men to perform their prayer at the scheduled time and pointed out that [such performance] was meritorious, his [attitude] implied that he was in favor of performing the prayer at the end of daybreak. So he said: "Pray at day break," by which he meant S 290
just at the time the dawn begins.

302. He asked: Is there any other possible meaning?

303. [Shāfi'ī] replied: Yes. It may mean either what you have held, or an intermediary position between your opinion and mine, or any other meaning that may be implied by [the term] daybreak.

304. He asked: What makes your opinion préferable to mine?

305. [Shāfi'ī] replied: That which I have already explained as well as the Prophet's saying:

> There are two dawns: The first is like the tail of the sirḥān [false dawn][77] in which [the performance of prayer] is neither prohibited nor permitted; [the other] is daybreak, at which the performance of prayer is permitted, but taking the meal is forbidden.

[77] Lane, *Lexicon*, p. 1345.

That is to say, [taking the meal] by him who intends to fast [for the coming day].[78] S 291

[B. Second] Category

306. [Shāfi'ī said]: Sufyān [b. 'Uyayna] told us from al-Zuhrī from 'Aṭā' b. Yazīd from Abū Ayyūb al-Anṣārī that the Prophet said:

Let him who eases nature or makes water not face the qibla or turn his back to it; but turn either eastward or westward.[79] B 41

And Abū Ayyūb said:

When we entered Syria we found water-closets already built facing the qibla;[80] we therefore turned to the other direction and asked God's forgiveness.[81]

Mālik [b. Anas] told us from Yaḥya b. Sa'īd from Muḥammad b. Yaḥya b. Ḥabbān from his uncle Wāsi' b. Ḥabbān from 'Abd-Allāh b. 'Umar, who said:

Some people have said: Whenever you ease nature, you should face neither the qibla [toward Makka] nor Jerusalem. However, 'Abd-Allāh [b. 'Umar] said: When I was on the roof of our house I saw [at a distance] the Apostle easing nature, sitting on two clay bricks in the direction of Jerusalem.[82] S 292

307. Shāfi'ī said: The Apostle of God, living among Arabs who, most if not all, possessed no water-closets even when they lived in houses, instructed them [on how to ease nature] in a manner which might have one of two meanings:

[78] This tradition is not cited in any of the six standard digests, but in Bayhaqī, *al-Sunan al-Kubra* (Hyderabad, 1344-55/1925-36), Vol. IV, p. 215; and Jalāl al-Dīn al-Suyūṭī, *al-Dur al-Manthūr* (Cairo, 1314/1897), Vol. I, p. 200.

[79] Bukhārī, Vol. I, p. 50; Muslim, Vol. III, p. 153; Abū Dāwūd, Vol. I, p. 3; Tirmidhī, Vol. I, pp. 13-14.

[80] Būlāq ed., p. 42. Cf. Mālik's wording in *al-Muwaṭṭa'*, Vol. I, p. 193.

[81] See note 82; and Shākir's commentary on Tirmidhī, *Sunan*, Vol. I, pp. 13-14.

[82] Mālik, Vol. I, pp. 193-94; Bukhārī, Vol. I, p. 50; Muslim, Vol. III, pp. 152-53; Shāfi'ī, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 269-70).

First, since [the Arabs] were in the habit of going out into the desert to ease nature, [the Prophet] ordered them neither to face the qibla nor to turn their backs to it, since it was easy to avoid facing the qibla and turning their backs to it in the open desert. Since it so often happened that those who went out to ease nature in the desert were seen uncovered by men performing prayer, they were ordered to respect the qibla of God by avoiding exposure of the uncovered portion of their bodies to men performing prayer. This is the meaning more consistent with [the Prophet's] instructions. But God knows best!

Second, it is possible that [the Prophet] prohibited men from going out to ease nature in the open desert in places which were likely to be in the direction of the qibla in order to protect it from filth which might hurt those who perform prayer on it.

308. [Shāfi'ī] said: It is possible that Abū Ayyūb heard the tradition related from the Prophet in a general manner, so he applied it both to the desert and the houses, making no distinction between facing the qibla in the open desert and in water-closets within houses in which those who ease nature would be hidden. He [Abū Ayyūb] seems to have related the tradition in a general manner as he had heard it. It is indeed the duty of all who may relate traditions in a general manner to do so as they heard them until they find [qualifying] evidence specifying them.

309. Shāfi'ī said: Because Ibn 'Umar related that he had seen the Prophet easing nature while facing [the qibla of] Jerusalem, one of the two qiblas—facing the latter qibla means that he should turn his back to the Ka'ba—, he objected to those who held that one should neither face the qibla nor turn his back on it while easing nature. He asserted that nobody should prohibit an act which the Apostle himself had permitted.

He [Ibn 'Umar] did not seem to have heard the Apostle's order concerning [easing nature in] the open desert in order to draw a distinction between that act in the desert and in

houses, so that he would relate the order of prohibition applicable to the desert and the order of permission applicable to the houses. For [if he did] he would have cited the specification concerning the houses as he heard it and would have distinguished between the two in the way the Apostle did, owing to the differences in the conditions between houses and the open desert.[83]

This is an evidence that whoever heard an order from the Apostle should obey it, even though [in obeying the order] the difference between one specifying order and another was unknown to him until such [an order] from the Apostle became known to him. S 296

There are several other parallel traditions, but we have cited sufficient examples from among others we did not cite.

[C. Third] Category

310. [Sufyān] b. 'Uyayna told us from al-Zuhrī from 'Ubayd-Allāh b. 'Abd-Allāh b. 'Utba from Ibn 'Abbās, who said:

> Al-Ṣa'b b. Jaththāma told me that he had heard the prophet asked about the sudden attack at night on unbelievers in an enemy territory [whether] their [women and children] are included? 'They are included,' the Apostle replied.

'Amr b. Dīnār, on the authority of al-Zuhrī, added: They [the children] fall in [the same category as] their parents.[84] S 297

[Sufyān] b. 'Uyayna told us from al-Zuhrī from Ibn Ka'b b. Mālik from his uncle, who said:

> When the Prophet dispatched men to [kill] Ibn Abī al-Ḥuqayq, he prohibited them from killing women and children.[85]

[83] Shāfi'ī's contention that Ibn 'Umar was unacquainted with such a tradition seems to be contradicted by a tradition cited by Abū Dāwūd to the effect that Ibn 'Umar was once seen urinating in the desert, sheltered by his camel, in the direction of the qibla. He was asked whether the Prophet had not prohibited this. Ibn 'Umar said yes, but not if there was a barrier between him and the qibla. See Abū Dāwūd, Vol. I, pp. 3-4.

[84] Bukhārī, Vol. II, pp. 250-51; Muslim, Vol. XII, pp. 48-49; Abū Dāwūd, Vol. III, p. 54; Ibn Ḥanbal, Vol. VI, pp. 332, 334; Shawkānī, *Nayl al-Awṭār*, Vol. VII, p. 259.

[85] For an account of this incident, see Ibn Hishām, Vol. II, pp. 714-16;

311. [Shāfi'ī] said: Sufyān held that the Prophet's saying: "They [women and children] are included," meant that their killing was permissible, but that [such a permission] was abrogated by his order relating to Ibn Abī al-Ḥuqayq; and [Sufyān] added that whenever al-Zuhrī related the tradition of al-Ṣa'b b. Jaththāma, he added to it the tradition of Ibn Ka'b [prohibiting the killing of women and children]. S 298

312. Shāfi'ī said: The tradition of al-Ṣa'b b. Jaththāma dates from the time of the Prophet's 'umra [or lesser pilgrimage].[86] So if it were related from the time of the first 'umra, his order [of killing] Ibn Abī al-Ḥuqayq was either given before this 'umra, according to one opinion, or in the same year, to another; but if the tradition were related at the second 'umra, its date must be after the Prophet had given the order to [kill] Ibn Abī al-Ḥuqayq. But God knows best! B 42

But we know of no order ever given [by the Prophet] permitting the killing of women and children which he later repealed. The reason for [the Prophet's] order prohibiting the killing of women and children, in our opinion, was to specify their exclusion from the order of killing whenever they could be distinguished from others [not because the killing of women and children was then permitted]. As to [the Prophet's] saying: "They [women and children] are included," the order means that [women and children] were subject to two rules: First, that they were immune neither by the faith [of Islam] which prohibits the shedding of blood of believers only, nor, [secondly,] by the rule governing only the territory [of Islam] which prohibits sudden attack on that territory. S 299

Since the Prophet permitted sudden attack by night on enemy territory, on the strength of his order to attack the

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Guillaume's translation, pp. 482-83. See also Abū Dāwūd, Vol. III, p. 54 (the latter part of the tradition).

[86] The Prophet twice performed the 'umra (lesser pilgrimage): the first was in the year 7 of the hijra (A.D. 629), before the capture of Makka, and the second in the year 8 of the hijra (A.D. 630), shortly after the capture of Makka. See Ibn Hishām, Vol. II, pp. 788-89, 886-87; Guillaume's translation, pp. 530-31.

Banū al-Muṣṭaliq, [legal] knowledge prescribes that sudden attack by night, with the [consequential] killing of women and children, is lawful by an order of the Prophet, and that whoever kills them shall be subject neither to punishment nor to atonement [kaffāra], nor to blood-money [diya], nor to retaliation. Thus, if sudden attack by night is permitted the protection of Islam cannot save them. But whoever kills women and children should not do so intentionally, if they are recognizable and distinguishable.[87] He [the Prophet] prohibited the killing of children, because they do not comprehend disbelief sufficiently to be able to practice it, and the women, because they do not fight. They and the children might be taken as khawls (i.e., wives, slaves and servants) who will reinforce the followers of God's religion. S 300

313. Someone said: Explain that by citing other examples?

314. [Shāfi'ī] replied: Enough has been given to the learned in distinction from others.

315. He asked: Will you give further evidence by citing a relevant text from the Book of God?

316. [Shāfi'ī] replied: [88] God said:

> It is not for a believer to kill a believer, unless it be by mistake. If anyone kills a believer by mistake, [the penalty is] the setting free of a believing slave, and blood-money is to be paid to his family, unless they forgo it as a free-will offering. If he [i.e. the victim] belongs to a people at enmity with you and is a believer, the compensation should be the setting free of a believing slave. If he belongs to a people between whom and you there is a compact, blood-money is to be paid to his family and the killer shall set free a believing slave. He who does not find the means to do that, shall fast two consecutive months—a repentance from God; verily God is All-knowing, All-wise [Q. IV. 94].[89]

So [90] God has imposed the penalty of paying the diya [blood-

[87] For further discussion on this rule, see Shāfi'ī, *Kitāb al-Umm*, Vol. IV, pp. 156-57.

[88] In the text: "Shāfi'ī replied: Yes, God said."

[89] But "if anyone kills a believer intentionally, his recompense is hell, to abide therein. God will be angry with him and will curse him, and prepare for him a mighty punishment" [Q. IV, 95].

[90] "Shāfi'ī said" is omitted.

money] and the freeing of a slave for the killing of a believer by mistake; and the payment of the diya and the freeing of a *believing slave for the killing of a member [of a people]* with whom Islam had made a compact. So in both cases killing is prohibited either by religion, or by compact, and by [residence in] the territory [of Islam]. If the believer kills another S 301
believer in a non-Muslim territory—wherein killing is not prohibited—faith prohibits him from so doing; he is therefore under [an obligation of] the kaffāra (atonement), but not the [payment of the] diya, for the shedding of the believer's blood is prohibited by the faith. Since the killing of non-Muslim children and women is neither prohibited by religion nor by residence in Muslim territory, compensation to the near of kin, retaliation, blood-money, and atonement are not obligatory.

[D. Fourth] Category [91]

317. *He asked: Give some other kinds of traditions regarded* by certain other scholars as contradictory.

318. [Shāfi'ī] replied: Mālik [b. Anas] told us from Ṣafwān b. Sulaym from 'Aṭā' b. Yasār from Sa'īd al-Khudrī, that the Apostle said:

> The Friday [complete] washing is obligatory on every adult [believer].[92]

[Sufyān] b. 'Uyayna told us from al-Zuhrī from Sālim from S 302
his father, that the Prophet said:

> Let no one go to the Friday [prayer] before he performs the [complete] washing.[93]

319. *Shāfi'ī said:* The Apostle's saying concerning "the

[91] This heading is neither in the MS nor in the Būlāq edition. Shākir introduces it as the "Friday washing," but since it is another category of contradictory traditions no special title is deemed necessary.

[92] Mālik, Vol. I, p. 102; Bukhārī, Vol. I, p. 220; Muslim, Vol. VI, p. 132; Abū Dāwūd, Vol. I, p. 94; Shawkānī, *Nayl al-Awṭār*, Vol. I, p. 255; Shāfi'ī, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 178).

[93] Mālik, Vol. I, pp. 102-103; Muslim, Vol. I, p. VI, 130; Abū Dāwūd,

Friday washing, etc.," and his order for its performance has two possible meanings: [First,] the literal, is that cleanliness for the Friday prayer cannot be fulfilled except by [complete] washing just as freedom from pollution cannot be attained without [complete] washing. [The second,] it is obligatory by discretion [i. e., commendable], for ethical or health reasons. [For] Mālik [b. Anas] told us from al-Zuhrī from Sālim [b. 'Abd-Allāh b. 'Umar], who said:

> A Companion of the Prophet entered the mosque on a Friday while the [Caliph] 'Umar was reciting the sermon. 'What is the time?' 'Umar asked. 'O Commander of the believers! I was at the market-place when I heard the call to prayer, so I performed the ablution at once [and hastened to this place,]' replied the Companion. '[Have you performed] the ablution too? I understand that the Apostle ordered only [complete] washing,' said 'Umar.[94] S 303

I have been told, [says Shāfi'ī], by the trusted authority [Yaḥya b. Ḥassā] from Ma'mar [b. Rashīd] from al-Zuhrī from Sālim from his father a similar tradition, giving the name of the Companion who entered the mosque without washing as 'Uthmān b. 'Affān.

320. [Shāfi'ī] said: Since 'Umar knew well that the Apostle had ordered [complete] washing [on Fridays], and knew that 'Uthmān was well aware of the Apostle's order and reminded him of it, and 'Uthmān admitted that he knew it, therefore if anyone thought that 'Uthmān might have forgotten, he should remember that 'Umar would have reminded him before he performed the prayer; and since 'Uthmān neither desisted from performing the prayer until he had washed nor was ordered by 'Umar to wash, this indicates that both must S 304 have been certain that the Apostle's order for the [Friday] washing was optional—not obligatory—, since neither 'Umar nor 'Uthmān would have neglected the order of washing unless, as I have already explained, it was regarded as optional.

Vol. I, p. 94; Tirmidhī, Vol. II, pp. 366-67; Shawkānī, *Nayl al-Awṭār*, Vol. I, p. 252.

[94] Mālik, Vol. I, pp. 101-102; Muslim, Vol. VI, p. 131; Shawkānī, *Nayl al-Awṭār*, Vol. I, p. 256.

321. [Shāfi'ī] said: [the scholar] of Baṣra has related that the Prophet said: He who fulfils the [duty of] ablution on Friday, [its fulfilment would be] satisfactory and virtuous; but he who performs the [complete] washing, washing would be preferable.[95] B 43

Sufyān [b. 'Uyayna] told us from Yaḥya [b. Sa'īd] from 'Amra [daughter of 'Abd al-Raḥmān] from 'Ā'isha, who said: S 305

> Men who were engaged in [daily] work and were in the habit of performing the [Friday] prayer [without washing] were told that it would be more appropriate if they first performed the [complete] washing.[96] S 306

[*A General*] *Order of Prohibition in One Tradition Made Particular in Another*

322. Shāfi'ī said:[97] Mālik [b. Anas] told us from Abū al-Zinnād and Muḥammad b. Yaḥya b. Ḥabbān from al-A'raj from Abū Hurayra that the Apostle said:

> Let none of you seek a woman in marriage if his brother [in religion] already is seeking her.[98]

Mālik [b. Anas] told us from Nāfi' from Ibn 'Umar from the Prophet, who said:

> Let none of you seek a woman in marriage if his brother already is seeking her.[99]

323. Shāfi'ī said: Had there been no indication from the Apostle specifying the meaning of his order of prohibition

[95] Abū Dāwūd, Vol. I, p. 97; Shawkānī, *Nayl al-Awṭār*, Vol. I, p. 256.

[96] Bukhārī, Vol. I, p. 229; Tirmidhī, Vol. II, pp. 407-408; and Shawkānī, *Nayl al-Awṭār*, Vol. I, p. 257.

[97] Būlāq ed., p. 44.

[98] Mālik cites different authorities in *al-Mumaṭṭa'*, Vol. II, p. 523.

[99] Mālik, Vol. II, p. 523; Bukhārī, Vol. III, p. 431; Cf. Muslim, Vol. IX, p. 197; Abū Dāwūd, Vol. II, p. 228; Dārimī, Vol. II, p. 135; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 114.

that no one should propose marriage to a woman in competition with his brother, the literal meaning of the tradition would have been that it was unlawful for any one to propose marriage to a woman in competition with another from the S 307
time when the suit was begun to the time of its withdrawal.

324. [Shāfi'ī] said: The Prophet's saying: "Let none of you propose, etc. . . . ," may have been an answer to a specific question, but the one who related the tradition did not know the reason for which the Apostle had given the answer. So either a certain portion, not all, of the tradition was related, or the portion which was subject to doubt was [consciously] not related. Thus it is possible that the Prophet was asked a question about a man who sought to marry a certain woman, and she agreed to marry him, but when another, whom she preferred to the first, sought to marry her, she rejected the first in favor of the second. So [the Prophet] prohibited the proposal to this woman. For if the woman rejected [the second man] after she had accepted him, the first to whom S 308
she wanted to return might not agree to marry her. The consequences would be disadvantageous to both, [for it would be more difficult for them to find a partner to marry].

325. Someone may ask: Why do you maintain that the Prophet's order prohibiting one man to propose marriage in competition with another specified the meaning [in a certain situation], to the exclusion of others?

326. [Shāfi'ī replied]: Because there is a specific indication [in the tradition] to this effect.

327. He asked: Where is it?

328. [Shāfi'ī] replied: Mālik [b. Anas] told us from 'Abd-Allāh b. Yazīd—freed-slave of al-Aswad b. Sufyān—from Abū Salma b. 'Abd al-Raḥmān from Fāṭima, daughter of Qays, who said: Her husband had divorced her and the Apostle ordered her to fulfil the 'idda [waiting period] in the house of Ibn Umm Maktūm before she could lawfully remarry, and told her to let him know when she had become lawful [for re- S 309
marriage]. When the time had come, she told him that Mu'āwiya b. Abī Sufyān and Abū Jahm had proposed to her.

"Abū Jahm," said the Apostle, "is a man whose stick is never laid down from his shoulder, and Mu'āwiya is a begger who owns no property. Get married to Usāma b. Zayd." "But I do not like him," she answered. "Get married to Usāma," he repeated. "So I married him and God has blessed him abundantly and I am happy with him," said she.[100]

329. Shāfi'ī said: We are in favor of this opinion. For the evidence in the Apostle's proposition on behalf of Usāma to Fāṭima—after she had told him that Mu'āwiya and Abū Jahm had proposed to her—specified two points:

First, the Prophet knew well that the proposals of the two men [Abū Jahm and Mu'āwiya] had not been made [at the same time, but] one after the other. Since he did not tell her that one of them had no right to propose until the other had withdrawn, and since he [himself] proposed to her on behalf of Usāma—after she had been proposed to—we concluded that she must have rejected the earlier proposals, for [the Prophet] would have ordered her to marry the one she had accepted. So her intimation [to the Prophet] that two [men] had proposed to her was merely to inform him that she already had rejected them. She may have told him because she wanted his advice, for if she had accepted either one, she would not have sought his advice.

[Second], since the Prophet proposed to her on Usāma's behalf, we concluded that the circumstances in which he proposed to her were different from those which he regarded as unlawful. Nor does the circumstance [in which the Prophet proposed to her] distinguishing this proposal from the other—rendering the one lawful and the other unlawful—make the marriage valid unless she empowered her guardian [the Prophet] to arrange her marriage on her behalf. If the guardian [formally] arranges the marriage, [the contract] becomes [equally] binding on both, and she becomes lawful [only] to him. Otherwise, neither does the guardian have the right to arrange the

[100] Mālik, Vol. II, pp. 580-81; Muslim, Vol. X, pp. 94-98; Dārimī, Vol. II, pp. 135-36; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 116.

marriage without her permission, nor does her approval or disapproval [of the proposition] make any difference.

330. Someone may ask: [Do you not think that] the circumstances of her approval are different from those of her disapproval?

331. [Shāfi'ī replied]: [Yes, they are] for if a man proposes to a woman and she rejects him with an affront, and she neither rejects him with an affront nor approves when he proposes again, her attitude is different and may be regarded as nearer to acceptance. Thus the circumstances in which she rejected him with an affront were different from those in which she did not reject him with an affront, for in the latter case her attitude was nearer to acceptance. Thus her attitude changed from non-commital to another nearer to approval than to non-approval.

No meaning other than the one which I have [just] described is valid: [The Prophet] has prohibited a proposal of marriage to a woman who had already been committed by her guardian, with her approval, to another; and that unless the guardian's commitment had been made, her previous position had not changed. But God knows best.[101] S 312 B 44

Orders of Prohibition [in Some Traditions] More Clearly Stated Than in Previous [Traditions]

332. [Shāfi'ī said]: Mālik [b. Anas] told us from Nāfi' from Ibn 'Umar that the Apostle said:

> The two parties to a sale [contract] have the right of option [to cancel the contract] so long as they have not separated, except S 313

[101] Shāfi'ī's controversy over this question was with Mālikī followers, since Mālik maintained that the Prophet's order of prohibition was confined only to the woman who had given prior approval to a person, specified the dowry and agreed to marry him. See Mālik, Vol. II, pp. 523-24. For a fuller discussion of Shāfi'ī's reply, see *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 296-301).

the sale of option (bay' al-Khiyār) [i. e., that the right of option would be as stipulated in the contract].[102]

Sufyān [b. 'Uyayna] told us from al-Zuhrī from Sa'īd b. al-Musayyib from Abū Hurayra that the Apostle said:

> Let no one sell to someone else what he already has agreed to sell to another.[103]

The meaning implied in this [communication] indicates that the Apostle decreed that "the two parties to a sale have the right of option so long as they have not parted," and his order of prohibition concerning sale by one person in contravention of his agreement to sell to another means that [such an order is applicable] only so long as the two [parties] have not departed from the place of the transaction. For the two cannot be regarded as two parties to the sale until they have made the contract. Once the contract is made, it becomes binding on the parties, and no disadvantage befalls the vendor if another man enters into another sale transaction with the purchaser whether relating to the same property or to different property after the property is sold. But so long as the two parties have the right of option and another vendor may offer, let us say, a suit of cloth for nine dīnārs while the other had asked ten, the purchaser is bound to cancel the sale trans- § 314
action since he has the right of option before they separate. He may even cancel the first sale transaction and make no other one. So the other [vendor's] action could be disadvantageous to either the first vendor and the purchaser, or to either one of them. This is the explanation for the [Prophet's] order of prohibition that no man should enter into a sale transaction in contravention of his agreement to sell to another, and I know of no other. For do you not agree that if a man purchases a suit of cloth for ten dīnār: and the sale contract is binding on the two parties before they separate, no damage accrues to the first vendor if a second vendor offers to sell the

[102] Mālik, Vol. II, p. 671; Bukhārī, Vol. II, pp. 18-19; Muslim, Vol. X, p. 173. See also Shāfi'ī, *Kitāb al-Umm*, Vol. III, p. 3.
[103] Cf. Shawkānī, *Nayl al-Awṭār*, Vol. V, pp. 195-96.

prospective purchaser one dīnār cheaper, because the sale contract for ten dīnārs had become binding and could not be cancelled.

333. [Shāfi'ī] said: It has been related from the Prophet that he said:

> Let none of you bargain in competition with his brother [i. e., another Muslim].

If this tradition were reliable, although I do not consider it to be so, it would be parallel to the one which runs as follows:

> Let none of you propose marriage to a woman in competition with his brother.

"No one should bargain in competition with his brother" means that [no sale to another is permitted] if he [the vendor] has indicated an intent to sell before the sale takes place, so that if the contract is made it becomes binding. S 315

334. If someone should ask: What is the evidence for that?

335. He would be told: The Apostle sold [a piece of property to a person] who paid a higher price. The sale of a property to one who paid a higher price is a bargain against another's bargain; but the vendor [in this case] did not accept the offer of the first person and demanded a higher price.[104]

[*Orders of*] *Prohibition Consistent with Previous Orders in Certain Matters and Inconsistent with Others*

[A. First Category]

336. [Shāfi'ī said]: Mālik [b. Anas] told us from Muḥammad b. Yaḥya b. Ḥabbān from al-'Araj from Abū Hurayra, who said:

[104] Shāfi'ī disagreed with Mālik on the khiyār al-majlis, following more consistently the spirit of the Prophet's tradition, while Mālik, under the influence of local practice, rejected a tradition in favor of a sound legal rule. See Mālik, Vol. II, pp. 671-72; Shāfi'ī, *Kitāb al-Umm*, Vol. VII, pp. 204-205.

The Apostle of God has prohibited the performance of prayer after the 'asr till the sun has set, and after the break of dawn till it has risen.[105]

Mālik [b. Anas] told us from Nāfi', from Ibn 'Umar that the Prophet said: S 316

Let no one intend to perform his prayer at the time of the sunrising nor at the sun-setting.[106]

Mālik [b. Anas] told us from Zayd b. Aslam from 'Aṭā b. Yasār from 'Abd-Allāh al-Ṣunābiḥī that the Apostle of God said:

When the sun first rises, Satan's horns are associated with it; when it is up, they are separated; when it is at the meridian they join it; when it begins to descend, they are separated; when it approaches its setting, they join it again; and when it disappears, they are separated. The Apostle of God has forbidden the performances of prayer during these hours [when Satan's horns are associated with the sun].[107] S 317

The Apostle's order of prohibition during these times may have two meanings:

The first, which is the more general, is that all kinds of prayers are incumbent on him who forgets or oversleeps, and those of that for any reason are incumbent on one are prohibited during these times, and no one is permitted to perform them. Should any one perform one of them, the duty would not be fulfilled, just as it would not be if he performed the prayer before its proper time. S 318-32

The second, [the Prophet] may have intended to specify a certain [kind] of prayer, not others.

Prayers may be divided into two kinds: The one is obligatory which no Muslim is permitted to omit at its proper time,

[105] Mālik, Vol. I, p. 221; Bukhārī, Vol. I, p. 154; Muslim, Vol. VI, p. 110; Shawkānī, *Nayl al-Awṭār*, Vol. III, p .93.

[106] Mālik, Vol. I, p. 220; Bukhārī, Vol. I, pp. 154-55; Muslim, Vol. VI, pp. 110-12.

[107] Mālik, Vol. I, p. 219; Ibn Ḥanbal, Vol. VIII, p. 8; Shāfi'ī, *Musnad*, Vol. I, p. 55; cf. Tirmidhī, Vol. I, pp. 301-302.

for if he ever does, he must make up for it. The other, the performance of which may draw [us] nearer to God, is supererogatory. He who omits a supererogatory prayer is under no obligation to make up for it.

We have found that obligatory [prayers] are to be distinguished from the optional if one is travelling as a rider. B 45
The obligatory prayers can be performed on the ground, and no other way fulfils the duty, but the supererogatory ones may be performed while riding in whatever direction one desires. The two [kinds] may be distinguished [on the basis of] their performance whether in town or [in the country] while on travel. He who can perform the obligatory prayers standing, S 321
should not do so sitting, but he is permitted to perform the supererogatory ones sitting.

Since the two meanings [are permissible] it is obligatory on the learned not to become attached to any particular—in distinction from general—meaning unless there is a specifying indication in the sunna or an agreement among the scholars who do not agree on any matter contrary to the sunna.

337. [Shāfiʿī] said: Similarly, other traditions from the Apostle should be accepted as explicitly general unless an indication specifies otherwise, as I have explained, or unless there is an agreement of the Muslim [scholars] specifying that their meaning is implicit, not explicit [literal], and that it is particular, not general; and men should obey them in either case as such. [For] Mālik [b. Anas] told us from Zayd b. Aslam from ʿAṭāʾ b. Yasār from Busr b. Saʿīd and al-Aʿraj from Abū Hurayra that the Apostle said: S 322

> Whoever performed one cycle of the morning prayer before sunrise would be regarded as having performed the morning prayer, and whoever performed one cycle of the ʿaṣr prayer before sunset, would be regarded as having performed the ʿaṣr prayer.[108]

338. Shāfiʿī said: Thus [legal] knowledge indicates that he who performs one cycle of the morning prayer before sun-rise

[108] Mālik, Vol. I, p. 6; Bukhārī, Vol. I, p. 154; Muslim, Vol. V, p. 104; Abū Dāwūd, Vol. I, p. 112; Shawkānī, *Nayl al-Awṭār*, Vol. II, pp. 22-23; Shāfiʿī, *Musnad*, Vol. I, p. 63.

and he who performs one cycle of the 'aṣr prayer before sun-set, would be regarded as having performed his prayers at forbidden times, because both would be regarded as having been performed after the morning and 'aṣr prayers, coinciding with sun-rise and the sun-set, and these are times at which the performance of prayers is prohibited.

Since the Apostle considered those who perform their prayers at these times as having performed the morning and 'aṣr prayers, we concluded that his order of prohibition against performing prayer at these times governs supererogatory prayers [only], which are not obligatory, for he would not permit the performance of a prescribed prayer at a time forbidden for such prayers.

Mālik [b. Anas] told us from Ibn Shihāb from Ibn al-Musayyib that the Apostle said:

> Whoever forgot to perform a certain prayer should make up for it whenever he remembered it, for God said: 'And perform the prayer for my remembrance' [Q. XX, 14].[109]

Mālik [b. Anas] and 'Imrān b. al-Ḥuṣayn related a tradition from the Prophet similar to that of Ibn al-Musayyib, but one of them added: " [Whoever forgot . . .] or was asleep . . ."[110]

Shāfi'ī said: In his saying that ". . . he should make up for it whenever he remembered it," the Apostle, on God's behalf, appointed no specific time for it, but stated that it should be performed as soon as it was remembered.

[Sufyān] b. 'Uyayna told us from Abū al-Zubayr [al-Makkī][111] from 'Abd-Allāh b. Bābāh from Jubayr b. Muṭ'im that the Prophet said :

> Men of 'Abd-Manāf! Whoever of you may be in authority, shall never prevent anyone from performing the circumambulation of

[109] Mālik, Vol. I, p. 14; Muslim, Vol. V, pp. 181-83; Abū Dāwūd, Vol. I, p. 119. See also Shāfi'ī, *Kitāb al-Umm*, Vol. I, pp. 130-31; *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 126); *Musnad*, Vol. I, p. 55.

[110] Muslim, Vol. V, p. 193; Shawkānī, *Nayl al-Awṭār*, Vol. II, p. 26; Shāfi'ī, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 127).

[111] Bū'ūb ed., p. 46.

this House [of the Ka'ba] or the prayer at any time, whether in daytime or at night.[112]

'Abd al-Majīd [b. 'Abd al-'Azīz] told us from Ibn Jurayj from 'Aṭā' [b. Yasār] from the Prophet, a similar tradition, S 325
adding at the beginning: "Men of 'Abd al-Muṭṭalib, etc. . . .[113]

339. [Shāfi'ī] said: So Jubayr informed [us] that the Prophet gave an order permitting the performance of the circumambulation and prayer at any time that anyone wished to do so. This [order] clearly indicates that the [Prophet's] orders prohibiting the performance of prayers at certain times related only to optional prayers, not to obligatory prayers. For Muslims performed the funeral prayers, which were obligatory, generally after the morning and the 'aṣr prayers [irrespective of the forbidden times].

Some of our followers argued that since 'Umar b. al-Khaṭṭāb performed the circumambulation after daybreak and, finding S 326
the sun had not yet risen, went to Ṭuwa [114] and couched his camel and performed the prayer after sunrise, they prohibited the performance of the circumambulation prayer after both the 'aṣr and the morning prayers just as they prohibited optional prayers.[115]

340. [Shāfi'ī] said: If 'Umar delayed the circumambulation prayer, he delayed it because it was permissible for him to do so. For he may have been in need of a certain place at Ṭuwa to ease nature,[116] and it was permissible for him [to delay the prayer]. However, ['Umar] had heard only the general order of prohibition, and he punished al-Munkadir [b. 'Abd-Allāh] by striking him for performing a prayer after the 'aṣr in S 327
Madīna, without realizing that the order of prohibition was specified to the situation that I have just explained and so

[112] Abū Dāwūd, Vol. II, p. 108; Shawkānī, *Nayl al-Awṭār*, Vol. III, p. 101; Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 131; *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 127).

[113] See Shāfi'ī, *Kitāb al-Umm*, Vol. I, p. 131; and *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 127-28).

[114] A place on the outskirts of Makka.

[115] For 'Umar's prayer at Ṭuwa, see Mālik, Vol. I, p. 368.

[116] Būlāq ed., p. 46.

[he felt] himself under obligation [to punish al-Munkadir]. He who knows the reasons for the orders of prohibition and permission [should distinguish between the two], since the order of permission was different from that of prohibition, just as I have already explained in the [case of the tradition of] 'Alī b. Abī Ṭālib concerning the Prophet's order of prohibition against keeping the meat of sacrifice beyond three days, because 'Alī had heard the Prophet's [general] order but did not hear the reasons for that [particular] prohibition.

341. He said: Someone may ask: Did not Abū Sa'īd al-Khudrī do what 'Umar had done?

342. [Shāfi'ī] replied: The answer to this [question] is like the answer to other [questions]. 8328

343. He asked: Someone may ask: Is there any one who did contrary to what the two have done?

344. [Shāfi'ī] replied: Yes! They were: Ibn 'Umar, Ibn 'Abbās, 'Ā'isha, al-Ḥasan, al-Ḥusayn, and others. Ibn 'Umar heard the order of prohibition directly from the Prophet. [For] [Sufyān] b. 'Uyayna told us from 'Amr b. Dīnār, who said: 8346

> 'Aṭā' b. Abī Rabāḥ and I saw Ibn 'Umar perform the circumambulation after daybreak and a prayer of two rak'as before sun-rise.[117]

Sufyān [b. 'Uyayna] told us from 'Ammār al-Duhnī from Abū Shu'ba that al-Ḥasan and al-Ḥusayn performed the circumambulation after the 'aṣr and [then] prayed. 8329

Muslim [b. Khālid al-Zanjī] and 'Abd al-Majīd [b. 'Abd al-'Azīz] told us from Ibn Jurayj from Ibn Abī Mulayka, who said:

> I have seen Ibn 'Abbās perform both the circumambulation and the prayer after the 'aṣr.[118]

345. [Shāfi'ī] said: The reason for stating the Companions' disagreement on this matter is to enable him who is aware of

[117] Bayhaqī, *al-Sunan al-Kubra*, Vol. II, p. 462.
[118] *Ibid.*, p. 463.

this disagreement to understand that the meaning could not be other than what we have just said, or that the sunna was unknown by him who acted differently from it, or that he who knew the sunna may have interpreted its meaning in a certain way or may have found justification for certain other interpretation.

So if a certain tradition from the Apostle is proved to be authentic, it is obligatory on all who are aware of it to accept it, and nothing else shall be accepted instead, for God has given no one else [authority] to give an order contrary to the [Prophet's] order. S 330

[B. Second] Category:

346. Mālik [b. Anas] told us from Nāfi' from Ibn 'Umar that the Apostle prohibited "muzābana." Muzābana is the exchange of the [fresh] fruit [of palm-trees] for dry dates in equal quantities, and of grapes for raisins in equal quantities.[119]

Mālik [b. Anas] told us from 'Abd-Allāh b. Yazīd, freed-slave of al-Aswad b. Sufyān, that Zayd Abū 'Ayyāsh told him from Sa'd b. Abī Waqqāṣ that he heard the Prophet asked S 331 about the exchange of [dry] dates for fresh dates. "Do fresh dates lose weight after they dry?" inquired the Prophet. "Yes, they do," was the answer. Thereupon the Prophet ordered the prohibition [of such a sale].[120] S 332

Mālik [b. Anas] told us from Nāfi' from Ibn 'Umar from Zayd b. Thābit, who related that the Apostle permitted [the owner of] an 'arīya, [to sell a branch which contains a quantity of dates roughly estimated].[121]

[Sufyān] b. 'Uyayna told us from al-Zuhrī from Sālim from his father from Zayd b. Thābit that the Prophet permitted the sale of 'arīyas.[122] S 333

[119] Mālik, Vol. II, p. 624; Bukhārī, Vol. II, p. 32; Muslim, Vol. X, p. 193; Abū Dāwūd, Vol. III, p. 251.

[120] Mālik, Vol. II, p. 624; Abū Dāwūd, Vol. III, p. 251.

[121] Mālik, Vol. II, pp. 619-20; Bukhārī, Vol. II, p. 32; Muslim, Vol. X, pp. 183-86. For meaning of 'arīya, see Abū Dāwūd, Vol. III, p. 252.

[122] *Ibid.*; and Shāfi'ī, *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 319).

347. Shāfi'ī said: The exchange of [fresh] dates for dry dates was prohibited on the strength of the Prophet's order of prohibition, and the Prophet made it clear that he prohibited [such an exchange] because fresh dates lose weight after they dry. He [the Prophet] prohibited the exchange of dates for dates except in equal quantities, because he noted the loss of weight when fresh dates become dry, so that the exchange cannot possibly be equal in quantities since the [amount] lost cannot be known. Thus the [Prophet's] order of prohibition includes two meanings: The differential in weight, and al-muzābana; the latter means the sale of a known for an unknown [i. e., shrinking] measure of the same kind.

Since the Apostle permitted the exchange of 'arīyas for dry dates by measure, his special permission [of sale] should not be construed as permission for other kinds of sale, such as al-muzābana or the exchange of [dry] dates for fresh dates, for his order of prohibition is general excluding only [the sale of] S 334
'arīyas. This is an example of the general speech intended to mean the particular.[123]

[C. Third] Category

348. [Shāfi'ī said]: Sa'īd b. Sālim [al-Qaddāḥ] from Ibn Jurayj from 'Aṭā' [b. Abī Rabāḥ] from Ṣafwān b. Mawhab from 'Abd-Allāh b. Muḥammad b. Ṣayfī from Ḥakīm b. Ḥizām, who said: S 335

> The Apostle of God said to me: 'I have been told that you are engaged in selling foodstuffs.' 'Yes, O Apostle of God,' answered Ḥakīm. 'Let no one sell foodstuffs until it is purchased and its price is paid for,' said the Apostle.[124]

Sa'īd [b. Sālim] told us from Ibn Jurayj, who said: 'Aṭā' [b. Abī Rabāḥ] related to me a similar tradition from 'Abd-Allāh b. 'Iṣma [al-Jushamī] from Ḥakīm b. Hizām, who heard it from the Prophet.

The trustworthy authority [Yaḥya b. Ḥassān] told us from

[123] Cf. J. Schacht, *Origins of Muhammadan Jurisprudence*, pp. 153-54.
[124] Cf. Abū Dāwūd, Vol. III, pp. 281-82.

Ayyūb b. Abī Tamīma from Yūsuf b. Māhak from Ḥakīm b. Ḥizām, who said: S 336

The Apostle prohibited me from selling what I did not own.[125]

["What I did not own,"] means what one has not received and became responsible for.

[Sufyān] b. 'Uyayna told us from Ibn Abī Najīḥ from 'Abd-Allāh b. Kathīr from Abū al-Minhāl from Ibn 'Abbās, who said:

When the Apostle of God entered Madīna, he found men in the habit of paying for dates in advance for one or two years. Thereupon he stipulated: 'Whoever pays in advance [for a commodity], he shall do so for a specified measure and a definite weight, to be delivered at a fixed time.[126] S 337 S 338

349. [Shāfi'ī] said: The Prophet's order of prohibition against the vendor's sale [of a commodity] not in his own possession means either that the vendor may sell the commodity before it is seen by the buyer as it had been seen by the vendor at the time of sale, or that the vendor may sell a commodity he either did not have or had not taken possession of, so that the vendor was not responsible for it nor was it in his possession to be able to hand it over to the buyer. [Finally] the Prophet's order may have another meaning, other than the two [mentioned]. B 47 S 339

Since the Apostle stipulated that "whoever pays in advance [for a commodity] should do so for a specified measure and a definite weight, to be delivered at a fixed time," such [kind of a commodity] falls in the category of sale in which the commodity is neither in the vendor's possession nor ready for delivery at the time of sale. But since the vendor is responsible [for such a commodity] at the time of delivery, the Prophet's

[125] See Abū Dāwūd, Vol. III, p. 281.

[126] Cf. Būlāq ed., p. 47, where there is a repetition of the same stipulations. Paragraphs 917-918 in Shākir's edition are omitted for the same reason. See Bukhārī, Vol. II, p. 44; Muslim, Vol. XI, pp. 41-42; Abū Dāwūd, Vol. III, p. 275. Sale by paying in advance is called salaf or salam sale.

order indicates that he prohibited only the kind of sale in which the commodity is not in the vendor's possession. But God knows best!

The [Prophet's] order of prohibition may have been intended against the sale of a commodity not in evidence, regardless of whether it is in the vendor's possession or not, for it would be liable to destruction or shrinkage before it were seen by the buyer. S 340

350. [Shāfiʿī] said: Thus every explicitly general statement in the sunna of the Apostle should be accepted as such unless another reliable tradition from the Apostle indicates that only part of that explicitly general statement was intended to be general, as I have already explained regarding this and other similar points. It is obligatory on the scholars to accept the two kinds of traditions as complimentary—not as contradictory— S 341 in so far as they can be regarded as complimentary, for if there is a way for harmonizing them, without regarding either one more binding than the other, [they should do so]. No two traditions should ever be regarded as contradictory so long as there is a possibility of harmonizing them; a contradictory tradition is one which is incapable of being harmonized except B 48 by abandoning another, such as when two traditions relate to one [specific] act, the one permitting it and the other prohibiting it. S 342

Chapter X

[ON SINGLE-INDIVIDUAL TRADITIONS][1]

351. Someone has asked me: Will you state what the minimum proof for a narrative related by a few [transmitters] should be in order to be binding upon scholars?

352. [Shāfi'ī] replied: [The minimum proof] is that the narrative must be related by one person from another [before him] back to the Prophet, or to one next to the Prophet.[2] The S 369
proof for such a tradition is not established unless certain conditions are fulfilled:

He who relates a tradition must merit confidence in his religion, and be known as reliable in his transmitting, comprehending what he transmits, aware of any pronunciation that might change the meaning of the tradition, capable of transmitting the tradition word for word as he heard it, not merely transmitting [in his own words] its meaning; for if he trans- S 370
mits only the meaning and is unaware of what might alter its sense, he might unknowingly transmute the lawful into the unlawful and vice-versa.[3] So if he transmits word for word there remains no ground for fearing a change of the meaning. [Furthermore], he should have learned the tradition by heart,

[1] Būlāq ed., p. 51.
[2] Such a person might be one of the Prophet's companions.
[3] Būlāq ed., p. 51.

if he relates it from memory, and should have memorized the written text [of traditions] if he relates it in its written form; when he participates with others in relating a tradition from memory, that which they relate must agree. He must not be an interpolator,[4] attributing to someone whom he has not met that which he has not heard from him, or attributing to the Prophet something different from that which reliable authorities relate from him.

The same [qualifications] must be possessed by transmitters preceding him until the transmitter relates back to the Prophet S 371
or to him who carries it back closest to him, for each of them vouches for the tradition as he received it and verifies it for B 51
him to whom he passes it. So none of them should lack [the qualifications] I have just described.

353. He asked: Explain this to me by an example concerning which I am better informed, owing to my knowledge of it and my limited knowledge of what you have described in the traditions.

354. [Shāfiʿī] replied: Would you like me to cite an example for which this might be an analogy?

355. He said: Yes.

356. [Shāfiʿī] said: [Traditions] constitute a source in themselves and should not be regarded as analogous to anything else, for analogy is weaker than the original source.

357. He asked: I do not mean that you should consider it as an analogy. Will you give me an example of it from testimonies which are generally known?

358. [Shāfiʿī] replied: Testimonies may disagree in certain S 372
matters and agree in others.

359. He asked: In what [matters] could they disagree?

360. [Shāfiʿī] replied: I accept a tradition from either one

[4] Tadlīs literally means "deceit," which consist either of interpolating the name of a trustworthy authority or eliminating the name or names of discreditable transmitters from the isnād or the chain of authorities. See Ibn Ḥajar, *Marātib al-Mudallisīn* (Cairo, 1322/1904), pp. 2-4; I. Goldziher, *Étude sur la tradition Islamique*, tr. Léon Bercher (Paris, 1952), p. 58; J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 37.

man or one woman,[5] but I will accept neither one alone in testimony. I accept the traditions [in the form]: "So-and-so related to me from so-and-so" if the transmitter is not an interpolater; but I do not accept it in testimony unless [the witness] says: "I heard [so-and-so]" or "I saw [so-and-so]" or "take me as a witness."

Traditions, however, vary; I accept some of them by istidlāl (inductive reasoning) on the basis of the Book [of God], the sunna, consensus, and analogy, but istidlāl is not applicable to testimony as well. There are many people whose testimony is acceptable, but I do not accept a tradition related by them owing to the possibility that it might contain many changes in meaning and might omit certain words affecting the meaning. But [traditions] may agree with testimony on matters other than those I have already described. S 373

361. He asked: I agree with what you have said concerning your refusal to accept a tradition from anyone except a trustworthy authority who had learned it by heart and is aware of what might change the meaning of the tradition. But why do you not accept such conditions in the case of testimony?

362. [Shāfi'ī] replied: Changes in the meaning of traditions are more difficult to detect than in the case of testimony. So I am much more careful in the case of a tradition than in the case of testimony.

363. He said: I agree with you; but if the person from whom someone quotes a tradition is reliable and he [in turn] transmits from a man whose reliability you do not know, then I do not accept your refusal to put confidence in his good reputation and your insistence that he must narrate only from a reliable source even though you may not know who it is. S 374

364. [Shāfi'ī] replied: If four persons of just character, well-versed in the law, testified confirming the testimony of two witnesses in favor of the claim of one man against another, would you take a decision if the four persons did not tell you that the two witnesses were of just character?

365. He replied: No, I should by no means take any de-

[5] Būlāq ed., p. 53.

cision on the basis of their testimony until I knew their just character, either on the basis of the confirmation by the four persons of their just character, or of the confirmation of their just character by others, or on the basis of my own knowledge of their just character.

366. [Shāfiʿī] said: Why would you not accept their [testimony] for the same reason that you wanted me to accept the tradition, and say that they would not have testified in favor of anyone unless they considered him to be of just character?

367. He said: They might testify both in favor of someone whom they considered to be of just character, and in favor of someone whom they knew, although they did not know his 8375
just character. Since such a possibility might exist in their testimony, I could not accept the testimony of those who testified in his favor until [either] they declared him of just character or I was certain of his just character and the just character of those who testified before me concerning the just character of others. Nor do I accept the confirmation of the just character of a witness unless I know the just character of the person who confirms the just character of the witness.

368. [Shāfiʿī] said: The proof that you have adduced in this matter is against you, because you do not accept the narrative of a truthful [person] from someone whose truthfulness we do not know. People are more careful to testify only on behalf of the testimony of someone whose just character they know than they are in accepting a tradition only from someone whose transmission of traditions is known to be sound. This is because one man may meet another in whom he sees the mark of goodness and thinks well of him, so that he accepts the tradition from him and passes it on without knowing his character. Thus he may relate that a man called so-and-so transmitted to him such-and-such [a tradition] and hopes that he might find a trustworthy man who would know of the tradition so that he could accept it from him, or that he could relate it on the authority of a transmitter whether he approves of it or not; or he might be careless in transmitting the tradition from him. For I do not know that I have ever met any-

one who did not relate [traditions] both from a trustworthy S 376
authority who had learned them by heart and from other sources who were quite different. In such cases I have done what was incumbent upon me. Nor was my search for knowing the veracity of him who related a tradition to me more of an obligation than my quest for knowledge of the veracity of those from whom he had received the tradition. For as far as all of them are concerned I know all I need [to know] about those from whom I receive a tradition, since all of them confirmed the narrative as received from those before them and S 377
handed it on to those after them.

369. He asked: What about [the possibility of] accepting a tradition from a person whom you have never known to be an interpolator, relating it from so-and-so, although it might be possible that he had never heard it?

370. [Shāfi'ī] replied: Muslims of just character are right [when they testify] about themselves, but their status vis-à-vis themselves is different from their status vis-à-vis others. Do you not agree that if I knew them to be of just character [in matters] concerning themselves, I should accept their testimony; but that when they confirm the testimony of another witness I cannot accept that testimony until I know the just character of the other witness. For my knowledge of their just character does not constitute knowledge of the just character of him whose testimony they confirmed. We should accept the information they relate about themselves and assume that their statements are valid until their deeds indicate the opposite. We should then be on our guard in the matter with regard to which their deeds did not conform to what they B 52
ought to have done.

Tadlīs has neither been practiced in our lands by our predecessors in the past nor by our followers whom we have known until recently, for some have taken it over from people who S 378
practised it and who would have been better off if they had left them alone [to indulge] in it.

It is the same to them whether a man says: "I heard so-and-so say 'I heard so-and-so,'" or whether he says: "So-and-so

related from so-and-so"; they only narrate what they have heard from others whom they have met from those whom we know who [operate in] this fashion. We accept the form: "So-and-so related to me from so-and-so," if he is not an interpolater.[6]

He whom we have known to interpolate on one occasion has exposed to us his fault in his transmission. This fault constitutes neither falsehood, which would cause us to reject his tradition, nor a real truth. Hence we accept from him that which we accept from those who speak the real truth. So [our position is] that we do not accept a tradition from an interpolater unless he says in it: "He related to me" or "I heard." S 379

371. He said: I see that you accept the testimony [of a man] whose tradition you do not accept.

372. [Shāfiʿī] replied: This is because of the greater significance and position of traditions among the Muslims as well as for another obvious reason.

373. He asked: What is it?

374. [Shāfiʿī] replied: A word might be omitted from the tradition and thus alter its meaning; or a word might be pronounced differently from the way it was pronounced by the transmitter, thus altering the meaning of the tradition, even though he who pronounced it did not intend to do so. If he who transmits a tradition is ignorant of its meaning, he does not understand the tradition, and we do not accept it. [For] if he transmits what he does not understand, he is of those who do not transmit the tradition word for word; and he seeks to transmit the meaning of the tradition, but he does not understand the meaning at all. S 380

375. He asked: Is it possible that the tradition of a man of just character might not be acceptable?

376. [Shāfiʿī] replied: Yes, for if he were [the type of person] I have just described, this would give rise to open suspicion that would cause his tradition to be rejected. A man might be just in testifying for other men, but suspect when he testi-

[6] Būlāq ed., p. 53.

fies for himself or for some of his relatives. For it is [perhaps] easier for a man to let himself fall from a height than to give a false testimony. However, whenever he becomes subject to suspicion his testimony is rejected for that reason. For distrust of those who do not transmit a tradition word for word and who do not understand its meaning is most clearly [indicated] in the case of those who testify in favor of someone whose testimony has been rejected because of dubious [elements] that it contains.

The testimony of witnesses should be [carefully] considered; if we detect a certain bias or an excessive interest in the person on whose behalf they are testifying, we do not accept their S 381
testimony. If they testify regarding a difficult matter beyond their ability to comprehend, we do not accept their testimony, for we do not believe that they understand the meaning of that to which they have testified. We do not accept the testimony of those whose transmission betrays many errors and which has no sound written source, just as we do not accept witnesses who make many errors in their testimony.

377. Shāfi'ī said: [7] Traditionists vary: Some are well known [for their knowledge] of tradition; they make every effort in their search for it, listening to their fathers, uncles, near of kin, and friends as well as spending long hours in the company of scholars and disputants in the field. Such people stand S 382
in the forefront of [the science of] tradition.[8] If [their transmission] is contradicted by someone who is less knowledgeable, it is better to accept the tradition of the former.

With regard to the traditionists, if they are jointly [engaged in considering] a tradition handed down by a certain man, they try to find out whether it agrees with what has been memorized by one of them and whether it is supported by those who have committed [the traditions] to memory, or whether it conflicts with what he and those who have memorized the traditions have learned by heart. If the transmitted [versions] differ, we seek guidance from [the versions that

[7] Būlāq ed., p. 53.
[8] This is spurious, according to Būlāq ed., p. 54.

people] have memorized. One can then tell from the errors and other indications therein what the truth is. We have explained about memorization and errors in another section [of this work]. I ask God to protect us against error and grant us success.[9]

378. He asked: On what ground do you accept a tradition related by a single individual even though you do not accept the [unsupported] testimony of one witness? What is your argument for holding that the single-individual tradition and testimony are ambiguous in most cases but different in others? 8 383

379. [Shāfiʿī] replied: You are repeating a question that I thought I had already answered: I do not compare [the single-individual tradition] with testimony. You asked me to give a parallel example more familiar to you than traditions. I gave you such an example, but I did not mean that analogical deduction is applicable to tradition. For the proof of a single-individual tradition is too strong to need the support of a parallel example; indeed it is an original source in itself.

380. He asked: How is it that traditions are like testimony in certain respects but not in others?

381. [Shāfiʿī] replied: [Traditions] are different from testimony in some respects, as I have already pointed out to you; but if I have said that they are similar to testimony in some respects and not others, I have done so for certain obvious reasons. 8 384

382. He asked: What are they, since the purpose of all testimony is the same?

383. [Shāfiʿī] replied: Do you mean in all cases or only in certain ones?

384. He said: In all cases.

385. [Shāfiʿī] asked: What is the minimum number [of witnesses] you would require in [a case of] adultery?

386. He replied: Four.

387. [Shāfiʿī] asked: If there are only three of them, would you order [the accusers] to be scourged?

388. He replied: Yes.

[9] Būlāq ed., p. 53.

389. [Shāfi'ī] asked: How many witnesses would you require in [the case of] murder, disbelief [i. e., apostasy], and highway robbery, all of which are punishable by death?

390. He replied: Two.

391. [Shāfi'ī] asked: How many witnesses would you require in [cases of theft of] property? S 385

392. He replied: One male and two female witnesses.

393. [Shāfi'ī] asked: How many witnesses would you require in [cases relating to] vices affecting women?

394. He replied: One woman.

395. [Shāfi'ī] asked: If there were lacking [either one] of the two witnesses or one of the male and two female witnesses, would you not order the [remaining] witnesses to be scourged as you did in [the case of] adultery?

396. He replied: No.[10] B 53

397. [Shāfi'ī] asked: Do you consider that all these cases are similar?

398. He replied: Yes, I agree that the number [of witnesses] required is not the same and that only the witnesses in the case of adultery should be scourged.

399. [Shāfi'ī] asked: If I were to tell you that the same applies to the single-individual tradition, namely that I accept it as I do in testimony but that it is different with regard to the number [of witnesses], would that [not] constitute a strong argument against you? S 386

400. He replied: I have held my opinion concerning the variation in the [minimum] number of witnesses required in testimony on the strength of narrative and inductive reasoning.

401. [Shāfi'ī] said: Likewise, what I have held concerning the acceptance of the single-individual tradition is based on narrative and reasoning.

402. [Shāfi'ī] said: Do you maintain that if you did not accept the testimony of women in [a case concerning] childbirth that you would not accept it in [a case involving] property?

[10] "Yes" in the Arabic text (implying approval that the remaining witnesses should not be scourged).

403. He replied: [I should act] according to precedent [i. e., the practice followed by Muslims].

404. [Shāfi'ī] said: What would you do if someone told you that the Qur'ān does not stipulate [that there can be] less than one male and two female [witnesses]? S 387

405. He replied: Nothing is stipulated against accepting less than that [number], so we have accepted what the Muslims have permitted, which is not contrary to the Qur'ān.

406. [Shāfi'ī] said: We have held the same opinion concerning the confirmation of the single-individual tradition, based on reasons all of which are stronger than that permitting the testimony of women.

407. He asked: Is there anything other than precedent that could justify a distinction between tradition and testimony?

408. [Shāfi'ī] replied: Yes, and I know of no scholar who does not accept it. S 388-3

409. He asked: What is it?

410. [Shāfi'ī] replied: It is [the witness of] just character, whose testimony is acceptable in certain circumstances and unacceptable in others.

411. He asked: In what circumstances is his testimony unacceptable?

412. [Shāfi'ī] replied: [The circumstances are] when he testifies in cases in which his personal interests are principally involved, as when he defends himself against a certain debt, when he testifies in cases involving his son or his father or when he uses the testimony to defend them, and [finally] in any other circumstance liable to arouse suspicion. S 391

Furthermore, in a matter of testimony, [if] a witness testifies that a certain person is liable for a debt or a punishment, or if he testifies that a debt should be paid to a man or a punishment be inflicted on his behalf, he [the witness] is not responsible for any debt which is not concerned with his [the accuser's] debt, nor for the dishonor which befalls him. However, the witness might become more partial if his son or father were involved. But his testimony would be accepted [in the cases stated above], because there is no obvious sus-

picion such as there would be in the case involving himself, his son, and his father or any other situations which might give ground for suspicion.

But the one who related traditions concerning what is lawful or unlawful is not obtaining any material advantage for himself or for others nor is he defending himself or anyone else, nor is he dealing with anything that involves punishment [meted out] against anybody or on behalf of anybody. Therefore, he and the Muslims from whom he related the tradition are on equal footing, whether [the tradition] concerns lawful or unlawful acts. He is like anyone else and his status is not different in this respect; on one occasion he might be suspected and his narrative rejected; on another occasion he might be free of suspicion and his narrative accepted, just as the status of any witness may differ whether he is an ordinary 8 392
or notable Muslim.

There are circumstances in which people relate information more accurately and there are [cases] in which they are more pious than others. When people are in fear during illness or travel, or are mindful [of death] under such conditions or similar ones making them alive to [the danger of] negligence, they strive to be more careful; they concentrate their thoughts more effectively and are less forgetful. In such conditions [11] the untruthful Muslim might become truthful and his information trustworthy. His narrative might be regarded as reliable and fully trustworthy, if not because he is pious at least because he is afraid that he might cause people to distrust a tradition that he is not trying to use to defend himself or exploit to his own advantage. Subsequently, however, he might revert to prevarication or cause people to have reser- 8 393
vations about believing everything he has said.

Since there are certain circumstances in which the public and the untruthful might be truthful to the satisfaction of transmitters of traditions, it is more appropriate that pious and truthful men should in all circumstances be more careful than others; for they are in a position of [public] trust and

[11] "Shāfi'ī said" is omitted.

they are held up as examples for the faith and they are aware of the obligation imposed on them by God to be truthful in all matters and that the traditions dealing with that which is lawful and unlawful are of the highest importance and hence above all should be beyond suspicion. Moreover, a tradition from the Apostle has given them a meaning that has never been given with regard to anyone else—namely, that the fate of him who attributes a falsehood to the Apostle shall be hell-fire.

413. Shāfi'ī said: [12] 'Abd al-'Azīz [al-Darāwardī] has told us from Muḥammad b. 'Ajlān from 'Abd al-Wahhāb b. Bukht from 'Abd al-Wāhid al-Naṣrī from Wāthila b. al-Asqa' from the Prophet, who said: § 394

> The greatest of liars is he who ascribes to me that which I did not say, who claims to have dreamt what he did not dream, or claims that he is the son of someone other than his own father.[13] § 395

'Abd al-'Azīz [al-Darāwardī] related from Muḥammad b. 'Amr [b. 'Alqama] from Abī Salama [b. 'Abd al-Raḥmān] from Abū Hurayra, that the Apostle said:

> He who ascribes to me what I did not say shall surely occupy his place in the fire [of hell].[14]

Yaḥya b. Sulaym related to me from 'Ubayd-Allāh b. 'Umar from Abū Bakr b. Sālim from Ibn 'Umar, that the Prophet said:

> He who tells a lie about me will have a house built for him in the fire [of hell].[15] § 396

'Amr b. Abī Salama told us from 'Abd al-'Azīz b. Muḥammad from Asīd b. Abī Asīd from his mother, who said:

[12] Būlāq ed., p. 54.

[13] Bukhārī, Vol. II, p. 384; and Ibn Ḥanbal, Vol. VIII, pp. 85-86, and 243-44. Different authorities are cited.

[14] *Ibid.*

[15] Ibn Ḥanbal, Vol. VI, p. 333; Vol. VIII, p. 137; Vol. IX, pp. 137-38; Shāfi'ī, *Musnad*, Vol. I, p. 17.

I asked Abū Qatāda: How is it that you do not relate [traditions] from the Apostle as other men do? 'I heard the Apostle say: He who tells a lie about me is surely seeking for himself a resting place in the fire [of hell]. The Apostle began to say this while he was wiping the ground with his hand,' replied he.[16] B 54

Sufyān [b. 'Uyayna] related from Muḥammad b. 'Amr [b. 'Alqama] from Abū Salama [b. 'Abd al-Raḥmān] from Abū Hurayra, that the Apostle said:

You may relate from the children of Israel whatever you like, but whenever you relate from me you shall not relate an untruth.[17] S 397

This is the most emphatic tradition ever related from the Apostle on this matter. We have relied on this as well as on other traditions in not accepting a tradition unless it is from a trustworthy transmitter and we know the trustworthiness of those who transmitted it from first to last.

414. Someone may ask: What evidence is there in this tradition for what you have stated?

415. [Shāfi'ī] replied: [Legal] knowledge teaches [us] that in no circumstance has the Prophet ordered anyone to attribute falsehood to the children of Israel or to anyone else. While he permitted the relating of traditions from the children of Israel, the ascription of falsehood to them was not permitted; he merely permitted the acceptance of traditions from one who related from them, without its being known whether he was truthful or untruthful. S 398

Nor did he permit [the acceptance of traditions] from one whose untruthfulness was known, for it is related that [the Prophet] said:

He who relates a tradition that he considers to be false is a liar.[18]

So whoever relates a tradition from a liar is not guiltless of falsehood because he has perceived the liar lying in his tradi-

[16] Muslim, Vol. I, pp. 66-72; Dārimī, Vol. I, pp. 76-77; Shāfi'ī, *Musnad*, Vol. I, p. 17.

[17] Ibn Ḥanbal, Vol. IX, pp. 250-51; Vol. XI, pp. 127, 207; Shāfi'ī, *Musnad*, Vol. I, p. 17.

[18] Muslim, Vol. I, p. 62.

tion, and except in a few special [cases] he relies on the trustworthiness of the informant, or his lack thereof, for guidance as to the truth or the falsity of the tradition. In the latter case he can tell whether it is true or false if the transmitter relates what cannot possibly be the case, or what is contradicted by information that is better authenticated and is more indicative of the truth.[19] S 399

Since the Apostle distinguished between traditions related on his authority and traditions from the children of Israel by saying: "You may relate on my authority, but do not, etc.," [legal] knowledge instructs us [20] that the untruthfulness which [the Prophet] prohibited was hidden untruthfulness, namely, [that which might occur in a tradition] related from a person whose truthfulness is unknown. For since untruthfulness is prohibited in all circumstances, there is no untruthfulness greater than that which is related on the authority of the Prophet, God's peace and blessings be upon him.[21] S 400

Authentication of the Single-Individual Tradition

416. Someone might ask: [22] What is the proof for the authentication of the single-individual tradition, whether based on the text of a narrative, an indication in it, or on consensus?

417. [Shāfi'ī] replied: Sufyān [b. 'Uyayna] told us from 'Abd al-Malik b. 'Umayr from 'Abd al-Raḥmān b. 'Abd-Allāh b. Mas'ūd from his father, that the Prophet said:

> God will grant prosperity to His servant who hears my words, remembers them, guards them, and hands them on. Many a transmitter of law is no lawyer himself, and many may transmit law to others who are more versed in the law than they. The heart of a Muslim shall never harbor vindictive feelings against

[19] See J. Schacht, *Origins of Muhammadan Jurisprudence*, pp. 37-38.
[20] Literally: "Knowledge makes it certain to us."
[21] Abū Dāwūd, Vol. IV, pp. 203-204.
[22] The opening statement "Shāfi'ī said" is omitted.

three: sincerity in working for God; faithfulness to Muslims; and conformity to the community of believers—their call shall protect [the believers] and guard them from [the Devil's] delusion.[23] S 401

Since the Apostle has urged men to listen to his words, guard them, and hand them on, and since the man who hands them on is only one person, this indicates that the Apostle ordered that no one should transmit anything from him unless S 402 the proof were established to him to whom it was transmitted, because what is transmitted is something lawful [to be observed] or unlawful to be avoided, a punishment to be inflicted, a property to be taken or paid, and advice in matters relating to religion and wordly [life].

It also indicates that one who is not an expert in law may transmit law; he may have learned it by heart even though he is not an expert in the law.[24] The Apostle's order that men should follow the Muslim community is a proof that the ijmā' of the Muslims is binding.

Sufyān [b. 'Uyayna] told us from Sālim Abū al-Naḍr [client of 'Umar b. 'Ubayd-Allāh] from 'Ubayd-Allāh b. Abī Rāfi' from his father, who related that the Prophet said:

Do not let me find anyone of you who, reclining on his couch, when confronted with an order of permission or prohibition S 403 from me, says: We do not know [whether this is authentic or not]; we follow only what we find in the book of God.[25]

Sufyān b. 'Uyayna said: Muḥammad b. al-Munkadir related to me a similar tradition from the Prophet without the names of the transmitters.

In this case the confirmation of the narrative was from the Apostle [himself] and they were informed that it was binding on them, even though they did not find any relevant text in the Book of God. This subject is discussed elsewhere in this book.[26]

Mālik [b. Anas] told us from Zayd b. Aslam from 'Aṭā' b.

[23] Dārimī, Vol. I, pp. 74-76; Ibn Ḥanbal, Vol. VI, p. 96; Shāfi'ī, *Musnad*, Vol. I, p. 16. See also J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 54.

[24] Faqīh. [25] See paragraph 94, above. [26] See Chap. V, above.

Yasār that a man kissed his wife while fasting and became emotionally aroused. So he dispatched his wife [to the Prophet's wife] to ask her opinion about the matter. She found Umm Salama, Mother of the believers [and wife of the Prophet], and told her about the matter. "The Apostle [himself] kisses B 55
when fasting," she replied. The wife returned and told her husband, who became increasingly worried and said: "We are not like the Apostle, for God may permit him [to do] what S 404
he desires!" Thereupon the wife returned to Umm Salama and found the Apostle [with her], and he inquired: "What does this woman want?" So Umm Salama told him about the matter. "Have you not told her that I do it myself?" he remarked. "I have told her, but her husband was not satisfied and said: 'We are not like the Apostle, for God permits him [to do] what he desires,'" she answered. The Apostle became angry and said: "By God, I am more fearful of God than you and better informed regarding punishments!"[27] I have heard
someone who gave the names of all the transmitters of this S 405
tradition, but I do not remember the names.

418. Shāfi'ī said: In the Prophet's reply to Umm Salama, in which he said: "Have you not told her, etc.," an indication that Umm Salama's narrative from him [is of the category of traditions] which may be accepted, for the Prophet would not have ordered her to repeat what he had said, provided what she said contains a valid argument. The same would be true of the wife [of the man in question] if he considered her truthful.

Mālik [b. Anas] told us from 'Abd-Allāh b. Dīnār from Ibn 'Umar, who said:

> When men were performing the dawn prayer at [the mosque] of Qubā', a messenger arrived and said: A Quranic communication was revealed to the Apostle last night ordering him to face the qibla [of the Ka'ba]. So whereas they had been facing al-Shām [Syria], they [immediately] turned around toward the Ka'ba.[28]

[27] Mālik, Vol. I, pp. 291-92; cf. Bukhārī, Vol. I, p. 480; Muslim, Vol. VII, pp. 215-20. Mālik, however, did not approve of kissing while fasting (*al-Muwaṭṭa'*, Vol. I, p. 293).

[28] See paragraph 119, above.

419. Shāfi'ī said: [29] The men of Qubā' were among the first Muslims of the Anṣār [the Prophet's supporters in Madīna] S 406
and were versed in the law and they used to face the qibla which God had ordered them to face. They would not have abandoned God's [previous] command concerning the qibla if the obligation to do so had not been established upon them, for they had neither contacted the Apostle nor had they heard [from him] what God had revealed concerning the change of the qibla; so they faced the qibla in accordance with the [new text of the] Book of God or the [new] sunna of the Prophet as they heard it from the Apostle, and not according to a tradition related by the public; they felt they were obligated to change the qibla on the authority of one transmitter only since he was considered by them a truthful person, and abandoned it because he told them that the Prophet had changed the qibla. [Surely] they would not have accepted this on the authority of one individual unless they had known that the proof is established if the person who relates the narrative is truthful. They would not have made such a great innovation as this in the religion [of Islam] unless they had to do so. Nor S 407
would they have failed to inform the Apostle of what they had done.

If the information they had accepted from a single individual, related from the Apostle, concerning the shifting of the qibla—which was obligatory—were [not] permissible, the Apostle would have said to them: "You were facing a [certain] qibla, and it was not up to you to abandon it unless the proof for it were established through what you heard from me, from the public, or from more than one person [on my authority]."

Mālik [b. Anas] told us from Isḥāq b. 'Abd-Allāh b. Abī S 408
Ṭalḥa from Anas b. Mālik, who said:

> When I was serving a drink made of grape-juice and dates to Abū Ṭalḥa, Abū 'Ubayda b. al-Jarrāḥ, and Ubayy b. Ka'b, a messenger arrived saying: 'Wine has just been forbidden.' Thereupon Abū Ṭalḥa said: 'Come, Anas, break these jars!' So Anas

[29] Būlāq ed., p. 56.

took a mortar that we had and struck the jars with the bottom of it until they broke.[30]

420. Shāfi'ī said: [31] These men were closely connected with the Prophet in knowledge and position, and the Prophet's companions occupied a position of prominence that is not denied by any learned man. The drink of which they were partaking was lawful to them, but when a single person came and informed them that wine had been declared unlawful, Ṭalḥa, the owner of the jars, ordered that they should be broken. Neither he nor the others said that they would consider the wine lawful until they should see the Apostle, who S 409
was near by, or until they should learn about it through public channels. Otherwise they would not have wasted something lawful by pouring it out when they were not wasteful people. For they would have asked the Apostle what they should do, if they felt they were not bound to accept a single-individual tradition, and the Apostle himself would have prohibited its acceptance.

The Apostle ordered Unays to go to a certain man's wife who was said to have committed adultery and ordered him to stone her if she confessed. She confessed, whereupon Unays stoned her to death.[32] This tradition has been related by Mālik [b. Anas] and Sufyān b. 'Uyayna from al-Zuhrī from S 410
'Ubayn-Allāh b. 'Abd-Allāh from Abū Hurayra and Zayd b. Khālid [al-Juhanī] from the Prophet. Sufyān added Shibl [b. Mi'bad] to the list of transmitters after Abū Hurayra and Zayd b. Khālid.

'Abd al-'Azīz [al-Darāwardī] told us from Yazīd b. al-Hādī from 'Abd-Allāh b. Abī Salama from 'Amr b. Sulaym al- S 411
Zuraqī from his mother, who said:

When we were at Mina, 'Alī b. Abī Ṭālib arrived on a camel and declared that the Apostle of God said: 'These are days [in which

[30] Mālik, Vol. II, pp. 846-47; Muslim, Vol. XIII, pp. 148-50.
[31] See Būlāq ed., p. 56.
[32] See paragraph 123, above.

it is permissible] to eat and drink, so no one shall fast.' 'Alī B 56
went around on his camel crying out this message to the people.[33]

The Apostle would not have sent a single truthful person with his order of prohibition if that person's veracity and the words he reported from the Prophet were not acceptable without question to those who were the recipients of the Prophet's prohibition. Furthermore, there were pilgrims with the Apostle, and he would have been able either to go and speak to those [who were drinking the wine] himself or to send a number of men [on the mission], but he sent only one man whose veracity they knew. For he would not have sent any emissary to them unless the latter possessed [convincing] proof that bound them to accept his words as being those of S 412
the Apostle.

If such was the situation with the Prophet's, as I have said, having been in a position to send to them several men [instead of one], it would be most appropriate for those who came after him and who were not in a position to do what [the recipients of the Prophet's instruction] could have done or what the Prophet could have done with regard to them, to use the same procedure in establishing the truth of the narrative of a single veracious man.

Sufyān [b. 'Uyayna] *told us from* 'Amr b. *Dīnār from* 'Amr b. 'Abd-Allāh b. Ṣafwān [al-Jumaḥī] from one of his uncles, Yazīd b. Shaybān, who said:

When we were standing at a certain place at 'Arafa, while 'Amr [b. 'Abd-Allāh] was at a great distance from the Imām, Ibn Mirba' al-Anṣārī arrived and said to us: 'I am the messenger of the Apostle of God to you; he orders you to stand [in reverence] at S 413
the places of devotion of yours, because they are part of the heritage of your father Abraham.'[34]

The Apostle sent Abū Bakr in command of the pilgrimage in the year 9 [A. D. 631]. Many pilgrims came from various

[33] This tradition is not cited in the standard digests. See Shawkānī, *Nayl al-Awṭār*, Vol. IV, p. 277, giving the names of different transmitters.
[34] Abū Dāwūd, Vol. II, p. 189.

countries and diverse peoples, and Abū Bakr led the religious rites and instructed them, on behalf of the Apostle, in their rights and duties.[35] In the meantime [the Prophet] sent 'Alī b. Abī Ṭālib, who recited to the assembled pilgrims on the day of Al-Naḥr some verses from the sūra of Barā'a,[36] enjoining some of them to equity while encouraging others and forbidding them to do certain things.[37] 8414

Both Abū Bakr and 'Alī were well-known to the people of Makka as virtuous, religious, and truthful men, and those pilgrims who did not know either one or both of them could have found someone to testify to their truthfulness and virtue. The Apostle would not have sent a lone messenger unless the latter's words bore convincing proof to him to whom the Prophet had sent the messenger.

The Prophet dispatched governors to various regions, and the names of the men and the places to which they were sent to are known to us. [For example], he sent Qays b. 'Āṣim and al-Zibriqān b. Badr and [Mālik] b. Nuwayra to their own tribes, because they were known to them as truthful men. 8415

A delegation from Baḥrayn came [to the Prophet] and became acquainted with the men around him. [The Prophet] sent [Abān b.] Sa'īd b. al-'Āṣ back with them [as governor of Baḥrayn].

[The Prophet] sent Mu'ādh b. Jabal to al-Yaman with orders to lead those who followed him against those who resisted him.[38] Since Mu'ādh and his status and veracity were known to them, the Prophet also ordered him to instruct them in their duties toward God and to collect the obligatory

[35] See Ibn Hishām, Vol. II, pp. 919 ff.; Guillaume's translation, pp. 617 ff.

[36] Sūra (Chapter) 9.

[37] 'Alī was commissioned to recite the sura of barā'a (Q. IX) terminating the general agreement between the Prophet and the unbelievers. That agreement provided that no one should be kept back from the Ka'ba and that no one need fear the other during the pilgrimage. The special agreement between the Prophet and Arab tribes for specified terms was terminated at the end of its term. See Ibn Hishām, pp. 919-20; Guillaume, pp. 617-18.

[38] The wording of the sentence is slightly re-arranged for clarity.

[tax] from them. So all those who were appointed [by the Prophet] as administrators [of various regions] were ordered by him to collect [the taxes] imposed by God on the people subject to their rule. None of those veracious men who were sent by [the Prophet] was ever told that he was only one individual and that he had no power to collect [the tax] until the Apostle [himself] had been heard to say it was obligatory. S 416
I do not believe that the Prophet would have sent those who were well known for their veracity in the provinces to which they were sent if, as I have stated, men such as they did not carry binding proof to those to whom they were sent.

The same applies to those men who were commanders of [the Prophet's] expeditions. He [the Prophet] sent an expedition against Mu'ta and appointed Zayd b. Ḥāritha [his freed slave] as its commander; "If he is killed, Ja'far shall succeed him, and if [the latter] is killed, then Ibn Rawāḥa," he said. He also sent Ibn Unays on an expedition by himself.

All of the commanders of expeditions who were sent forth [by the Prophet] were competent judges of the matters on which they were sent, for they were responsible for appealing to those who had not yet received the call [of Islam] and for fighting those who had to be fought. The same was true of S 417
every commander and expedition leader whom [the Prophet] sent forth, although he was in a position to send two, three, four or more [if he had wished].

421. Shāfi'ī said:[39] On one occasion [the Prophet] sent twelve messengers simultaneously to twelve rulers, inviting them to accept Islam. Those [messengers] were sent only [to people] who either had already received the summons to Islam and who had been confronted with its arguments, or who had received [from the Prophet] letters indicating to those to whom the messengers had been sent that the letters were from the Prophet. He [the Prophet] was careful to choose well-known men both as his messengers and as his commanders. For example, he sent Diḥya [b. Khalīfa al-Kalbī] to the region in which he was known. For if [the person] to whom the

[39] Būlāq ed., p. 57.

messenger was sent had not known him, he first would have had to ascertain that he had been sent by the Prophet so as to rid himself of any doubt as to whether it was the Apostle's message, thus obliging the messenger to wait until his identity had been certified.

The Prophet's orders of permission and prohibition were continuously sent to his governors, and none failed to carry S 418
them out because the Prophet sent only messengers who were known as truthful to those to whom they were sent, and whose veracity could be certified by those on the spot. In case the recipient suspected that the letter carried by the messenger had been altered, or found that there were circumstances giving rise to a suspicion that the messenger who brought the B 57
communication had been forgetful, it was his duty to seek enlightenment regarding that which he suspected so that he could carry out the orders of the Apostle after they had been confirmed to his satisfaction.

In the same category fall the letters of the [Prophet's] successors and their governors and the Muslim's agreement that the caliph, the judge, the commander, and the imām were respectively single individuals. So they chose Abū Bakr [as caliph], and Abū Bakr designated 'Umar. 'Umar appointed a council of electors to choose one man. They selected 'Abd al-Raḥmān b. 'Awf, who chose 'Uthman b. 'Affān. Thus those S 419
governors who were judges, as well as others, handed down decisions, had their decisions executed, and imposed penalties. Their decisions were carried out after them, and these decisions were narratives handed down from them.

From what I have said concerning the sunna of the Apostle and the consensus of the Muslims, there is indication of a distinction among testimony (shahāda), narrative (khabar), and a decree (ḥukm).

Do you not agree that the decision of a judge in favor of one man against another is [a similar kind of] narrative handed down by the judge on the basis of confirmed evidence or on the basis of a confession made to him by one of the parties upon whom it was executed? Since the judge is obliged

to act on the basis of such a narrative according to [the best of] his knowledge, then in accordance with the interpretation S 420
of the person who transmitted the decision, he would have to declare [the matter in question] as lawful or unlawful on the basis of the testimony given with regard to it.

If a judge [other than the one in the present case] related a narrative from witnesses who testified to him against a person who was not on trial before him, or on the basis of confession of one of the parties to a dispute, [the judge in the case] is not obligated to take a decision on the basis of the evidence of the other judge, because the party was not referred to that judge, but to him [the judge in the case], or because the party was referred to another judge for trial. Then the judge [in the case] makes the decision on the basis of the testimony of one witness in addition to the other [judge], since the latter would be regarded as [only] one witness, and the testimony of one witness—whether he is a judge or any other person—is not acceptable unless his testimony is supported by that of a second witness, just as the testimony of [any] one witness is not acceptable unless supported by that of a second S 421
witness.[40]

422. [Shāfi'ī said]: Sufyān [b. 'Uyayna] and 'Abd al-Wahhāb [al-Thaqafī] told us from Yaḥya b. Sa'īd from Sa'īd b. al-Musayyib that 'Umar b. al-Khaṭṭāb decreed that [the compensation] for the loss of a thumb was fifteen [camels],[41] ten for the next finger, ten for the middle finger, nine for the finger next to the little finger, and six for the little finger.

423. Shāfi'ī said: Since 'Umar knew that the Prophet had fixed the compensation of the hand at fifty [camels], and since the hand consists of five fingers varying in attractiveness and usefulness, he gave each of them its proportional value based on the amount of the compensation for the hand. This was [a decision taken] on the strength of a narrative through analogical reasoning.

When, however, it was found in the letter of Āl 'Amr b.

[40] The wording of the sentence is slightly rearranged.
[41] Būlāq ed., p. 58.

Ḥazm that the Prophet said: "For every finger [the compensation] shall be ten camels," they were inclined to follow it. But they did not accept the letter of Āl 'Amr until it was confirmed to them that it was from the Apostle.[42] S 422

There are two indications in this tradition:

First, a narrative [from the Prophet] must be accepted. Secondly, the narrative is to be accepted when it is confirmed, even though none of the imāms may ever have done anything similar to the narrative in question. This indicates also that if the action of one of the imāms subsequently were found to be contrary to a narrative of the Prophet, the imām's action must be abandoned in favor of the Apostle's narrative. It [also] indicates that a tradition from the Apostle is self-confirming and does not need to be confirmed by the action of anyone else after him. For the Muslims never said: "'Umar acted differently [from the Prophet] in matters concerning the Muhājirīn [43] and the Anṣār." [44] Nor did you [45] or any other say anything about other men's having acted differently; they accepted traditions from the Apostle as they were bound to do and they desisted from all acts contrary to them. S 423

Had 'Umar been aware of this tradition he would have accepted it as he had accepted other things that emanated from the Apostle, owing to his fear of God, his [readiness] to carry out his obligation to obey the order of the Apostle, his

[42] Shāfi'ī's quotation from the Prophet's letter to 'Amr is not in the text that was reproduced by Ibn Hishām, perhaps because the text was not reproduced in full. See Ibn Hishām's *Sīra*, Vol. II, pp. 961-62. Shāfi'ī attaches great significance to the Prophet's order in this letter and argues that if Umar had known the Prophet's order that the compensation for the finger was ten camels, he would not have made a different decision (see *Ikhtilāf al-Ḥadīth* in *Kitāb al-Umm*, Vol. VII, pp. 17-19). 'Umar's ignorance of the letter and the Prophet's order, however, may raise doubt as to the authenticity of the letter. The tradition cited by Shāfi'ī may be found in Abū Dāwūd, Vol. IV, p. 188; Shawkānī, *Nayl al-Awṭār*, Vol. VII, p. 61; Yaḥya b. Ādam, *Kitāb al-Kharāj* (Cairo, 1347/1929), p. 119.

[43] The Makkans who emigrated with the Prophet to Madīna in 1/622.

[44] The inhabitants of Madīna who supported the Prophet after his migration to that city.

[45] In this statement Shāfi'ī is addressing himself to the interlocutor, a follower of the Ḥanafī school of law.

knowledge that no one else's order is on a par with that of the Apostle, and that obedience to God is obedience to the Apostle's order. S 424

424. Someone said: Give me an example indicating that 'Umar changed his practice when a tradition from the Apostle became known to him.

425. [Shāfi'ī] replied: [What will be the advantage of] my giving you one?

426. He said: Such an example will establish two rules: First, that opinion may be accepted in case there is no sunna. Secondly, that if the sunna reveals that one must do a certain thing, one must abandon what he [previously] had been doing. For one must discard all practices contrary to the sunna. One must also abandon [the idea that] the sunna is confirmed only by a narrative that has preceded it, for he should know that it is not vitiated by anything that contradicts it.[46] 3 425

427. [Shāfi'ī] said: Sufyān [b. 'Uyayna] told us from al-Zuhrī from Sa'īd b. al-Musayyib who said: 'Umar b. al-Khaṭṭāb held that the diya should be paid by the 'āqila, and that the wife cannot inherit from the diya of her husband; but al-Ḍaḥḥāk b. Sufyān told 'Umar that the Apostle had written to him ordering him to permit the wife of Ashyam al-Dibābī to inherit the diya [of her husband]. So 'Umar changed his opinion. This tradition has been explained elsewhere.[47] B 58

Sufyān [b. 'Uyayna] told us from 'Amr b. Dīnār and Ibn Ṭāwūs from Ṭāwūs that 'Umar said: Has God mentioned anything that anyone has heard from the Prophet concerning [the diya for] foeticide? Ḥamal b. Mālik b. al-Nābigha replied that he had two concubines, one of whom struck the other [who was pregnant] with a rolling pin causing a miscarriage. The Prophet ordered the payment of a ghurra or a slave [as S 426

[46] Shāfi'ī repudiates an ancient legal doctrine by virtue of which practice validates certain legal decisions even if they were contrary to traditions. See paragraph 423; and J. Schacht, *Origins of Muhammadan Jurisprudence*, pp. 59-60.

[47] For Shāfi'ī's discussion on this tradition see *Kitāb al-Umm*, Vol. VI, p. 77. For text of the tradition, see Mālik, Vol. II, p. 866; Abū Dāwūd, Vol. IV, p. 192.

the diya]. "Had I not heard this, I would have decided it differently," said 'Umar. Others related that ['Umar said]: "We almost decided this matter on [the basis of our] own opinion." [48]

'Umar changed his decision on the strength of a tradition related by al-Ḍaḥḥāk that conflicted with his own decision. He declared that if he had not heard that tradition he would have arrived at a different decision and that he almost made a decision concerning foeticide on the basis of his own opinion. S 427

428. Shāfi'ī said: [Since] the sunna specified that the diya for a life is a hundred camels, the diya for foeticide should be one hundred camels if the foetus is alive, and no diya if it is dead.

When the Apostle's order was related [to 'Umar] he deferred to him and obeyed him despite his prior contradictory decision. His own decision had been taken without his having heard anything with reference to it from the Apostle, but when he learned that his action was not in accord with the Apostle's decree, he abandoned his practice in order to obey the Apostle's decree and did likewise in all other matters. It is equally incumbent upon men to act accordingly.[49] [For] Mālik [b. Anas] has told us from Ibn Shihāb from Sālim b. 'Abd-Allāh that [the Caliph] 'Umar returned before [visiting] men [in Syria] on the strength of a tradition related by 'Abd al-Raḥmān b. 'Awf. This was when he set out for Syria and then learned that a plague had broken out there.[50] S 428 S 429

[48] Abū Dāwūd, Vol. IV, p. 191. Cf. Mālik, Vol. II, pp. 855-56; Shawkānī, *Nayl al-Awṭār*, Vol. VII, pp. 72-73; Bayhaqī, *al-Sunan al-Kubra*, Vol. VIII, pp. 115-16.

[49] For further discussion on this point, see Shāfi'ī's *Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, pp. 20-21).

[50] In A. D. 639 the Caliph 'Umar visited the borders of Syria where he met Abū 'Ubayda, Governor of Syria, and other leading men. The Caliph was advised to return owing to the plague, when thousands of believers died, but, according to one version of the story, Abū 'Ubayda said: "What! You flee from the decree of God?" "Yes," replied 'Umar, "if we flee, it is from the decree of God unto the decree of God." At this juncture 'Abd al-Raḥmān b. 'Awf arrived and said that he had heard the Prophet saying: "When you hear of it [the plague], you should not approach the land; if you were in the land where it was, you should not leave it."

Mālik [b. Anas] told us from Ja'far b. Muḥammad [al-Ṣādiq] from his father [Muḥammad al-Bāqir] who said: Upon mentioning the Magians, 'Umar said: "I do not know what we should do with regard to them." Thereupon 'Abd al-Raḥmān b. 'Awf said: "I bear witness that I heard the Apostle of God say: 'Follow the same usage with regard to them as you do with regard to the People of the Book.'" [51]

Sufyān [b. 'Uyayna] told us from 'Amr b. Dīnār that he heard Bajāla say: 'Umar did not collect the poll tax from the Ma- S 430
gians until 'Abd al-Raḥmān b. 'Awf told him that the Prophet had ordered it to be collected from the Magians of Hajar.[52]

429. Shāfi'ī said: All the traditions that I have cited [above] in an interrupted fashion were [originally] heard by me as uninterrupted, or are well-known traditions related by many people transmitting them from scholars who were acquainted with them through common knowledge; but I did not want to cite traditions that I had not fully memorized, nor did I have access to some of my books which I had lost [to verify them]; but I have verified the accuracy of what I memorized by checking it with the knowledge of scholars, and I have summarized it fearing that this book might become too long. I have, however, cited what might be sufficient without going into every aspect of it in an exhaustive fashion.

So 'Umar accepted the tradition of 'Abd al-Raḥmān b. 'Awf concerning the Magians and collected [the jizya] on the basis of the Quranic communication:

> Of those who have been given the Book, until they pay the jizya out of hand and have been humbled [Q. IX, 29].

On the basis of the Qur'ān, which states that the unbelievers should be fought until they accept Islam, and since 'Umar never heard anything from the Prophet [regarding the

Thereupon 'Umar, acting on the strength of this tradition, returned to Madīna. See Mālik, Vol. II, pp. 895-96; Muslim, Vol. XIV, pp. 205-206.

[51] Mālik, Vol. I, p. 278.

[52] Hajar, on the coast of Arabia, was the principal town in Baḥrayn. The term Hajar also applied to the whole of Baḥrayn, which included al-Ḥasā' and Qaṭīf. See Yāqūt, passim.

Magians] and thought that they were unbelievers and not people of the Book, he accepted the tradition of 'Abd al-Raḥmān b. 'Awf and followed it. S 431

The tradition related by Bajāla is uninterrupted; for he [Bajāla] had known 'Umar b. al-Khaṭṭāb personally and had served as a scribe to some of his provincial governors.[53]

430. Someone might say: 'Umar might have sought for another transmitter in addition to the one who related the narrative to him.

431. [Shāfi'ī said]: The answer would be: 'Umar would not ask for another transmitter [to substantiate] a tradition related to him by a man, except for one of three possible reasons: S 432

[First,] he may have wanted to be careful; for even though the proof is verified by the narrative of a single person, the narrative of two makes it even stronger. I have known [some men] who confirmed the narrative of a single person and sought a second narrative [to confirm it]. [If] a man possesses a sunna from five [different] sources and a sixth is related to him, he writes it down. For the more numerous the authorities of a tradition and the better known, the better it is authenticated and the more satisfactory to him who hears it. And I have known certain judges who, although two or three witnesses were confirmed to them as witnesses of just character, asked the person on whose behalf the testimony was given to produce more witnesses. By this they sought to satisfy themselves more fully. If the party on whose behalf the testimony was given did not produce more than two witnesses, the decision would have been given in his favor.

[Secondly,] it is possible that the transmitter might not have been known [to 'Umar], so he would suspend judgment until another transmitter whom he knew confirmed it. Likewise, [a tradition] related from an unknown person, is not acceptable. A tradition is acceptable only from someone known to be qualified. S 433

[53] Shāfi'ī cited this tradition in *Kitāb al-Umm*, Vol. VI, p. 96, on the authority of Sufyān b. 'Uyayna. See also Abū Dāwūd, Vol. III, pp. 168-69; Ibn Ḥanbal, Vol. III, p. 141, no. 1685; Abū 'Ubayd b. Sallām, *Kitāb al-Amwāl*, ed. Muh. Hamīd al-Fiqqī (Cairo, 1353/1935), pp. 31-32.

[Thirdly,] it is possible that the information related to 'Umar by the transmitter was unacceptable to him; in this case he would reject the narrative until he could find someone else whose word was acceptable.

432. *Someone might ask: In your opinion, which of these reasons motivated 'Umar?* B 59

433. [Shāfi'ī] replied: According to the tradition related by Abū Mūsa, it was caution, for he regarded Abū Mūsa as a trusted authority.

434. If he says: What is your evidence?

We reply: Abū Mūsa's tradition was transmitted by Mālik b. Anas from Rabī'a from more than one of their authorities. S 434 'Umar, however, said to Abū Mūsa: "I did not suspect you; I was merely afraid that people might attribute something to the Apostle that he did not say." [54]

435. Should he ask: Is this [not] an interrupted [tradition]?

436. [Shāfi'ī replied]: This is a well-authenticated tradition.[55] *For it is not permissible for an imām of the religion,* whether 'Umar or anyone else, to accept the tradition of a single individual on one occasion, when he is satisfied that it is well authenticated, and reject it on another. This is never permissible for an intelligent scholar, just as it is not permissible for a judge to take a decision on the basis of [the testimony of] two witnesses on one occasion and reject them on another, unless they have been proved wrong on grounds *disqualifying them* or because of his ignorance of their just character. For 'Umar was an extremely knowing, intelligent, trustworthy, and meritorious man. In the Book of God is an S 435 evidence for what I have discussed; God said:

> Verily, We sent Noah to his people [Q. LXXI, 1].

[54] Mālik, Vol. II, p. 964; Bukhārī, Vol. II, p. 8; Muslim, Vol. XIV, pp. 130-33; Abū Dāwūd, Vol. IV, pp. 345-46.

[55] Shāfi'ī did not answer the interlocutor's question directly. He had already pointed out in paragraph 429 that although some of the traditions he cited were lacking the names of transmitters, he had either *heard them with the full chain of transmitters or they were well-authenticated traditions.*

And He said:

We did indeed send Noah to his people [Q. XI, 27; XXIII, 23; XXIX, 13].

And He said:

We revealed to Abraham and Ishmael [Q. IV, 161].

And He said:

And to 'Ād [we sent] their brother Hūd [Q. VII, 63; XI, 52].

And He said:

And to Thamūd [we sent] their brother Ṣāliḥ [Q. VII, 71; XI, 64].

And He said:

And to Midian [we sent] their brother Shu'ayb [Q. VII, 83; XI, 85; XXIX, 35]

And He said:

The people of Lot gave the lie to those who were sent to them. When their brother Lot said to them: 'Will you not fear God? I am for you a faithful apostle. So fear God and obey me' [Q. XXVI, 160-163].

And to His Apostle Muḥammad, God's blessings and peace be upon him, He said:

Verily, we have revealed to thee as We have revealed to Noah and the prophets after him [Q. IV, 161].

And He said:

Muḥammad is only an apostle; apostles have passed away before him [Q. III, 138]. 8436

So [God] has given proof to His creatures through His prophets, who were distinguished by certain signs from others, and the proof was clear to those who witnessed the actions of the prophets and the indications which distinguished them from others as well as from those who came after them. One of them is as good as more than one, since the proof is established by one just as well as by more than one. For [God] said:

Coin a parable for them: the people of a town when the envoys came to it; when we sent to them two, and they called them liars; so we sent a third as reinforcement and they said: 'To you we are envoys.' They said: 'You are only human beings like ourselves, and the Merciful has not sent down anything; you are only speaking falsely' [Q. XXXVI, 12-14].

437. Shāfi'ī said: Thus God established the proof to them by sending two and later a third [prophet]; likewise He established it for various people by sending one, for the confirmation [of the proof by more than one] does not mean that it S 437
cannot be established by one only, if God endows him with that which distinguishes him from those who are not prophets.

438. Shāfi'ī said:[56] Mālik [b. Anas] told us from Sa'd b. Isḥāq b. Ka'b b. 'Ujra from his paternal aunt Zaynab, daughter of Ka'b, who said that al-Furay'a, daughter of Mālik b. Sinān, had told her that she [al-Furay'a] went to the Prophet requesting him to let her return to her family among the Banū Khudra,[57] since her husband, who had gone forth looking for some slaves of his, had been killed by them when he met them near al-Qaddūm.[58] "I requested the Apostle to let me return to my family since my husband left no house of his own for me to live in," she said. "Yes [you may return]," replied the Apostle. So I left, but he called me back when I was either in [my] chamber or in the Mosque, and said: "What did you S 438
say?" So I repeated the story of what had appeared to my husband. "Stay in your house until the end of the period stipulated in the Book," said the Prophet. "So I passed the period of the 'idda, four months and ten days," she said. When 'Uthmān became caliph, he sent for me and inquired about this [tradition], and I related it to him. He followed it and took decisions on the strength of it.[59] Thus 'Uthmān, who was an imām and a man of knowledge and virtue, settled disputes

[56] Būlāq ed., p. 60.

[57] The tribe of Banū Khudra, belongs to the Anṣār (supporters of the Prophet), in Madīna.

[58] A place about six miles from Madīna.

[59] Mālik, Vol. II, p. 591; Abū Dāwūd, Vol. II, p. 291; Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 208-209.

between the Anṣār and Muhājirīn on the strength of a tradition related by a woman.

Muslim [b. Khālid] told us from Ibn Jurayj from al-Ḥasan b. Muslim [b. Yannāq] from Ṭāwūs, who said: I was with Ibn 'Abbās when Zayd b. Thābit said to him: "Would you rule that a woman [who has begun to] menstruate should return from the pilgrimage before visiting the Sacred House?" "It is not for me to say so," replied Ibn 'Abbās, "ask so-and-so, the woman from the Anṣār, whether the Prophet ordered her to do so." Zayd b. Thābit went away laughing and said: "I must say that what you said is right." [60] S 439 S 440

439. Shāfi'ī said: Zayd had heard an order of prohibition [from the Prophet] against a pilgrim's returning from the pilgrimage before visiting the Sacred House, and thought that it included the menstruating woman. When Ibn 'Abbās ruled that she could return if she had visited the House after the Day of Sacrifice (al-Naḥr), Zayd took exception to it, but when Ibn 'Abbās related to him a tradition from a woman who was ordered to do so by the Apostle—and when the woman was asked, she confirmed the tradition—he believed the woman and saw that the right thing for him to do was to cease differing with Ibn 'Abbās. But Ibn 'Abbās had no other proof than the woman's narrative.[61] S 441

440. [Shāfi'ī said]: Sufyān [b. 'Uyayna] told us from 'Amr [b. Dīnār] from Sa'īd b. Jubayr, who said: I have told Ibn 'Abbās that Nawf al-Bikālī claims that Mūsa, the companion of al-Khiḍr, is not the Mūsa of the children of Israel. "The enemy of God had told a lie," replied Ibn 'Abbās, for Ubayy b. Ka'b told me that the Apostle in speaking to him once mentioned the story of Mūsa and al-Khiḍr in such a way as to indicate that the Mūsa of the children of Israel was the Mūsa who was associated with al-Khiḍr.[62]

[60] Ibn Ḥanbal, Vol. III, p. 307, Vol. V, p. 89. Similar traditions are related on the authority of 'Ā'isha. See Mālik, Vol. I, pp. 410-12; Bukhārī, Vol. I, pp. 393, 415-16.

[61] See Shāfi'ī, *Kitāb al-Umm*, Vol. II, pp. 154-55.

[62] Bukhārī, Vol. I, pp. 30-31; Vol. II, p. 354. Al-Khiḍr is a legendary figure identified with various early prophets and saints, including Enoch,

Thus Ibn 'Abbās, pious and versed in the law as he was, S 442
accepted the authenticity of a tradition related by Ubayy b.
Ka'b from the Apostle as a proof against the opinion of a B 60
certain Muslim. Ubayy b. Ka'b had reported to him a tradition from the Prophet that Mūsa of the children of Israel was the same as the Companion of al-Khiḍr.

Muslim [b. Khālid al-Zanjī] and 'Abd al-Majīd told us from Ibn Jurayj [from 'Āmir b. Muṣ'ab] that Ṭāwūs told him that he asked Ibn 'Abbās about the two cycles (rak'atayn) after the 'aṣr prayer, and Ibn 'Abbās forbade him to perform them. "I replied: I was not going to abandon them," said Ṭāwūs. Thereupon Ibn 'Abbās, [quoting the Qur'ān], said:

> It is not for any believer, man or woman, when God and his Apostle have decreed a matter, to have a choice in any matter affecting him. Whoever disobeys God and His Apostle has gone astray into manifest error [Q. XXXIII, 36].[63] S 443

Ibn 'Abbās was of the opinion that the proof against Ṭāwūs was established by his tradition from the Prophet and by his indicating through a citation from the Book of God that both sources deprived Ṭāwūs of any choice in a matter that had been decided by God and His Apostle. Although Ṭāwūs knew of the decision of the Apostle from a tradition related only by Ibn 'Abbās, he did not reject it and tell [Ibn 'Abbās]: "This is a tradition related by you alone. I do not consider that it is established as being from the Prophet, since it is possible that you have forgotten something with regard to it."

441. Someone might say: Would [Ṭawūs] not hesitate to say such a thing to Ibn 'Abbās?

442. [Shāfi'ī replied]: Ibn 'Abbās was above being afraid
to tell anyone the truth as he saw it. For he forbade [Ṭāwūs] S 444
to perform the two cycles after the 'aṣr prayer and told him

Elijah, and St. George. See Ibn Ḥajar, *al-Iṣāba*, Vol. I, pp. 428-47, for a traditional account of al-Khiḍr's life as a prophet. For a more critical account, see Meijer de Hond, *Der Koranisirte Elḫidr* (Leyden, 1914).

[63] See Bayhaqī, *al-Sunan al-Kubra*, Vol. II, p. 453; and Suyūṭī, *al-Dur al-Manthūr*, Vol. V, p. 201.

not to perform them before informing him that the Prophet had prohibited them.

443. [Shāfi'ī said]: Sufyān [b. 'Uyayna] told us from 'Amr [b. Dīnār] from Ibn 'Umar, who said: "We used to practice mukhābara[64] (share-cropping), seeing no harm in it until Rāfi' b. Khadīj claimed that the Apostle had prohibited it. So we gave it up because of what [Rāfi'] had said."[65]

Thus Ibn 'Umar, who was profiting from mukhābara and regarded it as lawful, did not continue to practise it after a tradition was related to him by a trusted transmitter that the Apostle had prohibited it. Furthermore, he did not use his own judgment regarding what was related from the Apostle S 443
and say: "Nobody has so far reproached us for this, and we have been practising it till now." This clearly indicates that something that was practised after the Prophet's death and was not supported by a tradition from the Prophet does not vitiate a narrative from the Prophet.[66]

444. [Shāfi'ī said]: Mālik [b. Anas] told us from Zayd b. Aslam from 'Aṭā' b. Yasār that Mu'āwiya b. Abī Sufyān once sold [either] a gold or a silver drinking cup for more than [the value of] its weight. "I heard the Apostle prohibit that kind [of thing]," said Abū al-Dardā' to him. "I do not see any harm in it," said Mu'āwiya. "Who will support me against Mu'āwiya?" asked Abū al-Dardā'. "I relate to him [a tradition] from the Apostle, and he gives me his own S 444
opinion. I cannot live in the same land with you [Mu'āwiya]."[67]

Thus Abū al-Dardā' was of the opinion that the proof against Mu'āwiya was established by a narrative related to him; but when Mu'āwiya did not agree with him, he departed from

[64] Mukhābara was the practice of renting the land by paying one fourth, or one third, or any specific portion of the produce after harvest. It is also called al-muzāra'a. See Jurjānī, *Kitāb al-Ta'rīfāt*, p. 290.

[65] See Shawkānī, *Nayl al-Awṭār*, Vol. V, pp. 287-96. For a different transmission, see Mālik, Vol. II, p. 711; Abū Dāwūd, Vol. III, pp. 257-59.

[66] Būlāq ed., p. 61.

[67] Mālik says that Abū al-Dardā' informed 'Umar about Mu'āwiya's action, and 'Umar forbade Mu'āwiya to conclude the transaction. See Mālik, Vol. II, p. 634. Cf. J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 55.

the land in which he had been to save his self-respect, since Mu'āwiya had rejected a narrative related by a reliable source from the Prophet.

445. [Shāfi'ī] said: We have been told that Abū Sa'īd al-Khudrī met a man to whom he related something from the Apostle; the man, however, related another narrative contradictory to it. " By God, may I never be [again] with you under the same roof," said Abū Sa'īd.

446. Shāfi'ī said: The transmitter [Abū Sa'īd] was chagrined because [the other man] did not accept the tradition he related from the Prophet, but quoted another contradictory to it. However, there were two aspects of the latter's tradition; one of them may have conflicted with Abū Sa'īd's tradition and the other not. S 447

447. Shāfi'ī said: [68] I was told by one whom I do not suspect [Ibrahīm b. Abī Yaḥya] [69] from Ibn Abī Dhi'b from Makhlad b. Khufāf, who said:

> I bought a slave whom I employed, but later I discovered a certain defect in him. So I took the case before [the Caliph] 'Umar b. 'Abd al-'Azīz, who made a decision in my favor that I could return the slave but decided against me that I should return the profit [I made on him]. When I called on 'Urwa b. al-Zubayr and told him about the matter, he said: I shall go to [the Caliph] this evening and tell him that 'Ā'isha related to me a tradition that the Apostle decreed that 'the profit belongs to him who bears the responsibility.' So I hastened to 'Umar and I told him what 'Urwa had related to me, on the authority of 'Ā'isha, from the Prophet. 'What a hasty decision I have taken! God knows that I sought nothing but what was right. Now that you have informed me of a sunna of the Apostle concerning this matter, I shall revoke the decision of 'Umar and carry out the S 448
> sunna of the Apostle of God,' said 'Umar. When 'Urwa called on 'Umar [to whom he related 'Ā'isha's tradition], 'Umar decided that I should take the profit from the man in whose favor the [earlier] decision was taken.[70] S 449

[68] Būlāq ed., p. 61.
[69] See Bayhaqī, *Manāqib al-Shāfi'ī*, folio 278.
[70] Abū Dāwūd, Vol. III, p. 284; Ibn Sallām, p. 73.

I was told by an authority from Madīna [Ibrāhīm b. Abī Yaḥya], whose truthfulness I do not suspect, from Ibn Abī Dhi'b, who said:

Sa'd b. Ibrāhīm took a decision against a certain man on the strength of an opinion of Rabī'a b. Abī 'Abd al-Raḥmān, whereupon I related to him [a tradition] from the Prophet that was contradictory to his decision. So Sa'd said to Rabī'a: "Here is Ibn Abī Dhi'b, a trustworthy authority in my opinion, who related a tradition from the Prophet that is contradictory to what I have just decided." "You have exercised ijtihād (personal reasoning), and your decision has been given," replied Rabī'a. "How strange! Shall I carry out the decision of Sa'd, son of Umm Sa'd[71] and reject the order of the Apostle of God?" said Sa'd. "No," he added, "I shall reject the decision of Sa'd, son of Umm Sa'd, and carry out the order of the Apostle of God." So he called for the written decision, tore it up, and made a decision in favor of the one against whom he had made the decision. B 61

448. Shāfi'ī said: Abū Ḥanīfa b. Simāk b. al-Faḍl al-Shihābī told us from Ibn Abī Dhi'b from al-Maqburī from Abū Shurayḥ al-Ka'bī that the Prophet, in the year of the conquest [of Makka], said: B 450

> Whoever suffers the loss of a relative who is killed can make a choice between blood-money and retaliation.[72]

Abū Ḥanīfa asked Ibn Abī Dhi'b: "O Abū al-Ḥārith! Do you act according to this [tradition]?" Thereupon, [Ibn Abī Dhi'b] gave me a blow on the breast, shouted vociferously, abused me and said: "I relate to you a tradition from the Apostle and you ask whether I act according to it? Yes, I do, for this is an obligation imposed on me and on whoever hears it. God chose Muḥammad from all men and guided them through him and through his words. Men are bound to follow

[71] Her name was Umm Kulthūm; but it was customary to address any woman as the mother of so-and-so.

[72] Abū Dāwūd, Vol. IV, p. 172; Abū 'Āṣim al-Ḍaḥḥāk, *Kitāb al-Diyāt* (Cairo, 1323/1906), p. 25.

him willy nilly, for no Muslim can escape from that." He S 451-452
went on and on until I implored him to stop.[73]

449. [Shāfi'ī] said: There are other traditions concerning the authentication of the single-individual traditions, but those cited here are sufficient. This is the source which our ancestors as well as succeeding generations have followed down to our time. Scholars in other countries tell us that they agree with us on this matter.

450. Shāfi'ī said: We have found that Sa'īd in Madīna says: Abū Sa'īd al-Khudrī related to me something that the Prophet said on the subject of exchange and it has been authenticated as a sunna.[74] He [Sa'īd] says: Abū Hurayra gave me information from the Prophet which has been accepted as an authentic sunna. Other [single transmitters] have also been quoted as the source of statements that have been accepted as authentic sunna. We have found that 'Urwa says that 'Ā'isha told him that the Apostle decreed that the "profit belongs to him who bears the responsibility," and it was accepted as an authentic sunna.[75] Many other traditions consisting of orders of permission and prohibition have been transmitted through her from the Prophet which were accepted as authentic sunnas. We have also found him ['Urwa] relating on the authority of S 453
Usāma b. Zayd and 'Abd-Allāh b. 'Umar and others from the Prophet. The tradition from each was accepted in each case as an authentic single-individual sunna. And we have found him relating on the authority of 'Abd al-Raḥmān b. 'Abd al-Qārī from 'Umar, and on the authority of Yaḥya b. 'Abd al-Raḥmān b. Ḥāṭib from his father and from 'Umar; and each one of these is accepted as an authentic narrative from 'Umar.

We have found al-Qāsim b. Muḥammad relating [at one time] on the authority of 'Ā'isha from the Prophet, and at another on the authority of Ibn 'Umar from the Prophet. In

[73] Shāfi'ī, *Musnad*, Vol. I, p. 21; J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 55.

[74] See paragraph 271, above.

[75] See paragraph 447, above.

each case these narratives have been accepted as authentic sunnas. And he relates on the authority of 'Abd al-Raḥmān and Mujamma', the two sons of Yazīd b. Jāriya, from Khansā', daughter of Khidhām, from the Prophet. This narrative, [although] transmitted by one woman, was accepted as an authentic sunna. 8454

We have found 'Alī b. Ḥusayn relating on the authority of 'Amr b. 'Uthmān b. 'Affān from Usāma b. Zayd from the Prophet, say: "A Muslim cannot inherit from an unbeliever, nor an unbeliever from a Muslim." This was accepted as an authentic sunna by him and by men after him on the strength of the narrative. And we have found Muḥammad b. 'Alī b. al-Ḥusayn relating on the authority of Jābir b. 'Abd-Allāh from the Prophet, and from 'Ubayd-Allāh b. Abī Rāfi' from Abū Hurayra from the Prophet, all of whose narratives have been accepted as authentic sunnas.

We have likewise found Muḥammad b. Jubayr b. Muṭ'im, Nāfi' b. Jubayr b. Muṭ'im, Yazīd b. Ṭalḥa b. Rukāna, Muḥammad b. Ṭalḥa b. Rukāna, Nāfi' b. 'Ujayr b. 'Abd Yazīd, Abū Salama b. 'Abd al-Raḥmān [b. 'Awf], Ḥumayd b. 'Abd al-Raḥmān [b. 'Awf], Ṭalḥa b. 'Abd-Allāh b. 'Awf, Muṣ'ab b. Sa'd b. Abī Waqqāṣ, Ibrāhīm b. 'Abd al-Raḥmān b. 'Awf, Khārija b. Zayd b. Thābit, 'Abd al-Raḥmān b. Ka'b b. Mālik, 'Abd-Allāh b. Abī Qatāda, Sulaymān b. Yasār, 'Aṭā' b. Yasār and other transmitters from Madīna relating on the authority of one of the Prophet's companions or from their successors on the authority of one of the Prophet's companions, and all this has been accepted as authentic sunnas. 8455

We have found that 'Aṭā', Ṭāwūs, Mujāhid, Ibn Abī Mulayka, 'Ikrima b. Khālid [b. al-'Āṣ], 'Ubayd-Allāh b. Abī Yazīd, 'Abd-Allāh b. Bābāh, ['Abd al-Raḥmān b. 'Abd-Allāh] b. Abī 'Ammār, and other Makkan transmitters; Wahb b. Munabbih in al-Yaman; Makḥūl in al-Shām (Syria); 'Abd al-Raḥmān b. Ghanam, al-Ḥasan and [Muḥammad] Ibn Sīrīn in Baṣra; al-Aswad, 'Alqama, al-Sha'bī in Kūfa; and transmitters and notables in other provinces have all accepted the authenticity of the single-individual traditions originating from the Apostle 8456 8462

and ending with him and agree that they may be used as the basis of fatwas. Each one of these [transmitters] has accepted the tradition from a preceding transmitter and from him it was accepted by a succeeding transmitter.

If it is permissible for anyone to hold the view of the specialists' knowledge that the Muslims, ancient and contemporary, are agreed in accepting the authenticity of the single-individual tradition and its binding [force], since no Muslim jurist is known who did not do likewise, it would be permissible for me to say so also. But I can add that none of the Muslim jurists have told me that they differ over the authentication of the single-individual tradition, since they were all in agreement, as I have already pointed out.[76] S 457

451. [Shāfi'ī] said: If it could be supposed that one person might say that a certain tradition was related from the Prophet in one way, while another person might say something contradicting that tradition, then in my opinion it would not be permissible for a scholar [to insist that] the tradition of a single person be confirmed by many and use it to declare things lawful and unlawful while he rejects others similar to it, unless he possesses a tradition that contradicts it. For he considers that which he has heard and those who heard it from [the single transmitter] as more trustworthy than those who told him something different from it. Or he who transmitted might not have been a memorizer; or he might consider him suspect; or he might suspect one of the previous transmitters; or the tradition might be ambiguous and he might accept one interpretation in preference to the other. But one should not imagine that an intelligent jurist could on one or more occasion accept the authenticity of a sunna on the strength of a single-individual narrative and then discard the same in favor of a narrative similar to or more reliable than the previous one, except for one of those causes that might cast doubt upon the interpretation of it (as in the case of the commentators on the Qur'ān) or because he S 458

[76] Cf. Būlāq ed., p. 62.

either suspects the transmitter, or is aware of a narrative contradictory to it.

452. Someone might say: Few are the jurists anywhere who have not related many traditions acceptable to them while they have related [only] a few that were unacceptable.

453. [Shāfiʿī replied]: It is not permissible [for a jurist] to reject a tradition save for one of the reasons I have discussed, or because he is relating from one of the successors or from someone from a succeeding generation a saying that he is not bound to accept. He relates it only as information and does not vouch for it; he may or may not accept it. If he does not follow any of these courses, he would commit a great error which would be inexcusable, although failure to follow some of them might be forgiven. S 459

454. Someone might ask: Has your term "proof" different meanings?

455. [Shāfiʿī] replied: Yes, it has; God willing.

456. He asked: What are they?

457. [Shāfiʿī] replied: No one shall be excused for discarding something [that is supported by] a clear text of the Book or a generally accepted sunna, for there is no doubt concerning either one of them, and he who refuses to accept either one must ask forgiveness. S 460

But if a sunna were derived from a narrative handed down by a few [persons] but there is disagreement concerning it because the narrative is open to different interpretations and came [originally] from a single source, then any argument regarding it would be that it should be binding on those who are informed about it. For they cannot reject it as long as there is a text to support it, just as they are bound to accept the testimony of witnesses of just character, since [such knowledge] is as certain as the text of the Book [of God] or a narrative well known to the public. So if someone were to cast doubt upon it, we should not tell him to repent. Instead, we should tell him that if he is a learned man he should not doubt, just as one should take a decision only on the strength of the testimony of witnesses of just character, even though

they are liable to err, for one is bound to take decisions in this regard on the basis of the apparent truthfulness [of the witnesses], since only God knows those things about them that are hidden from a person.

458. He asked: Can an interrupted tradition be used as an argument by him who knows about it? Are such interrupted traditions different from others, or are they on the same level?

459. Shāfi'ī replied: Interrupted traditions vary. A tradition related by one of the successors who saw one of the Apostle's companions but did not carry the tradition back to the Prophet should be scrutinized from various angles: S 461

[First,] one should examine the transmission of the tradition. If the transmitter is supported by trustworthy memorizers of traditions who have related from the Apostle traditions of similar meaning, this would be an indication of the soundness of those who passed on the tradition.

[Secondly,] if he were the only one to relate a tradition and no other was found to support him with a similar one, the tradition related by one individual should be accepted.

[Thirdly,] it should be considered whether he is supported by any other transmitter whose traditions were accepted by others but who did not belong to that group of men from whom he accepted his traditions. If such is found [to be the case], it would be an indication supporting the transmitter of the tradition, although [such an indication] would be weaker than the former one. In case such an indication is not found, the information related from the Apostle by some of his Companions should be examined. If they are found to be S 462 in agreement with [other] traditions from the Apostle, its transmitter took [his information] only from a sound source.

Furthermore, if scholars in general are found to have given rulings consistent with a tradition said to have been related from the Prophet, and if the transmitter cites as his authorities persons who were neither unknown nor objectionable, it is indicative of the soundness of what was related from the transmitter, since such authorities constitute a proof of reliability.

If [a transmitter] seeks the opinion of a memorizer regarding a tradition that the latter has never contradicted, and if the memorizer contradicts it but his tradition is found to be defective, it is an indication of the soundness of the person who gave out the transmitter's tradition. If the opposite of what I have described happens, then the [transmitter's] tradition is adversely affected and no one can accept it. But[77] if certain indications [in favor] of the soundness of his tradition are found by the means I have described, we should prefer to accept his tradition.

We cannot, however, claim that the proof [for the interrupted tradition] would be as good as that of an uninterrupted [tradition]. The reason is that the interrupted tradition has something lacking, though it may have been related from a person who, if his name had been known, might prove to be acceptable. But some interrupted [traditions]—even if similar interrupted traditions agree with them—might have been related from the same source, which if known might prove to be unacceptable. If the narrator is stating his own opinion [regarding the soundness of the tradition], even if some of the companions of the Prophet agree with him, it is not a strong indication of the soundness of the source of the tradition; for it is possible that [the transmitter] might have mistakenly thought that some of the companions were agreeing with him just as he might have mistakenly thought that some of the jurists agreed with him.[78]

But as for those who came after the leading Successors who so often saw some of the Companions of the Apostle, I do not know a single one of them whose transmission would be acceptable for various reasons. The reasons for that are: First, they were not so particular as to those from whom they related traditions. Secondly, there are certain indications in that which they transmitted that betray weakness in the source of their transmission. Thirdly, there are many variations [in

[77] "Shāfi'I said" is omitted.
[78] Cf. Ibn Ḥazm, Vol. II, pp. 2-6.

their traditions], and this raises the possibility of misunderstanding and lack of reliability on the part of him from whom S 465
it was received.

460. Shāfi'ī said: [79] My experience with certain scholars indicates that there are groups with [two] opposite tendencies: Some are satisfied with meager knowledge and want to derive knowledge from only one source, neglecting similar or more reliable ones. These are the ones who are lacking in knowledge. Others, who have criticized this approach and aspired to a broader and thorough knowledge [of tradition], have been driven by this [desire] to accept traditions from transmitters from whom it would have been better not to accept. I have noticed that most of them are inclined to be unreliable, because they accept [traditions] from the same transmitters whose similar and better traditions they have rejected. They accept traditions that are interpolated, as well as those from unreliable sources if they agree with their opinions, while they reject traditions from reliable transmitters if they happen to contradict their opinions.

Interpolations reach some of these people from various sources. He who scrutinizes the knowledge [of traditions] with competence and care is shocked by the [number of] inter- S 466
rupted traditions from those who are not well-known Successors, as shown from certain indications explicit in them.

461. He asked: Why do you distinguish between well-known early Successors who knew [many of the] Companions of the Apostle and those who knew only some of them?

462. [Shāfi'ī] replied: Because it was quite impossible for those who had never met most of the Companions to relate traditions from them.

463. He asked: Why do you not accept an interrupted tradition from them or from any of the jurists who came after them?

464. [Shāfi'ī] replied: For [the reasons] that I have already described.

[79] Būlāq ed., p. 64.

465. He asked: Is there any interrupted tradition from the Apostle that was transmitted by a reliable person but not accepted by any of the jurists?

466. [Shāfi'ī] replied: Yes. For Sufyān [b. 'Uyayna] has told us from Muḥammad b. al-Munkadir, who said: A man asked the Prophet: "O Apostle of God! I have my own family and property, and my father has his own family and property; yet he wants to take my property and use it to feed his family." "You and your property belong to your father," replied the Apostle of God.[80] § 467

467. He said: We do not accept this tradition; but some of your followers accept it.

468. [Shāfi'ī] said: No, [we do not accept this tradition] for he who accepts it will give [the right to] the rich father to take the property of his son.

469. He asked: That is right; nobody accepts it. But why do people dispute it?

470. [Shāfi'ī] replied: Because it is not established that it is from the Prophet. For when God decreed that a father can inherit from his son as others, he put him on the same basis as other heirs. He might also receive a smaller share than many other heirs—an indication that the son owns his property independently of the father.

471. He asked: Is Muḥammad b. al-Munkadir extremely reliable in your opinion?

472. [Shāfi'ī] replied: Yes, he is, for he is distinguished in matters of religion and piety; but we do not know from whom he accepted this tradition. [You will recall that] I have explained to you the case in which two witnesses of just character testify concerning two men,[81] and how their testimony could not be accepted until their just character had been confirmed either by the two men in question or by others. § 468

473. He asked: Will you give a tradition [in support of this opinion]?

474. [Shāfi'ī] replied: Yes. The trusted authority [Yaḥya b.

[80] Cf. Ibn Ḥanbal, Vol. X, p. 206; Suyūṭī, *al-Jāmi' al-Ṣaghīr*, Vol. I, p. 365.
[81] Būlāq ed., p. 64.

Ḥassān] told us from Ibn Abī Dhi'b from Ibn Shihāb, who said: "The Apostle ordered a man who laughed during the performance of prayer to repeat both the ablution and the prayer." We did not accept this tradition because it is interrupted. Then the trusted authority [also] related the same tradition from Ma'mar from Ibn Shihāb from Sulaymān b. Arqam from al-Ḥasan from the Prophet. We consider Ibn Shihāb to be an authority on traditions and expert in the choice of reliable transmitters; he names some of the Companions of the Prophet and prominent Successors, and we know of no transmitter who can relate from men more reliable or better known than those from whom Ibn Shihāb relates.

475. He said: We think it strange that he related from Sulaymān b. Arqam. S 469

476. [Shāfi'ī replied]: [Perhaps] he did so because he thought that [Arqam] was a man of virtue, knowledge, and reason. So he accepted traditions from him and had good opinion of him, but failed to mention his name, either because Arqam was younger than he, or for some other [reason]. But when Ma'mar asked [Ibn Shihāb] who related the tradition, he gave him as his authority. Thus though it is possible that Ibn Shihāb may have related a tradition from Sulayman b. Arqam [the tradition should be accepted] in view of what I have said [in praise of] Ibn Shihāb; but other [transmitters] should not be trusted in similar cases.

477. He asked: Is there any sunna of the Apostle established by an interrupted chain of transmitters which everybody has refused to accept. B 64

478. [Shāfi'ī] replied: No; sometimes we do find people disagreeing about it among themselves, some accepting it and others not. However, we have never found people agreeing in opposition to a well-authenticated sunna as we have found them to do in the case of an interrupted tradition from the Apostle.[82]

[82] Būlāq ed., p. 65. For further discussion, see Shāfi'ī, *Kitāb Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, p. 338); and J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 11.

479. Shāfi'ī said: I [also] pointed out [to the interlocutor]: You have asked for the proof on the basis of which an interrupted tradition is rejected and you have rejected such a tradition; but you have gone too far in rejecting a well-authenticated tradition which, in our opinion, you are under an obligation to accept. S 470

Chapter XI

[ON CONSENSUS (IJMĀ')][1]

480. Shāfi'ī said: Someone has asked me: I have understood your doctrine concerning God's commands and His Apostle's orders that he who obeys God obeys His Apostle, [for] God has imposed [on men] the duty of obeying His Apostle, and that the proof for what you held has been established that it would be unlawful for a Muslim who has known the Book [of God] and the sunna [of the Prophet] to give an opinion at variance with either one, for I know that this [i. e. acceptance of the Book and the sunna] is a duty imposed by God. But what is your proof for accepting the consensus of the public [on matters] concerning which no explicit command of God nor any [sunna] related on the authority of the Prophet is to be found? Do you assert, with others, that the consensus of the public should always be based on an established sunna even if it were not related [on the authority of the Prophet]? S 471

481. [Shāfi'ī] replied: That on which the public are agreed and which, as they assert, was related from the Apostle, that is so. As to that which the public do not relate [from the Prophet], which they may or may not relate as a tradition from the Prophet, we cannot consider it as related on the authority of the Prophet—because one may relate only what

[1] Although Shāfi'ī's treatment of ijmā' in this chapter is brief, he has discussed some aspects of it in other parts of the *Risāla*. See Chaps. VI, VII, IX, X, XIV, and XV.

he has heard, for no one is permitted to relate [on the authority of the Prophet] information which may or may not be true. So we accept the decision of the public because we have to obey their authority, and we know that wherever there are sunnas of the Prophet, the public cannot be ignorant of them, although it is possible that some are, and we know that the public can neither agree on anything contrary to the sunna S 472
of the Prophet nor on an error.

482. Someone may ask: Is there any evidence in support of what you hold?

483. [Shāfi'ī] replied: Sufyān [b. 'Uyayna] told us from 'Abd al-Malik b. 'Umayr from 'Abd al-Rahmān b. 'Abd-Allāh b. Mas'ūd from his father, who said: The Apostle said:

> God will grant prosperity to His servant who hears my words, remembers them, guards them, and hands them on. Many a transmitter of law is no lawyer himself, and many may transmit law to others who are more versed in the law than they, etc.[2]

And Sufyān [also] told us from 'Abd-Allāh b. Abī Labīd from 'Abd-Allāh b. Sulaymān b. Yasār from his father, who S 473
said: 'Umar b. al-Khaṭṭāb made a speech at al-Jābiya in which he said: The Apostle of God stood among us by an order from God, as I am now standing among you, and said:

> Believe my Companions, then those who succeed them [the Successors], and after that those who succeed the Successors; but after them untruthfulness will prevail when people will swear [in support of their saying] without having been asked to swear, and will testify without having been asked to testify. Only those who seek the pleasure of Paradise will follow the community, for the devil can pursue one person, but stands far away from two. Let no man be alone with a woman, for the devil will be the third among them. He who is happy with his right [behavior], or unhappy with his wrong behavior, is a [true] believer.[3] S 474

[2] Only the first three words of this tradition are cited, because Shāfi'ī considered it quite unnecessary to repeat a text which he has already given in full in paragraph 417 above. It is reproduced in full in the Būlāq edition, p. 65.

[3] In the year 638 the Caliph 'Umar went to al-Jābiya, a village on the

484. He asked: What is the meaning of the Prophet's order to follow the community?

485. [Shāfi'ī] replied: There is but one meaning for it.

486. He asked: How is it possible that there is only one meaning?

487. [Shāfi'ī] replied: When the community spread in the lands [of Islam], nobody was able to follow its members who had been dispersed and mixed with other believers and unbelievers, pious and impious. So it was meaningless to follow the community [as a whole],[4] because it was impossible [to do so], except for what the [entire] community regarded as lawful or unlawful [orders] and [the duty] to obey these [orders].

He who holds what the Muslim community holds shall be regarded as following the community, and he who holds differently shall be regarded as opposing the community he was ordered to follow. So the error comes from separation; S 475
but in the community as a whole there is no error concerning the meaning of the Qur'ān, the sunna, and analogy.[5]

outskirts of Damascus, where he met several leading Companions For the text of the tradition, see Shāfi'ī, *Musnad*, Vol. II, p. 187; and Ibn Ḥanbal, Vol. I, pp. 112-13, 176-81.

[4] This sentence is twice repeated in the Arabic text, in the middle and toward the end of the paragraph.

[5] For a brief translation of the last two paragraphs, see J. Schacht, *Origins of Muhammadan Jurisprudence*, pp. 90-91.

Chapter XII

[ON ANALOGY (QIYĀS)][1]

488. He asked: On what ground do you hold that [on matters] concerning which no text is to be found in the Book, nor a sunna or consensus, recourse should be had to analogy? Is there any binding text for analogical deduction? B 65

489. [Shāfiʿī] replied: If analogy were [stated] in the text of the Book or the sunna, such a text should be called either God's command or the Apostle's order rather than analogy. S 476

490. He asked: What is analogy? Is it ijtihād, or are the two different?

491. [Shāfiʿī] replied: They are two terms with the same meaning.

492. He asked: What is their common [basis]?

493. [Shāfiʿī] replied: On all matters touching the [life of a] Muslim there is either a binding decision or an indication as to the right answer. If there is a decision, it should be followed; if there is no indication as to the right answer, it should be sought by ijtihād, and ijtihād is qiyās (analogy).[2]

494. He asked: If the scholars apply analogy correctly, will they arrive at the right answer in the eyes of God? And will it be permissible for them to disagree [in their answers] through analogy? Have they been ordered to seek one or different

[1] Būlāq ed., p. 65. Analogy is also discussed in the chapters on personal reasoning and juristic preference (Chaps. XIII-XIV).

[2] Cf. Schacht, *Origins of Muhammadan Jurisprudence*, p. 127.

answers for each question? What is the proof for the position that they should apply analogy on the basis of the literal rather than the implicit meaning [of a precedent], and that it is permissible for them to disagree [in their answers]? Should [analogy] in matters concerning the scholars themselves be applied differently from the way it is applied in matters concerning others? Who is the person qualified to exercise ijtihād through analogy in matters concerning himself, not others, and who is the person who can apply it in matters concerning himself as well as others? S 477

495. [Shāfi'ī] replied: [Legal] knowledge is of various kinds: The first consists of the right decisions in the literal and implied senses; the other, of the right answer in the literal sense only. The right decisions [in the literal and implied senses] are those based [either] on God's command or on a sunna of the Apostle related by the public from an [earlier] public. These [God's commands and the sunna] are the two sources by virtue of which the lawful is to be established as lawful and the unlawful as unlawful. This is [the kind of knowledge] of which nobody is allowed to be ignorant or doubtful [as to its certainty].

Secondly, [legal] knowledge of the specialists consists of traditions related by a few and known only to scholars, but others [the public] are under no obligation to be familiar with it. Such knowledge may either be found among all or a few [of the scholars], related by a reliable transmitter from the Prophet. This is the [kind of] knowledge which is binding on scholars to accept and it constitutes the right decision in the literal sense such as we accept [the validity of] the testimony of two witnesses.[3] This is right [only] in the literal sense, because it is possible that [the evidence of] the two witnesses might be false. S 478

[Thirdly], [legal] knowledge derived from ijmā' (consensus).[4]

[Finally], [legal] knowledge derived from ijtihād [personal

[3] Būlāq ed., p. 66. Shākir's edition reads: "just as we condemn to death the murderer on the strength of two witnesses," p. 479.

[4] This subject is dealt with in Chap. XI.

reasoning] through qiyās [analogy], by virtue of which right decisions are sought. Such decisions are right in the literal sense to the person who applies analogy, not to the majority of scholars, for nobody knows what is hidden except God.

496. [He asked]: If [legal] knowledge is derived through analogy—provided it is rightly applied—should [the scholars] who apply analogy agree on most [of the decisions], although we may find them disagreeing on some?

497. [Shāfi'ī replied]: Analogy is of two kinds: the first, if the case in question is similar to the original meaning [of the precedent], no disagreement on this kind [is permitted]. The second, if the case in question is similar to several precedents, analogy must be applied to the precedent nearest in resemblance and most appropriate. But those who apply analogy S 479
are likely to disagree [in their answers].

498. He asked: Will you give examples known to me explaining that [legal] knowledge is of two kinds, the one consisting of the right decisions in literal and implicit senses, and the other of the right decisions in the literal, not the implicit, sense?

499. [Shāfi'ī] replied: If we were in the Sacred Mosque and the Ka'ba is in sight, do you not agree that we should face it [in prayer] with certainty?

500. He said: That is right.

501. Shāfi'ī asked: [Since] the duties of prayer, [the payment of] the alms, performance of pilgrimage, and the like have been imposed on us, are we not under obligation to perform them in the right ways?

502. He replied: That is right.

503. [Shāfi'ī] asked: Since the duty imposed on us to punish the fornicator with a hundred stripes, to scourge him who S 480
casts an imputation [of adultery] with eighty, to put to death him who apostatizes, and to cut off [the hand of] him who steals, are we not under obligation to do so [only] to him whose offence is established with certainty on [the basis of] his admission?

504. He replied: That is right.

505. [Shāfi'ī] asked: Should not [the decisions] be the same whether we were obligated to take them against ourselves or others, although we realize that we know about ourselves what others do not know, and we do not know about others by outward observation what we know about ourselves inwardly?

506. He replied: That is right.

507. [Shāfi'ī] asked: Are we not under obligation to face the Sacred House [in prayer] wherever we may be?

508. He replied: That is right.

509. [Shāfi'ī] asked: Do you hold that we [could always] face the Sacred House correctly?

510. He replied: No, not always as correctly as when you were able to see [the Sacred House]; however, the duty imposed on you was fulfilled.

511. [Shāfi'ī] asked: Is our obligation to seek the unknown object different from our obligation to seek the known object? S 481

512. He replied: That is right.

513. [Shāfi'ī] asked: Are we not obligated to accept the just character of a man on the basis of his outward behavior, and establish marital and inheritance relationship with him on [the basis of] his outward acceptance of Islam?

514. He replied: That is right.

515. [Shāfi'ī] said: Yet he may not be just in character inwardly.

516. He replied: That is quite possible; but you are under no obligation to accept save what is explicit.

517. [Shāfi'ī] asked: So is it not lawful for us to establish marital and inheritance relationship with him, and to accept his testimony, and is it not unlawful for us to kill him on the basis of [our] explicit [knowledge] of him? But if others should discover him to be an unbeliever, would it not be lawful for them to kill him and to repudiate marital and inheritance relationship or whatever else he had been permitted to do?

518. He replied: That is right.

519. [Shāfi'ī] said: Thus the obligation imposed on us toward the same person differs in accordance with the degree of our understanding of it and others' understanding of it.

520. He replied: Yes, for each one fulfils his obligation on the basis of his own understanding.

521. [Shāfiʿī] said: Thus we hold concerning matters on which there is no binding explicit text that these should be sought by ijtihād—through qiyās—because we are under obligation to arrive at the right answers according to us.

522. He asked: Are you not seeking the answer to one question through different means?

523. [Shāfiʿī] replied: Yes, whenever the grounds are different.

524. He asked: Give me an example.

525. [Shāfiʿī] replied: If a man admits an obligation on his part to God or to another person, I should take a decision against him on the strength of his admission; if he does not admit, I should take the decision on the evidence established against him; if no evidence can be established against him, I should take the decision on the basis of an oath taken by him which might acquit him; if he refuses [to take the oath], I should ask the other party to take an oath and I should make the decision against him on the basis of the oath of the other party. It is understood that [one's own] admission against himself—owing to [one's natural] covetousness and greed—is more certain than the evidence of others, since they might make a mistake or tell a lie against another. The evidence of witnesses of just character against a person should be regarded as nearer to the truth than [the accused] refusal to take an oath, or [nearer to the truth] than the oath taken by the other party [against him], since the latter might not be just in character. Thus the decision is taken on several grounds, some of them stronger than others. B 66 B 483

526. He said: That is all right, but if he refuses to take an oath, we [the Ḥanafī School] will take the decision [against him] on the ground of his refusal.

527. [Shāfiʿī] said: But you will have taken a decision on an evidence weaker than ours.

528. He said: Yes; however, I disagree with you on the source of evidence [on the strength of which you have taken the decision].

529. [Shāfi'ī] said: The strongest evidence for your decision was his admission, although one is liable to make an unfounded or erroneous admission [on the strength of which] a decision might be taken against a person.

530. He said: That is correct; for you are under no other obligation than that. S 484

531. [Shāfi'ī] asked: Do you not agree that we are under an obligation to take the right decision by one of two means: Either by certainty based on the literal and implicit meanings, or by certainty based on literal, not implicit meaning?

532. He replied: Yes, but is there any explicit text in the Book or the sunna in support [of your opinion]?

533. [Shāfi'ī] said: Yes, in such examples as I have [already] discussed concerning the determination of the qibla for myself and others. [For] God said:

> And they comprehend not anything of His knowledge save what He willeth [Q. II, 256].[5]

Thus God endowed knowledge to man in whatever amount or way He wanted; no one shall raise an objection to His decision; for He is quick at reckoning.[6]

And He said to His Prophet:

> They ask thee about the Hour: 'When is its arrival?' What hast thou to do with the mention of it? To thy Lord is its final coming [Q. LXXIX, 42-44].

Sufyān b. 'Uyayna told us[7] from al-Zuhrī from 'Urwa, who said:

> The Prophet went on inquiring about the Hour until God communicated to him: 'What hast thou to do with the mention of it?' [Q. LXXIX, 43] so he stopped. S 485

And God said:

> Say: No one in the heavens or on earth knows the unseen except God [Q. XXVII, 66].

[5] Cf. Ṭabarī, *Tafsīr*, Vol. V, pp. 396-97.
[6] Cf. Q. XXXIII.
[7] Būlāq ed., p. 67.

And God, the Blessed and Most High, said:

> With God is the knowledge of the Hour; He sends down the rain, He knows what is in the womb. No person knows what he will gain tomorrow, and no person knows in what land he will die. Verily God is all-knowing, All-aware [Q. XXXI, 34].

So men are under obligation to hold opinions and to act in accordance with what they have been ordered [to do], provided that they do not exceed the limits. However, they cannot reward themselves; only God can reward. So we ask God S 486
to reward us for fulfilling our duties to Him and to enlarge His reward [to us].

Chapter XIII

[ON PERSONAL REASONING (IJTIHĀD)][1]

534. He asked: On what ground do you hold that [the exercise of] ijtihād is permitted in addition to what you have already explained?

535. [Shāfi'ī] replied: It is on the basis of God's saying:

> From whatever place thou issuest, turn thy face in the direction of the Sacred Mosque; and wherever you may be, turn your faces in its direction [Q. II, 145].[2] S 487

Regarding him who [wishes to] face the Sacred Mosque [in prayer] and whose residence is at a distance from it, [legal] knowledge instructs [us] that he can seek the right direction through ijtihād on the basis of certain indications [guiding] toward it. For he who is under an obligation to face the Sacred House and does not know whether he is facing the right or wrong direction may be able to face the right one through certain indications known to him [which help him] to face it as accurately as he can, just as another person may know other indications which help to orient him [in the right

[1] Būlāq ed., p. 76.

[2] Paragraphs 1379 and 1380 (of Shākir's ed.) are omitted because Shāfi'ī's answer to the interlocutor's question on the meaning of "direction" is confined to citing a verse of poetry without actually giving directly the meaning of the term. Besides, this is a repetition of paragraph 109 (Shākir's ed.).

direction], although the direction sought by each person may be different from that sought by the other.[8]

536. He asked: If I agree with you on this [matter], I should agree with you on the permissibility of disagreement in other matters.

537. [Shāfi'ī] replied: You may hold whatever opinion you like.

538. He asked: I hold that [that disagreement] is not permissible.

539. [Shāfi'ī] asked: Let us [assume that] you and I, who know [the direction of] this road, [hold different opinions]: I hold that the qibla is in this direction; but you may disagree with me. Who should follow the opinion of the other? S 483

540. He replied: Neither one is under an obligation to follow the other.

541. [Shāfi'ī] asked: What should each one do?

542. He replied: If I hold that neither one should perform the prayer until he is certain [of the right direction], both might not know with certainty the unknown object. Thus either the prayer [duty] should be abandoned, or the obligation of the qibla waived so that each one can pray in whatever [direction] he wishes. But I am not in favor of either one of these two [opinions]—I am rather bound to hold that each one should pray in the direction he believes [is right] and he would be under no obligation to do otherwise. It is also possible to hold that while each one is ordered to seek the right [solution] on the strength of the literal and the implicit meaning [of the duty], neither shall be responsible for the error [which might be committed], in the implicit—not the literal—meaning [of the duty].

543. [Shāfi'ī] said: Whatever opinion you may hold is a proof against you, because you have distinguished between [the validity of] decisions taken in the literal and the implicit [senses], a distinction for which you have already criticized us

[8] The translation of this paragraph is based on the Būlāq edition (p. 67) owing to the difficulty, as Shākir rightly points out (p. 488, notes 2-3), of deciphering the Rabī' MS.

by saying: "If they disagree [on the qibla, etc.]," [4] one of them must be in error.

544. He replied: That is right [I did].

545. [Shāfi'ī] asked: You have held that the prayer was permissible despite your awareness that one of them was in error; it is even possible that both may have been in error. I have added: Such [a distinction] would be binding on you in [the cases of] testimonies and analogical deduction. S 489

546. He replied: I hold that [such an error] is inevitable, but it is not intentional.

547. [Shāfi'ī] said: God said:

> O belivers, do not kill the game when you are in pilgrim sanctity; whosoever of you kill it intentionally, there shall be compensation equal to what he has killed, in flocks as shall be judged by two men of just character among you, an offering to be delivered at the Ka'ba [Q. V, 96].

Thus God ordered [men] to pay compensation [in kind], to be determined by two men of just character. Since the eating of game in general was prohibited, compensation for animals taken by hunting shall be by other [edible animals] equal to their size. Some Companions of the Prophet made decisions [to the effect] that the compensation for the hyena is a ram, S 490 for the gazelle a goat, for the rabbit a she-goat, and for the jerboa a kid.[5] [Legal] knowledge instructs [us] that equal compensation means compensation in kind, not in prices, for if decisions were taken on the basis of prices they would vary, owing to the variation of the prices of game from one town and one time to another, even though legal decisions should be the same.

Knowledge instructs [us] that the jerboa is not quite equal in size to the kid, but since it is the nearest in size, it is regarded as equal [for this purpose]. This kind of analogy is closer to [the analogy of] the goat and the deer than to that of the kid and the jerboa.

[4] See Paragraph 536, above.

[5] A jafra is a small kid about four months of age. For the Companions' decision, see Shawkānī, *Nayl al-Awṭār*, Vol. V, pp. 18-19; Shāfi'ī, *Kitāb-al-Umm*, Vol. II, pp. 175-76.

548. Shāfi'ī said: [6] In the event equal compensation in kind is for four-footed game—not birds—[such compensation] is permissible only in accordance with 'Umar's opinion that game killed shall be compensated for in kind by another animal nearest in resemblance to it. If the game killed is larger, compensation shall be made by another animal nearest in size to it, as in the case of the hyena, the compensation for which is a ram; and the jerboa, though smaller than the little she-goat, a kid. S 491

Since game birds do not resemble cattle, owing to differences in their physical make up, compensation for those which are not lawfully edible shall be made on the basis of precedent and analogy by paying their price to the owner. It is agreed [7] [among the scholars] that the decision as to the price should be on the basis of the price [of the game] in the place and the day [it was killed], for [prices] vary from one place and time to another, so that the price of a bird in one place may be one dirham and in another only a fraction of a dirham. S 492

549. Shāfi'ī said: [8] We are ordered to accept the testimony of [witnesses of] just character. Thus, if the acceptance of [the testimony of] "just character" is stipulated, the indication is that we should reject [the testimony] of those who are not [of just character]. [Since] there is no sign in the body or speech of the witness of just character which distinguishes him from the witness lacking it, such a sign should be sought in the truthfulness reflected in his behavior. Thus if his behavior were on the whole good—although certain things may be lacking, as nobody, as far as we know, is [completely] devoid of sin—[his testimony] must be accepted. If his sins and good deeds are mixed, only by ijtihād may the good be distinguished from the bad, but in such a case the mujtahids are liable to disagree. If the just character [of a person] is apparent his testimony must be accepted by us; but if another person finds him deficient in just character, the testimony must be rejected.

[6] Būlāq ed., p. 68.
[7] "Shāfi'ī said" is omitted.
[8] Būlāq ed., p. 68.

Thus two judges may take a decision in which one of them accepts [a testimony] while the other rejects it. This is [an example of] disagreement,[9] but each judge has fulfilled his duty. S 493

550. He asked: Will you cite a tradition permitting [the exercise of] ijtihād?

551. [Shāfi'ī] replied: 'Abd al-'Azīz b. Muḥammad [al-Darāwardī] told us from Yazīd b. 'Abd-Allāh [b. Usāma] b. al-Hādī from Muḥammad b. Ibrāhīm [al-Taymī] from Busr b. Sa'īd from Abī Qays [the client of 'Amr b. al-'Āṣ] from 'Amr b. al-'Āṣ, who heard the Prophet say:

> If a judge makes the right decision through ijtihād, he shall be doubly compensated; if he errs, he shall be compensated once.[10] S 494

'Abd al-'Azīz b. Muḥammad told us from Yazīd b. al-Hādī, who said: I have related that tradition to Abū Bakr b. Muḥammad b. 'Amr b. Ḥazm, who said: The tradition was related to me by Abū Salama b. 'Abd al-Raḥmān from Abū Hurayra.

552. He said: This is a narrative transmitted by one individual which other [scholars] reject and [for which they] demand a proof [for its authenticity].

553. [Shāfi'ī] replied: You and I are capable of establishing its authenticity.

554. He said: Yes.

555. [Shāfi'ī] said: Those who reject it know what I have already stated concerning the authentication [of such a tradition] as well as others.[11] Which [12] part [of the tradition] is in question? S 495

556. He asked: Did not the Prophet specify in what you related from him [13] [what kind of] ijtihād is right and [what kind is] wrong?

557. [Shāfi'ī] replied: This is an argument against you.

558. He asked: How?

[9] Cf. Būlāq ed., p. 68.
[10] Muslim, Vol. XII, pp. 13-14; and Abū Dāwūd, Vol. III, p. 299.
[11] See Chap. X, above.
[12] "Shāfi'ī said" is omitted.
[13] Būlāq ed., p. 68.

559. [Shāfi'ī] replied: Because the Prophet stated that [the judge] shall be rewarded for the one [i. e., the right kind of ijtihād] more than for the other [the wrong]; but rewards are not granted for things forbidden nor for intentional errors. For if he [the judge] were ordered to exercise ijtihād on the basis of the literal meaning [of the text], and his ijtihād was indeed on the basis of the literal meaning [of the text], his B 496 error would be forgiven, as I have pointed out. But the punishment for an error which is not permissible is not forgivable as far as I can see; however, God might forgive him. This is [another] example for what I have already discussed that one is ordered to exercise ijtihād on the strength of the explicit, not the implicit meaning [of the text].

560. He asked: This may well be, as you hold; but what is the meaning of "wrong" and "right"?

561. [Shāfi'ī] replied: Their meaning is the same as that [explained in the example] of the qibla. He who can see it with certainty would face it correctly; but if it is out of sight, whether he [the person facing it] is at a distance or close to it, he should search for it. So some may face it correctly and others wrongly. Thus the facing itself is liable to be right or wrong, just as if one intends to relate a certain narrative concerning right or wrong, he says: So-and-so is right in seeking B 497 [the right solution] for he did not fall into error, but so-and-so fell into error although he sought [the right solution]. B 68

562. He said: It is as you hold; but do you not agree that ijtihād might be right in a different sense?

563. [Shāfi'ī] replied: Yes; for one is under an obligation to exercise ijtihād only in the search for an unknown object. If one does so, he would be right by doing what he was obligated to do. This is right for him on the basis of the literal meaning [of the text]; only God knows the implicit meaning. For we know that those who disagree in their search for the qibla cannot be right if the qibla is in sight; but they would be right in seeking it by ijtihād even though they may disagree [on how to face it]. The same [reasoning] may be applied in such cases as [the testimony of] witnesses and others which I have described.

564. He asked: Will you give an example?

565. [Shāfi'ī] replied: I do not think it would be explained by a stronger example than this. S 498

566. He asked: Will you give a different example?

567. [Shāfi'ī] replied: God has made it lawful to marry two or three or four women and what our right hand possesses; but he made it unlawful [to marry] mothers, daughters, and sisters.

568. He said: That is correct.

569. [Shāfi'ī] asked: If a man purchases a slave-woman, whom he found clear of pregnancy, is she lawful to him?

570. He replied: Yes.

571. [Shāfi'ī] asked: after he had gone into her and she had given children, he discovered that she was his sister. What is [your] opinion about such [a situation]?

572. He replied: His [intercourse with her] was lawful until he found out about her [that she was his sister]; but once he knew it she was no longer lawful to him.

573. [Shāfi'ī] asked: So one may hold that the same woman was both lawful and unlawful to one man, although neither S 499
he nor she was responsible for the [wrong] act?

574. He replied: In the implicit sense she was his sister from the beginning to the last; but in the explicit sense she was lawful to him so long as he did not know she was his sister, and unlawful after he became aware of it. Other[14] scholars might hold that he committed an offence, but the punishment would be waived.

575. [Shāfi'ī] said: Whatever [the scholars] hold, they have distinguished between the explicit and the implicit [meanings of] decisions, waiving the penalty for him who exercises ijtihād on the strength of an explicit decision—despite the fact that he committed an error—but they do not waive it in the case of an intentional offence.

576. He replied: That is correct.

577. [Shāfi'ī] said: Similarly, a man might marry an unlawful woman unknowingly or take a fifth [wife] who turned

[14] "He [the interlocutor] said" is omitted.

out to be his [former] wife, after the death of one of the four; S 500
and so forth.

578. He said: Yes, there are many other similar situations. But [15] it is clear to those of you who are certain of truthful information that ijtihād should never be resorted to except in seeking an unknown object by means of certain indications, although it is permissible to those who exercise ijtihād to disagree [in their decisions].

And he asked: How is ijtihād [to be exercised]?

579. [Shāfi'ī] replied: God, Glorified and Praised be He, has endowed men with reason by which they can distinguish between differing viewpoints, and He guides them to the truth either by [explicit] texts or by indications [on the strength of which they exercise ijtihād].

580. He asked: Will you give an example?

581. [Shāfi'ī] replied: God erected the Sacred House and ordered men to face it [in prayer], when it is in sight, and to seek its direction [by ijtihād] when they are at a distance from it. And He created for them the heaven and the earth and the sun and the moon and the stars and the seas and the mountains and the wind [as guiding indications by which S 501
they can exercise ijtihād]. For God said:

> It is He who has appointed for you the stars, that by them you might be guided in the darkness of land and sea [Q. VI, 97].

And He said:

> And landmarks and by the stars they might be guided [Q. XVI, 16].

Thus [God] instructed men to be guided by the stars and [other] indicators, and by His blessing and help they know the direction of the Sacred House. So those who can see it from their places [may perform the prayer] and those who cannot see it should either be informed by those who have seen it or seek guidance by means of certain indications such as a mountain, which might point to [the direction], or a star

indicating the north and south, or the sun, whose rising and setting is known, pointing out the direction for him who performs the evening [prayer], or the seas [which might also be a guiding indication] and the like. S 502

Thus men should seek, through the reasoning power which God has implanted in them, the direction in which He made it incumbent for them to face [during prayer]. If it is thus sought, through their reasoning power and their knowledge of the indications [pointing to it], men can fulfil their duty.

[God] has made it clear that the duty He imposed on them is [to pray in] the direction of the Sacred Mosque, not always to face the House [al-Ka'ba] itself. If the right direction is not known with the same certainty as is possessed by those who see it, it is not permissible to hold that one can face any direction one wishes without [a guiding] indication.

Chapter XIV

[ON JURISTIC PREFERENCE (ISTIḤSĀN)][1]

582. He said: I agree with you that ijtihād should not be exercised except for a specific object, and the object must be something definite that can be determined by means S 503
of evidence or resemblance to an established object. Thus, it should be clear that it is unlawful for anyone to exercise istiḥsān whenever it is not called for by a narrative, whether the narrative is a text of the Qur'ān or a sunna, by virtue of which an [unknown] object is sought,[2] just as when the Sacred House is out of sight it should be sought by analogy. So nobody is allowed to give an opinion save through ijtihād, and this, as you said, is seeking [to know] the right answer. Thus would you hold that it is permissible for anyone to exercise istiḥsān by means other than analogy?

583. [Shāfi'ī] replied: It is not permissible for everyone in my opinion, [to do so], for only the scholars—not others—may give an opinion, and the scholars hold that a narrative must be followed; if a narrative is not found, analogy might be applied on the strength of a narrative. For if analogy were B 69

[1] Būlāq ed., p. 69. This subject is also discussed in a separate treatise entitled *Kitāb Ibṭāl al-Istiḥsān* (see Shāfi'ī, *Kitāb al-Umm*, Vol. VII, pp. 267-70, 270-77.)

[2] Literally: "an object is sought by the mujtahid" (i.e., the person who exercises the istiḥsān).

abandoned, it would be permissible for any intelligent man, other than the scholars, to exercise istiḥsān in the absence of a narrative. But to give an opinion based neither on a narrative nor on analogy, as I have already stated in the discussion on the Qur'ān and the sunna, is not permissible according to [the rules of] analogy. S 504

584. He asked: The Qur'ān and the sunna give, indeed, evidence in support [of ijtihād]. For since the Prophet gave an order to exercise ijtihād, it should not be exercised save to seek an [unknown] object, and the object cannot be sought except through certain evidences [on the strength of] which analogical deduction may be made. Will you point out what are the analogy and the evidences which you have explained?

585. [Shāfi'ī] replied: Do you not agree that if a man injured the slave of another the scholars would not ask a [third] man to fix the price of the slave, whether male or female, unless he were well informed about the market prices in order to estimate two prices [i. e. the market price and the estimated price] by which he would inform you of the price of a similar slave on that day? For such [pricing] cannot be done except on the basis of the [man's] knowledge of similar cases on the strength of which he applies analogy. So whoever deals with property should not be asked to estimate the price unless he is well informed [about the market price]. S 505

So it is not permissible to ask a jurist of just character who is not acquainted with the prices of slaves [the question]: "What is the price of this male or female slave?," or "What is the wage of this worker?" for if he estimates such prices without regard to similar prices, he is making his estimate wrongly. S 506

If that is the case in such matters as the pricing of property of little value, concerning which an error might easily be committed by one man against another, it is all the more necessary that God's orders as to what is right and wrong should not be applied by treating a case without due consideration or by dealing with it on the basis of istiḥsān. Istiḥsān is merely doing what is agreeable.

No one except a well-informed scholar fully acquainted

with the [binding] narratives should exercise it [analogy]. And he who exercises it should do so only on the basis of [legal] knowledge, and legal knowledge consists of the binding narrative on the strength of which analogy may be applied by means of certain indications as to what is right. So the scholar should always follow a narrative or have recourse to analogical deduction on the strength of such a narrative, just as [in prayer] one should either face the Sacred House when it is in sight or seek the direction in which it lies by the exercise of ijtihād through certain landmarks [when it is out of sight]. S 507

If he [the scholar] were to give an opinion based neither on a binding narrative nor on analogy he is more liable to commit a sin than is an ignorant person, if it were permissible for the latter to give an opinion. For God has not permitted any person since the Prophet's time to give an opinion except on the strength of established [legal] knowledge. [Legal] knowledge [after the Prophet's death] includes the Qur'ān, the sunna, consensus, narrative, and analogy based on these [texts], as I have already explained. S 508

Nobody should apply analogy unless he is competent to do so through his knowledge of the commands of the Book of God: its prescribed duties and its ethical discipline, its abrogating and abrogated [communications], its general and particular [rules], and its [right] guidance. Its [ambiguous] communications should be interpreted by the sunna of the Prophet; if no sunna is found, then by the consensus of the Muslims; if no consensus is possible, then by analogical deduction. S 509

No one is competent to apply analogy unless he is conversant with the established sunna, the opinions of [his] predecessors, the agreement (consensus) and disagreement of the people, and has [adequate] knowledge of the Arabic tongue. Nor is he regarded as competent in analogical [reasoning] unless he is sound in mind, able to distinguish between closely parallel precedents, and not hasty in expressing an opinion unless he is certain of its correctness. Nor shall he refrain from listening to the opinions of those who may disagree with

him, for he might be warned against [possible] forgetfulness S 510
or be confirmed in his right [judgment]. In so doing he must exert his utmost power not to be misled by personal [bias], so that he knows on what ground he has given one opinion and on what ground he has rejected another. Nor should he be more preoccupied with the opinion he has given than with the one with which he disagrees, so that he knows the merits of what he accepts as compared with that which he rejects.

He who possesses a mature mind but lacks the other qualifications we have described should not be permitted to express an opinion based on analogy, for he might not know the precedent on which he applies analogy just as a jurist of sound mind should not be permitted to estimate what a dirham will buy if he lacks the information on market [prices]. And he who possesses the [legal] knowledge I have described [solely] through memory, and is uncertain of its correctness, should not be permitted to express an opinion based on analogy, for he may not comprehend the meaning [of that knowledge].

Moreover, if he were good in memory but were lacking either in comprehension or in knowledge of the Arab tongue, he should not be permitted to apply analogy, for he would be lacking in the tool by means of which he applies analogy. However, we do not maintain that it is permissible only to follow [precedents] and not to use analogy.[a] But God knows S 511
best!

586. Someone asked: Will you give some examples of [binding] narratives on the strength of which analogy might be applied, and how would you apply it?

587. [Shāfi'ī] replied: Every order laid down by God or by the Apostle for which there is evidence, either in itself or in some other of the orders of God or His Apostle, was laid down for some reason. If a case should arise for which there is no [specific] textual order, it should be decided on the strength of the case identical to it in reason for which a [specific] order was laid down.

Analogy is of various kinds, and all are included under the

[a] See *Kitāb Ibṭāl al-Istiḥsān* (*Kitāb al-Umm*, Vol. VII, p. 274).

term "analogy." They differ from one another in the antecedence of the analogy of either one of them, or its source, or the source of both, or the circumstance that one is more clear than the other. The strongest kind [is the deduction] from an order of prohibition by God or the Apostle involving a small quantity, which makes equally strong or stronger an order of prohibition involving a great quantity, owing to the [compelling] reason in the greater quantity. Similarly the commendation of a small act of piety implies the presumably stronger commendation of a greater act of piety; and similarly an order of permission involving a great quantity would render permissible something involving a smaller quantity.[4] S 512 B 70

588. Someone may say: Give an example of each one of these to explain their meaning. S 513

589. [Shāfi'ī] said: The Apostle said:

> God has prohibited the shedding of the believer's blood and the taking away of his property, and [ordered] that only what is good should be thought of him.[5]

If [God] has made it unlawful for [the believer] to be thought of in any way contrary to the good which he manifests, then the thing greater than the thought implying in any way what is contrary to his good such as telling an untruth about him, should be all the more unlawful. The more this matter is indulged in, the stronger the order of prohibition becomes. [For] God said: S 514

> Whoever has done a particle's weight of good, he shall see it; and whoever has done a particle's weight of evil, he shall see it [Q. XCIX, 7-8].

Thus what is greater than a particle's weight of good is a greater commendation [of an act of piety] and what is greater than a particle's weight of evil is a greater sin.[6]

He [God] has made lawful for us the life-blood and property

[4] See *Kitāb Ibṭāl al-Istiḥsān* (*Kitāb al-Umm*, Vol. VII, p. 274).

[5] This is a mursal tradition for which no authority is given, although its substance might be found in other traditions.

[6] Bayḍāwī, p. 807.

of combatant unbelievers, excepting those who have made a compact [with us], prohibiting nothing that I remember. So whatever we take of their bodies, except their life-blood, and of their property, except the whole of it, is all the more lawful.

Some scholars refuse to call these [rulings] analogical deduction, for they hold that they fall within the meaning of what God has made either lawful or unlawful, and has either com- S 515
mended as an act of piety or repudiated; these things are included in the general order itself rather than an analogy based on another order. Similarly this is applicable to other matters: whatever is equivalent (fi ma'na) to something lawful is lawful and what is equivalent to something unlawful is unlawful. They refuse to call anything an analogy unless there is a parallel precedent which can be determined in one of two ways, one of them being chosen as the answer to the exclusion of the other. Other scholars hold that any [ruling] other than the [explicit] text of the Book and the sunna is analogy, pro-
vided it is in harmony with their meaning. But God knows S 516
best.[7]

590. Someone said: Give examples of analogy that illustrates its varieties of clarity and arguments and the proof for it, other than those already stated, which the public can understand.

591. [Shāfi'ī] replied: God said:

> Mothers shall suckle their children two full years, for anyone who wishes the period of suckling to be complete. It is for the father to provide for his [daughters] and clothe them honorably [Q. II, 233].

And He said:

> And if you desire to seek someone to suckle your children, it is no fault of yours when you hand over what you have given honorably (Ibid.).

And the Apostle ordered Hind, daughter of 'Atba, to take from her husband's—Abū Sufyān's—property what was needed

[7] Cf. Schacht, *Origins of Muhammadan Jurisprudence*, pp. 124-25.

for her and her children without asking his permission, since they were his children.[8]

592. [Shāfi'ī] said: Thus the Book of God and the sunna of the Prophet indicate that it is [the duty] of the father to see to it that his children are suckled and that they are supported as long as they are young. S 517

Since the child is [an issue] of the father, he [the father] is under an obligation to provide for the child's support while [the child] is unable to do that for himself. So I hold by analogical deduction when the father becomes incapable of providing for himself by his earnings—or from what he owns—then it is an obligation on his children to support him by paying for his expenses and clothing. Since the child is from the father, he [the child] should not cause him from whom he comes to lose anything, just as the child should not lose anything belonging to his children,[9] because the child is from the father. So the forefathers, even if they are distant, and the children, even if they are remote descendants, fall into this category. Thus I hold that [by analogy] he who is retired,[10] and in need should be supported by him who is rich and [still] active.[11]

The Prophet made a decision that a slave sold with a defect which became known only after he was employed could be returned, with the purchaser retaining the profit [derived from the slave's employment] on the ground that he was responsible for the slave [during the latter's employment].[12] S 518

We conclude that if it were not stipulated in the sale transaction that the profit should be part of the price [the profit belongs to the purchaser], since the slave is a piece of property belonging to his owner, and if the slave should die, his price would be a loss to him who had purchased him. So the profit belongs to the purchaser because it was earned when the slave

[8] Bukhārī, Vol. III, p. 489; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 342; Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 77-78.

[9] Singular in the Arabic text.

[10] Literally: "Without an occupation."

[11] Cf. Ṭabarī, *Tafsīr*, Vol. V, pp. 30-44, 71-76.

[12] See paragraph 447, above.

was in his possession and under his responsibility. We hold [by analogy] the same opinion about the fruit of palm trees; the milk, wool, and young of cattle; the children of a slave-woman; and anything that may be produced while in the possession and responsibility of the purchaser, including the [right of] intercourse with a slave-woman who is a thayyib, and the use of her service.

593. [Shāfi'ī] said: Some of our fellow jurists as well as others have disagreed with us on this matter.

One of them held: The profit, the service,[13] and the property of male and female slaves, except the right of intercourse, belong to the purchaser, who has the right to return [the female slave] if he discovers any defect in her. He added: He has no right to return the female slave if he enters into sexual intercourse with her even if she were a thayyib. Nor is he entitled to the fruit of palm trees or the milk and wool of cattle, or the children of slave-women, for all of these—the cattle, the children of the slave-woman, the palm trees, and S 519
the profit—are not in the category of the slave.

594. Shāfi'ī said: [14] I asked one of those who held this opinion: Do you not agree that the two [i. e., the slave and the profit, etc.] belong together in that both were produced while in the possession of the purchaser and there was no stipulation concerning them in the sale transaction?

595. He replied: Yes, but the two must be distinguished because the fruit which the purchaser has received from the palm, the children he has received from the female slave, and the young he has gained from the cattle have been produced by them, while the slave's profit does not accrue [directly] from him but results from his employment. S 520

596. [Shāfi'ī] asked: If a critic raises an objection in line with your reasoning and says: Since the Prophet decided that the profit belongs to him who bears responsibility, and since the profit cannot be earned except by employment and this B 71
might deprive the master of the slave's service, do you not

[13] Būlāq ed., p. 72.
[14] *Ibid.*, p. 72.

agree that the master is entitled to the slave's profit in lieu of the service rendered [to the employer] and the expenses for the [slave's] subsistence? But if a gift is given to him [the slave], which cannot divert him from his master's service, it should not be given to the second but to the first owner.

597. He replied: No, it should be to the second, in whose possession the slave was when the gift was given.

598. [Shāfiʿī] said: But [the gift] is not a profit, for it falls in a category other than that of profit.

599. He said: Although it is not, neither can it be considered [to have been produced] by the slave.

600. [Shāfiʿī] said: Its meaning must be distinguished from that of profit, for it belongs to a different category. S 521

601. He said: Although it falls in a different category, it was given [to the slave] while he was in the possession of the purchaser.

602. [Shāfiʿī] said: The fruit and the other products were produced while their [sources] were in the possession of the purchaser. So if the fruit were picked from the palm tree it should no longer remain a part of the tree and might be sold without it just as the tree might be sold without the fruit. The same [reasoning] applies to the product of the cattle. However, the profit [from the slave] would more appropriately be returned with the slave, because sometimes it seems to acquire a quality which the fruit of the date palm has, if it were permissible that one of the two should be returned.

Some of our followers have agreed with us on [retention of] the profit and on the [permissibility of] sexual intercourse with the thayyib [slave-woman] and on keeping the fruit of the palm trees; but they have disagreed on [the right to retain] the children of the slave woman.

Since all of them have been produced while [the property was] in the possession of the purchaser, they fall in the same S 522
category and no other [opinion] is right; for the slave's master—the purchaser—can claim only the [slave's] profit and his service, but not what was given to him as a gift, nor what he may find, nor anything that he may obtain from a [hidden] treasure

or the like—except in the form of profit or service rendered—nor the fruit of palm trees, nor the milk of the cattle nor anything else, for all of them do not fall in [the category of] profit.

603. Shāfi'ī said: [15] The Apostle of God has prohibited [the exchange of] gold for gold, date for date, wheat for wheat, and barley for barley unless in equal quantities and delivered immediately.[16]

Since the Prophet excluded (with regard to these kinds of edibles, concerning which men were so greedy that they sold S 523
them by measure) two categories: one, that a thing should be sold for an equal quantity with one a cash sale and the other with deferred payment; and the second, that one of the things might be more than the other when delivered by hand, so whatever is in these categories is unlawful, by analogy. Such kinds are all edibles when sold by weight, for all have the common attribute that they are edible and potable, since the latter's meaning falls within the former's. To the public, these materials [foodstuffs] are either basic food or plentiful or both. I have found that when such foodstuffs (as honey, clarified butter, olive oil, sugar, and other [foodstuffs] which are edible and potable) become scarce, men sell them by weight, for weighing is more accurate than measuring and its meaning is included in measuring.

604. Someone may ask: Is it possible that the thing sold by weight is analogous to the thing sold by gold and silver in weight, so that things exchangeable by weight would be more S 524
appropriate for analogy than things exchanged by measure?

605. [Shāfi'ī said]: To this it may be replied: That which prevented us from taking the position you have described, which confines the analogy of things that are weighed to other things that are weighed, is that valid analogy occurs when you make one thing analogous to another in decisions in which one case would be the same as the other. If you were to make honey and clarified butter analogous to dīnārs (gold coins) and dirhams (silver coins) and were only declaring the

[15] *Ibid.*

[16] See paragraph 271, above, and Shāfi'ī, *Kitāb al-Umm*, Vol. III, p. 12.

superiority of some things over others to be illegal when they are of one kind, on the analogy of gold and silver coins, then would it be proper for honey and clarified butter to be bought for cash with gold and silver coins on [the same basis as a transaction including] payment at an appointed time?

606. If he says: It [the sale] should be permitted in accordance with that which the Muslims permitted. S 525

607. [Shāfiʿī said]: The reply to this may be: The permissibility of the Muslims indicated to me that they did not do so by analogy. If it were by analogy, the decision in one case would be the same as in the other. So it would not be legal unless [the thing] were sold for ready money, just as gold and silver coins may not be exchanged except for ready money.

608. Should he ask: If analogy were applied on the basis of measuring, would you apply the same rules?

609. [Shāfiʿī] replied: That is correct; I make no distinction under any circumstances.

610. He asked: Is it not permissible for you to purchase a mudd [a measure] [17] of wheat, delivered on the spot, for three raṭls [measures] [18] of olive oil to be delivered at an appointed time? S 526

611. [Shāfiʿī] replied: This is not permissible, for nothing edible or potable can be [exchanged lawfully] for other kinds of things to be delivered at an appointed time.[19] For the rule of [exchanging] foodstuffs by measure applies to [exchanging] foodstuffs by weight.

612. He asked: What is your opinion about the [exchange of gold] dīnārs for [silver] dirhams?

613. [Shāfiʿī] replied: That is unlawful in itself. Edible [things] are not analogous to it, for they are not in the same category. The [exchange of] measured edibles is not lawful

[17] The mudd is a grain measure equivalent to 1½ of a raṭl in the Hijaz and 2 in ʿIrāq.

[18] The raṭl is a measure of weight approximately equivalent to a pound (in Egypt).

[19] This paragraph is written on the margin of al-Rabīʿ MS (Cf. Būlāq ed., p. 72).

in itself; only the analogy of what is equivalent in measure or weight applies to it, because they fall in the same category.

614. He asked: What is the difference between the [exchange of] dīnārs for dirhams?

615. [Shāfi'ī] replied: I know of no scholar who disagrees on the permissibility of exchanging foodstuffs by measure or by weight for dīnārs and dirhams to be delivered at an appointed time, but [such an exchange] would be unlawful if it is made by [gold] dīnārs for [silver] dirhams. Nor do I know any scholar who denies that if I discover a mine and pay the right [tax] on my profit from it, I should each year pay its S 527
zakāt (legal alms) if the silver or the gold from it remains a year [or more] with me. And if I were to harvest grain from my land, having paid its kharāj (land-tax), and it remained with me for a year, there would be no zakāt due from me for it. And if I were to destroy something belonging to a man, its value might be paid in gold or silver coins, because they are the [measure of] prices of all the property of a Muslim, except in cases of blood-money [which may be paid in camels].

616. He said: That is correct.

617. [Shāfi'ī] said: Thus things differ by [differentials] less B 72
than what I have described to you.

618. [Shāfi'ī] said: [20] We have found that it was generally agreed among scholars that the Prophet decreed that [the diya] for unintentional homicide committed by a free Muslim against another shall be one hundred camels to be paid by the 'āqila.[21] It is also generally agreed that the [diya] shall be [paid] within three years, one-third each year on the basis of specified years. Several meanings of analogical deduction are implied in this [decree]; some of them which I may remember are the following:

We have found that it was generally agreed among scholars that if a free Muslim commits an intentional offence against the life or limb of a person or destroys his property, the com-

[20] Būlāq ed., p. 73.

[21] The 'āqila is a term applied to the killer's male relatives who are under obligation to pay the diya or blood-money.

pensation shall be paid out of his own property; but if the offence were unintentional, it shall be paid by his 'āqila. S 528

We have found them [the scholars] agreed that the 'āqila pays one-third of the diya for an offence [in the category] of injuries and upwards. But they have disagreed on the payment of less than one-third [of the diya]. Some of our fellow jurists held: The 'āqila should pay compensation for al-muwaḍḍiḥa [22] and upwards, [equal to] half of the one-tenth [of the diya] and upwards; but he should not pay for injuries less than that.[23]

I have said to some of those who stipulate the payment of half of the one-tenth but not anything less: Can analogy ever be sound on the basis of the sunna but in one of two forms? S 529

619. He asked: What are they?

620. [Shāfi'ī] replied: First, since the Prophet decreed that the diya shall be paid by the 'āqila, I should follow his ruling; anything less than the diya should be paid out of the offender's property. No other analogy can be applied on the basis of the diya, for in principle it should be more appropriate for the offender than for the others to pay the compensation for his offence, just as in the case of intentional injuries. Since God has decreed that whoever commits an unintentional killing shall pay the diya and set free one slave, I hold that the slave shall be paid out of the [offender's] property—since the offence is his—, but the diya would be excluded on the basis of the [Prophet's] ruling. On the basis of this ruling I hold that anything less than the diya should be paid out of the [offender's] property, since it is more appropriate for him to pay than for others, just as I hold that the wiping of the shoes is permitted on the strength of a tradition from the Prophet, without regarding it as a precedent for analogy. [Secondly], analogy may take another form. S 530

621. He asked: What is it?

622. [Shāfi'ī] replied: Since the Prophet has excluded unin-

[22] Al-muwaḍḍiḥa is a category of an offence involving a wound reaching to the bone.

[23] This is the doctrine of the Ḥanafī school of law.

tentional offence against life from offences other than those involving life [i.e., the limb] and from intentional offence against life, requiring the 'āqila to pay [the diya] for the unintentional offence because it is the greater amount, I hold that the 'āqila shall be liable to pay for what is less [than the diya] in an unintentional offence, since it is more appropriate for him to pay it than the greater amount or what falls in that category.

623. He said: This is the more appropriate meaning as a basis for analogy, but it is not a case parallel to the wiping of the shoes.

624. [Shāfi'ī] said: That is in agreement with your opinion, for the scholars are agreed that the 'āqila should pay one-third or more [of the diya]; and their agreement is an evidence that they applied the analogy of the payment of compensation of what is less than the diya on the [basis of the] payment of [full] diya. S 531

625. He said: That is right.

626. [Shāfi'ī] said: Our master [Mālik b. Anas] said: "The best opinion that I have heard is that the 'āqila should pay one-third of the diya upward," and he said that this is the opinion acceptable to him.[24] Do you not agree that a critic might advance two points [against such an opinion]?

627. He asked: What are they?

628. [Shāfi'ī] replied: You and I are agreed that the 'āqila should pay one-third or more of the diya; but we are in disagreement on the payment of the smaller amount. So the proof is established by your agreement and mine on the payment of the one-third, but you are unable to produce a tradition in support of the payment of the smaller amount. What would be your answer?

629. He replied: I should say this: My agreement [with you] is based on a ground different from your agreement [with me], for my agreement is based on the analogy that since the 'āqila pays the greater amount [of the diya] he should also be responsible for a smaller amount. For who has limited the

[24] Mālik, Vol. II, p. 865.

amount to one-third? Do you not agree that someone might argue: "The ['āqila] should pay nine-tenths [of the diya] rather than the smaller amount?"

630. [Shāfi'ī] said: If he holds that one-third [of the diya] is too much for whomever pays it, I hold [likewise] that it is too much and that it should be paid by some one jointly with him or on his behalf, but no one else should pay it if it were the smaller amount. S 532

631. He said: Do you not agree that if some one possesses only two dirhams it would be too much for him to pay one-third [of the diya] and one dirham—since he would thus be deprived of his property—but that it would not be too much for one who possesses a fortune to pay one-third [of the diya]?

632. [Shāfi'ī] said: Do you not agree that he [Mālik] would not say, "This is our practice," unless the matter had been agreed upon among the scholars in Madīna? S 533

633. He said: Is not an opinion agreed upon in Madīna stronger than a narrative related by one individual? For[25] why should he relate to us a weak narrative related by one individual and refrain from relating to us a stronger and binding matter agreed upon [among the scholars]?

634. [Shāfi'ī] asked: Supposing someone should tell you: It is because the narrative is rare and the agreement [about the matter] is too well known to be related; and should you yourself say: This is a matter agreed upon?

635. He replied: Neither I nor any of the scholars would say: "This is [a matter] agreed upon," unless it were [a matter] about which you would never find a scholar who would not repeat it to you and relate it from a predecessor, such as that the noon-prayer has four [cycles, rak'as] and that wine is forbidden, and the like. I sometimes find one who says: "The matter is agreed upon," but I often find scholars in Madīna who say the opposite, and I find that the majority [of scholars] of other cities oppose what is said to be "agreed upon."[26] S 534

[25] "He said" is omitted.

[26] On the controversy with Mālik and his followers, see Shāfi'ī, *Kitāb al-Umm*, Vol. VII, p. 188, and *Ikhtilāf al-Ḥadīth*, *ibid.*, pp. 147-48.

636. [Shāfi'ī] said: I pointed out to him that he [the critic] might object to your opinion: "No blood-money [should be paid] for less than al-muwaḍḍiḥa," just as he objected to the payment of the one-third [of the diya]. B 73

637. He replied: The evidence for that is that the Apostle made no decision on cases relating to [offences] less than al-muwaḍḍiḥa.

638. [Shāfi'ī] asked: Do you not agree that a critic may raise an objection by saying: "I will make no decision relating to injuries less than al-muwaḍḍiḥa, because the Apostle made no decisions on such matters."

639. He replied: He has no right to say so, for if [the Apostle] made no decision on such matters, it does not follow that he waived the payment of compensation for such injuries. S 535

640. [Shāfi'ī] said: He may also hold that if he [the Prophet] did not order the 'āqila to pay blood-money for offences less than al-muwaḍḍiḥa he did not prohibit the 'āqila from paying the blood-money for less than al-muwaḍḍiḥa; for if he had made a decision [relating to compensation paid by the 'āqila] for al-muwaḍḍiḥa, but not for offences less than that, it does not follow that the 'āqila should not pay compensation for offences less than al-muwaḍḍiḥa [on the ground] that if it pays the greater compensation it must pay the smaller one, just as you and I have already agreed on this matter when you raised an objection to us. If it is permissible for you to hold such an opinion, it would be permissible to hold it against you also.

If the Prophet made a decision that the 'āqila should pay half of the one-tenth [of the compensation for al-muwaḍḍiḥa], would it be permissible to hold that [the 'āqila] should pay either half of the one-tenth [of the diya] or the [full] diya, but not an amount between the two, for this should be paid by the offender! This is an opinion that it is not permissible for anyone to hold, nor should one hold that the 'āqila should pay compensation for all unintentional offences, even if it were only one dirham.

641. [Shāfi'ī] said: Some of our fellow jurists held: If a free

man commits an unintentional offence against a slave resulting either in the latter's death or in an injury less than death, the [compensation] shall be paid out of the offender's property—not by the 'āqila—for the 'āqila is under no obligation to pay the compensation for a slave. S 536

We maintain that this is an offence committed by a freeman. For since the Apostle decreed that the compensation paid by the 'āqila covers an offence committed by a freeman unintentionally, [the freeman's] offence against a slave, if it were unintentional, must be included [in the Prophet's decree]. But God knows best!

You [the interlocutor] have already agreed with us [on this matter], and have held that he who holds that the 'āqila is not liable to pay compensation for a slave holds that no compensation shall be paid by the 'āqila for an offence committed by the slave, for the slave himself should be responsible for it, not his master. Thus you have held an opinion similar to ours and have regarded our argument, based on the sunna, as valid.

642. He replied: That is right. S 537

643. [Shāfi'ī] said: I have added: Your fellow jurist[s] as well as some of our fellow jurists held: Compensation for an offence committed against a slave is [equal to] the slave's price just as the compensation for an offence committed by a freeman is [equal to] his diya. Thus [the compensation] for the loss of an eye is half of the slave's price and for al-muwaḍḍiḥa half of the one-tenth of his price.[27] However, you have disagreed with us on this matter and have held that the [compensation] for the slave's offence is less than his price.

644. He replied: First, let me ask you to give the proof for the opinion that the [compensation] for the slave's offence is [analogous to] the diya. Is it based on a narrative or on an analogy?

645. [Shāfi'ī] replied: It is on a narrative from Sa'īd b. al-Musayyib.

646. He asked: Will you relate it?

647. [Shāfi'ī] replied: Sufyān [b. 'Uyayna] told us from Ibn Shihāb al-Zuhrī from Sa'īd b. al-Musayyib, who said: "The blood-money of the slave is [equal to] his price," and I have heard it repeated by him [al-Musayyib] several times. He may have added: "just as [the compensation] for an offence committed by a freeman is [equal to] the diya." Ibn Shihāb said: Others have added: "[The price of the slave] shall be estimated in the same manner as that of a commodity." [28] S 538

648. He asked: I have asked you to relate a [binding] narrative [i. e., a tradition] in support of your argument.

649. [Shāfi'ī] replied: I have already said that I know of no narrative from an authority earlier than Sa'īd b. al-Musayyib.

650. He said: His [Ibn al-Musayyib's] opinion is not a proof.

651. [Shāfi'ī] said: [29] I have not claimed that it is a proof to be rejected.

652. He asked: What is the proof?

653. [Shāfi'ī] replied: It is an analogy [based on the case] of the criminal offence committed by a freeman.

654. He said: [The compensation for the slave] differs from the diya of the freeman, because the latter is specified, while the former is equal to his price, just as commodities—such as camels, beasts and the like—are priced. S 539

655. [Shāfi'ī] replied: This argument, in support of those who hold that the 'āqila should not pay compensation for the slave, is against you.

656. He asked: In what way?

657. [Shāfi'ī] replied: One may say to you: Why do you hold that the 'āqila pays the slave's price [as compensation], if the offence is committed by a freeman who is in possession of the price, while if the offence is committed against a camel, the compensation should be paid out of the offender's property?

658. He said: Because it is unlawful to take the [slave's] life.

[28] Cf. Būlāq ed., p. 74; and Shāfi'ī, *Kitāb al-Umm*, Vol. VI, pp. 90-91.
[29] Būlāq ed., p. 74.

659. [Shāfi'ī] asked: Is not the camel's life unlawful to the slayer?

660. He replied: Not in the same [degree] as that of a believer.

661. [Shāfi'ī] asked: One may argue that the slave's life is not of the same [degree of] unlawfulness as that of the free- § 540
man. He added: If it is, should the 'āqila pay the blood-money?

662. He replied: Yes.

663. [Shāfi'ī] asked: [Is not] God's judgment concerning the unintentional killing of a believer that a diya should be paid and a slave freed?

664. He replied: That is right.

665. [Shāfi'ī] asked: Do you not hold that [the compensation] for a slave is the freeing of [another] slave equal in price—as in the case of a freeman—and that the price is like a diya?

666. He replied: That is right.

667. [Shāfi'ī] asked: Do you not hold that you would kill a freeman [in retaliation] for the killing of a slave?

668. He replied: That is right. § 541

669. [Shāfi'ī] said: Have we not both held that a slave shall be killed for the [killing of another] slave?

670. He said: I hold the opinion you hold.

671. [Shāfi'ī] said: It is your opinion and mine that [the slave] and the freeman are liable to the same penalty for whatever offense they may commit, and that the camel falls in the same category concerning the payment of compensation that is equal to its price? On what ground have you based your opinion that the [compensation for the slave's] offence should be equal to that for an offence against a camel, putting it in [the category of] the smaller amount rather than in the category of the diya of the freeman? [The slave] and the free man possess five things in common and differ in one. Would it not be more appropriate to apply analogy to the [situation in which the slave and the freeman possess] five points in common than to the situation in which they possess only one? In fact, the slave possesses further points in common with the freeman,

[namely,] that whatever is unlawful for the one is unlawful for the other, and that both are liable to [the same] penalties and that they are under the [same] obligations concerning the performance of prayer and the observance of fasting as well as other duties, while animals are under no such obligations.

672. He said: I hold that the [slave's] diya should be equal to his price. S 542

673. [Shāfi'ī] asked: [Since] you hold that a woman's diya is equal to half that of a man, why should [the compensation for] offences against her not be equal to her diya, just as [the compensation for] an offence against a man is equal to his diya? [Shāfi'ī] added: If the diya consists of camels [to be paid] in three years, do you maintain that the camels would be regarded as a debt? If so, why do you object to the sale of camels by deferred delivery? And [if you apply analogy], why do you do so on the basis of diya rather than on the basis of either the sale agreemeent [of the slave], or the dowry,[30] while you permit the camel to be regarded in all these cases as a debt? Thus you have [taken a position] contradictory to analogy as well as to the text of a tradition from the Prophet to the effect that he had borrowed a camel [the price of which] was paid later as a debt? S 543

674. He replied: Ibn Mas'ūd has objected to this [kind of a transaction].

675. [Shāfi'ī] asked: Is there anyone whose authority is equal to that of the Prophet?

676. He replied: No, if [the tradition] from the Prophet is well authenticated.

677. [Shāfi'ī] said: It is well authenticated [by the Prophet's precedent] that he borrowed a camel which was later paid back—a case on diyas well known to you and to us. This [precedent] is a sunna.

678. He asked: What is the narrative for analogical deduction?

679. [Shāfi'ī] replied: Mālik [b. Anas] told us from Zayd b. Aslam from 'Aṭā' b. Yasār from Abū Rāfi', who said:

[30] Shāfi'ī, *Kitāb al-Umm*, Vol. III, p. 106.

> The Prophet borrowed a camel from a certain man. Upon receiving several camels [later] he ordered me to pay back [the debt], but I told him: I find that every one of these camels is superior. 'Give it to him [the man from whom the camel was borrowed], for the best of men shall have the best in payment [of the debt].'[31]

§ 544

680. He asked: What is the narrative which cannot be regarded as a basis for analogy?

681. [Shāfi'ī] replied: Whenever God has established a textual order for which a qualifying sunna is provided by the Apostle specifying a certain modifying permission to the exclusion of another, such an order of permission should be obeyed provided it is not regarded as a precedent for other orders of permission. The same [reasoning] applies to certain specifying sunnas which the Apostle may have laid down to qualify general rules.

682. He asked: For example?

683. [Shāfi'ī] replied: God has imposed [the duty of] ablution on all who rise up from sleep to perform the prayer and said:

> When you stand up for the prayer wash your faces and your hands up to the elbows, and wipe your heads and your feet up to the ankles [Q. V, 8].

[God] meant that the washing of the feet is included [in the ablution], just as other limbs are included. But since the § 545 Apostle practised the wiping of the shoes, we should not wipe by analogy the turban, the veil, or the gloves. Thus the duty of washing the limbs is confirmed while the wiping of the shoes is permitted only by the Prophet's order to the exclusion of wiping other things.[32]

[31] Abū Dāwūd, Vol. III, pp. 247-48; and Shāfi'ī, *Kitāb al-Umm*, Vol. III, pp. 103, 106-108.

[32] Some jurists maintain that there are traditions to the effect that the Prophet permitted the wiping of the turban. See Abū Dāwūd, Vol. I, p. 36; Tirmidhī, Vol. I, pp. 170-73; and Shawkānī, *Nayl al-Awṭār*, Vol. I, pp. 181-84.

684. He asked: Would you regard this [tradition] as contradictory to the Qur'ān?

685. [Shāfi'ī] replied: In no circumstance can the sunna contradict the Qur'ān.

686. He asked: What is the meaning [of this tradition] in your opinion?

687. [Shāfi'ī] replied: It means that one should [always] wash his feet if the shoes were not worn in cleanliness.

688. He asked: Is this [meaning] permissible in the [Arab] tongue?

689. [Shāfi'ī] replied: Yes, just as it is permissible for anyone who has [already] performed the ablution to stand up in prayer—for it is not the ablution that is desired—on the S 546 strength of the Apostle's [precedent] that he performed two or more prayers with one ablution.[33]

Also, God said:

> The thief, male and female, cut off their hands as a recompense for what they have earned: [an exemplary] chastisement from God. God is All-mighty, All-wise [Q. V, 42].

Just as the sunna indicated that God did not mean by "cutting off" [a penalty] for all kinds of thieves, so the Apostle's sunna indicated that he meant by the prescription of the wiping of the shoes that he who wears them need not wash his feet if they were clean.

690. He asked: What are the like examples in the sunna?

691. [Shāfi'ī] replied: The Apostle prohibited the exchange of dates for dates except in equal quantities. Asked about the exchange of fresh dates for dry dates, he inquired: "Will the dates lose weight when dry?" "Yes," he was answered; and he ordered the prohibition of such an exchange. He also prohibited muzābana, an exchange of a known quantity for an unknown which may include riba. These are examples which fall in one category. However, [the Prophet] permitted the S 547 sale of 'arāya for dry dates.[34] So we have permitted [the sale

[33] Abū Dāwūd, Vol. I, p. 44; Tirmidhī, Vol. I, pp. 86-91; Shawkānī, *Nayl al-Awṭār*, Vol. I, pp. 230-31; Ṭabarī, *Tafsīr*, Vol. X, pp. 7-81.

[34] See paragraph 347, above.

of] 'arāya on the strength of the [Prophet's] permission, although it is the exchange of fresh dates for dry dates, and it falls in the category of muzābana with its conjecturing. Thus we confirm all prohibited foodstuffs that are in the same category as muzābana, whether [sold] by measure or by estimate; but we have permitted [the sale of] 'arāya as an exception on the basis of his permission, qualifying the general rule of prohibition. Thus neither one of the two traditions is invalidated by the other, nor are they invalid as a precedent for analogy.

692. He asked: What [possible] explanation would you give for that?

693. [Shāfi'ī] replied: There are two possible explanations. One, is that what [the Prophet] prohibited as a general rule did not include 'arāya; the other is that he may have given his order of permission after he had given the general rule of prohibition. In either case we have to obey his orders, by accepting as lawful what he regarded as lawful, and as unlawful what he regarded as unlawful. S 548

694. [Shāfi'ī] said: [35] The Apostle decreed that the diya for the unintentional killing of a believer is one hundred camels, to be paid by the 'āqila. The compensation for intentional injuries must be distinguished from that for unintentional, and from wrongs, but the common factor is that a diya shall be paid.

Since the Prophet decreed that each person must pay compensation out of his own property, not from that of another, B 75
except in case the free Muslim is killed unintentionally, we hold that the 'āqila should pay [the diya] for the unintentional killing of a freeman in accordance with the Prophet's decree, and that for the intentional killing of a freeman a diya must be paid by the offender out of his own property just as the penalty for any other offence committed intentionally should be paid out of his own property. However, the analogy of compensation for an unintentional offence should not be S 549
applied to compensation for intentional killing.[36]

[35] Būlāq ed., p. 75.
[36] See paragraphs 618 ff., above.

695. Someone may ask: What should be the compensation paid for offences committed intentionally?

696. [Shāfi'ī] replied: God said:

> And give the women their dowries as a gift [Q. IV, 3].

And He said:

> Observe the prayer and pay the zakāt [Q. II, 40].

And He said:

> But if you are prevented, then such offering as may be feasible [Q. II, 192].

And He said:

> For those who say, regarding their wives, 'Be as my mother's back,' and then retract what they have said, they shall set free a slave, before they touch each other [Q. LVIII, 4].

And He said:

> If any of you kill it intentionally, let there be compensation, equal to what he has killed, from his flocks, as two persons of just character among you shall decide—an offering to be delivered at the Ka'ba; or let there be an expiation, the feeding of poor people, or its equivalent in fasting, so that he may taste the mischief of his action. God has pardoned what is past, but if anyone repeats the offence God will take vengeance on him. God is mighty, taking vengeance [Q. V, 96]. 8 550

And He said:

> The expiation of it [the broken oath] is to feed ten poor persons with the food you ordinarily serve to your families, or to clothe them, or to set free a slave; but if anyone finds not the means let him fast for three days [Q. V, 91].

The Apostle decreed that the owners of property are responsible for its protection during the day [from damage by the flocks], but that the responsibility for any damage done [to the property] during the night rests with the flock's owners.[87]

[87] Mālik, Vol. II, pp. 747-48; Abū Dāwūd, Vol. III, p. 298; Shawkānī, *Nayl al-Awṭār*, Vol. V, pp. 342-44.

The Book and the sunna—as well as the absence of disagreement among the Muslims—indicate that [compensation] must be paid by the person [responsible for the damage] in accordance with the due owing to God which God imposed on men in ways that bind them, and that no one is responsible for a damage done by another. Nor is it permissible for a person to commit an offence for which another would be held liable, except in the particular case for which the Prophet laid down a sunna, such as unintentional homicide and unintentional offences against other men. S 551

The analogy of offence against an animal or damage to a property or the like, which I have already described, indicates that [compensation] should be paid by the offender, and it is commonly accepted that the greater [the amount of compensation] the greater the reason that it should be paid by the offender. So analogical deduction should not be applied to cases of the smaller [amount of compensation] while the greater and the [more] reasonable is abandoned. The compensation for an unintentional killing committed by a freeman against another, or any other unintentional killing or offence, should be paid by the 'āqila on the basis of both tradition and analogy.

697. Shāfi'ī said: [38] The Apostle decreed that the compensation for foeticide is a ghurra (a male or female slave). Scholars have estimated the price of the ghurra to be five camels.[39]

698. [Shāfi'ī] said: Since nothing has been related from the Apostle distinguishing between the compensation for male and female foeticide, it is taken for granted that he had put them on an equal footing; if the foetus dies after abortion the compensation for the male is one hundred camels, and for the female fifty. S 552

But it is not permissible to apply the analogy of foeticide to other cases [the compensation for which is] specific and in which a distinction is made between the female and male.

[38] Būlāq ed., p. 76.
[39] See paragraph 427, above.

Men do not disagree that if the foetus dies after abortion compensation must be full, namely, that it should be one hundred camels for the male and fifty for the female. The Muslims are agreed—as far as I know—that if a man causes the death of another none of them should be held liable to pay any diya or fine, and the [compensation for] foeticide should be paid [in like manner], whether dead or alive.

Since the Apostle made a distinction in his decision between the dead and the living, which was unknown before, other decisions should be taken on the strength of, and in obedience to, the Apostle's order.

699. He asked: Do you know of any possible explanation for that? 8553

700. [Shāfi'ī] replied: I know of one, but God knows best!

701. He asked: What is it?

702. [Shāfi'ī] replied: If [the child] were not known to be alive—thus it would be neither necessary to pray for it nor could one inherit from it—the offence would be regarded as being against its mother and the Apostle specified [a compensation] the price of which the Muslims fixed, just as he specified [the compensation] for al-muwaḍḍiḥa.

703. He said: That is one explanation.

704. [Shāfi'ī] said: Another one is that the tradition does not make it clear that the decision was made in favor [of the plaintiff]; therefore it would not be right to hold that such a decision was made [in favor of the plaintiff]. But if one holds that a decision was taken, it must be in favor of the wife not the husband (i. e., the mother, not the father) since if any offence was committed, it was against her. However, there is no decision to the effect that the child can be inherited from, for he who does not inherit cannot be inherited from.

705. He said: This is a sound opinion. 8554

706. [Shāfi'ī] said: God knows best!

707. He asked: If this is not the [right] explanation what else should the decree mean?

708. [Shāfi'ī] replied: It is a sunna binding on men on the strength of which they should make decisions.

709. [He asked]: What should the other [i. e., analogy] be which the narrative indicates is a reason on the strength of which a decision may be made?

710. [Shāfi'ī] replied: It is the binding decision of a sunna the meaning of which is known and on the strength of which analogy may be applied in like situations.

711. He asked: Give an example other than what you stated, which you may remember, illustrating how analogy may or may not be applied. S 555

712. [Shāfi'ī] replied: The Apostle decreed in [the case of] the muṣarrāt [40]—the she-camel and sheep and goats which the buyer has milked after the purchase—that he can either keep it or return it with one ṣā' (a measure) of dates.[41] He also decreed that "the profit (al-kharāj) belongs to him who bears responsibility." [42]

As to "the profit belongs to him who bears responsibility," in the event a slave is bought [43] and a profit is derived from his employment, it would be reasonable that when a defect is discovered [the buyer] has the right to return the slave without the profit for two reasons. First, since [the slave] was not in B 76
the possession of the seller, he [the latter] should not have a share in the profit. Second, [the slave] was in my possession and the responsibility was transferred from the seller to me, S 556
so that if the slave died the loss would be borne by me. Thus if I decide to keep the slave, the profit belongs to me.

On the strength of the tradition "the profit belongs to him who bears responsibility" I hold that anything accruing from the fruits of an estate that I have purchased, the young produced by the flock and the children of a slave-woman born

[40] Al-muṣarrāt is the animal which the vendor consciously does not milk for some time before the sale so that its yield of milk will be greater after the sale. The buyer soon discovers the trick of the vendor. See Muzani, quoting Shāfi'ī on the meaning of al-muṣarrat, in *Mukhtaṣar* (*Kitāb al-Umm*, Vol. II, pp. 184-85, margin).

[41] Bukhārī, Vol. II, pp. 26-27; Abū Dāwūd, Vol. III, p. 270; Shawkānī, *Nayl al-Awṭār*, Vol. V, pp .226-27.

[42] See paragraph 447, above.

[43] Literally: "by me."

after her purchase, should be regarded as a profit, because all of them were produced or born after they have become the possession of the buyer, not the vendor.

Our opinion concerning the muṣarrāt is based on the Apostle's order, but this case should not be [a precedent] for analogy, because the sale transaction was made for a specific sheep carrying an unknown quantity of milk and at a specific price, and we know that [the prices of] the milk of the sheep and the she-camel vary. However, since the Apostle fixed [the price of] the unknown quantity of the milk to be one ṣā' of dates, we accept his decision [as an exceptional order]. S 557

713. [Shāfi'ī] said: If a man buys a sheep which he, after milking her, decides to keep even though it turns out to be a muṣarrāt, but after a month he finds another hidden defect in addition to the taṣriya [for which he decides to return her], he has the right to do so, and the milk belongs to him, because it is in the category of profit (kharāj) and was not included in the sale transaction, but was produced when the animal was in the possession of the purchaser; but he must give one ṣā' of dates for the milk which was in the muṣarrāt [at the time of the sale], on the strength of the Prophet's decision. Thus our opinion on [the price of] the milk of the muṣarrāt is based on a tradition, but the ownership of the milk accruing after taṣriya is determined by an analogy based on [the Prophet's ruling]: "The profit belongs to him who bears responsibility." For the taṣriya milk must be distinguished from the milk that accrued later, since the former was included in the sale transaction, while the latter accrued after the buyer had taken possession [of the sheep]; it should not [therefore] be included in the sale transaction.[44]

714. Someone may ask: Is it possible that for one question two answers might be given?

715. [Shāfi'ī] replied: Yes, if it includes two or more different reasons. S 558

716. He asked: Will you give another example?

[44] Paragraphs 715-716 are summarized in J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 123.

717. [Shāfiʿī] replied: A woman, upon hearing of the death of her husband waits for the period of the ʿidda and marries another man, but her [former] husband returns.[45] Separation [between the woman and her second husband] shall take place on the basis of the cancellation of the second marriage without resort to divorce and neither one shall be held liable for punishment. The woman has the right to keep the bride-price, but she has to wait for the period of the ʿidda [before she joins her former husband]. The child [if any] belongs to his father. Neither the woman nor the [second] husband can inherit from one another.

A decision in his [the second husband's] favor—since in the explicit sense [the marriage] is lawful—gives the woman the right to keep the bride-price, to wait for the ʿidda, the child [the right] to belong to his father, and waives the punishment. A decision against him [the second husband]—since in the implicit sense it is unlawful—invalidates the marriage [contract], forbids intercourse with her after [the two spouses] have known [about the first husband], prohibits inheritance between them, and separation takes place without divorce since she was not a lawful wife.

There are many other parallel situations, such as the marriage of the woman during the period of her ʿidda. S 559

[45] Būlāq ed., p. 77. The structure of the passage is slightly changed for clarity.

Chapter XV

[ON DISAGREEMENT (IKHTILĀF)][1]

718. He asked: I have found the scholars, in former and present times, in disagreement on certain [legal] matters. Is it permissible for them to do so?

719. [Shāfiʿī] replied: Disagreement is of two kinds: one of them is prohibited, but I would not say the same regarding the other.

720. He asked: What is prohibited disagreement?

721. [Shāfiʿī] replied: On all matters concerning which God provided clear textual evidence in His Book or [a sunna] uttered by the Prophet's tongue, disagreement among those to whom these [texts] are known is unlawful. As to matters that are liable to different interpretations or derived from analogy, so that he who interprets or applies analogy arrives at a decision different from that arrived at by another, I do not hold that [disagreement] of this kind constitutes such strictness as that arising from textual [evidence]. S 560

722. He asked: Is there any evidence which demonstrates your distinction between the two [kinds of] disagreement?

723. [Shāfiʿī] replied: Concerning [His] disapproval of disagreement,[2] God said:

> Those who have been given the Book did not become disunited until there had come to them the Evidence [Q. XCVIII, 3].

[1] Cf. Būlāq ed., p. 77.
[2] Būlāq ed., p. 77.

And He said:

> Be not like those who became disunited and went different ways after the Evidences had come to them [Q. III, 101].

Thus [God] disapproved of [people's] disagreeing on matters concerning which they have been provided with clear [textual] evidence. As to matters which shall be decided by ijtihād, I have already given you examples such as the qibla, testimony, and the like.

724. He said: Give me some examples of matters concerning which our predecessors have disagreed in their transmission and concerning which God has provided a textual command [in His Book] liable to different interpretations. Is there any indication [in that text] as to the correct interpretation? S 561

725. [Shāfi'ī] replied: Few are the matters on which they have disagreed and concerning which we have found no evidence in the Book of God or the sunna of His Apostle, or an analogical deduction based on both or on one of them.

726. He said: Give some examples.

727. [Shāfi'ī] replied: God said:

> Divorced women shall keep to themselves for three [menstrual] periods (qurū') [Q. II, 228].

'Ā'isha said: The [term] aqrā' or "periods" [means] purity; those who agreed with her in this meaning include Zayd b. Thābit, Ibn 'Umar and others.[3] However, some of the Companions of the Prophet held that aqrā' [means] menstruation, so that the divorced woman cannot lawfully [remarry] until she performs the washing after the third menstruation.[4]

728. He said: On what ground has each based his opinion? S 562

729. [Shāfi'ī] replied: The common meaning of aqrā' [in the foregoing narratives] is periods, and the periods in this B 77 case are signs indicating to the divorced women that they are not allowed to remarry until these periods have been com-

[3] See Shāfi'ī, *Kitāb al-Umm*, Vol. V, 191-92; Bayhaqī, *Sunan al-Kubra*, Vol. VII, pp. 414-16.

[4] Ṭabarī, *Tafsīr*, Vol. IV, pp. 499-515; Bayhaqī, *Sunan al-Kubra*, Vol. VII, pp. 416-18.

pleted. But, in our opinion, those who held that aqrā' means menstruation believe that [God] said that these periods constitute the minimum [time-limits], because such periods separate one [menstruation] from another, just as limits are the minimums that separate things from each other. Since [the period of] menstruation is shorter than that of purity, it is more appropriate to speak of it as a period, just as the new S 563
moon marks the period of division between one month and another. He [who held this opinion] has perhaps based it on the Prophet's order that the women taken captives at Awṭās [5] should wait one menstrual period before indulging in intercourse.[6] So he concluded that the 'idda constituted an istibrā',[7] and that the istibrā' was one menstrual period. He also made a distinction between the istibrā' of slave and free women and held that the istibrā' of the free woman followed three full menstrual periods after which she attains the state of purity, while the istibrā' of the slave-woman was achieved after one full menstrual period after which she attained purity.

730. He said: This is one school of thought; but why have you accepted a different one, since you hold that the Quranic S 564
communication is capable of two interpretations?

731. [Shāfi'ī] replied: The new moon, which marks [the beginning of] a period of time, is a sign provided by God to indicate the months; but the period marked by the new moon is different from the [time defined by the] day and the night, since it is the sum of either twenty-nine or thirty just as the numbers thirty or twenty are totals of other numbers and have no other meaning.[8] So if the [term] "period" (qur') means time, it consists of a number of nights and days just S 565
as the 'idda consists of a number of nights and days of menstruation and purity. Thus a period resembles limits, which

[5] Awṭās is a valley near the tribes of Hawāzin where the Prophet's men assembled before the battle of Ḥunayn. See Ibn Hishām, Vol. II, p. 840; Guillaume's translation, pp. 566-67.

[6] See Abū Dāwūd, Vol. II, p. 248.

[7] Clear of pregnancy.

[8] Būlāq ed., p. 78. Cf. Shākir's ed., where there is a certain ambiguity in the text, p. 565.

may or may not be included within the thing bounded by the limits and not clearly distinguished. So [qur'] means period in a [special] sense.

732. He asked: What is that sense?

733. [Shāfi'ī] replied: Menstruation means the visible discharge of blood by the womb, while purity means that the womb retains the blood so that it is no longer apparent. [Both] S 566
purity and qur' refer to the retention—not the discharge—of blood; therefore, since purity might refer to a period of time, it is more appropriate to use it in the meaning of qur'; because it refers to the retention of the blood. Thus when 'Abd-Allāh b. 'Umar divorced his wife during her menstruation, the Apostle commanded 'Umar b. al-Khaṭṭāb to order him to keep her until she achieved her state of purity, after which he could divorce her while she was in that state without entering into sexual intercourse with her. "This is the [period of the] 'idda, during which God has decreed that woman can be divorced," said the Apostle.[9]

734. Shāfi'ī said:[10] This means that God said: "When you divorce women, divorce them during their 'idda" [Q. LXV, 1].

The Apostle handed down God's word that the [term] 'idda refers to [the state of] purity, not menstruation.[11] For God S 567
said: "[Women should wait for] three periods." So a divorced woman must wait for three periods; if the third period is prolonged, it is not lawful [for her to remarry] until she has menstruated again. If it is feared that she might not [menstruate] again, she must wait for [the prescribed] months of the 'idda. Thus the washing [after the third menstruation] has no significance, since it is a fourth consideration apart from the other three. He who holds that it is obligatory for her would be holding that if a woman remained a year or more S 568
without washing it would not be lawful for her to remarry.

Thus the opinion of him who holds that aqrā' means [periods

[9] Mālik, Vol. II, p. 576; Bukhārī, Vol. III, pp. 457-58; Muslim, Vol. X, pp. 59-61; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 235. See Shāfi'ī, *Kitāb al-Umm*, Vol. V, p. 162.

[10] Būlāq ed., p. 78.

[11] See Bayḍāwī, p. 742; cf. Shākir's commentary, p. 567, n. 7.

of] purity, is closer to the meaning of the Book of God, and the language is clear as to the meanings of these words. But God knows best! S 569

735. Shāfi'ī said: [12] The Prophet's order that the istibrā' of the female captive should be one menstrual period means just what it says [i. e., in the literal sense]; for if a slave woman completed a full and genuine menstrual period following a state of purity, she obviously is not pregnant. Even though blood might appear, it would not [necessarily] constitute a true menstrual period, for the latter is valid [only] when it has been completed. Therefore any period of purity that has preceded the full and valid menstruation is to be regarded as free of pregnancy in the literal sense.

Women who are observing the 'idda do so for two reasons: To accomplish the istibrā' [in the sense of clearance from pregnancy] and for a purpose other than this. When she accomplishes [in the sense of fulfilling the waiting period], she fulfils two menstrual periods and two [periods of] purity and [ends with] a third [period of] purity. If the purpose were [merely] istibrā' [in the sense of clearance from pregnancy] she would have repeated the performance of this istibrā' twice; but in addition to clearance from pregnancy there is also an obligatory [istibrā', i. e., that provided in the Book of God]. S 570-571

736. He asked: Will you cite for me other similar [cases] in which scholars have disagreed?

737. [Shāfi'ī] replied: Yes, and perhaps we can give some clearer examples. We have already partially adumbrated this subject in our discussion of the sunnas concerning which transmitters disagree, which has a bearing on the questions you have asked as well as similar matters.[13]

738. Shāfi'ī said: [14] God said:

> Divorced women shall wait by themselves for three periods [Q. II, 228].

[12] Būlāq ed., p. 78.

[13] See Chap. IX, above; this subject is also dealt with in Shāfi'ī's *Kitāb Ikhtilāf al-Ḥadīth* (*Kitāb al-Umm*, Vol. VII, margin).

[14] Būlāq ed., p. 78.

And He said:

> As for your women who have despaired of [further] menstruation, if you are in doubt, their period shall be three months, and those who have not menstruated as yet. And those who are pregnant, their term is when they are delivered of what they bear [Q. LXV, 4]. S 572

And He said:

> Those of you who die, leaving wives, they shall wait by themselves four months and ten [days] [Q. II, 234].

Some of the Companions of the Apostle said: Concerning divorced women, God prescribed that the [period of the] 'idda of those who are pregnant should be [until] they are delivered; but those whose husbands have died should observe an 'idda of four months and ten [days]. So the 'idda of the widow who is pregnant must be four months and ten [days], even if she has been delivered, so that she fulfils two 'iddas, since delivery itself does not mean the termination of the prescribed 'idda save in the case of divorce.[15] They hold in effect that delivery B 78
is acquittance, while the [waiting for] four months and ten [days] is obligatory, and that the widow cannot [lawfully] remarry until the four months and ten days are completed.[16] They believe that she is under obligation in two senses, and that neither one can be waived. It is as if she were subject to the claims of two men, neither one of whom invalidated the other, or if she married [one of them] during the 'idda and had intercourse with him, she would have to fulfil an 'idda before she could marry the other one.

Other [17] Companions of the Apostle have held that if she [the widow] has been delivered, it is lawful for her to remarry even if her [dead] husband is not yet buried.[18]

[15] Mālik, Vol. II, pp. 589; Bukhārī, Vol. III, p. 478; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 304. See also Shāfi'ī, *Kitāb al-Umm*, Vol. V, pp. 205-206.

[16] Būlāq ed., p. 79.

[17] "He said," is omitted.

[18] Mālik, Vol. II, p. 590.

739. Shāfi'ī said: Thus the Quranic communication can be interpreted in two ways at the same time, but the most reasonable literal one is that a state of pregnancy puts an end to the 'idda.

740. [Shāfi'ī] said: The sunna of the Apostle indicates that delivery marks the end of the 'idda in the event of the death [of the husband], just as in the case of divorce. [For] Sufyān [b. 'Uyayna] has told us from al-Zuhrī from 'Ubayd-Allāh b. 'Abd-Allāh [b. 'Utba] from his father, [who related] that a few nights after the death of Subay'a al-Aslamiya's husband, she was delivered. When Abū al-Sanābil b. Ba'kak, who was passing by, saw her, he remarked: "You have already prepared yourself for remarriage! You still have four months and ten [days] to wait." So Subay'a reported this to the Apostle, who said: "Abū al-Sanābil is not telling the truth" (or it is not as Abū al-Sanābil said) "You are already lawful, so remarry."[19] 8575

741. He said: A person whose words are in conflict with the sunna has no proof. So give examples of disagreement concerning which no sunna is to be found, but concerning which there may be either textual or inferred evidence in the Qur'ān, or evidence based on analogical deduction.

742. [Shāfi'ī] replied: God said: 8576

> For those who set aside their women, their women must wait four months; if they revert, God is All-forgiving, All-compassionate. But if they resolve on divorce, then verily God is All-hearing, All-knowing [Q. II, 226-227].

The majority of the Companions of the Prophet who related from him have said that they believed that when the [period of] four months has expired, he who has set aside his wife must make a decision either to go back to her or to divorce her.[20] Other Companions are reported to have said that the intent to divorce [the wife] is indicated by the expiration of

[19] Bukhārī, Vol. III, p. 478; Muslim, Vol. X, pp. 108-111; Abū Dāwūd, Vol. II, p. 293; Shawkānī, *Nayl al-Awṭār*, Vol. VI, p. 304.
[20] Mālik, Vol. II, p. 556; Bukhārī, Vol. III, p. 469.

the four months.[21] However, we do not possess anything on this matter from the Apostle of God. S 577

743. He asked: Which of the two opinions have you accepted?

744. [Shāfi'ī] replied: I hold that the divorce is not binding on him who has put his wife aside, and that if his wife claims her due [i. e., payment of the deferred bride-price] from him, I should not hold him liable for it until the four months had expired. When the four months had expired, I should tell him either to take her back or to divorce her. His taking her back is [indicated] by intercourse.

745. He asked: Why do you prefer this opinion over the opposite one?

746. [Shāfi'ī] replied: Because I consider it more consistent with the meaning of the Book of God and with what is reasonable.

747. He asked: Where is the evidence for it in the Book of God? S 578

748. [Shāfi'ī] replied: In God's saying: "For those who set their women aside is a wait of four months" [Q. II, 226], the literal meaning is that he upon whom God for some reason has imposed [the obligation] to wait for four months is bound to wait until the four months expire.

749. He said: It is possible that God may have given him four months in which to take her back, just as you may say [to someone]: "I have given you four more months in which to finish building this house."

750. [Shāfi'ī] replied: No one to whom this statement had been made would imagine that it meant such a thing unless it had been stipulated during the course of the conversation, for if he [the owner of the house] says: "I have given you four months," *it means that he has given him four additional* months and that he has no claim against him unless the four months have elapsed and the house still is not finished. He

[21] Tirmidhī, Vol. II, p. 222; and Ibn Rushd, *Bidāyat al-Mujtahid* (Istanbul, 1333/1915), Vol. II, p. 83. The Ḥanafī school supports this point of view. Cf. Ṭabarī, *Tafsīr*, Vol. IV, pp. 456-99.

[the builder] cannot be accused of failing to complete the house, or of being late in completing it so long as any part of the four months remains unexpired. If the four months have completely expired [and the builder has not completed the house], he can be charged with being in default, and there may well be an indication before the expiration of the four months that the house cannot be completed by the time the four months are over. S 579

However, there is no indication in the [act of] taking a wife back that one cannot do so before the expiration of the four months, because the performance of intercourse may take only a twinkling of an eye. So if the person, as I have explained, keeps himself apart from his wife until the four months expire, and then continues to keep himself apart, then he is answerable to God, for he should either take her back or divorce her. If there had not been any indication in the latter part of the communication that its meaning never differed from what you held, we should have preferred the first interpretation for reasons we have described, since that is the literal meaning. The Qur'ān is to be taken at its literal meaning, unless there is an indication either in the Qur'ān itself, the sunna, or the ijmā', that the true meaning is a hidden one, and not the literal meaning.

751. He asked: What is there in the tenor of the communication that supports what you have said? S 580

752. [Shāfi'ī] replied: When God, Glorious and Mighty, said that those who put their wives aside will have four months, He added:

> If they take them back, God is All-Forgiving, All-Compassionate. But if they resolve on divorce, then verily God is All-Hearing, All-Knowing [Q. II, 226-227].

So [God] laid down two rulings conjointly and without separating them; they must both take effect after the expiration of the four months, for He gave the husband the choice of either taking her back or divorce; the choice is simultaneous, neither one precedes the other. He said that the choice must

be made at one time, just as in the case of something pawned [the lender would say to the owner]: "Redeem it or else I shall sell it." The two are inseparable, for in all cases [where there is a choice] between good actions one has either to choose one or the other without separating [the two alternatives].

[As for the contention that] the two alternatives should have been stated separately [on the ground that] the decision to take the wife back can be taken during the four months while the decision to divorce her [has to be made] at the end of the four months, [I should reply that] they are two judgments that have to be envisaged at the same time, and that one has plenty of time in which to take one of them but little time in which to decide on the other. B 79 S 581

753. He asked: If he takes her back before the expiration of the four months, do you hold that it is [a valid act]?

754. [Shāfi'ī] replied: Yes, it is, just as you would say that if you paid a debt before it was due, you would be quit of it, and you would be doing a good act in paying it of your own free will before you were required to.

755. [Shāfi'ī] asked: Do you hold that it would be wrong if every day he resolved to take her back but did not have intercourse with her until the four months had expired?

756. He replied: The determination to take her back is not consequential until he actually does so, and his taking her back is [accomplished only by the performance of] intercourse, if he is capable of it.

757. [Shāfi'ī] asked: If he performs intercourse without the intent to take her back, is he thereby freed from the obligation to divorce her, since that is the significance of intercourse?

758. He said: Yes. S 582

759. [Shāfi'ī] asked: Likewise, if he were determined not to take her back and swore daily that he would not take her back, but then had intercourse with her for a moment before the expiration of the four months, would he no longer be bound to divorce her, even though the intercourse did mean that he intended to take her back?

760. He replied: Yes.

761. [Shāfi'ī] asked: Is not his resolve not to take her back thereby invalidated? And if he has intercourse with her for pleasure and not because he intends to take her back, does this not, in our opinion and yours, prevent him from escaping from his obligation to divorce her?

762. He replied: It is as you said, for by having intercourse with her he gives up the right to divorce her, regardless of the reason for the performance of the intercourse. S 583

763. [Shāfi'ī] asked: How could he resolve daily to take her back and then at the end of the fourth month be obliged to divorce her, even though he had not determined to do so and had not spoken of it? Do you consider that such an opinion would be regarded as reasonable by anyone?

764. He replied: What makes it lacking in reasonableness?

765. [Shāfi'ī] asked: If a man says to his wife "By God I shall never approach you," do you think that it is as if he says: "You are divorced for four months?"

766. He replied: Supposing I should say yes?

767. [Shāfi'ī] asked: What if he had intercourse with her before [the end of] the four months?

768. He replied: No, it would not be the same as saying: "You are divorced for four months."

769. [Shāfi'ī] said: Thus the pronouncement of the oath of putting aside is not a [pronouncement of] divorce, but merely an oath that is transformed into divorce after a certain period of time. Is it permissible for any person who comprehends S 584 what he is talking about to say such a thing, unless it is based on a binding narrative?

770. He replied: Such an argument is against you.

771. [Shāfi'ī] asked: How?

772. He replied: You hold that if the period of four months expires, he [who has put his wife aside] has either to take her back or is compelled to divorce her.

773. [Shāfi'ī] said: The oath of putting her aside does not constitute divorce, but is an oath for which God specified a period during which He forbade the husband to harm her. He imposed on him the obligation either to take her back or

to divorce her, and the decision had to be made after the expiration of four months from the time he put her aside. But the period of the effectiveness of this injunction is temporary, for it compels the person concerned whichever of the two alternatives he wishes—to take her back or to divorce her. If he refuses to do either, he who has the power to do so is to take from what he can; i. e., he shall be divorced from her since it is not lawful for him to cohabit with her. § 585

774. Shāfi'ī said: [22] They [the scholars] are disagreed on [the distribution] of inheritance. Zayd b. Thābit and his followers held that each heir should be given his designated share; if any surplus remains and the deceased has no agnate ('aṣaba) [23] relative or patron,[24] it goes to the Muslim community. Others have held that the residue should be given to the uterine relatives (dhawī al-arḥām). If a man is survived by [only] one sister, she inherits half of his estate and the other half is to be given to her. § 586

775. Someone has asked: Why would you not give the residue of the estate [to the survivors]?

776. [Shāfi'ī] replied: Because of certain indications in the Book of God.

777. He asked: Where is the indication in the Book of God in support of your opinion?

778. [Shāfi'ī] replied: God said:

> If a man passes away and has no children, but he has a sister, she shall receive a half of what he leaves, and he is her heir if she has no children [Q. IV, 175].

And He said:

> If there be both brothers and sisters, the male shall receive the portion of two females [ibid.].

Thus [God] prescribed that if the sister is the only survivor,

[22] Būlāq ed., p. 80.

[23] An 'aṣaba (pl. 'asabāt) is a male relative of the father.

[24] Succession by contract (Walā') is an arrangement between one person and another that the one can inherit the other in case of death of one of them.

she is to receive half [of the estate of the deceased person]; if the brother is the only survivor, he is to receive the entire estate. And He prescribed that if both brothers and sisters survive the deceased, the sister's portion shall be half the brother's. His [God's] decree concerning the sister's portion, whether she is the sole survivor or survivor with a brother, is the same, [namely] that she is not on an equal footing with the brother, but receives only half of what he is entitled to receive of the inheritance. Thus if you hold that [in the event] a man dies leaving a sister as [the sole] survivor and she receives half the estate by inheritance and the other half as a residue, have you not given her the entire estate as a sole survivor, while God prescribed for her only half of it whether she was alone or with others? S 587

779. He replied: I should not give her the other half as an inheritance but as a residue [in the absence of other survivors].

780. [Shāfi'ī] said: What is the meaning of giving her [a residue]? Is this a matter on which you can exercise istiḥsān (discretion) and give it to whomever you wish so that you may give it to the [deceased's] neighbors or to one of his distant relatives? Is that for you to decide?

781. He replied: No, that is not for the discretion of the judge, but I would give it to her [as a residue] on the grounds of her uterine relationship. B 80

782. [Shāfi'ī asked]: Would it be as an inheritance?

783. He replied: Supposing I should say yes?

784. [Shāfi'ī] said: You would then have let her inherit what God did not.[25] S 588

785. He said: I hold such an opinion on the strength of God's saying:

> Those who are uterine relatives are nearer to each other in the view of the Book of God [Q. VIII, 76].

786. [Shāfi'ī] said: [The Quranic communication]: "Those who are uterine relatives are nearer to one another" was revealed at a time when men were [first] entitled to inherit

[25] See Shāfi'ī, *Kitāb al-Umm*, Vol. IV, pp. 6-7.

from one another on the basis of succession by contract, then on the basis of the Islamic faith and the hijra [emigration] so that one emigrant was entitled to inherit from another while his heirs who did not emigrate [to Madīna], notwithstanding their closer blood relationship, could not inherit. So the communication: "Those who are related, etc." was revealed [to regulate inheritance] in accordance with what [God] prescribed for them.[26]

787. He asked. What is the evidence for that?

788. [Shāfi'ī] replied: [The communication]: "Those who are uterine relatives are nearer to one another" is the rule [of inheritance] in accordance with what [God] prescribed. Do you not agree that some of "those who are uterine relatives" inherit while others do not? The husband [who is not related in blood] receives a larger share than most of those who are uterine relatives. So if you permit people to inherit according to uterine relationship, the daughter would be on an equal footing with the brother, and all the uterine heirs would be entitled to inherit and would have a greater claim than the husband, who enjoys no uterine relationship. If the meaning of the communication were as you have described it, you would have objected to our position with respect to it, namely, that neither his sister, who is more closely related to him, nor his mawlas get all of the estate; half is given to his sister and half to his mawlas, even though they are not uterine relatives and the Book of God does not prescribe any share for them.[27] S 589

789. Shāfi'ī said:[28] They [the scholars] have also disagreed on the grandfather's [share of inheritance]. Zayd b. Thābit, supported by 'Umar [b. al-Khaṭṭāb], 'Uthmān [b. 'Affān], 'Alī [b. Abī Ṭālib] and Ibn Mas'ūd, held that the [deceased's] brothers can inherit along with his grandfather. Abū Bakr and Ibn 'Abbās, supported by 'Ā'isha, Ibn al-Zubayr and 'Abd- S 590

[26] See Ṭabarī, *Tafsīr*, Vol. IV, pp. 90-91; Suyūṭī, *Lubāb al-Nuqūl* (Cairo, 1373/1954), p. 114.

[27] Būlāq ed., p. 81; and *Kitāb al-Umm*, Vol. IV, pp. 10-11.

[28] Būlāq ed., p. 81.

Allāh b. 'Utba, hold that the grandfather is on an equal footing with the father, and they eliminate the brothers.[29]

790. He asked: On what ground have you fixed the inheritance of the brothers on the same level with that of the grandfather? Is it on the strength of the Book of God or the sunna?

791. [Shāfi'ī] replied: I do not know of any explicit text in the Book of God or the sunna.

792. He said: The narratives are equally divided on the subject and the evidence of analogy supports those who held that [the grandfather] is on an equal footing with the father and that the brothers are debarred.[30]

793. [Shāfi'ī] asked: What is the evidence? 8 55

794. He replied: I consider it to lie in the binding title of "fatherhood," in your [the scholars'] agreement that because of it you debar the mother's near relatives, and in your agreement that his [minimum share] is one-sixth; all of this is the ruling that applies to the father.

795. [Shāfi'ī] said: We do not believe that he should inherit only on the ground of his fatherhood.

796. He asked: Why?

797. [Shāfi'ī] replied: Because I might find that although the title of fatherhood applies [in his case] he could not inherit.

798. He asked: In what instance?

799. [Shāfi'ī] replied: If there were another father surviving—and the title of fatherhood applies to him [the grandfather] and so on back to Adam—the grandfather could not inherit. Moreover, if he were a slave, a disbeliever, or a murderer, he could not inherit. Thus, if it were only on the ground of fatherhood, he would inherit in all these instances. Our opinion that the grandfather debars the mother's near relatives is based on a narrative, not on the title of fatherhood. 8 55
For we hold that the son's female descendants in the male line, no matter how small the share to which they are entitled, debar the mother's near relatives. As to [your argument that] the grandfather's share cannot be less than one-sixth, we hold

[29] Cf. Mālik, Vol. II, pp. 510-12.

[30] It is the Ḥanafī's opinion which the interlocutor supports.

that this is applicable to the grandmother also.[81] In doing so we have followed a [logical] sequence, and we do not believe that if the rule applicable to the grandfather resembles that applicable to the father in certain respects, it does so in all respects. For if the latter were true, similar to those of the grandfather, the son's female descendants would enjoy rights and they would debar the mother's near relatives. The rule applicable to the grandmother is similar to that governing the grandfather in that we should not make her share less than one-sixth. S 593

800. He asked: What is your argument for rejecting our opinion that the grandfather debars the [deceased's] brothers from inheritance?

801. [Shāfi'ī] replied: Because it is far removed from analogical deduction.

802. He said: We thought that it was indeed [a valid] analogical deduction.

803. [Shāfi'ī] replied: Do you think that the grandfather and the brother each claims to be related to the deceased or is it to someone else?

804. He asked: What do you mean?

805. [Shāfi'ī] replied: Is the grandfather's [relationship] not based on his claim: "I am the father of the father of the deceased person" while the brother says: "I am the son of the deceased's father."

806. He said: That is right.

807. [Shāfi'ī] asked: Does not each claim his relationship to the father in accordance with his own position in that relationship?

808. He replied: Yes. S 594

809. [Shāfi'ī] asked: Supposing that the deceased person were the father, and his successors were his son and his father; what would each inherit from him?

810. He replied: The son's share would be five-sixths [of the estate] and the father's one-sixth.

811. [Shāfi'ī] replied: If, as you said, the son of the deceased

[81] Shāfi'ī, *Kitāb al-Umm*, Vol. IV, p. 11.

is entitled to inherit a greater portion of the estate than is the father of the deceased and since the claim of the deceased's brother is based on his relationship through the deceased's father, [just as] the deceased's grandfather's claim is based on his relationship through the [deceased's] father, then why do you hold that the brother is debarred by the grandfather? If one of the two is to be debarred by the other, it is the grandfather who should be debarred by the brother, since the latter is entitled to a greater portion of the estate than is he [the grandfather] to whom the two [the father and the brother] both claim to be related? Otherwise, we should never allot the brother five-sixths [of the estate] and the grandfather one-sixth.

812. He asked: What prevents you from holding such an opinion?

813. [Shāfi'ī] replied: All those [scholars] who disagree [on matters concerning inheritance] are in agreement that the grandfather [as a joint successor] with the brother is entitled to an equal or greater share than the brother. On this matter I am in full agreement with them without having recourse to analogy, since analogy is the common basis of all their rulings. S 595

I have taken the position that the brothers' right to inherit on a par with the grandfather is the more appropriate ruling in view of the evidence provided by analogy, which I have explained, as well as the opinion of the majority of jurists, ancient and modern. In addition, the brother's inheritance is firmly fixed by the [text of the] Book, while that of the grandfather is not. Furthermore, the sunna establishes the brother's inheritance more [clearly] than the grandfather's. B 81

814. He asked: I have heard your views on consensus and analogy, in addition to your opinions concerning the decrees of the Book of God and the sunna of the Apostle. What is your position concerning the opinions of the Apostle's Companions, if they disagree?

815. [Shāfi'ī] replied: We accept those which agree with the Book, the sunna, consensus, or which is soundest according to [the rules of] analogy. S 596

816. He asked: What of the opinions of a single Companion, on which neither the agreement nor the disagreement of others is known: Would you seek evidence for accepting it in the Book, or a sunna, or a ruling that people in general have accepted so that such evidence constitutes what you call a narrative?

817. [Shāfi'ī] replied: We have not found anything concerning this matter in the Book or in any established sunna, but we have found that scholars accept the opinion of one of their number at one occasion and reject it on another. They also differ concerning some of the opinions which they accept from such a person.

818. He asked: Which one would you accept? S 597

819. [Shāfi'ī] replied: I would accept the opinion [of a Companion] if I did not find anything about it in the Book, or established sunna or consensus, or anything of similar meaning that would decisively support it, or any analogical deduction. But one seldom finds an opinion of one Companion that is not contradicted by another.[32]

820. He asked: You have [rightly] made decisions on the basis of the Book and the sunna; on what ground have you made decisions on the basis of consensus and analogy, placing them on an equal footing with a [text in the] Book and a sunna?

821. [Shāfi'ī] replied: Although I have made decisions [on the basis of consensus and analogy] just as I have made decisions on the basis of the Book and the sunna, [in the case of consensus and analogy] the principle on which I made my decision varies.

822. He asked: Can there be different bases for the same decision? S 598

823. [Shāfi'ī] replied: Yes; we make decisions on the basis of the [text of the] Book and the generally accepted sunna, concerning which there is no disagreement, and we maintain that therefore such decisions are right according to both the explicit and the implicit [meaning of these sources]. We also

[32] Cf. J. Schacht, *Origins of Muhammadan Jurisprudence*, p. 19.

make decisions on the basis of a single-individual tradition on which there is no general agreement, and we hold that we have made the decision correctly according to its explicit meaning, since it is possible that he who related the tradition may have made an error in it.

We also make decisions on the basis of consensus and analogy, although the latter is the weaker of the two instruments.[83] Analogy is used only in case of necessity, since it is not lawful if a tradition exists, just as performing the ritual ablution with sand [84] renders one pure when one is travelling and there is no water; but it does not render one pure if water is available. It produces a state of purity only if water is not at hand. Similarly, a source other than the sunna can be used as the basis for a decision if there is no sunna. However, I have already discussed analogy and other sources [of the law].[85] 8 599

824. He asked: Will you give an example?

825. [Shāfi'ī] replied: I should make a decision against a person either on the basis of my knowledge that the accusation made against him was right, or on his [own] admission. If I neither had the knowledge or if he did not confess, I should decide against him on the basis of [the testimony of] two witnesses [of just character]. Since witnesses may make mistakes or be confused, my knowledge and the [defendant's] admission would be stronger [evidence] against him than the [testimony of] two witnesses. I should [also] decide against him on the strength of [the testimony of] one witness and the [plaintiff's] oath; but [such evidence] is weaker than the [testimony of] two witnesses. I should also decide against him if he refused to take an oath whereas the plaintiff did take an oath; but [such evidence] is weaker than the [testimony of]

[83] Shaykh Shākir maintains that the word "weak" qualifies both consensus and analogy—which is unlikely—and argues that since Shāfi'ī held that the consensus of the people is authoritative, his reference must be to the consensus of the scholars. Cf. Shākir's ed., p. 599, note 10.

[84] Tayammum is ablution by sand during travel instead of by water. Sand as a substitute for water is lawful for fulfilling the duty of ablution if water is scarce or unavailable during travel.

[85] See Chaps. XII and XIII, above.

one witness and the oath, since the accused's refusal might have been the result of his fear for his reputation or his feeling that the matter was too insignificant for an oath, whereas he who did swear an oath on his own behalf might be a covetous or debauched person. S 600 B 82

The end.

TRANSMITTERS OF TRADITIONS

Abān b. Sa'īd b. al-'Āṣ
Companion; Madīna; d. 14 or 15/635 or 636

'Abd-Allāh b. 'Abbās
Companion; authority of Makkans; d. 68/687

'Abd-Allāh b. Abī Bakr b. Muḥammad b. 'Amr b. Ḥazm
Traditionist; Madīna; d. 130 or 135/747 or 752

'Abd-Allāh b. Abī Labīd
Traditionist; Madīna; d. circa 132/750

'Abd-Allāh b. Abī Najīḥ
Successor; Makka; d. 132/750

'Abd-Allāh b. Bābāh
Successor; Makka; n. d.

'Abd-Allāh b. Dīnār
Traditionist; Madīna; d. 127/774

'Abd-Allāh b. 'Iṣma
Obscure (transmitted one tradition); Ḥijāz; n. d.

'Abd-Allāh b. Kathīr
Traditionist; Makka; d. 120 or 122/737 or 739

'Abd-Allāh b. Mas'ūd
Companion; Madīna; d. 32/652

'Abd-Allāh b. Muḥammad b. Ṣayfī
Successor; Makka; n. d.

'Abd-Allāh b. Rawāḥa
Companion; Madīna; d. circa 8/629

'Abd-Allāh b. Sulaymān b. Yasār
Son of successor Abū Ayyūb Sulaymān; related traditions from his father; n. d.

'Abd-Allāh b. 'Ubayd-Allāh b. Abī Mulayka
Successor; Makka; d. 117/736

'Abd-Allāh b. 'Umar
Companion; son of the Caliph 'Umar; d. 73 or 74/692 or 693

'Abd-Allāh b. 'Usayla al-Ṣunābiḥī
Companion; Madīna; n. d.

'Abd-Allāh b. Wāqid
Successor; Madīna; d. 119/737

'Abd al-'Azīz b. Muḥammad al-Darāwardī
Traditionist; Madīna; d. 187 or 189/802 or 804

'Abd al-Malik b. 'Abd al-'Azīz b. Jurayj.
Traditionist; Makka; d. 150/767

'Abd al-Malik b. 'Umayr.
Judge of Kūfa; d. 136/753.

'Abd al-Raḥmān b. 'Abd-Allāh b. Abī 'Ammār
Traditionist; Makka; d. circa 198/813

'Abd al-Raḥmān b. 'Abd-Allāh b. Mas'ūd (son of the Companion Ibn Mas'ūd).
Successor; 'Irāq; n. d.

'Abd al-Raḥmān b. 'Abd al-Qārī
Successor; Madīna; d. 80 or 88/699 or 707

'Abd al-Raḥmān b. Abī Sa'īd al-Khudrī
Son of the Companion Abū Sa'īd; n. d.

'Abd al-Raḥmān b. 'Awf
Companion; Madīna; d. 31 or 32/651 or 652

'Abd al-Raḥmān b. Ghanam
Companion; Syria; d. 78/698

'Abd al-Raḥmān b. Hurmuz al-A'raj
Successor; Madīna and Alexandria; d. 117/735

'Abd al-Raḥmān b. Ka'b b. Mālik al-Anṣārī
Traditionist; Madīna; died during the caliphate of Sulaymān b. 'Abd-al-Malik

'Abd al-Raḥmān b. al-Qāsim b. Muḥammad b. Abī Bakr.
Successor; Madīna; d. 126/743

'Abd al-Raḥmān b. Yazīd b. Jāriya
Successor; Madīna; d. 93/711

'Abd al-Raḥmān b. al-Zabīr
Companion; Madīna; n. d.

'Abd al-Wahhāb b. 'Abd al-Majīd al-Thaqafī
Traditionist; Madīna; d. 194/809

'Abd al-Wahhāb b. Bukht
Successor; Makka and Syria; d. 113/732

'Abd al-Wāḥid al-Naṣrī
Obscure; transmitted one tradition; n. d.

Abū 'Ayyāsh Zayd b. 'Ayyāsh al-Zuraqī
Companion; Madīna; died during the caliphate of Mu'āwiya

Abū Ayyūb Khālid b. Zayd b. Kulayb
Companion; Madīna; d. 52/672

Abū Ayyūb Sulaymān b. Yasār
Successor; Madīna; d. 107/725

Abū Bakr 'Abd-Allāh b. Abī Quḥāfa
Companion; first caliph; d. 12/634

Abū Bakr b. Sālim b. 'Abd-Allāh b. 'Umar
Successor; son of Ibn 'Umar; d. 106/724

Abū al-Dardā' 'Uwaymir b. 'Āmir (or Mālik) al-Khazrajī
Companion; Madīna; d. 32 or 37/652 or 657

Abū Ḥanīfa b. al-Faḍl al-Shi'bī
Successor (obscure)

Abū al-Ḥārith al-Layth b. Sa'd
Traditionist; Egypt; d. 165/781

Abū Ḥumayd b. 'Abd al-Raḥmān b. Ḥumayd b. 'Abd al-Raḥmān b. 'Awf
Traditionist; Kūfa; d. 192 or 196/807 or 811

Abū Hurayra 'Abd al-Raḥmān b. Ṣakhr
Companion; Madīna; d. 57/676

Abū Idrīs 'Āidh-Allāh b. 'Abd-Allāh al-Khawlānī
Successor; Madīna and Syria; d. 80/699

Abū al-Juham b. Hudhayfa b. Ghānim
Companion; Makka and Syria; d. circa 60/680

Abū Khālid Ḥakīm b. Ḥizām
Companion; Makka and Madīna; d. 54/674

Abū al-Minhāl 'Abd al-Raḥmān b. Muṭ'im
Successor; Makka; d. 106/720

Abū al-Muhallab (either 'Amr or 'Abd al-Raḥmān) b. Mu'āwiya (uncle of Abū Qilāba).
Successor; Baṣra; n. d.

Abū Muḥammad 'Aṭā' b. Yazīd
Successor; Madīna; d. 107/725

Abū Mūsa al-Ash'arī
Companion; Madīna and 'Irāq; d. 52/672

Abū al-Naḍr Sālim b. Abī Umayya
Successor; Madīna; d. 129/746

Abū Qatāda Ḥārith (or Nu'mān)
Companion; Madīna; d. 54/665

Abū Qays (freed slave of 'Amr b. al-'Āṣ)
Successor; Egypt; d. 54/673

Abū Qilāba 'Abd-Allāh b. Zayd
Successor; Baṣra; d. 104 or 106/722 or 724

Abū Rāfi' Ibrāhīm or Aslam (freed slave of the Prophet)
Companion; Madīna; d. circa 35/656

Abū Sa'īd al-Ḍaḥḥāk b. Sufyān
Companion; Madīna; n. d.

Abū Sa'īd Sa'd b. Mālik al-Khudrī
Companion; Madīna; d. 74/694

Abū Sa'īd Yaḥya b. Sa'īd b. Qays
Traditionist; Madīna; d. 143/760

Abū Salama 'Abd-Allāh (or Isma'īl) b. 'Abd al-Raḥmān b. 'Awf
Successor; Madīna; d. 93 or 94/711 or 712

Abū al-Sanābil b. Ba'kak
Companion; Makka; n. d.

Abū Shu'ba (probably the freed slave of Suwayd Muqarrin)
Successor; Madīna; n. d.

Abū Shurayḥ al-Ka'bī
Companion; Madīna; d. 68/687

Abū Sufyān b. Ṣakhr (father of the Caliph Mu'āwiya)
Companion; Makka; d. 32 or 34/653 or 655

Abū Suhayl b. Mālik (uncle of Mālik b. Anas)
Traditionist; Madīna; n. d.

Abū Tha'laba al-Khushanī
Companion; Madīna and Syria; d. 75/695

Abū 'Ubayd Sa'd b. 'Ubayd al-Zuhrī
Traditionist; Madīna; d. 98/716

Abū 'Ubayda 'Āmir b. 'Abd-Allāh b. al-Jarrāḥ
Companion; Makka and Syria; d. 18/639

Abū 'Uthman Rabī'a b. Abī 'Abd al-Raḥmān
Traditionist; Madīna; d. 130 or 136/747 or 753

Abū Zakarīya Yaḥya b. Ḥassān
Traditionist; Baṣra; d. 208/823

Abū al-Zubayr Muḥammad b. Muslim b. Tadrus
Successor; Makka; d. 128/745

'Ā'isha (daughter of Abū Bakr)
Wife of the Prophet; d. 57/676

'Alī b. Abī Ṭālib
Companion; fourth caliph; d. 40/661

Anas b. Mālik
Companion; Baṣra; d. 90/708

'Āmir b. Shurāḥīl al-Sha'bī
Traditionist; Kūfa; d. 104/722

'Amr b. Abī 'Amr (freed slave of Muṭṭalib b. 'Abd-Allāh b. Ḥanṭab)
Traditionist; Madīna; n. d.

'Amr b. Shu'ayb b. Muḥammad b. 'Amr b. al-'Āṣ
Traditionist; Madīna; d. 118/736

'Amr b. Sulaymān al-Zuraqī
Successor; Madīna; n. d.

'Amr b. 'Uthmān b. 'Affān
Successor; Madīna; n. d.

'Amr b. Yaḥya
Traditionist; Madīna; n. d.

'Amra bint 'Abd al-Raḥmān
Successor; Makka; d. 98 or 101/716 or 719

Asīd b. Abī Asīd
Son of the Companion Asīd; transmitted from his father; n. d.

'Āṣim b. 'Umar b. Qatāda
Grandson of Companion Abū Qatāda; d. 117/735

al-Aswad b. Sufyān
Companion (?); Makka; n. d.

al-Aswad b. Yazīd
Successor; Madīna; d. 75/694

'Aṭā' b. Abī Rabāḥ
Traditionist; Makka; d. 114/732

'Aṭā' b. Yasār
Successor; Madīna; d. 97 or 103/715 or 721

Ayyūb b. Kaysān al-Sikhtiyānī
Successor; Baṣra; d. 131 or 135/748 or 752

Bajāla b. 'Abd (or 'Abada)
Successor; Baṣra; died in the Caliph 'Umar's time

Bilāl b. Rabāḥ
The Prophet's mu'adhdhin; Makka and Madīna; d. 20 or 21/640 or 641

Busr b. Sa'īd
Traditionist; Madīna; d. 110/718

Diḥya b. Khalīfa al-Kalbī
Companion; Ḥijāz and Syria; died during Mu'āwiya's caliphate

Fāṭima bint Qays
Companion; Madīna; n. d.

al-Furay'a bint Mālik b. Sinān
Companion; sister of the Companion Abū Sa'īd al-Khudrī; n. d.

Ḥakīm b. Ḥizām
Companion; Makka; d. 54/673

Ḥamal b. Mālik b. al-Nābigha
Companion; Madīna and Baṣra; n. d.

al-Ḥasan b. Abī al-Ḥasan
Traditionist; Baṣra; d. 110/728

al-Ḥasan b. 'Alī b. Abī Ṭālib
The Caliph 'Alī's first son; d. 48/669

al-Ḥasan b. Muslim b. Yannāq
Successor; Makka; transmitted from Ṭāwūs; n. d.

Hilāl b. Usāma
Successor; Madīna; n. d.

Ḥiṭṭān b. 'Abd-Allāh al-Raqāshī
Successor; Baṣra; n. d.

al-Ḥusayn b. 'Alī b. Abī Ṭālib
Caliph 'Alī's second son; d. 61/680

Ibn 'Abbās (*see* 'Abd-Allāh b. 'Abbās)

Ibn Jurayj (*see* 'Abd al-Malik b. 'Abd al-'Azīz)

Ibn Shihāb al-Zuhrī (*see* Muḥammad b. Muslim b. 'Ubayd-Allāh b. Shihāb etc.)

Ibrāhīm b. Abī Yaḥya
Traditionist; Madīna; d. 184/801

Ibrāhīm b. Maysara
Successor; Ṭā'if and Makka; d. 132/750

Ibrāhīm al-Nakha'ī
Traditionist; Kūfa; d. 95 or 96/713 or 714

Isḥāq b. 'Abd-Allāh b. Abī Ṭalḥa
Successor; Madīna; d. 134/751

Ismā'īl b. Abī Ḥakīm
Traditionist; Madīna; d. 130/747

Jābir b. 'Abd-Allāh al-Anṣārī
Companion; Madīna; d. 78/697

Ja'far b. Abī Ṭālib
Grandson of the Caliph 'Alī; d. 148/765

Jarīr b. 'Abd-Allāh
Companion; Kūfa; d. 51 or 54/671 or 673

Jubayr b. Muṭ'im
Companion; Madīna; d. 54 or 59/673 or 678

Khālid b. al-Walīd
Companion; Madīna and Syria; d. 21/641

al-Khansā' bint Khidhām
Daughter of the Companion Khidhām b. Khālid; Madīna; n. d.

Khārija b. Zayd b. Thābit
Son of the Companion Zayd; Madīna; d. 100/718

Khawwāt b. Jubayr
Companion; Madīna; d. 40 or 42/660 or 662

Maḥmūd b. Labīd
Companion; Madīna; d. 96/696

Mā'iz b. Mālik al-Aslamī
Companion; Madīna; n. d.

Makhlad b. Khufāf
Son of companion Khufāf; n. d.

Makhūl b. Zayd
Successor; Damascus (Syria); d. 112 or 118/731 or 737

Mālik b. Anas
Founder of a school of law; Madīna; d. 179/795

Ma'mar b. Rashīd
Successor; Ṣan'ā'; d. 154/771

Mu'ādh b. Jabal
Companion; al-Yaman; d. 18/639

Mu'āwiya b. Abī Sufyān
Companion; first Umayyad caliph; d. 61/681

Muḥammad b. 'Abd al-Raḥmān b. al-Mughīra b. Abī Dhi'b
Traditionist; Madīna; d. 158 or 159/774 or 775

Muḥammad b. al-'Ajlān
Traditionist; Madīna; d. 148/765

Muḥammad b. 'Amr b. 'Alqama
Successor; Madīna; d. 144/761

Muḥammad b. Ibrāhīm al-Taymī
Successor; Madīna; d. 119 or 121/737 or 738

Muḥammad b. Ismā'īl b. Abī Fudayk
Traditionist; Madīna; died circa 200/816

Muḥammad b. Jubayr b. Muṭ'im
Son of Companion Jubayr; Madīna; died during the caliphate of 'Umar b. 'Abd al-'Azīz

Muḥammad b. al-Munkadir
Traditionist; Madīna; d. 130 or 131/747 or 748

Muḥammad b. Muslim b. 'Ubayd-Allāh b. 'Abd-Allāh b. al-Zuhrī
Traditionist; Madīna; d. 124 or 125/741 or 742

Muḥammad b. Sīrīn
Traditionist; Madīna and Baṣra; d. 110/728

Muḥammad b. Ṭalḥa b. Rukāna
Successor; transmitted from his father Rukāna; died circa 105/724

Muḥammad b. Yaḥya b. Ḥibbān
Traditionist; Madīna; d. 121/738

Mujammi' b. Yazīd b. Jāriya
Companion; Madīna; n. d.

Mūsa b. Abī Tamīm
Traditionist; Madīna; n. d.

Muslim b. Khālid al-Zanjī
Traditionist; Muftī of Makka; d. 179 or 180/795 or 796

al-Muṭṭalib b. al-Ḥārith b. Ḥanṭab
Companion (?); Makka; n. d.

Nāfi' (freed slave of Ibn 'Umar)
One of Mālik's chief authorities; transmitted from Ibn 'Umar; d. 117 or 120/735 or 737

Nāfi' b. Jubayr
Son of the Companion Jubayr; Madīna; d. 99/717

Nāfi' b. 'Ujayr b. 'Abd-Yazīd
Successor; Madīna; n. d.

Nawf b. Faḍāla al-Bikālī
Successor; Madīna; d. 90 or 100/708 or 718

al-Qays b. Muḥammad b. Abī Bakr
Successor; grandson of the first caliph; d. 106/724

Rabī'a b. Abī 'Abd al-Raḥmān (called Rabī'a al-Ra'y)
Traditionist; Makka; d. circa 136/753

Rāfi' b. Khadīj
Companion; Madīna; d. 74/693

al-Ṣa'b b. Jaththāma
Companion; Madīna; d. 198/813

Sa'd b. Abī Waqqās
Companion; Madīna; d. 55 or 58/674 or 677

Sa'd b. Ibrāhīm b. 'Abd al-Raḥmān b. 'Awf
Judge of Madīna; d. 127/744

Sa'd b. Isḥāq b. Ka'b b. 'Ujra
Traditionist; Madīna; d. circa 146/757

Ṣafwān b. Mawhab
Successor; Makka; n. d.

Ṣafwān b. Sulaym
Traditionist; Madīna; d. 132/749

Sahl b. Abī Hathma
Companion; Madīna; n. d.

Sahl b. Sa'd b. Mālik b. Khālid al-Sā'idī
Companion; Madīna; d. 88 or 91/706 or 709

Sahl b. Sa'd al-Sā'idī
Last of the Companions; d. 88 or 91/707 or 710

Sa'īd b. Abī Sa'īd b. Kaysān al-Maqburī
Traditionist; Madīna; d. 123/740

Sa'īd b. Jubayr
Traditionist; Kūfa; d. 95/713

Sa'īd b. al-Musayyib
Companion; authority of Madīna; d. 93 or 94/711 or 712

Sa'īd b. Sālim al-Qaddāḥ
Successor; Makka; n. d.

Sufyān b. 'Uyayna
Traditionist; Madīna; d. 198/813

Sufyān al-Thawrī
Traditionist; Kūfa; d. 161/772

Suhayl b. Abī Ṣāliḥ b. Dhakwān al-Sammān
Traditionist; Madīna; n. d.

Sulaymān b. Abī Muslim al-Aḥwal (uncle of Ibn Abī Najīḥ)
Successor; Makka; n. d.

Sulaymān b. Arqam
Traditionist; Baṣra; n. d.

Sulaymān b. Yasar
(*See* Abū Ayyūb Sulaymān b. Yasār)

Suwayd b. Muqarrin
Traditionist; Madīna; n. d.

Ṭalḥa b. 'Abd-Allāh b. 'Awf
Successor; Madīna; d. 97/715

Ṭalḥa b. 'Ubayd-Allāh
Companion; Madīna; d. 36/656

Tamīm b. Aws al-Dārī
Companion; Madīna; d. 40/660

Ṭāwūs b. Kaysān
Successor; Makka; d. 105 or 106/723 or 724

'Ubāda b. al-Ṣāmit
Companion; Madīna; d. 34/654

'Ubayd-Allāh b. 'Abd-Allāh b. 'Utba b. Mas'ūd
Traditionist; Madīna; d. 94 or 95/712 or 713

'Ubayd-Allāh b. Abī Rāfi'
Son of companion Abū Rāfi'; n. d.

'Ubayd-Allāh b. Abī Yazīd
Traditionist; Makka; d. 126/743

'Ubayd b. Ka'b
Companion; Madīna; d. 22/642

'Umar b. al-Ḥakam al-Sulamī
Companion; not very well known; n. d.

'Umar b. al-Khaṭṭāb
Second caliph; Companion; d. 23/643

'Umrān b. Ḥusayn
Companion; Baṣra; d. 52/672

Unays b. al-Ḍaḥḥāk al-Aslamī
Companion; Madīna; n. d.

'Urwa b. al-Zubayr
Successor; Madīna; d. 92/710

Usāma b. Zayd
Companion; Madīna; d. 54/673

'Uthmān b. 'Abd-Allāh b. Surāqa
Son of the Companion 'Abd-Allāh b. Surāqa; transmitted from his father; n. d.

'Uthmān b. 'Affān
Third Caliph; Companion; Madīna; d. 35/656

'Uwaymir al-'Ajlānī
Companion; Madīna; n. d.

Wahb b. Munabbih
Traditionist; Ṣan'ā'; d. 110 or 114/729 or 730

Wāsi' b. Habbān b. Munqidh
Traditionist; Madīna; n. d.

Wāthila b. al-Asqa'
Companion; Madīna; d. 83 or 85/702 or 704

Yaḥya b. Hassān
Traditionist; Baṣra; d. 208/823, in Egypt

Yaḥya b. Sa'īd al-Qaṭṭān
Traditionist; Baṣra; d. 198/813

Yazīd b. 'Abd-Allāh b. Usāma b. al-Hādī
Traditionist; Madīna; d. 139/756

Yazīd b. Rūmān
Traditionist; Madīna; d. 130/747

Yazīd b. Shaybān
Companion; Makka; n. d.

Yazīd b. Ṭalḥa b. Rukāna
Companion (?); Madīna; n. d.

Yazīd b. al-Zinnād
Successor; Madīna; n. d.

Yūnus b. 'Ubayd
Successor; Baṣra; d. 139/756

Yūsuf b. Māhak
Traditionist; Makka; d. 110/728

Zayd b. Aslam
Traditionist; Madīna; d. 136/753

Zayd b. 'Ilāqa
Successor; Kūfa; d. 125/742

Zayd b. Khālid
Companion; Madīna; d. 72 or 78/692 or 698

Zayd b. Mirba' (or Yazīd) al-Anṣārī
Companion (full name is unknown); n. d.

Zayd b. Thābit
Companion; Madīna; d. 45/665

Zaynab bint Ka'b
Companion (or successor); wife of Abū Sa'īd al-Khudrī

al-Zubayr b. al-'Awwām
Companion; Madīna; d. 36/656

GLOSSARY

'Abd: slave

'Adl: justice; probity or the just character (of a witness)

Ahl al-Kitāb: People of the Book (people who possess a scripture)

'Ālim (pl. 'ulamā'): scholar

Allāh: God

'Amal: practice; precedent

'Aqd (pl. 'uqūd): contract

Al-'Āqila: the group of persons sharing liability with the person who committed homicide (or an injury), responsible for the payment of compensation (diya) in cash or in kind

'Aql: intellect; reason

Al-Arkān al-khamsa: the five pillars of Islam (profession of the faith, prayer, payment of alms, fasting, and pilgrimage)

'Aṣaba (pl. 'aṣabāt): clan; agnate

'Awra: private

Bāṭil: void

Bay': sale transaction

Al-Bayān: declaration; clear speech

Bayt al-Māl: public treasury

Al-Bayyina: evidence; indication

Bid'a: innovation

Dār al-Islām: territory of Islam

Ḍarar: damage

Da'wa: claim

Dhawū al-Arḥām: uterine heirs

Dhawū al-Furūḍ: sharers

Dhikr: praise and glorification of God

Dīn: religion

Dīnār: the gold unit of coinage derived from the Greek *denarius*

Dirham: the silver unit of coinage derived from the Greek *drachma*

Diya: blood-money; compensation

Faqīh (pl. fuqahā'): jurist

Far' (pl. furū'): branch of the law

Farḍ (pl. furūḍ): duty, the performance of which is obligatory

Farḍ 'Ayn: individual duty, the performance of which is obligatory for every individual

Farḍ al-Kifāya: collective duty, the performance of which is obligatory for the community as a whole: if a sufficient number fulfil the duty, the rest are relieved of it; if the duty is not performed, all the community is liable for punishment

Fatwa: legal opinion

Fiqh: jurisprudence

Furqān: that which distinguishes or separates; a name for the Qur'ān

Ghanīma: spoil of war

Ghusl: complete washing; bathing

Ḥadd (pl. ḥudūd): penalty

Ḥadīth: tradition

Ḥajj: major pilgrimage to Makka (see 'umra)

Ḥalāl: lawful; permitted

Ḥaqq (pl. ḥuqūq): right; the truth

Ḥarām: prohibited; unlawful

Al-Hijra: migration of the Prophet Muḥammad from Madīna to Makka; the beginning of the Islamic era in A. D. 622

Al-Ḥikma: wisdom (divine wisdom embodied in the sunna)

Ḥukm (pl. aḥkām): decision; command; order; rule of law

'Īd: feast

'Idda: period of waiting after death of husband or cancellation of marriage contract before eligibility for remarriage

I'jāz: miracle (of the Quranic revelation)

Ijmā': consensus; agreement

Ijtihād: personal reasoning

Ikhtilāf: disagreement or differences among jurists on matters of law

'Ilm: legal knowledge

Imām: leader of a school of law; prayer-leader; caliph

Iqrār: confession; admission

Isnād: chain of authorities through whom a tradition has been handed down from the time of the Prophet

Istibrā': clearance of pregnancy; acquittance

Istidlāl: inductive reasoning

Istiḥsān: juristic preference

Istinjā': cleansing with stones after defecation

Jā'iz: permissible

Janāba (pl. junub): ritual impurity, the removal of which is obligatory before the performance of prayer

Jarḥ (pl. jirāḥ): offence; injury

Jihād: just war (popularly holy-war)
Jizya: poll tax
Ka'ba: central shrine in the city of Makka
Kaffāra: atonement; expiation
Kāfir: unbeliever
Kalām: theology
Khabar: narrative
Kharāj: land tax
Khiyār al-Majlis: right of option of the parties to a transaction before they separate
Khuṭba: (Friday) sermon
Kitāb: book; scripture
Li'ān: accusation (of adultery)
Madhhab: school of law; doctrine
Mahr: bride-price; dowry
Majlis: sitting; assembly
Mansūkh: abrogated (legislation)
Masjid: place of worship; a mosque
Mīrāth: inheritance
Mu'adhdhin: the man who calls to prayer
Muftī: jurisconsult
Mujtahid: the man who exercises personal reasoning (see ijtihād)
Mukhābara: renting of an agricultural land by paying a portion of the produce after harvest
Mut'a: temporary marriage
Muzāra'a: *see* mukhābara
Nabī: prophet; messenger
Nafal: supererogatory (*see* tanfīl)
Nāsikh: abrogating (legislation); *see* mansūkh
Naskh: abrogation
Naṣṣ: text
Nikāḥ: marriage
Nīya: intention
Qadhf: accusation of unchastity and illegitimacy
Qāḍī: judge
Qarāba: blood relationship
Qibla: direction toward Makka in prayer

Qiyās: analogical reasoning
Rajm: stoning to death
Ramaḍān: month of fasting
Rasūl (pl. rusul): apostle
Ra'y: opinion
Riba: usury
Sabī: women and children taken as spoil
Ṣadaqa: charitable alms
Ṣaḥīḥ: authentic (tradition)
Ṣalāt: ritual prayer
Sariqa: theft
Ṣawm: fasting
Shahāda: profession of the faith; testimony
Shāhid (pl. Shuhūd): witness
Sunna: custom; a precedent based on the Prophet's acts or sayings
Sūra: a portion or chapter of the Qur'ān
Tafsīr: exegesis; commentary
Ṭahāra: state of purity
Taḥkīm: arbitration
Takbīr: to glorify God by reciting the formula: "God is very great"
Tanfīl: supererogation (*see* nafal)
Tanzīl: revelation
Taqlīd: originally, conformity to the opinion of a leading jurist; later, conformity to one of the four schools of law
Tashahhud: recitation of the salutation to the Prophet and the formula of the profession of the faith
Tayammum: purification by fine sand instead of water
Tha'r: vendetta
Thayyib: a woman separated by death of the husband or by divorce, or a girl who is not a virgin
Umma: community (of the believers)
'Umra: minor pilgrimage (*see* ḥajj)
'Ushr: tithe
Uṣūl: roots or sources (of the law)
Waṣīya (pl. waṣāyā): will; bequest
Wuḍū': ablution
Zakāt: legal alms
Zina: fornication; adultery

SELECT BIBLIOGRAPHY

It is the purpose of this bibliography neither to compile and set forth a complete list of works on Islamic jurisprudence nor to reproduce all those cited in the footnotes, but rather to provide the fundamental primary and modern works on the life and jurisprudence of Shāfi'ī and those that have a bearing on the substance of the *Risāla* in particular. Fairly exhaustive bibliographies of classical works can be found in Ḥājjī Khalīfa's *Kashf al-Ẓunūn*, ed. G. L. Flügel (Leipzig and London, 1835-58); Ibn al-Nadīm's *Kitāb al-Fihrist*, ed. G. L. Flügel (Leipzig, 1871); and C. Brockelmann's *Geschichte der arabischen Literatur* (Leiden, 2nd ed., 1944-49). For a modern critical study of the historical origins of Islamic jurisprudence, the reader may refer to J. Schacht's *Origins of Muhammadan Jurisprudence* (Oxford, 1950) and *Law in the Middle East*, eds. M. Khadduri and H. J. Liebesny (Washington, D. C., 1955). For an exposition of Islamic law in general, and the Shāfi'ī system in particular, there are available David Santillana's *Istituzioni di diritto musulmano malichita, con riguardo anche al sistema schiafi'ita* (2 vols.; Roma, 1938) and Theodor W. Juynboll's, *Handbuch des islamischen Gesetzes nach der lehre der Schafi'itischen Schule* (Leiden, 1910). The reader may also refer to the relevant articles in the *Encyclopaedia of Islam* (old and new editions) and the *Shorter Encyclopaedia of Islam*.

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PRINTED IN INDIA

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MINHAJ ET TALIBIN

MINHAJ ET TALIBIN

A MANUAL OF
MUHAMMADAN LAW
ACCORDING TO THE SCHOOL OF
SHAFII

BY

MAHIUDIN ABU ZAKARIA YAHYA IBN SHARIF EN
NAWAWI

TRANSLATED INTO ENGLISH FROM THE FRENCH EDITION
OF
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LONDON:
W. THACKER & CO., 2, CREED LANE, E.C.
CALCUTTA & SIMLA: THACKER, SPINK & CO.
1914

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N3282M5
1914

PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

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PREFATORY NOTE

In the preface to his edition of the *Fath el Karib* in 1894, Mr. L. W. C. Van den Berg remarked that "from year to year European control over Moslem peoples is extending, so that it is unnecessary to insist upon the importance of rendering the two works that form the basis of the legal literature of the School of Shafii accessible, not only to a small number of Arabic scholars, but also to magistrates and political agents" to whom that language is for the most part unfamiliar. This being as true now as it was twenty years ago it is thought advisable to publish an English translation of the other and larger work referred to, the *Minhaj et Talibin*, which "occupies the first rank for deciding legal cases." In the preface to his edition of this treatise, published in 1882 at Batavia by the Government of the Netherlands Indies, Mr. Van den Berg explained that the French version, of which this book is a rendering into English, was not a mere literal translation of the concise Arabic text, which would have been unintelligible, but a paraphrase, based partly upon the *Moharrer* and the Commentary of Mehalli, and partly upon the two principal sixteenth-century commentaries on the *Minhaj et Talibin*—that is to say, the *Tohfat-el-Mohtaj* and the *Nihayat el Mohtaj*. It is not always possible to decide a question by reference to the *Minhaj* alone; and in such a case a Muhammadan jurist—alim, fakih, mufti or kadi, as it may be—has recourse principally to the *Tohfa* and the *Nihaya*, which Dr. Th. Juynboll, in his *Handbuch des islamischen Gesetzes*, 1910, calls "the two standard works in the whole modern Fikh-literature of the School of Shafii." It is hoped, therefore, that the present publication may be of some practical utility in the direction above indicated, and at the same time not without interest to the student of comparative jurisprudence.

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INTRODUCTION

In the Name of God, the Merciful, the Compassionate

Glory to God, the good, the generous, whose blessings are too manifold to be numbered; who poureth forth abundantly His grace and His justice, Who leadeth us in the right way; Who maketh to profit in the study of the divine law those His servants towards whom He showeth kindness, and whom He hath chosen.

To Him I offer praise the most high, the most perfect, the most pure, the most complete. I bear witness that there is none other god but He alone, whose power none shareth; that He is the One that loveth to pardon. And I bear witness that Muhammad is His servant and His preferred and chosen Apostle. God grant him His grace and His blessing, and crown him in heaven with favour and honour.

Now, the best way to manifest obedience towards God and make right use of precious time is assuredly to devote oneself to the study of the law. And many of our learned men of blessed memory have already published with this object concise but exhaustive works, of which in my opinion the best is the Moharrar of the imam Abu Kasim er Rafii, an authority whose accuracy is beyond question. It is a book of the very greatest usefulness, upon whose authority may rely not only the jurist anxious to ascertain the veritable doctrine of our school, but also any other person who seeks to instruct himself by obtaining information from it. Rafii intended to include in his work nothing which had not already been established by the majority of authorities, and he may be said to have remained faithful to this programme, in spite of the great difficulty of carrying it out.

Its prolixity, however, is an obstacle to this work being learnt by heart, except perhaps by some persons who devote themselves exclusively to the study of law, and consequently it appeared to me to be useful to compose an abridgment of it, in length not more than about half of the original volume, but introducing—if God will—some improvements.

In the number of these improvements should principally be mentioned the four following: In the first place, I have everywhere indicated

the reservations, that are sometimes not indicated in the Moharrar. Secondly, it will be easy for me to quote from the Moharrar several passages in manifest opposition to the doctrine preferred in our school, as the reader will see, if it please God. In the third place, I shall replace by others clearer and more correct all the little used expressions employed by Rafii, as well as those that might suggest erroneous ideas, either because he wished to be too explicit, or because he was not sufficiently so. Finally, in cases where there is divergence of opinion among authorities I shall give an impartial exposition of the two opposing theories, the two sides from which one may consider the question in dispute, and the two methods of reasoning adopted in order to solve it ; and then I will also, where there is occasion for it, quote separately the decisions of our imam Shafii, and note the relative value of the different appreciations.

In order to avoid any subsequent misunderstanding I hereby notify the reader that in the course of the work I shall employ the words *el adhhar* and *el mashur* to designate the doctrine which appears to me preferable, with this difference that I shall use *el adhhar* wherever the doctrine I reject is widely accepted, but otherwise *el mashur*. Similarly the words *el asahh* and *es sahih* will indicate what, in my opinion, is the better way of regarding and resolving a question ; with this difference that where there are to be found authorities of repute who incline to the contrary opinion, I shall use the word *el asahh*, but otherwise *es sahih*. The word *el mazhab* will indicate the system which merits the preference in our school ; while *en nass* will denote the personal opinion of our imam Shafii, even where his reasoning may appear to me to be weak, or in the case of an isolated decision. The word *el-jedid* means that in his first period, *i.e.* during his stay in Irak, Shafii was of the contrary opinion ; and the words *el-kadim* and *fi kawl kadim* indicate that the theory quoted was abandoned by that imam in his second period, *i.e.* during his stay in Egypt. The expression *kil kaza* denotes that this way of regarding and resolving a question is not to be recommended, and that most authorities come to another conclusion, whether the method I disapprove is or is not defended by authorities of repute ; and I employ the words *fi kawl* to mean that nearly all authorities have expressed the contrary opinion. And lastly, I must warn the reader that I begin all insertions of my own by the word *kultu*, and terminate them by the phrase *wallahu aalam*.

In case of words or orthographic signs that have been added or intercalated, the reader may rely upon it that the matter was incontestable and the insertion absolutely necessary. Similarly, wherever he may meet with a form of glorifying God differing from that in the

Moharrar or other books upon jurisprudence, he may rest assured that I have verified it from the most authoritative collections of traditions.

And, finally, to some questions I have assigned another place in their section, without keeping to the order in the Moharrar, either because I thought them better placed so, or because I wished to be more concise. I have even taken the liberty to invert the order of whole sections, in order to improve the general arrangement.

In consequence of what I have said I hope that this abstract will be at the same time a veritable commentary upon the Moharrar; for, on the one hand, I have omitted absolutely none of the rules and controversies discussed in that work, however small their importance, and, on the other hand, I believe that I have considerably improved it.

Moreover, I have already begun a work which will contain a discussion of all the debatable points in this abstract, a work in which I explain why I have sometimes had to depart from the text of the Moharrar, and sometimes added a reservation or a conditional modification, etc. But in almost all cases these changes were absolutely necessary and indisputable.

God, the generous, is my sole helper; in Him I put my trust; upon Him I lean. To Him I address my prayer, that He may cause to grow from my labour some benefit to myself and to all other believers; that He may be satisfied with me, my friends, and all the faithful.

NOTE

(SEE INTRODUCTION, PAGE xii)

THE following four signs indicate doctrines considered by Nawawi to be preferable to the contrary opinion.

* = *adhhar* (clearer), where the doctrine rejected is widely accepted.

** = *mashhur* (well known), where this is not the case.

† = *asahh* (surer), where the contrary is maintained by authorities of repute.

†† = *sahih* (authentic), where this is not so.

(The signs immediately precede the passages to which they relate.)

The personal opinions of Nawawi are inclosed in square brackets [ ].

MINHAJ ET TALIBIN:
A MANUAL OF MUHAMMADAN LAW

BOOK 1.—LEGAL PURITY

CHAPTER I.—GENERAL PROVISIONS

God has said in the Koran—" We make clear water for cleansing come down from heaven." Thus to remove any impurity, whether slight or serious, it is necessary to make use of " water " in the proper sense of the word, a liquid that can be described as " water " without modification. Water whose nature has been altered by the addition of some foreign substance, such as saffron, loses its purifying quality, for the alteration prevents its being any longer described simply as " water." On the other hand a modification that does not prevent a liquid being still called " water " does not affect its purifying quality ; and consequently mere stagnancy, or mud, or moss, or some accidental object in a basin or a pipe, are of no consequence. And in the same way the introduction of substances that do not dissolve, such as aloes or grease or sand, cannot be regarded as modifying the nature of water.

It is blamable to proceed to purification with water heated by the sun, or with water that has already been used for an obligatory purification. According to some authors Shafii, in his Egyptian period, sustained that even water used for a purification not legally prescribed must on that account be considered improper for any ritual use, if the quantity does not amount to two *kollah*. So considerable a quantity cannot itself become impure by contact with impure substances, unless its nature is thereby modified.

The impurity of water ceases with the adulteration that causes it, whether it regains its original quality of itself, or by an increase in the quantity of liquid ; but if the impurity has merely been rendered imperceptible by the addition of musk, saffron, sand, or plaster, the water continues to be unsuitable for purification, as the impurity itself has not been removed.

A quantity of less than two *kollah* becomes impure by contact, but

as soon as the amount is increased to this minimum the water becomes suitable for purification, if the impurity was unaccompanied by any adulteration of the quality. On the other hand, impure water, to which water suitable for purification has been added, remains impure until the minimum has been reached; but according to some jurists the mixture should be considered pure, though unsuitable for purification, if the quantity of impure is less than that of pure water.

**As an exception to the foregoing rules the body of a bloodless insect does not render a liquid impure. And one jurist is of opinion that nothing we have just said applies to impurity so slight as to be inappreciable.

[*In this latter opinion I concur.]

Running water is subject to the same rules as stagnant water, at least this is so according to the opinion expressed by Shafii in his second period, though that Imam at first admitted that running water can never become impure, unless by adulteration, however small the quantity of liquid.

†Two *kollah* are equal to about five hundred *ratal* of Baghdad.

The adulteration of water due to a change from a state of purity to one of impurity is shown by taste, colour, and smell; and when it is at first impossible to distinguish the pure from the impure, one must decide as best one can which of the two one ought to use, and then purify oneself with that one believed to be pure. This course, however, according to some jurists, is not lawful if other water can be procured whose purity is not subject to doubt. *A blind man is subject to these rules relating to the examination of the liquid. If of two liquids that resemble one another one is water and the other urine††, it is of no use attempting an examination, and recourse must be had to purification by sand, after mixing the contents of the two vessels. And finally if it is a question of water and rose-water, both pure, one washes first with one and then with the other; though some authors maintain that even in such a case one should first carefully ascertain the nature of the liquid to be used.

When one of two similar liquids has been chosen and used, the other must be thrown away, in order that no other believer, coming in his turn to perform his ablutions, may be assailed by the same doubts. Should this not have been done, and should a mistaken choice be believed to have been made, still the purification should not be repeated with the other liquid—such at least is Shafii's personal opinion. †But in such a case purification by sand also should be performed. A warning that a liquid is impure should be accepted, if grounds are given for it and it comes from a person worthy of confidence, and even without

grounds if coming from a jurist of the school of which one is a follower.

Any sort of vessel may be used for the purpose of ablution so long as it is clean, except vessels of gold and silver, †of which the very acquisition is forbidden. †This prohibition does not include vessels merely gilt or silvered *or of valuable material or adorned with jewels, but does include such as are mounted or inlaid with gold or silver, if the precious metal is in great quantity and solely for ornament. †Thus it does not apply to the three following cases :—(1) if the gold or silver forms only a small part of the vessel and is of some use ; (2) †if the quantity is very small, even when solely for ornament ; (3) †if the quantity is considerable, provided it is of some use. †The position of the gold or silver is immaterial.

[The use of vessels mounted or inlaid with gold is totally forbidden by our school.]

CHAPTER II.—CAUSES OF SLIGHT CORPORAL IMPURITY

Section 1

There are four of these causes.

1. The issue from the body, by the urinary or stercorary passage, of any substance except sperm. As to matter from a wound, a fistula, an incision or any other opening in the proximity of the stomach, the following distinctions have been established :—(*a*) when either passage is obstructed and the opening is below the stomach, any issue—*even if accidental, *e.g.* a tænia—impairs the purity of the body ; (*b*) when either passage is obstructed and the opening is above the stomach, or (*c*) when neither is obstructed and the opening is below, *the purity of the body is unaffected.

2. Loss of consciousness, except by sleep in a sitting posture.

3. Contact between a man and a woman, *except when marriage between them would be prohibited on account of relationship, etc. *The impurity affects the person touching as much as the person touched. †Contact with a girl under age, and in general a very slight touch, as of hair, teeth, or nails, cause no impurity.

4. Touching with the palm of the hand the private parts of any human being, including oneself, or even, according to the opinion of Shafii in his second period, the anus ; but not including the parts of an animal. Touching the private parts of a corpse, of a child under age, or of a eunuch or mutilated person, cause impurity ; †as does also a touch with a mutilated hand. †But touching with the finger tips, and taking the parts between the fingers, do not cause impurity.

All persons in a state of impurity are forbidden—

1. To pray.

2. To walk round the holy temple at Mecca.

3. To carry the Koran, or touch its leaves, ††or binding. Such persons may not even touch a bag or box containing the sacred volume, †or a slate upon which any text has been written as an exercise. †They may carry the Koran among and at the same time with other objects, or carry a commentary, or gold pieces engraved with texts ; but they may not turn over the leaves of a Koran, even with a piece of wood. †These provisions do not apply to a child under age.

[†It is permissible to turn over the pages of a Koran with a piece of wood ; at least it has been so decided by jurists of Irak.]

A person who was at first assured of his state of purity, but who afterwards suspects that he is affected by a slight impurity, should conform to what he considers to be certain, and not concern himself with ulterior doubts. This rule holds good also in the inverse case, *i.e.* when a person is at first assured of being affected by a slight impurity, but is afterwards attacked by doubts as to the result of his examination. Finally, where he perceives he has been alternately pure and impure, without remembering which state had the priority, he should first try to recollect the state he was in before the question arose, and then consider himself as being in the contrary condition.

Section 2

Latrines must be entered left foot first, and quitted right foot first. No object upon which the name of God is inscribed should be taken there. One should squat down leaning rather on the left foot, and if possible avoid turning either face or back in the direction of Mecca, either position being rigorously forbidden on a desert plain where it is possible to choose any direction. To relieve a want of nature one should retire and conceal oneself from the public view. It is forbidden to pass urine into stagnant water, or into a hole, or so that the liquid is dispersed by the wind, or at a meeting place, or on the public road, or under a fruit tree, or while speaking to any one. After evacuation one should not wash oneself at the same place. When passing water care should be taken that all the urine is passed out of the body.

The following words are used on entering latrines : " In the name of God. O God, I seek refuge with Thee against male and female demons " ; and on leaving, " I beseech Thy forgiveness. Praise to God that has kept evil afar from me and preserved me." Cleansing, after evacuation, can be effected either with water or with stones, but

better with both. By "stone" is here understood any hard, clean object that can be used to remove filth and thrown away; *even a tanned piece of leather may lawfully be employed for this purpose. The use of stones alone suffices only when the excrement is not dry; but may be considered sufficient although extraordinary matters such as blood are excreted, or in spite of the excretion of an extraordinary quantity of matter, provided that the impurity does not extend beyond the sides of the orifice.

The rubbing with stones is three times repeated, either with three different stones, or with three sides of the same stone. A dirty stone must be cleansed before use. The Sonna insists upon each of the three cleansings being done separately. Each stone should be used in cleansing the whole of the part of the body requiring to be cleansed; though some jurists recommend apportioning the three stones, or three ends of the same stone, between the two sides and the middle. The Sonna requires the cleansing to be done with the left hand. *In the case of the excretion of a tænia, or of hard matters, a cleansing is not strictly necessary.

CHAPTER III.—ABLUTION

The following things are necessary to constitute a valid ablution:—

1. The intention to remove an impurity; or the intention to enable oneself to accomplish an act, for the validity of which bodily purity is a requisite; or the intention to perform ablution as a duty prescribed by law.†† If a person is in a state of chronic impurity, *e.g.* a woman whose menses are prolonged beyond the legal term, there can of course be no intention to remove an impurity whose removal is an impossibility; but the intention to render licit the act one desires to accomplish suffices in all cases.†† An intention to cool oneself by washing may be combined with the religious purpose here treated of;† but it is illicit to combine the intention to accomplish an obligatory purification with a purpose to perform an ablution which is merely recommended, *e.g.* for the recitation of the Koran. The intention is formulated at the moment of proceeding to the ablution of the face; though some learned authors maintain that, following the example of the Prophet, it may be formulated before this.† It is not necessary that the intention should refer to the entire ablution, it may be formed at the washing of each separate member of the body.

2. The washing of the face, *i.e.* the part of the head comprised from top to bottom between the place where the hair usually begins and the extremity of the lower jaw-bones, and from right to left between the ears. This includes also the part of the forehead upon which the hair

falls down, and the part of the head where the hair has been cut; but does not include the temples, *i.e.* the two white spots to right and left of the forelocks.

[A part of the head where the hair has been cut is rightly considered by nearly all learned men as belonging to the top of the head and not to the face.]

It is necessary to wash eyelashes, eyebrows, whiskers, moustache and imperial, both the hair and the skin covered by it. Some jurists, however, contend that it is not obligatory to wash the skin covered by the imperial when the latter is thick; and all agree that the beard need be washed like the eyelids, etc., only when it is thin, but, otherwise, merely on the surface. One learned author has even advanced the opinion that a special ablution of the beard, and in general of all the hair on the face, is not obligatory.

3. The washing of the hands and arms up to the elbows.** If one has lost part of a hand, one should wash what remains. The stump should be washed, if an arm has been amputated below the elbow; but if above, an ablution is not necessary, though always to be recommended.

4. The passing of the moistened hand over the skin of the top of the head, or if that be impossible over the hair covering it.† A proper washing, is of course, also quite licit; and the head may also be moistened while keeping the hand closed, if necessary.

5. The washing of the feet, including the ankles.

6. The observing of the prescribed order.† If any one, instead of practising a mere ablution, prefers to take a bath, for the purpose of removing an impurity, this is permitted; provided that the prescribed order is observed in plunging into the water, and one remains there some time, but not otherwise. [†Even a hurried bath is in all cases sufficient.]

The following practices have been introduced by the Sonna :—

1. The use of teeth-cleaners, or other hard substance capable of taking their place,† except fingers. This is particularly to be recommended before prayer and when the taste in the mouth is changed; but it can be practised at any time, except when fasting in the afternoon.

2. Beginning ablution by pronouncing the formula, "In the name of God." If neglected at the beginning the omission may be rectified by pronouncing the formula in the middle.

3. Washing the hands before commencing the ritual ablution. It is even considered blamable to dip the hands in a basin containing water for the ablution of several persons, without first washing them three times, unless one is sure they are quite clean.

4. Rinsing the mouth and cleansing the nostrils with water. *It is well to do these separately; †first taking water three times in the hollow of the hand for rinsing, and then three times for the other purpose. Except in the case of persons fasting, these two practices are as a rule observed by every one. [*It is preferable to combine them, taking water in the palm of the hand three times for the two together.]

5. Repeating all ablutions and moistenings three times.

6. Resolving any doubt as to the validity or number of ablutions, by coming to a definite conclusion one way or the other.

7. The moistening of the whole head and ears; though it is enough to moisten the turban if it is difficult to take off.

8. Separation of the hairs of the beard if it is very thick; and even the fingers and toes.

9. The washing of the right side before the left.

10. Extending the ablution of the face upon the skin covered by hair; as well as that of the arms and feet above the elbows and ankles.

11. Completion of the ablution without interruption, a precept which Shafii in his first period even called obligatory.

12. Performance of the ablution without the assistance of other persons.

13. Abstention from shaking the water off the body, †or removing it with a sponge or other similar object.

14. Terminating the ablution by pronouncing the following formula:—"I witness that there is no other god than God alone, whose power is shared by none. I witness that Muhammad is His servant and apostle. O God, receive me amongst them that repent, that keep themselves from sin, Thy holy servants. Glory to Thee, O God! I praise Thee, and witness yet again that there is no other God but Thee. I implore Thy forgiveness. I turn again unto Thee."

[I intentionally omit the formulas given in the *Muharrar* for repetition by the believer during the ablution of the different parts of the body, as their authority has not been established.]

CHAPTER IV.—MOISTENING OF FOOT-GEAR

The ablution of the feet may be replaced by that of the foot-gear, if not worn for more than a day and a night during a stay at a fixed abode, or more than three days and three nights when on a journey. This indulgence applies only to a case where the impurity has been incurred after the feet have been covered. When setting out on a journey after moistening the foot-gear at home, or *vice versâ*, the shorter interval of one day and one night must be observed. It is also necessary

that the feet should be thoroughly cleansed before being covered ; that every part of the feet requiring ablution should be covered ; that the foot-gear should be quite clean when put on ; and that the same foot-gear should be able to last to the end of the way. It is also necessary that the march or journey should have some object ; and some jurists insist further that there must be a legal right to use the foot-gear worn.

†Permeable foot-gear, **e.g.* the slippers called *jermuk*, cannot be moistened ; †but a torn sole is no objection, if properly fastened.

The Sonna insists on the foot-gear being moistened from top to bottom with the fingers, as if one were tracing lines on it ; but it is strictly sufficient to moisten the part of the foot-gear corresponding to that portion of the foot of which ablution is prescribed, except only the sole of the foot and heel which it is not the practice to moisten, at least according to the teaching of our school. [This rule applies to the edges, as well as to the sole.]

Moistening of the foot-gear is not permissible if there is any doubt as to the time not being yet passed ; nor in the case of grave impurity, where the clothes must be changed and a bath taken before the indulgence of moistening the foot-gear can again be had recourse to. And when foot-gear that has been moistened is changed, the feet must be washed ; and also the head and arms, according to one author.

CHAPTER V.—BATHING

Bathing, or general ablution of the body, is necessary on all occasions when a person is affected with grave impurity. These occasions are :—

1. Death.
2. Menstruation.
3. Lochia ; †and confinement in general, even when unaccompanied by evacuation.
4. Sexual penetration.
5. Any effusion of semen ; recognisable by emission, sensation, odour, or appearance. In the absence of these signs no bath is necessary.

In all that concerns grave impurity a woman is subject to the same rules as a man. In a state of grave impurity it is illicit to accomplish the three religious acts prohibited to persons affected by any impurity ; and in addition it is forbidden to remain in a mosque, though one may walk through ; and forbidden to recite the Koran, though one may pronounce a few words from the sacred volume, if solely to glorify God.

For the validity of the bath there must be :—

1. An intention to remove a grave impurity, or to enable oneself

to accomplish an act requiring a previous bathing, or to take the bath as a duty prescribed by law. This intention must be formulated at the moment of entering the bath.

2. A washing of all parts of the body, both the skin and the hair covering it; but rinsing of the mouth and cleansing of the nostrils, acts required as we have seen by the Sonna in ordinary ablution, are unnecessary.

It may be added, however, that the best way of taking a bath is as follows :—

1. Begin by removing all filth from the body.

2. Then perform ablution; except that according to one author washing of the feet should be deferred until the end.

3. Wash carefully in all the folds of the skin, especially in places more liable to perspiration.

4. Pour water on the head.

5. Separate the hair of the head and beard, by passing the wet fingers through them.

6. Give priority to the right side.

7. Rub the whole body.

8. Repeat the whole three times.

A woman subject to menstruation should also rub with musk any parts of the body that bear traces of blood, or if she has no musk with any other perfume.

The Sonna does not insist on a fresh bath for each act requiring bodily purity, but does insist upon an ordinary ablution before performing such act, even when no impurity has knowingly been incurred since the last ablution. It has also ruled that the quantity of water for an ordinary ablution should not be less than one *modd*, and for a bath not less than one *saa;* in neither case is any maximum prescribed. A person affected with grave material impurity should first remove the filth from the part concerned, and then take a ritual bath as a mere bath does not suffice. Whether the impurity incurred is grave or slight, ritual ablution must be practised as well as a bath. [†The bath alone is always sufficient.]

A person wishing to take a bath for a grave impurity at the same time as the prescribed Friday's bath may lawfully perform these two duties simultaneously, provided that his intention applies to both.

[According to our school a bath alone is sufficient, even in the case of a person who has incurred both grave and slight impurity, irrespective of which has been first incurred.]

CHAPTER VI.—THINGS IMPURE IN THEMSELVES

THINGS not accidentally but essentially impure are :—

1. Every intoxicating liquid.

2. Dogs and pigs ; and any animal born of the copulation of a dog or a pig with any other—even a pure—animal.

3. Animals dead from natural causes, or killed otherwise than in accordance with the law relating to that matter. Only human corpses, and the bodies of fishes and locusts, remain pure, however death has been caused.

4. Blood, pus, vomit and droppings.

5. Urine and any other liquid issuing from the genitals of a living being ; †including sperm, except human sperm. [†The sperm of all living things is pure, except that of animals mentioned in 2.]

6. The milk of animals not eaten by man ; but not a woman's milk.

Everything that comes or has been cut from a living thing is considered, so far as regards its purity or impurity, as the body itself, after such thing has ceased to live ; except the hair of animals that may be eaten ; for these are considered pure, however the animal came by its death. †In the same way a clot of blood, a bit of chewed meat, or the natural moisture of a woman's private parts, are not impure.

Essential impurity cannot disappear in any way ; but it is otherwise with accidental impurity. An exception, however, is admitted in the case of wine that has changed into vinegar of itself, *i.e.* without the use of chemicals. †This is accepted as pure, even if the change is due to transference from a sunny to a shady place, or *vice versâ*. But if, on the contrary, wine changes to vinegar on the introduction of some substance producing that effect, it remains impure.

An animal's skin, rendered impure by its death, may be purified by tanning either outside **or inside. By "tanning" is understood the removal of everything superfluous by corrosives, but not by sun-heat or sand. †The use of water is not necessary to insure the legal effect of tanning. Moreover leather soiled after tanning is in the same condition as a piece of cloth or other object become accidentally impure, that is to say that this impurity can be removed by a thorough cleaning ; it is only the impurity caused by contact with a dog, or with something that has come from a similar animal, that necessitates purification of a special kind. Now in this latter case the object must be washed seven times, and one of these seven ablutions must be performed with sand, *a substance specially prescribed for this purification. †Sand that is impure or has been mixed with liquid cannot be used for this

purpose. *In reference to this matter contact with a pig is regarded in the same way as that with a dog. The impurity caused by the urine of a little boy not yet weaned can be removed by a mere washing of the soiled object ; but in cases of impurity other than the two we have just specified, if it has left no perceptible trace water must be passed over it, and if it has then purification must be continued until at least there remains no noticeable odour. Traces of colour or smell need not prevent use of the object, if it is impossible or difficult to remove them. One authority, however, insists that the odour should be entirely got rid off. [††When traces of impurity are left, both in colour and smell, the object cannot lawfully be used.]

†For an efficient washing it is enough to pour water on the object ; it is not always necessary to soak the object in water, or press it with the fingers or wring it out ; *while water flowing off an object washed without pressing, etc., remains pure after the impurity of the object has disappeared, provided there has been no modification of quality.

Purification of liquid matter is impossible, though some authors assert that grease is an exception to this rule, at least when of a nature to admit of washing.

CHAPTER VII.—ABLUTION WITH SAND

Section 1

Recourse may be had to ablution with sand, whether for slight or grave impurity, in the following cases :—

1. If there is no water. The traveller who is sure of this can at once have recourse to ablution with sand ; he need not first search the neighbourhood ; but if it is a mere supposition, he should first search his luggage, or make inquiries from his companions. If in a plain he should look around him ; and if the ground be hilly search the vicinity as far as the horizon. Only if all his efforts are without success, is he permitted—when uncertain of the absence of water—to practise ablution with sand. †When not on a journey, the absence of water at a place, once ascertained, does not dispense with the necessity of another search on a second ablution becoming requisite ; because water may in the interval have risen at a spot where previously there was none. If there is known to be water at so short a distance that a traveller in case of necessity would be willing to leave his route in order to reach it, then he must do so, unless he fear thereby to endanger his person or property, for in this latter case also ablution with sand is permitted. If the certainty of being able to obtain water is acquired only at the last

moment before the time prescribed for prayer, it is better to defer the accomplishment of this religious duty and go and get the water, rather than to rest content with an ablution with sand. *On the other hand, if it is not a certainty but a mere supposition that is formed at the last moment, it is better to pay no heed to it and proceed at once to perform the ablution with sand. When there is some water, but in insufficient quantity for an ablution, still one should make use of it, rather than have recourse to ablution with sand ; and water should even be purchased if this can be done at a reasonable price, unless the money is needed to pay a debt that is due, or for travelling expenses, or for the keep of persons or animals in one's charge. †An offer of water, or of a bucket to draw it with, must be accepted ; but an offer of money with which to buy it need not. If one has forgotten to bring water with one, or left the skin containing it amongst one's luggage and cannot find it after a careful search, ablution with sand is lawful ; *but in that case the prayer or other act of devotion must be repeated when the liquid is found. This repetition is not necessary if it is the luggage itself that cannot be found amongst that of other travellers.

2. If the water one has is required for drinking by the persons and animals in one's charge, either immediately or in the near future.

3. In the case of an ill or wounded person, if it is feared the patient may die in consequence of an ablution with water, or may lose the use of a limb. *This rule even extends to the case where an ablution, by aggravating a malady or an injury, might retard the cure, or disfigure some part of the body ordinarily exposed like the face. For the purpose of ablution extreme cold is regarded in the same way as a malady. In all cases where the use of water is dispensed with, ablution with sand must be practised upon any diseased or injured limb not covered with a bandage ; and it still remains necessary, according to our school, to proceed to the ablution with water of all those parts of the body that are healthy or sound. In these circumstances a person who has incurred grave impurity has the option of beginning with sand or water as he pleases ; for these are a substitute for bathing, a religious duty that does not require the observance of any definite order in the purification of the parts of the body. †On the other hand, a person who has incurred a slight impurity must perform the ablution with sand, only at the proper moment at which the prescribed order requires the washing of the diseased or injured limb ; and so, should there be two injured limbs, they must be separately purified, carefully observing the prescribed order. If a part of the skin is covered over, as by splints that cannot be removed, the exposed part of the body must be washed, and the rest cleansed in the way we have explained. The splints, too, must

be completely moistened and wiped ; though, according to some opinions, a part is enough. When it is necessary to proceed to a second ablution in order to prepare for the accomplishment of another religious obligation, where no impurity has intervened since the first ablution ; the sick person, if on the earlier occasion he had incurred grave impurity, and consequently performed ablution in place of a bath, need not wash the sound limbs when practising the second. But if, on the contrary, the sick person had on the first occasion incurred only slight impurity, he must, on the second, again wash those limbs which, in the prescribed order, have their turn after the diseased or injured limbs. Some authors support the view that in both cases the ablution of all sound limbs should be repeated ; others contend that the indulgence accorded to a sick person previously affected with grave impurity should be applied equally when the impurity is merely slight. [†I prefer the latter doctrine.]

Section 2

Any kind of sand can be used for ablution, even medical powder, or sand mixed with dust ; but not mineral powder, nor pounded pottery, nor sand mixed with flour, etc. Some, however, are of opinion that the use of sand mixed with other substances is licit, if they are present only in very small quantity. ††The use of sand that has already served for a previous ablution is illicit, whether it still adheres to the body †or not. It is necessary that the sand should be specially obtained for the purpose of ablution. Thus sand swept up by the wind and blown upon a person about to practise ablution cannot legally be utilised, even if it be shaken upon the member to be rubbed with the special intention of accomplishing that duty. It is, however, permissible to be assisted in the ablution by another person ; though some authorities admit this only if one is prevented from performing it oneself.

The essentials to a proper performance of ablution with sand are :—

1. An actual removal of the sand to the limbs ; †*i.e.* it must be carried from the face to the hand, or *vice versâ.*

2. An intention to prepare oneself for prayer. A mere intention to remove an impurity incurred, †or to practise ablution as a religious duty, is of no value. It is formulated at the moment of carrying the sand to the limbs, ††and should continue until some part of the face is rubbed. When the intention is directed both to an obligatory and also to an additional prayer, then both of these become licit by the fact of a single ablution. An ablution, practised with the intention of making an obligatory prayer, will serve either for this or for an additional (*i.e.* optional) prayer ; but if the intention refers only to an optional

prayer, or even merely to a prayer in general, it can in that case be succeeded only by an optional and not by an obligatory prayer—at least according to our school.

3. A rubbing, first of the face and then of the hands and forearms with the elbows. The law does not insist on the sand reaching the roots of the small hairs that cover these parts of the body.

†When carrying the sand to the limbs it is not necessary to observe any order of succession among the different parts of the body ; and this principle even goes so far that it is quite permissible to plunge both hands at the same time in the sand, and to rub the face with the right hand, and then the right hand with the left hand.

In ablution by sand the following acts are considered recommendable:

1. Beginning by uttering the words " In the name of God."

2. Rubbing both face and hands twice. [†It was the personal opinion of Shafii that this repetition is obligatory, even when a rag or something similar is used to rub with.]

3. Always giving priority to the right side of the body over the left.

4. Rubbing the face from above downwards.

5. Using no more than the necessary amount of sand, and throwing away the rest.

6. Completing the ablution without interruption, as is the case for a ritual ablution. [This rule applies also to the bath, where it is considered recommendable to begin by separating the fingers. When rubbing the hands for the second time a ring must be laid aside.]

When a person finds water, after having had recourse to ablution by sand because he thought there was none, the two following cases must be distinguished.

1. If the water is found before beginning the prayer, the ablution by sand is annulled, and one proceeds to the ritual ablution, if there be no obstacle to such use of the water found, *e.g.* if it be not required for drinking.

2. If the water is not perceived until after the prayer is begun. Here it is necessary again to distinguish two possibilities :—(*a*) if the time legally allowed for the prayer in question permits of completing the ablution and after it another prayer, **then these should be undertaken, and the ablution by sand is annulled ; and (*b*) if it is impossible to do this within the prescribed time, in which case the ablution by sand is valid, and the prayer may be continued.

According to some opinions an optional prayer is always annulled by the fact of finding water afterwards. †And if possible it is always better to interrupt an obligatory prayer in which one is engaged, and continue it after ablution, even if time does not permit of concluding

an entirely new prayer, and where in consequence the finding of the water does not absolutely nullify the ablution with sand. †Those, however, who admit that an optional prayer, preceded only by ablution with sand, is not in all cases annulled by the fact of finding water, contend that in these circumstances the prayer must not exceed two *raka*, unless the previous intention has been formulated of accomplishing a greater number.

A single ablution with sand can never serve for more than one obligatory prayer; though it suffices for as many optional prayers as may be desired. *But a supererogatory prayer which is the consequence of a vow comes under the same rule as an obligatory prayer. An ablution for the prayer for the dead may be combined with that for an obligatory prayer.

†If one has neglected to accomplish one of the five obligatory prayers, and one cannot remember precisely which, the oversight may be repaired by performing one ablution followed by the five prayers. If an uncertain two of the five have been omitted, all five must be repeated, each with its separate ablution; or one may perform two ablutions each followed by four prayers, omitting from the second four the one that began the first. And if the same obligatory prayer has been twice omitted, there must be two ablutions, each followed by all five prayers.

Ablution by sand is not permitted before the hour prescribed for each prayer; and this prohibition applies not only to obligatory prayers, †but also to those additional ones that are made at fixed times.

Notwithstanding that neither water nor sand can be procured for ablution, one should still, according to the view supported by Shafii in his second period, perform the obligatory prayers at their legal time, repeating them when one or other has been found. Moreover a person living at a fixed place who has recourse to ablution with sand in consequence of a want of water, must again acquit himself of his religious duty after finding it; but no such obligation lies on a traveller, †unless his journey has been undertaken for an illicit end. *Similarly, if one has had recourse to ablution with sand on account of the cold, the prayer must be subsequently repeated and preceded by a regular ablution; but this repetition is not strictly necessary if the use of sand was caused by a sickness which prevented the use of water in general or its application to a part of the body not covered by a splint, except only in the case of a wound that bleeds profusely. But if it is a question of a part of the body covered by a splint, a distinction must be made. **If the part of the body to which the splint has been attached has incurred only a slight impurity a repetition is necessary—if the splint

was not removed before the ablution with sand; * but this is not so in the case of a grave impurity.

CHAPTER VIII.—MENSTRUATION

Section 1

The age at which a woman can begin to have menses is nine years. The shortest period of continuance of one menstruation is one day and one night; and the longest fifteen days and fifteen nights. The shortest interval of purity between two menstruations is fifteen days; there is no legal limit for the longest period.

The legal consequence of menses is that the woman undergoing them is regarded as a person who has incurred a grave impurity. Besides this the law forbids her—

1. To pass through a mosque, if she fears she may soil the building;

2. To fast,—though she must perform an obligatory fast on recovering her normal condition. On the other hand, prayers omitted on account of menstruation need not be accomplished;

3. To be touched by a man on the part of the body between the navel and the knees, though according to some authorities this prohibition refers only to the act of coition.

When the discharge stops, acts that are illicit during menstruation remain so until the woman has taken a bath; with the exception of fasting and repudiation, which become licit at the moment of stoppage.

A hæmorrhage that continues after the legal term of the menstruation is a perpetual cause of slight impurity, as is also an unhealthy discharge of urine or semen; though they do not prevent fasting or prayer. Before, however, proceeding to these latter acts of devotion, the person subject to the infirmities mentioned, should wash the affected part and apply a bandage. After this, as soon as the hour of prayer has sounded, ritual ablution should be practised, and the prayer accomplished as soon as possible. ††What the law forbids here is any capricious delay. A delay rendered necessary for the regularity of the prayer is permitted. Thus, after ablution, the prayer may be deferred until one is suitably dressed; or until the congregation has assembled, if it is a public act of devotion. A person subject to irregular discharges such as we have just spoken of, must repeat a ritual ablution for each obligatory prayer, even when no fresh impurity has elapsed, †and renew the bandage each time. And, finally, a person whose discharges cease after ritual ablution must repeat it immediately, even if she is not usually subject to a return of her infirmity after it has ceased, or if

while subject to returns she usually has an interval of purity sufficiently long to admit of an ablution and prayer.

Section 2

When a woman has reached the age of puberty all matter coming out of the womb constitutes menstruation, at least during the legal period. †Even yellow or colourless fluids are regarded as menstruous. As to irregular discharges that occur after the legal period of menstruation, it is necessary to distinguish the two following varieties :—

1. Discharges occurring for the first time. This category is subdivided into two kinds : (*a*) if the discharges are of distinct nature, *e.g.* plentiful and slight, the latter are considered as hæmorrhages and the former as true menses if continuing for not less than the minimum and not more than the maximum legal period, provided that the slight discharges continue at least for the minimum legal state of purity ; and (*b*) if the discharges cannot be regarded as distinct, either because they are similar or because their precise periods cannot be determined ; they are then looked upon as menses for one day and one night, and as a hæmorrhage for the rest of the month, *i.e.* for the 29 following days.

2. Discharges constituting a chronic infirmity, in such a way that the person in question is habitually subject to intermittent intervals of purity. This category also admits of two subdivisions : (*a*) if the person understands the ordinary course of her infirmity, and can rely upon her experience of the length of the periods observed, even once ; †any new indications being duly conformed to ; and (*b*) if the person has doubts upon the subject ; **she should then scrupulously observe the phases of her infirmity and act accordingly ; at least this is the opinion of all jurists except one, who considers such person to come under rule 1.

It is forbidden to persons subject to irregular discharges coming under case 2 (*b*) to indulge in coition. They may not touch a Koran, nor may they recite passages from this sacred scripture, except in prayer,—for their infirmity does not prevent their performing the obligatory prayers. †They may only accomplish a supererogatory prayer after taking a bath. Similarly, a woman subject to irregular discharges must observe the fast of the month of Ramadan, *i.e.* she must fast for the whole of this month, and then for the whole of another month. Thus she will be regarded as having fasted for fourteen days in each of these two months. Finally she must fast six days out of eighteen in a third month, *i.e.* first three days, then, after an interval of twelve, three more days, to make up the two missing days of the fast. She may also sub-

stitute for any fasting day another fasting day, provided that in that case she fasts on the third and seventeenth days following.

A person subject to the chronic infirmity we are discussing, who has but a confused recollection of what happened previously, should be of strict observance where she is certain ; and, where doubtful, she should regard herself as impure concerning coition, but pure concerning the accomplishment of her religious duties. If there be uncertainty as to cessation of discharge, a bath should be taken before each obligatory prayer. †The hæmorrhage of a pregnant woman is regarded as a true menstruation ; as is also an interval of purity in any woman, during the legal period of her menses.

The shortest period of lochia is one instant and the longest sixty days ; the ordinary time is forty days. Their effect is to render illicit all acts forbidden in the period of menstruation. Lochia that continue for more than sixty days are subject to the same rules as menses that have exceeded the legal term.

BOOK 2.—PRAYER

CHAPTER I.—GENERAL PROVISIONS

Section 1

Five daily prayers are prescribed in the Book of God—

1. The midday prayer (*dhohr*). The legal time for this prayer commences at the moment when the sun begins to decline, and lasts until the shadows of objects equal their real height, plus the length of shadow cast at noon.

2. At this moment begins the legal time for the afternoon prayer (*asr*); it lasts until sunset. It is preferable, however, to accomplish this prayer before a shadow has become twice as long as the object causing it, plus the length cast at noon.

3. The evening prayer (*maghrib*) should be performed at the moment of sunset. In his first period Shafii admitted that the legal time for this duty extends until the red colour of the sky has disappeared; but in his second period he contended that it lasts no longer than is necessary for practising ablution, dressing suitably, listening to the first and second call, and accomplishing the five *rakas* that form the act of devotion. ††These acts, however, may if necessary be prolonged until the red colour of the sky has disappeared, provided they began at the right moment. [*Shafii's first opinion is preferable.]

4. The prayer of the night (*isha*) can be said as soon as the red colour of the sky has disappeared; and the legal time lasts till dawn. It is, however, preferable not to defer this prayer beyond the first third of the night; or, according to one author, beyond midnight.

5. The morning prayer (*sobh*); for which the legal time begins with the appearance of dawn, *i.e.* when the light of day first appears on the horizon, and lasts until sunrise. It is preferable not to defer this prayer beyond the rising of the sun.

[The following practices are considered worthy of blame:—

1. To call the evening prayer *isha* instead of *maghrib;* and to call the prayer of the night *atama* instead of *isha;* as did the Beduin in the time of the Prophet.

2. To go to rest before accomplishing the prayer of the night.

3. To engage in conversation after having said the prayer of the night; unless it is an edifying conversation.]

The following two practices have been introduced by the Sonna.

1. To finish a prayer as soon as the legal time permits; although, according to one authority, it is to be recommended to defer the prayer of the night until one goes to rest.

2. For the midday prayer, to wait until the heat of the day begins to diminish, at least when it is very hot; †a rule specially adapted to hot climates, and to public prayer if the mosque is situated at a great distance.

†A prayer not finished within the legal term is nevertheless regarded as performed with regularity and at the prescribed hour, if at least one *raka* is finished within the time; otherwise it counts only as an act of devotion made too late. If one is uncertain as to the exact time of day, one should try to determine it approximately, for instance, by observing cattle that go down to drink at fixed hours. *If, however, one afterwards becomes aware of having thus said one's prayer too soon, one should repeat it by way of reparation; but this is not necessary in the case where a prayer is discovered to have been made too late. A person who perceives that he has allowed the prescribed hour to pass should accomplish the omitted prayer as soon as possible, but the Sonna insists in this case that the proper order of daily prayers should be observed, and that the prayer of which the proper time is passed should be accomplished before the one next due after the time the error was discovered, provided that too long a delay would not thereby be caused.

It is blamable to pray—

1. At the moment the sun is on the meridian, except on Friday.

2. From the end of the time prescribed for the morning prayer, until the elevation of the sun has attained the height of a lance.

3. From the end of the time prescribed for the afternoon prayer, until the sun has set.

These rules, however, do not apply to—

1. Prayers made for a special reason: *e.g.* (*a*) a prayer said by way of reparation, when the legal time has been allowed to pass; (*b*) public prayer on occasion of an eclipse; (*c*) the salutation of a mosque; (*d*) prostrations of thanksgiving; (*e*) prostrations at the reading of the Koran.

2. Prayers performed in the holy land of Mecca.

Section 2

Prayer is obligatory only for an adult Moslem, sane and free from impurity. Thus an infidel who has been converted to Islam need not

thereupon perform all the prayers which he would have said in his past life ; but this obligation does lie upon the apostate who repents of his errors. Similarly the adult need not perform prayers omitted during his minority. But minors should be exhorted to prayer from their seventh year, and from their tenth forced to it, even with blows. Prayer is not obligatory for a woman during her menses, nor for a lunatic, nor for a person in a faint ; but it is for a drunkard, *i.e.* such person must perform it after becoming sober.

When one of these causes of exemption from prayer ceases before the legal time has passed, the prayer must be performed, even if there be but time to pronounce the introductory formula " God is Great " ; or, according to the opinion of one jurist, if there be time to finish the first *raka.* *As to the midday and evening prayers, they must, under these circumstances, be performed as long as their respective terms admit of the enunciation of the formula mentioned. If a minor attains puberty while praying, the prayer should be continued and concluded ††and then counts as performed during majority. ††Neither of course is repetition necessary when the signs of puberty occur immediately after the termination of a prayer, even though the legal time permit it ; but a woman in whom menstruation manifests itself, or a person who goes mad, after the hour prescribed for a prayer has sounded, must afterwards perform it, if the time passed before the cause of exemption would have sufficed for concluding the act of devotion, had the latter been begun at the proper moment.

Section 3

The *adzan,* or first call to prayer, and the *ikama,* or second, are only prescribed by the Sonna, though some consider them to be rigorously obligatory, and that the Moslem community is collectively responsible for their observance. These calls take place only for the five obligatory prayers, or as some think also on occasion of all public prayers, as for the great festivals, etc. In his second period Shafii admitted as a recommendable practice that every one about to pray on his own account should begin by reciting aloud the words of the first call, except in a mosque where the congregation was assembled. During the same period the imam also recommended the reciting of the words of the second call, in the case of an obligatory prayer for which the legal time was already past, and which one was about to accomplish by way of reparation. [*I prefer Shafii's earlier doctrine, namely that it is commendable to recite in all cases the words of the first call.]

If several prayers have been omitted at the proper legal time, it is

sufficient to recite once the words of the call, when these prayers are repeated one after the other by way of reparation.

**When persons praying together are all women, they omit the first call, repeating the words of the second only.

At the first call all the phrases are pronounced twice ; those of the second only once. The words, "the hour of prayer is come," do not form part of the calls ; they are recited twice in each case.

The Sonna has introduced the following practices in the calls to prayer :—

1. Raising the voice by degrees while repeating the second call.

2. Pronouncing distinctly the words of the first call.

3. Pronouncing the confession of faith in the first call at first in a low tone and then aloud.

4. Adding to the first call to morning prayer the phrase "prayer is better than sleep."

5. Standing up when reciting the first call and turning to the *kibla, i.e.* the direction of the holy temple of Mecca.

But the two following requirements are alone necessary for the validity of the calls :—

1. Observance of the due order of succession of the phrases.

2. Enunciation of the calls without interruption ; though, according to one of our jurists, their validity is not compromised either by a few superfluous words or by a fairly long interval of silence.

The muezzin or person entrusted with the duty of crying the first call must be a male Moslem and have attained years of discretion. It is blamable to entrust this duty to any one who has incurred a slight—and still more a grave—impurity ; and it is yet more blamable that any such person should cry the second call. In conformity with the Sonna a person chosen to perform the function of muezzin is usually of irreproachable character, with a fine, sonorous voice.

In the prayer the function of the imam is more important than that of the muezzin. [On the contrary, the function of the muezzin must be considered as the more important.]

Another essential condition for the validity of the first call is that the prescribed time for the prayer should have come ; except in the case of the first call to morning prayer which may be chanted any time after midnight.

The following additional practices have been introduced by the Sonna :—

1. The chanting of the first call to morning prayer by two of the muezzins attached to the mosque, one before and one after the appearance of the dawn.

2. The repetition of the words of the muezzin by every person hearing the first call to any prayer; except the two phrases beginning with the word "come," *i.e.* "come to prayer," and "come to salvation," which should be replaced by the formula, "there is no force nor power but in God." [The phrase, "prayer is better than sleep," is also not to be repeated. It is preferable to substitute for it, "Thou art the truth and the right."]

3. A prayer for the Prophet, uttered after the call is finished both by muezzin and hearers; and then after that the following formula:—"O God, to whom are addressed this call and also the prayer which I am about to offer, grant to Muhammad thy benediction and grace, and make him to enter the abode of the blessed, as Thou didst promise. O Thou that art the most Merciful!"

Section 4

One of the conditions essential to the validity of prayer is to turn if possible towards the *kibla*, that is in the direction of the holy temple of Mecca. To this rule there are only two exceptions—(1) prayer made at a moment of danger; and (2) a supererogatory prayer made by a traveller.

As to this second cause of exemption, it is necessary to observe further that a traveller is permitted to accomplish his supererogatory prayers while still remaining on his mount, and even while continuing his journey, **be it long or short. If, however, one is travelling in a litter, one should take the required direction and accomplish thus the inclinations and prostrations wherever possible; †but no such obligation exists for the rider, unless he can comply with it easily. †It is specially to be recommended that one should place one's body in the right direction at the moment of pronouncing the introductory formula "God is great"; and also, according to some authorities, at the moment of proceeding to the final salutation. The traveller who has a valid reason for not turning towards the *kibla*, must not turn in any other direction, but remain in the position he happens to be in at the time; while a traveller, riding, may accomplish the inclinations and prostrations by merely bending the head—lower on the breast for the latter than for the former.

*The traveller on foot must accomplish the inclinations and prostrations like everybody else, and he must turn towards Mecca when bending down or prostrating himself, just as when pronouncing the introductory formula "God is great." But he is allowed to continue his journey during the *kiam*, and when uttering the confession of faith.

The traveller whose mount or litter permits of his accomplishing the inclinations and prostrations in the usual manner, and of taking the direction of the *kibla,* all without alighting, may do this provided he stops. But he is forbidden to continue the journey while doing it.

When praying in the sanctuary of Mecca one may either turn to the wall or the door ; but if the door happens to be open, the threshold must be at least two-thirds of an ell high. When praying on the roof of the sanctuary one may turn to a wall or to the door at choice.

A person who is himself able to ascertain the proper direction of Mecca should regulate his attitude by that and not by what he sees others doing. If unable to ascertain the true position, he should find out from some reliable person who is sure of it ; only in the absence of such person may one have recourse to indirect methods, and even then it is forbidden to follow blindly the example of another. When unable to discover the position of the *kibla,* it is better—rather than to follow blindly the example of another—to pray in the position one may happen to be in, at the risk of having to repeat the prayer upon learning afterwards that it was the wrong direction. ††One should make fresh efforts to ascertain the direction of the temple of Mecca before performing each prayer. It is only in two cases, *i.e.* where personal information is impossible, and where one cannot oneself distinguish the indications of direction—as, for instance, if one is blind—that it is allowable to follow without examination the example of a reliable and sufficiently educated person ; †but such a course is rigorously forbidden except where one is totally unable to find out oneself or to distinguish the indications.

*He who ascertains to the best of his ability the direction of the sanctuary of Mecca, and afterwards finds it to be mistaken, should repeat his prayer. If at the discovery the prayer is not yet finished, it should be begun again at once. If one's opinion alters with regard to the direction when at prayer, one should conform to that opinion, without repeating the prayer—even if it should happen three times, and four *rakas* be addressed in four different directions.

CHAPTER II.—MANNER OF PRAYER

The essentials that constitute prayer are thirteen—

1. *Niya,* or intention. With regard to the obligatory prayers this consists in the intention of accomplishing the prayer specially in view. †It should also refer to the obligation to accomplish that prayer, but there is no need to add that it is an obligation towards God, as this is understood. †The intention to pray late to replace an omitted or irregular prayer suffices also for the prayer made at the legal time ;

and similarly an intention to accomplish a prayer at the legal time suffices for a prayer said late by way of reparation. So far as regards intention, a supererogatory prayer accomplished at a fixed time, or for a particular reason, follows the same rule as an obligatory prayer ; but whether it is necessary that the intention should also refer to the idea of a voluntary work is a matter of controversy. [††No special intention with regard to this idea is necessary.] The simple intention to pray is sufficient in the case of supererogatory prayers that have no fixed time nor particular reason ; and it should also be observed that intention is a matter of the heart and not of words, though this does not prevent it being commendable to formulate the intention at the moment of saying "God is great."

2. The *takbirat al ihram*, or introductory formula "God is great," obligatory for every one capable of pronouncing it. Though this formula is all-important, a few superfluous words may be added. Thus one may say, "God is the great,"†or "God the most high is great." But the addition must not be derogatory to the name "God." ††One may not say, "The greatest is God." The believer who cannot pronounce this formula in Arabic may provisionally make use of a translation, but he must as soon as possible learn to pronounce it in the ritual language. According to the Sonna the hands must be lifted to the height of the shoulders †at the moment of pronouncing the first syllable of the formula, and in any case the intention must not be separated from it. It is enough, according to some jurists, if the intention accompanies the first word of the formula.

3. The *kiyam*, or standing up. In an obligatory prayer this act is required of every one capable of it. It consists in straightening the backbone. If the body remains bent or inclined in such a manner as cannot ordinarily be described as "upright," the act is invalid ; ††but if holding oneself erect is physically impossible, one may perform the *kiyam* as best one can, even in an inclining position. In this latter case one should if possible bend more when accomplishing the *rokua*. Similarly a person who can stand up but cannot bend or prostrate himself, may accomplish the *rokua* and the *sojud* as best he can. And finally a person who cannot stand at all may sit instead ; but in this case it is better to sit in the manner called *iftirash*, rather than in that called *tarabba*, *i.e.* cross-legged. The manner of sitting called *ikaa*, *i.e.* on the buttock with the knees in the air is regarded as blamable. After the *kiyam* one bends forward for the *rokua*, until the forehead is before the knees, or, better still, on the spot where one is about to prostrate oneself. If unable to sit one can rest on the right side, or even on the back, for the whole prayer. *Kiyam* is not an essential part of supererogatory

prayers which can be performed sitting †or lying, even when one is able to get up.

4. The *kiraa*, or recitation of the Koran. After the introductory *takbir* the Sonna prescribes the pronunciation, first, of some invocation, and then of the formula, "I seek refuge with God from Satan the stoned"; both in a low tone. Our school insists upon the *tawoz*, as this formula is called, being repeated at the beginning of each *raka*, especially the first. The part of the Koran specially appointed for recitation in prayer is the first chapter called the *Fatiha*. It is recited at each *raka;* except when one is late at public prayer, when one may leave it out, in order to catch up the others. The whole of the chapter must be recited, including the words "in the name of God," correctly, and paying attention even to the double consonants. †If even a letter *d* is replaced by a *dh*, the recitation is invalid. The order in which the verses occur must be observed, and the recitation continued without interruption. The uttering of any word not in the text destroys this continuity. †On the other hand, the "amen" or any word left out by the imam may be added by the congregation. A long interval of silence, †or even a short intentional interval, invalidates the recitation. A person who cannot recite the first chapter of the Koran, should recite seven other verses of the holy book, consecutive if possible. [†In Shafii's personal opinion one may recite seven separate verses, even though one may happen to know by heart seven consecutive ones.] A person who does not know seven verses of the Koran may simply glorify God; †but in this case what is said must contain as many letters as the first chapter of the Koran. A believer who can recite absolutely nothing must remain standing in silence during the whole of the recitation.

The following are practices of the Sonna :—(*a*) At the end of the first chapter "amen" is said without doubling the "m," but with emphasis on the "a"—it may be pronounced short and at the same time as the "amen" said by the imam in the public prayers, but always aloud; and (*b*) at the end of the first chapter another is recited, except at the third and fourth *raka*, when only the *Fatiha* is repeated. [According to a decision of Shafii this does not apply to a person who may happen to be in advance of the congregation; he should repeat the additional chapter so that the congregation may catch him up.] In general the congregation need only recite the first chapter, even in the two first *raka*, merely listening to the imam while he reads the second. †Only if the imam cannot be heard, either on account of the distance or because he speaks too low, should one recite aloud the second chapter; (*c*) this supplementary chapter is usually chosen from among chapters

49–114 of the Koran, a longish one at the morning and midday prayers, a shorter one for the afternoon and night, and a very short one at evening prayer. On Friday chapter 32 is preferred at the first *raka*, and chapter 76 at the second, to be recited after the *Fatiha*.

5. The *rokua*, or bending. This act should consist in bending so as to touch the knees with the hands, keeping the rest of the body still. The action of standing up again should be distinctly separated from that of bending. The bending must be for the express purpose of prayer; not, *e.g.* for reading the Koran. In the best manner of doing it care should be taken to keep back and neck in a straight line, to place the legs perpendicularly and to take the knees in the hands, the fingers being separate and turned towards the *kibla*. At the moment of bending one pronounces the formula "God is great," holding the hands in the same position as formerly in the prayer; and one repeats three times, when in a bending position, the formula, "Praise to my illustrious Lord." At public prayer this is all the imam says. At private prayer one adds, "O God, I incline myself before Thee; in Thee I put my trust; to Thee I make my petition. Before thee I humble my ears, my eyes, my marrow, my bones, my sinews, and all that is supported on my feet."

6. The *aatidal*, or equilibrium of the body. This is standing still with the sole object of praying. Thus, to get up through fear is regarded as an infraction. The Sonna insists on the following practices besides:—(*a*) The raising of the hands when about to raise the head, and saying, "God hearkens unto him that praiseth Him." Then one gets up, pronouncing the formula, "O our Lord! To Thee be homage of all that is in the heavens or in the earth, and of all that exists." At public prayer this is all the imam says. At private prayer one adds, "O Thou to whom alone belong glory and praise. I declare true what Thy servant has just said; for we are all Thy servants; none can refuse when Thou givest, nor give when Thou refusest; nor can fortune render us happy, if it come not from Thee." (*b*) Pronouncing, during the *aatidal* of the second *raka* of the morning prayer, the following formula called *Kanut*, "O God, lead me, as Thou hast led those before me," etc., which, of course, the imam recites in the plural at public prayers. (*c*) ††Praying for the Prophet after finishing the *kanut*, holding the hands before the face, but not wiping it, as some do. (*d*) ††Intoning aloud of the *kanut* by the imam. At the end of each invocation the congregation say "amen," while they repeat the Lord's praises in a low tone. Those who cannot hear the imam say the *kanut* on their own account. The *kanut* is obligatory, not only at morning prayer, as we have just said, but also at all the other prescribed prayers when made

at a time of endeavouring to avert an imminent calamity. **At other times the formula is not recited at the other prayers.

7. *Sejud*, or prostration. It consists in touching with a part of the forehead the place intended to be touched while praying. The validity of the prayer is not affected by touching a place at the side, provided the deviation be not caused by a previous and unlawful movement. *In prostration one is not strictly obliged to rest one's hands, knees, or feet on the ground. [*On the contrary, this act must be rigorously observed.] The following practices are considered necessary for the validity of prostration :—(*a*) keeping still the different parts of the body, while resting the whole weight of the head on the ground ; (*b*) prostrating oneself with the exclusive object of accomplishing prayer ; (*c*) recovering the position called *aatidal*, if unfortunately one falls on one's face ; (*d*) †causing the upper parts of the body to be lower than the inferior. And besides these necessary elements of the *sejud*, it is commendable, in order to accomplish one's prayer after the most approved manner : (*a*) to say, "God is great," while prostrating oneself, but without lifting the hands ; (*b*) to place the knees first on the ground, then the hands, then the forehead, and last the nose ; (*c*) to exclaim three times, while remaining prostrate, "Glory to the Lord most high." At public prayer this is all the imam says. At private prayer each believer adds, "O God, before Thee I prostrate myself ; in Thee I put my trust, to Thee I make my petition. I humble my face before Him who hath created it, who hath fashioned it, who hath opened my ears and my eyes. Blessed be God, best Creator" ; (*d*) to place the hands on the ground close to the shoulders with the fingers together and turned towards the *kibla ;* (*e*) to take care that the knees are not touching each other, that the stomach does not rest on the thighs, and that the elbows do not touch the sides. This rule is obligatory not only in the *sejud* but also in the *rokua ;* only women and hermaphrodites pray with the limbs together.

8. *Jelus, i.e.* sitting still between the two prostrations required in each *raka.* After sitting one cannot lawfully get up for any purpose but prayer. Neither must one sit too long. The *aatidal* also should last only a short time. The best way of accomplishing the *jelus* is to observe the following practices :—(*a*) to exclaim on sitting, "God is great" ; (*b*) to sit in the manner called *iftirash ;* (*c*) to place the hands on the thighs, a little above the knees, extending the fingers ; (*d*) to say while sitting, "O Lord, pardon me, show me Thy mercy, help me in misery, succour me, nourish me, lead me and preserve me." After the *jelus* one prostrates oneself a second time in the same way as the first ; **except that the Sonna has introduced the practice of sitting

a little after the second prostration, in order to rest, in every *raka* followed by another.

9. The *tashahud*, or confession of faith.

10. The *kaud* or sitting down when about to repeat the confession of faith.

11. The prayer for the Prophet.

Nos. 9 and 10 are considered essential elements only when followed by the final salutation, *i.e.* in the last *raka* of the prayer. In the other *rakas* they are only commendable acts. As to the *kaud* it is strictly allowable to accomplish it in any manner ; though, at the first, *tashahud*, the Sonna insists that the sitting should be in the manner called *iftirash*, *i.e.* on the heel of the left foot half bent on its side on the ground, the right foot being under the body with the toes turned towards the *kibla*. To recite the second *tashahud* one should sit, according to the Sonna, in the manner called *tawarok*, similar to the *iftirash* but with the left foot under the right side, and the hinder parts on the ground. †At public prayer, however, any one who is behind the others or has been guilty of some omission, should sit only in the manner called *iftirash*, both at the first and second *tashahud*. In both *iftirash* and *tashahud* the left hand is placed on the thigh close to the knees with extended fingers. [†The fingers should, on the contrary, be pressed together.] As to the right hand, one shuts the little, ring, and *middle fingers ; and raises the index finger when pronouncing the words of the *tashahud*— "that God," etc. ; but one should not alternately raise and lower it. *And finally one should hold the thumb pressed to the hand, like a person wishing to indicate by the position of his fingers the number 53. After the second *tashahud* one should pray for the Prophet ; *and it is even recommended by the Sonna after the first ; the Sonna insists upon a prayer for the family of the holy man after the second, ††but not after the first. Some authors consider it obligatory. The best manner of saying the *tashahud* is known to every one, so I confine myself here to pointing out that the minimum consists of the following words :— "Glory to God and salvation to thee, O Prophet. May the mercy and blessing of God come upon thee. May peace be bestowed upon us and upon all pious servants of God. I bear witness there is no divinity but God, and that Muhammad is the apostle of God." According to some authors one may still further compress the formula by omitting the words "and blessing" and "pious" and by replacing the words "Muhammad is the apostle of God" by the words "Muhammad is His apostle." [†The former phrase is preferable, as one reads in the Sahih or collection of traditions of Muslim.] The prayer for the Prophet should consist of the following words :—"O God, grant thy grace to

Muhammad and to his family" ; but after the second *tashahud* the Sonna insists upon adding the rest of the formula up to the words, "worthy of praise and glorious." It also requires the addition of an invocation, by preference one of those directly transmitted to us from Muhammad, *e.g.* "O God pardon all my sins," etc. ; but this invocation should not be longer than the confession of faith and the prayer for the Prophet together. A person who cannot say the confession of faith and the prayer for the Prophet in Arabic, should make use of a translation ; and this is allowable also for invocations and glorifications that are not obligatory but merely commendable. †But this permission to use one's mother tongue is strictly limited to cases of absolute impossibility.

12. The *salam*, or final salutation. It consists of at least the words, *es-salam aleykum*, †though one may also say *salam aleykum*. [†According to Shafii these latter words alone are insufficient.] †The *salam* need not be pronounced with the intention of finishing the prayer. The best way of doing it is to use the words, "Peace be with you, and may God be merciful to you," saying them twice, looking first to the right and then to the left and thus giving salutation to angels, men, and spirits. This, however, does not apply to public prayer, for there the imam should in intention salute the congregation, and they return his salutation.

13. *Tertib*, or observance of the order of succession of the essential elements of prayer, *i.e.* the order in which we have just mentioned them. If this order is intentionally neglected, *e.g.* by prostration before bending, the entire prayer is annulled ; if done by inadvertence, then the subsequent portion only is regarded as unaccomplished. If one perceives that one has omitted or failed to accomplish lawfully one of the essential elements of a certain *raka*, before coming to the same part of the next *raka*, one can repair the omission by beginning the prayer again at the part omitted ; otherwise the defective *raka* is completed by the *raka* one is actually saying, and one begins the prayer again from the *raka* so completed. If at the end of a prayer one perceives one has omitted a prostration in the last *raka*, it is enough to prostrate oneself forthwith, repeating the confession of faith ; but if the omission was in a previous *raka*, or one cannot remember for certain which *raka* it was in, then the whole *raka* must be repeated. Should one, after completing the *kiyam* of the second *raka*, perceive that a prostration has been omitted from the first *raka*, it is sufficient to prostrate oneself forthwith, at any rate if one has already sat down after the first prostration. Such procedure, however, is not sufficient, according to some jurists, if one sat down merely with the intention of resting ; and if that be not the case, still,

according to their doctrine, one must sit still and then accomplish the omitted prostration. Finally, some authorities support the view that a subsequent prostration will of itself always suffice, without prejudice to an expiatory prostration. A believer who, at the end of a fourfold prayer, perceives that he has forgotten two or three prostrations, and cannot remember exactly to which *raka* they belonged, should accomplish two further *rakas* by way of reparation. If four prostrations have been omitted, the remedy is one prostration and two *rakas;* if five or six, three extra *rakas* suffice ; if seven, a prostration and three extra *rakas* are necessary.

[The following further practices are recommended by the Sonna :—

1. Keeping the eyes fixed on the place where one is about to prostrate oneself. According to some it is even blamable to close the eyes ; but this, in my personal opinion is going too far, unless one is afraid thus to endanger the efficacy of the prayer.

2. To pray only in a humble and submissive attitude.

3. To meditate upon the words of the Koran recited and the glorifying of God enounced in the prayer.

4. To intone the prayer with fervour and without preoccupation.

5. When standing up, to hold the hands under the breast, the left in the right.

6. To pronounce an invocation when prostrating oneself.

7. To lean on the hands when rising from the prostration and the *kaud.*

8. †To recite the Koran for a longer time in the first *raka* than in the second.

9. To glorify God at the end of the prayer.

10. To change one's place, at the end of an obligatory prayer, if one wishes to accomplish a supererogatory prayer ; it is even better to go home to accomplish such optional act of devotion.

11. For the women at a mosque to take their places behind the men, who should remain until the women have gone out.

12. That each person should leave the mosque on the side most convenient for his business ; but the right is preferred, if there be no special reason to go out by the left.

13. That at public prayer the congregation should cease to follow the example of the imam immediately after the final salutation, during which they should recite an invocation or something of the sort, and then reply to the imam's salutation. Should the latter salute only once, the congregation must still salute him twice.]

CHAPTER III.—CONDITIONS FOR THE VALIDITY OF PRAYER

Section 1

There are five essential conditions for the validity of prayer—

1. The certainty that the legally prescribed time has come.

2. The direction of the body towards the *kibla.*

3. Keeping the shameful parts of the body covered. The parts of the human body between the navel and the knees are called "shameful," and this rule applies to men †and to female slaves. In the case of a free woman, the whole body is regarded as shameful, with the exception of the face and the hands. By "cover" is meant obscuring the colour of the skin, even by dirty water or mud. †If one has no clothes mud is obligatory. All that is necessary is that the clothing should be arranged so as to veil the shameful parts from being seen from above or from the side, but not from below. This rule is infringed if the parts in question are exposed by the garment opening in front when the body is bent. One's coat should be fastened, and drawn tight across the waist; and if necessary, as much as possible of the shameful parts should be covered with the hand. When one is able to cover the shameful parts both before and behind, this should be done; but if one's garment does not suffice for this, it is better to conceal those in front; though some authors give preference to the hinder parts, and others contend that it is a matter of choice.

4. To be free from all impurity, even slight. A slight impurity incurred during the prayer nullifies it just as much as one that one has neglected to remove before beginning; although, according to the opinion entertained by Shafii in his first period, one can, in the first case, proceed at once to a ritual ablution, and subsequently continue the interrupted prayer. The controversy extends to all other causes of illegality in prayer not due to negligence on one's own part and which cannot be immediately removed. If, on the other hand, one can remove at once the cause of illegality, *e.g.* if the wind has accidentally exposed the shameful parts, and one readjusts one's garment at once, the illegality is without consequence. But if it is a case of responsible illegality, *e.g.* if one has allowed the time for moistening the footgear to elapse, then the prayer is annulled.

5. That not only the clothing and the body but also the place of prayer must be free from impurity. In case of difficulty one should endeavour to ascertain whether a thing is pure or impure. If a part of the clothing or of the body has become impure, and one does not know precisely which part, one should wash the whole of the body or clothes. ††Even if one supposes the impurity to have tainted only one corner,

a partial cleaning will not suffice. †This cleaning, however, can be done in two stages, *i.e.* by washing first one half and then the other; provided that an overlapping border be washed twice, otherwise an intervening space is considered to be still impure.

If the clothing is or has been in contact with any impure object, even though only a part of the clothes which have not been displaced incurred this impurity, the prayer is invalid. Similarly if anything of which the other end is in contact with an impure object is held in the hand, whether it is †or is not in motion. However, if it be merely the foot which rests upon something of which the other end is touching an impure object, the prayer is valid, unless there are other causes of nullity. ††The impurity of the ground below the breast at bending and prostration does not entail the illegality of the prayer.

If in a surgical operation it is necessary to join to the patient's bone the bone of an animal, one can, if the matter is urgent and no other can be found, utilise an impure bone. On recovery the patient is none the less able to accomplish a valid prayer. If, however, the operation was not necessary, the impure bone must be cut out, if this can be done without manifest danger, or even in any case according to some authors. ††Only in case of death is there never need to cut out the impure bone from the corpse.

One may lawfully pray after cleaning the shameful parts with pebbles, even if there are still traces of impurity; †but if while praying one has been in contact with a person so cleansed, the prayer is invalid. The dirt of the high-road, even when manifestly impure, is an excusable impurity, if not in immoderate amount, as it is very difficult to take precautions against it. Distinctions, however, are to be made in this respect as to the time of day, and the part of the clothing or body that is affected. Similarly, a small quantity of blood from the bite of a flea, or of dirt deposited by a fly, does not affect the validity of a prayer; †but a large amount of either, or even a small quantity spread over the skin by the flow of perspiration, does. [†According to the most competent authorities these impurities are always excusable.]

Blood from blisters is considered in the same way as that from flea-bites; except, according to some authors, if the blisters are pressed. Blood from a pimple, an ulcer, a blood-letting or a cupping glass, is assimilated by some authors to that from blisters; †but the majority consider it to have the same effect as hæmorrhage after menses, provided the flow is ordinarily of some duration. Otherwise this blood is equivalent to that of another person; *i.e.* it is never excusable. Some jurists, however, admit an exception to this rule, when the blood has flowed only in a small quantity. [†Pimples, ulcers, etc., come under

the same rule as blisters ; *and one may even accomplish prayer while tainted with the blood of another person, if in very small quantity.]

Pus and clear fluid substance coming from a wound are regarded by the law for this purpose in the same way as blood ; and the same is the case with matter coming from ulcers or tumours, whether it has *or has not a fetid odour. [According to our school this matter is always pure.]

If any one prays in a state of impurity without knowing it he should, according to the opinion held by Shafii in his second period, repeat it on discovery by way of reparation ; and the same obligation rests, according to our school, on any person who may have forgotten his state of impurity after having become aware of it.

Section 2

A prayer is nullified by any superfluous word, even if it consist of but one letter ; or by too long a pause in its enunciation. †Coughing, laughing, weeping, groaning, or breathing, if of such a nature as to render perceptible to the ear at least two letters, nullify prayer ; but not otherwise.

The following are considered excusable :—

1. Words uttered (*a*) because one cannot control the tongue ; or (*b*) through momentary forgetfulness that one was engaged in prayer ; or (*c*) through ignorance of the prohibition, if recently converted to Islam. †But this only applies to a small number of words, many are never excusable.

2. Coughing, etc., where avoidable.

3. Omission to recite the Koran through incapacity ; †but to cry aloud is inexcusable.

*If superfluous words are the consequence of violence the prayer is nullified all the same. If one utters some passage from the Koran, even if it is to say something to some one else, *e.g.* Koran xix. 13, " O Yahya, take the holy scripture," the prayer is nullified, unless the passage comes in relevantly in the recitation.

The prayer is not nullified in the two following cases :—

1. If it is interrupted for glorifying God or for an invocation ; provided this be not in addressing some one else, as *e.g.* in saying to some one who has sneezed, " God be merciful to you."

2. †If it is stopped unintentionally, even for a considerable time.

The Sonna recommends that any believer who may be obliged to interrupt his prayer by unforeseen circumstances, *e.g.* in order to tell the imam to let some one pass who has just come in, or to warn a blind man, should say, " Praise to God " ; while a woman in similar circumstances should strike the back of the left hand with the right.

When the superfluous thing consists, not of a word, but of an act, the prayer is nullified if the act consists of something of a nature essential to the prayer itself, *e.g.* an inclination of the body ; though such contravention is not condemnable if committed in ignorance. But if the superfluous act is not of this category, it does not nullify the prayer, unless it is a thing of great importance. Custom indicates what must be considered a thing of great importance ; thus two paces or two knocks are not so considered as a rule, but three consecutive paces or knocks are. Similarly prayer is nullified by an indecent jump, but not by a slight though continuous movement, as *e.g.* counting the beads of a rosary, †or scratching oneself. †In all these cases faults due to inadvertence have the same effect as intentional faults.

Prayer is also nullified by eating, however little. [Two exceptions are admitted, when the act is done (1) through forgetfulness, without thinking what one is doing, and (2) without knowing that it is illicit.] †So rigorous is this prohibition that even a morsel of sugar in the mouth is enough to nullify the prayer, if any liquid from it be swallowed.

A practice has been introduced by the Sonna that any one about to pray should place himself near a wall, a column or a post stuck in the ground ; or place before him a special carpet, or draw a line to stop passers-by, ††who are obliged to respect it.

[The following things are considered blamable if done during prayer:—

1. Turning round unnecessarily.
2. Lifting up the eyes to heaven.
3. Taking hold of one's hair or one's clothes.
4. Unnecessarily putting the hand into the mouth.
5. Standing on one foot when accomplishing the *kiyam.*
6. Retaining urine or stercoral matter.
7. Performing devotion in the presence of a repast one wishes to eat.
8. Spitting in front of one, or to the right side.
9. Placing the hand on the hip.
10. Bending the head excessively when bowing.
11. Praying at the public baths, or on the road, or at a place where ordure is deposited, or in a temple of unbelievers, or at a place for camels to lie down, or in a cemetery even if free from impurity.]

CHAPTER IV.—EXPIATORY PROSTRATION

The Sonna has introduced the practice of accomplishing an expiatory prostration, whenever (1) Any prescribed duty has been neglected ; and (2) any prohibited act has been done.

With regard to the first point, if it is a matter of negligent omission of one of the necessary elements of prayer, one should first correct oneself, and prostrate oneself immediately afterwards, observing for the supplementary prostration the rule mentioned when speaking of the *tertib*. But when the omission extends only to a part of a necessary element, *e.g.* the *kanut*, the *kiyam* accompanying it, the first *tashahad*, the *kaud* accompanying it, or the prayer for the prophet that is said after the first *tashahad*, then one may repair the error by prostrating oneself at once. Some authorities maintain, however, that this procedure is insufficient, if the omission was premeditated. [The same rule should be observed in case of omission of the prayer for the family of the Prophet, at any rate if this is considered as a duty introduced by the Sonna.] Negligent omission of the other practices of the Sonna has no need of such expiation.

In the second case, the doing of a prohibited act, even intentionally, does not necessarily involve the nullity of the prayer ; if, *e.g.*, one has turned round, or taken a pace or two. One need not prostrate oneself to repair the error, if one has committed any such fault by inadvertence. But where an act would, if committed intentionally, nullify the prayer, one must prostrate oneself in reparation, if one commits it inadvertently. If, however, a fault is so grave as to nullify the prayer, even when committed inadvertently, an expiatory prostration is of no avail. This is the case if the prayer is interrupted by a long discourse. On the other hand, prolonging excessively one of the essential elements of prayer which should be accomplished rapidly, nullifies the prayer only if premeditated ; if it is mere negligence it can be expiated by prostration. Among practices that should be rapidly accomplished are cited the *aatidal*, †and the *jelus* between two prostrations.

If one of the essential verbal elements has been misplaced, *e.g.* if one has recited the first chapter of the Koran during the *rokua* or the *tashahad* ; †the prayer is not annulled, even if the act be intentional. †If, however, such fault has been committed negligently, an expiatory prostration is required. This forms an exception to the rule already mentioned, viz. that where an intentional act does not affect the validity of a prayer, it is not necessary to expiate by a prostration its inadvertent committal.

As to forgetting the first *tashahad*, the two following cases must be distinguished :—

1. If one remembers the error after finishing the prayer, one should not resume the formula, for the whole prayer would be nullified, at least if the resumption is done knowingly. Otherwise, *i.e.* if one has not thought of the prohibition, the law requires an expiatory prostration.

†The same rule applies if the resumption is due to ignorance instead of forgetfulness. Only a member of the community may resume the first *tashahad,* in these circumstances, when the imam gives him the example. [†This is even rigorously necessary.]

2. If one perceives one's error before finishing the prayer, one should, if not still standing, resume the first *tashahad.* One should also prostrate oneself. But if one has intentionally risen before finishing the prayer, without having enounced the first *tashahad,* the resumption of the omitted formula nullifies the whole prayer, even if one is not yet quite standing.

The *kanut,* if forgotten, is not resumed, if one remembers it only during the *sejud ;* but it is so if remembered before this, and one also accomplishes a prostration to repair the error, as soon as one is in a bending position.

If one does not know exactly what part of the essential element one has neglected, one should still prostrate oneself ; but if one merely suspects one has done some prohibited thing, an expiatory prostration is never required. Should one commit an irregularity by inadvertence, and be unable to remember whether it has already been expiated by a prostration, one should prostrate oneself ; and should one be uncertain if one has accomplished three or four *rakas,* one must perform another, followed by a prostration. †This prostration is even obligatory if the doubt has disappeared before the final salutation. The same rule applies to all cases where one has accomplished some practice without knowing if it was obligatory or not, for it is possible one may have performed a superfluous act. On the other hand, no expiatory prostration is required for an act which appears to have been necessary, even if one doubted it for a moment ; for example, if in the third *raka* of a prayer that consists of four *rakas* one is uncertain if it is the third or the fourth ; but if one remembers the truth before finishing the *raka* in question, one need not prostrate oneself to expiate one's fault. If, however, the doubt disappears only during the fourth *raka,* an expiatory prostration is required. **If it is only after the final salutation that one suspects having omitted a necessary practice, one need pay no attention to it.

At public prayer, an omission by a member of the congregation who has followed the lead of the imam, is the latter's business. This principle is carried so far that if one has repeated the final salutation in the mistaken belief that the imam had reached that stage, it can be pronounced a second time without an expiatory prostration. Even if one remembers, during the imam's *tashahad,* that one has omitted one of the essential elements of a *raka,* always excepting the intention and

the introductory *takbir* without which the prayer is null, one need only repeat the missing *raka* without prostration, after the imam has pronounced the final salutation. Any omission by a member of the congregation after the final salutation is his own mistake, for which the imam is not responsible. Thus, if one has lagged behind the imam in the prayer, one should nevertheless pronounce with him the final salutation, and then continue one's act of devotion from the place interrupted, and finally accomplish an expiatory prostration for negligence. On the other hand, faults committed by the imam through inadvertence are imputable to the congregation; and for this reason the expiatory prostrations of the imam are accomplished by the whole community; and even if the imam does not prostrate himself to expiate his errors the congregation should do so, this at least was Shafii's personal opinion. When, though the congregation is ahead, one prays under the direction of the imam, and he is guilty of an omission, either †before or after one has begun to follow him, ††one should in both cases accomplish with him the expiatory prostration, and then at the end of the prayer prostrate oneself again to expiate one's having lagged behind. If the imam omits his prostration in these circumstances, the congregation is none the less obliged to accomplish it at the end of the prayer. This was so decided by Shafii himself.

The expiatory prostration is never accomplished more than twice, whatever the number of faults committed through inadvertence. It is performed like an ordinary prostration, and, according to the opinion of Shafii in his second period, between the *tashahad* and the final salutation. †It follows that no reason for its performance can arise, once the final salutation has been knowingly accomplished; or even inadvertently, if a long interval has ensued. Otherwise, according to Shafii's personal opinion, the fact of having inadvertently accomplished the final salutation, does not prevent performance of an expiatory prostration. †After the prostration has been accomplished one continues the interrupted prayer. However, if the imam has been guilty of some omission in the public Friday prayer, and the time prescribed for that ceremony has expired during the expiatory prostration, one proceeds immediately to the celebration of midday prayer; and after this the congregation again prostrates itself in order to expiate the fault of having exceeded the time allowed for the weekly prayer. †It should be added that if after prostration for a fault believed to have been committed, it appears that the fault never really existed, one should prostrate oneself again in order to expiate the error of having accomplished a superfluous prostration.

CHAPTER V.—PROSTRATIONS FOR READING THE KORAN, AND FOR THANKSGIVING

Prostrations for reading the holy scripture, introduced by the Sonna, are fourteen in number, according, at least, to Shafii in his second period, including two prostrations for the reading of Chapter XXII., but not including the prostration for the reading of Chapter XXXVIII., as the latter is a prostration of thanksgiving, commendable when the chapter is read out of prayer time, †but prohibited at prayer. The prostrations of which we are speaking are prescribed by the Sonna as well for the reader as for the hearers, the only distinction being that those accomplished by the hearers are but the necessary complement of those performed by the reader. [They are prescribed also for every person who happens to hear the reading of the holy scripture.]

When the reading of the Koran takes place during prayer, the imam and congregation, when praying on their own account, prostrate themselves as may be necessary in the case of each ; but when the congregation prays under the direction of the imam, its prostrations must follow the lead given by him. Should any one omit a prostration performed by the imam, or *vice versâ,* the prayer of that person is nullified. A person about to accomplish a prostration for reading the Koran out of prayer time, should express his intention and then accomplish an introductory *takbir* raising his hands, adding another *takbir* when bending to the ground without raising his hands. He thus accomplishes the prostration as he would in prayer, and then, on rising, says the final *takbir* and the salutation. ††The introductory *takbir* is an essential condition for the validity of prostrations of this nature, *and so is the salutation. The believer must also comply with all the conditions requisite for the validity of prayer ; the only exception being that during prostration at prayer the *takbir* is said without raising the hands both in bending down and in rising up. [As another exception it may be mentioned that one does not sit down to rest after prostration for the reading of the Koran.]

While prostrate, one should say : "My face is bowed before Him that hath created it, that hath formed it and opened mine ears and mine eyes by His energy and power." A person who reads a verse of the Koran at two different sittings, should prostrate himself each time ; †and so should any one who reads at one and the same sitting a verse he has already read. For this purpose one *raka* is considered as one sitting, and two *rakas* as two sittings ; but if one has read a portion of the Koran without prostrating oneself, and becomes aware of the omission only after a long interval, no prostration is necessary.

The prostration of thanksgiving is never accomplished during prayer ; it is prescribed by the Sonna on the occasion of any unforeseen happiness, or averted calamity, or on meeting a person stricken with some physical or moral infirmity. Such prostration is performed in public only when one perceives a moral infirmity, not in presence of a physical infirmity. It is accomplished in the same way as a prostration for the reading of the Koran.

A traveller may accomplish without alighting any prostrations for the reading of the Koran, whether during prayer †or out of prayer time, or any prostration of thanksgiving.

CHAPTER VI.—SUPEREROGATORY PRAYER

SUPEREROGATORY prayers are of two categories—

1. Those which are not prescribed by the Sonna to be performed at public prayer.

(*a*) Special acts of devotion combined with obligatory prayers, *i.e.* two *rakas* before morning prayer, two before midday prayer, evening prayer, and the prayer of the night. Some jurists, however, maintain that these *rakas* should not be combined with the prayer of the night ; others insist on the accomplishing of four *rakas* before the midday prayer, or four after it ; others on four before the afternoon prayer. All these *rakas* are no more than practices introduced by the Sonna ; they are not of rigorous observance. It is only those founded upon some imperative text of the Sonna as to whose rigorous observance there is some dispute amongst authorities. Some authors add the two *rakas* to be accomplished in haste before evening prayer. [††These two last *rakas* are also meritorious acts, for a direction to perform them is found in al-Bokhari's collection of traditions called *as-Sahih.* There should also be considered as imperative precepts of the Sonna the accomplishing of four *rakas* after the Friday public prayer, and before it as many *rakas* as before the midday prayer.

(*b*) The prayer called *witr,* or *uneven,* consisting of a single *raka* at least, and at the most eleven, or according to others, thirteen, *rakas.* A person who wished to perform more than one, may either combine them, or, better, accomplish each separately. The combination is done by means of a *tashahad,* and, for the last two, two *tashahads.* The time prescribed for the *witr* is between the prayer of the night and the appearance of the dawn. According to some authors the *witr* may not consist of only one *raka* except where preceded by another supererogatory prayer performed after the prayer of the night ; and the Sonna insists on the *witr* being the last prayer accomplished during the night. To

this rule there is but one exception, viz. that the prayer called *witr* may be followed by the prayer called *tahajud* (reveille) without requiring to be repeated ; a few jurists only maintaining that it is even then necessary to begin by praying a *raka* and then repeat the *witr*. It is commendable to add the *kanut* to the *witr* during the latter half of the month of Ramadan, and some consider this act to be commendable throughout the year. This *kanut* is the same as the *kanut* for morning prayer, except only that before beginning one pronounces the formula " O God, with sure trust in Thee we implore Thy succour and pardon," etc. [†On the contrary, this formula should be enounced after finishing the *kanut* ; it is also commendable to perform the *witr* at public prayer after finishing the prayer called the *pauses*, specially prescribed for the nights of the month of Ramadan.]

(*c*) The prayer called *doha, i.e.* late in the morning, consisting of not less than two, and not more than three *rakas*.

(*d*) †The salutation of a mosque. This act of devotion consists of two *rakas*, which may, however, be implicitly performed when one says any obligatory or supererogatory prayer, ††though it is not permissible to omit one of the *rakas* composing it, when accomplishing the act of devotion separately. [The salutation is not implicitly performed by saying a prayer for the dead, or by accomplishing a prostration for the reading of the Koran, or of thanksgiving. †It is repeated each time of approaching the sacred edifice.]

The legal time for such supererogatory acts of devotion as are accomplished before beginning some obligatory prayer is the time for that prayer ; and the legal time for such as are performed after finishing a prayer is the moment of accomplishing such prayer. In each case the legal time finishes at the same moment as the time for the prayer. *Where a supererogatory prayer, to be accomplished at a fixed time, has not been so performed, it is always commendable to practise it afterwards by way of reparation.

2. Supererogatory prayers prescribed by the Sonna to be performed at public prayer, on the occasion of the two yearly festivals, at an eclipse, or in time of drought. Acts of devotion of this category are in general of more importance than those which need not be performed at public prayer. †In spite of this, however, prayers of sub-category 1 (*a*) have priority over the prayer called *tarawih*, †though the Sonna prescribes that the latter must be accomplished at public prayer, and no such precept exists for supererogatory prayers in general. The believer who has performed the introductory *takbir* for more than one *raka*, may at choice accomplish the *tashahad* either for two *rakas* at once, or for each *raka* separately. [††It is forbidden in these circumstances to perform

the *tashahad* for each *raka* separately.] The intention to say a certain number of *rakas* does not prevent the performing of a greater or smaller number, provided one expressly changes one's intention as to the number before deviating from the original idea, otherwise the prayer will be nullified. If, however, it is only by inadvertence that one has begun a third *raka* while the intention was to perform two, one may lawfully finish the third, although the intention has not previously been changed, †if only one sits down immediately upon becoming aware of one's error. Only after having thus sat down may one lawfully recommence and terminate the *raka* in question.

[Of supererogatory prayers those performed at night are of most value, especially those said at midnight, and after them those said at the end of the night. It is commendable to pronounce the final salutation each time one finishes two *rakas*. The Sonna has also introduced the nocturnal prayer called *tahajud*; but it blames the practice of passing the whole night without going to bed, especially the night of Friday. It also blames the omitting of the *tahajud*, if one is in the habit of accomplishing it.

BOOK 3.—PUBLIC PRAYER

CHAPTER I.—GENERAL PROVISIONS

Section 1

The Sonna imperatively prescribes the coming together of the faithful to perform in congregation the obligatory prayers. The performing of the Friday public prayer in congregation is a matter of rigorous observance; and some jurists maintain it to be the same with the daily prayers, and that all male believers are collectively responsible. This obligation, however, exists only in countries where Islam is an officially recognised religion. Inhabitants of such a country refusing to observe it should be executed. †The precept of the Sonna concerns the men only, and does not mention the women, whose presence at public prayer is not even a meritorious act. [†According to Shafii's personal opinion public prayer is an obligation for which the community is collectively responsible. Some authors maintain the obligation to be individual.]

It is preferable to pray publicly in a mosque, but neither is this rule applicable to women; and the more numerous the congregation the more valuable the prayer, provided the crowd be not attracted by any heretical innovations of the imam, and the neighbouring mosques be not deserted in consequence. It is recommended to reach the mosque so as to be present at the introductory *takbir*, the believer being considered to take part in the prayer if he begins this formula before the imam has finished it. Some authors, however, maintain one may arrive at any time before the *kiyam*, or even at the first inclination; ††and, strictly speaking, there is yet time so long as the final salutation has not been pronounced. The imam should perform his duty without either wasting time or neglecting any essential part or practice of the prayer. He need not haste, however, if all the congregation ask that the prayer should be accomplished slowly; but it is blamable to do this in order to give time to those that are late to join. *The imam may wait a moment if he sees a person come in at the inclination or the last *tashahad*, provided no distinction be made between the members of the community. [According to our school it is even commendable to wait under these

circumstances.] But with the exception of the moment at the inclination and the *tashahad* of which we have just spoken, one never waits at public prayer. And according to the Sonna any one who has made his prayer either alone †or in company with others should repeat it with the congregation when he enters the mosque at the moment the same act of devotion is being accomplished. According to the opinion of Shafii in his second period, it is the first prayer which is then considered as the obligatory prayer; †though one should formulate an intention for the second, as if it also were obligatory.

Whoever neglects attendance at public prayer is deserving of the most severe blame, even according to authors who see in that act only a precept of the Sonna. But it is not necessary to go to the mosque if one has a valid general or personal excuse. Amongst excuses of a general character may be ranked rain, or a storm in the night, ††or too much mud on the road. Among personal excuses are reckoned illness, excessive heat or cold, impossibility of satisfying hunger or thirst, the necessity of preserving oneself from some impurity, the fear of incurring some injury to person or property, the pursuit of an importunate creditor, the avoiding of some chastisement by a few days' concealment, want of decent clothing, preparations for a voyage in company of a caravan about to start, the fact of having partaken of some food of disagreeable odour, wish not to leave a relative at the point of death, and finally the illness of any person to whom assistance is indispensable or to whom one is bound by ties of friendship.

Section 2

At public prayer it is forbidden to pray, not only under the direction of a person whose prayer is known to be nullified, but even under that of a person the nullity of whose prayer one has reason to presume. Thus where two persons cannot agree upon the true direction of the *kibla*, even after doing their best to ascertain it; or if they differ as to which of two vessels for ablution is pure; one may not lawfully pray under the direction of either. The same if a choice has to be made from several vessels, even if the most of them are known to be pure. †But the vessel used by the imam should be used by the congregation until proof of its impurity; and one may even lawfully use without personal examination a vessel used by another, if one has no good reason for doubting its purity. Impurity of vessels for ablution gives rise to the following particular case:—when five similar vessels belong to five different individuals praying together in public, and amongst them one is impure but it is not known which, each of the five believing his own

to be pure ; then each should use his own vessel for ablution ; but in order to be sure to avoid praying under the direction of an imam using an impure vessel, each should assume the function of imam at one of the five obligatory prayers, beginning with the morning prayer. †Then the prayer for the night should be repeated on their own account by four of them, *i.e.* all except the one who has already presided as imam, who should repeat on his own account the evening prayer. †A follower of Shafii praying under the direction of a follower of Abu Hanifa who has touched the private parts or has been bled without removing the impurity, lawfully performs his religious duty in the latter but not in the former case ; the ground of the distinction being the probable intention of the follower of Shafii, whose school does not admit impurity from bleeding. It is not permitted to follow as imam, either a person who prays under the direction of another, or a person obliged to repeat his act of devotion, *e.g.* one who, though living at a fixed place of abode, has recourse to ablution by sand.

According to the opinion of Shafii in his second period it is not lawful for one who can read and write to pray under the direction of an illiterate person. This latter phrase comprises—

1. He who suppresses a letter or a *tashdid* in the recitation of the first chapter of the Koran.

2. A stammerer who pronounces two letters as one, where the grammar does not require it.

3. A person who by defect of pronunciation substitutes one letter for another.

One illiterate may, however, pray under the direction of another illiterate, though it is blamable to be imam when one has a difficulty in pronouncing the letter " t " or the letter " f " or does not know the exact use of the vowels. And if this last defect is so grave as to alter the sense of the words, *e.g.* if instead of saying " an'amta " one says " an'amto " or " an'amti," the prayer is nullified, at least if the person in question ought to have known better. But if such person is merely perplexed and has time enough still to learn, he should be considered illiterate only if the mistakes are made in the reading of the first chapter of the Koran ; mistakes in the other parts of the prayers do not affect their validity, or disqualify the imam making them.

Neither a man nor a hermaphrodite may lawfully pray under the direction of a woman or of a hermaphrodite. A person who has performed ablution with sand or moistened the footgear may as imam lead another who has accomplished ritual ablution. A man standing may follow the lead of one sitting or lying on the side ; and a free adult may pray under the direction of a minor or a slave. Shafii himself says

that the blind is in this respect as he that can see. †And an individual with no bodily infirmity may pray under the direction of one subject to an unhealthy issue of urine or sperm ; or a woman in a state of purity follow the lead of one subject to hæmorrhage after menses, provided the latter is in no uncertainty upon the subject. If it subsequently appears that an imam under whose direction one has prayed is a woman or a notorious unbeliever, or even according to some a secret unbeliever, the prayer should be repeated. But this is not necessary if it merely appears afterwards that the imam had incurred some, or even a grave impurity, or was secretly in contact with some impure object. [†The personal opinion of Shafii, which is generally accepted, is to the effect that the unbeliever who has concealed his infidelity should be considered in this matter as if he had openly proclaimed it.] †The rule applying to the case of a woman under whose direction one has erroneously prayed applies also to that of an illiterate person ; *while inversely a repetition is necessary if one has taken for a hermaphrodite an imam who appears afterwards to be a man.

A man of irreproachable character has more right to be an imam than a person of notorious misconduct ; †and a savant more than one who can merely read and write, or who has the merely negative quality of having done nothing wrong. A savant, or even a merely lettered man, has more right than an older man or one of undoubted descent; but according to the opinion of Shafii in his second period age has precedence over birth. Where two persons are equal in all these respects preference will depend on cleanliness of clothing or body, sonority of voice, profession, trade, and so on. An owner of landed property, even if not otherwise the most worthy of the congregation, has a better right to be imam than he who possesses nothing ; and if incapable of assuming the functions himself, he has a right to nominate the imam. The master has a right of precedence over the slave living on his land ; but the law accords him no such precedence if the slave is under contract of enfranchisement. †The tenant has precedence over the lessor, the lender over the borrower ; and in his province the Governor has precedence over the learned man or the landowner.

Section 3

No one may place himself in front of the imam, and an infraction of this rule nullifies the prayer, according at least to the opinion supported by Shafii in his second period. There is, however, no objection to being on the same line with him, though it is always commendable to keep a little distance. Whether one is before or behind depends on the position

of the heels. At public prayer in the Masjid-al-Haram at Mecca a circle is formed round the sanctuary ; †and in that case a person on the other side to the imam may approach nearer than he. One can also approach nearer the wall if imam and congregation make their prayer inside the sanctuary and turn in two different directions. If in these circumstances the congregation consists of one man, he may place himself on the imam's right, and any one coming afterwards should place himself on the left. Then the imam moves forward a little, or, better, the others move back. If the congregation in the sanctuary consists originally of two men, or of a man and a minor of the same sex, they should place themselves behind the imam. The same rule applies to a congregation composed of one or more women.

In general, men should place themselves in front behind the imam, then male minors ; and last of all the women, the person who directs their prayer being in the front rank among them. When praying under any one's direction, one should not occupy a place apart, but place oneself if possible in one of the rows. Otherwise, immediately after the introductory *takbir*, one should draw some one towards oneself, and the person so drawn must comply with this demand. The congregation should be kept informed of the movements of the imam, either by looking at him or at other members close by, or by the *muballigh* or person specially charged with communicating to the congregation in the large mosques the acts and words of the imam.

If the imam and a member of the congregation are in a mosque, the distance between them is immaterial, whatever may be the shape of the edifice ; but if they are praying in a plain it must never exceed three hundred cubits more or less ; according to some jurists this is the absolute maximum. If the question relate to two persons or two rows, the distance is measured between these persons or rows, and not between the last person of the last row and the imam. It is of little importance if the plain is private property, real property or part property ; ††or if the distance is cut by a public road or an unfordable stream. If the imam and the person praying under his direction are in different buildings, *c.g.* one in the interior and the other in the vestibule of a mosque or in a chamber apart, the following distinctions are to be observed :—

1. The place of the follower is to right or left of the imam. In this case they must be in the same storey, †interrupted or not, of the buildings.

2. The place of the follower is behind the imam. ††In this case there must not be between the two buildings a greater distance than three cubits.

3. According to another system three hundred cubits is the maximum

distance permitted between the two buildings as in the case of the plain ; but in any case, for the validity of the prayer it is necessary that there should be no separation between the two places, or that at least they should communicate by an open door. If there intervene an obstacle to passage but not to sight, opinions differ. All authors, however, agree that if a wall intervenes the prayer is invalid. [†I prefer the second system.]

If a person can lawfully follow, as imam, another person in another building, he can in his turn lead the other's prayer, in spite of a separation.

If one is in a higher or lower position than the imam, it is necessary that at least some part of the body should be at the same height. If one be outside the mosque and the imam inside, with nothing intervening, the distance should be measured from the edifice, or, according to some authors, from the last rows of the congregation. Under these circumstances a wall or a locked door prevent participation in public prayer, †as do also a door closed but not locked, and a railing. [It is blamable for a believer to be in a higher or lower position than the imam ; unless it is the only position possible, in which case it is even praiseworthy. One should not begin a prayer before the muezzin has finished the second call, nor begin a supererogatory prayer at the moment when the muezzin has already begun the second call ; but such prayer if already begun should be concluded unless one fears that the time for public prayer will thus be taken up.]

Section 4

One can only pray under the direction of another if one has formulated the intention of following his lead or of performing public prayer, an intention which should accompany the introductory *takbir*. ††There is no difference in this respect between a Friday and any other public prayer ; but if the intention be lacking the prayer is void, even though otherwise completely accomplished. The law does not insist that the intention of the congregation shall refer to any special imam ; but the prayer is void if such intention be formed, and there is an error as to the person. On the other hand, it is not necessary that the imam should formulate the intention to perform his functions, though it is a commendable practice. An error committed by an imam in designating some particular person about to pray under his direction does not prejudice the validity of the prayer.

A person who prays in order to perform his religious duty at the time prescribed by law may take as his imam a person who prays in order to accomplish his duty by way of reparation. One may also perform an

obligatory prayer under the direction of an imam who is accomplishing a supererogatory prayer; and perform midday prayer under the direction of an imam who is accomplishing afternooon prayer, and *vice versâ.* The midday prayer may even be performed under the direction of an imam who is accomplishing the morning or evening prayer; but in that case the believer should act as if he were behind the congregation, and accomplish afterwards the *rakas* that are in his own prayer but not in that of the imam. When the imam proceeds to the *kanut* at morning prayer, or to the last *jelus* of the evening prayer, one may then either follow him or leave the congregation. *And so, on the other hand, one may perform morning prayer, taking as imam one who is accomplishing that for midday, though the latter is longer than the former; and then one may either pronounce the final salutation and leave the congregation as soon as the imam begins the third *raka,* or remain quietly in one's place to the end of the ceremony without taking part in it, and pronounce the final salutation along with the imam. [This latter course is the better.] When the believer has an opportunity of performing the *kanut* of the second *raka,* while the imam is not speaking, he should do so; but if this be impossible he may either omit that formula or cease to pray under the direction of the imam and recite it by himself. ††It must always, however, be quite understood that one cannot perform under the direction of an imam a prayer which differs in its essential practices from that which the imam himself is accomplishing. Thus one may not perform one of the five obligatory prayers under the direction of an imam who is accomplishing prayer on the occasion of an eclipse, or a funeral prayer.

Section 5

One should follow the imam in the different acts constituting prayer, commencing each shortly after the imam, without waiting for him to finish it. Strictly speaking, however, one can begin each act at the same time as the imam, with the exception of the introductory *takbir.* †If one is still occupied with another essential element of the prayer, *i.e.* when the imam has already finished such element, while one is still occupied with the preceding, the prayer is not therefore nullified. This only occurs when the interval between the imam and the member of the congregation amounts to two essential elements of the prayer, without valid excuse. If such excuse exists, *e.g.* if the imam has hurried over the recitation of the Koran, and bent in prayer before the member of the congregation has finished his recitation, that member should, according to some authors, follow the imam, omitting the remainder of his recitation. ††Others think the recitation should first be concluded,

and the imam followed afterwards. But the interval between imam and member must never exceed three essential elements of importance, *i.e.* which cannot be hurriedly accomplished. If this should occur, the member must stop praying under the direction of the imam, according to some opinions ; †or else he should follow the imam in what he is actually doing, and accomplish what has been omitted after the imam has pronounced the final salutation. In case the member of the congregation is unable to conclude the recitation with the imam, because occupied with the introductory invocation, he is considered excusable.

This only applies to a member of the congregation who has been present at the ceremony from the beginning. One who is behindhand because he arrived late, and has in consequence not yet finished his recitation when the imam bends in prayer, †should stop his recitation, bend, and join the imam in the *raka*, provided the imam be not at the moment occupied with the introductory invocation or the *tawuz*, for in this case the recitation should be continued as much as possible. When behindhand like this, after pronouncing the introductory *takbir*, one should pay no attention to the practices introduced by the Sonna, but limit oneself to the recitation of the first chapter of the Koran, unless one is quite sure of being able to catch up the others. A member of the congregation who during the *rokua* perceives he has omitted the recitation, or is uncertain about it, should not go back, but should pray one *raka* after the imam has pronounced the final salutation. If this recollection or doubt occurs after the imam has bent in prayer, but before the member has done so, he should first proceed to the recitation and then has an excuse for remaining behindhand. Others, however, think he should bend in prayer with the imam, and accomplish the omitted portion after the final salutation. If the member of the congregation has preceded the imam in saying the introductory *takbir* his prayer is null ; but if he has only preceded him in the recitation and the *tashahad*, his prayer is valid and he has legally acquitted himself of his duty before God. Some authors, however, prescribe that in these circumstances the prayer should be recommenced with the imam. Finally, if one has preceded the imam in some material act, *e.g.* inclination or prostration, the prayer is nullified, if the error affects two essential elements ; otherwise not. A few authorities contend that the prayer is nullified even if only one essential element is affected.

Section 6

When the imam stops praying the congregation ceases legally to pray under his direction. Each member indeed can stop praying under

the direction of the imam whenever he pleases; though according to one authority such a course is only lawful if there be some valid excuse for withdrawing from public prayer. With respect to this, there should be added to the excuses already mentioned the case where an imam unnecessarily prolongs a prayer, or omits some important precept of the Sonna, such as the first *tashahad.*

*One may begin a prayer on one's own account and resolve afterwards to continue it under the direction of the imam, even if the latter has already begun. Even if the imam be already occupied with a different *raka,* one can still take him as model, and get up and sit down when he does. When, under these circumstances, the prayer of the imam terminates first, one should act like any other person who was not present at the beginning. But if one is finished before the imam, one can either leave the congregation, pronouncing the final salutation on one's own account, or wait and finish the prayer along with the imam. The part of the prayer which the imam is accomplishing at the entry of a late arrival, is considered, so far as the latter is concerned, as the first part of the prayer. Consequently, in the part of the prayer he has still to make on his own account, he must repeat the *kanut* pronounced by the imam, if this formula is of strict observance. Similarly a member who joins the congregation at one of the *rakas* of evening prayer should say the *tashahad* in his own second *raka*; but it should be remembered that an arrival at the moment the imam bends in prayer is considered to have been present at the entire *raka.* [Provided one keeps still before the imam gets up after the *rokua;* even when the latter is accomplished in the most simple manner.] *If one is doubtful of having participated in a *raka* at the right moment, that *raka* cannot count.

On joining the congregation one should accomplish the *takbir* twice, once as introduction to the prayer, and once for the inclination. One *takbir* will not suffice for the two acts; except, according to some authors, in a supererogatory prayer. ††One *takbir* is of no use if performed without thinking of the double function of this formula. When a person joins the congregation at the moment the imam is performing the *aatidal,* the later portions of the prayer are valid for him on accomplishing one *takbir*; †and such person should say with the imam the *tashahad,* and the formulas beginning with the word *sobhana.* †A person who does not arrive before the prostration, an act of no profit to him, need not say a *takbir* on joining the congregation. But after the imam's final salutation the person behindhand in this way should get up and pronounce the formula in question, provided he has sat under the direction of the imam at the place he performed the *jelus* in a former *raka*

accomplished on his own account; †otherwise he should omit the *takbir* altogether.

CHAPTER II.—PRAYER ACCOMPLISHED ON A JOURNEY

Section 1

Of prayers that fall to be performed in the course of a long journey, undertaken with a lawful object, only the fourfold prayers may be abridged. This indulgence of the law does not extend to a prayer whose proper legal time has been allowed to pass by when not travelling. *If this oversight has occurred when travelling, the prayer can be performed afterwards abridged, if the journey is not yet over, but not after one's return home.

A traveller leaving a town is considered to have begun his journey when he has passed not only the ramparts †but also the habitations of the neighbourhood. [†These are of no account.] If the town has no ramparts the journey begins after passing the last buildings, without considering what ruins or gardens may be in the neighbourhood; and the same principle applies also to a village. The journey of a nomad living in a tent begins from the limit of the camp. The journey may be considered at an end when one has repassed these same boundaries. If the traveller stops anywhere intentionally for four days, the journey is suspended for that period, by the mere fact of arrival at this temporary halting place. ††But in the four days is included neither the day of arrival nor the day of departure. On arriving at a town with the intention of stopping only as long as the finishing of one's business requires, prayer may be abridged for eighteen days; or according to some opinions four days, while according to others there is no restriction of time. There are authorities too who consider an abridgment warranted if the delay is caused by fear of being attacked, but not during a stay for some commercial object. However this may be, our rite does not allow abridgment if a long stay is anticipated.

Section 2

Prayer may be abridged if a journey extends to at least forty-eight miles of Hashim. [This distance is the equivalent of two days' journey with loaded camels. Distances on land and sea being the same, prayer may be abridged even where a ship might under full sail cover the distance in an hour.]

The traveller must from the start have a fixed destination. Therefore he cannot abridge prayer if either—

1. He wanders aimlessly here and there, whatever the distance may be.

2. He is looking for a debtor or a slave whose whereabouts he does not know, and after finding whom he means to return home.

If of two roads leading to the same destination one chooses the longer for some reason or other, *e.g.* because of the level or the security, prayer may still be abridged. *But this is not so if the choice be made from mere caprice. A slave, a wife, or a soldier travelling under the authority of other persons, and ignorant of their destination, may not abridge prayer ; even when such persons have an idea the journey will be long, only the soldier may abridge prayer, not the slave or the wife. If a person starts with the intention of making a long journey, and returns voluntarily before completing it, it is finished none the less, and if he starts again it is considered a new journey.

No one has the benefit of abridging prayer who leaves their abode for an illicit purpose, *e.g.* as a fugitive slave, or a wife deserting her husband. †It is the same if a journey begun lawfully is continued unlawfully ; while, on the other hand, prayer may be abridged on a journey continued with a lawful object though unlawfully begun.

A traveller who has prayed even for a moment under the direction of an imam who is accomplishing the entire prayer without abridgment, should also finish it without abridgment. This principle is carried so far that a traveller cannot invoke the right of abridgment, if he has begun his prayer under the direction of another traveller, who in the middle of it incurred some unforeseen impurity, *e.g.* a nasal hæmorrhage, and was replaced by another imam who did not abridge. If under these circumstances the first imam rejoins the congregation and resumes his functions after the disappearance of his impurity, the traveller must yet continue his prayer without abridgment. A prayer accomplished by a traveller without abridgment because following an imam must be repeated entire in regular fashion, if it has to be repeated because of some fault of the traveller or the imam, or because the latter is afterwards discovered to be impure. The same rule is observed if one has to repeat a prayer accomplished under the direction of an imam one supposed to be a traveller but afterwards discovered to be living at a fixed abode, or of an imam with regard to whom one did not know whether he was a traveller or not. On the other hand, one may lawfully abridge prayer after having formulated one's intention ; when, at the moment of formulating that intention, one knew that the imam was not living at a fixed abode, though uncertain if he intended to abridge

prayer or not. †One may even, in this state of uncertainty, formulate the intention conditionally, *i.e.* "if the imam abridges the prayer I will do so with him, but otherwise perform it in the ordinary manner."

To abridge prayer lawfully one must intend to do so from the beginning, and avoid anything incompatible with that intention, throughout the whole act of devotion. Thus a believer cannot claim a right to abridge prayer if :—(1) he has begun the prayer intending to shorten it, but has afterwards hesitated to keep to this intention ; or (2) he is not sure of having had the intention of shortening the prayer ; or (3) if the imam gets up to perform a third *raka,* and one is not certain if it is in order to accomplish the entire prayer without abridgment, or by inadvertence.

The prayer is nullified, if one begins intending to shorten it, and then in spite of that knowingly begins the third *raka,* without special cause for deviating from one's original idea. But if this is a mere inadvertence one may either :—(1) resume one's position, and after a prostration by way of reparation pronounce final salutation ; or (2) change one's intention and accomplish the whole prayer without shortening it ; but in that case one should first resume one's position, and then get up again at once to perform the later *rakas.*

Another essential condition for the lawful shortening of prayer is that one must be able to consider oneself as a traveller throughout the entire duration of the act of devotion. If one expects to arrive at one's destination during prayer, or if one's vessel arrives in port, the prayer must be normally accomplished.

**On a journey of at least three days it is better to abridge prayer than to perform it in the ordinary way. But the traveller is recommended to observe the fast of the month of *Ramadan,* rather than exercise his right to break it, at least when this can be done without danger.

Section 3

During a journey that admits of abridgment of prayer, one may combine the midday and afternoon prayers, and the evening prayer with that of the night ; performing the combined prayers at the usual time of the earlier or of the later of the two. According to one jurist this may be done even when the length of the journey does not admit of the shortening of prayer. If one is actually travelling at the legal time for the midday or evening prayer, it is better to postpone it until the time of afternoon prayer or of the prayer of the night, as the case may be, and accomplish the two prayers together.

One may anticipate a later prayer only on three conditions :—

(1) One must first perform the prayer for which the legal time has

come. Its illegality involves that of the second, anticipated, prayer—but not *vice versâ*.

(2) One must intend to combine the two prayers, when one begins the first, or at least before its completion.

(3) The two prayers must not have any considerable interval between them; otherwise the second prayer must be postponed to its proper time. Whether an interval is considerable or not is a matter of custom.

††The believer who has had recourse to lustration with sand may lawfully combine prayers, as well as one who has performed ritual ablution or bathed. Asking for something in a hurry between the two prayers is not considered a breach of continuity. If, after combining two prayers one remembers that one has omitted from the former some essential element, both are nullified and must be repeated together, but if it is one of the essential elements of the second that has been omitted, the error may be rectified by recommencing the act of devotion at the place of omission, if no long interval has elapsed. If a considerable interval has been allowed to ensue, the second prayer only, not the first, is nullified; and the combination of the two prayers becomes unlawful. If uncertain whether the omitted portions belonged to the first or second prayer, both prayers should be separately repeated at their respective legal hours.

††If the second prayer has not been anticipated, but the first postponed to the legal time for the second, they can be combined without observing the order, without causing one to follow immediately on the other, and even without formulating an intention to combine them. But this intention should have existed already when one resolved at its prescribed hour to postpone the first, otherwise one is guilty of an irregularity, and the first prayer counts merely as an act of devotion performed too late.

If, when one wishes to combine two prayers by anticipating one of them, one arrives at a fixed place of abode before beginning the second, their combination becomes unlawful; but this is not so if one has already begun, and still less if one has finished, the second prayer. And if, in a case where the first prayer has been postponed, one reaches a fixed abode after having accomplished both, both remain valid; but if they are not finished before arrival, the first counts only as an act of devotion accomplished too late. Rain is a good reason for combining two prayers by anticipating the second; while, on the other hand, Shafii in his second period decided that it is no excuse for a postponement. Anticipation is, however, permitted only where rain is actually falling at the beginning of each prayer, †and at the moment of final salutation in the first. Snow

and hail, when sufficient to wet the clothes, are regarded as rain. *This faculty of combination refers especially to the believer performing public prayer in a distant mosque, who is afraid of getting wet before reaching home if he starts at once.

CHAPTER III.—PUBLIC PRAYER ON FRIDAYS

Section 1

Public prayer on Fridays is obligatory only for adult male Moslems, sane, free, domiciled in the place, and not obliged to remain at home by sickness, etc. It is not obligatory for any one with a valid excuse for not attending daily public prayer, for one under contract of enfranchisement, ††or one partially enfranchised. Those for whom public prayer on Fridays is not obligatory have nevertheless a right to be present, provided they can legally perform midday prayer ; though the law allows them the option of leaving the congregation after the midday prayer, before proceeding to that for the week. This rule does not apply to believers who, having a mere accidental excuse for absence, such as sickness, etc., happen to be in the mosque at the time of weekly prayer ; these are forbidden to leave, unless their sickness is increased by remaining. Weekly public prayer is obligatory even for decrepit and sickly persons, if they have means of transport and can endure it without pain. The blind should attend, if he can find some one to lead him. The inhabitants of a village should perform weekly prayer, if they are in sufficient number for it, otherwise they should go for this purpose to a neighbouring town or village, if a call can be heard from the one to the other, in the silence of the night. If the distance is too great for this, then there is no obligation to go.

The law forbids any one who should attend the Friday prayer beginning a journey upon that day immediately after the sun has begun to decline, unless he happens to have to take the road that leads to the place of meeting, or he is afraid of incurring some detriment from leaving later and consequently being obliged to remain in the rear of the caravan. According to the opinion of Shafii in his second period this rule applies also to the case of a person wishing to leave a little before the sun begins to decline, at least if the journey is merely allowable ; but if the departure is commendable or obligatory, one may chose what hour one pleases. [†A journey, whether it be merely allowable, or commendable, or obligatory, is in all cases subject to the prohibition to start on Friday at the time mentioned.]

†Persons who are not obliged to take part in the Friday prayer,

should still, according to the Sonna, be present at the public midday prayer on that day. It is better, however, that they should not take part in it, but remain concealed, unless the cause of their absence from the Friday prayer is a matter of public notoriety. It is also recommended to believers who consider themselves temporarily excused from attending the Friday prayer, to postpone the midday prayer on that day as long as possible, until sure of being unable to go to the weekly function ; but those, on the other hand, who have a permanent excuse, such as women and sickly persons, should perform the midday prayer as soon as the hour has sounded.

Besides the conditions already mentioned, the law has established for the validity of weekly public prayer, the following :—

1. It must take place at the time prescribed for midday prayer. If this is past, the Friday prayer cannot be performed, as it may not be accomplished too late by way of reparation. If one is afraid that the legal time does not suffice for its completion, one should say the midday prayer and no more ; and if the legal time expires during the ceremony, it should be concluded as an ordinary midday prayer. Only one author maintains that this prayer should be accomplished from beginning to end. A person who arrives late and lags behind should finish his act of devotion as a midday prayer ; though according to some authors he should finish the weekly prayer as if nothing were the matter.

2. Public weekly prayer must be performed in a place surrounded by edifices inhabited by members of the community ; *so that people living in tents in the desert cannot accomplish it.

3. In the same town, public prayer on Friday cannot be performed in different places, either simultaneously or successively, unless the town be so extensive that its inhabitants cannot easily assemble in one spot. Some jurists do not admit this exception ; others think that any town divided by a large river should be considered in this respect as two separate towns ; others again are of opinion that in the case of several villages with contiguous buildings, the ceremony may be held in as many places as there are distinct communes. When Friday public prayer has been accomplished in one place, and others proceed to perform it in too near a neighbourhood, the former alone is lawful, unless the Sultan attends the latter, in which case it alone is lawful, in spite of not having priority. To determine which of two public prayers has priority it is necessary to observe the time of the introductory *takbir ;* or, according to some authors, the moment when the congregation disperses ; while a third doctrine maintains that the important point is the beginning of the first sermon. If two public prayers begin at the same time, or it is not certain if one began first, the ceremony should be begun over

again. When, on the contrary, it is known that one began before the other, but it is not certain which, or it has been forgotten, then midday prayer only must be accomplished. One jurist maintains that even then one should perform the Friday prayer.

4. Weekly public prayer can be accomplished only in congregation, and is in that respect subject to the rules detailed in Chapter I. of this Book. The congregation must consist of at least forty Moslems, adult, sane, free men, domiciled in the place, *i.e.* who leave it neither in winter nor summer, except by necessity. The ††Friday prayer is regularly performed even if the congregation consist only of forty sick persons. The imam can be included in the legal forty. If the congregation wholly or partly disperses during the sermon, leaving less than forty behind, the continuation of the service is invalid ; but if they return after a short interval it can be resumed from the place of interruption. *If the interval is long the whole ceremony must be begun over again ; and if the congregation disperses during the prayer, the latter is nullified. Only one author thinks this is not so if at least two persons remain in the mosque. *The weekly service may be performed under the direction of a minor, a slave, or a traveller, provided there are forty persons present besides them. *If the imam has contracted an impurity, whether grave or slight, the service is still lawful if forty persons besides him are present, but not otherwise. ††But if one begins the prayer at the *rokua* under an impure imam the whole *raka* is invalid.

5. Before beginning the prayer the imam must deliver two sermons, consisting of five parts :—(*a*) the praise of God ; (*b*) the prayer for the Prophet, consisting like (*a*) of certain special words ; (*c*) an exhortation to virtue, ††of which the wording is not prescribed. These three parts must occur in each of the three sermons. (*d*) A recitation of a verse of the Koran in one of the two sermons. Some authorities maintain that this recitation should take place in the first sermon ; others that it should occur in both ; yet others that it is not obligatory at all. (*e*) An invocation, as the word is ordinarily understood, for the good of Moslems, in the second sermon. A few authors consider it not obligatory. The sermons must be delivered in Arabic, observing the proper order of succession of (*a*), (*b*) and (*c*) ; and the proper time must have arrived, that is the sun must have begun to decline. The imam remains standing, if possible, when delivering each sermon, but sits down during the interval between them. The sermons should be pronounced so that at least the minimum legal congregation could hear them. Shafii, in his second period expressed the opinion that it is not absolutely prohibited for the members of the congregation to speak a few words when listening to the sermons. The Sonna insists on the

congregation being silent when listening to the imam. [†The order of succession of the parts of the sermons is not a matter of rigorous observation.] *The following are essential conditions for the validity of the sermons :—(*a*) uninterrupted delivery ; (*b*) absence of any grave or slight impurity in the imam, who (*c*) must be decently dressed. The Sonna has introduced the following additional practices :—(*a*) delivery from a pulpit or other elevated place ; (*b*) a preliminary salutation by the imam of those close to the pulpit, his turning towards the congregation when mounting the steps, and salutation of the whole congregation when taking his seat ; it is only then that the first call is intoned ; (*c*) eloquence, intelligibility and conciseness ; (*d*) turning neither to the right nor to the left ; (*e*) leaning during delivery upon a sword, stick or something similar ; (*f*) remaining seated between the sermons as long as is required to recite chapter 112 of the Koran.

After the second sermon the muezzin intones the second call to prayer, while the imam hastens to descend from the pulpit so as to be facing the *mihrab* before the second call is finished. He then says a prayer consisting of two *rakas ;* in the first he recites aloud chapter 62 of the Koran, and in the second chapter 63, both after reciting chapter 1.

Section 2

The Sonna recommends every believer to take a bath before attending Friday public prayer. Some authorities extend the recommendation to those who do not attend the service. The bath can strictly be taken at any time after dawn, but it is preferable to take it as soon as possible before going to the mosque. †Those unable to take a bath should have recourse to ablution with sand. The Sonna also prescribes—

1. The taking of a bath on the occasion of each of the great festivals ; at an eclipse, or in time of drought ; when about to wash a corpse ; on recovery from an attack of insanity or a fainting fit. It is prescribed to an infidel upon his conversion, and for pilgrims to Mecca. The bathing of a person about to wash a corpse is more imperative than the Friday bath ; though Shafii in his first period maintained the contrary opinion. [*This former opinion is the better ; being accepted by the majority of authorities and based on several authentic traditions, while only one authentic tradition supports the opinion adopted by Shafii in Egypt.]

2. Going to the mosque early, on foot, in a state of composed meditation.

3. On the way, and in the mosque before the service begins, reciting a portion of the Koran, or glorifying God.

4. Refraining from outstripping other members of the congregation on their way to the mosque.

5. Wearing one's best clothes, using scent, paring the nails, and removing any disagreeable bodily odour.

[The Sonna also recommends the recitation of chapter 18 of the Koran, both on the day and night of Friday, and to pronounce on that day several invocations and prayers for the prophet. Once the first call has been entoned, those present at the service are rigorously prohibited from occupying themselves with commercial or other affairs, in the preacher's presence. A bargain, however, struck in contravention of this rule, cannot be legally invalidated on that ground. It is considered blamable to conclude a bargain even before the first call if the sun has already begun to decline.]

Section 3

A person who takes part in the Friday public prayer from the inclination in the second *raka* is considered to have been present at the whole ceremony; and all he needs to do is to perform one single *raka* more, after the imam has pronounced the final salutation. But if he enters after that inclination, he is considered to have been absent at the whole prayer; and should perform midday prayer in four *rakas*, after the imam's final salutation.

†Each member of the congregation should have an intention to accomplish the Friday public prayer under the direction of the imam. If the imam is obliged to discontinue Friday public prayer, or any other prayer, by reason of a slight impurity, etc., *another may continue the function. Only, in the case of Friday public prayer, the imam may be replaced solely by a member of the congregation who has prayed under his direction until the moment when the impurity was ascertained, †but who need not have been present at the sermons or even at the first *raka*. It is clear, however, that if the substitute has been present from the beginning of the first *raka*, the ceremony continued under his direction will be valid both for him and for the congregation; †otherwise it will be valid for the congregation only and not for him. The substitute should continue the function just as the imam himself would have done, whether he has been present since the beginning of the prayer, or whether he came late and so is behind the congregation. Consequently if he has still to perform two *rakas* and the congregation only one, he should proceed at once to the *tashahad* after finishing his first *raka*. Then he should inform the congregation that they may cease praying under his direction, or wait until he has

finished his second *raka* and finish the service together. †The congregation need not renew their intention when continuing the service under the direction of a substitute.

If the crowded condition of a mosque obliges the believer, when making his prostration, to rest his body, not on the ground but on the body of one of his neighbours, the prostration is still valid. ††If prostration is quite impossible he must wait till the others get up ; he must not substitute for the prostration a mere nodding of the head. Under these circumstances the following distinctions are to be drawn :—

1. If the believer has still time to prostrate himself before the imam bends in prayer in the second *raka* he should do so, and after rising he should :—(*a*) take part in the recitation if the imam is still standing ; (*b*) †bend his body with the imam if the latter has already begun the inclination of the following *raka*, acting like a person who has arrived late ; (*c*) take part in that portion of the prayer with which the imam is occupied, if the latter has already finished the inclination of the next *raka*, but not pronounced the final salutation, and then after the service perform a supplementary *raka ;* (*d*) but he has missed the service altogether if the imam has already pronounced the final salutation.

2. If the believer has no time to prostrate himself before the imam bends in prayer in the second *raka*. One author is of opinion that he should prostrate himself as soon as possible and finish the prayer on his own account, *but other authorities think he should bend his body with the imam. †This inclination, though the imam's second, is considered to be the believer's first, and so his *raka* consists of the inclination of the imam's first *raka* and the prostration of the second. †This, however, does not prevent one accomplishing in this way the entire Friday prayer. The authors referred to go so far as to consider the whole prayer nullified if the believer prostrates himself on his own account, while knowing that he ought to incline with the imam. But if he has so prostrated himself through oversight or ignorance it is only that first prostration which does not count ; and if he has occasion to prostrate himself a second time, the latter prostration is valid. †One has thus accomplished all the essential elements of a *raka*, and is considered to have performed the Friday prayer, provided the two prostrations are finished before the imam pronounces the final salutation. When, owing to forgetfulness, the member of the congregation has lagged so far behind that the imam is already bending in the second *raka* when he is still prostrated in the first, he should, according to our school, bend in prayer with the imam.

CHAPTER IV.—PRAYER IN CASE OF DANGER

Section 1

There are three categories of this prayer :—

1. When the enemy comes from the direction of the *kibla,* the imam should draw up his army in two or more lines, and pray with all his soldiers up to the prostration, when one of the lines should prostrate itself with him for the two prescribed prostrations of the first *raka,* while the other soldiers remain on guard. Then before beginning the second *raka* those who at first remained on guard perform two prostrations on their own account, and after that the whole army begins the second *raka* with the imam. In this *raka* the soldiers who remained on guard during the prostrations of the first *raka* prostrate themselves with the imam, while the others remain in their turn on guard until the imam sits down, when they prostrate themselves on their own account. The *tashahad* and the final salutation should be accomplished by all together. This manner of prayer was introduced by the Prophet of God at the battle of *Osfan.* It is also permissible for the two divisions of a single line to remain on guard by turn in the two *rakas ;* †or even a single division may remain on guard in the two *rakas* while the imam prostrates himself, provided, as we have just seen, that these omitted prostrations are accomplished at the end of each *raka.*

2. When the enemy does not come from the direction of the *kibla,* and consequently it is impossible to face the prescribed point without exposing the rear or the flank, the imam should perform the prayer twice, each time with a separate portion of the army while the other portion is held ready to repel an attack. This was done by the Prophet of God at the battle of *Batn-Nakhl.*

3. When one only of two divisions of an army is in face of the enemy, the imam first prays one *raka* with the other division, and when he is about to begin the second *raka* this division stops praying under his direction, pronounces the final salutation, and relieves the division on guard, which then joins the imam and accomplishes the second *raka* under his direction. After the imam has sat down for the *tashahad,* the whole army performs another *raka* on its own account—the second so far as the soldiers are concerned—and this *raka* finished, the army begins to pray again under the direction of the imam and pronounces with him the final salutation. This course was adopted by the Prophet of God at the battle of *Zat ar Rika,* †and is better than that followed at *Batn-Nakhl.* After the departure of the first division the imam

should recite some passage of the Koran until the arrival of the second. On finishing this recitation he says the *tashahad ;* though this, according to one jurist, should be deferred until the second division has joined him. In the case of evening prayer the imam should pray two *rakas* with the first division and one with the second. *This is better than the other way about, though the latter is also permissible. The imam should so arrange that the second division may arrive either during the first *tashahad* of the second *raka,* or, †better, during the *kiyam* of the third. In the case of a fourfold prayer he should pray two successive *rakas* with each of the two divisions, *though he may also divide his army into four and pray a single *raka* with each. The entire army is responsible for the negligences that each division may commit in the *raka* it prays under the direction of the imam, *i.e.* its first *raka ;* †and the same responsibility exists for faults of this nature committed by the second division in the second *raka,* but not for those of the first division in its own second raka. A negligence of the imam in the first *raka* is imputed to the whole army, but if it occurs in his second *raka, i.e.* the first of the second division, it is imputed to that division only.

The Sonna prescribes that in these three categories of prayer weapons should not be laid aside ; and one jurist considers this to be of rigorous observance.

4. In the midst of a battle or other imminent danger, one must pray as one can, whether riding or afoot. One need not turn in the direction of the *kibla,* †and may even, if necessary, omit most of the practices of which prayer consists. Prayer, however, can never be performed shouting ; and one must always, if possible, lay aside weapons if ever so little blood-stained ; but if circumstances do not permit the laying aside of one's weapons, one may, if it is absolutely necessary, pray while holding blood-stained weapons in the hand, *without being obliged to repeat this act of devotion later. If it is impossible to perform the bending and the prostration, one makes only a sign of the head, lower in the latter case than in the former. One can pray like this both in combat and flight where combat or flight is permissible ; and also when escaping from a fire, a flood, a fierce beast, or even a pressing creditor who threatens his debtor with bodily restraint ; †but such a course is not permissible for a pilgrim to Mecca who is afraid of invalidating his pilgrimage by arriving too late for the ceremony at Mount Arafa. *If one has prayed in this manner in presence of a troop of persons supposed erroneously to be the enemy, one's prayer must be performed over again on discovering the mistake.

Section 2

The law forbids a man to clothe himself in silk or to use it as carpet or covering. A woman may wear clothes of silk; †but neither may she use this material for carpet or covering. †A guardian may clothe in silk a minor of whom he has charge. [†A woman may use silk also as carpet or covering; at least it has been so decided by jurists of *Irak*, and others.]

Silk clothes may, however, be legally worn by men :—

1. When urgently necessary; *e.g.* in case of extreme heat or cold, or if some unforeseen attack obliges him to snatch up the first thing he can find, and he can find no other.

2. For the sake of health; *e.g.* if infected with itch or other cutaneous malady, or to protect himself from vermin.

3. In time of war; brocade having qualities that render it particularly useful to the soldier.

It is forbidden to use a material composed of silk and threads of some other stuff, if the weight of the silk exceeds the weight of the other threads, †but if otherwise it is permissible. Silk lace or embroidery is not forbidden, if the coat is not ornamented in an extravagant manner.

And finally one may lawfully wear an impure coat when not praying or performing some other act of devotion; but except in case of urgent necessity such as an unforeseen attack, one may not cover oneself with dogskin or pigskin, †nor with the skin of any animal that has died a natural death.

**It is not forbidden to burn in a lamp oil that has become impure.

CHAPTER V.—PUBLIC PRAYER AT THE TWO GREAT FESTIVALS OF THE YEAR

Section 1

This prayer is prescribed by the Sonna only, though some authors maintain it is a rigorous obligation for which the community is collectively responsible. The prayer may be accomplished either in public or on one's own account. Slaves, women, and travellers should take part in it as well as other believers. The legal time for this prayer is between sunrise and the moment when the sun begins to decline, but it is preferable not to begin the ceremony before the elevation of the sun has reached the height of a lance.

The prayer consists first of two introductory *rakas;* then is pronounced the introductory invocation; and after that are said seven

takbirs, with a pause between each two *takbirs* of a length sufficient for the recitation of a verse of the Koran of medium length. On the termination of the *takbirs* the confession of faith is pronounced, followed by another *takbir* and a glorification of God, preferably in the following terms :—" Praise to God," " Glory to God," " There is no god but God," or " God is great." Finally the *tawaz* is accomplished and the first chapter of the Koran recited. In the second *raka* five *takbirs* precede the ordinary recitation of the Koran, and the hands must be raised at each *takbir*. Neither the seven nor the five *takbirs* mentioned are obligatory, nor any of them ; and they have no object once the recitation has been begun, though Shafii in his first period admitted that they could if necessary be performed so long as the inclination had not begun. The chapters of the Koran which should be recited after the first chapter are, in the first *raka* chapter 50, and in the second chapter 54, both aloud and without any omission.

After the two *rakas* are finished the Sonna requires two sermons of the same component parts as the two Friday sermons. At the end of the fast the sermons contain an exhortation with regard to the special contribution prescribed on that occasion ; while at the feast of victims the congregation should be exhorted to accomplish the sacrifice. The first sermon is preceded by nine *takbirs* and the second by seven, accomplished in either case one after the other without interruption.

At these two festivals it is commendable—

1. To take a bath at midnight, and according to one jurist at dawn.
2. To use scent, and dress in one's best clothes, as on Friday.

The ceremony should take place preferably in a mosque, or according to others, in a plain, provided there be no obstacle to either of these courses. In any case the imam should instruct his substitute to preside at the prayer in the mosque for those whose strength does not permit them to follow the rest of the community to the plain. The others make their way to the plain by one road and return by another. The congregation should assemble early, but the imam arrives only at the time the prayer begins. At the feast of victims the ceremony should be performed in haste.

[At the end of the fast some nourishment should be taken before the ceremony, but not at the feast of victims. In either case one should go to the ceremony on foot, in a state of composed meditation. Before going every one except the imam may say a supererogatory prayer.]

Section 2

It is commendable to entone the *takbir*, on the eve of the two festivals, at sunset, in the inns, on the roads, in the mosques, and in the bazaars,

**takbirs* which are continued until the imam begins the ceremony. On the eve of the feast of victims the Mecca pilgrims replace the *takbirs* by the cry of *labaika*. †The Sonna makes no mention of *takbirs* to be entoned immediately after evening prayer on the eve of the breaking of the fast. The Mecca pilgrims begin the *takbirs* from the midday prayer of the *Yum-an-nahr* or day of the feast of victims, and continue them until morning prayer on the last of the next three days called *ayam-at-tashrik*. *Those who are not on pilgrimage are subject to the same obligation as the pilgrims. One authority maintains that the *takbirs* of these believers should begin at evening prayer on the eve of the feast of victims, another thinks they should commence from morning prayer on the day of Mount *Arafa*. According to this view, which has prevailed in practice, the *takbirs* continue until the afternoon prayer of the last of the days called *ayam-at-tashrik*. *If when performing one of the special acts of devotion or some supererogatory prayer one is guilty of omitting some obligatory prayer one should say *takbirs* also on the days called *ayam-at-tashrik*. The most usual form of the *takbir* is the following :—" God is great, God is great, God is great. There is no god but God. God is great, God is great. Praise be to God." It is commendable to add : " God is great in his greatness. I offer Him numberless praises. Glory be to God morning and evening." If on the thirtieth day of the month of *Ramadan*, before the sun has begun to decline, it is legally ascertained that the new moon has been seen on the previous night, the fast should be at once broken, and the festival prayer accomplished. But if the proof be only attained after sunset the day just ended counts as a fast day ; while if this takes place after noon but before sunset one breaks the fast without celebrating the festival prayer, as the hour is past. *Under these latter circumstances the prayer can be accomplished at any moment according to some ; but one jurist has expressed an opinion that the next day must be considered the legal one, and that the prayer performed then at the prescribed hour, is not too late.

CHAPTER VI.—PRAYER ON THE OCCASION OF ECLIPSES

This prayer is prescribed by the Sonna. One begins by formulating a special intention to perform it, and then recites the first chapter of the Koran. One bends one's body, gets up, again recites the first chapter, stands still and at the end prostrates oneself. This constitutes one *raka*, after which another is performed in the same manner ; but never a third, even if the eclipse be not yet over when the second is finished.

†Should the eclipse terminate sooner than the prayer, one of the two inclinations may not for that reason be omitted. To accomplish it in the best and most approved manner possible one recites the two first chapters of the Koran at the first *kiyam ;* and at the second, besides the first chapter about 200 verses of the second ; at the third about 150, and at the fourth about 100. At the first inclination one repeats the formula " Glory to God " as long as would be necessary for the repetition of 100 verses of the second chapter of the Koran ; at the second inclination this formula is repeated for as long as it would take to repeat 80 verses ; similarly for the third a time of 70 verses ; and for the fourth 50. †The prostrations should not last too long. [††On the contrary they should be prolonged as much as possible according to what is stated in the two collections of traditions called *Sahih* by al-Bokhari and Muslim, while al-Bawaiti quotes a decision of Shafii tending to show that the prostrations should last as long as the preceding inclinations.]

According to a precept of the Sonna prayer on the occasion of eclipse should only be accomplished in congregation. The imam repeats aloud in the case of a lunar, but not in that of a solar eclipse. Then he delivers two sermons as on Friday, and finally exhorts the congregation to repent and do good. A person joining the congregation at the imam's first inclination is considered to have been present at the whole *raka,** but not one arriving at the second inclination or the second *kiyam.*

The legal time for prayer on the occasion of an eclipse of the sun is considered to have elapsed when it reappears in its full splendour, or sets still obscured. The legal time for prayer on the occasion of an eclipse of the moon is considered to be over at the end of the eclipse or at sunrise ; but according to the opinion adopted by Shafii in his second period, neither the appearance of the dawn, nor the setting of the moon while still obscured, have any effect upon the legal time.

If the time of a prayer on occasion of eclipse coincides with that of a public weekly prayer, or with any obligatory prayer, that obligatory prayer has the priority, at any rate if it is feared there may not be time for it unless begun at once. If there is time one should first perform the prayer on occasion of eclipse, then pronounce the Friday sermons with references in them to the eclipse, and lastly accomplish the weekly or daily obligatory prayer. If a festival or eclipse coincides with a burial prayer, the latter should be first accomplished.

CHAPTER VII.—PRAYER IN TIME OF DROUGHT

This prayer also has been introduced by the Sonna, and is said when there is great need of rain. It is repeated two or three times if the

drought continues. When preparations have been made for it but the rain falls before the congregation assembles, they should still meet to render thanks to God and invoke Him, ††and then proceed to the prayer as if nothing had happened.

The imam should first command the faithful to fast for three days, to repent of their sins, and to seek the favour of God by being charitable and refraining from injustice. On the fourth day one goes to the plain, fasting, in ordinary clothes, with head bent in sign of humility. Children, old people †and domestic animals should accompany the community; and even the presence of infidels cannot be forbidden at this ceremony provided that they are the subjects of a Musulman prince and do not mix with the believers.

The prayer consists of two *rakas* like that on the occasion of the two festivals, except that according to some authorities the 71st chapter of the Koran is recited in the second *raka*, †and that the ceremony need not take place at the time prescribed for the festivals. The sermons are the same as at the festivals, except that for the formula "God is great" are substituted the words "I ask pardon of God." In the first sermon is pronounced also the following invocation:—"O God grant us an abundant rain, to moisten the soil, for our benefit and profit and the fertilisation of the earth, a rain that may spread everywhere upon all lands for a length of time. O God, grant us an abundant rain, and reduce us not to despair. O God, grant us Thy pardon, for Thou lovest to pardon. Cause the heavens to pour down an abundant rain." The imam turns in the direction of the *kibla* after beginning the second sermon, and on its termination turns again to the congregation and utters the most pressing invocations, both in a low tone and aloud. When turning towards the *kibla* he turns back his cloak so that the right side is to the left and the left to the right; and Shafii in his second period decided that it must be turned back again so as to place the upper part below and *vice versâ*, while the congregation imitates his movements. [The cloak is worn turned about in this way until one has got home and taken off one's things. If the imam will not perform the prayer, the congregation has the right to do so on its own account; but there is no objection to the imam delivering the sermons after the prayer, instead of before as usual. The Sonna has also introduced the following usages:—

1. Exposing oneself to the first rain of the year, with no clothes on but what is required to cover the shameful parts, so that the rain may wet the body all over.

2. Taking a bath on that occasion, or performing ritual ablution in the water of some torrent.

3. Saying "glory to God" on hearing the thunder or seeing the lightning, but without continuing to look at it.

4. Exclaiming during the rain, "O God, may this rain be beneficial to us." Then one utters some invocation, and at the end of it says, "A favourable rain has been sent us by the goodness and mercy of God." It is blamable to substitute for this formula the words, "We have had rain through the influence of such and such star," or to conjure the wind in a similar way.

5. Asking God to abate too abundant rains, if they are causing damage. This supplication is made in the following words :—"O God, be Thou our help ; but be not against us," without accomplishing a regular prayer.]

CHAPTER VIII.—INTENTIONAL OMISSION OF PRESCRIBED PRAYERS

A SANE adult Moslem who refuses to pray and denies the obligation is an apostate and punishable as such ; even if he has merely neglected prayer through laziness, without denying its obligation, he is none the less punishable with death. ††Capital punishment is liable to be incurred by the omission of even one single prescribed prayer, the moment its time is passed, if done designedly and without offering any excuse. One should begin by exhorting the culprit to repentance, and if this be unavailing strike him upon the neck. Some authorities prefer that he should be pricked with a sharp instrument until he either prays or dies. After his death, however, his body is washed and wrapped in a winding sheet. Prayers are said for the repose of his soul, and he is buried among the faithful. Nor does the law insist upon removing all trace of the grave in which he is laid.

BOOK 4.—FUNERAL CEREMONIES

Section 1

One should think often upon death, and prepare oneself for it by repentance, and by refraining from injustice, especially if one is ill.

††A person about to die is laid upon the right side, with the body turned towards the *kibla*. If the bed is not large enough the dying person is laid on the back, the face and the soles of the feet turned towards the *kibla*. The confession of faith is said so that the sick person may hear it, but without inconveniencing him; the 36th chapter of the Koran is recited, and everything done to fix his attention upon his Lord. After death the eyelids are closed, and a bandage placed under the cheeks; the joints are rendered as supple as possible; the whole body is covered with a piece of light cloth; and some heavy object is placed on the stomach. Lastly the corpse is placed on a bier or something of the sort, and after the clothes have been taken off is turned towards the *kibla* as before death. This duty is incumbent upon the most suitable relative.

As soon as death is ascertained one hastens to wash the body. This ablution, the wrapping of the body in a shroud, the prayer for the repose of the soul of the deceased, and the burial, are obligations for which the survivors are collectively responsible. The washing of a corpse must always extend to all parts of the body. The person accomplishing it removes the impurity, †but he need not formulate the intention. The corpse of a person drowned, if the body has been completely wetted, need not be washed again. An infidel can, if necessary, perform the ablution. [According to Shafii's personal opinion the body of a drowned person should be washed.]

The best way of performing the ablution is as follows. The corpse is taken to some place isolated and concealed, where it is placed on a table. Ablution is then practised with cold water, while the corpse remains covered with a shirt upon the table, inclined backwards. The spine of the corpse is supported on the right hand, the thumb being in the hollow of the neck, and the back of the deceased resting on the right knee. The left hand is then pressed down hard upon the abdomen

of the corpse, in order to expel the excreta. The body is laid upon the back; and the shameful parts washed with the left hand, covered with a rag. The left hand is then covered with another rag, and the fingers introduced into the mouth of the deceased. The teeth are rubbed and the nostrils cleansed. After this one proceeds to ritual ablution as in the case of a living man; and when it is terminated the head and beard are washed with a decoction of lotus leaves or some analogous plant, and the hair and beard are softly combed with a comb of which the teeth are not too close together. Any hairs that may come out should be put back again. Then one proceeds to the ablution of the front of the body, first the right side then the left. Then the corpse is laid upon the left side in order to wash the right side and the back, from the neck to the heels; and on the right side in order to wash the left side and the back in the same way. Such is the first ablution of the body. It is commendable:—

1. To repeat the ablution once or twice, and to employ for the first ablution a decoction of lotus or marsh-mallow.

2. To pour clear water on the body, from above to below, after the liquid containing the lotus or marsh-mallow has flowed away.

3. To put a little camphor in the water used at each of the three ablutions.

If after the ablution some impurity still comes from the body, one should simply remove it; though some authors consider that one should proceed to a fourth ablution, if the impurity comes from the shameful parts; while others think a new ritual ablution to be obligatory in such a case.

A man's corpse is washed by a man, and a woman's by a woman; though the master can wash the body of a woman who was his slave, and the husband that of his wife. Similarly the wife may wash the body of her husband; but in all cases where the ablution is performed by a person of the other sex, the hands should be wrapped in rags so as not to touch the body. †When at the place of decease persons of the same sex as the deceased cannot be found, nor persons of the other sex allied by kinship or marriage, the ablution cannot take place, and recourse must be had to lustration with sand. The ablution of the corpse of a deceased person is obligatory for those who have to pray for the soul; but in the case of a woman this duty is incumbent on the relatives, and firstly those within the prohibited degrees. †They even have priority over the husband. In default of relatives a woman not of the family may be called upon for this duty, and it is only in the last resource that recourse is had to the male relatives, in the order in which they are called to pray for the deceased. [With the exception of a cousin on

the father's side and the other relatives with whom marriage is not forbidden, for they are considered for this purpose as not being of the family.] †A husband has priority over all other male relatives.

It is forbidden to perfume the corpse of a person deceased during *Ihram*, and to cut off a hair or a nail as a memento ; †but it is permissible to perfume the body of a woman deceased during a period of legal retirement, though the use of scent was legally forbidden her when alive. According to the opinions maintained by Shafii in Egypt, in the case of a person not deceased during *Ihram* one may lawfully cut the nails and the hair, even of the armpit, the pubis and the moustache. [*Such a proceeding is always blamable.]

Section 2

After the ablutions are finished the corpse should be wrapped in a shroud, which is subject to the same rules as the clothes which the dead person might wear during life, in such a manner as to cover at least the shameful parts. Any testamentary disposition tending to nullify this precept is without legal effect. It is preferable to wrap a man's corpse in three shrouds, though four or five may be used ; but as to women five shrouds are recommended by law. If using three shrouds, the corpse is simply enveloped three times ; but if five are employed, one begins by dressing the body in a shirt and turban and then wraps it round three times, in the case of a man ; while a woman is first dressed in a cloak, a veil and a shirt, and then enveloped twice. According to one jurist, however, the body of a woman should first be dressed in a mantle and veil, and then wrapped round thrice. The Sonna has prescribed that the shroud should be of white material ; and that the expense is a first charge upon the succession ; while, if the deceased person has left nothing the expense must be borne by those liable for the maintenance of the deceased, *i.e.* the relatives, the master †or the husband. One spreads first the finest and largest shroud, the second above it, and the simplest last, not forgetting to scatter aromatic spices upon each. One lays the body on the back upon these three shrouds, and places with it camphor and spices. The thighs are pressed close together, and each opening of the body stopped with cotton. The shrouds are then wrapped round and pressed tightly together. The bands on the thighs and other parts of the body are not detached until the corpse is just about to be lowered into the grave.

The body of a person deceased during *Ihram* is not wrapped in sewn shrouds ; neither is the head covered. In the case of a woman deceased during *Ihram*, the face only should remain uncovered.

†It is better to have the bier supported between the two poles than to have it carried by four persons. In the former case a man places the two front poles on his shoulders with his head in the middle, while two men bear the poles behind, one on the right and one on the left. If four persons are employed two bearers are placed in front of the bier and two behind. It is commendable that those who form part of the funeral procession should walk immediately in front of the bier, which should be carried rapidly to the cemetery, unless it is feared some lesion may thereby be caused to the body.

Section 3 (1)

Prayer for the repose of the dead consists of seven essential elements :

1. The intention, which is formulated like that in other prayers. It is enough to have the intention of performing one's duty to God ; though some authorities consider necessary an intention of accomplishing an obligation for which Moslems are collectively responsible. The intention need not refer to a particular deceased person ; but if one does so and afterwards discovers one has made a mistake, the prayer is void. If one is present at two or more simultaneous funerals, one may formulate an intention for all at once.

2. Four *takbirs ;* †though the prayer is not void if five are said. However, if the imam begins a fifth, †it is better that those present should cease to pray under his direction, and either pronounce at once the final salutation or wait quietly till they can do so with him.

3. The ordinary final salutation.

4. The recitation of the first chapter of the Koran, after the first *takbir.* [This chapter can be recited just as well after one of the three other *takbirs.*]

5. The prayer for the Prophet, which is performed after the second *takbir.* ††The prayer for the family of the Prophet is not obligatory.

6. A special invocation for the repose of the soul of the deceased, after the third *takbir.*

7. The *Kiyam,* at least according to our school, if it is possible.

The Sonna requires also that the hands should be raised when performing the *takbir,* and that the first chapter should be said in a low tone, though some consider that it should be recited aloud if the ceremony takes place at night. †It is commendable to pronounce the *tawuz,* without the introductory invocation.

At the third *takbir* one pronounces the formula :—" O God, this is Thy servant, and the child of parents who are Thy servants," etc. These words are preceded by the following :—" O God, pardon our living and

our dead, absent and present, old and young, women and men. O God, cause him amongst us to whom Thou accordest life to live in the observance of religion, and to die in the faith him whom Thou willest to die." To this last formula is added in the case of a little child :— " O God, may this child be the forerunner of his parents in Paradise, may his loss be reckoned to them as a sacrifice to Thee, may it be to them a warning and an example, and may this child be their intercessor with Thee. May the weight of this loss be placed in the heavenly balance to their profit at the day of judgment, and patience be poured upon their hearts." And lastly at the fourth *takbir* one says these words :—" O God, deny us not the recompense due to him ; lead us not into temptation after his death ; and pardon both us and him.

The prayer is void if, without valid excuse, one has lagged so much behind the imam as to be still engaged upon one *takbir* when the imam has already got to the next. A person who arrives after the ceremony has begun should pronounce a *takbir*, and then say the first chapter of the Koran, even though the imam may have finished it ; but if the imam has already got to the next *takbir* before such person has begun the recitation he should omit it, and join the imam in saying the *takbir*. †If the imam is finishing the next *takbir* while one is still reciting the first chapter, one should stop doing so and follow the imam for the remainder of the prayer. If the imam has reached the final salutation when one arrives, one should accomplish all the *takbirs* and glorifications of God, though according to one jurist the latter are not rigorously necessary under the circumstances.

The conditions essential for the validity of a prayer for the repose of the dead are the same as in the case of ordinary prayer, except that it need not be accomplished in public, the prayer of one man being sufficient. According to some authors, however, there must be at least two persons to accomplish this prayer ; others say three, others four. †A funeral prayer may validly be performed by women, if there are no men in the place. Funeral prayer is said for one who dies far from his own people. It should take place before burial, but it can be repeated afterwards, †especially if at the moment of death one is among those responsible for its due execution.

Funeral prayers should never be performed on the tomb of the Prophet.

Section 3 (2)

Shafii, in his second period, adopted the doctrine that the *wali* of the deceased is more competent to be imam in the prayer for the repose of his soul than the chief of the state or of the town. In this connection

is understood by *wali* any male relative of the deceased, whether entitled to succession or not, *i.e.* (1) father, (2) grandfather or other agnate ancestor, (3) son, (4) grandson, (5) brother—*whole brother having priority over half-brother on the father's side ; (*b*) son of whole brother, (7) son of half-brother on father's side, (8) other agnates in order of succession, (9) cognates. If two persons are equally related to the deceased, priority should, according to the personal opinion of Shafii, be accorded to the elder, if of irreproachable character. But a free man always has priority over a slave, even though the latter may be more nearly related to the deceased.

The person presiding as imam at a burial service should place himself near the head of the corpse if a man, but in the case of a woman he should place himself behind the body. A single service will suffice for several deceased persons at once. It is forbidden to pray for the rest of the soul of an infidel ; it is not necessary even to wash his corpse, though the body of an infidel subject of a Moslem prince should be wrapped in a shroud and buried. In the case of a Musulman known to be dead, prayer for the repose of his soul is obligatory, even if only a part of the body has been found. An abortion that has uttered a cry or wept at birth is buried like an ordinary person. *If, uttering no cry, it has given some sign of life, as palpitation of the heart or movement of a limb, prayer is obligatory ; but if there are no such signs it is unnecessary, even if four months be passed.

It is unnecessary to wash the body of a martyr, or to pray for the repose of his soul. By martyr is understood any one who dies in war against the infidels. *Thus a soldier who dies after the end of the war, or fighting against rebels, or, according to our school, in consequence of an accident, is not considered as a martyr. †A martyr dying in a state of grave impurity need not be washed. The impurity should be removed, but not the blood from his wounds. His blood-stained garments are the shroud of the martyr. If these are an insufficient covering, they should be supplemented with a shroud of some kind.

Section 4

The grave should always be deep enough to retain the odour of the body and protect it from wild beasts. It is commendable that it should be so deep and wide that the deceased could stand up in it and lie down in it with his whole length. It is better, if the earth is hard enough, that the grave should be hollowed out laterally rather than a simple trench. The corpse is introduced head first, drawn softly by that part of the body, preferably by men, *i.e.* in the first instance by those who

have the precedence in the burial service. [In the case of a married woman, the husband has the better right to carry out the deposition, though not to lead in the prayer.] The people who place the corpse in the grave should be of uneven number. The corpse should be laid on the right side, facing the *kibla* and leaning against the wall, with the back supported by a brick or something similar. The entrance of the grave should also be walled with bricks. Those present then throw in three handfuls of sand, and the grave is filled up by means of the shovel. The earth forming the tomb may rise above the level of the ground to the height of a span; ††and it is better that the surface should be plane rather than convex. Two persons are not buried in the same grave except in case of necessity, when the one having most merit must be placed on the side of the *kibla*. Sitting or walking on a tomb is forbidden, and any one wishing to visit it should approach in the same manner as to the living person.

The Sonna has introduced the practice of making visits of condolence before the burial and three days after. A Musulman performs this duty to a fellow-believer by saying:—"God grant you large compensation for the loss you have suffered; may He pour resignation upon your heart; may He pardon the sins of the dead." If it be an infidel whom the Musulman is consoling, he says:—"God grant you large compensation for the loss you have suffered; may He give you the necessary patience"; while an infidel says to a Musulman:—"God pardon the sins of the dead, and pour resignation upon your heart." It is permissible to deplore the loss of any one before and after death; but it is forbidden to compose for this purpose an elegy or a funeral oration containing nothing but an enumeration of the good qualities of the deceased. It is also forbidden to utter lamentable cries, or to manifest extravagant signs of sorrow, as *e.g.* by striking the breast.

[Some special rules are here added:—

1. One should make haste to pay the deceased's debts and execute his testamentary depositions.

2. It is blamable to wish for death in order to avoid some misfortune, but not to avoid something incompatible with religion.

3. The Sonna recommends a sick person to take care of himself and to take medicine; but it is blamable to force any one to do so.

4. Parents and friends of the deceased may kiss his face.

5. There is no objection to making an announcement of the death, in order to call people to the burial service, etc., provided this be not done in the manner practised in the time of paganism.

6. The person performing the funeral ablution should see no more of the body than is strictly necessary for the proper performing of his

duty, and should never look at the shameful parts. Ablution with sand is enough, if circumstances prevent washing the body with water.

7. A person who has incurred a grave impurity, and even a woman during menstruation, can attend to the washing of a corpse ; and such persons themselves require after death no greater ablution than any one else.

8. The person entrusted with the ablution of a dead body should be a reliable person. Should he perceive that the deceased had some good quality of body he may mention the fact ; but he must not mention any bodily defects, unless for some useful purpose.

9. If two brothers, or two wives, both claim precedence at a funeral, the matter must be decided by lot.

10. An infidel is more competent than a Musulman to preside at the funeral of an infidel relative.

11. It is blamable to use a shroud dyed with red carthamine, or one of an exorbitant price. A piece of material that has been washed is better for this purpose than one which is quite new. A minor is subject to the same rules as an adult, so far as regards the shrouds and cloths to be used at the interment.

12. It is meritorious to use spices for the embalming of the dead ; some authorities even regard it as obligatory.

13. A bier should be borne by men only ; even if the body be that of a woman.

14. It is forbidden to carry the bier carelessly ; or so as to cause apprehension lest the body fall to the ground.

15. It is recommended to carry the body of a woman so as to be concealed from the public gaze, *e.g.* in a coffin.

16. One may not ride, except when returning from the burial.

17. There is no objection to a Musulman attending the funeral of an infidel relative.

18. It is blamable to make a noise, or to light fires, during a funeral.

19. If the dead bodies of Moslems are so mixed with those of infidels that it is impossible to distinguish them all must be washed and prayed for. In this case one may either : (*a*) perform a burial for all at once declaring one's intention of applying it only to the repose of the souls of those who were Moslems ; this is considered the better course and was recommended by Shafii himself ; or (*b*) pray for each body separately, on the understanding that the prayer is valid only in the case of a Musulman ; in this case the formula used is " O God, pardon him, if he was a Musulman."

20. It is requisite for the efficacy of a funeral prayer that the corpse

should first be washed ; and it is even blamable to pray before the corpse has been wrapped in a shroud. Consequently no prayer is said for the repose of the soul of a person crushed to death by the fall of a house, whose body cannot be recovered from under the *débris*.

21. When performing a burial service it is not lawful to stand in front of the bier or of the grave. These two precepts are admitted by our school. The prayer may, however, be said in a mosque. The Sonna insists upon those present being placed in at least three lines.

22. Every person attending a burial service, who has not already prayed for the repose of the soul of the deceased should join the others in doing so ; but he need not repeat it if he has already done it.

23. A burial service may not be deferred in order to allow more people to attend.

24. The body of the suicide is washed, and prayer said for the repose of his soul, just as in other cases.

25. When the imam has the intention of accomplishing a prayer for the repose of the soul of a deceased person who is absent, and a person praying under his direction has the intention of praying for the repose of the soul of another whose body is present, or *vice versâ*, the prayer of the latter is valid all the same.

26. It is recommended that corpses be interred in some recognised cemetery. It is blamable to pass the night there.

27. It is also commendable to cover the grave with a piece of cloth of some sort during an interment, even in the case of a man, and to say during the deposition :—" In the name of God, and in accordance with the precepts of the religion of His apostle. God grant him His grace and His blessing."

28. A dead body may not be laid on a carpet ; nor may the head be placed on a pillow.

29. It is blamable to place a corpse in a coffin, unless the earth be damp or soft.

30. It is permissible to proceed to a burial at night, and even at an hour in the daytime when it is blamable to pray, provided it be not intentionally chosen, for any other time is better.

31. It is considered blamable to plaster a tomb, to adorn it with a monument, or place inscriptions upon it. Monuments erected in a public cemetery should be demolished.

32. It is recommended :—(*a*) to water the grave, (*b*) to place pebbles as a pavement, (*c*) to mark the position of the head with a stone or a piece of wood, (*d*) to have the graves of relatives together in one spot (*e*) to visit graves. Visiting graves, however, is commendable in men only ; in women it is blamable, some authorities even forbidding it

altogether in their case. Others allow women this visit as a right but not as a merit.

33. A person visiting a tomb should pronounce a salutation, recite some portion of the Koran, and invoke the grace of God upon the deceased.

34. It is forbidden to carry a corpse to another town—though some authorities consider it merely blamable—unless the death occurred in the neighbourhood of Mecca or Medina—or, according to a decision of Shafii, Jerusalem—for then it may always be carried into one of these holy cities. All, however, agree that it is forbidden to disinter a body, whether in order to carry it elsewhere or for any other reason, except in case of necessity, *e.g.* if the body has been buried without being washed, or if buried in a misappropriated shroud or piece of ground, or if a valuable object has accidentally fallen into the grave, or if the face of the deceased was not turned towards the *kibla*, etc. †On the other hand, a corpse may not be legally disinterred under the pretext of wrapping it again in a shroud.

35. The Sonna prescribes to those taking part in funerals not to hasten away from the grave as soon as the body is buried, but to wish the deceased person a happy abode.

36. The neighbours should prepare food for the family of the deceased for the first day and night after the interment; one should even persuade the survivors to take something. But it is forbidden to prepare a meal for the hired mourners.

BOOK 5.—ALMS CONTRIBUTION, OR CHARITY TAX

CHAPTER I.—ASSESSMENT ON CATTLE

Section 1

Alms is not obligatory except on cattle properly so called, *i.e.* camels, horned cattle and small cattle; it is not exacted upon horses, slaves or the offspring of small cattle and gazelles. It is not leviable upon camels unless there are at least five. On this number one *shah* is due, on ten camels two *shahs;* on fifteen three *shahs;* on twenty four *shahs;* on twenty-five one she-camel called *bent-makhad;* on thirty-six one she-camel called *bent-labun;* on forty-six one she-camel called *hikka;* on sixty-one one she-camel called *jaza;* on seventy-six two *bent-labuns;* on ninety-one two *hikkas;* on one hundred and twenty-one three *bent-labuns;* and after this on each forty head one *bent-labun,* and on each fifty one *hikka.*

By *bent-makhad* is understood a yearling she-camel; by *bent-labun* a two-year-old she camel; by *hikka* a three-year-old she-camel; and by *jaza* a four-year-old she-camel. By *shah* is understood a young animal; either a yearling lamb (others say six months), or a two-year-old kid (others say one year). †Where a *shah* is due the taxpayer may give a lamb or a kid at his choice, whether the small cattle of the country consists principally of sheep or goats. †Either a male or a female *shah* may be given, and when paying assessment on less than twenty-five camels one may give a camel instead of a *shah.* Instead of a *bent-makhad* one may give a *bent-labun* as the latter is the more valuable. If the only camels one possesses have redhibitory defects, it is as if one had none. And on the other hand the taxpayer is never obliged to give a very valuable animal. †An *ibn-labun, i.e.* a male two-year-old camel may not be given instead of a *bent-labun* or of any she-camel; but a *hikk* or three-year-old male camel may be substituted for a *bent-makhad* or yearling she-camel, †though not for a *bent-labun.*

If the number of camels in a drove be a multiple of both forty and fifty, *e.g.* two hundred, the taxpayer is not, according to our school, obliged to give always four *hikkas;* he may give either four *hikkas* or five *bent-labuns.* Thus the owner of a drove containing only *hikkas*

or only *bent-labuns* may give four of the former or five of the latter; while the owner of a drove containing neither may buy, as he prefers, four *hikkas* or five *bent-labuns*. According to some jurists, however, such owner should give those that would be most advantageous for the poor; ††and in any case an owner possessing both is not considered to have paid the assessment if he has given an inferior lot, either by deceiving the inspector, or because the latter has failed in his duty. Otherwise, if the owner has acted honestly and the inspector done his duty, there is no ground for complaint, once the animals have been accepted; †but the difference between the value of the animals given and what was due must be made up, either in money or, according to some authorities only, in kind. The taxpayer who is liable for a *bent-makhad*, but has none, though he has a *bent-labun*, may give this latter and take back two *shahs* or twenty *drahms;* if he is liable for a *bent-labun*, and does not possess one, he may either give a *bent-makhad* and also two *shahs* or twenty *drahms*, or give a *hikka* and take back two *shahs* or twenty *drahms*. The right of choosing between *shahs* and *drahms* belongs to the payer. The taxpayer may always in these circumstances decide whether to give a *hikka* and take back its excess value over the *bent-labun* he was owing, or to give a *bent-makhad* plus the difference between its value and that of a *bent-labun*. Only he must not give an animal having redhibitory defects. The taxpayer has even the right:—

1. To give she-camels two degrees more valuable than what is required, *e.g.* a *hikka* instead of a *bent-makhad*, and to take back the double excess, *i.e.* four *shahs* or forty *drahms;* or

2. To give she-camels two degrees less valuable than what is required, *e.g.* a *bent-makhad* instead of a *hikka*, plus the double deficit, *i.e.* four *shahs* or forty *drahms;* †both on condition that *bent-labuns* cannot be procured.

According to the best opinion there is no excess if a *thaniya* or five-year-old she-camel is given instead of a *jazaa* or four-year-old she-camel. [†On the contrary, nearly all authorities admit that there is an excess in such a case.]

One cannot supply the deficit nor take back the excess of one degree of value, by giving or taking one *shah* and ten *drahms* instead of two *shahs* or twenty *drahms;* but if it is a difference of two degrees one may give or take either four *shahs* or forty *drahms* or two *shahs* and twenty *drahms*.

As to horned cattle the levy is void on less than thirty head. Of thirty one *tabia* or yearling calf is taken. If there be more than thirty head in the herd a *tabia* is taken for each thirty, and a *mosinna* or

two-year-old calf for each forty. Nothing is taken from small cattle in less number than forty. On forty, one *shah* is levied ; on one hundred and twenty-one, two *shahs ;* on two hundred and one, three *shahs ;* on four hundred, four *shahs ;* and on each additional hundred, one *shah.*

Section 2

Where a flock or herd consists of animals of the same kind the ordinary levy is made with this modification that, taking due count of their respective values, a kid may be exchanged for a lamb, and *vice versâ,* as they are both included in the word *shah.* But if the animals are of different kinds, *e.g.* sheep and goats, the assessment is made, according to one jurist, on the more numerous kind ; or, if the two kinds are in equal number, on that which is the more advantageous for the poor. *According, however, to the majority of authorities, the taxpayer may in these circumstances give whichever kind he prefers, taking due count of their respective value and number. If, for instance, there are thirty goats and ten sheep, the assessment, according to this theory, is one goat or one sheep, provided the value of the animal given is equal to three-quarters of the average value of a goat, plus quarter of the average value of a sheep. A sick animal, or one with redhibitory defects is not sufficient, unless there are none but animals of this sort. Neither is a male animal accepted except in the two following cases :—

1. If, as we have already mentioned in the preceding section, the law insists upon its acceptance.

2. †If there are none but males.

If there are none but little ones, one must be contented with such, according to the opinion maintained by Shafii in his second period. One may not take for the assessment a ewe that has just lambed, nor an animal that is being fatted, nor one in calf, nor one of exceptional value, without the owner's consent.

Cattle belonging to two joint owners is taxed as if it belonged to a single individual. This is also the case where two neighbours have mingled their flocks or herds ; provided there is no separation between the animals of the two owners, either at the watering-place, the meadow, the stable, or the place where they are milked ; †and provided there is only one herdsman, and one male animal for breeding purposes. †It does not matter whether the flocks or herds were mingled intentionally or accidentally. *In the case of fruit, grain, precious metals and merchandise, it is taken as indicating that the owners have mixed their respective quantities, if they have jointly the same overseer, threshing-floor, shop, caretaker, store, etc.

There are two other essential conditions for the tax on cattle being due—

1. That the property has been in one's possession for a whole year. This rule admits of one exception. In the case of a flock or herd of which the original number already reached the *nisab* or taxable minimum, the new-born animals become taxable in the year of their birth; but animals added by purchase, etc., become so only in the year following. The declaration of births made by the owner at the end of the year is presumed to be correct, and it is only in case of grave suspicion that he may be required to confirm his declaration on oath. If during the year one loses possession of some head of cattle and replaces them later in the year, or if an exchange of cattle of the same kind takes place between two owners, the yearly period for the purpose of taxation begins only from the date of acquisition.

2. That the cattle have been turned out to graze; for there is no ground for the tax if the animals have passed most of the year in the stable. †Even cattle fed in the stable for half the year or less are taxable only if the owner turned them out to graze also during this period, and if the fodder given in the stable was comparatively in such small quantity that the animals could have gone without it and been hardly the worse.

In default of these two conditions the tax cannot be levied. †Cattle is also not considered taxable if: (*a*) it is turned out to graze separately; or (*b*) it is, though grazing, fed with hay, etc.; or (*c*) it is used to plough or irrigate the land.

If the animals are accustomed to go down together to the watering-place, the assessment takes place while they are all there; otherwise in the stables or enclosures of the respective owners. An owner whose moral character inspires confidence is believed on his word when he declares the number of his taxable animals; otherwise this presumption does not exist, and the animals must be counted, after having them driven into some narrow space.

CHAPTER II.—ASSESSMENT ON PRODUCE

This tax is limited to plants fit for food, such as, among fruit, dates, and grapes, and among grains and vegetables, wheat, barley, rice, lentils and other such commonly eaten products. According to Shafii's earlier opinion it is levied also on olives, saffron, *wars*, carthamine, and honey.

The *nisab* or taxable minimum of produce is five *wask*, which is equal to sixteen hundred *ratal* of Baghdad, or, according to the measure

of Damascus, to three hundred and forty-six *ratal* and two-thirds. [†This last amount is three hundred and forty-two *ratal* and six-sevenths, †as the *ratal* of Baghdad is one hundred and twenty-eight *drahms* and four-sevenths. Some authorities reject the four-sevenths, and according to others one hundred and thirty *drahms* is the proper estimate.]

When dates or raisins are intended to be dried, the weight is not estimated until after they have been so dried; otherwise the weight of dates or grapes is ascertained immediately after the plucking. Grain and vegetables are weighed without chaff, etc., while the minimum taxable of those that remain enveloped, such as rice and *alas*, is ten *wask* instead of five. In determining the quantity of produce taxable those of different nature may not be combined, but those of different species may. The taxpayer is in this case assessed on the total, taking count of the respective quantities of each kind. If this is impossible one takes the mean. Thus the *alas* may be combined with ordinary wheat, of which it is a species, and the assessment made on the total; but the *solt* is a distinct plant, though some jurists maintain it to be a species of barley and others a species of wheat. The fruit and other taxable produce of a particular year may not be combined with that of the year following, but those of the same year must always be totalled, even if the harvest be in different seasons. However, according to some jurists the totalling of the fruit of a whole year is not necessary where some only begin to grow after the gathering of others; but even these authorities agree that the rest of the produce of a single year must in all cases be combined. *By fruits of the same year is understood all produce gathered in that year, irrespective of the time it was sown or began to grow.

In the case of land irrigated only by rain—or in no need of artificial irrigation, the roots of trees and plants obtaining moisture by the proximity of water—the assessment on produce is one-tenth of the crop; but fields irrigated by means of tanks or water-wheels, or with water that has been paid for, are assessed at only half this rate. ††Water brought in conduits is regarded legally as rain-water. Where the irrigation is half natural and half artificial the assessment is three-fourths of the tenth. Where one kind predominates, it should be regarded, according to one jurist, as being the sole kind; *others, however, think an inquiry should be made as to which has contributed the more to the growth of the trees and plants; while others are of opinion that the number of times irrigation of each kind has taken place should be considered.

The tax is due on the appearance of signs of maturity in the case of fruit, and in the case of other produce at the moment the grain begins

to harden. It is then that the Somna has introduced the practice of making a valuation of the fruits and determining the amount due by the owner. **This valuation should include all the trees and can be made by a single expert, who should be a †free man of irreproachable conduct.

*After the valuation, the portion of the poor is separated from that of the owner, who should hand over the former as soon as the drying is finished. According to our school this obligation should be explicitly notified to the proprietor, who should declare his assent to it; though some authors consider that the separation of the two parts is legally accomplished by the mere fact of valuation. In any case the owner is responsible only for the amount of his assessment and not for the delivery of particular fruit, and so may still sell the total yield of his garden. An owner who alleges that fruit has been lost to him after valuation, either in some obscure way as by theft, or in some visible accidental manner of public notoriety is presumed to be correct if he takes an oath to that effect. If, on the other hand, he alleges as the cause of the loss something which, though visible in its nature, is not of public notoriety, ††he must first of all establish its existence in general, and only when this has been done can his oath be accepted to the effect that the calamity in question has injured his garden in particular. Should the owner complain of injustice on the part of the expert, or that the latter has combined produce of dissimilar kinds, his assertion cannot be accepted, †except in the case of some kinds of produce which, though different, can easily be confused.

CHAPTER III.—ASSESSMENT ON GOLD AND SILVER

The *nisab* or taxable minimum of silver is two hundred *drahms*, and that of gold twenty *mithkal*, of the standard weight in use in Mecca. One-fortieth is levied on each of these precious metals; but debased gold and silver are not taxable, unless the quantity of pure metal amounts to the *nisab*. Where a vessel or other object is composed of gold and silver in two unequal parts, the proportion of the two parts themselves being known, but it not being known which is gold and which is silver, the vessel is assessed as if it were composed of a quantity of gold equal to the larger part and also of a quantity of silver equal to that larger part, unless the owner prefers to have the metals separated.

The tax is levied on illicit ornaments and other objects of gold and silver, *but not on such as may legally be used. Among illicit objects are reckoned gold and silver vessels, and also chains and bracelets if belonging to a man who has obtained them in order to wear them.

†But if a man buys a bracelet or other ornament, without intending to wear it, or in order to lend it to a woman who can lawfully wear it, he is not liable to pay tax on it. The same is the case with a man who has bought a broken ornament to mend and sell. A man may not lawfully wear gold, except at the nose or the end of a finger, if these have been mutilated. Gold may also be applied to the teeth to prevent their becoming loose. But if a man has lost a finger he may not replace it by one in gold; neither may he wear a ring in which the jewel is attached by means of small gold hooks. As to silver the law permits a man to wear it in the form of a ring, and to adorn with it his weapons and accoutrements, such as a sword, lance, or belt; †but he may not ornament with silver what he does not himself carry, his saddle or bridle. This of course does not apply to women, who may lawfully wear all sorts of ornaments both in gold and silver, †as well as stuffs embroidered with threads of the precious metals. †Only they should abstain from adorning themselves with gold or silver in an excessive and prodigal manner, wearing for instance a chain of the weight of two hundred *dinar*, a restriction which is applicable also to the ornamentation of weapons and accoutrements. †A man may possess a Koran adorned with silver, a woman one ornamented with gold.

Lastly, it is an essential condition for the tax on the precious metals becoming due that the owner should have had possession of them for a whole year.

Pearls and precious stones are not taxable.

CHAPTER IV.—ASSESSMENT ON MINES, TREASURE AND MERCHANDISE

Section 1

On gold or silver extracted from a mine one-fortieth is due. One jurist says a fifth; another a fortieth if there is difficulty in the extraction, otherwise a fifth. Our school admits only the imposition of the *nisab* or minimum mentioned in the last chapter for each of the two precious metals, without possession for a whole year being necessary.

The quantities extracted are added together in order to determine the total amount to be assessed, if the exploitation has been uninterrupted; but it is not necessary that it should have been continually remunerative, this at least is the opinion adopted by Shafii in his second period. A forcible interruption is considered as no interruption, and so the quantities extracted may still be combined; but this is not permissible in the case of a voluntary interruption. In other words one cannot add what the mine has already produced to what is extracted

subsequently, except to determine if the latter has reached the taxable minimum. This principle applies to all taxable precious metals, whether they come from a mine or not.

**On discovered treasure a fifth should be paid by way of assessment, according to our school, provided the amount is not less than the taxable minimum, and that it consists of coin. A whole year's possession is not necessary. By treasure is understood a hoard buried in the time of Paganism. A discovered hoard, dating from a period when Islam had already been introduced into the locality, belongs to the owner who buried it. If the owner is unknown, it becomes simply lost property, and the finder must then conform to the rules which will be given when treating of that subject. The hoard is considered to be lost property when it is not known if it was buried before or after the conversion of the country to Islam. One becomes owner of the treasure and owes assessment on it only if it was discovered on an uncultivated portion of the public domain, or when clearing an uncultivated portion of one's own property. A hoard discovered in a mosque or on the public road is regarded simply as lost property, whatever may be its date, at least according to our school. Treasure discovered on the property of another belongs to the actual proprietor if he claims it, otherwise to the previous holder and so on and ultimately to the original owner. In case of dispute between seller and purchaser, landlord and tenant, or borrower and lender, the presumption is in favour of the actual occupier provided he confirms the truth of his assertion on oath.

Section 2

Assessment on merchandise depends on two conditions—possession for a whole year, and attainment of the *nisab* or minimum taxable value. This latter is the same as for the precious metals, and should be the value obtaining *at the end of the year, or according to the opinion of one jurist both at the beginning and end of the year—or as another thinks, throughout the whole year. †If goods are sold in the course of the year for an amount less than the *nisab*, and other goods bought with the money, possession dates from the purchase. †If at the end of the year the value of goods is under the *nisab*, one owes nothing for that year, and begins to reckon another. Objects acquired in order to profit by their exchange are regarded as merchandise, whether obtained by purchase †or as dower or as compensation for divorce, but not when obtained by gift, nor when consisting only of firewood gathered in the forest, nor when taken back after sale in consequence of redhibitory defects.

When goods are bought for a sum of money which is itself taxable, the year's possession is reckoned from the date of obtaining the money; but if the amount is under the *nisab*, or if goods are acquired by exchange for other goods already in one's possession, the year begins only from the date of purchase. Some authorities, however, admit an exception to this rule when taxable cattle are given in exchange for goods, in which case duration of ownership of the cattle is added to duration of ownership of the goods. Profit obtained in the course of the year by sale or exchange is added to capital if this profit consists of goods and not coin; *otherwise it is not included in the total taxable. †All increase of merchandise, whether by animals in which one trades giving birth to young, or by trees bearing fruit, is regarded as taxable merchandise, the possession of which dates from that of the original merchandise.

The assessment on merchandise is one-fortieth of the value. When goods are bought for money the price constitutes the real value, whether less than the *nisab* †or not; but where goods are exchanged they must be valued in the money of the place. In this last case, if there are two kinds of money of equal currency, the following distinctions must be drawn:—

1. If the value reaches the *nisab* only when expressed in one of the two kinds, it should be expressed in that kind.

2. If the value reaches the *nisab* when reckoned in either kind, then it should be reckoned in that which is most advantageous for the poor. According to some authorities the taxpayer has the choice.

The value of goods sold is estimated according to the price stipulated; that of exchanged goods is valued in the money current in the place.

Slaves owned for purpose of trade in them are liable both to the tax at the end of the fasting month and also to the ordinary tax on merchandise. In the cattle trade the owner of a herd which reaches the *nisab* either under Chapter I. or as merchandise, owes the assessment under that heading; if the *nisab* is reached in both, then only the tax on cattle is paid. Shafii so decided during his Egyptian period. If at the beginning of a certain year one has become possessed of goods exchanged six months afterwards for a herd of cattle, it is the assessment on merchandise which is payable at the end of the year in question, after which the tax on cattle is payable in due course. This opinion also was adopted by Shafii in his second period.

In a joint stock company a sleeping partner is personally responsible for the tax both on the joint capital and on the profits; at least where it is agreed that the acting partner does not become legally entitled to his share in the profits by the mere fact of drawing up the balance sheet, but only on distribution. †This, however, does not prevent the entire

assessment being always based on the total profit, and not on the capital. If, on the other hand, it is agreed that the managing partner becomes legally entitled to his share of the profits by the mere fact of having drawn up the balance sheet, a sleeping partner is responsible only for the assessment on the joint capital and on his part of the profit ; while it is the managing partner who, according to our school, is responsible for his own share.

CHAPTER V.—PAYMENT AT THE END OF THE FASTING MONTH

This tax is due from the night preceding the festival at the end of the fasting month. Those who die after sunset are still liable for it, but not those who are born after that moment. The Sonna does not allow payment to be deferred until after prayer on the festival, and the law absolutely forbids its postponement until the next day after the feast.

An infidel is not subject to this tax at the end of the fasting month, †unless on account of his slave or Moslem relative. A slave is not liable on his own account, but authorities are not agreed upon the case of one undergoing gradual enfranchisement. The partially enfranchised slave owes the tax in proportion to his liberty. The payment is not obligatory for insolvent persons, those *i.e.* who have no more food than is necessary for their subsistence and that of people dependent on them for the day and night of the feast. And, besides, the believer should only pay this contribution after he has supplied the necessary needs of his household.

Any one who owes this payment for the breaking of the fast for himself, owes it also for those dependent on him, though a Moslem owes nothing for an infidel slave, relative, or wife. A slave owes nothing for his wife, nor a son for his father's wife ; though as regards the son this rule is the subject of controversy. *If a husband is insolvent, or a slave, his wife is liable for this payment on her own account, unless she is herself a slave ; †and the master of a female slave owes it for her, if she is married to some one who is free, but poor. [†A free woman married to a slave does not owe this payment on her own account ; such is Shafii's personal opinion.]

When a slave is absent, and his whereabouts is unknown the master still owes the tax for him, according to our school. Some authorities consider it as due only on the return of the slave ; one maintains that under these circumstances the master owes nothing.

†If a person possesses no more than a *saa* of food, he should give what he has in payment for himself. If he has more than a *saa*, he should pay first for himself and then in order for his wife, infant child, father,

mother, grown-up child. Now the assessment on food stuffs is one *saa* for each taxable individual, *i.e.* six hundred and ninety-three *drahms* and a third. [†According to the method of calculation adopted in the chapter relating to the assessment on produce, the *saa* is equal to six hundred and eighty-five drahms and five-sevenths.]

The food that is given in alms at the breaking of the fast should be such as is liable to ordinary assessment, *though cheese may also be given. It must be food commonly consumed in the place. Only a few authors maintain it to be enough to give what one has and consumes oneself; and a few others think one may give what one likes. It is permissible to give better food than one has oneself, but not an inferior kind. According to one doctrine quality is determined by price; †but according to the generally received opinion the more substantial food should be looked upon as of superior quality. Thus corn is better than dates or rice, †while dates are inferior to barley but better than raisins. One may give on one's own account a *saa* of some kind of food and for one's relative a *saa* of some superior kind, but the tax is not properly paid by giving for each person a *saa* of different kinds of food. When the people of the place eat various kinds of food so that it is impossible to say which is the most common, the taxpayer may give whatever he thinks best, though the very best kind is to be preferred. †As to the payment due for an absent slave, this must be made in the food of the place where the slave is.

[Grain and vegetables given as payment of the tax at the breaking of the fast must be free from redhibitory defects. A father may legally pay this tax for his infant child from the latter's estate, and similarly for his grown-up son with the latter's consent. One may do it for any one with his consent. When a slave belongs in common to two persons of whom one is solvent and the other insolvent, the solvent owner owes half a *saa*; †if both are solvent but their contributions are of different kinds, each gives half a *saa* of food, without regard to the particular kind given by the other.]

CHAPTER VI.—PERSONS AND OBJECTS LIABLE TO ASSESSMENT

Section 1

The tax is due only from a free Moslem proprieter. It is, however, due from an apostate, if he does not legally forfeit his property by the mere fact of apostacy. But it is not due from a slave undergoing gradual enfranchisement. It is levied from—

1. The property of a minor, a lunatic, †and a slave partially

enfranchised; provided in the latter case that what belongs to him as a free man is not below the *nisab* or taxable minimum.

2. Property usurped by another, strayed camels, and goods deposited with a person who denies the deposit—all these only on recovery.

3. Property purchased, even before possession has been taken; though according to others the tax on such property is the subject of controversy, as also in the case of the second category.

4. Property in another town. The assessment on this is due immediately, if there is full power to dispose of it; otherwise it is treated as in 2.

5. Debts due to one. A debt relating to a certain quantity of cattle, and a debt which cannot be exacted, such as that due to a master from a slave undergoing gradual enfranchisement, are not subject to assessment. In his first period Shafii extended this principle to all debts due to a person, whether relating to goods or money; but during his Egyptian period he drew a distinction in this respect between a debt which can be immediately exacted and one which is due only at a fixed date. The tax on the former is due at once, except when the debt cannot be recovered owing to the insolvency of the debtor, etc.; otherwise it is regarded as coming under the second category; though some authors think the assessment is due even before the debtor has satisfied his obligation. *The fact of being a debtor does not prevent one's being due for the tax on one's property; though according to one opinion assessment cannot be insisted on in the case of so-called "hidden" property owed to others, *i.e.* precious metals and merchandise. *An exception, however, must be made in the case where a person's debts are so considerable that the judge has been obliged to declare him bankrupt, and that he has remained in a state of legal incapacity for a whole year, in which case his property is regarded as coming under the second category, as he has not had the free disposition of it. As to claims on the estate of a deceased person, the tax has preference over a debt to a private individual; though according to one authority the debt has preference, and according to another they are claims of equal importance.

6. Booty obtained in war against the infidel, even before distribution, provided it consist of one and the same kind of taxable property, that those having a claim to it prefer that it should remain in common, and that a whole year has elapsed since this decision. The entire booty is then subject to assessment, whether the share of each of the owners amounts to the *nisab*, or whether the total alone does so; and the tax is paid in the place where the booty was constituted common property.

But if those having a claim to the booty have expressed no wish to keep it in common, it is assessable only after distribution.

7. Marriage dower, *i.e.* when a woman has stipulated, as dower, a definite quantity of a specified taxable kind of cattle, she owes the assessment on it at the end of a year.

*A person who has leased a house to another for four years, at a rate of eighty *dinars* paid in advance, owes assessment only during the tenant's occupation, *i.e.* at the end of the first year he must pay assessment on twenty *dinars*, at the end of the second on twenty for one year and on twenty for two years, at the end of the third on forty for one year and on twenty for three years, at the end of the fourth on sixty for one year and on twenty for four years. According to another opinion assessment on eighty *dinars*, and nothing more, is due at the end of the first year.

Section 2

The tax may be exacted as soon as it is due, *i.e.* as soon as the existence of the taxable property and the categories of persons having claim to it have been ascertained. Such as consists of so-called "hidden" property, *i.e.* precious metals and merchandise may be given personally to those entitled to it; and, according to the opinion maintained by Shafii in his second period, this may even be done in the case of the so-called "visible" property, *i.e.* cattle and produce. This distribution may be effected through an agent, or by the Sovereign, his officials and delegates; *and this latter method is even considered the better, unless the ruler is a tyrant.

An intention of performing one's duty towards God must be expressed by saying: "Here is the portion of my substance which I owe as assessment," or "as legal alms." It is not enough to say, "This is the portion of my substance which I owe," †or "This is legal alms." It is unnecessary to specify the property on which one is paying assessment; but if one does so, the gift counts as assessment on that particular property only. Expression of intention is obligatory on the guardian of a minor or the curator of a lunatic, when paying the tax for those entrusted to their care. †When payment is made by an agent, it is sufficient to express the intention when the amount is handed to him; it is not necessary for the agent to repeat it when paying in at the receiving office. It is, however, preferable that the agent also should himself express an intention, if he personally distributes it to the ultimate recipients. If the distribution is effected through government, the only expression of intention required by law is from the tax-payer, but if this is omitted the act has no value, even if an intention is expressed by

the distributing official. †It is only when the assessment is recovered from a refractory taxpayer that expression of an intention is unnecessary on his part and is replaced by that of the ruler or his officer.

Section 3

It is not lawful to pay the assessment before one possesses the taxable minimum, but one may do so before the period of one year has expired, †so long as one is not two years in advance. As to the alms at the breaking of the fast, one may pay it in advance from the beginning of the month of Ramadan, †but not earlier. ††Assessment on fruit may not be paid until signs of maturity have appeared, nor in the case of grain and vegetables until the seeds have begun to harden ; but it may then be done immediately. In order that this anticipated payment should be valid the law insists that the owner should remain liable until the end of the year, as it is not till then that the tax is due ; it is also necessary that the person who accepts an anticipated share in the proceeds should not lose whatever claim he has at the end of the year. If after such anticipated acceptance a person loses his right to a share in the distribution of alms—even though he should regain it in the course of the year—the anticipation is, according to some authors, nullified. This right, however, is not considered to be lost merely because the person receiving an anticipated share has thereby ceased to be poor.

A taxpayer may only recover what he has bestowed in advance upon a person who appears afterwards to be no longer entitled to alms, if he has reserved to himself this right in all eventualities, †a reservation implied in the words, "This is the alms I owe you, which I give you in advance." †On the other hand, it cannot be recovered if the taxpayer did not state that the payment was in advance, and the person having a claim to it declares that he was not aware of it. †In legal proceedings the presumption is in favour of the recipient, on oath. If a claim for recovery is found good, the person who has received the advance is responsible for the accidental loss of the property delivered, †up to its full value on the day of delivery. †Nothing is due for a diminution in the value. †The separate fruit need not be given back.

A taxpayer who is in arrears is responsible for property due by him for alms, even in case of accidental loss ; but not if such loss occurred before the tax was due. *In the case of accidental and partial loss before the due date, the owner owes assessment only on what is left. If the loss was caused through his fault, after a year's possession but

before the tax was due, the owner owes the full assessment in spite of the loss, for the assessment adheres to the property as if the recipients were co-proprietors ; or, according to one jurist, as if it were secured to them. One author maintains, however, that there is here a stipulated responsibility, not a real right. *The sale of taxable property before paying the assessment is invalid so far as relates to the amount of the tax, but valid for the remainder.

BOOK 6.—FASTING

CHAPTER I.—GENERAL PROVISIONS

Section 1

The fast of the month of Ramadan becomes obligatory, *i.e.* commences, either upon the termination of the thirty days of the preceding month of Shaban, or from the first appearance of the new moon. The testimony of a single irreproachable witness—or of two, according to one authority—is sufficient to establish the fact of this appearance. †If there be only one, he must unite all the requisites of an ocular and unexceptionable witness ; so that the testimony of a slave or a woman cannot be accepted. If the fast has been begun on the testimony of a single irreproachable individual, but the moon is not seen for the next thirty days, †the fast must still be terminated after that period, even though the sky may have been cloudless. †A sight of the moon in any place renders obligatory the commencement of the fast in that neighbourhood, but not in places situated at a great distance. By great distance is understood a distance which permits of the abridgment of prayer, or, according to others, a distance that causes an appreciable difference in the rising of the heavenly bodies. [†The latter opinion is the better.]

When, by reason of the above rules, the fast is not yet obligatory in a certain place, †a traveller, arriving from a place where the moon has already been seen, should conform to the local observance. And he should act in the same way on arrival at a place where the moon has already been seen, coming from one where it has not yet been observed. But if in this way on arrival at a place he celebrates with the inhabitants the feast at the end of the fasting month, he must make up afterwards for the day's fasting he has thus omitted. †A passenger on a ship leaving on the morning of the feast and arriving the same day at a distant place where the inhabitants have not yet terminated the fast, should conform to the local observance during the rest of the day.

Section 2

The intention is an essential condition for the validity of fasting. For the obligatory fast it should be formulated before the end of each

night ; ††without, however, it being necessary to do this in the latter half of the night, or to abstain after having done so from eating and coition. ††If one goes to sleep after formulating it, it is not obligatory to renew it on awaking. As to a supererogatory fast it is enough to formulate the intention on the day selected for the fast, provided the sun has not yet begun to decline ; though according to one authority it can be done even later. ††Another doctrine, however, requires that the intention and the other conditions essential for the validity of fasting must in all cases exist from the beginning of the day. In the case of an obligatory fast the intention must have special reference to this fast. The most complete way of expressing an intention for the fast in the month of Ramadan is to use the following words :—" I intend to fast for the coming day, in order to perform my duty towards God, in the month of Ramadan of the present year." With regard to the words " perform," " duty," and " towards God," there is here the same diversity of opinion amongst scholars, as with regard to the formulating of an intention for prayer. ††One can, if need be, omit any special indication of the year, when expressing an intention as to fasting.

When, on the thirtieth night of the month of Shaban, one formulates the intention of beginning next day the fast of Ramadan, provided it is then the first of that month, the fast accomplished that day counts for that of the first of Ramadan only if one had reason to think that it would be the first day of that month, if *e.g.* the moon's appearance had been asserted by a slave, a woman or minors of sufficiently developed intelligence. For these persons, though incapable of furnishing legal proof of the moon's appearance, can render it probable, if they are otherwise worthy of confidence. In default of such reason for believing that the moon has appeared, a fast accomplished by virtue of the conditional intention above-mentioned is of no value, even if it afterwards appeared that it was really the first day of Ramadan on which one fasted. But if, on the other hand, it is on the thirtieth night of Ramadan that one expresses an intention to fast on the following day, provided it is not the first day of Shawal, this fast is always valid, if the day in question is really in the month of Ramadan.

A believer who is himself unable to ascertain the beginning of the month of Ramadan—if, *e.g.* he is in prison—should do his best to find out indirectly, and then fast for an entire month. If by doing this his fast happens partly to correspond with the ensuing month of Shawal, he is none the less considered to have accomplished his duty, †even if a little late. And if, under these circumstances, he has fasted for an incomplete number of days, while the month of Ramadan that year was a full month of thirty days, he can make up afterwards the single

day that is wanting. On the other hand, a believer who in such circumstances begins fasting by mistake before the first day of Ramadan, must all the same continue fasting for the whole of that month, if this is still possible when he perceives his error. Otherwise, according to the opinion adopted by Shafii in his second period, he should repeat the fast afterwards, by way of reparation, as soon as he has perceived his error.

A woman, even when undergoing menstruation, may lawfully formulate during the night an intention to fast next day, and subsequently accomplish that act of devotion, provided that bleeding ceases before dawn, and provided also that in that same night the legal time for the menstruation is more than half over, †or the ordinary term of the menses of the woman in question.

Section 3

When fasting, the following abstinences are rigorously prescribed :—

1. Abstinence from coition.

2. Abstinence from vomiting. ††Vomiting nullifies the fast, even if one be sure that nothing coming out of the body has gone back again. Involuntary vomiting does not count, †nor a clearing of the throat followed by a spitting of white froth. As to fluids descending from the head into the mouth they must be rejected, †for if kept in the mouth or swallowed the fast is broken.

3. Abstinence from allowing anything whatever to enter what is understood by the interior of the body. Some authorities consider that the fast is not broken unless the body has strength to digest what is thus introduced as nourishment or medicine. All authorities agree that introduction into the head, stomach, intestines or bladder breaks the fast ; and that it is of no importance whether the introduction takes place by sniffing or chewing or by a clyster, or through some wound penetrating into the stomach or touching the membrane of the brain. †The fast is also broken if one lets any liquid fall, drop by drop, into the ear. There are two other conditions established by the law as being required before the fast can be considered broken. (*a*) Introduction of substances must take place by an opening, and penetrate into the interior of the body. Thus the fast is not broken if oil happens to filter through the pores of the skin into the body, nor if collyrium applied to the eyes leaves a certain taste in the throat. (*b*) This introduction must be intentional. Thus the fast is not broken if a fly or a mosquito or the dust of the road or a little flour siftings enter the body, nor if the saliva is inadvertently swallowed, before it has left its original place of formation. On the other hand, the fast is broken : (*a*) by tasting saliva

which has re-entered the mouth after leaving it ; (*b*) by putting into the mouth a thread moistened and still wet with saliva ; (*c*) by swallowing saliva mixed with any other substance, or saliva which has become impure. †One may, without breaking the fast, swallow all at once the saliva which has accumulated in the mouth ; but according to our school fluid remaining in the mouth or nostrils after clearing the throat or sniffing and then introduced into the body does break the fast, at least, if it be in considerable quantity, not otherwise. Similarly particles of food between the teeth, carried away by the saliva and swallowed, are of no consequence for the fast, when they cannot be distinguished and removed. Forced deglutition does not break the fast ; but it is broken if one swallows anything which one has been forced merely to take into the mouth. [*This last circumstance does not break the fast any more than the former.] Nor is the fast broken by inadvertently eating something ; †but it is broken if this negligence is often repeated. [†Even in this case the fast is not broken.] And similarly, according to our school, with respect to coition.

4. Abstinence from onanism ; otherwise the fast is broken. It is the same in the case of emission of semen due to touching or kissing a woman, or sharing a bed with her ; but not if it is due to lewd thoughts or looks. It is for this reason that it is blamable to embrace a person during the fast, if one is of a passionate temperament, and in any case it is better not to do so. [†This rule is of rigorous observance.]

The fast is not broken by cupping, or by the application of leeches.

Care should be taken in the evening not to eat until first assured that the sun has set ; †though strictly one may rely upon indirect information as to that fact. In the morning one can eat as long as one has reason to believe that the night is not yet over. [And even if one is doubtful upon the matter.] When one has done one's best to ascertain the proper time for taking one's meal either before the beginning or after the end of the day, but it appears after all that a mistake has been made, that day's fast is nullified. If one has taken some nourishment without thinking of the exact time, and it does not afterwards appear that any contravention has occurred, the fast is nullified in the case of an evening meal, but not in that of a morning one. If one has some food in the mouth on the appearance of the dawn, but immediately rejects it, the fast is not nullified ; and similarly with regard to coition.

Section 4

Essential conditions for the validity of fasting in general are faith, mental lucidity, and absence of menstrues or lochia for the whole day.

††There is no objection to one's sleeping the whole day; *nor is the fast invalid by reason of a state of unconsciousness, provided there be in the day at least one instant's recovery.

Fasting is not permitted on either of the two great annual festivals, nor during the three days called *ayyam-at-tashrik*, at least according to the ideas of Shafii in his second period. †Nor may one accomplish a supererogatory fast on an "uncertain" day, for it is then generally speaking illegal, except to make up for a day of fast which has been neglected, or to accomplish a vow, or when it happens to coincide with a fixed date at which one is in the habit of fasting. The thirtieth day of the month of Shaban is called an "uncertain" day if the appearance of the new moon has been established only by public rumour, or by the testimony of minors, slaves, or persons of notorious misconduct. A day when the moon is invisible by reason of clouds is not an "uncertain" day.

During the month of Ramadan the Sonna recommends—

1. Breaking the fast as soon as possible, by eating some dates, if one has any, or, if not, by drinking a little water.
2. Putting off the meal taken before the fast to the last moment one is sure the prescribed time has not yet come.
3. Abstinence from lying and evil-speaking.
4. Not allowing oneself to be carried away by passion.
5. Bathing before dawn in order to remove all impurity.
6. Not applying cupping glasses.
7. Embracing no one.
8. Not exciting the appetite.
9. Refraining from chewing.
10. Saying, when breaking the fast, "O God, I have fasted to Thy glory; and I now break the fast with food that cometh from Thee."
11. Frequently bestowing alms.
12. Frequently reading the Koran.
13. Withdrawing often into a mosque, especially during the last ten days of the month.

Section 5

The fast of the month of Ramadan is obligatory for every believer provided he be of sound mind, an adult, and able to support it. A minor should be exhorted to it from his seventh year, if he is strong enough. A sick person may omit to observe it, if he fears that it may seriously affect his health; and so may a person undertaking a long journey with a lawful object; with this distinction, however, that the exemption of the latter begins only from the second day, that of the

former from the moment he falls ill. If in spite of this exemption the traveller or the sick person begins the day with fasting, he may break the fast when he pleases, ††except on arriving at his destination, or on recovery, as the case may be.

Such traveller or sick person must, after breaking the fast, make up afterwards for the days omitted. A similar duty lies upon the following persons :—

1. A woman who has her menses during the fast.
2. Any person who breaks the fast without lawful excuse.
3. Any person who forgets to formulate an intention before fasting.
4. Any person who is unconscious for at least one whole day.
5. An apostate. But the born infidel who is converted need not make up for the days on which he would have fasted, had he been a Moslem.

There is no obligation to make up for a neglect due to minority or madness. †A minor who attains puberty on a day begun fasting should finish that day fasting, and that is all that is necessary. If he has begun the day not fasting, it is not necessary to make up for it. †It is the same with a lunatic who has come to his senses, or a converted infidel, these also being exempt from any obligation to fast on the day of the change, unless it was already begun fasting. On the other hand, the omission must be made up for afterwards by any one who improperly breaks a fast, or forgets to formulate an intention, but not by a traveller or sick person whose cause of exemption has ceased after the breaking. Our school goes so far as to extend this rule to the case where the cause of exemption has ceased before a breaking of the fast by a traveller or a sick person, unless on the preceding night a special intention was formulated to fast next day. It is necessary to make up for the lost day, if one has taken anything on an "uncertain day" which turns out afterwards to be a day of the month of Ramadan.

Abstinence from anything that breaks the fast, during the rest of a day on which the fast has already been broken, is a feature peculiar to the month of Ramadan ; it is not required when fasting in consequence of a vow, or to make up for a lost day.

Section 6

A person dying before he has been able to make up for days of fast of the month of Ramadan omitted by reason of a valid excuse, owes nothing by way of reparation, as no contravention can be imputed to him. But if, on the other hand, he had been in a position to make up for the days lost, there must be deducted from his estate, by way of

expiatory fine, a *modd* of foodstuff for each day. Shafii, in his second period, abandoned the doctrine that the *wali*, or representative of the deceased, should accomplish the fast in his place. This rule applies also to a fast in consequence of a vow or by way of expiation. [*The original doctrine of Shafii is preferable, understanding by *wali* in this connection any relative, agnate or cognate, without distinction of sex or degree. Even a person who is not of the deceased's family can accomplish this fast, †not of his own accord but with the authorisation of the *wali*. It is not necessary after a death to accomplish a prayer or a spiritual retreat left undone by the deceased, nor to replace these acts of devotion by any expiatory fine paid out of the estate. One jurist, however, pronounces in favour of the obligation to accomplish a spiritual retreat neglected by the deceased.]

*An expiatory fine of a *modd* of foodstuff per day is due also from a person who abstains from fasting on account of advanced age. If a pregnant woman, or one who is suckling an infant, omits fasting for the sake of her own health, she should make up for it afterwards ; but she owes nothing in the way of fine. *If, however, she omits it for fear of hurting the health of the child, she must not only make up for it afterwards, but pay an expiatory fine in addition. †These principles with regard to a suckling woman apply also to any other person who breaks the fast in order to avoid imminent danger ; but not to the believer who breaks the fast of the month of Ramadan without a definite lawful excuse. We shall speak in the following section of the breaking of the fast by coition.

The believer who has to make up for a fast neglected in the month of Ramadan but who unnecessarily defers this act of devotion until the next Ramadan, owes also an expiatory fine of a *modd* of foodstuff for each day, multiplied by the number of years the accomplishment of this duty has been put off. And if, under these circumstances, the believer dies, without having made reparation for his fault, though able to have done so, there must be levied from his estate an expiatory fine of two *modd* for each day of fast neglected, *i.e.* one for the contravention and another for having deferred the reparation.

The expiatory fine is given to the poor and the indigent. Several *modd* may be given to the same individual. The foodstuffs given are the same as those given for the tax at the end of the fast.

Section 7

Expiation properly so called, and not merely an expiatory fine, is obligatory if one has violated the fast on a day of the month of Ramadan

by intentionally indulging in coition, which is considered under the circumstances not only as a contravention but as an immoral act. Expiation is therefore not obligatory in the following cases :—

1. When one has indulged in coition forgetting that it was a fast day.

2. When one has violated in this manner a fast other than that of the month of Ramadan.

3. When one has broken the fast of the month of Ramadan by some act other than coition.

4. When one has indulged in coition during a voyage, intending to use one's right to break the fast, †or otherwise.

5. When one has indulged in coition under the erroneous impression that it was still night.

6. When one has indulged in coition, after having eaten through forgetfulness, and thinking the fast had so been broken, even though this idea was erroneous, and the fast was really broken by the coition.

7. When, forgetful of the fast, one has committed the crime of fornication ; or in the case of a traveller who has broken the fast in this way, wishing to use his right to sleep with a woman, without first ascertaining whether she was prohibited for him or not.

Expiation for coition is due by the man who has indulged in it ; or, according to one jurist, by the man and the woman together ; though, according to another, each is separately liable for the entire expiation. Expiation is also obligatory for the unbeliever who, after seeing the new moon, indulges in coition on one of the following days, even if he be the only person who has seen it and the other people of the place have not yet begun their fast. The expiation must be repeated as many times as there are broken fast days, and it remains none the less obligatory though a voyage is begun immediately afterwards. Our school extends this principle to the case of illness, though in other respects both traveller and sick person may break the fast when they please. ††Expiation has no effect upon the obligation to make up for the broken fast days.

Expiation consists in the freeing of a slave. If one has no slave, one must fast for two consecutive months ; and if one is not capable of this, one must feed sixty indigent persons. *If all three methods are impossible, the transgressor remains personally liable for the expiation of his fault, which he must accomplish as soon as he has the means of doing so. †One may always discontinue a fast undertaken by way of expiation, and substitute for it the feeding of indigent persons, when assailed by violent sexual desire. †A poor man may not lawfully give to his family what he owes by way of expiation.

CHAPTER II.—SUPEREROGATORY FASTING

This fast is recommended by the Sonna on : (1) Monday ; (2) Thursday ; (3) the day of Mount Arafa ; (4) the *aashura,* or 10th day of the month of Muharram ; (5) the *tasua,* or 9th day of the same month ; (6) the days called "white days," *i.e.* the 13th, 14th, and 15th of each month, because the moon is then full ; and (7) six days of the month of Shawal, at one's choice, but preferably six consecutive days.

It is blamable : (1) to choose a Friday or Saturday for a supererogatory fast, except when fasting for several consecutive days ; (2) to undertake a perpetual fast, if one fears to incur thereby some injury to person or property ; otherwise it is commendable. But a perpetual fast may not include the two great annual festivals, nor the three days called *ayyam-at-tashrik.*"

A person who undertakes voluntarily a supererogatory fast or prayer may stop when he pleases without making any reparation ; but when one has begun an additional fast to make up for some neglect, this act of devotion must be completed. This must be done both in the case where immediate reparation is necessary, *i.e.* where an obligatory fast has been broken without lawful excuse ; for where the neglect need not be immediately made up for, as when the fast is broken in any other manner.

BOOK 7.—RELIGIOUS RETIREMENT

Section 1

This retirement is always commendable, but particularly upon the ten last days and nights of Ramadan, in order to include if possible the "night of power," believed to be the twenty-seventh. Shafii, however, inclined to think that this night is that of the twenty-first or twenty-third.

The retreat can only be accomplished in a mosque, preferably a *jama masjid.* In his second period Shafii maintained that a woman cannot perform this act of devotion in her private chapel, *i.e.* the room of her house specially set apart for family prayer. If one has vowed to undertake a retreat in *masjid-al-haram* at Mecca, it is there that it should take place ; and similarly if a vow is made to accomplish a retreat in the great mosque at Medina or in the *masjid-el-aksa* at Jerusalem. The mosque at Mecca may be substituted for that at Medina or Jerusalem, but not *vice versâ.* In the same way the mosque at Medina may be substituted for that at Jerusalem, but not *vice versâ.*

† It is necessary to remain in the mosque long enough to be able to say one has sojourned there ; though according to some jurists it is enough to have passed through the edifice without stopping, while others insist on a stay of at least one day.

Coition nullifies a retreat. So does any voluptuous contact, *e.g.* touching or kissing a woman, if any lascivious feeling is thereby provoked, but not otherwise. Coition in forgetfulness of the retirement is subject to the same rules as in regard to the fast. On the other hand, there is no objection to using scent and ornament, and taking nourishment during a retreat. One may also enter into retirement during the night only. A vow "to undertake a retreat on a fast day" is obligatory as is also a vow "to undertake a retreat fasting," or "to fast in retirement." †In all these cases the two acts of devotion must be combined.

Religious retirement requires a previous intention which, where the retreat is the consequence of a vow, is formulated in the same way as an intention for a necessary act of devotion. If the retirement has no previously fixed term, the intention to undertake a retreat is enough,

however long may be the stay in the mosque. If the devout person leaves the mosque intending to return to it, the intention must be formulated anew, even if at the beginning the intention was for a definite time. But if one left the mosque in order to satisfy a want of nature a renewal of intention is not rigorously necessary. Some authors, however, insist on the intention being renewed in all cases where the mosque is left for a long time, without reference to the motives of this absence; while others consider no such obligation exists at all. If one has vowed an uninterrupted retirement for a definite time, but afterwards quits the edifice for a valid reason, the retreat cannot be regarded as interrupted, and there is no need to renew the intention. Other jurists, however, insist on the intention being renewed, even in these circumstances, after each absence not necessitated either by a want of nature or by bathing to remove some grave impurity.

Religious retirement can be lawfully accomplished only by a sane Moslem free from grave impurity—including, in the case of a woman, menstruation. A retreat is nullified by apostasy, or drunkenness, both of which, according to our school, are retro-active. But madness and loss of consciousness supervening during retirement have no such effect upon what has already been accomplished, unless the person has been carried out of the mosque. The time passed by the believer in the mosque in a state of unconsciousness is considered as part of the retreat, but this is not so in the case of madness, or menstruation obliging the person to quit the edifice. A state of grave impurity also necessitates the believer quitting the mosque, if he cannot take a bath on the premises; if he can, it is not necessary for him to leave for this purpose though it is permissible. The time during which menstruation or any grave impurity continues must be deducted from the period of retreat.

Section 2

A vow to enter a state of retirement for a fixed time without interruption should be accomplished; ††but continuity is not obligatory, unless expressly declared. ††But a vow of a retreat "for a day" may not be divided up into twenty-four hours on different days. The believer who vows a retreat for a definite period only, *e.g.* a week, and who accomplishes it partially, but uninterruptedly, should observe continuity if obliged to make up afterwards for his omission; but, on the other hand, the person who has not begun continuously is not obliged to continue so later, when making up for any lost days. *It is lawful to undertake an uninterrupted retreat, reserving a right to leave the mosque in case of any unforeseen occurrence; and it is not necessary

then to make up for lost time. This last rule, however, presupposes that the retreat is to expire at a fixed date, *e.g.* "at the end of the month," otherwise lost time would have to be made up for.

Continuity is interrupted by any exit without valid excuse; though it is understood that there is no objection to one limb of the body being outside the edifice, or to leaving it in order to answer a call of nature. For the latter purpose one may go to one's own house, even if at a considerable distance, †if not too far. The believer who leaves in order to answer a call of nature, and falls ill on his return to the mosque, does not diminish the virtual effect of his act of devotion, if the interruption was short, and he followed the same road. Neither is continuity interrupted if one leaves the mosque for the following reasons:—

1. In consequence of some malady obliging one to leave.

2. In consequence of menstruation; at any rate in the case of a long period of retirement. *On the other hand, there is interruption from this cause, if the period of retirement was so short that a woman is ordinarily free during this interval.

3. Through forgetfulness, at least, according to our school.

4. †In order to go to a minaret, isolated from the principal edifice, and perform one's duties as muezzin.

After these exits and absences from the mosque it is necessary to make up later for the time lost; except when the mosque is quitted in order to answer a call of nature, for then it is never necessary to compensate for the interruption.

BOOK 8.—THE PILGRIMAGE

CHAPTER I.—GENERAL PROVISIONS

The *hajj*, or pilgrimage, *and the *omra*, or visit to Mecca, are obligations towards God which can be accomplished only by Moslims. The guardian puts himself into a state of *ihram* for his pupil, and the curator for the lunatic entrusted to his care, for one cannot do this for oneself if unable to understand the nature of this act of devotion. As to the obligatory pilgrimage and visit, a journey to Mecca can never count for one or the other, unless one has put oneself into a state of *ihram* on one's own account, *i.e.* unless one is a free, sane, adult Moslem. So the poor man is capable of it, but not the minor or the slave.

The obligation to accomplish the pilgrimage or the visit exists only for such believers as are not only capable of legally performing it but also in condition of doing so personally or by intermediary. As to the power of accomplishing this act of devotion in person, it depends on four conditions—

1. Possession of a sufficient quantity of provisions, sacks and money for the voyage there and back. Some authors do not insist on possession of funds for the return journey, if family or near relatives are not left behind at the place from which one starts. A man who gains only enough to live from day to day is not obliged to go to Mecca if the distance be great; but if the distance be short and enough is gained on one day to support him for several the journey is obligatory.

2. Possession of a mount, if the distance from Mecca is two days' journey. If one cannot ride without a great deal of difficulty, one need not go unless in a pannier, if one can find a companion to occupy the other half. Any person who lives at a less distance from Mecca than two days' march, and who can walk, must make the pilgrimage, even if afoot; but if he is too feeble for such an undertaking, he is considered in the same way as a person living at too great a distance. Before such a journey can be looked upon as obligatory, the law insists also that provisions for the nourishment of self and mount must be the property of the pilgrim, and that he has not acquired them to the prejudice of his creditors, or of persons he has to support during his absence. †In the same way the expenses of the pilgrimage may not be deducted from

those of the pilgrim's household nor from what he has to give to a slave whom he needs as a servant. †But he is obliged, if necessary, to sell his merchandise to defray the expense of the pilgrimage, if by so doing he is enabled to take his journey to the holy city.

3. The security of the road. The pilgrimage is not obligatory if danger is feared for person or goods, from wild beasts, enemies or brigands, unless one can take a safer road. *One should go by sea, if that way seems the safer; and if necessary pay for an escort. Nor need one go at all unless one can get water and necessary provisions at reasonable prices at the places where travellers usually obtain their supplies. A reasonable price is one considered moderate in that country and at that time. It is also necessary that one should be able to procure forage for one's mount at each stage of the journey. A woman need not go unless accompanied by her husband or by some relative within the prohibited degrees, or by at least three trustworthy females. †The law does not require each woman in a caravan to be accompanied by her husband or a relative. †A woman on pilgrimage should remunerate the individual who accompanies her and who has undertaken the journey solely on her account.

4. Ability to make use of one's mount with no great difficulty. A blind man is exempt from the duty of pilgrimage if he has no guide. The rules just mentioned with regard to a woman's companion, apply also to a blind man's guide. A person who is incapable by reason of imbecility is subject to the same law as any other person, so far as regards the duty of going on pilgrimage to Mecca, except that he is not entrusted with money for the journey, and his curator should accompany him or employ some one else to do so.

Permission to be represented by a substitute at the pilgrimage is granted in the following cases :—

1. When a person dies without fulfilling his obligation of going to Mecca, the pilgrimage should be accomplished by another person for the deceased, defraying the expense out of the estate.

2. When one cannot go to Mecca by reason of paralysis, etc., one's duty is to send a substitute, at least if one is rich enough to pay for such a substitute and can find one at a reasonable price. This remuneration is of course subject to the pecuniary obligations already mentioned as incumbent upon any one who undertakes the pilgrimage in person. But the law does not insist in these circumstances that the maintenance of the family should be assured in advance for the whole period of going to Mecca and returning from it.

†When a son wishes to employ some one to accomplish the pilgrimage for the sake of his father, the person addressed upon the subject is not

obliged to consent—and still less is he bound to comply when approached by some one who is not even a member of the deceased's family. But if a son offers to make the pilgrimage for his father, the latter is bound to accept his offer, or indeed that of any other person.

CHAPTER II.—STATIONS

One should put oneself into a state of *ihram, i.e.* begin the pilgrimage, in the month of Shawal or Zulkada, or on one of the ten first nights of Zul Hijja. As to the permissibility of not putting oneself into a state of *ihram* until the night preceding the feast of sacrifice, authorities are not in agreement. ††If he puts himself into a state of *ihram* on any other month, the believer can only accomplish a visit, an act which can be performed at any time of the year. The pilgrimage takes place only at one fixed time.

The stations at which one must stop in order to put oneself into a state of *ihram* are as follows :—

1. For the inhabitants of Mecca, the holy city itself. According to some authorities all inhabitants of the sacred territory may place themselves in a state of *ihram* at their own domicile.
2. For pilgrims from Medina, Zul Holaifa.
3. For those from Syria, Egypt and the north of Africa, Johfa.
4. For those from Tahama and Yemen, Yalamlam.
5. For those from south or north Nejed, Karn.
6. For those from the east, Zat Irk.

It is preferable to put oneself in a state of *ihram* at the entrance of these stations, although strictly speaking this may even be done when leaving them for Mecca. If the pilgrim does not pass through one of these places, he should place himself in a state of *ihram,* as soon as he arrives in the vicinity of the nearest to his route ; or, if he passes near two of them, †when close to that which is the farther from Mecca. If he passes near none of them, he should place himself in a state of *ihram* when at a distance of two days' march from the holy city. A pilgrim domiciled between the holy city and one of the stations should enter a state of *ihram* at the place where he resides. If a believer passes through one of the stations, not intending to accomplish a pilgrimage, but resolves afterwards to perform this religious duty, he should begin the state of *ihram* at the place where he adopted this decision. But no one arriving as a pilgrim may pass a station without putting himself in a state of *ihram ;* and if he neglects to do so he must go back to the station indicated by law, unless the time for the ceremonies is at hand, or the road is not safe. In these two last cases an expiatory sacrifice

must be performed ; †but not if the pilgrim duly returns to the station. Unless a pilgrim does so return, an expiatory sacrifice is always due for a neglect to put oneself in a state of *ihram* at the proper station. One can always place oneself in a state of *ihram* on leaving one's domicile, before arriving at one of the stations, and this is indeed the course to be preferred. Only one author maintains it to be better not to put oneself into a state of *ihram* until one's arrival at a station indicated by law. [*This latter doctrine is preferable, and in accordance with authentic traditions.]

The stations for the visit are the same as those for the pilgrimage, on arrival at least from outside the sacred territory. Otherwise, *i.e.* if one is already at Mecca for the pilgrimage, one should first of all proceed to the nearest part of the boundary of the sacred territory, without reference to one's country of origin, then cross this boundary if only by a single pace, and place oneself in a state of *ihram* at this same station. *The believer, however, who has taken part in the ceremonies of the visit, without first recrossing the boundary of the sacred territory in order to renew his *ihram*, may make reparation for his fault by an expiatory sacrifice. According to our school an expiatory sacrifice is not obligatory for those who cross the boundary of the sacred territory after having renewed their *ihram* for the visit. The places most to be recommended for crossing the sacred territory and renewing *ihram* for the visit are : Jarana, then Tanaim, and lastly Hodaibiya.

CHAPTER III.—*IHRAM*, OR STATE OF CONSECRATION

Section 1

The believer who goes to Mecca may put himself into a state of *ihram*—

1. Precisely ; by formulating an intention to accomplish the pilgrimage, the visit, or both.

2. Generally ; by merely formulating the idea of *ihram*, without special reference to the act to which it is to relate. The precise manner is to be preferred, though one jurist maintains the contrary opinion. The general intention may, during the months of pilgrimage, serve at the believer's choice, either for the pilgrimage, the visit, or both ; but one cannot lawfully take part in any ceremony without first making up one's mind upon the subject. †On the other hand, a general intention at any other time of the year applies only to the visit ; and never to the pilgrimage, even if one wait until the time prescribed for that duty.

3. By saying—"My *ihram* will be the same as such an one's." If the person indicated did not put himself into a state of *ihram* at all, these words are held to imply a general intention. According, however,

to the opinion of some authorities, such a proceeding has no legal consequence, if the person in question is known not to have put himself into a state of *ihram*. Where the former intention was precise, the later accomplishment must of course be in the same precise manner. If the death of the person indicated prevents the nature of his *ihram* being known, both pilgrimage and visit must be accomplished together in the manner called *kiran*, and part taken in the ceremonies of both.

Section 2

When placing oneself in a state of *ihram*, one should formulate one's intention and pronounce the sacramental words *labaika*, etc. The words without the intention are of no effect; ††but the intention is good, even without the words. The Sonna has introduced the following usages :—

1. Taking a bath when putting oneself in a state of *ihram;* or, if there be no water, having recourse to ablution with sand. The bath is repeated on making one's entry into the holy city; on the occasion of the halt at Mount Arafa; at Mozdalifa on the morning of the feast of sacrifice; and lastly on the three following days, called *ayyam-at-tashrik*, when one repeats the ritual lapidation.

2. To use scent, when putting oneself into a state of *ihram*, both for the body †and for the clothes. There is no objection to one's continuing to wear these perfumed garments after having placed oneself in a state of *ihram*, nor to having about one's person some object that gives an agreeable odour; †but one must not put them on again after having once taken them off, under penalty of an expiatory fine.

3. That women should stain the hands red when putting themselves into a state of *ihram;* and that men should put off clothes that are sewn, and put on special garments called *izar* and *rida*, both of white stuff. On his feet a man may only wear sandals.

4. Performing two *rakas*, when putting oneself into a state of *ihram*. But it is preferable to do this latter only when about to continue the journey to Mecca, whether on foot or not; only one author considers that the state of *ihram* should follow immediately upon the two *rakas*.

It is recommended to a person who has put himself in a state of *ihram* to repeat frequently and aloud the words "labaika," etc., especially when changing his position, *e.g.* mounting a horse or dismounting, ascending or descending some elevation, or when rejoining a caravan; but not during the circuit of the Kaba. However, according to the earlier idea of Shafii, the formula is commendable also when making this circuit, provided it is not said aloud. It is composed of

the following words :—" Behold me, O God, behold me, behold me. No one shareth Thy power. To Thee the glory, the riches, the empire of the world. No one shareth Thy power." On seeing anything astonishing one says : " Behold me, of a truth the true life is that of the other world." After pronouncing this formula the believer adds a prayer for the Prophet, and lastly beseeches God to permit him to enter Paradise to show Himself satisfied with him, and grant him escape from everlasting fire.

CHAPTER IV.—ENTRY INTO MECCA

Section 1

It is preferable—

1. To make one's entry into the holy city before the halt at Mount Arafa.

2. To take a bath at *Zu Tuwa,* if arriving by the Medina road.

3. To make one's entry near the place called *Thaniya Kada.*

On first catching sight of the Kaba or sanctuary one exclaims, " O God, may this temple grow in glory and grandeur, esteem and veneration. May the number of those that extol its greatness and grandeur exceed the number of those that come hither, as pilgrims and visitors, to praise its worth and distinction, its glory and magnificence. O God, salvation cometh from Thee ; make us live in faith." The mosque built round the *Kaba* is then entered by the gate called the Banu Shaiba, and one begins at once to make the circuits called " of arrival." These circuits are specially prescribed for the pilgrim who has made his entry into the holy city before attending the ceremony at Mount Arafa. When one enters the city without any idea of accomplishing a pilgrimage or visit, it is none the less commendable to put oneself into a state of *ihram* for one or other of these acts of devotion. According to one jurist this is even a matter of rigorous observation ; unless one is continually going in and out of Mecca, *e.g.* as a woodcutter or hunter.

Section 2

The circuits, of whatever category they may be, consist of obligatory practices, and of practices introduced by the Sonna.

The obligatory practices are as follows :—

1. To cover the shameful parts.

2. To be exempt from all filth and impurity. Any impurity incurred by the believer during the circuits necessitates ritual ablution or a bath, after which the circuit may be continued from where it was left off.

According to the opinion of one jurist, it must be begun all over again from the beginning.

3. To keep the sanctuary on one's left hand.

4. To begin the circuit from the place in the Kaba inclosing the Black Stone; and to face this stone with all the front of the body each time it is passed. A circuit begun at any other place does not count, and if the believer has in such way arrived at the Black Stone, he should begin a new circuit from there. Neither does a circuit count if one has walked upon the *Shazarwan* or basement of the sanctuary, nor if one has touched the wall of the sanctuary with the hand by stretching out the arm above the *Shazarwan*, nor if one has passed, on one's way, through the two entries of the *Hijr*. However, authorities are not all agreed as to the touching of the wall.

5. To make the circuit of the Kaba seven times, without leaving the mosque that surrounds it.

The practices introduced by the Sonna are as follows:—

1. Making the circuit on foot.

2. Beginning each circuit by touching the Black Stone with the hand, the lips and the forehead. If the crowd of devout people prevents one touching the stone with lips and forehead, it is enough to touch it with the hand and then kiss the hand. If necessary it can suffice to point the finger at the Black Stone.

3. Not touching the corner stones on the Syrian side of the Kaba, *i.e.* those placed at the north and west corners. As to the corner stone on the Yemen side, *i.e.* the south corner, one places one's hand upon it, and then simply kisses the hand.

4. Beginning a circuit by uttering the following formula:—"In the name of God; God is great; O God, I believe in Thee; I declare the truth to be in Thy Book; I trust in that which Thou hast promised; and I conform to the practices of Thy Prophet Muhammad, to whom grant Thy grace and blessing."

5. When opposite the door of the sanctuary pronouncing this formula: "O God, this temple is Thy dwelling; this sacred territory belongs to Thee; the security found here comes from Thee; and this is the place to seek refuge with Thee from fire everlasting." To this formula an invocation may be added if so desired. An invocation believed to have been used by the Prophet is to be preferred to a recitation from the Koran, but not one not so derived.

6. Making the first three circuits in the way called *ramal*, *i.e.* with short quick steps, and the others at an ordinary pace. This rule is specially to be observed when one is going, immediately after the seven circuits, to perform the ritual walk between the hills Safa and Marwa;

and, according to one authority, when performing the circuits called "of arrival."

7. Saying, during the *ramal*, "O God, may this pilgrimage be looked upon with favour by Thee; may my sins be pardoned; and may the walk that I am about to perform be agreeable to Thee."

8. Wrapping oneself with one's *rida* in the manner called *idtiba*, during the *ramal;* ††as also when executing the ritual walk. The *idtiba* consists in passing the middle of the *rida* under the right armpit, and putting the two ends over the left shoulder, so that the right shoulder is left bare. The *ramal* and the *idtiba* are not prescribed for women.

9. Keeping in the circuits as close to the sanctuary as possible, unless the crowd of devout people prevents the *ramal* being possible, in which case it is better to perform the circuits at a little distance. But if it is feared to come thus into immediate contact with women, it is preferable not to execute the *ramal*, and to perform all the circuits at an ordinary pace, keeping near the Kaba.

10. Performing the successive circuits uninterruptedly.

11. After finishing the circuits, performing two *rakas*, placing oneself behind the *Makam Ibrahim*. The recitation in each consists respectively of Chapters 109 and 112 of the Koran.

When accomplishing the circuits at night, the above-mentioned formulas, etc., are uttered aloud. According to one jurist the last two practices, Nos. 11 and 12, are obligatory, and not merely precepts of the Sonna. When a person in a state of *ihram* is carried round the sanctuary by another not in that condition, the circuit counts for the person carried. The same if the bearer also is in a state of *ihram*, and has already performed the circuits on his own account. †If, however, a person who has not yet accomplished the circuits, though in a state of *ihram*, carries round the sanctuary another in like state, the circuit counts for the person carried if such is the intention of the bearer; but if the latter's intention is to perform the circuit either for himself alone, or for himself and the person carried, the circuit counts only for himself.

Section 3

After finishing the circuits and the prayer, one touches the Black Stone with the right hand, and then kisses that hand. Then one leaves the mosque by the gate called the gate of Safa in order to perform the ritual walk, a ceremony which consists in traversing seven times the distance between the hills of Safa and Marwa, beginning at the former. This walk may be taken either just after the final circuits, or after those

"of arrival." But it must not be separated from the latter by the halt at Mount Arafa. In any case the walk is only done once; and if accomplished immediately after the circuits "of arrival" it is not repeated again after the final circuits. It is commendable—

1. To mount the hill of Safa and that of Marwa to the height of six feet, saying: "God is great, God is great, God is great; glory to God; God is great for having led us hither, and He is worthy to be praised for His goodness towards us; there is no God but He that is the One, whose power none shareth. To Him be the empire of the world; to Him the glory. It is He, the Beneficent, that giveth life and death from His hand; He is the Almighty." Then one offers up a prayer, either for some spiritual, or for some worldly, benefit. [These glorifyings and prayers are repeated twice or even thrice.]

2. To walk at an ordinary pace at the beginning and end of the road, but to run in the middle. The places where the speed should be altered are indicated.

Section 4

It is recommended that the imam or his substitute should preach a sermon at Mecca on the seventh day of the month of *Zul-Hijja*, after midday prayer. It consists of a single discourse exhorting the congregation to proceed next morning to Mina and obtain information as to the ceremonies about to be performed. Next morning the preacher sets out for Mina, followed by the pilgrims. There they pass the night, and as soon as the sun is risen proceed to Mount Arafa. [The pilgrims do not go straight there, but stop on the way at Namira near Mount Arafa, until the sun begins to decline.]

On Mount Arafa, as soon as the sun begins to decline, the imam preaches two sermons, and then accomplishes with the congregation the midday and afternoon prayers combined. The audience remains there until sunset glorifying God and offering prayer, and uttering many times the confession of faith. After sunset one goes to Mozdalifa and performs evening prayer and the prayer of the night combined, the former being said late.

For the validity of the halt at Arafa, the law insists absolutely that one must actually have been on some part of the mountain bearing that name; even if only for some other reason, as to seek a fugitive slave. It is necessary that one should be capable of taking part in religious ceremonies in general, and not in a fainting condition; while, on the other hand, there is no objection to sleeping upon the sacred mountain. The legal time for the halt at Arafa begins on the day bearing that name, from the moment the sun begins to decline; ††and it lasts until dawn

on the next day, called *yum-en-nahr*, or day of the immolation of victims. A person quitting the assemblage on Mount Arafa, and not returning before sunset, owes for this contravention an expiatory sacrifice; but the observance of this precept is merely commendable; only a single author maintains it to be obligatory. If one returns to Mount Arafa before sunset one cannot be blamed, †nor even if it be only during the night. The believers who by mistake have only been on Mount Arafa the tenth day of the sacred month have none the less fulfilled their duty, unless their number was inferior to the number of devout persons ordinarily there at that time, in which case their halt counts only as an act performed late. Those who halt at Arafa on the eighth of the month, and perceive their error before the time prescribed for the ceremony has gone by, should repeat their act of devotion at the legal time. †If they perceive it too late they must still satisfy the requirements of the law by way of reparation.

Section 5

The night is passed at Mozdalifa. A pilgrim who quits this village before or after midnight has not failed in his duty, provided he returns before the dawn. Only the pilgrim who is not there in the second half of the night, owes an expiatory sacrifice; though the necessity of this sacrifice has been considered doubtful as in the case of that already mentioned with regard to Arafa.

The Sonna prescribes that women and weak men should start early for Mina, but not before midnight. The other pilgrims remain at Mozdalifa, and as soon as possible after morning prayer they set out for Mina, taking with them from Mozdalifa pebbles for the lapidation. On arrival at the place called Al Mashar al haram, they halt until dawn, uttering invocations. Then they proceed to Mina, where they arrive a little after sunrise. There each pilgrim must throw seven pebbles on a heap of stones called *jamrat-al-akaba*. During this ceremony the cries of *labaika* are momentarily interrupted, and replaced at each cast by "God is great." Any person who has brought a victim should immolate if after the lapidation.

Next one has one's head shaved or one's hair cut, the former being preferable, though women may content themselves with the second. **This shaving or hair-cutting is an essential part of the ceremonies, whether of a pilgrimage or of a visit. Three hairs at least must fall under the razor or the scissors, or be pulled out or burnt. The cutting may be effected either at the end of the hairs or at the roots. It is even recommended to a perfectly bald person to have the razor passed at least once over his head. After the hair has been cut or shaved, one returns to

Mecca to accomplish the final circuits, and the walk if not yet taken. Then one returns to Mina for the third time.

The Sonna insists upon observing the proper order of the ceremonies —lapidation, immolation, head-shaving or hair-cutting, circuits—as they have been described. One may lawfully proceed to accomplish any of them from midnight preceding the day called *yum-en-nahr, i.e.* of the sacrifice of victims. For the immolation there is no prescribed time. The time allowed for the lapidation lasts until the end of the *yum-en-nahr.* [††The immolation should take place on the *yum-en-nahr,* as Rafii himself points out at the end of the next chapter.] For head-shaving or hair-cutting, for the circuits, and for the walk, no time is prescribed by the law.

When we said above that the act of shaving the head or cutting the hair is an offering to God, we should have added that after accomplishing the lapidation and this offering, the pilgrim has recovered the first degree of his *tahallol* or normal condition ; he can dress as usual, shave, pare his nails, *and even go hunting or execute a marriage contract. [*A marriage contract is still forbidden him. When the pilgrim has accomplished the final circuits, he has then entirely recovered his normal condition. He can do, after that, everything that was prohibited him on account of his state of *ihram.*]

Section 6

On his return to Mina the pilgrim passes there the next two nights, those *i.e.* separating the three days called *ayyam-at-tashrik,* and repeats each day the lapidation at the *jamrat-al-akaba,* and at the two other heaps of stones in the vicinity, each lapidation consisting of seven distinct casts. It is permissible to leave Mina on the second of the *ayyam-at-tashrik* before sunset, after the lapidation, without waiting to pass the night of the third day. Only, if the departure does not take place until after sunset, then the night must be passed at Mina and next day's lapidation duly performed. The lapidation on the *ayyam-at-tashrik* may be commenced as soon as the sun has begun to decline ; and must be finished before sunset, or, according to others, before the appearance of dawn on the morrow.

The following are conditions for the validity of the lapidation :—

1. That it is accomplished in seven successive casts, one by one.
2. Observing the proper order of the different heaps of stone.
3. That the stones thrown are pebbles.
4. That they are really thrown. It is not enough to deposit them at the place mentioned.

The Sonna has introduced the practice of employing pebbles of ordinary size. The law does not require: (1) that the stones should remain where they are thrown; or (2) that the person performing the lapidation should immediately leave the stone-heap.

A person who has not enough strength to accomplish himself the ceremony of lapidation should ask another to do it for him. *Any one who has omitted the lapidation on the first or second day can still make it good on the morrow, without an expiatory sacrifice. This sacrifice is, however, formally prescribed for any one who omits the lapidations altogether. According to our school an expiatory sacrifice is due if three out of the seven casts have been omitted.

The lapidations over, one may leave Mecca, after once more performing the circuits of the sanctuary as a farewell; a further stay in the holy city not being permitted. These farewell circuits are obligatory; their omission requiring an expiatory sacrifice. Only a single author maintains they are merely prescribed by the Sonna, and that consequently their omission has no need to be expiated. Even, however, in the case of those who admit that these farewell circuits are obligatory, the pilgrim is allowed to be exempt from the necessity of any expiatory sacrifice, if, after leaving Mecca without performing them, he returns before having covered a distance permitting him to abridge prayer, ††but not otherwise. A woman in whom menstruation manifests itself during her stay in Mecca, need not wait until it is over in order to perform her farewell circuits; she may leave without accomplishing them.

The Sonna has introduced a custom that the pilgrim, after taking part in the ceremonies we have just described, should drink the water of the sacred fountain Zamzam and visit the tomb of the Prophet at Medina.

Section 7

The essential elements of the pilgrimage are five: the *ihram*, the halt on Mount Arafa, the circuits, the walk, and the act of head-shaving or hair-cutting—at least, according to the authorities who consider this last as a necessary ceremony. If one of these elements is omitted the pilgrimage is wholly void, and this error cannot be made up for by any expiatory sacrifice. The five ceremonies mentioned, with the exception of the halt on Mount Arafa, are also essential elements of the visit.

The pilgrimage and the visit may be accomplished together in three different ways—

1. In the way called *ifrad, i.e.* first performing the pilgrimage, and then putting oneself into a state of *ihram* in order to accomplish the visit, as if one lived at Mecca.

2. In the way called *Kiran, i.e.* by putting oneself into a state of *ihram,* for both acts of devotion, before arriving at the prescribed station. One is then considered, when accomplishing the ceremonies of the pilgrimage, to have performed at the same time those of the visit. The putting oneself into a state of *ihram* in order to accomplish the visit in the pilgrimage months is enough to enable one to combine the two acts, provided that before performing the circuits one places oneself in a state of *ihram* for the pilgrimage also ; but the inverse proceeding is not permitted by the law, according to the opinion maintained by Shafii in his second period.

3. In the way called *tamatto, i.e.* by putting oneself into a state of *ihram* for the visit, at the station indicated by the law, and while accomplishing this act of devotion ; and then after this remaining at Mecca until the time of the pilgrimage and placing oneself in a state of *ihram* for this last duty, as if one lived in the holy city.

The first method is the best, then the third, and lastly the second, though one authority has maintained that the third method is the best. Any one who follows it, however, owes an expiatory sacrifice in the three following cases :—

1. If he does not live in the neighbourhood of the Masjid-al-haram, or sacred mosque built round the Kaba ; *i.e.* when his domicile is at a greater distance than two days' march. [†This distance is not to be computed from Mecca, but from the boundary of the sacred territory.

2. If the visit takes place in one of the pilgrimage months, and in the same year in which he performs the pilgrimage.

3. If he has not returned to the prescribed station, in order to place himself in a state of *ihram* for the pilgrimage.

This expiatory sacrifice is due from the moment of entering upon a state of *ihram* for the pilgrimage ; but it is better to perform it on the day of the immolation of victims. The believer who is unable to perform the expiatory sacrifice during his stay in the sacred territory should fast for ten days ; *i.e.* three days during the pilgrimage, preferably before the day of Mount Arafa, *and the other seven on his return home. It is also commendable that the three and the seven should be consecutive days ; *and if the three first have not been observed during the pilgrimage, a short interval should elapse between their observance and that of the seven. A person choosing the second of the three methods must make the expiatory sacrifice, in the same way as if he had chosen the third. [Unless he lives in the neighbourhood of the sacred territory.]

CHAPTER V.—ACTIONS FORBIDDEN DURING *IHRAM*

During *ihram* abstinence from the following things is obligatory :—

1. Covering the head, even partly, with anything whatever, except in case of necessity. Nor is it permitted to wear any article of clothing that is sewn or woven or tied round the body, unless one has no other. These precepts, however, apply only to men. A woman's face is subject to the same rule as a man's head ; but a woman may wear sewn clothing, *except gloves.

2. The use of scent, whether on the clothes or on the body ; and the use of cosmetics for the hair or beard ; though it is not even blamable to wash the body and head with mallow water.

3. Cutting the hair or the nails. The expiatory fine of three *modd* of foodstuffs is only incurred in full when at least three hairs or three nails have been cut ; one *modd* only being due for a single hair or a single nail, and two *modd* for two hairs or two nails. A person who is unable to observe this abstinence, should have his whole beard shaved and pay the expiatory fine.

4. Coition. This act nullifies the visit always, and even the pilgrimage if one has been guilty of it before attaining the first degree of *tahallol.* It must be expiated by the sacrifice called *badana, i.e.* the immolation of a camel, and subsidiarily a cow, or seven head of small cattle. One must continue to take part in the subsequent ceremonies, and must afterwards repeat all the ceremonies, even in the case of a supererogatory pilgrimage, or of a visit. †This repetition should take place as soon as possible, and in any case after no long interval.

5. Hunting any animal fit for food, other than a domestic animal. [This rule extends to any animal born of such animal and of one that may be killed.] Hunting is forbidden on all the sacred territory even when one is not in a state of *ihram.* Any one who has killed an ostrich must make reparation by a *badana ;* an antelope or a wild ass is expiated by the sacrifice of a cow ; a gazelle by a full-sized goat ; a hare by an *anak* or goat of less than one year ; and a jerboa by a *jafra* or weanling kid. Wild animals that have not been thus appraised are expiated by the most suitable domestic animals, according to the opinion of two irreproachable experts. If the law cannot be satisfied by the sacrifice of an animal, one should pay the value of the animal killed.

6. Cutting or plucking, upon the sacred territory, even if not in a state of *ihram,* any vegetable whatever that has not been sown or planted by man. *For cutting or plucking plants or trees one is liable for an expiatory sacrifice. In the case of a large tree one owes a cow ; in the case of a small tree or a plant, a sheep. [Our school does not distinguish

between what is planted by man and what is not. One is merely permitted to cut the galingale, and thorny plants, such as the *ausaj*, etc., such at least is the opinion of most authorities. †One may also lawfully take such plants as are necessary as fodder for one's beasts, and medicinal plants one may require.]

Hunting is also forbidden in the immediate neighbourhood of Medina; but a breach of this rule involves no responsibility, according to the opinion maintained by Shafii in his second period.

A hunter having to expiate the killing of an animal may, at his choice, either—

1. Kill the animal he owes and give the meat to the poor of the sacred territory; or—

2. Have the value of the animal he owes estimated, buy foodstuffs to this amount, and distribute to the poor as in 1; or—

3. Fast a whole day for each *modd* of foodstuffs owed in virtue of alternative No. 2.

If the animal killed is one which cannot be compensated for, No. 2 or No. 3 must be chosen. As to the expiatory fine for shaving the head or cutting the hair, one may choose between the sacrifice of a *sha*, or a present of three *saa* of foodstuffs, in each case to the profit of six poor persons; or one may fast for three days. †But the expiatory sacrifice incurred for omitting some obligatory duty, such as putting oneself into a state of *ihram* at one of the stations, always consists in the sacrifice of a *sha;* and this immolation cannot be replaced by any other act of devotion, unless it is impossible to find a *sha*. In this latter case one may buy foodstuffs to the value of the animal for poor persons, or, subsidiarily, fast a day for each *modd*. The expiatory sacrifice due for not choosing the prescribed time for the halt on Mount Arafa, also consists of a *sha*, but may be replaced in the same way as for the person who has unlawfully followed the third way of combining the pilgrimage and the visit. †It must take place during the pilgrimage, which must be accomplished afterwards by way of reparation. On the other hand, the expiatory sacrifice for committing some illicit act, or for omitting some obligatory duty, is not confined to any legal term; *but it must be performed in the sacred territory, and the meat belongs of right to the poor who are domiciled there.

As to persons accomplishing the visit, the best place for them to perform their expiatory sacrifices is Murwa. The best place for pilgrims to do so is Mina. This rule applies also to the immolation of victims which the pilgrim or the person accomplishing the visit have brought to the holy city in fulfilment of a vow. ††This immolation, like the others, should take place preferably on the day of the feast of victims.

CHAPTER VI.—CAUSES THAT PREVENT THE ACCOMPLISHMENT OF THE PILGRIMAGE

The believer who is prevented from continuing the ceremonies is considered to be thereby released from his state of *ihram*, and fully restored to his *tahallol* or normal condition. Some authors, however, insist that, to have this result, the cause of prevention must be individual, or that it must apply to all the pilgrims without exception. Illness is not a valid cause of prevention ; **unless a right to interrupt the ceremonies was expressly reserved at the time the *ihram* was undertaken ; but a person who leaves his state of *ihram* in this way must in any case sacrifice a *sha*, at the place where the cause of prevention arose.

[A return to a state of *tahallol* only occurs when the intention to do so is combined with a sacrifice and with the cutting of the hair, etc. ; at least according to the authorities who consider this last act as an essential ceremony. *In default of a *sha*, the immolation may be replaced by the purchase of foodstuffs to the value of the animal, and subsidiarily by a fast of a day for each *modd*. *This is the only way in which one can be immediately released from a state of *ihram*.]

When a slave has put himself into a state of *ihram* without his master's consent, the latter may oblige him to return to his normal condition. In the same way a husband may break the *ihram* of his wife, if she undertakes a supererogatory pilgrimage without his permission ; *and the same is the case if the pilgrimage be obligatory. A person who has been prevented from continuing a supererogatory pilgrimage is not required to repeat it later ; but this is so in the case of a recognised obligatory pilgrimage. As to a pilgrimage which, though obligatory, has not been expressly recognised as such, it must be repeated only if one has the power to accomplish it.

A pilgrim who has allowed the prescribed time for the halt on Mount Arafa to pass by, cannot be released from his state of *ihram* until he has performed the circuits, the walk, the cutting, etc., of the hair ; though the obligation to accomplish these two last ceremonies has been called in question by one authority. In any case the believer under such circumstances owes an expiatory sacrifice, and must afterwards perform his act of devotion.

BOOK 9.—SALE OR BARTER

CHAPTER I.—GENERAL PROVISIONS

For the validity of a contract of sale or exchange the law requires mutual consent, *i.e.* that the vendor should make an offer of the goods, *e.g.* by saying, "I sell you," or "I make you owner" of such and such a thing, and that the purchaser should declare his consent, *e.g.* by saying, "I buy the object," "I accept the ownership," or "I accept it." There is no objection to the purchaser first declaring his wishes, *as by saying, "Sell me such and such a thing," and the vendor replying, "I sell it you," which constitutes a valid agreement. †A sale may also equally well be implied in words such as, "I give you the thing for such and such a sum." But the law forbids that any long interval should elapse between the declaration of the vendor and that of the purchaser; and it requires the acceptance to be similar to the offer, for if one party says, "I sell you the thing for one thousand debased pieces of money," and the other replies, "I buy it for a thousand good pieces," there is no legal sale. In the case of a mute person a sign is as good as consent expressed in words. Each contracting party must be capable of managing his affairs.

[Another condition essential to the validity of a sale is that no violence must be used against either party, except such as is authorised by law. An infidel is forbidden: (1) *to buy a copy of the Koran, or a Moslem slave (unless his ancestor or descendant)—the latter is freed by the mere fact of such purchase; or (2) to buy weapons of war, unless he is the subject of a Moslem ruler.]

There are five conditions necessary for the legal sale of any thing—

1. It must be a pure substance. Thus, a dog cannot be sold, nor wine. Nor can anything that has become impure be sold; if it is impossible to remove the impurity, as in the case of impure vinegar, milk, or fat.

2. It must be of some use and consequently of some value. Thus, vermin cannot be sold, nor useless wild animals, nor *e.g.* two grains of corn, etc., nor an object of mere amusement like a musical instrument or an article only used in playing a game. As to this last category, however, some authors consider sale permissible if the materials have

an intrinsic value. †The sale of water is allowed, even by the banks of a river, and sand may be sold even in the desert.

3. The vendor must be able to deliver it to the purchaser. Thus, a domestic animal or a slave that has escaped or property that has been misappropriated by another person cannot be sold, ††unless to a person able in fact to bring back the animal or slave or recover the property. One may not sell the half of a vase or of a sabre, for these things cannot be materially divided without great loss of value ; †but this is permissible in the case of a piece of cloth, each portion of which retains its proportional value. One may not sell any pledged article without the creditor's consent ; nor a slave who has committed a crime and who can consequently be seized by the injured party as damages. There is no objection, however, to the sale of a slave who is himself in debt, *or who is liable to corporal punishment under the *lex talionis*, or otherwise.

4. The vendor must be the real owner. The sale of another's goods is null. In his first period Shafii was of a different opinion, and considered the sale of another's goods, without the knowledge of the owner, as a conditional sale, *i.e.* a sale having full legal effect if the owner subsequently approves of it, but not otherwise. But the sale of the property of a person to whose succession one will be called, and whom one supposes to be living, but who it subsequently transpires was dead at the time of the contract, is considered to be valid.

5. The thing must be distinctly known to the two contracting parties. Thus "one of two coats" cannot be sold without determining which ; but one *saa* may be sold from a heap of grain, whether the number of *saas* in the heap is known †or not. A sale cannot be effected, in block and without indicating the respective quantities, of "as much corn as can be stored in such and such a room," nor for "as much gold as the weight of such and such a stone," nor for "as much as so and so has sold his horse for," nor for "a thousand pieces of money consisting partly of *drahms* and partly of *dinars*." Where a certain quantity of "pieces of money" has been stipulated for, the price is considered sufficiently determined if one coinage only is current in the locality ; but where two coinages are current, the one intended must be specified. A particular heap of grain may legally be sold at the rate of one *drahm* the *saa*, though the number of *saas* is not known ; but if the sale is for "one hundred *drahms* at one *drahm* the *saa*," ††the contract is void unless there are really just one hundred *saas* of grain. A thing sold is deemed to be sufficiently known to the two parties if it is in their sight and they have inspected it ; *but a thing not there cannot be sold unless both parties have previously seen it. Another doctrine admits the validity of such a sale, but allows the purchaser the faculty of refusing

the goods after inspection. If the thing sold is not there, the fact of previous inspection suffices in the case of things ordinarily durable for that interval. If the whole of a thing may be estimated by partial inspection, it is enough to have seen a part, *e.g.* the outside of a heap of grain, or a sample. This is so also in the case of a natural envelope, such as the rind of a pomegranate, an eggshell, or the lower covering of nuts and almonds. Inspection of a thing means the inspection of those parts of it from which its quality may be judged. †A mere description of the thing as in the contract of *salam* is not enough for an ordinary sale. Consequently the *salam*, but not a sale, may be effected by a blind man. It is only, according to some jurists, when such person has become blind before reaching the age of discernment, that the contract of *salam* is forbidden him.

CHAPTER II.—ILLICIT GAIN

Foodstuffs cannot be legally exchanged for others of the same nature, unless: (1) it is a cash transaction; (2) the two quantities are equal; and (3) each party takes possession of what is due to him then and there.

If the foodstuffs exchanged are not of the same kind, *e.g.* corn and barley, the first and third conditions are still obligatory, but not the second. By foodstuff is understood anything that serves for the internal nurture of the body, whether as principal nourishment, seasoning, fruit, or medicine. Flours produced from different products of the soil are deemed to be of different kinds, as also liquors such as oil and vinegar. *The same rule applies to meat and milk from different animals.

Quantities are ascertained to be equal either by measure or weight, according to their nature—the custom of the inhabitants of the Hejaz at the time of the Prophet being observed with regard to this matter, or if it be not known the custom of the local market. Some jurists maintain one must always go by the measure, others by the weight; others allow choice. Money is subject to the same rules as foodstuffs. Goods from which illicit gain can be derived may not be bartered for in a lump without specifying the exact quantity, even if after the transaction the quantities are ascertained to be equal. Equality must be ascertained when the products are mature and dry. Thus unripe dates cannot be bartered for other dates, ripe or unripe; nor grapes for grapes or raisins. Products not intended to be dried, like cucumbers and some kinds of grapes, may not be exchanged at all with others of the same nature. Only one authority maintains that in this case an equality ascertained after plucking suffices to render the exchange valid. Equality cannot be ascertained after the substances have been

converted into flour, ptisan or bread ; but only when the grains are still intact. However, in the case of oleaginous plants like sesame, equality can be ascertained either when the grains are still intact or after preparing the oil ; or in the case of raisins either while dry or after the preparation of vinegar or must. As to milk one has the choice between its ordinary state, butter or skimmed milk ; but not in any other condition, such as cheese or *akit.* Equality cannot be ascertained after products have been cooked, fried, or roasted ; but there is no objection to their being heated in order to separate them from other substances, as in the case of honey or butter from which wax or milk has thus been extracted.

A sale is void if the prohibition of illicit gain has been violated by both parties, or by one only. No distinction is made between the exchange of products of a different nature and of a different species. Thus one cannot barter a *modd* of preserved dates and a *drahm* for a *modd* of the same substance and a *drahm,* nor a *modd* of this substance and a *drahm* for two *modds* or two *drahms,* nor a certain quantity of good and debased coin for the same quantity of good or debased coin. It is forbidden to barter meat for an animal, whether of the same kind as the meat, *or not, and whether eatable or not.

CHAPTER III.—OTHER ILLICIT SALES

Section 1

The Prophet has forbidden the following sales :—

1. The sale of the services of a male animal required to cover a female. According to some authors this prohibition relates to the sale of male sperm, while according to others it refers to payment for the use of the male. Sperm may not be sold at all, whether the transaction is called a sale †or a hire.

2. The sale of younglings to be brought forth later from the fœtus of an animal. No object may be sold by stipulating that the price shall not become due until such and such a fœtus bears young.

3. The sale of an embryo, *i.e.* of what a female animal bears in the womb.

4. The sale of the product of a future project, *i.e.* of a being still within the loins of the male.

5. A " touch " sale, expression which means : (*a*) the sale, *i.e.* of a piece of cloth already folded, that is bought by merely touching it, and renouncing in advance the right of option accorded by law after seeing it ; or (*b*) a sale concluded by saying, " When you have touched this coat I have sold it you."

6. A "throw" sale, *i.e.* if two persons mutually exchange their goods, and the sale is effected by this alone, without any preliminary examination on either side.

7. A "stone" sale; effected by saying, "Of these pieces of cloth I sell you the one upon which falls this stone thrown in the air"; or a sale that becomes irrevocable by throwing a stone; or by stipulating, "I sell you such and such an object, and you will have a right of option until I have thrown this stone."

8. A "double-face sale"; *i.e.* one effected by the words, "I sell you such and such an object, either for one thousand pieces of money in cash, or for two thousand at the end of a year"; or, "I sell you this slave for one thousand, if you will sell me your house for the same amount."

9. Any "qualified" sale; *i.e.* a sale on condition that the purchaser will sell or lend some other object to the vendor; or the purchase of a cultivated field on condition that the vendor will reap the harvest; or the purchase of a piece of cloth on condition that the vendor will make a coat out of it. †All these kinds of conditional sales are null.

The law does not forbid at a sale the stipulation of conditions that merely modify it, and do not affect the contract itself; such as—a reservation of a right of option; a stipulation that the vendor shall not be held to guarantee the absence of redhibitory defects; a reservation of the right of plucking fruit; the stipulation of a term for payment, of a security or of a personal guarantee for the payment of the price agreed upon, if it is not a cash transaction—provided always that there is no uncertainty as to the term, the security or the guarantee. It may also be stipulated that payment be made in the presence of witnesses, †without its being necessary at that time to designate the witnesses by name. If, under these circumstances, the purchaser does not deposit the necessary security, or the person designated does not bring it, the vendor has the right to relinquish the contract. **The sale of a slave on condition that he will be freed, is quite valid; †and the vendor has the right to proceed against the purchaser to enforce the enfranchisement agreed upon. †On the other hand, the sale would not be valid if the vendor reserved a right of ownership after the enfranchisement, or stipulated that the enfranchisement should be by will, or contract, or at some future time, *e.g.* a month.

The following stipulations are considered admissible:—

1. Any condition resulting from the very nature of the sale, such as taking possession, or redhibition; or even a condition without any reasonable object (itself without effect), as, *e.g.* to take only a certain kind of food.

2. A stipulation that goods should have some special, useful quality,

as, *e.g.* that a slave should know how to write, or that a beast should be with young, or have milk in the udder. Such stipulation confers on the party insisting on it the right to withdraw from the contract if the thing sold has not the stipulated quality. According to a single jurist a stipulation that a beast should be with young nullifies a contract.

†On the other hand, the law regards as null the sale "of a beast or a slave with the embryo." It prohibits the sale either of the embryo alone, or of the beast or the slave "without its embryo." It is illicit to sell in any way a slave pregnant with a free child. When a female is sold, the embryo is *ipso facto* comprised in the transaction.

Section 2

Some kinds of sales, though forbidden by the Prophet, are not necessarily null when concluded; the prohibition referring only to accessory circumstances, not to the essence of the contract. Amongst these are cited the following:—

1. A sale concluded between a townsman and an inhabitant of the desert or of the country, in the following circumstances:—(*a*) when the townsman sees a stranger arrive with objects of prime and general necessity for sale at the current rate of the day, and is able to persuade him to transfer the whole to himself, with the avowed object of retailing them at a higher price; and (*b*) when the townsman goes out to meet people bringing their goods to town, and buys these products before they are aware of the current rate. On learning the fraud of which they have been victims these people have even the right to cancel the contract.

2. Outbidding; *i.e.* it is forbidden to outbid, as soon as the vendor has accepted the offer of another person, even though this may not yet be irrevocable.

3. A sale or purchase effected with the object of supplanting a competitor. It is blamable to persuade a purchaser to cancel a revocable sale, in order to sell him a similar object; or to persuade a vendor to cancel a contract, in order to be able to buy the thing oneself.

4. Trickery, consisting in offering a higher price for something, not in order to obtain it but with the object of deceiving another person as to its value. †Under these circumstances, however, the person cheated has no right to cancel the sale.

5. A sale of dates or grapes to make wine of.

The law does not permit the sale of a female slave that involves her separation from her child before the latter has attained the age of discernment, or—according to one authority—the age of puberty. *Any sale or donation involving such separation is null.

A sale is also considered illegal where one buys goods giving at the same time a sum of money as earnest, which sum becomes part of the price if the purchaser is satisfied with the things, but is otherwise considered as a gift to the vendor.

Section 3

In the case of a sale of two objects at the same time, the sale of one of which is illegal, *e.g.* a sale of vinegar and wine, or of a slave and a freeman, or of one's own slave and that of another person, or of a slave without the consent of another co-proprietor, *the contract is valid with regard to what has been legally sold, without prejudice to the purchaser's right, if ignorant of the circumstances, to cancel the sale. Even if he knew of it, or would prefer the contract to remain valid, he has a right to claim a proportional diminution of the total price agreed upon. A single authority maintains that the purchaser cannot insist upon any such diminution if he prefers to keep the object which has been legally sold him. A vendor can never cancel a contract of this sort. The sale of two slaves is not *ipso facto* cancelled by the accidental death of one, before the purchaser has taken possession, at least according to our rite ; but the purchaser may decline to fulfil the contract, or, if he prefer, claim a proportional reduction of the price.

*Contracts of different kinds may be combined, as *e.g.* a contract of hiring with a sale or with a *salam* contract. In such a case the price agreed upon is divided proportionally between the obligations undertaken. Even in the case of a sale combined with a marriage contract, not only is the validity of the marriage admitted, *but also that of the sale, and of the stipulation of dower. Whether in any case there is a combination or a plurality of contracts depends upon whether one price only has been stipulated, or a separate and distinct price for each contract. If it is said, "I sell you this for so much and that for so much," two bargains have been concluded. Subject to this rule plurality may also be determined by the number of persons taking part in the transaction as vendors or purchasers ; and if two persons appoint one person to act for them, or one person appoint two agents, †it is the number of these agents that must be considered.

CHAPTER IV.—RIGHT OF OPTION OR CANCELLATION

Section 1

The right of option, called *majlis, i.e.* "of the sitting," is the inalienable right to cancel a contract concluded by both parties, so long as they have

not yet separated. This right of option obtains for all agreements of the nature of a sale, *e.g.* exchange of gold or silver or of foodstuffs, the contract of *salam*, mere transfer of a thing purchased, sharing, compromise for an equivalent, etc. It even exists if one purchases a slave of whom one is the ancestor or the descendant, and whose enfranchisement consequently take place *ipso facto* on that purchase. When, in these circumstances, it is admitted that the ownership of the slave remains with the vendor as long as the right of option lasts, or even that it remains in suspense during that interval, the doctrine must also be admitted that either of the contracting parties can cancel the agreement upon the spot. But if, on the contrary, it is held that the ownership of the slave is at once transferred to the purchaser by his taking possession, then it follows that the vendor alone enjoys a right of option. No such option exists in the delivery of a debt, nor in a marriage contract, nor in a gift, †whether accompanied or not by a remuneration, †nor in the exercise of a right of pre-emption, †nor in a contract of hiring, nor in a farm lease, nor in stipulating dower.

Neither does a right of option exist in the following two cases :—

1. If the parties declare their approval of the contract. If only one does so, he loses his right of option, but that of the other party remains, until he makes a similar declaration.

2. If the parties separate without any express reservation. A right of option remains, however, as long as the separation has not taken place ; even though the parties remain together for a long time, or get up and walk about together. Custom indicates what is to be understood by the word "separation."

†In the case of sudden death of one of the parties, his right of option is transferred to his heir ; similarly, in a case of sudden madness the right passes to the curator. If proceedings are taken and one party asserts and the other denies the fact of separation or cancellation, the presumption is in favour of the one that denies.

Section 2

The contracting parties may by special stipulation reserve a right of conventional option, *i.e.* the faculty of cancelling the contract within a certain time. Such stipulation may be made either by one of the contracting parties or by both. It is admissible in all agreements of the nature of a contract of sale, except only those in which possession must be taken upon the spot, as in the exchange of goods subject to the prohibition of illicit gain, and in the contract of *salam*. The faculty can only be reserved for a specified time, not exceeding three days, from the

conclusion of the bargain, or—according to others—from the separation of the parties.

*The ownership of the thing sold remains with the vendor, if a right of option has been stipulated by him; or with the purchaser if the stipulation was his; and it remains in suspense if both made the stipulation. However, if the contract is not subsequently cancelled by an exercise of the right of option, the ownership of the goods is considered to have been the purchaser's from the time the bargain was concluded; while if, on the contrary, the contract is cancelled, the vendor's ownership is considered to have been uninterrupted.

Cancellation or approval of a sale concluded under reservation of a right of option should be announced in explicit terms, such as, "I wish the bargain to be cancelled," or "suppressed," or that "the goods be returned"; or "I approve the contract," or "I wish it to be carried out." Cancellation may also be manifested by facts indicating that one considers oneself owner of the goods, *e.g.* by cohabitation between the vendor and the slave he has sold, or by her enfranchisement; as also by a second sale of the goods, or by hiring them to another person, or by giving in marriage a female slave. †Similar acts on the part of the purchaser are considered as showing that he approves the bargain concluded; but exposing the goods for sale does not constitute an act of ownership, either on the part of the vendor or the purchaser, and consequently does not suffice to establish approval or cancellation.

Section 3 (1)

A purchaser has a right of option on account of defects in the thing bought, of which he has become aware only after taking possession, but which existed previously. The following, for instance, are redhibitory defects in a slave:—castration; tendency to debauchery, theft or desertion; incapacity to retain urine when lying down; a bad breath; a fetid odour from the armpits. An animal such as a horse or mule, etc., is considered to have redhibitory defects, if it is stubborn or bites. In a word any defect is called redhibitory that affects the substance or the value of the thing sold in such a way as to render it unfit for the use to which it is lawfully destined, at any rate if the object is usually exempt from such defect. No distinction is made between defects already existing at the time of the contract and those that may occur later; but defects originating after taking possession cannot give rise to redhibitory option; unless they are the consequence of some previous fact, *e.g.* if some bodily member of a slave has to be amputated under the law of talion for a crime committed before taking possession. †In this

latter case the slave may be returned to the vendor ; but not if he dies of an already contracted malady. †On the other hand, redhibition is admissible if the slave has to be put to death for previously abjuring Islam.

*A sale under an express condition that the vendor shall not be responsible for redhibitory defects is permitted only in the case of animals and slaves, and only in regard to hidden defects existing at the time of the contract unknown to the vendor, who is otherwise fully responsible. Thus this stipulation does not affect the vendor's responsibility for defects supervening between the conclusion of the contract and taking possession ; †for this responsibility cannot be excluded from the agreement under any pretext, as during that interval the goods are at his risk and peril.

Should the purchaser not become aware of certain redhibitory defects until after the accidental loss of an object of which he has taken possession, or until after enfranchising a slave, he can still none the less sue the vendor for damages, *i.e.* he can claim a proportional reduction in the price. †Under these circumstances the value of the object is reckoned at the lowest rate obtaining between the contract and taking possession. And the right of redhibition remains also in the case of accidental loss of what has been given by way of price, in which case the purchaser can still none the less return any defective articles he may have received, and claim either objects analogous to those he gave by way of price or the value of those objects. But where a purchaser perceives the existence of defects only after transferring the property to a third person, †he is not entitled to any damage ; though the right of redhibition is renewed if the property returns to the ownership of the first purchaser. However, according to some, this last rule applies only to the case where an article is returned to the first purchaser by reason of redhibition.

Redhibition should be effected without delay, as quickly as custom requires. It is understood that if one becomes aware of some such defect while praying or at a meal, redhibition may be deferred until one has finished ; or until daybreak, if it occurs during the night. If the vendor or his agent is in the place the article should be returned either by the purchaser or some one acting on his behalf. But it is better not to concern oneself about the vendor but take the matter at once before the court. If the vendor is absent and has no representative in the place, there is all the more reason to adopt this latter course. †If possible, witnesses should be called to prove the fact of redhibition, and they should look after the object until it has been restored to the vendor or to the Court. †If it is impossible to call witnesses, cancellation need not be pronounced before meeting the vendor or his agent or coming into court.

After discovering redhibitory defects, use of the thing bought is absolutely forbidden. Thus the right of redhibition is lost if one continues to make use of the services of a purchased slave, or even if one leaves the saddle or shabrack on the back of a mount. But it is permissible to ride an animal back to the vendor if it is so mischievous one can neither lead nor drive it. In every case where the purchaser loses his right of redhibition in consequence of his own fault or negligence, he loses also all claim to damage.

The right of simply returning the defective article ceases when the latter is allowed to deteriorate still further in possession of the purchaser ; unless the vendor consents to take it back as if no deterioration had occurred, in which case the purchaser may either return it or keep it without compensation on the part of the vendor. But if, on the contrary, in consequence of the deterioration, the vendor declines to take back the object sold, the purchaser can only force him to do so if he offers to pay compensation for the further deterioration while in his possession ; or he can, if he prefer, keep the thing himself and claim damages for the original redhibitory defects for which the vendor was responsible. If the parties are in agreement as to the best way of arranging their difficulties in the matter, no one has any right to force them to adopt any other ; †but otherwise the court should authorise the arrangement proposed by the actual possessor who wishes to keep the thing in dispute. The purchaser should also inform the vendor without delay of any accident that may befall the article sold, so that the latter may be able to declare his wishes ; for if the purchaser puts off doing this, without valid excuse, he loses both his right of redhibition and his right to claim damage. If damage to the thing sold is necessary before redhibitory defects can be discovered, as for instance in the case of an egg, a coconut, or a melon, and one is not aware of the noisome or rotten condition of the thing until it is opened, right of redhibition remains intact, *and one is not liable for damage. But if it is possible to ascertain the existence of redhibitory defects in some way that does less damage to the goods, then the general rule relating to defects supervening after taking possession must be observed.

Section 3 (2)

Where two slaves with redhibitory defects have been bought together, both should be returned to the vendor. *Even if only one of the two is affected, both must be returned ; and the vendor may refuse to accept the one without the other. If a slave with some redhibitory defect has been bought from two co-proprietors, each may be proceeded against in proportion to his share ; *and, similarly, if two persons

have purchased a slave from another, each may sue on his own account.

Where defects are asserted by the purchaser and denied by the vendor, the presumption is in favour of the latter, provided he confirms his statement on oath.

Any increase which continues to form part of the object bought, *e.g.* the fattening of an animal, must be returned with it in case of redhibition ; but things that exist separately from it, such as the young of an animal, or the rent of a house, are unaffected. These latter belong to the purchaser, whether the redhibition takes place after he has taken possession †or before. But children or young animals born of a mother already pregnant at the time of the contract must be returned.

Employing a slave as a domestic servant, or cohabiting with one not virgin does not prevent redhibition, provided of course the purchaser was at the time unaware of the defects. On the other hand, the deflowering of a girl after taking possession is considered a damage that renders simple redhibition impossible ; if done before taking possession this even constitutes a crime against the property of another.

Section 4

It is rigorously forbidden to sell an animal put aside for a few days in order to increase the amount of its milk at the moment of sale. Such fraud gives the purchaser a right of cancellation, provided he makes use of it without delay. According to some authorities the right can still be exercised three days after discovery. If the purchaser has already consumed the milk from the animal, he should return the beast to the vendor together with a *saa* of dry dates, or—according to some—a *saa* of any kind of foodstuff forming the main ordinary nourishment in that locality. †A *saa* is the amount due, however much milk has been consumed. And this right of cancellation is not limited to cattle, but admitted for all animals serving for nourishment, and also for a female slave and a she-ass. Only, in these cases, it is not necessary to pay the vendor any compensation for loss of milk,—though this has been contested as to the female slave.

The following acts are considered to be of the nature of fraud and to give rise to a right of cancellation of sale :—

1. Damming irrigation water or mill water in order to let it flow at the moment of sale.

2. Painting the face of a female slave red, or dyeing her hair black, or curling it.

†But dirtying a slave's clothes with ink, to make a purchaser believe he knows how to write, is no ground of cancellation.

CHAPTER V.—PROPERTY SOLD, BEFORE THE PURCHASER HAS TAKEN POSSESSION

Section 1

The vendor is responsible for the thing sold, until the purchaser has taken possession ; so that if it is accidentally lost, the contract is *ipso facto* cancelled, and the price need not be paid. *The purchaser cannot relieve the vendor of this obligation, as it is a rule of public interest. However, if the loss has been caused voluntarily and knowingly by the purchaser, this circumstance is considered to amount to a taking possession by him, and the responsibility consequently devolves upon him. But in the contrary case, *i.e.* if the purchaser has caused the loss involuntarily, there is the same divergence amongst authorities as with regard to a person who involuntarily eats food unlawfully taken from him by his host. The same rule that obtains in case of casual loss is applied by our rite to loss caused by the vendor ; *but loss caused by a third person does not necessarily imply a dissolution of the contract, but confers on the purchaser the right of either demanding the execution of the engagement or of withdrawing from it. In the first case the purchaser, in the second the vendor, can proceed against the third person.

If it is not a case of total loss, but only of a deterioration in the value of the object sold, the law establishes the following distinctions :—

When the deterioration accidentally supervenes before taking possession, and the purchaser declares he does not wish to make it a ground of cancellation, he cannot claim to have a part of the price remitted ; and still less of course where the deterioration is caused by himself. On the other hand, deterioration caused by a third person confers on a purchaser a right of cancellation ; or, if he does not wish to withdraw from the agreement, a right of proceeding against that third person. If deterioration has been caused by the vendor, our rite prescribes that the purchaser may choose between a cancellation and an execution of the contract, both without any claim to damage.

A purchaser is forbidden to resell anything bought before he has taken possession of it ; whether the second sale be to the original vendor or to some one else. Hiring, pledging or giving is prohibited as much as selling, so long as possession has not been taken ; but the enfranchisement of a slave may take place first. What is given in exchange for goods, by way of price, is subject to the same law as the goods themselves, at least if it is a certain definite object ; that is to say that the

vendor cannot transfer its ownership to any one else before taking possession.

On the other hand, one may lawfully alienate, even before really taking possession, the following :—

1. What one has temporarily entrusted to the care of another by way of deposit.
2. Funds contributed to a society or company.
3. Funds contributed to a joint stock company.
4. A thing pledged, if one has paid the debt.
5. Property inherited.
6. The balance due from a guardian upon the majority of a minor.
7. An article one has lent for use.
8. Property bought at an auction sale.

For one is already owner of these things before actually taking possession.

Before taking possession it is unlawful to sell foodstuffs upon which one has advanced money, or to substitute other foodstuffs for those stipulated in the contract of *salam* or advance ; but it is permissible to replace the money advance by something else, at least according to the opinion maintained by Shafii in his second period. If, however, the money advanced, and the effects with which it is agreed to replace it, are capable of giving rise to some illicit gain, the mutual taking possession must be proceeded with at once. As an example may be cited the substitution of *drahms, i.e.* silver coin, for *dinars* or gold coin. †When, on the other hand, the things substituted and those for which they are substituted are not both of them capable of giving rise to illicit gain, *e.g. drahms* replaced by cloth, the law does not insist upon certain definite articles at the time of stipulation, and it is not necessary to take possession at once.

Section 2

One may also lawfully agree to replace, not only what one has borrowed, but also anything one has caused the loss of, and is consequently responsible for. In doing so the following distinctions should be observed, with regard to taking possession on the spot.

Except in accordance with the provisions of Chapter IV. of Book 12, *the sale of a credit to any one but the debtor is void. Thus one cannot purchase the slave of Zaid with a hundred pieces owed one by Amr. Neither may Zaid and Amr exchange debts owed them by a third person ; any agreement to that effect is void.

The taking possession of immovable property is not effected by a mere surrender of it to the purchaser ; the law insists that he must be

put in the state of being able to dispose of it, after the vendor has removed his belongings. †If the two contracting parties are not present at the place where the purchased property is, whether movable or immovable, possession should be taken within a reasonable time. The taking possession of movable property is effected by simple delivery, or by conveyance to the place where the purchaser is. That is to say, if the sale has not been concluded at the vendor's it is enough to convey the goods to the place where the purchaser is ; but if the sale has been concluded at the vendor's, then this is not enough, and the things must be taken to the domicile of the purchaser. And further, where the sale takes place in the vendor's house, the purchaser cannot waive his right to receive the goods at his own house, seeing that the vendor has no benefit in keeping in his house what he has sold. If the vendor consents to the things remaining, he is considered to have lent the purchaser his house or his store for that purpose.

Section 3

The purchaser has no right to take possession of the goods before paying the price, unless the vendor has allowed him time for payment.

When something is bought by measure or weight, such as a piece of cloth or a strip of land so long, or a certain amount of cheese, the measuring or weighing must take place at the same time as the delivery. As example of a sale by capacity may be cited one concluded thus : "I sell you this piece of cheese at one *drahm* the *saa*," or "I sell you these ten *saas* of cheese for such a sum." If it is a question of the sale of a certain quantity of foodstuffs, etc., that the vendor can claim from Zaid and sells again to Amr in equal quantity, the measuring must take place twice, first to transfer the ownership of the goods from Zaid to the vendor, and then to transfer it again from him to Amr. The taking possession would be illegal if in these circumstances one simply said to Amr, "Take what Zaid owes me," and Amr proceeded to comply with this invitation.

Section 4

When the vendor refuses to deliver the goods to the purchaser until the latter has paid the price of them, and the purchaser on his part declares he will not pay before taking possession, it is the vendor who should take the first steps. One jurist, however, has maintained the opinion that it is the purchaser who should begin by paying ; another considers that there is no obligation upon either to begin, but whoever fulfils the agreement thereby obliges the other to do so also ; a third

thinks that both parties should be forced to carry out the agreement simultaneously.

[If the price consists of a certain definite object, the first two of these opinions are inadmissible; *and both parties should simultaneously deliver the articles agreed upon.]

After delivery by the vendor the purchaser should pay the price agreed upon, if he has it with him. If he has not, the following circumstances should be distinguished :—

1. If the purchaser is insolvent. In this case the vendor can declare him bankrupt; the sale is *ipso facto* cancelled, and the vendor can reclaim the thing sold and delivered.

2. If the purchaser is solvent, and his property (*a*) is in the town or its neighbourhood. In this case the court may prohibit him from engaging in any further trade, until he has paid the debt, but the sale is not cancelled. But if his property (*b*) is at a distance that permits the abridgment of prayer, the vendor need not wait †but may either cancel the contract or if he prefer it await the arrival of the money, after having had the purchaser forbidden to engage in any further trade, as indicated under (*a*).

It must be understood, however, that this does not prevent the vendor always having a right to detain the object he is selling until payment, if otherwise he runs a risk of losing both the price and it. And the purchaser has the same right with regard to the price. So that the difference of opinion among jurists has regard only to disagreement between vendor and purchaser as to which of the two should begin the execution of a contract of sale, without prejudice to the adverse party.

CHAPTER VI.—SIMPLE TRANSFER; PART TRANSFER; TRANSFER AT A PROFIT, OR AT A LOSS

Simple transfer consists in buying a thing and then saying to a third person who is aware of the price agreed on, "I wish to transfer to you my rights and obligations under this contract. If he accepts a price must be paid equal to that agreed upon. An agreement of this sort is subject to the same rules and has the same legal consequences as an ordinary sale; but it is unnecessary to mention any price as the grantee knows this already. Any subsequent reduction in the price made by the vendor in favour of the original purchaser goes to the entire profit of the grantee.

Part transfer is identical to simple transfer, with the sole difference that only a part of the thing purchased is transferred, not the whole. Part transfer is valid, not only where the part transferred is indicated,

but also where a third person is made to participate in the sale, without expressly mentioning any particular portion of the thing sold. In the latter case each participant takes half; though according to some authorities such a proceeding is illicit.

It is lawful to make a transfer at a profit, *i.e.* to buy, *e.g.*, something for one hundred *drahms*, and then to offer to transfer it to a third person at a profit of "one drahm in ten," or "eleven for ten"; while transfer at a loss consists in saying, "I sell you what I have just bought at a loss of ten for eleven," and in that case the difference between the price of the purchase and that of the transfer is one in eleven, or, according to others, one in ten.

If the transfer has been made "for the price of the purchase," the transferee owes only the price and nothing more; but if the words used by the purchaser were "for what it has cost me," he owes, besides the price of the purchase, what the original purchaser has paid by way of remuneration to the measurer, the broker, the watchman, the cleaner, the repairer and the dyer he may have employed, and also the price of the dye and other substances he may have used to increase the value of the thing purchased. These expenses, however, are not taken into account if the original purchaser has himself cleaned, measured, or transported the article, nor if another person has done so gratuitously.

It is obligatory, in every transfer, that both contracting parties should be aware of the price of purchase, or what takes the place of it. ††Otherwise the agreement is void. The law admits a presumption in favour of a declaration by the transferrer with regard to price and term of payment, whether the price has been paid in coin, or other articles given instead, and with regard to redhibitory defects supervening while the goods were in his possession.

*If a transferrer declares he has bought the goods for one hundred pieces of money, while in reality he had them for ninety, he loses the ten pieces and any other profit he would otherwise have made; but this does not give the transferee a right to cancel the agreement. †If, after an agreement has been concluded, the transferrer declares that the article transferred at a profit for one hundred really cost him one hundred and ten, and that thus the transferrer is really at a loss, the agreement is void, unless the transferee consents to accept the truth of this subsequent declaration of the transferrer. [†This circumstance does not render the transfer invalid.]

But if, on the contrary, in such circumstances the transferee does not accept the subsequent declaration of the transferrer with reference to the price, and the latter can allege no adequate excuse for his former erroneous statement, his later declaration is inadmissible, even if he

could prove the truth of it. †His only remedy then is to call upon the transferrer to take an oath that he was ignorant of the real price of purchase. Where, however, the transferrer can allege an adequate excuse for his former erroneous declaration with regard to the price, he may at his choice either challenge the transferee to take an oath, or prove the truth of his later declaration.

CHAPTER VII.—SALE OF TREES, FRUIT, AND STANDING CROPS

Section 1 (1)

If one says, "I sell you this land," or "this courtyard," or "this plot of ground," the buildings and trees upon it are *ipso facto* comprised in the bargain. This rule, however, according to our school, does not apply to the case of a pledge or security. Plants whose roots remain in the soil for more than one year, such as the *katt* and chicory are considered to be trees and consequently included in a sale of land; but this is not the case with plants whose roots give only a single crop, like wheat, barley and other grain. Although in consequence the vendor remains owner of these plants, our school does not forbid the sale of a field that has growing grain on it; but the purchaser can make this a cause of cancellation, if he was not aware of it. †Previous sowing does not in itself form an obstacle to the delivery of a piece of ground, and the loss or accidental deterioration of the crops renders the purchaser liable as depository, from the moment of surrender by the vendor. Planting shoots is the same thing as sowing. †If the purchaser does not renounce the purchase upon perceiving that the land has been sown, he loses the right to damage he would otherwise have on the ground that he had had no use of the land until the harvest.

The combined sale of a field and the crops on it is void, both as regards the land and as regards the crops; though some jurists maintain that this rule is of doubtful application, so far as the land is concerned.

A sale of land includes the stones that may happen naturally to be upon it, but not those brought there by the hand of man. A purchaser has, however, no right to cancel the contract, if at the time of concluding the bargain he knew such stones were there; but he may oblige the vendor to remove them. If the purchaser was unaware of the condition of the ground, the same principle should be observed, if the stones can be removed without injury to the soil. If this is impossible, the purchaser may, at his choice, either cancel the contract on the ground of redhibitory defects, or oblige the vendor to remove the stones and level the soil. As to the obligation of the vendor to indemnify the

purchaser, under these circumstances, authorities are not in agreement. I prefer the view which admits that a reasonable indemnity may be claimed ; of course only in a case where the stones are removed after possession has been taken, for before this a purchaser has no right to any compensation.

In a sale the following things are understood to be included :—

1. In the sale of a " garden " are included the ground, trees, walls, and—according to our school—the buildings, that may be in it.

2. In the sale of a " village " are included all buildings and empty ground within the circuit of the walls ; ††but not the fields outside.

3. In the sale of a " house " are included the ground, and all buildings, including baths ; but not movable furniture, such as pails, pulleys, and beds. Included are also fixed doors, with their hinges, washing-house vats, fixed shutters, fixed stairs, ††upper and lower mill stones, †and the keys of fixed locks.

4. In the sale of an " animal " is included any shoeing of iron or other material applied to the soles of the feet.

5. In the sale of a " slave " are included the clothes he is wearing. [†The sale of a slave does not include the clothes he is wearing.]

Section 1 (2)

The sale of a tree includes that of the roots and leaves ; but as to the leaves of a mulberry tree authorities are not agreed. Such sale includes also the branches, except those already withered. A tree can be sold either on condition that it be torn up or cut down or on condition that it shall remain where it is. The latter is assumed, if no condition be mentioned. The sale of a tree does not extend to the soil in which it is planted, but the purchaser has a right to use the ground as long as the tree remains ; and if the tree dies, he must remove it.

The fruit of a palm that has been sold belongs to the vendor or to the purchaser according to agreement. If no stipulation has been made, the fruit belongs to the purchaser if it has not been fertilised by the vendor, but otherwise to the latter. As to trees that bear fruit but no flowers, such as the fig and vine, the fruit belongs to the vendor if it has already appeared at the time of sale, otherwise to the purchaser. But in the case of fruit that grows out from flowers that then fall off, as with apples and apricots, it belongs to the purchaser if not yet formed, †and also even if formed, if the flower has not yet fallen. If the bargain is concluded later than this, the fruit belongs to the vendor.

When one sells " the palm trees of a garden that have already produced spathes of which some are fertilised," all the fruit is the vendor's,

unless the purchaser has made a special stipulation reserving for himself the spathes not fertilised. †If, on the contrary, it is a question of the palm-trees, not of a single garden, but of two distinct gardens, of which only one has fertilised palms, then each must be separately considered. If the fruit remains the vendor's, he is obliged to gather it at once, if such is the agreement; but otherwise he may leave it on the trees until the proper season for plucking it. Both contracting parties have a right to water the ground when necessary if it is profitable for the tree or the fruit, and neither may place any hindrance in the way of this being done; but if the watering is harmful to the tree or the fruit, it can only be done by mutual consent. If watering is harmful to the tree only, but not to the fruit, or *vice versâ*, the contract should be cancelled if the two parties cannot agree about it, unless the injured party is willing to enter into an arrangement. Some jurists maintain, however, there is always a right of watering under any circumstances. The purchaser can compel the vendor to gather the fruit, or water the tree, if the tree only has been sold and the fruit absorb the sap.

Section 2

The fruit of a tree may be sold as soon as it has begun to ripen, either without expressing any condition, or on condition that it be gathered, or on condition that it remain some time longer on the tree. On the other hand, it cannot be sold apart from the tree until it has begun to ripen, unless it is stipulated that it must be gathered immediately, and the fruit so gathered prematurely is of some use. For example this is not the case with pears. Some authorities, however, maintain the validity of a sale of ripening fruit, unreservedly, if the purchaser is already the owner of the tree. [If, in such a case, the vendor has stipulated that the fruit must be plucked immediately, the purchaser is not obliged to carry out the obligation.]

A combined sale of fruit and tree is lawful, without the addition of any special agreement; but a stipulation that the fruit must be plucked at once is in this case inadmissible. The law forbids a sale of green standing grain, unless it is stipulated that it be at once plucked out or reaped; but the sale of grain, whether with the ground, or after ripening, is permitted unreservedly.

For the validity of a sale of ripening grain or fruit the law requires that the true subject of the bargain can be seen, *i.e.* that one can see the fig, the grape, or the barley. Products of the soil having hidden grains, such as corn in the ear or lentil seeds in their pods, cannot be sold without these envelopes. Shafii even advocated, in his second

period, the prohibition of a sale with the envelopes. This prohibition, however, does not relate to products of the soil whose envelope is only removed at the moment of eating; nor to those with two envelopes, such as nuts, almonds, and beans, which may lawfully be sold in their inner, but not in their outer, envelope. A single authority maintains, however, that a sale in the outer envelope is legal, if the products be not yet dry.

The first sign of maturity in fruit that does not change colour is the fact of its being seen from the outside to attain its full development, and of having acquired its agreeable taste; and an appearance of red and black in fruit that changes. It is enough that a part of the fruit, however small, arrives at maturity, to render lawful the unconditional sale of that fruit. If the fruit of one or more gardens is sold, in some of which only maturity has begun, the rule given in the second part of the preceding section with regard to fertilisation must be observed.

A person who sells fruit beginning to ripen should, although remaining owner of the tree, continue to water it, as well before as after the transfer of the fruit to the purchaser, until the gathering. However, after the transfer of the fruit to the purchaser, the latter has the right to dispose of them; and it is he upon whom the loss falls, in case of frost or other similar occurrence. This at least is the opinion entertained by Shafii during his Egyptian period. If the fruit deteriorates because the vendor neglects to water the tree, the purchaser has even the right to cancel the contract; but in the case of fruit sold before the appearance of signs of maturity, under the express condition that the purchaser shall gather it immediately, any loss from deterioration caused by insufficient watering by the vendor falls, according to the best doctrine, upon the purchaser, if the latter delays the gathering agreed upon.

In general, the law does not permit a sale of fruit, even mature, in the case of a tree or plant that does not ordinarily yield its fruit all at one time, but at different intervals, so that new fruit appears on the same tree or plant along with that already grown, as *e.g.* in the case of figs, or of cucumbers. The validity of such a sale is admitted only—

1. On condition that the purchaser must immediately gather the fruit sold him.

2. In a case where the peculiarity exists only for a few scattered fruits. *But the purchaser always has a right of cancellation, †unless the vendor allows him to take the new fruit as well.

It is forbidden to barter—

1. Corn in the ear for husked corn; an exchange called *mohakala.*

2. Dates on the tree for dry dates; an exchange called *mozabana.*

On the other hand, as an indulgence, the law allows the contract

called *araya, i.e.* the barter of dates on the tree for dry dates placed at the foot of it ; or the exchange of grapes on the vine for raisins ; provided in both cases that the amount is less than five *wask.* If the quantity be greater than this, the law admits the validity of such an exchange only if it takes place by two or more different transactions. The contract of *araya* necessitates an immediate taking possession by each party, *i.e.* the measuring and delivery of the dry dates on the one hand, and on the other the transfer of those on the tree. *An exchange of this kind cannot be effected with regard to any other fruit, except dates and grapes. Some authors maintain that only persons with insufficient money to buy green dates can have recourse to this form of contract ; but this is not so.

CHAPTER VIII.—DISPUTES BETWEEN VENDOR AND PURCHASER

WHERE the two contracting parties are agreed upon the validity of a sale ; but not upon its details, as *e.g.* the amount or nature of the price, stipulation of a time within which payment should be made, or the quantity of the goods sold ; and if neither party is able to prove his case, they should both take an oath as to the falsehood of what is alleged by the adverse party, and the truth of their own statements. The vendor is the first to be sworn ; though, according to one jurist, it is the purchaser ; and another thinks that they have an equal right to the priority. According to this last authority the court should decide according to circumstances who should have the priority. And some authorities maintain that the priority should be decided by casting lots. *A single oath, combining a denial and an affirmation, is sufficient on the part of each, but the denial must always be pronounced first. Thus one should say, "I did not sell for this sum, but I sold for that."

††When the oath has been taken by both parties, the contract is not considered as being immediately dissolved. The court should first endeavour to persuade the parties to a reconciliation. If this is unsuccessful, then each of the parties has a right to cancel the contract, or, if necessary, the court decrees its dissolution. Some maintain that cancellation must always be decreed by the court. Upon cancellation, however effected, the purchaser must return the thing bought ; or its value, if he has already disposed of it either by conversion into immovable property or by enfranchisement or by sale, just as if it had been accidentally destroyed. *The value of an article is that it had on the day it was lost. In case of accidental deterioration, but not total loss,

the purchaser must all the same return the article to the vendor, and indemnify him for the loss in its value.

Disputes between the heirs of the contracting parties are regulated by the same principles as disputes between the parties themselves.

If a dispute has arisen, not about the details, but about the very nature of a contract; as, for example, when one of the parties asserts, "I sold you the article for so much," and the other replies, "No, you gave it me;" no affirmative oath is then necessary, and each party need only swear that he denies his opponent's assertion. After this, the one who has received the donation must return the article received, together with any increase or profit he may have derived from it. †If one of the parties maintains and the other denies the legality of a sale, the presumption is in favour of the former, if he confirms his statement on oath. If, after a cancellation of a contract in the manner referred to, the purchaser brings to the vendor a slave with redhibitory defects as the one he purchased and the vendor asserts that it was another that he sold and delivered, the law admits a presumption in favour of this latter statement. †Similarly, in the contract of *salam*, it is the creditor who enjoys this advantage.

CHAPTER IX.—SLAVES

†A SLAVE who has not been designated by his master to carry on commercial transactions, can buy nothing without first obtaining his master's authorisation. Consequently a person who has sold anything to such a slave without the necessary authorisation, can claim back the goods, not only if they are in the slave's possession but also if the master has them. If the goods are accidentally lost while in possession of the slave, the latter is personally responsible for the payment of the price, even after his enfranchisement; but if they are so lost while in the master's possession, the vendor can claim payment either from the latter, or from the slave after his enfranchisement. A debt contracted by a slave is subject to the same rules as a purchase made by him.

A slave authorised to transact business in general can enter into any engagement up to the value of the things entrusted to him; but if the authorisation extends only to specified acts, he may not pass the limits prescribed. Even a slave authorised unconditionally may not of his own initiative conclude a marriage, nor engage his own services, nor authorise a slave of his own, nor give away for nothing the things entrusted to him, nor enter into commercial relations with his master. Desertion does not necessarily cancel an authorisation: for this the master's withdrawal is required. On the other hand, a slave is not

regarded as having been authorised, merely because his master has not objected to his transactions. The law insists upon a formal declaration on the part of the master. An affirmation of an authorised slave, with regard to his commercial undertakings, is admissible in a court of law.

A person who knows that a certain individual is a slave should not enter into commercial relations with him, until he has ascertained if he has been duly authorised. This can be done either by asking the master, or by requiring the slave to furnish proof of the position he claims, or by learning the matter from public notoriety. This public notoriety, however, is a controverted point. In any case an oral affirmation by the slave to the effect that he has been authorised is insufficient.

When an authorised slave has received the price of an article he has sold and it is accidentally lost while in his possession, the purchaser can, in case of a legal seizure of the article, cite as guarantor either the slave or his master. Some authorities, however, maintain the contrary opinion so far as regards the master ; others consider that the citation of the master is inadmissible unless the slave's goods have been seized. The same divergence of opinion exists upon the subject of the master's responsibility for the payment of the price, in case of seizure of an object bought by an authorised slave. In general the slave himself cannot be seized for a debt of a commercial nature ; nor can payment be exacted from the master ; but things supplied by the latter alone constitute the joint security of the creditors, †as well as profits realised by the slave in other ways, as by hunting, etc. Everything that a slave, even if authorised, acquires, belongs *ipso facto* to his master ; he can acquire nothing for himself, even if his master wished personally to transfer to him a right of ownership.

BOOK 10.—SALE BY ADVANCE

Section 1

The *salam* or advance is a sale of goods that have not been seen, but are specified in the contract. Besides the conditions necessary for an ordinary sale, there are required for the legality of a *salam* the following additional conditions :—

1. The payment of the value advanced must take place on the spot. It is permissible to promise an advance at first in vague terms, provided it is afterwards specified with precision, and paid upon the spot ; but it is not permissible to transfer, as an advance, a debt due from a third person, even if the latter pays immediately. There is no objection to the person who receives the advance touching it and depositing it with the person who made it. It need not consist of coin ; and may even consist of the use of some object, but possession must still be taken on the spot. In the case of dissolution of contract of *salam*, what has been advanced may be reclaimed, where it is some particular object still existing, though a few jurists maintain that the advance may then be replaced by other things of value. This faculty, however, is limited in their opinion, to cases where the objects advanced were not specified in the contract, but afterwards, though upon the same occasion. *Inspection of what is given by way of advance suffices to ascertain the quantity.

2. The goods upon which the advance has been given must be regarded as a debt due by the person receiving their value in advance. Consequently, if one says, *e.g.* " I advance you this piece of cloth for this slave here," there is neither a *salam* nor an ordinary sale. But if one says, " I buy from you a piece of cloth of such and such a description, for these pieces of money," to which the other party replies, " I sell you the piece of cloth," it is an ordinary sale, or according to others, a contract of *salam*, that has been concluded.

3. According to our school the place of delivery must be indicated ; at any rate if the *salam* is effected in a place which is either unsuitable for it, or would necessitate much expense in transport. Otherwise no stipulation as to place of delivery is required. Delivery of the goods

can be effected either at once or within a given time ; but if no time is agreed upon, it should be done at once. Others maintain that an omission to stipulate a time of delivery nullifies the *salam*. In all cases, if the delivery is not effected at once, a time must be determined on, either according to the months of the Arabs, or according to those of the Persians or Greeks. A mere enumeration of a certain number of months, not mentioning any particular calendar, is held to refer to the lunar year. In case of an agreement concluded in the middle of a month, its remaining days are taken into account ; so that, for example, a term " of one month " expires thirty days later. †The time may also be indicated by saying " at the festival " or " at the month of Jumada."

Section 2 (1)

The conditions permitting one legally to receive an advance on goods are four—

1. The goods should be of a nature to admit of their delivery at the term stipulated. Consequently an advance may be received for goods coming from another place only when they are regularly brought for sale to the place of delivery ; otherwise such a course would be inadmissible. When an advance has been given on produce to be found everywhere, but which happens to be unprocurable at the moment stipulated for delivery, *the contract is not necessarily cancelled, but the creditor can at his choice either claim its cancellation, or have patience and wait until the things arrive. †A creditor never has any right to cancel the contract before the expiry of the term fixed, even though he may know for certain that the goods cannot be delivered him within the time agreed.

2. There must be a precise specification of the amount, either by measure of capacity, or by weight, or by number, or by measure of length, except as follows :—Produce ordinarily sold by capacity, may be specified by weight, or *vice versâ ;* but the quantity may not be specified in two ways. Thus one may not stipulate for one hundred *saas* of corn to weigh so many pounds. Melons, tomatoes, cucumbers, quinces, and pomegranates are estimated only by weight ; while nuts and almonds are calculated either by weight, †or, when the sizes vary very little, by measure. Bricks are sold by number, or weight, but not by measure. In the latter case the contract is invalid, unless it is the local custom, †when it becomes a regular sale. An advance cannot be given upon a certain quantity of fruit from some village specially mentioned ; †but this may be done in the case of a large village which is sure to have a sufficient supply at the due date.

3. The quality must be known, or at least those essential qualities on which depends the object of the purchase. They must be mentioned in the contract, without, however, making an enumeration so meticulous as to cause great difficulty in finding goods to correspond to the description. Consequently a *salam* is forbidden with respect to articles with which this is impossible. Such is the case, for example, with a combination of qualities, each with a particular object, as in the eatable known as *harisa*, the medicine *majun*, the perfume called *ghaliya*, shoes, or a compound antidote. †On the other hand a *salam* is lawful in the case of goods which, though composite have a single particular object. Instances of these are the materials known as *attaba* and *khazz*, cheese, *akit*, honey, date vinegar and grapes ; †but not bread, at least according to most jurists.

4. The things should not be difficult to obtain, by their very nature—like game, in places where it is rare—nor of a quality rarely met with, though of an article itself not at all rare, such as pearls of an enormous size, precious stones of a certain shade of colour, a slave with her sister or child, etc.

Section 2 (2)

Domestic animals, and slaves, can be dealt with in a contract of *salam*. In the case of slaves their nationality should be specified, as, *e.g.* "a Turkish slave"; or their colour, stipulating, for example, "a white slave," and mentioning whether he should have a tawny or a ruddy complexion. Besides this, when dealing in slaves, sex, age, and approximate height should be indicated ; but it is not necessary to specify whether a slave has brown eyelashes, or is fat, etc. In the case of camels, horses, mules and donkeys, sex, age, colour and species are mentioned ; in the case of birds, species and size of the body ; in the case of meat it must be stated if it is beef, mutton or goat, and if it is a castrated animal, or one with milk, or one for fatting. It should also be mentioned if the meat comes from the leg, shoulder, or rib. Bones must be accepted in customary proportion with meat.

As to cloth, its nature, length and breadth must be mentioned, and the quality of the stuff determined, whether it is coarse or fine, hard or soft, rough or delicate. Unless otherwise agreed upon the material is assumed to be unbleached. An advance may be given on washed cloth, and on material of which the threads have been dyed before weaving, as is the case with striped cloth. By analogy the validity of an advance on cloth dyed after weaving may also be admitted. [†Most authorities deny the legality of an advance upon this material.]

In the case of dates, the colour, species, origin, and the size of the

fruit should be mentioned, and whether they are old or fresh. Wheat, barley, and other cereals, and beans, are subject to the same rule as dates. The things necessary to be known when stipulating about honey are—whether it is from the mountains or the town, summer or autumn honey, white or yellow ; but it matters little whether it is old or fresh. It is forbidden to give an advance upon what has been cooked or roasted, but there is no objection to doing so upon goods heated by the sun. *An advance is also illegal upon the heads of slaughtered animals, and upon things having individuality, such as worked pots, skins of animals, earthen jars, saucers, bottles, lanterns, kettles ; but it is lawful when given, *e.g.* upon the small square vessels called *satal*, or on pots or saucers, etc., of metal cast in a mould—upon things, in a word, that are made in the mass and resemble one another. †It is not necessary to mention whether the things are good or bad, for even if nothing is said about it one is assumed to have promised that they are in good condition. Both the contracting parties must be aware of the quality of the goods ; and a third person should also be aware of it, in order that they may appeal to his decision in case of disagreement.

Section 3

The substitution, for the thing stipulated, of another different in nature or kind, is totally prohibited. Some jurists, however, maintain the legality of a substitution, provided the difference is only in kind ; but they admit that the other party is not obliged to accept anything but what was agreed on. It is even permissible to offer, but never obligatory to accept, an inferior quality to that stipulated. †The person who has given the advance cannot refuse to accept produce of the same kind as, but of a superior quality to, that promised him.

If the debtor brings the goods before the time agreed upon, the creditor may refuse to accept, if he has a valid reason for so doing, *e.g.* if it is an animal he will have to feed, or if a hostile incursion is apprehended at the moment ; but otherwise he cannot refuse, especially if the debtor has good ground for anticipating delivery, *e.g.* if he wishes to redeem a pledge, *or even if he merely wants to discharge his obligation.

If, after expiry of the term agreed upon, a creditor meets his debtor elsewhere than at the place stipulated, he cannot prevent the latter fulfilling his engagement upon the spot, if the transport of the goods would involve some expense ; ††nor can he in such a case recover the value of the goods for breach of contract. But the creditor may refuse to accept the things, if the place of meeting is not a safe one. †In all

other cases the creditor is bound to accept the goods, even though the place be not that agreed upon.

Section 4

A loan is a meritorious act on the part of the creditor, and is effected by the following words :—" I lend you this," " I advance you this," " Take this and give me something similar in exchange," or, " I make you owner of it, till you pay me an equal sum." The law requires for the validity of this agreement †that the offer should be accepted, and that the lender should be capable of disposing of his property freely. Anything that can be made subject to a contract of *salam* can be lent, *with the single exception of a female slave, with whom the lender can lawfully have intercourse. †On the other hand what cannot be made the subject of a contract of *salam,* cannot be lent. If the things lent are measurable, an equal quantity of similar things must be returned ; but if the things lent are not measurable, then things resembling them must be returned ; or, according to some jurists, the value of these. If the lender meets the borrower at a place other than that where the contract was made and asks the return of the loan, his demand is admissible ; but if the transport of the object borrowed would cause expense, he can claim only its value at the place of agreement.

The lender may not stipulate for a return of produce of a better quality than that lent ; nor for interest of any sort or kind ; and if the borrower adds anything extra, when returning what was borrowed, it is pure generosity on his part. A stipulation that produce of an inferior quality to that lent shall be returned, and a stipulation that the borrower shall in his turn lend something to the lender, are void ; †but the contract remains otherwise valid. It is the same with the stipulation of a term of payment, if entirely in favour of the debtor ; †but if it is in the creditor's favour, for example, if the loan is made at a moment when a town is about to be sacked, and payment is to be made when quiet has returned, then the stipulation is equivalent to a return of produce of better quality, and consequently the contract itself is void. A creditor may legally stipulate for a pledge or personal security for the return of the loan.

Ownership of things lent is transferred only by taking possession ; or, according to one authority by a disposal on the part of the borrower, †though this does not prevent the lender being able to claim their return, as long as they are still undisposed of in the borrower's possession.

BOOK 11.—PLEDGE OR SECURITY

Section 1

Security cannot be legally given except by mutual consent of the parties interested, *i.e.* by offer and acceptance. There may be added a stipulation, of the very essence of the contract, to the effect that the creditor shall have a right of preference on the sale of the thing pledged ; or a stipulation tending to strengthen the contract, as, *e.g.* that it should be concluded in the presence of witness ; or even a stipulation without any reasonable object. But a stipulation that would prevent the creditor exercising his right would nullify the contract. A stipulation profiting the creditor to the detriment of the debtor, *e.g.* allowing the former exclusive and unlimited use of the article, is null, *and consequently nullifies the contract. *A stipulation that all increase in the thing shall remain pledged with him is unlawful, and causes the illegality, but not the nullity of the contract. The contracting parties must have the free disposition of their property ; consequently the goods of a minor or a lunatic cannot be given in security by the guardian or curator, except in case of absolute necessity or obvious advantage. It is only on the same condition that a guardian or curator may stipulate a pledging of property in order to secure the payment of debts due to the persons in their charge, for under ordinary circumstances these debts should be recovered as soon as possible.

†The thing given as security should be something definite and precise. An undivided share in something owned in common by several persons may be given in security ; or even a slave without her child, or, *vice versâ,* the child without its mother, although in these cases a sale would be unlawful, and consequently in case of an execution sale mother and child must be put up to auction together. In this latter case the proceeds are divided between creditor and debtor in proportion to the value of the mother and of the child. First the mother alone is put up to auction, and then both together ; the difference gives the value of the child. The pledging of a slave guilty of a crime, or of an apostate slave, is subject to the same rules as their sale. The pledging of a slave to be enfranchised under the provisions of a will, and that of a slave

whose enfranchisement may become obligatory before the satisfaction of the debt, are void, according to our school.

In the case of pledging of things liable to rapid deterioration that may be preserved in a dry state, like dates, drying must be resorted to. If this is impossible, giving such produce in security is only lawful in the case of a debt due immediately, or due before deterioration is likely to commence. Otherwise the contract may be effected only on the express condition that the thing shall be sold and the proceeds of the sale remain pledged ; and even then the sale may only take place at the moment it is feared deterioration will begin. The proceeds thus remain pledged, instead of the thing itself. A stipulation tending to exclude the right to sell under these circumstances nullifies the security, in the same way as an omission to stipulate with regard to the sale and the price, at least when it is known that deterioration will occur before the due date. *If this fact is not known, the absence of such a clause does not invalidate the contract. If something has been pledged which, though not naturally liable to rapid deterioration, is accidentally exposed to such an occurrence, as for instance wheat that has become damp, the security remains valid, in spite of the accident.

It is lawful to borrow a thing in order to pledge it, a proceeding which one authority regards as coming under the same rules as a gratuitous loan, *but most consider as a real security. In any case one must mention the nature, amount, and details of the bond and of the other sureties ; and if the thing lent is accidentally lost when in the creditor's possession he is not liable for it. The owner of an article borrowed in this way cannot claim to have it back once it is in the creditor's possession. On the expiry of the term allowed for payment, or, if the contract admits of it, at once, the owner must, on the creditor's demand, sell the article lent, if the debtor has not yet paid. The owner of the article can then, of course, seize the debtor's goods and recover the amount of the sale.

Section 2

Security may be given only for a definite, obligatory debt. Consequently it is not permitted to a person who desires in that way to secure the execution of some real obligation, such as the restitution of some object unlawfully usurped or borrowed ; or to secure some future debt, such as the repayment of a sum of money he intends to lend some one. Security is given in the following words :—" I lend you these pieces of money, provided you pledge me your slave." To this offer the answer is, " I accept the loan, and grant you the security asked for." Or the offer may be made thus, " I sell you this article for so much, provided

the coat is pledged to me," and the answer, "I buy the article, and grant you the security asked for." One may not secure by a pledge the periodical payments resulting from an enfranchisement by contract, nor the price stipulated for contract work before it is finished, or, according to others before it is begun, because these are not as yet definite and obligatory debts. On the other hand, security may lawfully be given for the payment of the price of a thing sold during the period of the right of option. The payment of a debt may be secured by two pledges even when successive; but according to the doctrine adopted by Shafii in Egypt, one may not pledge with a creditor an article already pledged him for another debt.

The security becomes irrevocable only when the creditor has taken possession of the object pledged. Possession may, however, be taken by the creditor's agent. The creditor may not appoint the debtor or his slave as his agent for this purpose. Authorities are not agreed as to whether he may so appoint the debtor's generally authorised slave; but he may certainly appoint the slave undergoing gradual enfranchisement. The pledging of an article already in possession of the creditor, either as deposit or because illegally usurped, becomes irrevocable only from the moment when he could have taken possession of it, if he had not had it already. *And in such a case the law requires that the debtor should declare that the change in the nature of the possession has taken place with his full consent. Subsequent pledging can never relieve a creditor from the consequences of any usurpation of which he may have been guilty; but he is freed from them *ipso facto* if the owner entrusts the article to his care as a deposit. The security is *ipso facto* revoked if the debtor disposes of the thing pledged, before the creditor has taken possession, in a way which causes him to lose the ownership of it, *e.g.* if he gives it away, or pledges it to some one else, provided it is effectively taken possession of. The same consequence is recognised by law if, before possession has been taken, the debtor begins the contractual enfranchisement of his slave, *or provides for his freedom in his will, or if a female slave is rendered pregnant by him; but not if he merely cohabits with her, or gives her in marriage to some one else. †Neither is security nullified by death, nor by lunacy, of one of the contracting parties, before possession has been taken; nor by a liquid that has been pledged becoming fermented; nor by the flight of a pledged slave.

After the creditor has taken possession, the debtor can no longer dispose of the pledged object, so as to lose the ownership of it. As to the validity of an enfranchisement authorities are not agreed. *As a rule it is considered valid in the case of a solvent debtor, who should in

that case pledge the value of the slave at the moment of enfranchisement. But if the debtor is insolvent, and consequently unable to execute the intended enfranchisement †the slave is not thereby freed, even though afterwards redeemed. The pledging of a slave who is to be enfranchised at a certain date, or who has been conditionally enfranchised is lawful; and the expiry of the term, or the fulfilling of the condition, before the due date of the security, has the same effect as a simple and voluntary enfranchisement. If the term does not expire, or the condition is not fulfilled, until after that date, ††the enfranchisement takes place *ipso facto*, whether the master is solvent or not.

After the creditor has taken possession, the debtor can no longer—

1. Pledge the thing to another person.

2. Give a pledged female slave in marriage.

3. Lend the thing pledged; at least where the debt is due at once, or at a term expiring before the loan.

4. Cohabit with a pledged female slave. A contravention of this precept involves the consequence that a child born of this cohabitation is considered free. Upon the question whether the mother becomes free by this maternity there is the same difference of opinion as with regard to the simple, voluntary enfranchisement of a pledged slave. †But it is agreed that in these circumstances a female slave is *ipso facto* enfranchised by reason of her maternity, upon the expiry of the due date of the security, even if the debtor is insolvent; and that the latter is bound to pledge the value of the slave, if she dies in childbirth.

A debtor remains owner of a pledged article, and can make what use of it he likes, provided he does not diminish its value. He may ride a pledged beast, or live in a house he has given in security. On the other hand, he may not build on or cultivate pledged land; but if he has already done these unlawful acts, he is not obliged to root up what has been planted, or take down the buildings either before or after the debt has become due, unless in the latter case the value of the ground with the plantations or constructions on it is insufficient to pay the debt, and the value of the land will be increased by their removal. When it is possible for the debtor to use the thing pledged, without its being actually in his charge, it should remain in the creditor's possession; but if this is impossible it should be intrusted into the charge of the debtor, if he demands it, to be held on sufferance. The creditor has the right to have this restitution effected before witnesses, if he has reason to doubt the debtor's honesty.

A creditor may always allow a debtor to dispose of a pledged article, even in a manner not otherwise permitted by law; but this authorisation may be revoked at any time before the debtor has made use of it. If

under these circumstances a debtor has disposed of a pledged article, not knowing that the authorisation has been revoked, he is in the same position as an agent who has acted in ignorance of the revocation of his appointment. But a creditor cannot give a debtor permission to sell a pledged article before the debt is due, whether this is done in order so to obtain an earlier payment, or on the understanding that the proceeds will be pledged instead of the article itself.

Section 3

When the security has become irrevocable by possession having been taken, the creditor has a right to keep the article pledged, without prejudice to what has been said in the preceding section, as to the use which the debtor can make of it. The parties may if they like agree to intrust the article to the care of a third person of irreproachable character ; or to two such persons, at the same time stipulating for a joint or separate performance of their duties by the depositaries. †If nothing has been stipulated with regard to this, neither can do anything in the matter alone. If a depositary is dead, or has ceased, by notorious misconduct, to be worthy of confidence, the contracting parties can deposit the article where they please ; or if they cannot agree about it, the court may order its sequestration.

A creditor may insist on the sale of a pledged article if the debt has not been paid by the due date ; and he is entitled to payment out of the proceeds, in preference to any other person. The sale is effected by the debtor or his agent, but never without the creditor's previous authorisation. If the creditor refuses the required authorisation the court will notify him that in default of his authorisation the debtor will be released from his obligation. When, on the other hand, it is the creditor who claims either the payment of the debt or the sale of the article, and the debtor refuses, the court will order the latter to fulfil his obligation or sell the article, and if he persists in his refusal after this order, the court may itself proceed with the sale without the debtor's concurrence. †But the creditor can never effect the sale in the absence of the debtor even with his consent. When it has been agreed that the sale shall be effected by a depositary, the latter may if necessary proceed with it without the debtor's concurrence, keeping the proceeds as depositary, *i.e.* at the debtor's risk, until the creditor has taken possession. In case of a legal seizure of the article pledged and sold in this way by a depositary the purchaser may cite as guarantee either the depositary or the debtor, who is in any case ultimately liable towards the depositary. This citation as guarantee is admissible even if the proceeds

of the sale are accidentally lost when in charge of the depositary. A depositary may sell a pledged article only at a reasonable price, and for cash, in locally current coin. If after the sale, but before the expiry of the time of option, another person bids more, the first bargain should be cancelled and the thing sold to the highest bidder.

A debtor must provide for the up-keep of a thing pledged, and a creditor has a right to have this enforced by the court. On the other hand, a creditor may not prevent a debtor from improving or repairing the article ; for example a debtor may have his pledged slave bled ; for the property is his, and he has only intrusted it to the creditor as a deposit.

The loss of a pledged object does not affect the debt ; and as to the responsibility of the creditor, it does not matter whether the security is valid or not, for in any case it is a deposit intrusted to his care.

It is illegal to stipulate that the thing pledged shall be considered as sold to the creditor upon the expiry of the term allowed for payment of the debt. Such stipulation renders illegal both security and sale.

A thing pledged remains on deposit until the due date ; consequently there is a presumption in favour of the creditor's statement on oath in any proceeding against him for loss of the article ; but not, according to most authorities, if it is a question of the restitution of a pledge.

A creditor who intentionally cohabits with a female slave pledged to him, is guilty of the crime of fornication ; and the excuse cannot be admitted by the court that he was ignorant of the prohibition of intercourse with such person, unless he has recently become a Muhammadan, or was brought up in the country far from the society of men acquainted with the law. †He may allege as an excuse that the debtor gave him permission ; and in this special case, though not guilty of fornication, he is liable to the slave for dower, if he forced her to cohabitation, and the child is his, and free from its birth. And, finally, he owes the debtor the value of the child as damage.

When a pledged article is lost by the fault of a third person, and the creditor receives from that person another article in its place, it is regarded as the thing pledged. Any proceeding against the individual in question to oblige him to replace the original pledge, must be taken by the debtor. †If he declines to make good his right in the matter, the creditor can do nothing as against the third person. Similarly, if a pledged slave is assassinated by a third person, the debtor alone can claim an application of the *lex talionis ;* but the contract of security is cancelled *ipso facto.* But if, on the other hand, there is only occasion for inflicting a pecuniary penalty, either because the debtor has pardoned

his slave's assassin, or because the homicide was not intentional, neither debtor nor creditor can of their own initiative remit the penalty.

The security given does not extend to increase from the thing pledged, if this increase consists of what has individual existence, like the fruit of trees, the young of animals, or the children of slaves. However, if an animal with young or a pregnant slave has been given in security, and the pregnancy continues until the debt falls due, *beast and slave must be sold as they are, with their offspring, if already born. *Where the pregnancy does not occur until after the security has been given, though it may exist at the moment of sale, the mother alone is pledged, and the creditor has no claim to the offspring.

Section 4

When a pledged slave commits a crime involving a penalty under the law of talion, the rights of the injured party have the first preference, and the security is cancelled by the capital penalty, or by a legal sale of the slave to recover the price of blood. The capital penalty has the effect of cancelling the security, both if imposed at the instance of the debtor as owner of the slave, or at that of a third party ; ††but where the debtor, not a third party, claims, from whatever motive, only a pecuniary penalty, then the security is unaffected, and the slave remains pledged as if nothing had happened. When a slave pledged by his master kills another pledged to the same master, both securities are cancelled by the execution of the criminal ; but when there is ground only for a pecuniary penalty, the master of the delinquent can claim this amount in place of the dead slave pledged to him. The culpable slave must then be sold, in spite of the security, and the proceeds remain pledged, by law, with the master in place of the dead slave. According to others, however, a sale is unnecessary, and the slave who has committed the crime, replaces *ipso facto* the dead slave. If murderer and victim were both of them slaves pledged to the same creditor for a single debt, he must resign himself to this diminution in his security. If the two individuals were pledged for two distinct debts, he may transfer to the remaining slave the debt for which the security has been lost to him, if he has good reason to do so.

A security is cancelled by the accidental loss of the thing pledged. The article itself is released by a renunciation on the part of the creditor, or by the remission of the debt. As a security is indivisible, the article remains pledged as long as the debt is not either remitted or paid in full. On the other hand, when half the share in a slave is pledged for one debt, and the other half for a second debt, a remission of one of them

releases the half share. A slave owned jointly by two masters and pledged by them, is proportionately released by a remission granted to one only.

Section 5

In all disputes between debtor and creditor about anything pledged, or about the quantity of it, the presumption is in favour of the former's assertion, if substantiated on oath ; provided that it is not a security which the debtor was obliged to effect. For if, *e.g.* in a sale, one of the parties has stipulated that the other shall pledge him something in order to insure the due execution of the contract, both parties must take an oath. If in any proceeding brought against two persons who together pledged a slave of whom they were joint owners, for a debt of a hundred pieces of money, one admits the fact and the other denies it, the slave is considered to have been pledged only on the part of the owner who admits, *i.e.* for fifty pieces ; while the other owner has the advantage of a presumption in his favour, provided he substantiates his denial on oath. This presumption, however, like any other, can be legally disproved, and the owner who admits may even be called as a witness to this effect, in order to show the falsity of his partner's assertions.

In any proceeding with regard to the taking possession of the thing pledged, the following distinctions must be observed :—

1. The article is in the debtor's possession ; or it is in the creditor's, but the debtor says he usurped it. In both these cases the law admits a presumption in favour of the debtor, on oath ; †and it is the same if he states that he delivered it to the creditor, but not as a pledge.

2. The debtor, having admitted that the creditor took possession of the article as a pledge, withdraws this admission as being untrue. In this case the debtor may only insist that an oath be administered to the creditor ; though other jurists maintain that he cannot even do this, and that the claim of the creditor should be at once allowed, unless the debtor can give some adequate explanation of his previous admission. Proof on his part that this admission had been based on false documents, would be regarded as a satisfactory explanation.

If one of the two contracting parties alleges that a pledged slave is guilty of a crime, and the other denies it, the presumption is in favour of the latter, on oath. Even if the debtor declares that the crime was committed before possession was taken, *the law still admits a presumption in favour of the creditor's denial on oath. †But in these circumstances the oath of the creditor does not in any way affect the debtor's obligation towards the injured party. This obligation consists, at the debtor's choice, either in the value of the slave or in the indemnity due

for the crime, whichever is most advantageous for him. If in such a case the creditor should refuse to be sworn, the court should administer the oath to the injured party, not to the debtor himself; and after the oath has been taken the slave should be sold for the damage, but not to reimburse the creditor to whom he was pledged. And lastly, if the creditor has consented to the sale of a pledged slave who is guilty of a crime but afterwards asserts that he withdrew his consent before the sale took place, while the debtor alleges he did not do this until after the sale, †the presumption is in favour of the creditor.

When a debtor owes two debts, each of a thousand pieces of money, one only being secured by a pledge, he may declare, when paying one thousand pieces, that he is thereby clearing off the most onerous debt, and the law will presume that this is the truth. If he has omitted to make this declaration at the time of payment, he may do so afterwards; though some authorities maintain that in this case the security is proportionally distributed.

Section 6

At the death of a debtor his debts must be paid, so far as the amount of his assets allow, the latter being regarded as the joint security of the creditors. Only one author maintains that the estate can be seized for debt in the same way as the person of a slave for the pecuniary consequences of a crime committed by him. *The estate is distributed amongst the creditors in proportion to their claims, unless there is some legitimate cause for preference, which is in any case independent of the amount due. †Where the heir has disposed of the estate, without there appearing to be any debt, and a properly authenticated debt is subsequently established, as *e.g.* by the redhibition of some article sold; the dispositions made by the inheritor are not *ipso facto* nullified, but they must be revoked, if there is no other way of paying the debt. It is undisputed that the inheritor can keep the estate and pay the debts from his own means. The obligation to pay the debts so far as the estate will allow, does not in any way affect the rights of the inheritor; and the profits of the estate, of a separate character, such as those realised from the labour of slaves or from births subsequent to the opening of the succession, belong to the inheritor, and cannot be included when determining the amount seizable for the payment of the debts.

BOOK 12.—BANKRUPTCY, ETC.

CHAPTER I.—BANKRUPTCY

Section 1

A person whose debts exceed the value of his property should be declared bankrupt, upon the demand of his creditors, but bankruptcy should never be declared on account of debts not yet due. *A declaration of bankruptcy for debts due does not render other debts not yet due claimable before the due date. If a person's debts are counterbalanced by his property, and he can also gain a livelihood by his labour, there is no ground for a declaration of bankruptcy. †This is so also if he cannot work, and consequently his support is a charge upon his assets. A bankruptcy is not declared on the initiative of the court, but as has been said on the demand of the creditors. If all the creditors do not support the application, the total of the debts due to the petitioning creditors, taken together, should amount to a sum sufficient to authorise the declaration. †Proceedings in bankruptcy may also be begun upon the demand of the debtor.

An immediate consequence of bankruptcy is that the debtor becomes *ipso facto* dispossessed of the administration of his property; while the court should in the presence of witnesses explain to him the measures taken with regard to the matter, so that he may abstain from any further disposition of his property. Only one jurist maintains that a sale, donation, or enfranchisement made by a bankrupt should remain suspended until it becomes clear whether these dispositions can be maintained without prejudicing the payment of the debts. If this is the case they should be regarded as valid, according to this jurist, but not otherwise. *On the other hand, most authorities maintain the nullity of these arrangements, for the same reason as for all others. †A declared bankrupt cannot transfer his property to his creditors, in order to free himself from his obligations, without the permission of the court; ††though there is no objection to his taking an advance on goods he promises to deliver by a certain date, nor to his making a purchase and stipulating for a delay in payment. These future obligations are on his own personal responsibility, and have nothing in common with his

property that has been seized. Bankruptcy also leaves intact purely personal rights, such as legal capacity to marry, repudiate or divorce a wife, claim an application of the law of talion, or grant a pardon in accordance with it. An admission made by a bankrupt, concerning a right or obligation that has become effective before the bankruptcy, *binds the creditors ; but they are not obliged to take into consideration an admission regarding obligations that become effective only at a later or indeterminate date, †unless it has reference to a crime. A bankrupt can of his own accord return goods he has just bought, on account of redhibitory defects, if such redhibition profits the estate. †But he is prohibited from dealing with anything he may obtain afterwards ; either by hunting, or by a testamentary disposition, or by purchase—at least when it is admitted that this last contract is not absolutely null when effected by a bankrupt. †The bankruptcy of a purchaser does not give a vendor the right to cancel a bargain, if he has knowingly entered into it ; he cannot even claim the goods back ; otherwise, both cancellation and reclamation are permitted him. †If the law forbids this reclamation on the part of the vendor, neither can he prove as creditor for the amount of the price.

Section 2

After the declaration of bankruptcy the court should hasten to sell the bankrupt's property and distribute the proceeds amongst the creditors. First of all are sold things liable to deteriorate, then slaves and domestic animals, then other movable property, and lastly immovable property. The sale takes place in presence of the bankrupt and the creditors, each object being sold at the market where such things are usually sold ; and nothing can be sold except at a reasonable price, payable immediately, in locally current coin. A creditor who has stipulated for some particular article is not obliged to take coin, and if such article is not among the assets it must be purchased to satisfy him. If, on the contrary, the creditor does not insist on the very thing stipulated for, the debt can be paid in coin ; except in the case of a contract of *salam*, for this contract does not admit of any similar conversion, even by consent of the parties interested. The court, when proceeding to the sale of the bankrupt's property, should never deliver it before receiving the price ; and money coming from the sales and recoveries should be immediately divided amongst the creditors, unless the sums are so small as to make this impossible. In the latter case distribution may be deferred until the amount in hand has been increased by the sale of other objects, or the recovery of other debts due to the estate.

In order to proceed to this distribution, the law does not require that the creditors present must prove that there are no others ; but a creditor who only presents himself after a distribution retains all his rights to his share in what remains of the assets. According to some authorities the previous distribution should in such a case be annulled.

If the bankrupt sold an article before the declaration, and this article is subject to legal seizure by a third party, while the price paid has been already spent, the purchaser can only prove like an ordinary creditor ; but if the article has been sold by the court after the declaration of bankruptcy, a seizure gives the purchaser the right to claim back the price as a privileged creditor. Only one authority maintains that a purchaser can never enjoy this privilege.

The support of persons dependent upon the bankrupt is a charge upon the assets until the distribution is finished, unless the bankrupt is himself capable of supporting them by his labour. †But all the property of the bankrupt must be realised. It is even necessary to sell his house and any slave who may be working as his servant, without any regard to the state of his health or to the rank he occupies in society. All that should be left him is a bundle of clothes sufficient for decency, *i.e.* a shirt, a pair of trousers, a turban and a pair of slippers ; to which in winter should be added a cloak. There is also exempted from sale the food necessary for the nourishment of the bankrupt and his family until the distribution is over.

After the final distribution the bankrupt need not work or hire out his services as domestic servant or workman, in order to pay what remains of his debts ; †but his creditors may oblige him to put out to service his female slave enfranchised by reason of maternity, and to lease out property realised in her favour. A bankrupt who says he is in a state of absolute insolvency, or who after the distribution of his property declares he has no more at all, must, if this is denied on the part of the creditors, prove the truth of his assertion ; at least this is so in the case of commercial debts, like those arising from a purchase or a loan. †In all other cases the law allows a presumption in his favour, provided he substantiates his declaration on oath. Proof of absolute insolvency can be furnished at any time ; but the witnesses called to establish it must have an accurate knowledge of the private life of the bankrupt. They must declare positively and expressly that the bankrupt is "absolutely insolvent." A merely negative deposition, *e.g.* that the bankrupt "possesses nothing," is not enough. When the bankrupt's insolvency is established in this way the creditors have no right to demand bodily restraint, nor that the bankrupt be adjudged personally as a pledge ; they must wait until he has collected sufficient money to

pay his debts. In the case of a stranger whose financial position is accurately known to nobody, and who consequently cannot prove his "absolute insolvency," the court should appoint some one to examine the state of his affairs, and this expert should then appear as a witness if he thinks the evidence of absolute insolvency to be conclusive.

Section 3

A vendor can, in case of bankruptcy, break the contract and claim back goods the price of which has not yet been paid him. †This right must be exercised without delay, for the reclamation is not admissible as soon as the bankrupt has disposed of the thing bought, either by cohabitation in the case of a female slave, or by enfranchisement, or by sale. This right of reclamation is not confined to a sale properly so called, but extends to all contracts involving the transfer of property for an equivalent. It is, however, admitted only under the three following conditions :—

1. That the time for payment has fallen due.

2. That payment cannot be obtained on account of the bankruptcy ; †for there is no ground of reclamation where the bankrupt's property is sufficient to meet all his engagements, but he nevertheless refuses to pay ; or where payment cannot be obtained because the debtor, though solvent, has absconded. On the other hand, the vendor may not be deprived of his right to cancellation and reclamation if the creditors wish to keep the goods at the price agreed upon between him and the bankrupt.

3. That the bankrupt purchaser is still the owner of the property ; for there is no right of reclamation if he is no longer its owner, or if he has entered into a contract of enfranchisement with a purchased slave. On the other hand, the right of reclamation is not affected by the fact that a bankrupt has given in marriage a purchased slave.

If the goods have been accidentally damaged, the vendor has the choice of either taking it back as it is, or claiming, for the payment of the price, his share of the assets, like any other creditor. If the deterioration in value is due to him or to a third person, he may choose between the property as it is, or a claim as ordinary creditor for the amount agreed upon, minus the deterioration. †Deterioration due to the bankrupt purchaser is regarded as accidental, so far as reclamation is concerned.

In the case of a sale of two slaves, one of whom dies after the purchaser has taken possession, and the purchaser then goes bankrupt, the slave still living may be claimed back, and for the dead slave the vendor

may claim his share in the assets as an ordinary creditor. According to the opinion of Shafii in his second period, the right of reclamation in this case is not invalidated by the fact that a part of the price has already been paid to the vendor. So that if the two slaves were of the same value, and the vendor has already received half the total price agreed, he may still claim back the living slave for the amount still due. Only one jurist maintains that he must in such a case keep the part payment already received, and claim his share of the assets, for the other half, as an ordinary creditor.

When the property has undergone an increase inseparable from it, as in the case of an animal that has become fat, or a slave that has learnt a trade, the vendor profits by its reclamation; but when the increase has an individual existence, like the fruit of trees or the young of animals, the purchaser keeps it, and the vendor can reclaim only the original thing and nothing more. In the case of a slave's child, an increase separable by nature but not by law, the vendor may claim it along with the mother, on paying its price; or if this is not convenient, both must be sold, and the price fetched by the mother paid to the vendor. According to others, however, reclamation is altogether inadmissible in such a case. If a slave is pregnant at the time of reclamation, but not at the time of sale, or *vice versâ*, †the vendor's right extends both to mother and child. The fruit of the date palm hidden in its envelope, or that already formed by means of fecundation is subject to nearly the same rule as the embryo hidden in its mother's womb and the child just born, *i.e.* it is better to include it in the reclamation. In the matter of the reclamation of a piece of ground which has been sown or built upon by the bankrupt, he, the vendor and the creditors may by common agreement proceed to pluck up the shoots or remove the buildings if they think fit. The ground is then returned to the vendor in its primitive condition. But if the creditors or the bankrupt object to this uprooting or removal, the vendor has no right to enforce it, but must receive back the land with the crops or buildings on it. Thus he only has a choice between two courses: either to appropriate crops and buildings on paying their value, or to uproot or remove them at his own risk, and deliver them to the bankrupt, plus damage, if any. *In no case can the vendor claim back the land, even if he abandons to the bankrupt crops and buildings.

If the property consists, for example, of corn that the bankrupt has mixed with other corn of the same or an inferior quality, the vendor can claim back the same quantity of the mixture; *but if on the contrary the bankrupt has added corn of a better quality, reclamation is inadmissible. Corn ground by the bankrupt, or a coat cleaned by him,

without in either case any increase in value, are subject to reclamation, and the vendor need pay nothing extra for the work done. *But if the value is increased, the corn or the coat should be sold, and a part of the price proportionate to the increase in value should be returned to the bankrupt.

Where the bankrupt has stained the cloth purchased in some dye belonging to him the three following cases are to be distinguished :—

1. The value of the cloth is increased by exactly the value of the dye. In this case the bankrupt becomes part owner of the cloth, for the amount of the value of the dye.

2. The increase in value is less than the price of the dye. In this case the bankrupt cannot profit by more than the increase in value of the cloth.

3. The increase in value is greater than the price of the dye sold by itself. †In this case the bankrupt takes the whole of the increase.

Where the bankrupt has purchased from one and the same person both cloth and dye, the vendor reclaims simply both, unless the value of the cloth, after manipulation, exceeds the value it had previously. In this latter case reclamation is impossible, and the vendor can claim his share in the distribution of the bankrupt's effects, like any other creditor.

Where cloth and dye have been purchased from two different persons, the law admits three distinctions—

1. The value of the dyed cloth does not exceed the previous value when undyed. In this case the vendor of the dye loses his right of reclamation.

2. The value of the dyed cloth exactly equals the sum of the values of cloth and dye. In this case the two vendors should jointly reclaim the cloth, and become co-proprietors of it.

3. The value of the dyed cloth is greater than the sum of the values of cloth and dye. †In this case the bankrupt takes the whole of the increase in value.

CHAPTER II.—INCAPACITY OF LUNATICS, MINORS, AND SPENDTHRIFTS

Section 1

The incapacity of a bankrupt in relation to his creditors ; that of a debtor with regard to an article pledged by him ; that of a sick person who may not deprive his legitimate heirs, by testamentary disposition, of more than a third of his property ; that of a slave whose property

belongs to his master; and that of an apostate, whose goods are confiscated for the benefit of Moslems; all these will be found treated of in those parts of my work dealing with these special classes of individuals. Here it remains for me to speak of the incapacity of lunatics, minors, and spendthrifts.

A person in a state of lunacy is incapable of administering his property, and not responsible for what he says. His incapacity ceases with its cause. The incapacity of a minor ceases at puberty only if his intelligence is then sufficiently developed to allow of his being intrusted with the administration of his property. The age of puberty is fixed by law for both sexes at fifteen years completed, unless in the case of a boy nocturnal pollutions have already manifested themselves. But whatever may be the physical development of the body, a child is never considered to have reached puberty before the age of nine. When the hairs of the pubis begin to grow it is a sign of puberty in the case of an infidel child †but not in that of a Moslem. As to girls, menstrues and pregnancy are also signs of puberty.

The intelligence of a minor is considered to be sufficiently developed for him to manage his property, under the following circumstances:—

1. When he is able to perform his religious duties properly.

2. When he behaves himself reasonably in his affairs.

3. When he abstains from everything incompatible with an irreproachable character.

4. When he is not a spendthrift; *i.e.* he does not waste his substance by allowing himself to be deceived in commerce by obvious frauds, by throwing his money into the sea, or by ruining himself in illicit pleasures. †On the other hand, prodigality does not include expenditure on charity or good works, nor even exorbitant expense on the table or the toilet.

The degree of intelligence of a minor should be estimated in different ways, according to the different categories of persons. Thus the son of a merchant should be examined with regard to purchase and sale or his aptitude at a bargain; the son of a farmer should undergo inquiry as to his knowledge of cultivation and the proper employment of labour for that purpose; and the son of an artisan should give proof that he understands his trade; while a girl should show herself apt in all that has to do with spinning and cotton and the best way of protecting food from the cat, etc. This examination should be undergone at least twice; according to some before the minor has reached the age of puberty, and according to others after. †Some insist upon a previous examination, maintaining that engagements entered into by a minor before puberty are invalid. †But according to these authors, the pupil should be given, before his majority, an opportunity to prove the

development of his intelligence, for example, by making a bargain; though the guardian and not the pupil is the person who must actually conclude it.

The minor who, having attained the age of puberty, has an intelligence insufficiently developed to be entrusted with the management of his property, remains in a state of incapacity; otherwise his incapacity ceases *ipso facto* on his attaining his majority. His property is then intrusted to him; though others maintain that the court should in all cases decree the cessation of the guardianship. A person who, immediately upon attaining his majority, begins to waste his substance, should be formally declared incapable; only a few jurists maintain that incapacity recommences *ipso facto* under guardianship as before.

†A person who has attained majority cannot be pronounced incapable owing to notorious misconduct.

An adult afflicted with idiocy should be placed under the care of the court, or according to others under that of the person who would be his guardian if he were a minor. This difference of opinion is also manifested with regard to an adult who is mad. A person in a state of incapacity through idiocy can neither sell, buy, nor enfranchise slaves, nor make a donation, nor marry without the consent of his curator. If he buys or borrows anything, and if after delivery it is lost when in his possession, he is not responsible either during or after his incapacity, whether his condition was or was not known to the injured party. He may marry with the consent of his curator, †but under no circumstances may he meddle with the management of his property or admit the existence of debts contracted before or since his incapacity. Neither is his admission of any value *as to any damage caused by him; but it is taken into consideration if it relates to an offence punishable by a definite penalty or under the law of talion. He can, moreover, repudiate or divorce his wife, pronounce an injurious assimilation with regard to her, or disavow a child by means of anathema. As to religious practices an idiot is subject to the same law as other believers; but he cannot personally take part in the distribution of what he owes in charity; and if he wishes to perform an obligatory pilgrimage, the curator should intrust to some reliable person what is required for his maintenance on the journey. Moreover, the curator may forbid his undertaking a voluntary pilgrimage, if the expense would exceed his ordinary maintenance, even if he has already begun it; and as our school considers the idiot as a person prevented from continuing his act of devotion, his *ihram* ceases *ipso facto*.

[If it is admitted that the expiatory sacrifice due in these circumstances may lawfully be replaced, the idiot should fast instead of

sacrificing a *shah* or giving food to the poor, as he is incapable of disposing of his property. However, if he is able to gain on the way what is enough to cover the extra expense of a voluntary pilgrimage, his curator is not legally entitled to prohibit this act of devotion.]

Section 2

A father is the guardian of his children during their minority. In default of the father the guardianship reverts to the father's father, and then to a testamentary executor appointed for that purpose by the father or father's father, and as a last resort to the court, which, however, may depute some reliable person as administrator. †A mother can never be guardian in her own right, but the father or father's father may so appoint her by will.

A guardian should manage the affairs of a minor like a good father. Thus he should in building use clay and bricks baked in a furnace, not bricks dried in the sun or plaster. He will not sell immovable property, unless it is absolutely necessary or the advantage is obvious; but he may alienate movable property, even by exchange or on credit, if his ward's interest requires it. In the case of a sale on credit, however, he should always have the transaction certified by witnesses, and stipulate for security. As to a right of pre-emption, he should exercise it or not as his ward's interest requires. He may pay what is due by the minor as legal alms; and should furnish him with what is necessary to enable him to live decently.

When a ward, after attaining majority, makes a claim against his father or father's father, alleging that the latter has not acted as a good father of a family with respect to the sale of his property, the guardian has a presumption in his favour if he takes an oath; but if the claim is against a testamentary executor or an administrator appointed by the court, the presumption is in favour of the ward.

CHAPTER III.—COMPROMISE, AND RIGHT OF WAY

Section 1

Compromises are of two kinds; the first, those come to between two litigants, is itself divided into two kinds—

1. A compromise about an obligation admitted by the other party, or legally established in some other way. When in these circumstances there is a consent to accept an object not claimed in the place of one claimed, this consent is regarded as similar to a sale, though the word

"compromise" may have been used; and consequently there must be observed all the rules of a sale, such as the right of pre-emption, redhibition for defects, prohibition from disposing of the article before taking possession, and the necessity of mutually taking possession, if both are capable of giving rise to illicit gain. When one consents to accept, instead of the thing claimed, the use of something else, this consent has the effect of a contract of hiring, of which all the particulars must be exactly observed. And lastly, if one consents to accept only a part of what one might claim, this consent is regarded as a true donation, subject to the law ordinarily governing such kinds of contract. But in all these cases †the word "compromise" and not the word "sale" must be employed. Moreover, if one says to some one, "Give me such and such a thing by way of compromise instead of your house," †this proposal has no legal effect unless there has already been some dispute about the house. There is, however, no objection to replace a debt in this way by some definite object. If, in these circumstances, it is on both sides a question of things giving rise to illicit gain, a mutual taking possession must take place at once; †otherwise this is not necessary, at least if what is given in exchange for the article originally due is something definite. If, on the other hand, one debt is substituted for another, the latter must be immediately converted into some definite object; though we have seen that authorities are not agreed as to taking possession in such a case. When compromising in such a way that one accepts the part payment of a debt, one really grants a remission as to what is left; and in this case one may make use of the word "remission" or "diminution," just as well as of the word "compromise." A permission granted to the debtor to pay in a certain time what is due immediately, or *vice versâ*, is quite invalid; but this does not prevent the debtor being able, with the exceptions mentioned, to anticipate payment of a debt due at a certain time. On the other hand, one may accept, by way of compromise, five pieces of money paid at once, instead of ten paid by a certain date; for in this case it is not the same sum that the debtor has to pay, these five pieces paid at once dispensing him from paying the rest. But the inverse compromise to this is not permissible, that is, one may not stipulate for ten pieces at a certain date instead of five immediately.

2. A compromise about an obligation not established by an admission or in any other way. Such a compromise is invalid when the denial of the opposite party relates to the obligation itself, †even partially. †A phrase such as "I propose to compromise upon the subject of the house you are claiming," cannot be regarded as an admission.

The second kind of compromises consists of those concluded between

the plaintiff and a third party. Now it is a perfectly lawful compromise when some third party declares to the plaintiff, "The defendant admits his obligation and has authorised me to come to a compromise with you." An agent has also power to compromise, in these circumstances, on his own account, for then it is as if there had been on his part a preliminary purchase of the thing in dispute. When the defendant's agent declares that the latter totally denies the claim, the compromise between the plaintiff and the agent upon the subject of litigation has the same effect as the purchase of something unlawfully usurped; that is to say the agent has concluded of his own accord a compromise whose validity depends upon whether the plaintiff can have the thing delivered him. A compromise is in any case invalid if the defendant denies the obligation, and his agent has not communicated this circumstance to the plaintiff.

Section 2

It is forbidden to make use of a public way, serving as communication between two places, in such a manner as to obstruct the passage. Thus it is forbidden to construct at one's house a balcony opening upon the road, or to make a covered passage between two houses; though both are lawful if at such a height as to allow of a man standing upright to pass underneath If it be a road along which riders and caravans habitually pass, the balcony or the roof of the covered passage must be of sufficient height to allow of the free passage underneath of a camel carrying a litter, including the baldachin and its supports. It is forbidden—

(1) To compromise upon the subject of these rights, relating to any public way; or

(2) to construct a bench upon the public road, or plant a tree on it. According to other authorities, however, this precept does not include benches or trees that do not in any way obstruct the free passage of the road.

If it be a question, not of a public road, but of a blind alley, access to it is forbidden to persons not living there; †and even these should obtain the previous permission of their neighbours. By a person living there is understood the occupant of a house with a door in the blind alley, but not a person whose house merely adjoins it with a bare wall. †Each inhabitant of the blind alley has a right to that part of it only comprised between the corner of the public road and his house door. The inhabitants alone have the right to make doors leading into the blind alley, for entrance and exit; †persons who have only a bare wall on it may not pierce this wall, unless they carefully nail up any door

they may make there. An inhabitant whose house already has one door opening on the blind alley, may not make another further from the corner of the road, without his neighbour's consent. Even if it is nearer the corner the new door may not lawfully be made without the knowledge of the neighbours, unless at the same time the old one is shut up; in this latter case no one has any right to object. †Nor have the neighbours any right to object if the owner of two houses proposes to make a door of communication between the two, whether the doors of these houses open on to two different blind alleys, or whether one opens into a blind alley and the other into the street. In all cases where neighbours wish to oppose the opening of another door, they may compromise for a sum of money. Every householder has a right to make new windows opening on to a blind alley, in order to get more light.

A wall between two properties is either a party-wall or not. If it is not a party-wall, the neighbour may not place beams against it without the knowledge of the owner, at least, according to what was admitted by Shafii in his second period; nor can he force the owner to allow him to do so. If the owner permits him to do so without payment, it is as if he had lent him the use of the wall; and he may at any time withdraw this permission, without being liable for damage, †even though the neighbour may have already begun his intended construction. If the owner withdraws his permission, he may at his choice either permit the building for a consideration, or he may insist upon its demolition, and claim damages for any injury done to the wall. Some authorities, however, maintain that the owner may only claim compensation under these circumstances, and cannot insist upon demolition. If, on the other hand, it is for a consideration that the owner has granted permission to rest upon the wall beams supporting some construction, *e.g.* if he has rented out for this purpose the use of the top of the wall, he must keep to the articles of the contract of letting. †If the following expressions have been used:—"I sell you the top of my wall to support your building," or "I sell you the right to build upon it," it is a sale combined with a contract of letting; and the owner, once the construction has begun, has no longer under any circumstances the right to demolish the wall. Even if the wall falls down and the owner rebuilds it, a neighbour who has bought a right of construction upon the original wall can exercise his right upon the wall newly erected. It is necessary that the portion of the wall concerned should be specified by mentioning both length and width, whether the permission has been granted for a consideration or not. There should also be indicated the nature and the height of the walls of the building it is intended to build upon the wall in question, and the nature of the roof with which it is to be covered. When

permission is asked to build on another's land, it is sufficient to indicate the area of the proposed building.

As to a party-wall, according to the theory adopted by Shafii in his second period, neither of the part-owners has a right to rest beams on it without the other's consent ; nor to fix a bolt in it, nor open a window, except on the same condition. Each part-owner may, however, support things against it, or open a shop for goods, so long as the wall is not damaged. Such acts are lawful also in the case of a wall which is not a party-wall. A part-owner may not oblige his neighbour to contribute to the repairing of a party-wall, at least according to the opinion adopted by Shafii in his second period ; but if the wall falls into ruin, he may rebuild it at his own cost and his own profit. In this case he obtains exclusive possession of it, and may dispose of it as he pleases, either by making it serve as a foundation for other buildings, or by demolishing it ; and if the neighbour should then object to its demolition, and offer to pay his share in the expense of rebuilding and up-keep, he cannot be forced to agree to this proposal. Where, however, one of two part-owners of a party-wall fallen into ruin wishes to rebuild it with the *débris* to which both have equal right, the other may object to this ; but if they help each other and build it together their joint rights in the party-wall become as before. It is permissible for one of the part-owners to grant to the other who alone undertakes to rebuild it, a larger share in the party-wall than he had before ; for in that case these increased rights are considered as being the reward of his labour.

One may grant to one's neighbour, for a consideration, the right to deflect a course of water, or to throw snow, upon property of which one is the owner.

When two proprietors dispute about the ownership of a wall between their properties, and the buildings belonging to one of them are so closely fixed in to the wall, that both must have been constructed at the same time, he is regarded as the owner of the wall ; otherwise they must be looked upon as joint owners. Consequently the wall must be adjudged in this case to that party who is able to prove his ownership ; and if neither can do this, the court should administer an oath to both of them. If both, or neither, substantiate their statements on oath, the wall should be declared a party-wall ; but if one only does so, the wall should be adjudged to him. The circumstance that one of two neighbours has rested beams on a disputed wall, cannot of itself add weight to his claim. The flooring between two storeys of a house belonging to different persons is subject to the same law as a wall between two properties. It is necessary to consider if the floor can have been made after the construction of the upper storey. If this is the case, it is presumed that the

floor is, so to speak, a party-floor; but if it is not so established, the floor is presumed to belong to the proprietor of the lower story.

CHAPTER IV.—TRANSFERENCE OF DEBTS

For the validity of a transference the law requires the consent of the transferrer and of the transferee, †but not that of the debtor. A person who owes nothing, however, cannot be made the subject of such a transference; though some authorities maintain that this is possible, with the consent of the person in question. A debt transferred must be obligatory. It can refer to things sold by weight or measure †or otherwise. It is lawful to transfer the price of a sale during the period of option, either by the purchaser designating to the vendor a third person who will pay him the price agreed upon, †or by the vendor designating a third person to whom the purchaser should pay the money. A slave undergoing enfranchisement by contract may designate to his master another person who will make him the periodic payments; though the master may not transfer to any other person his claim upon the slave for these same payments. The amount and nature of a transferred debt should be known, as in the case of the original debt. Only one jurist admits the legality of a transference of camels due as the price of blood, both on the part of the claimant and of the debtor. A debt extinguished by transference must be of the same nature and amount as the transfer; †the due date of both must be the same; †and they must both refer to the same coin or goods.

A debtor who pays his creditor by transferring him a claim, is thereby free of the debt; and the person whose liability is transferred is at the same time freed as regards his first creditor, while becoming responsible towards the transferee. Consequently, the transferee cannot proceed against the transferrer, even if he meets with difficulty on account of the bankruptcy of the other party, or by reason of his denial confirmed on oath. Even if the latter is already a bankrupt at the moment of the transference, without the knowledge of the transferee, the latter has still no claim against the transferrer; though other authorities allow him this remedy if the transfer was on the express condition of the debtor's solvency.

A transfer by a purchaser, as to the price agreed upon, *is annulled by a restitution on account of redhibitory defects; but, according to our school, a similar transfer by the vendor stands good, even though the goods are subsequently returned him on account of such defects. A transfer with regard to the price of a slave sold is also null, if the interested parties, *i.e.* the vendor, purchaser, and transferee, are agreed

that it is really a free man they have disposed of by mistake, or if one of the parties proves this in court. When, in such circumstances, the transferee alone denies to the slave the liberty admitted by the vendor and purchaser, the latter have the right to insist upon the transferee confirming upon oath his ignorance of the liberty of the person in question; and it is only after taking this oath that the transferee can claim from the purchaser payment of the price transferred.

In case of a dispute between two persons, one of whom contends that he appointed the other his agent to take possession of something due by a third party, while the other maintains that the debt was transferred to him and he acted not as agent but as transferee, or if the case turns upon the question whether the word "cede" used by the parties implies a mandate or a transfer, the one who asserts the fact of an appointment as agent has a presumption in his favour, if his statement is confirmed on oath. All authorities, however, are not agreed in admitting this presumption in the latter case, *i.e.* where the dispute is about the meaning of the word "cede." If one of the parties in litigation maintains that he transferred his claim to the other, while the latter asserts that he was merely authorised to receive the sum due, the law presumes that this latter statement is the truth, if confirmed on oath.

CHAPTER V.—GUARANTY

Section 1

A person who is incapable of managing his affairs cannot be a surety. A guarantee on the part of a bankrupt has the same effect as a purchase by him; †and that on the part of a slave without his master's authorisation is considered void. If a master has authorised his slave to go surety, indicating as guarantee what the slave gains by his labour, or some other thing, it is the property indicated which is liable to seizure; †otherwise the following rule must be observed. In the case of a generally authorised slave, everything he actually possesses and everything he has gained after his authorisation may be seized; but in the case of a slave not authorised to trade, the profits of his labour are alone liable. †It is necessary that the surety should know the creditor, but the latter need not accept or even subsequently approve him. It is generally agreed that one may go surety for a person without his consent; †one need not even know him.

A guaranty can only be given for a debt, which must be—

1. Certain; though in his first period Shafii accepted the validity of a guarantee on a future obligation. Our school also admits a guarantee as to the indirect consequences of a sale, even after payment of the

price ; *i.e.* one can go surety to the purchaser for the return of the price paid by him, in case of a legal seizure, redhibition or deterioration.

2. Obligatory. One may not go surety for the periodic payments arising out of an enfranchisement by contract ; †but one may do so for payment due by reason of a contract of sale, even during the continuance of a right of option. A guaranty relating to the payment of a contractor is regulated by the same principles as a security with reference to a similar obligation.

3. Known. This, at any rate, is what Shafii decided in his Egyptian period, when he also gave it as his opinion that the remission of an unknown debt is null, unless it is a case of camels due as price of blood, †in which latter case he also admits the validity of a guaranty. †An agreement in the following terms :—" I go surety for so-and-so's debt up to an amount of from one to ten *drahms* is not regarded as a guarantee for an unknown debt, and one is then liable for the maximum. [†In such a case one is responsible for a maximum of nine *drahms*.]

Section 2

Our school admits the validity of personal security. One can go surety for the person of a debtor without knowing the amount of the debt. In every other case personal security can only be given where an ordinary guarantee can also be given. Our school admits personal security even for a person liable to a penalty depending upon the will of the injured party as under the law of talion, or liable to punishment for defamation ; but a third party can never go bail for the person of a criminal liable to a definite punishment, *i.e.* one that cannot be remitted. One may go bail for the person of a minor, a lunatic, a man in prison, an absent person and even a dead man.

In this last case it is necessary to produce the corpse, for its identity to be established by witnesses ; but in other cases a personal bail has for its effect that one has undertaken to bring the debtor alive to the place where he has to pay his debt, at least if such place has been previously indicated, or if not to the place where the guarantee was given. The guarantee has been fulfilled once the debtor is brought to the place, so that the creditor is able to seize his person. It has been fulfilled also if the debtor presents himself of his own accord and places himself at the disposition of his creditor, in order to fulfil his engagement ; but a mere appearance of the debtor is not enough, unless he declares he comes to answer to his bail. When one has become bail for a debtor, who subsequently absconds, and nobody knows where he is, there is no longer need to produce him ; and the guarantor, even if he has already

made inquiry as to the debtor's whereabouts, may still insist on a delay necessary to enable him to go and look for the debtor and procure his return. When this is over, the guarantor may be imprisoned, unless he brings the debtor. Some jurists maintain, however, that in these circumstances the guarantor can never be obliged to bring the debtor, if the latter has gone away as far as will permit of an abridgment of prayer. †If a debtor is already dead and buried at the moment when a guaranty was given for his person, the guarantor is not responsible for the payment of the debt; and personal security is in such a case null and void, even if a clause has been added to the effect that the guarantor shall be liable for the payment of the debt, where the burial of the debtor prevents his being brought. †And, finally, personal security is not valid without the debtor's consent.

Section 3

For the validity of a guaranty, ordinary or personal, such words must be used as clearly indicate the obligation undertaken, as "I go bail for what so-and-so owes you," or "I take his debt on myself," or "I undertake it," or "I answer for his person," or "I become bail, security, guarantor, responsible for bringing you the debtor; and if I do not bring him, I will pay for him." But if, on the other hand, one says, "I will pay the money or bring the debtor," it is a mere promise and not a personal guaranty. †Guaranty, whether ordinary or personal, cannot be made conditional; nor may the exact moment of the debtor's appearance be lawfully specified. But it may be stipulated that the debtor shall be brought immediately, or that he shall not be brought before the end of the month. One may also guarantee payment by a certain time of a debt due immediately, as well as the immediate payment of a debt due on a certain date. †The guarantor need never pay off a debt before the date agreed upon between him and the creditor.

A creditor may at his choice seize either the guarantor or the original debtor. †He cannot accept the security on condition that the principal debtor shall be free from seizure. The guaranty ceases with the principal debt, and consequently the guarantor is released by a remission of the original debtor. On the other hand, a release of the guarantor does not affect the obligation of the original debtor. Upon the death of the principal debtor, or of the guarantor, the death is recoverable from the goods of the deceased; but the position of the survivor is unaffected. A guarantor, on proceedings being taken against him, may cite the original debtor, and force him to discharge his debt to the creditor, unless he has gone security without the debtor's knowledge; but† the

guarantor cannot proceed against the original debtor, before the creditor claims payment. A guarantor who pays, without reference to the debtor, may still sue the latter if guaranty and payment were effected with his consent. But if the debtor disapproved these, the guarantor has no remedy against him. †The debtor's consent to the guaranty renders him liable to the guarantor ; but not his mere consent to payment by the latter. †If a guarantor has persuaded a creditor to accept debased money instead of the good pieces due by the debtor, or a coat worth fifty pieces instead of one hundred pieces, he can claim from the debtor no more than he has actually paid.

If one discharges another's obligation without his knowledge and without any guaranty, one is not substituted for the creditor so as to be able to proceed against the debtor ; but the debtor's consent to payment by a third party not a guarantor involves this substitution, whether or not such a right has been expressly reserved. †This right of substitution remains intact, even where the creditor and the third party convert the debt into another of a different nature.

The law requires that before proceedings are taken, either under a guaranty or by right of substitution, that payment took place in presence of two male witnesses, or of one male and two female witnesses ; or even of a single male witness—but in this last case the guarantor or substitute should take an oath. If there are no witnesses, the payment made by the guarantor or the substitute, in the absence of the debtor, gives him no right to proceed, whether there is †or is not a rejoinder on his part. Our school, however, admits such right to proceed, even without witnesses, where payment is substantiated by a declaration of the creditor, or where it has taken place in presence of the original debtor.

BOOK 13.—PARTNERSHIP

Four kinds of partnerships are to be distinguished—

1. Personal (sherkat-al-abdan), a contract by virtue of which some persons unite for the exercise of their trade or profession, as a partnership of two or more porters or workmen so that their profit is held in common and divided amongst them. Such a partnership does not require equal contribution, nor that the partners should all have the same trade.

2. Universal (sherkat-al-mofawada), in which the profit gained by each partner is held in common by all, and all are jointly responsible for the debts of each.

3. Commercial, in participation (sherka-al-wujuh), in which two persons, well known as merchants, each buy goods as if for himself, under particular conditions as to time of payment ; the goods being then sold in common and the profits divided between the two.

All these three kinds of partnership are null and void.

4. Particular (sherka-al-inan), which alone is permitted, provided that the share of each partner is expressly indicated. †Thus a partnership of this kind cannot exist where there is merely an agreement to combine and nothing more. No particular partnership can take place except between persons capable of appointing or being appointed an agent.

The share capital must consist of things sold by measure or weight, and not otherwise. Some jurists even maintain that these contributions must consist in gold or silver coin. All agree that the shares must be mixed together so as to be indistinguishable. This cannot take place unless the contributions are of the same nature and quality. Thus one partner cannot bring good coin and another debased. These rules, however, apply only to the common stock collected to form a conventional partnership ; for if two persons obtain anything as undivided property in some other way, as by inheritance, sale, etc., and allow each other unrestricted right to trade with it, this is a perfectly legitimate partnership, without, however, there being any combination of funds subscribed, and without there being any question of things sold by measure or weight. It follows therefore that the rule that the funds of a partnership must consist of things sold by measure or weight can be

eluded by a mutual and partial exchange of the things contributed, combined with an authorisation to dispose of them at pleasure. The law does not insist that the share contributed by each partner shall be equal; †nor even that the exact amount must be known at the time of the contract of partnership.

No partner may dispose of the common funds, except in a reasonable manner. Thus he cannot of his own accord sell either on credit or for any coin not legally current in the place; and he is personally responsible if he allows himself to be deceived by any obvious fraud. Neither can he take with him on a journey partnership funds; nor send them to a commission agent, without the permission of the other partners.

Each partner has a right to terminate the contract of partnership at any moment; but can then no longer dispose of the common funds. This rule, however, must be understood in the sense that if one partner says to another, "I release you from our contract," or "You can no longer dispose of my share in the common funds," he is not himself released from his obligations towards the partnership. A partnership terminates upon the death, lunacy, or disappearance of one of the partners.

Profit and loss must be shared in proportion to the contribution of each partner, without regard to the value of the labour of each. Any stipulation to the contrary would involve the illegality of the contract. But in these circumstances the partners retain a right of action against each other for any salary that may be due for their respective services, and what dispositions they may have made with regard to the common funds remain intact. And any profit made or loss incurred, before the legality of the contract was called in question, must be shared in proportion to the capital contributed.

Each partner is considered as the depositary of the common funds intrusted to him; which implies that his word is presumed to be true as to restitution, deterioration or accidental loss of such property. If he alleges some visible cause of the loss, he need only prove that the accident took place, his word being enough to show the accident did also cause the loss of the object in dispute. If one partner possesses something he says is his, while another says it belongs to the partnership or *vice versâ*, the presumption is in favour of the person in possession; but if he asserts that the thing belongs to him in consequence of a division amongst the partners, the presumption is in favour of the party that denies this fact. And finally there is a presumption in favour of a partner who asserts that a thing was purchased, either for the partnership or on his own account, against any other partner who maintains the contrary.

BOOK 14.—PRINCIPAL AND AGENT

Section 1

For the validity of an appointment as agent, it is necessary that the principal should have the right to do in person what he authorises his agent to do, whether it concerns his own property, or something else of which he has a right to dispose. Thus a minor, a lunatic, a woman—as to marriage—or a person in a state of *ihram,* cannot appoint an agent; but a guardian may do so on behalf of his pupil. A blind person, though incapable of himself buying or selling anything because he cannot see it, may nominate an agent for this purpose.

An agent must himself be capable of doing on his own account what he is appointed to do for another. Consequently, neither a minor, nor a lunatic, nor—as to marriage—a woman, nor a person in a state of *ihram,* can be appointed an agent.

There are, however, certain circumstances in which one may rely upon the word of a minor, *e.g.* when in the name of his parents he allows some one to enter the house, or when he brings a small present from them. †A slave may be appointed an agent to receive a woman in marriage, but not to give her away.

The object of an appointment as agent must be—

1. The property of, or a right acquired by, the principal. †Thus, for example, the appointment of an agent to sell a slave one is about to purchase, or to repudiate a woman one is about to marry, is considered null and void.

2. An act which may be performed by another person. Consequently, to appoint an agent to perform one's religious duties is unlawful, with the exception of the pilgrimage, visit, distribution of charity and sacrifice. An agent may not be appointed to depose as a witness, take an oath of continence, pronounce an anathema or other oaths †or an injurious comparison. On the other hand, sale and purchase, donation, contract of *salam,* security, marriage, repudiation, and in general all civil conventions may be effected or revoked through an agent. Similarly, an agent may accept what a third party owes his principal; he can fulfil the latter's obligations, appear in court for him either as plaintiff or defendant, *and by occupation in his name acquire possession

of an object not belonging to any one, as *e.g.* by clearing waste land, by hunting, or by picking up dry wood. A judicial confession should be made personally by the interested party, †and cannot be made through an agent; but it is permissible to apply by agent for the application of a penalty that may be remitted, as under the law of talion, or of a penalty for defamation. Only a small number of authorities refuse to allow this unless the principal is present.

3. Known; at least in part, for complete precision is unnecessary. Thus, an appointment as agent in the following terms is invalid :—" I give you general authority as my agent in business, important or otherwise," or "for all my affairs," or "I intrust my property to you." On the other hand, there is no objection to an appointment as follows :— " I appoint you my agent for the sale of all my property, and the enfranchisement of all my slaves." It follows also from this principle that when giving any one power of attorney to purchase a slave, the kind must be specified; or, in the case of a house, its situation; but in † neither case is it necessary to mention the price.

The principal must make use of words that leave no doubt as to his consent. Thus, for example, he should say, " I appoint you my agent for such and such a business," or " I intrust it to you," or " You will be my agent;" and consent is also sufficiently expressed by saying, " Sell this for me," or " Enfranchise such and such a slave." For the validity of an appointment as agent the law does not require an express acceptance on the part of the agent; though some authorities maintain the contrary opinion, in a case where the principal has merely indicated the nature of the contract, as, for instance, by saying, " I appoint you my agent." Where, however, the principal has disclosed the nature not of the contract but of the act, by saying, *e.g.* " sell " or " enfranchise," even these authors do not insist upon an express acceptance.

†An appointment as agent cannot be made to depend upon a condition; but there is no objection to the business confided to the agent being made so to depend. †The words, " I appoint you my agent and you will be so again after I have revoked the appointment," constitute a valid power of attorney for the present, but it lapses upon revocation, for there is then a new appointment depending upon a condition. †The same principle applies to the cancelling condition; whether, *i.e.* the revocation of the appointment may or may not be conditional.

Section 2

An agent appointed to effect a general sale may accept in payment of the price only such coin as is legally current in the locality. He may not

sell on credit ; nor may he allow himself to be deceived by any obvious fraud—such a fraud, that is, as is seldom capable of deceiving an average person. In any case the agent is personally responsible to the principal for damage, when there has been delivery of the goods. If the power of attorney specifies that a sale shall be at a fixed time, the same rule must be applied ; †but it is quite legal to leave the time to the discretion of the agent, who should then guide himself by what is usually stipulated as to the time. An agent appointed to sell a thing cannot buy it for himself, nor for a minor of whom he is the legal guardian ; †but there is no objection to his selling it to his father or to his adult child. A power to sell implies a power to receive the price and deliver the goods. A delivery of the goods before the receipt of the price is at the agent's risk. An agent appointed to buy must not purchase a thing with redhibitory defects, except on his own responsibility. If the object is worth the price stipulated, in spite of redhibitory defects, the purchase is chargeable to the principal, if the agent was unaware of the defects, †but not otherwise. If the thing is not worth the price paid, the purchase does not bind the principal, if the agent knew of the defects. If he was not aware of them, the agreement rests intact, except for the right of option, which in these circumstances the law allows both to principal and agent.

An agent, if able to carry out his instructions, may not delegate a third party to do so, without his principal's consent ; but if he is unable to conclude the affair through incapacity or on account of his social position, such delegation is quite lawful. It is so also where there are many agencies that one person cannot execute alone ; but in this case our school admits delegation only for that part of his duty that exceeds the agent's power. A power of delegation accorded by the principal in explicit terms, such as, "Choose a substitute for yourself," does not affect the position of the substitute, who remains always the agent's agent. †Consequently his authority terminates either by a revocation of his appointment by the agent, or by a revocation of the latter's own appointment. Where, on the other hand, the principal says to the agent, "Choose me another person to replace you if you should require a substitute," and the agent chooses such a substitute, the latter becomes the direct agent of the principal. †And it is the same where the principal has accorded a faculty of substitution, without indicating whether the substitute is to act for him or for his agent.

[1. In all cases where the substitute acts directly for the principal, an agent cannot revoke his appointment ; nor is his appointment *ipso facto* revoked by the revocation of the agent's appointment. On the other hand, the agent is equally independent of the substitute.

2. Even where an agent has a right of delegation, he can appoint as substitute only a person worthy of confidence ; unless the principal has indicated some particular person.

3. †Where an agent has made use of his power to appoint as substitute a person worthy of confidence, who is afterwards guilty of notorious misconduct, he cannot of his own accord revoke his appointment.]

Section 3

If in an agent's power of attorney there is a formal injunction to sell, either to a person specially mentioned, or at a certain date, or at a particular place, the agent must act in conformity with this clause. Authorities, however, are not in complete agreement as to the place, especially if the agent is unaware that such place has been indicated with a particular object. A power of attorney to sell for " one hundred pieces of money " does not imply any authority to sell for less ; but the sale may be effected at a higher price, unless expressly forbidden by the principal.

Where an agent had been appointed to purchase a *shah* of a certain quality for a *dinar* received for that purpose, and he buys for that price two *shahs* of the required quality, but neither of them is worth the price, the principal is not obliged to confirm the purchase. *He would be bound to confirm it, if each of the two *shahs* had the value mentioned, and in that case the ownership of the property would be transferred to the principal by the fact of his agent's taking possession. Where a principal instructs an agent to give some definite object in exchange for the goods, and the latter buys on credit, †or *vice versâ,* the purchase has no effect as against the principal. An agent who does not conform to his principal's instructions, with regard to the sale of his property or an exchange for some definite object, disposes of the goods of another in such a way as to cause the nullity of the contract. A purchase effected by an agent without naming his principal, and on his own responsibility, does not affect the latter ; †and it is the same where the vendor says, " I sell you this thing," and the agent answers, " No, I buy it for so-and-so." Finally, according to our school, an agreement expressed as follows :—" I sell this to your principal Zaid," to which the agent answers, " I buy it for him," is null and void.

An agent is considered as the depositary of everything intrusted to him in virtue of his appointment as agent ; and, even where he does not act gratuitously, he is responsible for loss or accidental deterioration only if he has exceeded his powers. †However, an error of this sort upon his part does not of itself involve the revocation of his

appointment. In all cases the immediate consequences of a contract concern only the agent who has effected it, and not the principal. Thus the inspection of the goods, the irrevocableness of the contract upon the separation of the parties, and mutual taking possession upon the spot, are the affair of the agent, not of the principal.

The price agreed upon may be recovered by the vendor in the following ways :—

1. If the price has been left by the principal to the agent, the vendor may cite both of them.

2. If this is not so, and the price consists of some definite object, the vendor can cite only the principal.

3. If neither of these suppositions is the case, the vendor can cite only the agent ; at any rate if the principal entirely denies the agency, or declares he knows nothing about it. †Where, on the other hand, the appointment is admitted by all the interested parties, the vendor may cite both principal and agent, even though the price is not a definite object. In such a case the agent is regarded as the principal debtor, and the principal as his security.

In case of a legal seizure the purchaser has a remedy against the agent if the latter has received the price, even though this price may have been accidentally lost when in his possession, †and even though he may have informed the purchaser he was not acting on his own account. The agent may in his turn proceed against the principal. [†The purchaser has also the right to proceed directly against the principal in case of a legal seizure.]

Section 4

An appointment as agent may at any moment be revoked by the principal ; and the agent on his part may also at any moment give it up. A revocation pronounced in presence of the agent, as, for example, in the following words :—" I cancel the power of attorney," or " I annul it," or " I release you from it," operates as an immediate dismissal of the agent. A revocation in the agent's absence has the same effect, though one authority maintains that in such a case the revocation has no effect until communicated to the agent. An agent may give up his appointment, as, for example, by saying, " I resign," or " I return you your power of attorney." The appointment terminates of itself where either party loses a right to dispose of his own property, as by death or loss of reason, †or by temporary loss of consciousness following upon a fit. It ceases also of itself when the article which the principal has instructed his agent to dispose of no longer belongs to him. A mere disavowal of an agent by his principal who has forgotten his engagement,

or who wants to conceal his intentions, does not involve a dismissal; but this is certainly involved in a premeditated disavowal, with no other object in view.

In the case of a dispute as to the essential nature of an appointment as agent, *e.g.* where the agent maintains that the principal instructed him to sell something on credit, or to buy it for twenty pieces of money; while the latter contends that it was to be sold for cash, or bought for ten pieces; the presumption is in favour of the principal, if he takes an oath.

The law considers as null and void a purchase effected by an agent—

1. Of a female slave for the price of twenty pieces of money; if the agent tells the vendor he has been instructed to buy at that price, and the principal afterwards states on oath that he said only ten pieces.

2. For a price consisting of a definite object belonging to the principal; if the agent declared either before or after the purchase that it was not on his own account, but for another, and the principal afterwards disavows this on oath. However, the nullity in this case occurs only where the vendor admits he was informed of the fact that he was dealing with an agent; for if this is denied by the vendor on oath, the purchase remains and the agent is personally responsible for payment. If the sale is not effected for some definite object, but on credit, the principle to be followed is still the same; that is to say, the purchase is void if the agent has disclosed his true character to the vendor and this is admitted by the latter; but the agent is himself liable if he has not done so, for the vendor states on oath he did not know it. Finally, in all cases where the purchase remains chargeable to the agent, the law recommends the court to persuade the principal to give an explanation of his disavowal to the agent, *e.g.* by saying, "If I had instructed you to purchase this slave for twenty pieces of money I would have resold her to you with pleasure for that amount which seems to me exorbitant;" to which the agent may reply, "I buy her," with the object of thus acquiring a female slave with whom cohabitation is permitted him.

Where an agent maintains he has not exceeded his powers, and his principal asserts that he has, there is a presumption in favour of the latter; or, according to one authority, in favour of the former. There is general agreement that an agent's declaration must be accepted when he affirms upon oath that a certain article in his possession has been accidentally destroyed, or that he has restored to his principal what the latter intrusted to his keeping. Where an agent does not act gratuitously, some authorities are of a different opinion, so far as concerns restitution. If the agent maintains that he effected the restitution by means of a messenger of the principal, the messenger's word is

presumed to be true, and not that of the agent; ††and in that case the principal is not required to pronounce upon his attorney's declaration. Where an agent contends that he received the price of a sale and that it was accidentally lost, and the principal denies these facts, there is a presumption in favour of the latter, so long as the delivery of the goods has not yet taken place; after this our school admits a presumption in favour of the agent. Where some one has been instructed to pay a debt, and says he has done so, but the creditor denies receiving the money, the latter has a presumption in his favour, provided he takes an oath. An appointment as agent is never presumed; consequently an agent must always prove his assertions, if contradicted by his principal, with the exception of the special cases mentioned in which his word is believed. ††On the same principle the administrator of an orphan's property is obliged, if the fact is contested, to prove that he has handed over all that remains in his hands to his ward upon his attaining his majority.

†Neither an agent nor a depositary can refuse to hand over to the owner what they hold of his, under the pretext that such restitution must take place in the presence of witnesses, for their word suffices to establish this. But a person holding by usurpation, or any one enjoying no legal presumption in his favour as an agent does, may refuse restitution except in the presence of witnesses.

If a person asserts that he has been instructed by some one having a right to do so to take possession of property in possession of a third party, whether as payment of a debt or as restitution of a definite object, the debtor may pay the debt or restore the object to the agent, if he sees fit to acknowledge the character he claims. However, according to our school, he cannot be obliged to pay the debt or restore the object to the agent, unless the latter proves his right to act as agent. †On the other hand, in such a case, if the claimant states he is acting as transferee, the restitution or payment is obligatory, unless the debtor denies. [Our school acknowledges a similar obligation where the claimant derives his right from his being an heir, and the debtor admits this.]

BOOK 15.—ADMISSION

Section 1

An admission is valid only when made by a person who can dispose freely of his property. Thus an admission by a minor or a lunatic is null and void. But where an individual, regarded as a minor, admits having attained puberty in consequence of nocturnal pollutions, he must be believed, without being sworn, if he has attained an age at which emission is legally presumed to be possible. Where, on the other hand, a minor says he has reached his majority, on no other ground than his having attained the required age of fifteen, he must prove this circumstance. The consequences of an admission made by an idiot or a bankrupt have already been dealt with. An admission by a slave, asserting upon his part an obligation to undergo a purely corporal punishment, is accepted in a court of justice ; but his admission relating to an offence for which a pecuniary penalty may be imposed, involves only his own personal obligation, if it is contested by his master. The slave is bound to discharge this obligation upon his enfranchisement, but the admission does not render him liable to seizure. Moreover, a slave's admission in a civil matter is not accepted at all, if it relates to his master's rights or property, unless in the case of a slave generally authorised to trade. In this latter case it is accepted, and the slave must discharge the resulting obligation, either out of the profits he has realised, or out of the funds intrusted to him by his master. A sick person's admission upon his deathbed is valid, according to our school, whether made in favour of some third party or in favour of one of his heirs. An admission made before a last illness enjoys no right of priority over one made on a deathbed, if it is a matter of two admissions about the same thing in favour of two different persons. †Nor is there any right of priority where a person, in health or on his deathbed, makes an admission in favour of some one ; and after his death his heir makes an admission about the same thing in favour of some one else.

An admission is of no value if obtained by violence. The person in whose favour an admission is made should be capable of possessing and exercising rights over the thing it refers to. Thus an admission made in favour of an animal is invalid ; but an obligation would be created by

the following words :—" I admit owing such and such a thing to its master on account of that animal," or " I admit owing to the child of which Hind is pregnant such and such a thing which the child will be able to claim as inheritance or legacy." This admission is equally invalid if some cause is assigned that cannot legally exist ; but it is valid if the cause has not been expressed. †A denial on the part of the person in whose favour an admission is made, results in the ownership of the property not being transferred. A revocation of an admission followed by such denial must be accepted, if the admission was an error, and the denial is immediately followed by the revocation.

Section 2

An admission is usually made in the following words :—" Such and such a thing belongs to Zaid ; " and if it is about a debt, " I am his debtor," or " I owe it him." An admission with regard to real property or some definite object should be made as follows :—" The thing belonging to so and so is with me," or " I hold it." If one merely says to some one, " You owe me a thousand pieces of money," and the other merely answers, " Weigh it," " Take it then," " Weigh the money," " Take it," " Put your seal on it," or " Put it in your purse," this cannot be considered as an admission ; but it does amount to an admission if he answers, " Certainly," " Yes," " You are right," " You have given me a receipt for it," " I have paid you," or " I admit it." The words, " I admit," without adding " what," or " I will admit my debt," *i.e.* in the aorist tense instead of the past, do not constitute an admission ; but the words, " Certainly," or " Yes," in answer to a question such as, " Don't you owe me this sum ? " do so. However, authorities are not agreed as to the answer, " Yes." †There is an admission also where one says to some one, " Pay me the thousand pieces you owe me," and he answers, " Yes," or " I will pay you them to-morrow," or " Let me have a day's time," or " Let me have time to sit down," or " To open my purse," or " To look for my key."

Section 3

An admission must refer to something not belonging to the person making it. Thus, an admission as to " my house," or " my coat," or in the words, " My claim upon Zaid I admit belongs to Amr," is null and void. In the phrase, " I admit such and such a thing now belongs to so-and-so, but until I made this admission it belonged to me," the first part implies an admission, and the second is considered as null. And secondly the thing with reference to which the admission is made must

be in the possession of the person making the admission, since the consequence of the admission is that he is obliged to deliver the object. However, the admission will be valid even where the thing, at the moment of the admission, is not yet in the possession of the person making the admission; provided he obtains possession of it before the time fixed for the delivery.

An admission that the slave of a third party is free, renders the person making it liable under it, if afterwards he obtains possession of the slave by purchase. If the admission is to the effect that the slave is already free, the purchase must simply be considered as a ransom. But if otherwise, that is if the admission is merely of an intention to enfranchise the slave of a third party, the purchase is considered a ransom only on the part of the person making the admission, but an ordinary purchase on the part of the owner, at least according to our school. Consequently to the vendor alone belongs the right of option, both that called "of the sitting," and that which is the effect of a special agreement.

An admission need not refer to a known object. Thus, if one admits owing somebody "a thing," the creditor must be contented with whatever the debtor says he meant, provided only that it is "a thing" in the legal acceptation of the word, *i.e.* a thing of some value and capable of being owned. †He would even have in these circumstances to content himself with some valueless thing, if of the same kind as *e.g.* a grain of corn; or with an object which, though not capable of legal ownership, may be acquired and possessed, such as a trained dog, manure, etc. Only those things of which the acquisition and possession are forbidden, *e.g.* a pig or an untrained dog, may be refused as having no legal utility. A debtor cannot discharge an obligation resulting from any such admission by performing an act of mere politeness, *e.g.* by visiting his sick creditor, or returning his salute. An admission of owing some one something "of value," "of high value," "of great value," or "of much value," involves an obligation merely to give something not entirely valueless;—†for instance, even a female slave enfranchised on account of maternity;—but a dog, or the skin of a dead animal, would not suffice. The expression "I admit owing him so much," is equivalent to "I admit owing him something"; while the simple repetition of "so much," or "thing," in an admission, have no consequence at all. If, on the contrary, one says, "a thing and a thing," or "so much and so much," uniting the words by the conjunction, one owes two distinct things.

If one says, "I owe you such a *drahm*," or "I owe it you," one owes only a single *drahm*; but one owes two, according to our school, if

one says, "such and such a *drahm*," putting the word "*drähm*" in the accusative singular. And according again to our school, one owes only a single "*drahm*," when the word is in the nominative or the genitive, or where the conjunction "and" has been omitted. An admission expressed as follows, "a thousand plus a *drahm*," may be explained as though the word "thousand" did not refer to *drahms*, but to something else. ††But "twenty-five *drahms*," can refer to nothing but *drahms*. ††A modification to the effect that "the *drahms* I admit are *drahms* of an inferior weight," must be accepted; but if the *drahms* current in the locality are not debased coin, the modification must immediately follow upon the admission. Such a modification may be made later only where the *drahms* current in the locality are not of the usual weight. At least Shafii so decided. An admission in the words, "I owe him from one to ten *drahms*," †involves an obligation to pay nine; but an admission of "one in ten" means eleven if the preposition is used in a conjunctive sense, and ten if in an arithmetical one; though otherwise, *i.e.* if used in the ordinary sense, it means only one.

Section 4

An admission of owing "a sword in a sheath," or "a coat in a box," does not imply the sheath or the box; and similarly an admission of owing "a sheath containing a sword," or "a box containing a coat," does not involve the contents. And so too, if one admits owing "a slave with a turban on his head," ††one is not supposed to have included the turban; but, on the other hand, one owes everything spoken of when the admission is of "an animal with its saddle," or "a coat adorned with embroideries."

The expression "a thousand pieces of money in my father's inheritance," implies an admission that the estate is burdened with a debt of this amount; but the expression "a thousand pieces of money in the inheritance my father will leave me" is considered as a mere promise of a future donation. Moreover, if one admits owing any one "a *drahm*," and repeats this last word without saying anything else, one owes a single *drahm*; but if one repeats the word "*drahm*," and adds the conjunction "and," then one owes two. By saying "a *drahm* and a *drahm* and a *drahm*," one owes two for the two first times the word is pronounced. The third has no effect if used only to confirm the obligation resulting from the other two. On the other hand, a third *drahm* must be paid in the following cases:—

1. If the third *drahm* was pronounced with the intention of creating a new obligation.

2. †If the third was pronounced with the intention only of confirming the admission in the first.

3. †If the third was pronounced with no special intention.

An admission made in vague terms, *e.g.* "something and a coat," obliges the debtor to specify more precisely the object of his admission when required to do so by the creditor ; ††and should he refuse to do so the latter may force him to do so by having him committed to prison. When the debtor specifies the object of the admission in a more precise manner, but the creditor contends that this declaration is made in bad faith, the latter must prove his allegation, for he is the plaintiff, and the presumption is always in favour of the defendant. An admission of "a thousand" pieces of money, followed by a second admission of "a thousand" pieces, involves the payment of only one thousand pieces ; and where these two admissions do not refer to the same sum, the smaller is *ipso facto* included in the greater. On the other hand, the two admissions give rise to two distinct obligations where the particulars are not the same ; or if one first says, "I received ten pieces of money on Saturday," and then afterwards, "I received ten of them on Sunday."

*An admission constitutes a novation, or substitution of one obligation for another ; consequently the words, "I owe him a thousand pieces of money for the wine or the dog he sold me," or "I owe him a thousand pieces of money I have already paid him," result in the person using them having to pay the sum admitted.

If one says, "I owe him such and such a sum as the price of a slave purchased by me, of whom I have not yet taken possession, and I will pay him as soon as he has delivered me this slave," our school considers the sum mentioned as the price offered for the slave, though the payment is not obligatory before delivery takes place. According to our school nothing is due upon the admission of a debt of a thousand pieces of money under the restriction "If God wills" ; but an admission of a debt creates an obligation, even if it is added that nothing is owing. On bringing one thousand pieces of money, after admitting owing this sum, and saying, "Here they are, as a deposit," *one has the presumption on one's side, provided one takes an oath, where the opposite party contends having yet another credit of the same amount ; while on the contrary our school admits a similar presumption in favour of the creditor, where the debtor, on remitting him the amount, does not use words implying a deposit, but speaks to him of "my obligation," or "my debt."

[†Where it is allowed that one can validly declare afterwards that the sum one admits owing was remitted to the creditor only as a deposit, it follows that from the time of the original admission the debtor has a

claim against the creditor for loss, and that he can demand restitution of what has been, as it were, intrusted to the latter's good faith. If one has used the expression "six thousand pieces of money are with me," or "I have them upon me," one still has the presumption in one's favour if one afterwards maintains that it was only a deposit, or if one alleges that the sum mentioned has been restored or accidentally lost.]

An admission of a sale or a gift followed by a taking possession of the object does not admit of a subsequent retractation upon the ground that the contract was illegal or the admission the result of an error. All that the debtor can do is to have an oath administered to the creditor in whose favour the admission was made; and it is only if the latter refuses to be sworn that the court may tender the oath to the debtor, who can then free himself from the debt by taking it. When one admits "that a certain house belongs to Zaid," and afterwards corrects oneself and admits "that it belongs to Amr"; or when one admits that one has illegally usurped "the house of Zaid," and subsequently declares "that it was the house of Amr"; the house should be delivered to Zaid, *but Amr can claim the value of it.

An admission may be accompanied by all sorts of exceptions, provided that the clauses containing them are pronounced at the same time as the admission and do not render it illusory. Thus if one says, "I owe him ten, less nine less eight pieces of money," one owes nine. Such a clause of exception may even refer to a thing of a different kind from that admitted, for instance, "I owe a thousand pieces of money minus a coat," in which case the value of the coat must always be considered less than the sum mentioned. A clause of exception is also admissible with reference to definite objects, *i.e.* one may admit, *e.g.* "This house is his, except this room," or "These *drahms* are his, except this *drahm*." However, with regard to this last class of objects, jurists are not all in agreement, though the great majority adopt the admissibility.

[In saying, "These slaves belong to so-and-so, except one," one makes a valid admission, but one should immediately declare which one is intended. ††If, in such a case, all the slaves die except one, and the person who made the admission declares that this was the slave he intended to except, the presumption is in his favour, if he confirms on oath the truth of his words.]

Section 5

An admission of paternity is admissible only on condition that it is in conformity with law and common-sense; thus, one cannot recognise a child that is notoriously another's. The interested person must

consent to the admission if legally capable of doing so ; thus an admission does not establish paternity with regard to an adult who opposes it, unless it is legally proved in some other way. †A minor legally recognised as a child cannot annul this by his mere denial upon majority. It is permissible to recognise one's child after death, or during minority, †or after attaining majority ; and this recognition is sufficient to give one a claim upon the estate. Where an adult is recognised as their child by two different persons, the paternity is established of the one he accepts as his father. The consequence of a similar recognition in the case of a minor will be explained in the book about foundlings. A declaration on the part of a master "that the child of one of his slaves is his" is sufficient by itself to establish filiation, *but not to enfranchise the slave on account of maternity. The same rule applies to a declaration as follows :—"Such and such a slave belonging to me is the mother of my child." On the other hand, the words, "She conceived while belonging to me," implies enfranchisement on account of paternity. The child of a slave who has frequently shared her master's bed, has no need of special recognition in order to establish filiation. The child of a married slave is the child of the husband ; and in such a case a recognition of paternity by the master would be null and void.

A recognition of relationship, such as, "so and so is my brother," or "my paternal uncle," establishes that relationship, if made under the conditions just mentioned, and provided the person whose paternity is involved is dead. Such recognition is permissible †even though the deceased denied the imputed paternity ; but in every case it is necessary that the person making the declaration should be the deceased's universal heir. †A declaration, however, that one considers a certain individual as one's brother, gives him no claim to any share in the estate, not even to a share in the portion of the person making the declaration. †An adult heir can never of his own accord establish filiation between a third party and the deceased, if there are other heirs, minors. If filiation is admitted by one of the heirs and denied by another, it remains established if the one denying it dies, leaving no other heir except the one who admits it. †And it is established also where, after the father's decease, his son, universal heir, admits that persons of unknown descent are his brothers, while these persons recognise their own filiation, but deny that of the person who makes the admission. †Lastly, where the known heir is excluded from the succession by a person whose relationship he admits, *i.e.* if *e.g.* he admits "that his deceased brother left a son," the admission has reference to family rights, but gives no claim to the succession.

BOOK 16.—LOAN

Section 1

It is necessary that a lender should be legally capable of disposing gratuitously of his property, and that he should have a right to convey the use of the object lent. Thus a lessee or a tenant may lend what they hold as such, ††but not a borrower. There is, however, no objection to the latter allowing a third party the use of a thing borrowed, instead of using it himself. Things that are not consumed by use can alone be the subject of this contract; whence it follows that a female slave may be lent as a servant, or to a woman, or to a man within the prohibited degrees, but not to a man who can legally cohabit with her. It is blamable to lend a Moslem slave to an infidel.

†The law insists that the lending should be expressly mentioned, *e.g.* by the words, "I lend you," used by the lender, or "lend me," said by the borrower. It is sufficient if only one of the two parties has thus expressed himself, provided that the other has shown his consent by his conduct. By saying, "I lend you my horse on condition that you feed it," or "on condition that you lend me yours," one does not effect a loan, but an irregular contract of hiring, for which a reasonable payment should be made.

The cost of restitution of the thing lent must be borne by the borrower, who is liable for damage if it is even partly destroyed, except by mere usage, even though no negligence can be imputed to him. But where, on the contrary, the thing lent is lost or damaged merely by usage, †the borrower is not responsible; though even in this case some authorities consider that he is. †A person who borrows something from a lessee or a tenant is not responsible as a borrower, but just as if he were himself the tenant or lessee. Nor would there be any responsibility where a principal lends his agent an animal which dies in the latter's possession in consequence of work ordered by the principal; nor where an animal dies in the possession of a trainer, to whom the owner intrusted it for the purpose of being trained.

A borrower can use the thing borrowed only in accordance with the agreement. Thus, if a piece of land has been lent to be sown with corn,

it may be sown also with similar cereals, unless this has been expressly forbidden ; but if it has been lent to be sown with barley, it cannot be sown with a grain like wheat, which is more prejudicial to the soil. A permission to sow in general is lawful, and gives a borrower the right to sow what he likes. Permission to build or plant implies a right to sow ; but not *vice versâ*. ††Permission to build neither implies nor is implied by permission to plant. ††Lastly, it is forbidden to lend a piece of land without stipulating the use to which the borrower may put it.

Section 2

The lender has the right to demand back, and the borrower to return, the article lent, whenever they please, even where one of them had stipulated for a definite period. To this rule there is one exception ; where a piece of land has been lent for the interment of a corpse, it cannot be taken back until the remains have been duly buried.

Where the owner takes back a piece of land lent for building purposes or for sowing, with no time of restitution mentioned, the borrower is obliged to demolish the buildings or uproot the crop only if this has been specially stipulated. In default of such stipulation the borrower cannot be obliged to do so ; and if he does so of his own free will, †he need not level the ground. [*Levelling is obligatory under these circumstances.]

Where the borrower refuses to demolish buildings or uproot crops without compensation, the owner cannot force him to do so, but may choose one of two courses. He can either leave them on the land, charging the borrower a rent ; or himself carry out the demolition or uprooting, compensating the borrower for the loss of his buildings or his crop. Some authorities maintain that the owner of the land can also appropriate the buildings and crops, paying their value to the borrower. If the owner has not declared, on taking back his land, whether he prefers to retain the buildings or crops, paying compensation to the borrower, or whether he prefers to have them removed, he cannot have them removed later without paying compensation. This rule applies just as well where the borrower pays the compensation of which we have spoken, as a rent, †as where he does not pay it. And some authors maintain that if the owner refuses to decide, the court should sell the land with everything built or sown on it, and pay the owner and borrower their proper share out of the proceeds ; †but the majority are of opinion that the court should not interfere until both parties have declared their wishes with regard to the buildings and the crops. During this period, however, the owner may visit and utilise his land, while the

borrower may not visit it without the owner's permission, merely for the sake of amusement, †though he cannot be prevented from going there at any time to water the crop or repair the buildings. Both lender and borrower retain their right to sell what belongs to them; though, according to some jurists, the borrower can only sell his crop or buildings to the owner of the land. A loan, in which a definite time of restitution is specified, is subject to the same rules as regards demolition and uprooting as the loan for an indefinite period with which we have just dealt. Only one authority maintains the contrary opinion, *i.e.* that in these circumstances the borrower is not liable for any indemnity if, upon the restitution of the land, he wishes to demolish or uproot what he has built or sown. ††An owner who has lent his land with the avowed object of having it cultivated by the borrower, without stipulating for any particular time of restitution, should always, when taking back the crops, leave them standing until the next harvest. ††In this case, however, he can charge a rent for the whole period that may elapse between the restitution and the harvest. Where, on the other hand, the owner has stipulated for a specified time of restitution, and the harvest does not occur before this, the borrower should uproot his crop on the expiry of the term, at any rate if the delay is caused by his own fault, if *e.g.* he did not sow the field at the usual time. Where a torrent has carried away the crop on to another's seed field, the crop belongs to the original owner, †but he must remove it upon the first notification.

Where a person mounts a horse and says to the owner, "You have lent it me," and the owner replies, "No, I have hired it to you," as well as in a similar dispute between the owner of a field and the sower, our school admits a presumption in the owner's favour. A similar presumption is admitted by our school in the owner's favour where the possessor of something says, "You lent it me," and the owner answers, "No, you usurped it." Whatever may be the result of the proceedings whenever in these circumstances the thing in dispute is destroyed before restitution, the holder is always responsible, either as borrower or as usurper; †with this difference, that a loan involves responsibility only for the value of the thing when lost, and not for the maximum value it may have reached during the period of possession, nor for its value on the day upon which possession was taken of it. Where an owner claims, on account of usurpation, a higher value than the thing had on the day it was lost, he must take an oath as to the surplus value.

BOOK 17.—USURPATION

Section 1

Usurpation includes all acts of encroachment, in bad faith, upon the rights of another. Thus the following categories of persons must be considered usurpers :—

1. One who mounts another's beast, or sits upon another's carpet, even without moving it.

2. One who enters a house and drives out the owner ; or without entering himself prevents the owner from entering. This last precept has been contested, though not strongly.

3. A tenant who prevents the owner of a house from entering his room, though leaving him in the peaceable possession of the rest. This act, however, constitutes a usurpation of the room only, not of the whole house.

4. One who enters a house intending to take possession of it, even though the owner may not be there at the moment. If the owner is there, and is not driven out, the fact of entering in this way amounts to a usurpation of half the house. Where, however, the person entering is physically weaker than the owner, the act does not imply a usurpation.

A usurper should immediately restore an object he has taken possession of. He is responsible for any injury, even if accidental, that may happen to it while detained by him, in the same way as if he had caused the loss of an object in some one's lawful possession. Thus a person who opens a sack lying on the ground, so that the contents escape ; or opens one placed upright, so that it falls down and the contents escape in this way ; is in either case liable for damage. If, however, in the latter case, the sack does not fall down in consequence of being opened, but the loss is caused by the wind or some other fortuitous cause, such as an earthquake, he is not liable. A person who opens a bird cage and then shakes it to make the animal fly out, is responsible ; but if he merely opens the cage *he is responsible only when the bird flies away at once, and not when it remains some time inside the open cage.

A person who derives possession from a usurper is responsible for

the accidental loss of what he thus holds, even if unaware of the usurpation; with this distinction, however, that if he knew of it he must be considered as having usurped the thing from the original usurper, and to be just as responsible as he is; while if he was ignorant of the illegal manner in which it was come by, his responsibility is of the same degree only where the cause of his possession implies such responsibility. Therefore responsibility for accidental loss is admitted, where the third party has obtained the object from the usurper by way of loan, but not where it has been obtained as a deposit. But when a person who has received something from a usurper causes its loss exclusively through his own fault, the responsibility rests upon him in all cases, even though the usurper may have pressed him to take possession of it. Thus the responsibility is admitted of *an individual who is hungry and eats of a plate passed him by a usurper; and, carrying this principle further, the usurper's responsibility ceases if he passes the plate to the owner and the latter eats it.

Section 2

The responsibility of a usurper, in the matter of the life of a slave, can never exceed the value of the individual at the moment of death, without distinguishing between death caused by the usurper, and accidental death. Injuries, not involving payment of a legal indemnity in the case of a free man, are compensated for by payment of the diminution in the slave's value. No attention is paid to whether these injuries have been caused by circumstances not under human control, or whether they are intentional, at least according to Shafii's original opinion. On the other hand, according to the opinion adopted by Shafii during his stay in Egypt, compensation for the intentional injuring of a slave, in such a way as to be liable to the payment of a legal indemnity, is subject to the laws that regulate the "price of blood" for a free man, though this compensation should be estimated according to the value of the individual. Thus, for example, for the loss of one hand, half the slave's value should be paid, just as in the case of a free man half the "price of blood;" without taking into consideration whether or not the value of the slave has undergone a similar diminution.

Compensation due for domestic animals consists, according to circumstances in payment of the value of the animal or a sum amounting to its diminution in value. As to other things liability differs according as they are or are not sold by measure or weight, and consequently can or cannot have an advance paid on them. †Such are water, sand, copper, precious metals in an unrefined state, musk, camphor, cotton, grapes, flour, but not the perfume called *ghaliya*, nor the medicine

called *majun*. Compensation for the loss of articles such as these consists in restitution of similar things, whether the loss was intentional or fortuitous ; only if they cannot be procured is payment of the value permissible. †This value is always fixed at the maximum from the moment of usurpation until the time when the impossibility of procuring an equivalent was perceived. If the measurable things usurped have been taken to another town, the owner may still demand restitution ; he can even insist upon the value being paid immediately, until the usurped articles are brought back ; but on their arrival the price provisionally paid must be returned. When the measurable articles have been destroyed at the place they were taken to, the owner can claim an equivalent in either place ; and if there are no equivalents at the place where the demand is made, the usurper is liable for their value at the place where they are the dearer. ††However, an owner who meets a usurper at a place other than that of the loss, can only claim restitution of similar things there, if they do not involve expense for transport, as in the case of coin. If this is not the case he cannot claim at this place the restitution of similar things, but the usurper owes him simply their value at the place where they were lost. Finally, as to things not sold by weight or measure, the usurper always owes their maximum value in the period between the day of usurpation and that of loss ; while in the case of intentional destruction of things not so sold and not usurped, the responsible person is liable only for the value ascertained on the day of the crime. To this rule only one exception is admitted ; when a slave or a domestic animal is wounded, and death ensues without its being possible to attribute it directly to the wound, there is due the maximum value between the day of the crime and the day of death.

A loss of usurped wine involves no liability. It is unlawful to transfer usurped wine to an infidel subject of a Moslem prince, unless he has manifested an intention of drinking it immediately or selling it. However, as long as the usurped wine still exists, its restitution is obligatory, and this last rule even applies to juice of the grape not destined to fermentation, where this juice has been usurped to the owner's prejudice, if he is a Moslem. The same rule applies also to idols and to instruments of gaming or music, which one should break before returning, without incurring any liability. †However, if the owner asks the holder of these things for their return, they should not be all at once rudely shattered ; but the different parts should be detached so as to return to their original condition, and it is only where the owner himself has rendered this impossible, that they may be destroyed in a more rapid manner.

In case of loss, either by his own fault or by accident, the usurper

should not only compensate the proprietor up to the value of the thing, but owes him in addition an indemnity for the use he has made of it, at least in the case of something the owner could have leased out in the meantime, such as a horse, a slave, and so on. In the case of a female slave, the usurper owes this indemnity only if he has cohabited with her, and that she has died as a consequence of this. †It is the same with services rendered by a free man, during the period of usurpation. If it is not a question of the loss of the thing usurped, but of its deterioration, not caused by the usurper's usage, the latter, on restoring it is still liable for damage, plus an indemnity by way of rent for the use he has made or might have made of it. This principle must be applied also when the deterioration has been brought about by the usurper, *e.g.* where a usurped coat has been worn.

Section 3

††A usurper who declares that the thing in dispute has been lost, has a presumption in his favour ; provided he takes an oath to that effect, if the statement is contested by the owner. †In this case the owner must be contented to claim damage, according to the principles enunciated in the preceding section. The same presumption is established in the favour of a usurper, on oath, if contested by the owner, as to the value of the article, as to the clothes worn by a usurped slave, and as to the latter's natural defects ; but, on the other hand, the owner enjoys a presumption in his favour, if he maintains on oath the existence of accidental defects in the slave.

A usurper who restores something in dispute at a moment when its price has gone down, owes nothing by way of damage for this diminution in value. Thus when one has usurped, *e.g.* a coat of the original value of ten *drahms* that has gone down to one *drahm,* and has besides worn the coat until it is no longer worth more than half a *drahm,* one must pay back five *drahms* as damage, having regard to the rule that requires payment of the maximum value.

[†The usurper of a pair of shoes worth ten *drahms,* one of which is accidentally lost, so that he can restore only the other worth alone not more than two *drahms,* owes eight *drahms* as damage. This sum is due also where the loss is not accidental, but caused after usurpation, or while in the owner's possession.]

Deterioration of such sort as to lead to total loss, *e.g.* the use of cheese to make *harisa,* is legally regarded as the same. A single author maintains that even in that case the thing usurped should be restored as it is, together with an indemnity for the deterioration. Where a

usurped slave commits a crime punishable by a fine for which his person may be seized, the usurper is liable up to the full value of the slave or of the sum due, whichever is the more advantageous for him, without prejudice to his liability towards the owner, in case of the slave's death. Under these circumstances the injured party has none the less the right to proceed by seizure against the usurper. Should he prefer to take similar action against the owner, and recoup himself out of what the latter has received from the usurper as damage, the owner can take fresh proceedings against the usurper to recover what he has had to pay the injured party. Similarly the owner has a claim against the usurper where, after the return of the slave, he has had to put him up for sale, in order to pay what was due for an offence committed during the period of usurpation.

The usurper of a field, who has removed earth from it, must restore it as it was at first. He must return the earth, or other earth of the same quality. The restitution of the earth that has been removed is obligatory, even without any demand from the owner, if it would be profitable to him. †Otherwise the usurper must wait for the owner's permission. The same principles must be followed if the usurper has dug a well, or filled up one that already existed. If the field has been re-established by the usurper in its original condition, and no permanent deterioration has been caused to it, damage cannot be claimed from the usurper, who is liable merely for reasonable compensation as rent, for the time employed in removing all traces of the usurpation. On the other hand, in the case of a permanent deterioration caused by removal of earth, the usurper owes damage in addition.

†A usurper of olive oil, etc., who has boiled the liquid so that part has evaporated without the total value being diminished, must, all the same, in case of restitution, compensate the owner for the amount lost. In the case where the value of the oil has diminished in consequence of the operation, without diminution in quantity, the usurper still owes damage. Diminution in quantity accompanied by a diminution in the value of the remainder renders it obligatory to compensate the owner for what has evaporated, and return him the rest with damages, if the diminution in value is ever so little greater than that caused by the diminution in quantity alone. †Stoutness acquired by a slave during usurpation cannot be held to compensate for a previous leanness during the same period ; but if a slave who, during usurpation, has lost knowledge of his profession or trade, is in a condition to take to it again, the owner cannot claim damage for this. The fact that the slave has learnt a new trade or profession with the usurper does not in any way affect the latter's liability for knowledge lost.

†If usurped must ferments and then changes into vinegar, the vinegar must be returned to the owner with damages, when the value of the vinegar is less than that of the must. †When impure things, that consequently cannot be claimed back, such as wine that changes to vinegar, or the skin of an animal that has died a natural death and is afterwards tanned, have been usurped, the wine or tanned skin, although it has lost its impurity owing to the usurper, nevertheless belongs to the person from whom it was usurped.

Section 4

No increase in the value of a usurped article, consisting in simple amelioration, such as the cleaning of a coat, goes to the profit of the usurper; and the owner may even insist upon his restoring the thing to its original state, if this is possible, together with any damages that may be due. Where, on the contrary, the increase in the value of the thing has a separate existence, such as a building or a plantation, the usurper should in all cases restore the land to its original condition. †A person who dyes a piece of usurped cloth with his own dye, may be obliged to remove this dye if it is possible. If it is impossible, and the value of the cloth has not been increased by the addition, the usurper can claim nothing, but damages may be claimed from him if there is ground for this. Where, on the other hand, the dyeing has increased the value of the cloth, owner and usurper become its co-proprietors.

If a thing usurped has been mixed with something else belonging to the usurper, it should be separated from it if possible. If this separation is impossible our school considers the thing as destroyed, that is to say the owner can claim from the usurper either a return of the value or something of the same kind not so mixed. Thus a beam that has been usurped and used in building must be removed, even if it has been used in building a ship. The claim, however, cannot be immediately complied with, if made at a moment when the removal of the beam would cause danger to the persons or goods confided to the captain's care.

Cohabitation knowingly practised with a usurped female slave renders the usurper liable to the penalty for fornication; but not if unknowingly. In both cases, however, the usurper owes dower, unless the cohabitation was accomplished with the woman's full consent. In this latter case ††nothing is owing, and the woman is liable to be dealt with severely, if she has knowingly committed the crime. Cohabitation with a female slave purchased from a usurper, has the same consequences, so far as the purchaser is concerned, both as regards the

penalty and the dower, as if the usurper himself had been guilty of it. The purchaser has no claim against the usurper for payment of the dower. When a usurper, or some one who has purchased from him a female slave, renders her pregnant, knowing that she was forbidden him, her child becomes the slave of the owner without regard to paternity ; but if it was done unknowingly, the child is free, and considered to be the father's legitimate offspring. In this case, however, the father owes to the mother's owner the value of the child at the time of its birth.

Where, under these circumstances, the child's father buys the mother in good faith from the usurper, he has a claim against him ; although, in general, the purchaser of anything usurped has no claim against the usurper, if the article is destroyed in his possession in a manner which renders him directly responsible towards the owner. *The same principle is followed in the case where the article has not been destroyed, but has only deteriorated. *Neither has the purchaser any claim against the usurper for payment of the indemnity due to the owner for his usage of the article ; †but such claim is admitted for damages paid to the owner, whether for accidental loss or for injury caused, *e.g.* to a piece of land by demolition of buildings or uprooting of crops, if there was ground for such damages. A usurper who has paid damages for a purchaser can never claim them from him ; even in a case where the latter could have claimed them from the former ; but he may do so if the damage was incurred by the purchaser's own fault.

[Every person who derives his possession from that of the usurper, is subject to the same rules as have now been shown to apply to the first purchaser of a usurped object.]

BOOK 18.—PRE-EMPTION

Section 1

This right does not exist in reference to movable property, but only with regard to land and what is naturally included in it, like buildings and trees, †and fruit not artificially fertilised. There is no right of pre-emption in the case of a *hojra* supported on a roof, †even a roof held in common ; †nor in the case of anything that cannot be divided without lowering the value, such as a bath or a mill.

Right of pre-emption exists only in favour of a co-proprietor of the immovable property sold. Thus, where there are two houses belonging to two different persons, both houses having a common outlet to the public road, neither of the two proprietors can, in case of sale, exercise a right of pre-emption with regard to the other's house, on the ground of common ownership of the outlet. ††He cannot even exercise a right of pre-emption with regard to the common outlet, unless the purchaser has another at his disposition, or can open a door upon the public way. There is a right to pre-emption only in the case of transfer of ownership for a consideration and irrevocably, and the transfer must be later than the acquisition of the pre-emptor's rights. Consequently pre-emption is admissible in the following cases : transfer by sale, dower, compensatory price, compromise in the matter of a crime, periodical payment, rent, advance. From these principles ensue the following conclusions :—

1. When, in a sale, a right of option has been stipulated, either by the two contracting parties, or by the vendor alone, a co-proprietor cannot exercise his right of pre-emption before the expiry of the optional time. Where, on the other hand, the purchaser alone has reserved a right of option, *the right of pre-emption can be immediately exercised, at least when it is admitted that in these circumstances the ownership is acquired by the purchaser at the moment of the contract.

2. *When the purchaser, on perceiving that the thing bought has redhibitory defects, wishes to return it to the vendor, while the pre-emptor wishes to accept the thing and waive the redhibition, the latter may exercise his right independently of the rupture of the original sale.

3. If two persons jointly buy a house, wholly or in part, neither can dispossess his co-proprietor by way of pre-emption.

4. *If a piece of land belongs to three co-proprietors, and the first sells his share to the second, the third cannot, by exercising his right of pre-emption, acquire the whole of the part sold, but only in proportion to his original share.

In pre-emption the transfer of ownership is effected without any adjudication on the part of the court; the price need not be brought; and the presence of the original purchaser is unnecessary. All that is required is the verbal declaration of the pre-emptor, such as, "I appropriate the whole of the land," or, "I take possession by right of pre-emption." In order that the pre-emption should have full effect, the law requires also that the price of the re-purchase should be delivered to the purchaser. On making this delivery of his own accord, or in consequence of an injunction, the pre-emptor becomes proprietor of the portion he wants. It is, however, also permissible that the purchaser may consent to allow credit to the pre-emptor for the amount of the re-purchase, and that it be pronounced by the court. In both cases delivery of the price of repurchase is unnecessary in order that the ownership of the property claimed should be transferred, although, in the latter case, that ownership can only pass to the pre-emptor on condition that he is present at the sitting, and shows that his claim is well founded. And finally, according to our school, ownership of a portion of an immovable property that the pre-emptor has not yet seen is never transferred.

Section 2

As to the compensation due to the purchaser by the pre-emptor, the law admits the following distinctions :—

1. When the purchase has been effected for a price consisting in things sold by measure or weight, the pre-emptor should indemnify the purchaser with similar things.

2. When the purchaser has given in exchange something not sold in this way, the pre-emptor should return him the value, *i.e.* the value the thing had on the day of sale, or according to others its value on the day the right of option expired, and on which consequently the sale became irrevocable.

3. *When the purchase has been effected on credit, the pre-emptor can at his choice either pay at once and take possession of the immovable property, or he can wait until the term has expired and do so then.

In the case of a combined sale of a portion of an immovable and of some other object, the pre-emptor can exercise his right all the same,

provided that he pays what may be considered the price of his portion, in proportion to the total value of the sale.

A portion of an immovable property transferred as dower is subject to a right of pre-emption on the part of a co-proprietor, for a price valued according to the proportional dower the woman in question could claim; and the same rule is observed with regard to a transfer as compensatory price in case of divorce. When the sale of an immovable property subject to pre-emption takes place for a contract price, and this latter is accidentally lost, the owner cannot exercise his right of pre-emption. Where, under these circumstances, the co-proprietor indicates the exact amount which has been paid in this way for the property, while the purchaser declares he knows nothing of it, the latter should confirm his ignorance on oath, and the claim is dismissed. †Neither can it be entertained, where the co-proprietor maintains before the court that the purchaser really knows how much he has paid, without any further indication on his part as to the exact amount.

A subsequent judicial seizure of what the original purchaser has given by way of price, nullifies both sale and pre-emption, at least where the price is some definite thing liable to seizure. Otherwise the things given as price may be replaced, and both the sale and the pre-emption hold good. A right of pre-emption remains unaffected by a seizure of what the pre-emptor has given the purchaser in compensation, whether this is a consequence of the pre-emptor's ignorance, †or whether he knew of the danger. A disposal of the purchased property by the purchaser, by way of sale, *wakaf*, lease, etc., is not *ipso facto* annulled by a subsequent pre-emption, but the pre-emptor can demand the cancellation of a disposal which, like *wakaf*, would render illusory a right of repurchase. In the case, however, of a disposal on the part of the purchaser, which, like a sale, admits of subsequent pre-emption, the person in whose favour this right originally existed may at his choice either exercise it with regard to the second sale, or demand the cancellation of that one, and exercise his right with regard to the former.

In case of dispute between purchaser and pre-emptor upon the subject of the price, the presumption is in favour of the purchaser's statement; and the same is the case where the latter denies the purchase or the status of co-proprietor upon which the plaintiff bases his right of repurchase. †This presumption, however, is destroyed, and the repurchase takes effect, if in these circumstances the co-proprietor who has sold maintains the purchase denied by the purchaser. And it is to this co-proprietor that the pre-emptor then owes the compensation originally due to the purchaser, unless the co-proprietor admits having already received the price. If he does admit it, in spite of the purchaser's

denial; authorities are not agreed as to whether the compensation should be left in the hands of the co-proprietor pre-emptor, or whether the court should seize and keep it for whoever finally establishes his claim to it. This controversy is the same as that we have spoken of, about a confession that is denied by the person in whose favour it is made.

Where several co-proprietors have a joint right of pre-emption, they should exercise it in proportion to their respective shares; though, according to one jurist, they should do it by heads. When one co-proprietor sells the half of his share in a property, and then the second half to another person, it is understood that the right of pre-emption with regard to the first half belongs to the other of the original co-proprietors; but if the latter waives his right, the purchaser who has become owner of the first half, shares with him a right of pre-emption with regard to the second half. †A renunciation on the part of one of the two co-proprietors possessing a joint right of pre-emption, prevents him from making any later claim; the other co-proprietor should then decide, either to exercise his right upon the whole of the property put up for sale, or to renounce his part also. Thus he may not merely exercise his right in proportion to his own share; but the repurchase being indivisible, even a partial renunciation by one of the parties results in a devolution of the full and entire right of pre-emption to the other. When, of two persons having right to pre-emption, only one is present, he can at once exercise the right in its entirety, on condition of allowing the other to participate in it upon his return; †though he may instead postpone the repurchase until his co-proprietor's arrival. If two persons have bought in common a share in immovable property, the pre-emptor can exercise his right either against the two together or against one of them; †but where two of the co-proprietors have sold their respective shares to a single person, the pre-emptor should exercise his right separately with regard to what has been sold by each of his co-proprietors.

*A right of pre-emption should be exercised without delay, and the person having this right should speedily declare his wishes in the matter, in conformity with custom as soon as he has learnt of the sale. If that is impossible through sickness or absence or fear of enemies, he should appoint an agent to act for him, or, if he cannot find one, call witnesses and announce in their presence his intention of exercising his right of pre-emption. The right of pre-emption lapses †if no agent is appointed, or no intention expressed before witnesses, where this might have been done; but a person at prayer, at the bath, or at a meal can postpone his declaration until he has finished. A prolonged delay involves the

loss of the right of pre-emption, even although the pre-emptor declares that he did not believe the person who brought the news of the sale, at any rate if it was brought him by two persons of irreproachable character, †or even by a single person worthy of confidence. He is permitted to disbelieve in the truth of the news of the sale only where it is brought him by persons whose deposition would not be accepted in a court of law. However, if the co-proprietor learns that the sale has taken place, *e.g.* for a thousand pieces of money, in consequence of which price he renounces his right of pre-emption ; his right remains intact, in spite of his renunciation, if it subsequently transpires that the sale was concluded for five hundred only ; though, on the contrary, it remains irrevocably lost if it afterwards appears to have been concluded for more than a thousand. Neither is there any loss of the right of pre-emption where the pre-emptor, meeting the purchaser after learning of the sale, salutes him, saying, " Peace be with you," or " God bless you in the acquisition you have made." However, all authorities are not in agreement as to the consequences of an exclamation which, like the latter, contains an invocation of the name of God.

†There is no right of pre-emption, if, after a sale by one of the co-proprietors, the other, who is thus entitled to appropriate the entire property, has himself sold his share also to a third party, even though this sale was effected in ignorance of the other.

BOOK 19.—JOINT-STOCK COMPANIES

Section 1

A JOINT-STOCK company is called *kirad*, or *Modàraba*. It exists between two persons, one of whom supplies funds to the other to trade with, on condition that the former has a share in the profit. The law requires that these funds :—

1. Consist in gold or silver coin ; consequently the company has no legal existence where the funds are given in the form of bullion, or gold or silver ornaments, adulterated coin, or goods.

2. Are of a known amount and consist in coins of known value ; though others maintain that it is sufficient to indicate the amount, *e.g.* "the contents of one of the two purses."

3. Are remitted to the managing partner ; for the money may not be left in the hands of the person who furnishes the funds.

It may not be stipulated that the sleeping partner should take part in the management, ††though his slave may be employed in the affairs of the company. The powers of the responsible partner are limited to trading and what depends on it, such as exposing for sale, and placing the stuffs in their covers or rolls. Thus when one forms a joint-stock company with some one in order that he may buy wheat and sell it after grinding and baking into bread, or when one instructs him to buy cotton thread and sell it after weaving, the company is *ipso facto* invalid. †Neither can one instruct the managing partner to buy certain specified goods, nor such as are of a rare kind, nor to trade with only one specified individual.

It is not necessary to stipulate any period of duration for the company; and if it is stipulated that after a certain time the responsible partner cannot dispose further of the funds, this stipulation will even involve the illegality of the contract. There is, however, no objection to instructing him to abstain from certain specified proceedings, *e.g.* to buy after a certain lapse of time.

Both partners, sleeping and managing, share in the profits to the exclusion of all others. Consequently the words, "I form a joint-stock company with you, and all that you gain will be yours," do not constitute a legal association ; though others maintain its validity. It is

the same if the words used are "all the profit shall be mine;" though, according to others, this constitutes a commission agency. Besides this the share of each partner in the profits must be mentioned in their respective proportion. Thus one cannot associate with some one by stipulating, "You will have a part of the profits," or "a part in the profits," without indicating what part; †but one can do so by providing that "the gain shall be common to both of us," and then each partner can claim half. ††Although it is admitted to be a legal contract when the person who provides the funds says to the manager, "Half the gain will be yours," †if he says, "Half the gain shall be mine," and nothing more, the association is invalid. And this would also be the case if it were stipulated that one of the partners should have ten pieces of money from the profits, or should take all the profits of a certain nature.

Section 2

For the contract to be valid there should be an offer by one of the parties and acceptance by the other; though, according to some authorities, acceptance need not be formally announced, provided it exists in fact.

The relations between the managing partner and the sleeping partner are the same as those between agent and principal. †A managing partner cannot in his turn form a joint-stock company with a third person, participating both in the management and in the profits, even if the original provider of the funds authorises it. Without his authorisation such secondary association is considered wholly illegal, *i.e.* any dispositions the third person may make are considered to be those of a usurper; †and this principle is carried still further, for if the second managing partner buys on credit for the company, any profit that may result from this purchase goes entirely to the original manager, who owes nothing to the second except remuneration for his services, if there is occasion for this. It is, however, well known, that, according to the opinion of Shafii in his second period, a usurper who has effected a similar sale can keep the profit for himself. Only a few authorities maintain that in these circumstances the profit belongs also to the second managing partner who has obtained it. A purchase effected by the second managing partner, not on credit, but for cash, or for some specified thing belonging to the company, is absolutely null and void. There is, however, no objection to one person associating himself with two others by furnishing them with funds, either of the same or of different amounts; and similarly two persons supplying funds may associate themselves with a single managing partner. In the latter

case the profits are shared between them in proportion to their capital, after deducting the share of the managing partner. In all cases where a joint-stock company is illegal, dispositions made in good faith by the managing partner remain intact ; but the profit is for the person who supplied the funds, who owes the manager reasonable remuneration for his trouble. †It is only in a case where the contract is invalid owing to the sleeping partner reserving all the profit for himself, that the manager can claim nothing.

The managing partner should administer the society's affairs like the good father of a family ; he is responsible if he allows himself to be caught by any obvious fraud. He is forbidden to sell on credit without the sleeping partner's authorisation, but he can alienate by exchange, and cancel a bargain on account of redhibitory defects, or keep a thing bought in spite of its redhibitory defects, as circumstances require. Redhibition is a right of the person who supplies the funds just as much as of the manager, and where the two are not agreed about the redhibition of a thing bought, that course should be adopted which offers the greater advantage. The managing partner can never in any case, on account of the company, enter into commercial relations with the person who provides the funds. He must not purchase goods to a larger amount than the capital of the company ; nor must he buy a slave whose enfranchisement would be obligatory for the sleeping partner, except with his consent. †This rule applies also to the purchase of a slave married to the latter. In all cases where the managing partner effects a forbidden purchase, the person supplying the funds is not bound by it ; but the managing partner is personally responsible if it was on credit. The managing partner cannot take the capital of the company with him on a journey without the authorisation of the sleeping partner, nor can he use it for his personal expenses whether at home *or on a journey. He must act in conformity with custom, *e.g.* he should place in covers or rolls the stuffs in his shop ; he should at once personally ascertain the weight of precious or light articles, such as gold or musk, but this is not necessary with heavy or voluminous merchandise.

A managing partner may credit himself with the salary of employees, for any work he is not obliged to do himself as managing partner. *His share of the profits becomes his property only upon division, not upon his merely drawing up a balance sheet. Fruit, the young of animals, profit realised from slave labour, and the dower of a female slave given in marriage, belong to the person who supplies the funds ; though others consider them as forming part of the profits of the company. Losses caused by a fall in price are deducted from the profits if possible, and should be compensated for in the same way. †This principle should

be followed also in the case of a loss of part of the capital, whether by accident, usurpation or theft; †all on condition that the loss is incurred after the managing partner's administration has begun, for any previous loss constitute a diminution of the capital supplied.

Section 3

Each partner has a right to withdraw from the company, which is terminated *ipso facto* by the death or madness or even by the unconsciousness of one of the partners. After the dissolution of the company, on the wish of one of the parties, it is the managing partners' duty to proceed to the payment of the debts and the realisation of the capital, at least if it consists of merchandise. Only a small number of jurists maintain that realisation is not obligatory, at least if no profit is expected from it.

If the sleeping partner withdraws a part of the money before a profit and loss account has been drawn up, this fact constitutes a diminution of the total capital of the company; if after then it is a diminution both of the capital and of the profits. Where, for example, the capital is a hundred pieces of money, and the profit twenty, and the sleeping partner wishes to withdraw twenty more, a sixth of the sum claimed must be taken from the profits, all without prejudice to the share in the profits stipulated for by the managing partner. The remaining five-sixths are taken from the capital. If the sleeping partner wishes to withdraw a part of the capital of the company, and it appears that the company has incurred a loss, the loss must be shared both on the sum claimed and on the rest of the company's capital; but under these circumstances any profits which may subsequently be realised do not render it necessary to compensate the sleeping partner for the proportional diminution of the sum he wished to withdraw. Where, for example the capital of the company is one hundred pieces of money and the loss twenty and the sleeping partner expresses a desire to withdraw twenty more, this sum is diminished to a quarter, that is to five, and the capital of the company is thus reduced to seventy-five.

The declaration of the managing partner, confirmed on oath, is presumed to be true, when it relates to :—

1. The absence of any profit, or the total of the profit.
2. His purchase of a thing for the company, or on his own account.
3. The absence of any prohibition by the sleeping partner to effect a particular bargain.

4. The total amount of the funds supplied.
5. The loss of any article belonging to the company.
6. †The restitution of the sums or articles of value supplied.

In case of dispute as to the share in profits stipulated for by the managing partner, both parties should take an oath, and the court then awards the managing partner a reasonable remuneration for his trouble.

BOOK 20.—FARMING LEASES

Section 1

A FARMING lease (*mosaka*) is lawful only if concluded by a person enjoying a right to dispose of his property ; consequently a minor or a lunatic is incapable of effecting it except through his guardian or curator. Plantations of palms or vines are alone subject to this contract ; though Shafii in his first period admitted similar leases with regard to all kinds of fruit trees. Besides this a farming lease cannot be effected on condition that the cultivator shall plough the field and share the produce with the owner, whether the seed is provided by the one or the other. Such leases are called respectively *mokhabara* and *mozaraa*. But if between the palms there are bits of uncultivated land, a contract of *mosaka* may be combined with one of *mozaraa*, provided it is the same cultivator in each case, and that it would be difficult to proceed separately to the watering of the palms and to the ploughing of the intermediate portions of uncultivated land. †In the case of such a combination the law insists that the two contracts must be considered as forming one only, without the *mozaraa* predominating ; but with that exception it matters little whether there is much uncultivated land between the trees or only a small portion. †Nor is it necessary that the fruit should be shared between cultivator and proprietor in the same proportion as in a division of the harvest. †A contract of *mokhabara*, one, *i.e.* by virtue of which the cultivator gives the seed, is never lawful, even as an accessory to a contract of *mosaka*.

Where, in defiance of the law, a contract of *mokhabara* is effected by itself, all the produce of the field belongs to the owner, who owes the cultivator nothing but a remuneration for his labour, and for the animals and implements used in ploughing. If necessary, however, both cultivator and proprietor may be made to share in the profits of the crop, without its being requisite for the latter to remunerate the former when recourse is had to one of the following ways of eluding the law :—

1. The cultivator has hired his services to the proprietor for half the seed, under condition of sowing the other half to the profit of the owner who on his part lends him half the field.

2. The cultivator lends his services to the proprietor for half of both the seed and the field, under condition of sowing the other half of the field with the rest of the seed.

Section 2

It is necessary that the fruit of the trees should become the exclusive and common property of the proprietor and the cultivator, and that the share of each should be proportionally determined as in a joint-stock company. Moreover, a contract of *mosaka* can be legally effected, *even after the appearance of the fruit, provided it is before the first signs of maturity, but the cultivator may not be given palm shoots for planting on condition that the trees become the common property of himself and of the owner. It is only after the shoots are already planted in the soil that the cultivator may be promised a share of the future fruit as a remuneration for his labour upon the trees, if at least a period of time has been stipulated equal to that in which the trees planted usually bear fruit. When on the contrary the time stipulated is shorter than this the whole transaction is illegal; though some authorities maintain its validity even then, provided the time is not so very short as to render it wholly impossible that the fruit can be gathered before the end of it. One of the joint owners of a plantation can undertake to look after the trees of the whole of it by himself, provided that he reserves to himself a certain quantity of the fruit, exceeding the portion that is his by right.

The law requires also :—

1. That the cultivator shall not take upon himself obligations of any kind not relating to the cultivation.

2. That the cultivator alone does the work, and occupies the garden or the orchard.

3. That the length of continuance of the labour is known. It may be stipulated, for example, that the contract shall expire after a year's time, or that it shall last longer. †But the length cannot be lawfully determined by the words : "until the fruit comes to maturity."

The words by which the contract may properly be expressed are : "I give you charge to water these palm-trees for so much," or "I cede you my plantation to be taken care of." The cultivator must then manifest his consent, without its being necessary to announce in detail in what the work is to consist.

In default of special agreement to the contrary, the contract relates to everything that is usually comprised in it; *i.e*, the cultivator must not only do all that is necessary to enable the fruit to ripen, but must

also undertake all the work that has to be repeated each year, such as watering, cleaning the channels for the water, upkeep of the little reservoirs at the foot of the trees, fertilisation of the flowers, weeding, removal of dead branches hurtful to the development of the trees, construction of trellises for the vines, according to usage. †He must also protect and shelter the fruit, and also pluck and dry it. On the other hand, everything that is required in order to preserve the trees themselves, and all work that is not repeated each year, like the construction of walls and new water channels, is the duty of the owner. Neither party can withdraw from a contract of *mosaka;* consequently the cultivator who runs away before the expiry of the contract remains none the less liable for damage to the owner, even though the latter voluntarily undertakes to look after the garden. The court should engage another person at the cultivator's expense, to take care of the plantation, if the owner is not disposed to undertake it personally; and if the owner is unable to take the matter before the court, he can engage a workman of his own initiative. By doing so, however, he loses his right of proceeding against the absent cultivator, unless he has the cost of cultivation established by witnesses. If the cultivator dies the contract becomes part of the estate, and his heirs should continue it; but they have the choice either to cultivate the plantation in person, or to employ workmen to do so. If it is established that the cultivator has committed some fraudulent action, the owner may appoint an overseer; and if this is insufficient, may engage another person to complete the work at the cultivator's expense. Finally, in case of a judicial seizure of the fruit, the cultivator can always insist that the owner shall pay him a reasonable salary.

BOOK 21.—CONTRACT OF HIRING

Section 1

The two contracting parties are subject to the same conditions as the vendor and purchaser. The contract is formulated by the words, "I give you this on hire," or "I make you lessee," or "I cede you the use of it for a year for so much;" to which the other party replies, "I accept," "I take," or "I wish to be the lessee of it." †The contract may also be expressed in the words, "I hire you the use of it," but not by saying, "I sell you the use of it."

The contract of hiring is of two kinds. It may either refer to a particular thing, such as the rent of immovable property, or the hiring of an animal or slave specially indicated; or it may refer to something not yet determined, such as the hiring of an animal of which only the species is described, or the hiring of some one's services for some work indicated in a general manner, for example to sew or to build. When one says to a workman, "I engage you to make such and such a thing," this hiring applies to a specified object; though according to the opinion of some authorities this is a contract of hiring of the second kind. Between the two kinds there is first of all this difference that the contract of hiring of the second kind cannot exist unless the rent or the workman's salary is paid at once; while this is not necessary in a contract of hiring of which the object is certain and specific. In the case of the latter the payment can be made either in cash at once or at a fixed date if such is the agreement. If nothing has been agreed upon as to this, the payment should always be made at once, and the ownership of the sum given as rent, etc., passes at once to the tenant or the workman. In all cases the law requires that the rent or the salary shall be known; consequently it cannot consist of a field or the upkeep of an animal. One cannot hire one's services to skin an animal stipulating for its skin as salary; nor stipulate for a right to a part of the flour, as reward for grinding corn; nor for the refuse that passes through the strainer in sifting grain. ††But it is permissible to engage a woman to give suck to a child slave, and to grant her at once a part ownership in it.

The use to which the thing hired is put, or the labour, should be of

a nature of which the price can be legally fixed. Consequently one may take on hire :—

1. The services of a hawker, telling him he will not need to tire himself, provided there is a sale for the goods.

2. †Gold or silver coin, to be used as ornaments.

3. A dog for hunting.

It is necessary that the person letting on hire should be in a condition to deliver the gratification he engages to supply. From this it follows :—

1. That one cannot hire out a runaway slave ; nor goods that a third party has usurped.

2. That a blind man cannot hire himself out as a watchman.

3. That a field with no means of irrigation and as a rule insufficiently watered by rain cannot be taken for sowing. For the renting of a field for sowing is possible only if it has means of irrigation, or if there is usually sufficient rain to water it, or if there is †usually an accumulation of snow sufficient to be used for this purpose.

If a precept of the law renders the use of an object impossible, one should act as if it were a physical impossibility. Thus one may not lend one's services to take out a sound tooth ; a woman undergoing menstruation may not be engaged as servant in a mosque ; †and a married woman may not be engaged as nurse, etc., unless she obtains her husband's permission.

A term may be stipulated for the use of a thing or the engagement of personal services, if the object of the contract is not some specific article ; *e.g.* one may say, " I engage you to take such and such a thing to Mecca, on the first of such month ; " but it is not permissible to hire some particular thing, in order to make future use of it. †There is, however, no objection to one's letting one's house for a second year to the tenant of the first year, before its termination ; and hiring out by turns is also lawful. By this last is meant either that one hires one's mount to some one to use for a part of the way only, or that one hires it to two persons to use alternatively on different days. In these cases the respective rights should be clearly announced in the contract before allotment.

Section 2

It is also necessary that the use should be known, and that its duration should be limited to a particular period, such as the rent of a house for a year ; or that the duration should be limited by the nature of what is stipulated, such as the hiring of a mount for the journey to Mecca, or hiring out one's services to make a coat of such and such a piece of

cloth. †In such cases, however, the duration and nature of the agreement may not both be indicated; thus one cannot engage a tailor "for a whole day to make a coat of such and such piece of cloth." If one hires out one's services to teach the Koran, it is necessary to determine the length of the lessons or to specify the chapters that are to be taught; while in the case of a building the site, length, breadth, height, and materials must be indicated, if the agreement is to be determined by the nature of the work. A piece of land naturally adapted either for building on or for cultivation cannot be rented without specifying the particular use that is to be made of it; though it is sufficient to stipulate, *e.g.* that it is to be sown †without giving any fuller details as to the manner of cultivation. One may even say in general, "You can use it as you like," †or "You can sow it, or plant trees on it, as you like."

When an animal is hired as a mount, the rider must be indicated, either by presenting him to the owner; or by pointing him out so that there can remain no uncertainty as to his identity, but this latter method is disapproved by some authorities. It is the same as regards the manner in which the animal is to be ridden, *i.e.* it must be mentioned if a litter or any other burden is to be placed upon it. †Consequently a contract must be considered illegal which stipulates only that the animal shall carry "what is placed upon it" without specifying what. If nothing is agreed to upon the subject, nothing can be loaded upon the animal. If the contract refers to some particular animal, that animal must be specified. As to whether it must have been seen there is the same controversy as upon the subject of the validity of the sale of an object which is not there. Where, on the other hand, it is not a particular animal that is hired, but only one of a certain species, without regard to the individual, it is enough to mention the nature and species, and indicate whether it is male or female. In both cases, however, the daily journey should be stipulated; unless there are fixed stations on the road, when the animal must be rested at those stations, even if no stipulation has been made upon the matter. *When a beast of burden is hired, it is absolutely necessary in all cases that the two parties should know what it is to carry. Thus, if the goods are on the spot, they must be inspected, and raised with the hand if they are in packages; and if they are things to be found elsewhere, measure, weight, and quality should be mentioned. But it is not necessary to know the nature of a beast of burden, nor its qualities, when no particular animal is in view except in the case of transport of glass or other fragile articles that require extraordinary precautions.

Section 3

A Moslem cannot be hired to take part in the war against infidels, nor to perform his duties towards God, where an intention is necessary, except as far as regards the pilgrimage, and the distribution of the tax. On the other hand, a person may be engaged to perform funeral ceremonies, including burial, and to teach the Koran. Similarly a woman may be engaged to nurse a child and give it suck, either for both these obligations combined, or for one or the other, for they are two distinct obligations. To nurse a child means to look after it and wash both its head and body, to clean its clothes, put pomade on its hair, and ointment round its eyes, put it to bed and rock it to sleep. From these principles it follows that when a woman has been hired to nurse and give suck to a child, our school admits that the contract is *ipso facto* dissolved, so far as concerns the suckling, when the breasts are dry; but, in spite of this, it holds good for the nursing. †A copyist is not bound to bring ink at his own expense, nor a tailor thread, nor an eye-doctor collyrium.

[Rafii has shown in his commentary that in such a case everything depends on custom; if there is no custom, special stipulations should always be made with regard to the obligations just mentioned; otherwise the whole contract is null and void.]

Section 4

The landlord should give the tenant the keys of the house, and keep it in good repair; for if it is uninhabitable, and the landlord does not hasten to repair it, the tenant may cancel the agreement for the renting of it. It is also the landlord's duty to clear the snow from the roof; but the tenant has to clear away the snow fallen in the court yard, and have the house swept. In the case of an animal hired to ride, the owner must supply an *ikaf* or shabrack, a pack-saddle, a girth, a crupper, a nose-ring, except in the case of a camel, and a bridle; while litter, baldachin, mattress, blanket, and accessories must be supplied by the hirer. †Custom decides which of the two parties supplies the saddle. The packing of goods for transport is the duty of the owner of the animal, at least where a specified animal has not been hired; for in the latter case the expense of packing must be borne by the hirer, and the owner must accompany his animal to take care of it, and lend the rider assistance to mount and dismount, if it be at all necessary. In the case of a beast of burden the owner should accompany it in order to load and unload it, or to fasten and unfasten the litter. On the other hand,

where some specified animal is hired, the owner need merely give the hirer opportunity to make use of it. The hiring of some specified animal is cancelled *ipso facto* by the death of the animal ; and in case of redhibitory defects, the hirer has a right to cancel the contract. If it is not a specified animal that has been hired, the death of the animal the owner had in view does not of itself give rise to the dissolution or cancellation of the contract, for he is obliged, if necessary, to supply another. *Provisions taken on a journey by the owner of the animal and by the hirer for their mutual nourishment, should be replaced with others by the party who has consumed them.

Section 5

A contract of hiring may be entered into for as long a period as the ordinary duration of the thing hired. According, however, to one jurist, the term can never exceed one year ; another fixes the maximum at thirty years.

The hirer may make use of the thing hired, either personally, or by an intermediary. The only thing insisted on is that a substitute empowered to ride an animal or inhabit a house should not be of an essentially different condition of life from that of the principal hirer or tenant. Thus, for example, one cannot sublet a house to a blacksmith or a scourer.

The owner cannot replace the thing whose use he has to permit, *e.g.* a house or a mount, by any other object, even of the same kind, at least if it is a case of something specified. *But a person who has engaged some one, *e.g.* to sew a coat or suckle a child, even if these are specified, may substitute another coat or another child.

During the term of the contract, †and even after its expiry, the hirer's possession is considered to be of the same nature as that of a depositary. Thus a person who hires an animal to carry a load or to ride, and does not use it, but merely ties it up somewhere, is only responsible if the stable collapses while the animal is tied up in it, and at a time when the animal could not have been injured if the person had made use of it. In case of the accidental loss of an article entrusted to the care of a workman, without any fault upon his part, for instance the loss of a coat he has been told to mend or dye, he is not responsible. This rule applies not only to the case where the workman has no exclusive possession of the article, for instance, where the owner sits by his side during the work, or makes him come to his house to do it, *but also to the contrary case. Some authors, however, maintain a different opinion, distinguishing between a workman on contract and an ordinary work-

man, and contend that the former is responsible, but not the latter, who merely supplies his labour for a specified piece of work, or for a specified time.

A workman to whom a coat has been entrusted for scouring or mending, without mentioning any wages, cannot claim any wages after the termination of the work. Some authorities, it is true, maintain the contrary; while others contend that under these circumstances the workman should be remunerated, if that particular kind of work is his trade, though not otherwise. Obviously the latter are right.

In all cases where it can be shown to be the hirer's fault, he is responsible for the loss of the thing hired, as for instance if he gives more blows to an animal, or stops it more suddenly, than is usual; or if he allows it to be ridden by a heavier rider than himself; or if he allows a house which he has hired to be occupied by a blacksmith or a scourer. The same principle applies to the responsibility of a person who hires an animal for carrying a weight of one hundred *ratal* of wheat, and makes it carry a weight of one hundred *ratal* of barley, or *vice versâ;* or who hires it to carry a measure of ten *kafiz* of barley, and loads it with a measure of ten *kafiz* of wheat; for these changes really cause an aggravation of the beast's burden. But no responsibility is incurred by replacing ten *kafiz* of barley with ten *kafiz* of wheat. A person who hires an animal to carry one hundred pounds and loads it with one hundred and ten, owes to the owner a reasonable indemnity for the surplus; and he is responsible for the death of the animal if this is caused by the additional load, unless the owner accompanied him and consented to it. In these circumstances the hirer owes for the death of the animal an indemnity proportional to the extra service rendered, or, according to one jurist, half the value of the animal. Our school admits the responsibility of the hirer in a case where the one hundred and ten pounds are delivered to the owner of the animal, who undertakes the transport in ignorance of the excess; but if the owner undertakes the transport after ascertaining the weight and without raising any objection about the surplus, the law prescribes neither indemnity nor responsibility on the part of the hirer.

*When a piece of cloth is delivered to a tailor to make into clothing, and he makes a coat out of it and says that was the order given, and the owner says his order was for a shirt, the presumption is in favour of the owner, provided he takes an oath to that effect; and not only does he owe nothing to the tailor, but the latter is liable for damages.

Section 6

A contract of hiring remains intact, even where the hirer is prevented from making use of the thing hired, for example, if he has no combustibles for heating his bath, or cannot use it on account of a journey, or if he falls ill after hiring an animal for a journey. Nor can a contract of hiring be cancelled when the crop from a field hired for sowing perishes from some calamity. In none of these circumstances may even a partial remission of the amount of the hire be claimed. On the other hand, the contract is *ipso facto* dissolved by the death of the animal or of the workman ; at least if it is a specified animal or a particular workman ; but the consequences of this dissolution are not retrospective. Therefore the hire or the wages are due in proportion to the work done or the use made of the article. Except in the case of a hiring of the labour or services of a particular workman, the contract is not dissolved by the death of the contracting parties, even if the lessor be the trustee of a *wakaf*. †But where the hiring has been contracted by the trustee of a *wakaf* with a life interest, of the first generation, for a certain time, the contract is dissolved by his death before the expiration of that term. †On the other hand, if a guardian agrees that his ward shall go and work with some one as an apprentice for a salary, and for a term that expires before he can attain the age of puberty, the agreement holds good up to the expiration of that term, even though majority were attained before the legal age by the occurrence of nocturnal pollutions. The renting of a house is cancelled *ipso facto* by the fall of the building. But the renting of a field is not cancelled by a failure of its means of irrigation ; though the farmer may cancel the agreement. The usurpation of an animal or the escape of a slave also give a person who has hired them a right of cancellation.

When, after hiring out one's camels to some one, one leaves them at his domicile, he must apply to the court before proceeding to seize the camel-driver's goods for the cost of their up-keep. If the camel-driver has nothing that can be seized, the court should borrow money for him, and deliver it to the hirer if it can trust him ; if not, it should deposit the amount with some person worthy of confidence. In case of necessity the court can even proceed to sell some of the camels left in order to defray the cost of upkeep of the others. *Or, finally, the court can authorise the hirer to keep the camels at his own expense, in which case he can recover the cost from the owner.

The taking of possession of an animal by the hirer, or of a house by the tenant, and the fact of having kept the one or occupied the other

until the expiry of the contract, suffice together to constitute an obligation to pay the price, even though no use has been made of the thing hired. It is the same where an animal is hired for a journey to some specified place, and kept until the time necessary for such a journey has expired. It is of no consequence whether it is or is not a particular specified animal, provided that in the latter case the owner really delivers to the hirer an animal that possesses the qualities stipulated. ††In the case of an illegal hiring, a reasonable remuneration is due, in proportion to the time during which the object is retained.

The contract is *ipso facto* dissolved where the owner does not deliver the object to the hirer within the time agreed upon ; †but where no time has been fixed for the duration of the hiring, no such consequence follows even where an animal is hired for a journey to some particular place, and the owner delivers the animal to the hirer after the time for such a journey has expired. Nor is the agreement affected by the enfranchisement of a slave just hired ; for in these circumstances, the freed slave can †neither break the engagement entered into by his master *nor recover from him the wages he might have gained for his services after his enfranchisement. The sale of an object hired out to a tenant is lawful, †and does not affect the hiring ; *one may even admit the validity of the sale of an object hired out to a third party without the hiring being in any way affected.

BOOK 22.—OCCUPATION OF LAND

Section 1

Every believer may, by clearing it, appropriate any piece of land, situated in a Moslem country, that has never been cultivated or built upon. Infidel subjects of our Sovereign do not enjoy this right. Uncultivated land in an infidel country can be so occupied either by an infidel or a Moslem; provided it is not a piece of land from which a Moslem has been expelled, for this must return to its former owner by virtue of the *jus postliminii.* Land that has been cultivated or built upon belongs to its proprietor; and land that still bears traces of occupation previous to the conversion of the country to Islam, but of which the owner is unknown, is regarded as a thing lost, and consequently not susceptible of appropriation. *Where, on the other hand, the abandonment of the land dates from a period before the conversion ownership may be acquired by clearing it.

Land that, though uncultivated and unbuilt upon, serves as *harim* to other land already occupied, cannot be appropriated by clearing. By *harim* is understood land contiguous to other land, the use of which it renders possible. Thus, in a village the place of meeting of the inhabitants, the training ground, the place for the camels, the ditch for depositing filth, and so on, must be considered *harim;* while the *harim* of a well situated in uncultivated land consists of the place where one stands to draw water, the trough, the irrigation wheel, the reservoir, and the place necessary for the animal to turn the wheel. The *harim* of a house situated in uncultivated land includes the ditches for filth, for odure and for snow, and the space necessary to leave or enter by the door. One must also consider as the *harim* the reservoirs of a conduit of water, as far round as a well cannot be sunk without affecting the quantity of water or threatening the solidity of the reservoir. A house immediately surrounded by others has no *harim.*

One may dispose of one's property in conformity with custom, and one is responsible for the prejudice caused to one's neighbour only in the case of a disposition or act of an exceptional nature. †One may convert one's house, even if surrounded by other buildings, into a bath or a stable,

or establish a forge in one's shop situated perhaps in the bazar of the dealers in old clothes, provided that the shop is shut off on all sides from the neighbouring dwellings by walls.

†Clearing is permissible on the sacred territory of Mecca, with the exception of Mount Arafa. [Mozdalifa and Mina are subject to the same law as Mount Arafa.]

Clearing differs according to the object in view. Thus, if a habitation is to be built, it is necessary, before the habitation can be considered finished, that the land should be surrounded with a wall, that a part of it should be covered with a roof, and a door built, though the necessity of building a door has been called in question. In the case of an enclosure for animals, it is necessary to have a surrounding wall, but the land need not be covered with a roof. Authorities are not agreed as to the necessity of a door in such a case. If it is a matter of clearing a field, the sand must be removed from all parts of it, the land must be levelled and the necessary works constructed for its irrigation, unless the ordinary rains suffice ; but the law does not require it to be sown. In the case of a garden, the sand must be removed, the land surrounded by a wall or a hedge, if such is the custom, and means of irrigation prepared ; and, according to our school, trees must be planted.

When one has begun to clear land without finishing, or, what is more, when one has only marked a piece of land with stones or stakes, and not yet begun to clear it properly speaking, one is considered to be the first occupier, and one has a prior right to continue the work in preference to any other person. †However, it is forbidden to sell this purely personal right, and if in the meanwhile any one in good faith clears the land, he will be considered as the owner. Consequently, if the first occupier allows too long an interval to elapse before continuing the clearing the Sultan should notify him either to continue it or to abandon the land, allowing him a short respite if he asks for it. A person who has obtained a concession from the Sovereign has, so far as clearing is concerned, the same right of preference as a person who has begun to clear but not continued. Such concession is only to be given to a person able to complete his undertaking, and in proportion to the means at his disposal. This latter principle is applicable also to the preference that results from the simple occupation of which we have just spoken.

*The Sovereign may reserve a part of the uncultivated land, in order to pasture upon it—

1. Cattle given as capitation or assessment.
2. Cattle escaped from a stable or enclosure and seized by the police.
3. Cattle belonging to persons incapable of obtaining forage.

*He also has a right of dispensation with regard to the regulating of

land so reserved, if it is necessary ; but he can never reserve uncultivated land for his own use.

Section 2

By enjoyment of the public road is understood the right of each person to go along it, to sit down and rest, to speak of one's business, etc., without in any way annoying the passers-by. One has no need of any special permission of the Sovereign in order to rest, etc., upon the public road ; and one may even shade the place where one sits with a mat, etc. If two persons want to occupy the same spot on the public road at the same time, chance should decide between them, or, according to others, the public authority. If any one who sits on the public road to sell his goods, leaves his place, either because he wishes to discontinue that means of livelihood, or because he wishes to occupy another place, he loses all his rights ; but if he goes intending to return, his rights remain intact, unless his absence is so prolonged that his customers go to some one else.

A learned man who habitually frequents a certain part of the mosque to pronounce his decisions and to teach, should be regarded in the same way as a person established upon the public way to carry on his business ; but if one is merely sitting in the mosque to accomplish a prayer, one has no right to occupy the same place again, in preference to another person, in order to say a later prayer. †A person who chooses a place in a mosque for prayer, and leaves it for some reason intending to return, does not lose his right to return to it, in preference to all other persons, if he wishes to finish the prayer he has begun. He need not even leave his cloak to show that the place is occupied. The traveller who takes up his quarters at a public inn, or the doctor-at-law who instals himself at a college, or the sufi at a monastery, should be left in peace, and their place should not be occupied by others, if they happen to leave it to buy necessaries, etc.

Section 3

" Visible " mines, those, that is, from which material can be extracted without preliminary labour, as in the case of deposits of naphtha, sulphur, pitch, or bitumen, or in the case of millstone quarries, do not become private property by exploitation, and no preferential right arises from first occupancy, nor even from a concession from the Sovereign. If the yield of the mine is not abundant, the first occupier can take from the mine what is enough for his needs ; †but if he wants to take more, it may be prohibited. †Drawing lots must decide the priority, where

two or more persons want to begin the exploitation at the same time. "Hidden" mines, those, that is, from which nothing can be extracted without preliminary labour, as gold, silver, iron, and copper mines, *do not become private property by the mere fact of digging and exploitation, any more than "visible" ones; but if a person clears uncultivated land, and discovers in it a "hidden" mine, he obtains the ownership of it, as an accessory to the soil.

Every one has an equal right to the water of rivers and springs in the mountains, if it is ascertained that no one has obtained exclusive possession of the water. If several persons wish to use it for the irrigation of their fields, and the quantity of water is not sufficient for an extensive employment, the owner of the highest land can water his fields first, then the next lower, and so on. None of them may retain more of the water than is required to inundate his fields to the height of the ankles; and if it is the case of a field of varying level, each level should be separately considered in this respect. ††Water, even when common to all, becomes private property as soon as it is taken into any sort of vessel.

A person who sinks a well on uncultivated land, with the sole intention of procuring the water he requires, obtains in this way only a right of preference until he has left the place; †but if he sinks the well in order to become the owner of it, he becomes proprietor of the water as well. In any case, whether or not the water becomes private property, the person who has sunk the well is never obliged to share the superfluous water with another person if the latter only requires it for agriculture; ††but he must share the superfluous water with any person who wants to water his animals.

The water of common canals is distributed by means of wooden sluices in which holes are pierced, so that the distribution may take place either equally or in proportion to the respective rights of the co-proprietors. The partition may also be effected by turns, in virtue of special agreements between the owners having a right to the water.

BOOK 23.—WAKAF

Section 1

The founder must be capable of declaring his wishes, and must be able to dispose of his property at his own will and pleasure, and the foundation must be of such a kind that perpetual use may be made of it. Thus it may not consist of foodstuffs or odoriferous plants, but with this exception, it may be either movable or immovable, or even such things as are capable only of individual possession, but not a slave or a coat unless a particular specified one, nor one's own person, †nor a slave enfranchised on account of maternity, †nor a trained dog, †nor one of two slaves without indicating which. †On the other hand the validity of a foundation is admitted that consists of buildings and plantations on another's land leased for that object.

A foundation, whether in favour of a certain particular person, or of several individuals all together, has no legal effect unless the beneficiaries could legally become proprietors of the goods given in endowment. Consequently a foundation cannot be made in favour of a fœtus, or of a slave by personal reference to him. A foundation in favour of a slave with no such express reference is understood as referring to his master. A foundation in favour of an animal is null and void, though, according to some, it is to the profit of the master in this case also. †It results from the principle already stated that one may endow in this way an infidel subject of a Moslem prince, but not an apostate, nor an infidel who is not the subject of a Moslem prince, nor one's self. A foundation for an illicit purpose, such as the construction of a Christian church or of a synagogue is null and void. But it is perfectly legal, whether it is made with a pious object, as in favour of the poor, of learned men, of a mosque or of a school ; †or whether it is made with no manifestly pious intention, as when in favour of the rich.

The intention to endow a foundation should be expressed in explicit terms, as, for example, "I make such and such a thing a wakaf," or "My field shall be a foundation in favour of so and so." ††The phrases, "I consecrate," or "I devote to such and such pious use," are explicit ; †as are also, "I make a sacred gift of such and such a thing," or "I

make wakaf," or "it cannot be sold or given to another." On the other hand, the expression "give" without anything else cannot be considered explicit, even if it was the intention to found a wakaf; except when in favour not of one or many individuals, but of a category of persons or of the public, when it is so regarded. †The phrases, "I make such and such object a sacred thing," or "I wish it to remain for ever as it is," are not explicit; but the expression, "I destine this land to become a mosque," is enough to make of it a place devoted to religious worship.

†A foundation in favour of a particular person is not complete unless he accepts; an acceptance which can in no case follow upon a previous refusal. A foundation expressed in the words, "I make such and such a thing wakaf for a year," is null and void; but if the words used are, "I make it wakaf in favour of my children," or "in favour of so-and-so, and after him of his descendants," and nothing else, the foundation remains intact, even after the extinction of the family. *The usufruct then goes to the nearest relative of the founder, upon the day of the extinction of the beneficiaries designated by him. Our school regards as null and void a foundation made without designating an original beneficiary capable of enjoying it immediately, made *e.g.* "in favour of the child I shall have." On the other hand, it recognises the validity of a wakaf where one of the intermediary beneficiaries does not exist, *e.g.* where it is said, "I make a wakaf in favour of my children; and if I have none, then in favour of a person not designated, and after that in favour of the poor.

*The law considers null and void a foundation that has no object. Nor can it be made to depend upon a condition, as "I make wakaf, provided Zaid comes." ††It is also annulled by an option. †As to other conditions they should be faithfully executed, as that the property immobilised may not be leased, or that a mosque should be specially destined to a particular rite, such as that of Shafii. In this last case members of the school mentioned alone have a right of enjoyment, to the exclusion of all other believers; and this rule applies also to the foundation of a school or hostelry. †In the case of a wakaf in favour of two persons, and after them of the poor, the death of one causes his share in the usufruct to fall to the other, and not to the poor, who profit from it only after the death of both. This doctrine was defended by Shafii himself.

Section 2

A wakaf in favour "of my children and grandchildren," results in the usufruct being divided equally between all the children and grandchildren

alive on the day of the foundation, even though one may have added "who are their descendants," or "generation after generation." Where, on the contrary, one has used the words, "in favour of my children, then of my grandchildren, then of my great-grandchildren who are their descendants," or "in favour of my children and my grandchildren, the one after the other," or "the former first," there is successive enjoyment by the different generations, and the first are merely fiduciary beneficiaries. †Besides, the grandchildren have on their own account no claim upon a wakaf made in favour of "children" only; but, on the other hand, grandchildren born of the founder's daughter are included in the expressions "posterity," "descent," "progeny"; or "grandchildren," unless one says "grandchildren bearing my name. "A wakaf in favour of "persons between whom and myself there are relations of patronage," should be divided into two equal parts, if the founder is both client and patron; but according to some jurists it is null and void.

An apposition preceding several words, joined to one another, refers to all of them; for example, in the phrase, "I make a wakaf in favour of those who are indigent, my children, my grandchildren and my brothers" —brothers and grandchildren are here proclaimed to be indigent equally with the children. It is the same with an apposition that follows, and with a reservation added to the principal words, provided these words are united by the conjunction "and"; thus, "I make a wakaf in favour of my children and grandchildren and brothers, who are indigent," or "except such as may be of notorious misconduct."

Section 3

*The ownership of the thing immobilised is transferred to God; which means that such object ceases, for men, to be subject to the right of private property, and that it henceforth belongs neither to the founder nor to the beneficiary. To the latter belongs the usufruct alone; and he may enjoy it, either personally, or by an intermediary, *e.g.* by lending him the object immobilised, or by hiring it out to him. The beneficiary of a wakaf is *ipso facto* the proprietor of what is obtained from a lease of the foundation, or of what it produces, as fruit, wool, and milk, †without forgetting slave-born children and the young of animals; though according to another theory these various offshoots become themselves wakaf, by virtue of the right of increase. After the death of a dedicated animal, the skin belongs to the beneficiary. Similarly, he becomes proprietor of the dower paid for a female slave with whom a third party has cohabited, either by error, or by right of marriage, †at least where it

is admitted that a dedicated slave can legally be married. On the other hand, according to our school, the indemnity due by the murderer of a dedicated slave does not belong to the beneficiary, who should employ the money in purchasing another slave, who then becomes dedicated *ipso facto* in the place of the slave killed ; or, if this be impossible, he should at least employ the money in acquiring an undivided share in a slave.

The dedication of a tree is not, according to our school, terminated by the death of the tree ; for this does not prevent the continued use of the wood ; though according to some authorities, the tree should in this case be put up to auction, and the proceeds employed in the same way as the indemnity due for a slave killed. †The old mats and broken beams of a mosque may be sold, but only to be used as firewood. The ground of a mosque can in no case be sold, even though the building may have fallen into ruin, and though it be impossible to reconstruct it.

Section 4

Where the founder has reserved to himself the administration of the wakaf, or where he has conferred this duty upon another person, that disposition must be adhered to ; but if the founder has made no stipulation with regard to this, the administration must, according to our school, be intrusted to the court. The administrator of a wakaf must be a man of irreproachable character, fit for his duties physically and mentally. The functions of an administrator consist in keeping up and leasing the property immobilised, and in the collection and distribution of the revenues. If the administration has only been partly conferred upon him, he is forbidden to exceed the limits of his authority. In all cases the founder has the right to dismiss his administrator and appoint another, unless the administrator has been appointed in the deed of foundation itself. †A lease, effected by an administrator, remains good in spite of a rise in price, or the fact that another person offers more advantageous conditions.

BOOK 24.—GIFTS

A GIFT is a gratuitous transfer of property. When such transfer is made with the intention of obtaining a recompense in the other world, it is an alms ; ††when the gift is brought to the donee to manifest one's respect for him, it is a present. It is an essential condition for the validity of a gift properly so-called that offer and acceptance be made in explicit terms ; but in the case of a present neither offer nor acceptance are strictly necessary ; it is enough that the object is brought by the donor and taken possession of by the donee. By saying to some one, " I want you to live in this house of mine, and that it shall pass to your heirs after your death," one makes a gift, as also by merely saying, " I want you to inhabit it," at least according to the doctrine adopted by Shafii in his second period, or by saying, " After your death it will return to me." Shafii in his first period expressed an opinion different from that adopted in his second as to the validity of a gift made in the following terms, " I grant you a life interest in this house," or " I make you a gift of it for life " ; that is, if you predecease me it will return to me, but otherwise it will be yours irrevocably. Nowadays, however, in our school, both of the imam's opinions have equal currency.

Anything that may be sold may be given ; anything that may not be sold, as an unknown or usurped thing, or an escaped animal, cannot be the subject of a gift. But in the case of things of very little value, such as two grains of corn, etc., a gift is permissible but not a sale. The gift of a debt due to one, implies the remission of the debt, if made to the debtor ; †to any third person it is null and void.

As to the ownership of the thing given, this is transferred only upon the donee taking possession with the consent of the donor, or if one of the parties dies between the giving and the taking possession, by the agreement of the heirs. Some jurists, however, consider that under these circumstances the gift is *ipso facto* revoked.

A practice has been introduced by the Sonna, by which parents, at any rate when not of notorious misconduct, may by gift *inter vivos* distribute their property equally amongst their children, without distinction of sex ; others, however, maintain that the provisions of

the law of the distribution of property upon succession cannot be set aside in this way.

A father **or any ancestor may revoke a gift made in favour of a child or other descendant, provided that the donee has not irrevocably disposed of the thing received, *e.g.* by selling or dedicating it. Revocation is not prevented by a disposition leaving the right of ownership intact, such as pledging or gift, at any rate as long as neither have been followed by possession, conditional enfranchisement, giving in marriage a female slave, cultivation of a field, or even, according to our school, a contract of hiring. In a case where the donee first loses the ownership of the thing and afterwards recovers it, †the right of revocation does not revive; and where, in the meanwhile, the thing given increases, the revocation applies only to that part of the increase which is incorporated with the thing itself, not that which has a separate existence. A revocation is made in the following words:—"I revoke my gift," or "I claim back the object," or "I wish the thing to become my property again," or "I wish to put an end to my donation"; but it cannot be effected by mere implication, by ulterior dispositions affecting the thing given, such as sale, immobilisation, gift to another person, enfranchisement †or cohabitation.

In the case of a gift by which it has been expressly stipulated that there is to be no remuneration, a right of revocation belongs only to ancestors; while a gift with regard to which no stipulation has been made about the matter is considered to have been made without any prospect of remuneration, if the donee is in any respect inferior in social position to the donor, and even if he is superior. Our school goes even further; it accepts the same principle in the case of a gift between two persons of equal position. Where a remuneration is obligatory, but none has been specified, †it consists in the value of the thing given; and the donor has in these circumstances the right to revoke the gift, if the donee forgets the remuneration. *A donation is admitted as valid when made with the reservation of a known remuneration; ††a donation which must, however, be considered as a sale; but, according to our school a gift made on the express condition of an unknown remuneration, is null and void.

In the case of a present made to some one, the receptacle is considered to be part of the present, and, if such is the custom, need not be restored, as one does not return the basket that has contained dates. Otherwise the receptacle remains with the donor, and the donee can only use it as, for example, a plate for the food given, provided always custom admits of this.

BOOK 25.—THINGS FOUND

Section 1

It is commendable to pick up what one finds, if one thinks one can keep it in safety. Some authorities even maintain this to be obligatory. If one has reason to doubt if one can keep a thing safely, the law neither recommends the above course, †nor does it forbid it, except for a person of notorious misconduct, in which case it is blamable. According to our school one is not obliged, on finding something, to call witnesses to see it; and, strictly speaking, a person of notorious misconduct, a minor, or an infidel subject of a Moslem prince, can pick a thing up in case of necessity. *But it should be removed from the possession of a person of notorious misconduct and deposited with one of irreproachable character; and one should never rely upon a person of notorious misconduct for announcing the discovery to the public, even if the object found be left in his possession, which is permissible if the person in question is watched by another. As to a minor it is his guardian who should take from him the thing found, make the public announcement, and appropriate it for his pupil, if he considers it proper for him to undertake the resulting obligations, *i.e.* in a case where it would be otherwise permissible for him to borrow money on his behalf. The guardian is responsible for a thing found which he has omitted to take from his pupil's possession, and which has been accidentally lost. *If a slave has picked anything up his action is null and an announcement made by him is void. On the other hand, his master who takes the thing from him is regarded as the person who has found it and picked it up.

[According to our school a slave who is undergoing enfranchisement by contract can pick up a thing found, with all the legal consequences, provided that the contract cannot be legally invalidated in any respect. In the case of a person who is partially free, the fact of having found something affects both him and his master; *and if he has only to serve his master once in two or three days, the object is considered as having been found by him or by the master in accordance with whether it was or was not a free day. This last principle is also applicable to all accidental benefices or expenses, with the single exception of an indemnity

due for a crime which affects solely the person himself who is partially enfranchised.]

Section 2

Domestic animals that have nothing to fear from small carnivores, either in consequence of their strength, as in the case of the horse or the camel, or of their fleetness, as with the hare and the gazelle, or because they can fly, like the pigeon, can only be seized in a desert place with the intention of keeping them. This seizure can be effected as well by the court †as by any other person. Such animals when found in such a place cannot be seized in order to be appropriated ; †but it is quite lawful to seize them with this intention when straying in a village. Domestic animals such as ordinarily become the prey of small carnivores —sheep, for example—can be seized and appropriated wherever found ; and a person who seizes them in a desert place can at his choice—

1. Make a public announcement, and at once appropriate them.

2. Sell them, keep the price and appropriate it after making a public announcement.

3. Kill them and eat the meat ; acts, however, by which one engages to pay the value to the owner upon his presenting himself.

Where, on the contrary, the animals in question are found in an inhabited place, the choice lies between the first two of these courses, †to the exclusion of the third. One may also seize a young slave who has not yet reached the age of discernment.

As to inanimate things found, if they are liable to rapid deterioration, like the paste called *harisa,* one may either sell them and appropriate the price after making the required public announcement, or take them at once and eat them. Others, however, maintain that sale is obligatory for a person who finds things of this sort forgotten in an inhabited place. Where, on the other hand, it is a question of things that can be preserved after manipulation, such as fresh dates that can be dried, one has the right either to sell them or to dry them, whichever course is rendered most advantageous by circumstances ; if, at any rate, after finding them, one is willing to undertake their manipulation gratuitously. Otherwise the finder can sell a part to defray the cost of manipulation.

A thing picked up with the sole object of keeping it and returning it to the owner becomes a deposit, which one can get rid of at any moment by consigning it to the care of the court, which must accept it. According to the majority of jurists a public announcement is not obligatory in these circumstances.

Bad faith supervening after picking up a thing †involves no

responsibility, which arises only from bad faith at the moment of doing so. Such bad faith it is, according to our school, that prevents a public announcement in order to appropriate the thing subsequently.

Whoever picks a thing up intending to announce it, and appropriate it if the owner does not present himself, keeps the thing as a deposit, as long as the public announcement lasts, †and even until he declares his intention to appropriate it. One should first examine the nature, quality, quantity, wrappings and fastenings of the thing found, and then announce it in the markets, at the doors of the mosques, etc., for a whole day and according to custom. This notification should be repeated twice a day, *i.e.* morning and afternoon, then once a day, then once a week, and lastly once a month, †without interruption for the whole year that is prescribed for notifications. [†An interruption in the year prescribed for notifications does not render them absolutely illegal.] In the notification it is only necessary to give a superficial description of the thing found. The expense of the notification does not fall upon the finder, who picks a thing up merely in order to keep it and give it to the owner. The court should in such a case defray the expense, either from the public treasury, or by borrowing in the owner's name. The expense should, on the other hand, be borne by the finder if he picks a thing up in order to appropriate it; though, according to some authors, the owner should recoup him in all cases where the appropriation for some reason or other did not take place. †A thing of small value need not be announced for a whole year; it is enough if the notification lasts long enough to give reason to suppose that the loser has renounced his claim.

Section 3

A person who has notified the finding of a thing for a whole year, is not *ipso facto* its owner; he must also express his intention to appropriate it, in words such as, "I appropriate it." According to some, however, the intention alone is enough; while according to others appropriation takes place *ipso facto* upon the expiry of the required year. In any case appropriation is merely temporary; for if the original owner presents himself he can exercise his rights, under the following circumstances:—

1. The thing found should be returned him in kind, if the two interested parties are agreed about it; †or if the owner insists upon such restitution, even though the finder may prefer to replace the thing found by something similar.

2. When the thing found has been accidentally lost, the finder should

replace it by another similar object, or pay the value it had on the day he appropriated it.

3. Where the thing has deteriorated in the meantime, †the finder should restore it to the owner in the state in which he found it, and also pay damage.

If some one presents himself and claims a thing found, but can neither give a description of it, nor prove he is the owner, the person who has found it has no right to give it him. If some one comes and is able to give a description of the object but no other proof that he is the owner, the finder may give it him if he believes him to be speaking the truth ; but, according to our school, restitution is never obligatory in such a case. Where restitution is made on the sole ground that the claimant gave a description of the thing, and the real owner comes later and proves his claim, the person to whom the thing was given may be called as surety. If in the meanwhile the thing has been destroyed in possession of the person who wrongly represented himself as the owner, the real owner may proceed either against the finder or against the person to whom he gave the object found ; though the former may always recover from the latter what he has been obliged to pay the owner.

[††Objects found upon the sacred territory of Mecca, cannot be appropriated ; but this does not affect the obligation to make a public announcement of their finding.]

BOOK 26.—FOUNDLINGS

Section 1

Children that have been abandoned must not be left to their fate; this is an obligation for which the Moslem community is collectively responsible. †The fact of finding a child should be established by witnesses. Authority over a child, in consequence of finding and taking care of it, can be exercised only by an adult, sane, free Moslem, of irreproachable character, and of sufficient intelligence to manage his own affairs. Consequently, a slave who takes charge of a foundling without his master's knowledge, has no right to keep it. Even if a slave, after finding a child, tells his master, and the latter lets it remain with him, or if a master authorises a slave to take charge of a child; it it is not the slave but the master who must be regarded as civilly responsible for it. A minor, a person of notorious misconduct, and one legally incapable, cannot legally take charge of a child they may find; and the same with an infidel in the case of a Moslem foundling. In all these cases the care of the child should be confided to another person.

If two individuals dispute possession of a foundling, the court should decide which of the two seems preferable, and, if necessary, confide the child to a third; but no one can dispute the claim of a person who has already taken a child to his home. †In a case where two persons, both of full legal capacity, jointly find a child, the court should prefer the richer to the poorer, and the one who is notoriously and positively irreproachable to the one about whom it can only be said that nothing is known to his disadvantage. In a case of complete equality in all respects chance should decide. A townsman who finds a child abandoned in a town, has no right to take it into the desert among the nomads; †but there is no objection to his taking it to another town; nor is there any objection to a stranger who finds a child in a town where he is temporarily staying, taking it to the town where he has his domicile. A stranger who happens to find a child in the desert may take it to a town. A nomad who finds a child in a town is subject to the same law as a townsman in similar circumstances; but a nomad who finds a child in the desert can keep it and bring it up at his home; unless, according to some

jurists, the tribe has a habit of changing its place in search of new pastures.

The upkeep of a foundling is defrayed from property destined to such children in general, like wakafs made in their favour, or from the property of the foundling. This last phrase means the clothes, etc., in which he is wrapped, or upon which he is lain, the drahms there may be in his pocket, his cradle, and the dinars placed above or below his body. The law even considers as the child's property the deserted house in which he is found, but not the treasure buried underneath the place where he lay, †nor clothes or other objects placed in the neighbourhood. *A wholly destitute foundling should be brought up at the expense of the state ; and, if necessary, every Moslem is obliged to assist him, as by way of loan ; or, according to one author, as by way of upkeep. †A person who finds a child has the exclusive right to administer its property ; but in all cases the expenses of its upkeep must be authorised by the court.

Section 2

A child that has been abandoned is regarded as a Moslem—

1. If it is found in a Moslem country, even though inhabited by infidel subjects of our Sovereign.

2. If it is found in a country conquered from the infidels, whose inhabitants have retained their property by virtue of a treaty, or hereditary possession by right of capitation ; provided the country is not entirely destitute of believers.

3. †If it is found in a country not yet conquered from the infidels, but where there are some Moslems who have come either as prisoners of war or for a commercial object. If, on the other hand, the country is inhabited exclusively by infidels, the child also is regarded as an infidel.

The son of an infidel, declared to be a Moslem in consequence of the place where he is found, becomes none the less an infidel as soon as his origin has been proved ; but a mere contestation of the presumption established by law in favour of the Moslem faith, is not sufficient, according to our school, to cause the child to be regarded as an infidel.

The Moslem faith of a minor, in general, is established in two other ways that have no reference to foundlings.

1. By the fact of being born of Moslem parents, even though only one of them may have been Moslem at the moment of the child's conception. If such a child, after attaining majority becomes an infidel, he must be regarded and punished as an apostate. Even a child

conceived at a moment both the father and the mother were infidel, becomes Moslem *ipso facto* upon the conversion of either parent during its minority ; and must also be considered as an apostate if proof of infidelity is given upon majority. However, one of our jurists considers the child in these circumstances to be an infidel by origin.

2. By being made a prisoner of war by a Moslem ; for in that case the child follows the religion of the person that has taken possession of it, unless the father and mother were made prisoners at the same time. †The fact of being made a prisoner of war by an infidel subject of a Moslem prince constitutes no reason for considering a child to be a Moslem. ††As a general rule, a minor, even though he may have attained the age of discernment cannot become a Moslem unless at least one of his parents is converted to the faith of the Prophet.

Section 3

If a foundling, upon his majority, does not himself admit that he is a slave, every one must consider him as free, until another person has proved the legal presumption in the matter to be false. If a foundling, upon his majority, admits he is the slave of a particular person, who does not deny it, the admission should be accepted by the court ; unless the child previously admitted he was free. However, our school does not consider it an obstacle to an admission of being a slave that a foundling has already disposed of his property or person in a manner only compatible with freedom, *e.g.* by entering into a contract of sale or marriage. In spite of any dispositions of this nature the child's admission of being a slave must be admitted both as regards his origin and with reference to his subsequent actions ; but his previous acts remain valid in all cases where such an admission would prejudice other persons who, believing him to be free, have in good faith entered into relations with him. The debts of a foundling who upon his majority admits being a slave are recoverable from anything he actually possesses. *Where the status of slavery of a foundling is maintained in legal proceedings by a person who has not the child with him in his house, the court can take no notice of his claim unless he proves the truth of his statement. In a case where the statute of slavery is not alleged by the foundling himself but by the person who finds him, the court can never give credit to the statement of the latter, unless the fact is established by sufficient evidence.

A minor, whether or not he has attained the age of discernment, kept by some one as a slave, without it being known if he is a foundling

or not, should be regarded as really the slave of the person employing him; †and on his majority he cannot change his status by merely declaring himself to be free. Such a change is admissible only upon legal proof. And if any one proves that a certain foundling is a slave the latter should be treated as such; but before this can be admitted, not only must a general right of ownership be proved, but the cause must be shown, only one authority considering the former alone sufficient.

When a free Moslem declares a foundling to be his child, this declaration is enough to give him a right to bring up the child in preference to all other persons. A similar declaration by a slave also establishes filiation; though one of our jurists admits it only on condition of the master's approval. †On the other hand, a declaration of this kind made by a woman has not the same consequences. In a case where two persons dispute the paternity of a foundling the law admits no presumption in favour of a Moslem over an infidel subject of a Moslem prince, nor of a free man over a slave. In the absence of other proof recourse must be had to a physiognomist to discover the true father of the child. The person indicated by the physiognomist as the real father must be so considered; but, if there be no physiognomist, or if the physiognomist cannot venture to decide, or declares that the child is the child of neither competitor, or that he finds traces of filiation with respect to both of them, then the child on his majority must himself decide to which of the two persons he inclines by his character, etc. *Finally, in a case where each party succeeds in legally proving the truth of his affirmation of paternity, these proofs mutually annul each other.

BOOK 27.—JOB WORK

This form of agreement occurs when one says, for example, "Whoever brings me back my fugitive slave will be rewarded in such and such a manner," or when one makes use of any other phrase indicating the work that is to be done for some obligatory remuneration. In consequence one can claim nothing for doing a piece of work without the master's consent, or one that another person had been employed to do. A third party may promise a reward to any one who brings back the fugitive slave of another person; but in that case the person who undertakes the work can proceed only against the person who promised him the reward. If some one says, "Zaid promises a reward of so much to any one who brings back his slave," a person who brings back the slave has no case against the speaker if Zaid denies it. It is not necessary that the offer of a job should be formally accepted by the person undertaking it, even in the case of something that is to be delivered to a particular person.

The contract is valid if the work to be done is not known, †as well as where its extent is ascertained; provided in both cases that the amount of the remuneration is known. Thus, one may not say, "Whoever brings me back the slave shall have a coat," or "I shall reward him"; although, under these circumstances, the person undertaking the job can still claim, if he succeeds, reasonable remuneration for his trouble. In case of a promise to reward any one "bringing back a slave from such and such a place," the person who undertakes the job can claim only a proportional reward if he finds the fugitive in some nearer spot. If two persons together bring back a slave, they should jointly claim the promised reward; but if the reward has been promised to some particular person and another assists him in the work, the person with whom the master made the contract can alone claim the entire reward, at least, where the other shared the work in order to assist him. But if the second has taken part in it for the sake of the master, the original contractor can only claim a reward proportional to what he has done, and the other can claim nothing.

Each of the contracting parties may cancel the agreement before the job is completed under the following conditions:—

1. Nothing is due to the person undertaking the job if the cancellation takes place before the work is begun ; or if the person so undertaking wishes to cancel the agreement later.

2. †If the master wishes to cancel the agreement after work has been begun he owes to the other party reasonable remuneration for what has been accomplished.

The master has the right to increase or diminish the remuneration so long as the work is not finished ; without prejudice, however, to the contractor who has begun it, who in these circumstances always has a right to demand reasonable remuneration instead of accepting the change in that promised. The contractor cannot claim the promised reward, if, *e.g.* a slave he has undertaken to bring back dies on the way or escapes again ; nor has he any right to retain the recovered property in order to secure payment of what is due to him.

The law admits a presumption in favour of the master when the latter denies that a condition, alleged by the contractor, has been added to the promise ; or if he contends that the contractor has not been diligent in bringing back a fugitive. In case of a dispute upon the subject of the amount of the promised remuneration, both parties should take an oath to the truth of their assertions.

BOOK 28.—DISTRIBUTION OF ESTATES

Section 1

Funeral expenses are a first charge upon the total of the deceased's estate; next his debts must be paid; and then his testamentary dispositions may be executed, but only with regard to one-third of what is left of the estate, after deducting the debts. The remaining two-thirds of the net estate belong to the heirs.

[Special privileged claims, such as the charitable tax, the price of blood, security, and the return of things sold and not paid for in case of bankruptcy, are prior charges even to funeral expenses.]

The grounds of legitimate succession are four in number—relationship; marriage; patronage; in the sense that the patron is heir to the enfranchised slave, but not *vice versâ;* and, finally, religion, for in default of heirs of the first three kinds, the inheritance passes to the state, and this acquisition has all the effects of an ordinary succession. Legitimate male heirs are ten in number: (1) son; (2) son's son and other agnate descendants; (3) father; (4) father's father and other agnate ancestors; (5) brother; (6) brother's son, except in the case of a son of a uterine brother; (7) father's whole brother, and father's half-brother on father's side; (8) son of (7); (9) surviving husband, not divorced, who has not repudiated the deceased; (10) patron. Legitimate female heirs are seven in number: (1) daughter; (2) son's daughter, and other female descendants of a son, provided they are agnates; (3) mother; (4) grandmother, and the other ancestresses mentioned in section 5 of this book; (5) sister; (6) surviving wife, not divorced nor repudiated; (7) patroness.

In a case where all the male heirs just mentioned present themselves, father, sons, and wife share the succession to the exclusion of the others. If all the heiresses appear, then daughters, sons' daughters, mother, whole sisters, and wives alone share in the estate. Finally, should all possible male and female inheritors claim their portion, then the succession belongs exclusively to the father, mother, sons, daughters, and husband or wives.

The primitive doctrine of our school did not allow cognates a share in the succession, and the heirs indicated in the Koran could never obtain more than their determinate portions. Consequently, in default of persons legally entitled to it, the remainder of the inheritance escheated to the state. For this reason modern authorities have introduced the rule that, in all cases where the public money is not administered in accordance with the law, the heirs indicated in the Koran, with the exception of husband and wife, may, after receiving their respective portions and in default of other legitimate inheritors, demand that the remainder of the estate should be proportionately distributed amongst them. The state is even excluded by cognates, if the deceased has left no legitimate heir. By "cognates" are understood all relatives, except those already mentioned as legitimate heirs. They are of ten different kinds of relationship: (1) mother's father and, in general, any ancestor or ancestress who is not a legitimate heir or heiress; (2) daughters' children; (3) any brothers' daughters; (4) sisters' children; (5) uterine brothers' sons; (6) father's uterine brother; (7) father's brother's daughters; (8) father's sisters; (9) mother's brothers and sisters; (10) relatives of all these persons, male and female.

Section 2

The portions fixed by the Book of God are of six categories—

1. Half the estate is assigned to five individuals: (1) husband, if the deceased has left no children nor son's children; (2) only daughter; (3) son's only daughter; (4) only whole sister; (5) only half sister on father's side.

2. A quarter of the estate is assigned to: (1) husband, if the deceased has left children or son's children; (2) wife, if the deceased has not left children nor son's children.

3. An eighth of the estate is assigned to the wife, if the deceased has left children or son's children.

4. Two-thirds of the estate are assigned to: (1) two or more daughters; (2) two or more daughters of sons; (3) two or more whole sisters; (4) two or more half sisters on the father's side.

5. A third is assigned to: (1) mother, if the deceased has left no children nor son's children, nor two brothers, nor two sisters; (2) two or more brothers or uterine sisters; (3) father's father, when called to the succession along with the brothers.

6. A sixth is assigned to seven individuals: (1) father, if the deceased has left children or son's children; (2) father's father, under the same circumstances; (3) mother, if the deceased has left either children or

son's children, or brothers or sisters; (4) grandmother; (5) son's daughter, when she is called to the succession along with the deceased's daughter, *i.e.* her father's sister; (6) one or more half sisters on the father's side called to the succession along with the whole sister; (7) brother, or only uterine sister.

Section 3

Father, son, and husband are never excluded from the succession; son's son, or other agnate descendant, is excluded by son or other agnate descendant of a nearer degree, even though in another line; but an agnate ancestor can be excluded only by a nearer agnate ancestor of the same line. Whole brother is excluded by father; son's son and half brother on father's side are excluded also by whole brother; while uterine brother is excluded by father, father's father, child, and son's child. Whole brother's son is excluded by six persons: father, father's father, son, son's son, whole brother, and half brother on father's side; son of half brother on father's side is excluded also by whole brother's son. Father's whole brother is excluded by the same persons and by the son of deceased's half brother on the father's side; father's half brother on the father's side is excluded also by father's whole brother. Father's whole brother's son is excluded by all the persons last mentioned, and then by father's half brother on the father's side; while the son of father's half brother on the father's side is excluded also by father's whole brother's son. A patron is excluded by all agnates.

Daughter, mother, and wife are excluded by no one. Son's daughter is excluded by son and by two or more daughters of deceased; unless she inherits by way of agnation owing a special legal disposition. Mother's mother is excluded only by the mother herself; father's mother only by the father or mother. Now in the same line of succession more distant relatives are excluded by nearer ones, and more distant ancestors in the paternal line are even excluded by nearer ancestors in the maternal line, *but not *vice versâ*. Thus father's mother's mother is excluded by mother's mother. Whole sister is excluded by the same persons as whole brother; and half sister on the father's side is excluded also by two or more whole sisters. Patroness is subject to the same rule as patron.

If the estate is entirely disposed of amongst the portions of persons designated in the Koran as entitled to a share, agnates receive nothing by virtue of their right of agnation; but otherwise they can claim what remains of the estate, after deducting these portions.

Section 4

A son is universal inheritor when he alone is called to the succession; and this principle applies also where the deceased leaves several sons. On the other hand, an only daughter can never claim more than the half, nor two or more daughters more than two-thirds. In case of concurrent claims by sons and daughters, the whole estate belongs to them, in such proportion that a son's share is equal to that of two daughters; while son's children, in default of other heirs, are subject in this respect to the same rule as for deceased's children. In case of concurrent claims by a son and by children of another predeceased son, the latter are excluded from the succession; but in case of concurrent claims by an only daughter and by children of a predeceased son, she can only claim half, and the remainder falls to the share of the son's children, if they include a male. Otherwise, *i.e.* where the son left only daughters, they can only claim a joint sixteenth. Where, in these circumstances, the deceased leaves, not an only daughter, but several daughters, called to the succession along with children of a predeceased son, the law assigns to the daughters together two-thirds of the estate, and the remainder falls to the son's children, provided they included a male. Otherwise, *i.e.* where the son left only daughters, they have no right to the succession, unless they are called to it as agnates, because otherwise the remainder of the estate would fall to the share of agnates further removed. As to son's son's children, etc., in case of concurrent claims with deceased's children, they are subject to the same rule as son's children.

As a general rule, where agnate descendants are called to the succession, the result is that any female descendant of the same degree of relationship also inherits by right of agnation. The same applies to any female descendant of a nearer degree of relationship, if otherwise she would be excluded from the two-thirds' share assigned her by the Koran.

Section 5

A father can claim only the portion fixed by the Koran, if he is called to the succession along with a son or son's son; but in default of children and son's children he inherits by agnation; and if a daughter or son's daughter has a concurrent claim, the law assigns him—

1. A sixth, as heir designated in the Koran.
2. The remainder, after deducting daughter's and son's daughters' portions, as agnate.

A mother can never claim more than a third or a sixth, as explained

in the second section of the present book; while her portion is only a third of what remains of the estate after deducting the husband's or wives' portions, in case of concurrent claims by the father and the husband or wives of the deceased.

Father's father is subject to the same law as father, except that—

1. Brothers and sisters are always excluded by the latter; whereas whole brothers and sisters and half-brothers and half-sisters on the father's side, are called to the succession along with the former.

2. A father excludes his own mother, *i.e.* deceased's father's mother, who is not excluded by deceased's father's father, *i.e.* by her husband.

3. A father reduces a mother's share to a third of the remainder, in case of concurrent claims by her and the husband or wives; which is not so in the case of father's father.

A grandmother can claim a sixth; if both father's mother and mother's mother have survived deceased, the two grandmothers share this fraction between them. By grandmother is understood not only father's mother or mother's mother, but also all other paternal or maternal ancestors of the female sex not related to the deceased through males; **and this even includes father's father's mother, or her mother. Thus the law calls to the succession every ancestor connected with the deceased, either exclusively through women, or exclusively through men, or connected with deceased's agnate ancestor exclusively through women, but not those female ancestors in whose line a male interposes between two women.

Section 6

If the deceased leaves only whole brothers and sisters, they share the estate as if they were deceased's children. Half brothers and half sisters on the father's side are subject to the same law as whole brothers and sisters, except in the case called *mosharaka*, *i.e.* where a woman leaves as her heirs a husband, a mother, two uterine brothers or sisters and a whole brother. In this particular case the whole brother participates, along with the two uterine brothers or sisters, in the third assigned them by the Koran; but if, in these circumstances, it is the case of a half brother on the father's side, and not of a whole brother, the half brother inherits nothing. In the case of concurrent claims by whole brothers or sisters along with half brothers or sisters on the father's side, the same rule is applied as obtains in the case of children called to the succession along with children of a predeceased son; except that the son's daughters inherit by right of agnation where there exists an agnate of the same or an inferior degree; while a whole sister or a half sister on the father's side inherits by right of agnation when she has a brother, *i.e.* where there

exists an agnate of the same degree. A uterine brother or sister may claim a sixth ; two or more uterine brothers or sisters may claim a third, and in this case males have no advantage over females.

Whole sisters or half sisters on the father's side also inherit by right of agnation when they have concurrent claims along with deceased's daughters or sons' daughters ; they can then claim a portion as if they were brothers ; except that half sisters on the father's side are excluded by whole sisters only if there also exists a daughter of the deceased.

Sons of whole brothers or of half brothers on the father's side, are subject as a general rule to the same provisions as relate to their respective fathers, whether both categories are represented, or only one. They differ from their respective fathers only in the four following respects :—

1. They do not reduce the mother's share to a sixth.
2. They are excluded by the father's father.
3. They do not cause their sisters to inherit by right of agnation.
4. They are excluded from the succession in the case called *mosharaka*, of which we have spoken.

Father's whole brother or father's half brother on the father's side is subject to the same rule as deceased's whole brother or half brother on the father's side, whether the two categories of uncles are represented, or only one. This principle extends also to father's brother's sons, and other agnates properly so called, *i.e.* by reason of relationship.

By inheritors by right of agnation are understood the legitimate inheritors to whom the Koran does not assign a definite fraction of the estate, but who, in default of persons entitled to such fraction, share amongst them the entire succession, and who, if there are persons so entitled, can claim only the remainder, after deducting the portions prescribed in the Book of God.

Section 7

In default of agnates properly so called, *i.e.* by reason of relationship, the patron or patroness must be accepted as such and may claim the estate or what is left of it, after deducting the portions assigned by the Koran to the heirs we have just mentioned. In default of patron or patroness, their agnates are called to the succession of an enfranchised slave ; but in this case the law recognises as agnates only those properly so called, and not a daughter or sister inheriting as agnates by a special legal disposition. Agnates of patron or patroness share the succession as if they were agnates by reason of relationship ; but the *brother or brother's son of the patron or patroness have priority over the father's

father. In a case where the patron or patroness are themselves enfranchised slaves without agnates, it is their patron and subsidiarily his agnates that the law calls to the succession, and so on. Thus a woman is never heiress by right of patronage, except to the estate of her own enfranchised slave, or of a person connected with the latter by relationship or enfranchisement.

Section 8

In case of concurrent claims by father's father along with brothers and sisters, whether whole brothers and sisters, or half brothers and half sisters on the father's side, and where there are no other inheritors who can claim a portion specified in the Koran, the law assigns to the first, either a third of the estate, or the option of sharing with the brothers and sisters as if he were himself a brother, whichever is more advantageous for him. If the father's father claims a third, brothers and sisters share the remainder. On the other hand, where, in the above circumstances, there are other inheritors who can claim a portion specified in the Koran, the law allows the father's father to choose whichever of three alternatives is the most advantageous for him : (1) a sixth of the estate ; (2) a third of what remains after deducting the portions of those inheritors ; (3) sharing with the brothers and sisters as if he were himself a brother. In these circumstances the following provisions also must be observed :—

1. Where the estate is exhausted by the portions specified in the Koran, *e.g.* where a woman leaves as her heirs two daughters, mother, husband, father's father, and whole brothers and sisters or half brothers and half sisters on the father's side, a sixth is still given to the grandfather ; and recourse must be had to a proportionate reduction of the respective shares, as otherwise they would exceed the total estate. This excess and consequent reduction is called *awl.*

2. Where, after deducting the portions specified in the Koran, there remains less than a sixth of the estate, *e.g.* where a woman leaves as her heirs two daughters, her husband, and her father's father, the latter should still have his sixth, while observing the proportional reduction rendered necessary by the *awl.*

3. Where, after deducting the portions specified in the Koran, there remains precisely a sixth of the estate, *e.g.* where a woman leaves as her heirs two daughters, her mother and her father's father, the latter obtains this sixth and nothing more.

In the three cases mentioned brothers are entirely excluded from the succession.

In the case of concurrent claims by father's father, not with brothers

and sisters or half brothers and half sisters on the father's side, but with both whole brothers and sisters and also with half brothers and half sisters on the father's side, the same rules must be observed ; but in this particular case half brothers and half sisters on the father's side are not always excluded by whole brothers and sisters. It is only, under these circumstances, when the grandfather prefers to content himself with the portion assigned him by the Koran, rather than to claim a fraction of the remainder of the total estate, or participate with the brothers and sisters, that the existence of a whole brother amongst the persons entitled has the effect of excluding the half brother and half sisters by the father's side. Where there are no whole brothers, but one only whole sister, and also where, beside the father's father, there are two or more whole sisters, the estate is exhausted by the respective fixed portions of a third and two-thirds, and nothing is left for half brothers and half sisters by the father's side. Father's father, on being called to the succession concurrently with full sisters or half sisters on the father's side, is admitted to share as if he were a brother, *i.e.* the sisters cannot then be considered as heirs able to claim a specified portion according to the Koran, except in the particular case called *el akdariya.* This is where a woman leaves husband, mother, father's father, and a whole sister or half sister by the father's side. Then the husband can claim half, the mother a third, the grandfather a sixth, and the sister half. As the sum of these fractions exceeds the total of the estate, recourse must first be had to proportional reduction ; then the portions of the grandfather and of the sister must be combined, and two-thirds of the total taken for the grandfather, and one-third for the sister.

Section 9

An infidel cannot succeed to the estate of a Moslem, nor *vice versâ.* An apostate cannot inherit nor be inherited from. Infidels inherit among themselves, whatever their respective religions may be ; **but between infidel subjects of a Moslem prince and infidels not so subject there is no right of inheritance. Neither can a slave be an heir ; but, according to the opinion adopted by Shafii in Egypt, the partially freed slave is capable of having heirs, though he cannot himself inherit. A person who has killed another cannot succeed to the estate of the person killed ; though some authorities admit an exception to this rule in the case of a homicide for which the perpetrator was not in any respect to blame.

When two persons, called respectively to succeed to each other, perish together in a shipwreck, or the fall of a building ; or if they die

apart, either simultaneously, or in such circumstances that it is not known which predeceased the other, there is no inheritance as between them, and both estates go to other heirs.

The property of a prisoner of war, or of an absent person of whom there has been no news, should be sequestrated, until the death has been legally established, or until the lapse of such time as may justify its presumption. Then the court, after thorough examination, should declare that there is a presumption of death, and proceed to the distribution of the estate amongst those entitled at the moment when the presumption was declared. If the absent person is an inheritor, his portion should be sequestrated ; but the other inheritors obtain at once what is legally due to them.

If, when an estate falls to be distributed, there is a woman pregnant whose child will or may inherit, the rights of this child should be reserved intact until its birth, in the best way that may be possible, while respecting the rights of the other inheritors. If the child is born alive, and at a time indicating that conception took place before the inheritance fell due, it inherits as if it had been already born then ; otherwise it does not inherit. In any case the estate must be sequestrated until the delivery of the child, at least, if there are no other heirs, or if the other heirs are excluded by the posthumous infant. That is to say that when, in these circumstances, there are, besides the posthumous infant, other inheritors not excluded by the law, a distinction must be made between heirs that have a portion specified in the Koran, and those that have not. The former receive at once their respective portions, subject, if necessary, to a proportional reduction ; while the latter receive nothing. There is an example of the former case when the deceased leaves a pregnant wife who can claim an eighth, and his two parents can each claim a sixth, all subject to proportional reduction ; and one of the latter when the deceased leaves only children. According to some authorities there should be reserved out of the estate a sufficient provision in case the woman should give birth to four children at once ; though naturally there is eventually given to the posthumous child only what is really due to him.

When a hermaphrodite is called to a succession by reason of a title that makes no distinction between heirs and heiresses, as by uterine fraternity or patronage, the matter is simple ; but otherwise it should only be given at first what is due to it on the more disadvantageous hypothesis ; the remainder being sequestrated until it becomes evident which sex is preponderant. The fact of being an heir by reason of a disposition of the Book of God is no objection to claiming also as an inheritor by reason of agnation. Thus the master who has married his

enfranchised slave inherits from her both as husband and as patron; and the cousin on the father's side who has married his cousin inherits from her both as husband and as agnate.

[However, if it happens as the result of an incestuous marriage between mother and son that the same person is daughter and uterine sister of the deceased, she inherits only in the former character, though some jurists admit a succession under both denominations, even in these circumstances. Incestuous marriages such as these are customary among fire-worshippers, and might happen accidentally in Moslem families.]

If two persons have an equal right by reason of agnation, and one can also claim a portion specified in the Koran, by reason of some other relationship, this latter portion is assigned him without prejudice to his right to participate with his coinheritor. Thus, where there are two sons of a father's whole brother or father's half brother on the father's side, of whom one is also uterine brother of the deceased, the latter takes from the estate the sixth assigned him by the Koran, and the remainder is shared equally by the two cousins. Where, however, in these circumstances, the deceased has also left a daughter, the latter obtains the half specified in the Koran, and the remainder is shared equally by the two cousins; though, according to some jurists, the law assigns the entire half that remains to be disposed of to the cousin who is also uterine brother. A person who could strictly claim two portions specified in the Koran, by virtue of two distinct causes, is considered to be entitled only under the "predominant" cause. By this term is understood that cause which would exclude the other, if it were a case of two persons, or one which cannot be excluded, or that of which the exclusion is the more limited. As an example of the first kind of predominant causes may be quoted the case of a daughter who is also uterine sister, as may happen when a fire-worshipper has married his mother, or where a Moslem has accidentally concluded a like incestuous marriage, and the mother gives birth to a daughter. As an example of the second kind may be quoted the case of a mother who is at the same time a half sister on the father's side, such as may happen by the birth of a daughter of a marriage between a father and his daughter; and as an example of the third kind where a mother's mother is at the same time half sister on the father's side, as may happen where a father marries his daughter and she gives birth to a daughter who in her turn is also married by the father. In this case the daughter who is first married to her father becomes mother's mother and half sister on the father's side to the children born of the second incestuous marriage.

Section 10 (1)

Where all the inheritors claim by right of agnation or what is equivalent to it and they are all of the same sex, they should share the estate in equal portions; but in the case of concurrent claims by male and female agnates, each man counts for two women. In both cases, however, the number of heads is the "numerical basis of distribution," which means that the estate is divided into as many lots as there are persons entitled to a share. Where there are concurrent claims, by reason of agnation, by heirs entitled under the Koran to equal portions, the numerical basis of distribution is the denominator of the fraction of these inheritors. Thus, the numerical basis of the fraction $\frac{1}{2}$ is two, of the fraction $\frac{1}{3}$ three, of the fraction $\frac{1}{4}$ four, of the fraction $\frac{1}{6}$ six, and of the fraction $\frac{1}{8}$ eight. In the case of two fractions having different denominators of which one is a multiple of the other, as $\frac{1}{3}$ and $\frac{1}{6}$, the numerical basis of distribution is the greater denominator. When of two denominators one is not a multiple of the other, but they have a least common multiple, the numerical basis is found by multiplying the particular factor of each of the denominators by the other. Thus the numerical basis of $\frac{1}{6}$ and $\frac{1}{8}$ is twenty-four. Where the denominators have no least common multiple, they must be multiplied by one another, and the product constitutes the numerical basis of distribution. Thus the numerical basis of $\frac{1}{3}$ and $\frac{1}{4}$ is twelve.

Numerical bases are seven in number; two, three, four, six, eight, eleven, and twenty-four; and of these bases the following can give rise to *awl*, *i.e.* to proportional reduction of the shares, or—what comes to the same thing—to an enlarging of the basis.

1. A basis of six becomes: (*a*) seven, *e.g.* in case of concurrent claims by a husband and two whole sisters or half sisters on the father's side; (*b*) eight, if there is also a mother; (*c*) nine, if there is a uterine brother in addition to (*b*); (*d*) ten, if there are several uterine brothers, in addition to (*b*).

2. A basis of twelve becomes: (*a*) thirteen, *e.g.* in case of concurrent claims by a wife and two whole sisters or half sisters on the father's side; (*b*) fifteen, if there is also a uterine brother; (*c*) seventeen, if there are several uterine brothers in addition to (*a*).

3. A basis of twenty-four becomes twenty-seven, *e.g.* in case of concurrent claims by two daughters, father, mother, and wife.

In the case of two fractions having the same denominator the calculation is easy, *i.e.* it is only necessary to multiply these fractions by the common denominator to obtain whole numbers with exactly the same proportion; and the addition of these numbers gives the numerical

basis ; but if the two fractions have different denominators then the following cases must be distinguished :—

1. One of the denominators is a multiple of the other ; they are thus mutually divisible, as 6 or 9 by 3 ; and the fractions are multiplied by the greatest.

2. They have a greatest common divisor, as 2 in the case of 4 and 6 ; then the fractions are multiplied by the least common multiple.

3. Their greatest common multiple is the number 1, as with 3 and 4 ; then the fractions are multiplied by the product of the two denominators.

Denominators of which one is a multiple of the other, have at the same time a greatest common divisor, but not *vice versâ.*

Section 10 (2)

When the numerical basis is known, and it allows of giving to all those persons entitled to share in the estate portions in whole numbers, the calculation is easy ; but in the case of portions composed of a whole number and a fraction the following cases must be distinguished :—

1. The fractions have the same denominator. Then the numerators must be rendered divisible by the number of heads. This is done, if there be no least common multiple, by multiplying the numerical basis by the number of heads ; or, otherwise, by multiplying, either the basis by the particular factor of the number of heads in question, or the number of heads by the particular factor of the basis, while observing in both cases the proportional reduction, if necessary.

2. The fractions have two different denominators. Then each numerator should be rendered divisible by its respective number of heads, after having reduced this number to its particular factor, if there exists a least common multiple. Then, in case of an equality in the number of heads that cause the two different fractions, it is necessary, in order to know the final basis, to multiply the number of heads by the numerical basis, while observing the proportionate reduction, if necessary. Where the two numbers of heads in question differ, the multiplication is made by the greater, if one is a multiple of the other ; and by the particular factors, if the two numbers have a least common multiple. Finally, if the numbers of heads are mutually indivisible, the numerical basis is multiplied by the product of these numbers. In this way is obtained a final numerical basis admitting of division without fractions ; and following the same principle the calculation can be made with fractions having three or even four different denominators, which is the greatest possible number.

If one wishes to know the number of shares that fall on the final

basis to each category, one has only to multiply the number of the shares obtained on the original basis, by the multiplicator of that basis ; and afterwards to divide the product by the number of heads. The quotient will be the separate portion of each inheritor.

Section 10 (3)

When the deceased leaves heirs of whom one dies before the distribution of the estate, leaving no other inheritors besides those of the original succession, who can claim the same portions in the second as in the first, the distribution takes place as if the deceased inheritor had never existed. This happens, for example, if a deceased person leaves only brothers and sisters, or sons and daughters ; and one of these heirs dies before distribution, leaving no other heirs than his coinheritors in the original succession.

Where, on the other hand, the inheritor deceased before distribution leaves other heirs, or his coinheritors are called to his succession in different portions from their shares in the original estate, these different portions must first be separately determined. If the number of shares assigned to the deceased inheritor in the original estate permits also of assigning to his own inheritors portions consisting of shares in whole numbers, the calculation is easy. Otherwise the number of shares in question must be rendered divisible by the basis of the second succession ; *i.e.* the basis and portions of the original succession must be multiplied by the particular factor of the basis of the second, at least if there exists a least common multiple of the number of shares fallen to the lot of the deceased inheritor, and the basis of his succession. If there is no least common multiple, the portions must be multiplied by that basis. Each inheritor in the original succession takes finally the portion due to him from that estate, multiplied by the multiplicator above mentioned ; and a person called to the second succession obtains, from the first estate, the portion he would have from the second, multiplied by the portion of the deceased, or by the particular factor if there exists any least common multiple of the numbers in question.

BOOK 29.—WILLS

Section 1

Capacity to make a will is accorded by the law to every one, whether Moslem or not, without distinction of sex, who is adult, sane, free ; and even according to our school to a person otherwise incapable by reason of imbecility. It is not possessed by a madman, by a person in a faint, nor a minor ; though one jurist maintains that this incapacity does not extend to a minor who has attained the age of discernment. Neither can a slave make a will, unless—according to some jurists—he is enfranchised after doing so, and renews its dispositions before his death.

Testamentary dispositions for the public benefit must have some lawful object ; thus a legacy cannot be made for the upkeep of a Christian church or a synagogue. Those in favour of one or more individuals are permitted only on condition that the person designated is capable of exercising a right of property. Thus a legacy in favour of a child conceived has effect only upon the double condition that such child is born alive, and that the conception has already taken place at the moment of the disposition, *i.e.* that the birth takes place before the expiry of six months. If the birth takes place after an expiry of six months the child is not considered as having been conceived before the testamentary disposition, at least if the husband or the master has not ceased to have commerce with the mother. *Otherwise conception is admissible up to a maximum of four years. A legacy in favour of a slave falls to the master, unless the slave is enfranchised before the testator's death. As to a subsequent enfranchisement followed by acceptance on the part of the slave, the effect depends upon the question whether ownership of the legacy has or has not been acquired since the testator's death. Testamentary dispositions in favour of an animal are absolutely null, whether an intention is manifested to make the animal a proprietor, or whether nothing is announced as to that ; but when there is merely a declaration that the legacy is to be used so that the animal may never be in want of necessary nourishment, the traditional doctrine tends to admit its validity.

A legacy for the upkeep of a mosque is lawful, †and even one " for

the profit of a mosque," specifying nothing further. However, in this case, the disposition is considered to have been made not only for the upkeep properly so called, but also for any amelioration of the edifice. A legacy may also be left to an infidel, †whether or not the subject of a Moslem prince, †to an apostate, *and to a person who afterwards murders the testator. *A legacy in favour of a legitimate heir is valid only if unanimously approved by the coinheritors, after the succession has been opened. This approbation is strictly necessary even if the coinheritors renounce their claims to the succession, and it cannot be given before the testator's death. For the disposition can be invalidated only by the fact that coinheritors exist at the time of death; and this cannot be known before that event. A testamentary disposition leaving each inheritor his legitimate portion is void; but there is no objection to leaving one of one's heirs a specified object of the same value as the portion he can legally claim. †But the disposition must be approved by the coinheritors.

The following things may be left by will:—

1. "The child with which a certain slave is pregnant," words which imply the condition that the child is born alive, and at a time indicating that conception had already taken place at the moment of the disposition.

2. The usufruct of things that are not consumed by use.

3. †The future fruit of a tree, the future young of an animal, and the future children of a slave.

4. One of two slaves at the choice of the legatee.

5. An impure thing, provided its use is not forbidden by the law, *e.g.* a trained dog, manure, grape juice not intended for fermentation.

A legacy of "one of my dogs" has effect if the heir gives any dog that belonged to the deceased. If the deceased had no dogs it is void. A person owning dogs among his property may leave them either all or part, even though the dogs form the larger half of the estate. When one possesses two tambours one of which is a musical instrument of diversion and the other an instrument that may lawfully be used, *e.g.* a war drum or one used by pilgrims, the legacy of "a tambour" and nothing more refers to the latter. A legacy of the tambour of diversion is void, unless it can also be used as a war or pilgrim drum.

Section 2

Testamentary dispositions may not exceed a third of the estate; and those made in contravention of this precept of the law, may be reduced to the portion which may be disposed of, upon the application

of the legitimate heir. If the heir declares his approval of the disposition, it is effective, whatever its amount may be; but according to one jurist it is then considered as a mere donation upon the part of the heir, and the legacy itself remains void for as much as exceeds the third.

The reduction is carried out by forming a lump total of all the property existing on the day of the decease, or, according to others, the day the disposition was made. In the portion that may be disposed of are included: enfranchisements of which the condition has been fulfilled by death, liberalities *inter vivos* made during the last illness, such as *wakaf*, gift, simple enfranchisement, and remission of debts. If all this exceeds the third which may be disposed of, the following rules must be observed in the reduction:—

1. Where the testamentary dispositions consist only in enfranchisement of slaves, a drawing of lots must decide which of them shall be deprived of their liberty in consequence of the reduction.

2. Where the testamentary dispositions consist in liberalities of other kinds, all are subject to a proportionate reduction.

3. Where the testamentary dispositions consist both in the enfranchisement of slaves and in other liberalities, it is necessary first to divide the portion of which one may dispose in proportion to the amount of the two categories of the legacy, and then to proceed under 1 and 2. One authority, however, maintains that the enfranchisements should always have their effect up to the full amount of the portion of which one may dispose, in preference to all other liberalities.

4. Where the third of which one may dispose has been exceeded, not by testamentary dispositions, but by liberalities *inter vivos*, bestowed during the last illness, no proportional reduction takes place; but earlier liberalities are executed in preference to later, until the amount of which one may dispose is exhausted. If these liberalities are of the same date and the same nature, *e.g.* the enfranchisement of all one's slaves, or the remission of all one's debts; the enfranchisement is carried out by drawing lots, up to the amount of which one may dispose, but the remissions are reducible by so much in the pound. Liberalities *inter vivos* of the same date, but of different nature; and in general all engagements entered into, not by the deceased in person, but through agents are also carried out at so much in the pound; except in the case of enfranchisements, for in that case the rule explained under 3 must be observed. According to one authority, however, enfranchisement has still the preference even in this case.

A single exception is admitted to the rules given as to casting lots, that is to say if, *e.g.*, the deceased has left only two slaves, Salim and Ghanim, and has declared before his death, "If I give his liberty to

Ghanim, Salim shall be free too," and has afterwards enfranchised Gahnim in his last illness. In this case Ghanim alone becomes free, if it transpires that the two enfranchisements together exceed the third of which one may dispose; and one cannot have recourse to drawing lots to decide between him and Salim.

If the deceased has bequeathed a specified object, at that locality, of which the value does not exceed the third of which one may dispose, while the rest of the estate is elsewhere, this object cannot be wholly delivered to the legatee immediately after the death; †and he cannot even be permitted the free disposition of a third, before the entire assets are got together, and become capable of being shared.

Section 3

A person who becomes so ill as to be in danger of death may no longer dispose of his property for nothing to a greater amount than one-third; but should he against all hope recover, these dispositions cannot be invalidated. A sick person, not in any danger, may freely dispose of his property; and even if he unexpectedly dies during this sickness, his dispositions have all the same their full legal effect. This is not the case where death is caused by the malady in question, even though the latter may not be regarded as of a dangerous nature, for then it is manifested to be really dangerous. In case of uncertainty as to the character of the malady, it should be ascertained by two doctors, free men of irreproachable character.

The following are considered by the law to be dangerous maladies—colic, pleurisy, constant flow of blood from the nose, chronic diarrhœa, phthisis, commencement of paralysis even where merely partial, vomiting out of food in an unchanged condition, and even vomiting in general if very violent and accompanied by pain or effusion of blood, and also continuous or intermittent fever, but not quartan fever. The following circumstances are by our school regarded as analogous to a dangerous malady—being made a prisoner of war by infidels who do not usually give quarter; being in a desperate battle between two armies of equal force; being condemned to death by the law of talion, or to be stoned to death; being in a ship in the middle of a tempest or a rough sea; a woman in grievous pangs of childbirth, before or after confinement, so long as the fœtus has not broken the membrane.

A testamentary disposition is expressed by the words—"I leave him such and such a thing," "give it him," "give it him after my death," "I make it his," "it shall be his after my death;" but the mere words "it is his" constitute an admission, and not a legacy. On the other

hand, where one says, "It is his in my succession," this is a valid testamentary disposition. A testamentary disposition can also be expressed in a way which, though not explicit, still indicates the last wish of the deceased, *e.g.* by giving witnesses a writing that contains it.

A legacy in favour of a category of persons, as "the poor," does not require acceptance, but becomes irrevocable by decease; while, on the other hand, a legacy in favour of one or more particular persons should be formally accepted by them. The acceptance or renunciation of a legacy cannot take place during the testator's life-time; and it is not even rigorously necessary that the legatee should declare his decision immediately after the decease. Moreover, a legacy lapses if the legatee predeceases the testator. If he dies after the testator, but before accepting the legacy, the right of acceptance passes to his heirs. As the question at what period the legacy becomes the property of the legatee, some jurists consider that the legatee becomes owner from the death of the testator, under the condition that he accepts the legacy; others maintain the contrary, *i.e.* that he becomes owner only upon acceptance. *Others maintain that, before acceptance, the legacy remains in suspense, but that the legatee is regarded as having been the owner since the decease, if he accepts; and that otherwise the heirs have never lost the ownership. These three different doctrines as to the ownership of a legacy between the death of the testator and acceptance by the legatee, exist also with reference to fruit and the profit realised by a slave bequeathed by will, and with reference to other expenses, like the keep of the slave, and the tax to be paid for him on the breaking of the fast. According to the authorities who admit that the legacy remains in suspense until the legatee has accepted or repudiated it, the latter is nevertheless obliged to defray provisionally the cost of the keep of the slave or animal bequeathed.

Section 4

A legacy "of a *shah*," and nothing more, implies as well a large animal as a small one, a sound animal as one having redhibitory defects, an animal of the ovine as well as one of the caprine race, and even a male animal of one of these kinds, †but not a very young animal that can still be looked upon as *sakhla* or *anak*. A bequest of "a *shah* of my flock" is regarded as void, if the testator had no flock of *shahs;* but if it is a bequest of "a *shah* of my estate," one must be bought and given to the legatee, if the testator has left none. The expressions "camel" and "she-camel," in a testamentary disposition, include both the Bactrian and Arabian species; but the expression "camel" does not

include "she-camel" or *vice versâ*. †The expression "animal of the camel race" includes both camel and she-camel. "Cow" excludes "bull," which in its turn includes only males; while, on the other hand, according to our school, the expression "mount" includes horse, mule, and donkey.

"Slave" includes a child, a woman, an individual with redhibitory defects and an infidel; though, according to some authorities, an injunction to an heir to enfranchise a slave means a slave who may be lawfully enfranchised by way of expiation. A bequest of "one of his two slaves" is *ipso facto* annulled by the death of both, accidental or otherwise, before the testator's decease; while the bequest becomes direct and simple by the death of one of the two slaves, accidental or otherwise. Where one instructs one's heirs to enfranchise "several slaves," they should give their liberty to three at least, and if the value of three exceeds the third of which one may dispose, it is necessary, according to our school, not to buy merely a share of a slave for the amount that remains of the third after the purchase of the two first, but to buy and enfranchise two slaves of a total value approaching as near as possible to the third of the estate; after which the excess goes to the profit, not of the legatee, but of the heirs. An injunction to enfranchise "two-thirds of a slave," involves merely an obligation to buy and enfranchise that share.

A legacy in favour of "the child such-and-such a woman is pregnant with," goes to the profit of both children, if she gives birth to twins; †and to the living, if one is born dead. Where, on the contrary, the testator added, "if it is a boy" or "if it is a girl," the giving of birth to a twin boy and girl nullifies the disposition. The legacy can only be claimed by the boy to the exclusion of the girl where the testator adds, "if she bears a boy in her womb." †This last form of legacy is still valid if the woman gives birth to twin boys; and the heir, in these circumstances, may give the object bequeathed to whichever child he chooses.

A legacy in favour of his "neighbours" extends to the inhabitants of forty houses in four different directions; one in favour of *savants* to all who occupy themselves with sciences relating to the law, *i.e.* Koranic exegesis, prophetic traditions, and jurisprudence; but it does not include mere reciters of the Koran, men of letters, interpreters of dreams, or doctors; nor does it include, according to most authorities, theologians properly so called.

A legacy in favour of the "poor" includes the "indigent," and *vice versâ*. Where both categories are jointly benefited, the legacy must be divided into two equal portions, and one given to each category, provided it comprises three persons at least. Of course the testator

may also bequeath to one of the persons composing the category in question more than to the others so entitled; but according to our school a legacy "to so-and-so and to the poor" results in the person designated being unable to claim more than each separate poor person however small the portion may be, provided it is of some value. The person designated may not, however, be entirely excluded.

A bequest, moreover, may be made, not only in favour of a certain specified category of persons, without indicating their number, *e.g.* "to the Alids," but also to a specified number, *e.g.* "three persons" of a certain category, or to "the relatives of so-and-so." In this latter case, it should be observed that the phrase includes all the relatives, even those that are very distant, †but not those in a direct line, whether ancestors or descendants. †Relatives on the mother's side are not included in testamentary dispositions made by Arabs in favour of any one's "relatives," unless they are expressly named. Thus to know who the "relatives" are that are benefited by the testator, the nearest ancestor must be taken, and his descendants that have remained in the tribe must be regarded as the parents intended by the testator. If, on the other hand, the testator uses the expression "the nearest relatives," the legacy includes also the direct line, †it being always understood that son has priority over father, and brother over father's father; but with this exception the law grants no preference, in these circumstances, to either sex, nor by virtue of any right of succession. In consequence, father, mother, son, and daughter, are all considered as equal sharers in the legacy, and daughter's son has even priority over an agnate great grandson. †A legacy to one's own relatives does not include those that are legitimate inheritors.

Section 5

The usufruct of a slave or a house, or the rent of a shop, may be bequeathed. The legatee may then not only have the full enjoyment of the slave, but he is also owner of what the slave gains by his ordinary work; †and even of the dower, if it is a woman. †On the other hand, a child born of a slave during the usufruct follows the mother's condition, *i.e.* the legatee has the usufruct, but the ownership is the heir's. The latter also keeps the right of enfranchisement, and must provide for the slave's support, whether the usufruct is temporary or perpetual. The sale of an object of which the usufruct has been bequeathed to a third party for a specified time has the same consequences as the sale of a thing lent; †but in the case of a perpetual usufruct the thing can only be sold to the legatee. †If it is desired to ascertain whether a

legacy exceeds the third of which one can dispose ; the perpetual usufruct of a slave must be regarded as ownership ; but if it is a case of temporary usufruct, the value of the slave's services must be calculated, having regard to the period during which the owner will be deprived of them.

*One may lawfully enjoin upon one's heir the accomplishment of a voluntary pilgrimage which one wished to accomplish oneself. The heir must then pay a visit to Mecca, †from the station fixed by the law, unless the testator has indicated some particular town for the pilgrimage to start from. As to an obligatory pilgrimage neglected by the deceased, this act of devotion has *ipso facto* to be defrayed by the estate, as we have seen. If, however, the testator has instructed the heir to pay it, either from the residue of the estate or from the third of which one may dispose, his last wishes must be observed. If the deceased has expressed no desire in the matter, the duty imposed on the heir to accomplish the obligatory pilgrimage that has been neglected must be defrayed from the residue of the estate, or according to others from the third of which one may dispose ; but in any case this duty relates only to the journey as from the station fixed by law. †Moreover, any person, even though not belonging to the family, may accomplish the obligatory pilgrimage for the deceased, though not authorised to do so by him or by his heir.

The heir must also bear the pecuniary charges, resulting from fixed expiations which the deceased neglected to accomplish. As to alternative expiations, the inheritor may at his choice give foodstuffs or clothing to the poor, if there is occasion for it, †and even enfranchise a slave for this purpose. †In any case, and whatever may be the nature of the expiation, the heir may accomplish it at his own expense, if the estate is insufficient, and it counts none the less as an act of the deceased. †The result is the same when the expiation is accomplished by some one not belonging to the family, at least in the case of a gift of foodstuffs or clothing, but not where the expiation consists in the enfranchisement of a slave. And the soul of the deceased profits from alms and pious invocations made for its benefit, whether by the heirs or by any other person.

Section 6

A testamentary disposition may be wholly or partly revoked. It may take place either :—

1. Verbally, *e.g.* by uttering the words—"I cancel the will," "I annul it," "I revoke it," "I renounce," or "The thing I have bequeathed will be none the less my heir's ;" or

2. By the fact of having disposed of the object bequeathed, by sale,

enfranchisement, dower, gift, or security; even where, in these two last instances, possession has not been taken by the donatee or creditor; or

3. By an injunction to the heir, contained in a later will, to dispose of the thing bequeathed in one of the ways mentioned under 2; or

4. †By an authorisation to sell the thing bequeathed; †by a putting up for sale though unsuccessful; or by mixing other wheat with the specified wheat bequeathed. Even if the legacy does not consist of specified wheat, but merely of "a *saa* of wheat" from a certain stack; the fact of mixing it constitutes a revocation, at least if the wheat added is of superior quality. But if it is of the same †or of inferior quality, the fact of mixing it with the original wheat does not imply a revocation of the legacy. And, finally, revocation results from the following facts—grinding the corn bequeathed; sowing one's field with it, kneading flour bequeathed, spinning cotton, weaving thread, making a shirt out of a piece of stuff bequeathed, building or planting on a piece of land bequeathed.

Section 7

The Sonna has introduced the practice of appointing testamentary executors to see to the payment of the testator's debts, the carrying out of his last wishes, and the guardianship of such of his children that are under age. An executor should be a Moslem, adult, sane, free, of irreproachable character, and a fit person to perform the duties intrusted to him. †However, an infidel subject of a Moslem prince may be appointed executor by a person of his own religion. Blindness is no cause of incapacity. An executor need not be a male; and the mother of children that are under age is considered the fittest person to bring them up.

An executor guilty of notorious misconduct should be relieved of his functions. This principle applies also †to a judge; but not to the chief of the state.

A right to appoint an executor to see to the payment of his debts and the carrying out of his last wishes belongs to every Moslem, adult, sane, and free; but the faculty of intrusting to an executor the guardianship of children under age belongs only to a testator who is himself their lawful guardian. An executor cannot by will appoint another person to replace him after his death, *unless this faculty has been formally accorded him by the original testator. There is no objection to an appointment of two executors in succession; as happens, for example, in the words, "I constitute you my executor until the majority

of my son," or "until the arrival of Zaid, for then my son," or "Zaid will undertake this duty." On the other hand, one cannot appoint an executor to be guardian of one's children, during the lifetime of their father's father, who is their lawful guardian, if he is capable of performing this duty.

It is forbidden to give power to an executor to conclude a contract of marriage for the deceased's son during his minority, or to represent the deceased's daughter as her guardian, in a contract of marriage.

Forms of words by which an executor may be appointed are—"I name you my testamentary executor," "I intrust my affairs to you," etc.; but there is no objection to adding a term or a condition, provisional or absolute. It is necessary to define with precision the duty the executor is charged with; for if one merely says, "I name you my executor," the disposition is null and void. The nomination of a testamentary executor has no effect until the duty is accepted; †and this acceptance cannot take place during the testator's lifetime.

Where the testator has named two executors, neither can do anything without the other's concurrence, unless such faculty has been expressly accorded. A testator may revoke a nomination, and an executor, even after accepting, can give it up when he pleases. On a child's majority an executor guardian must render him an account of his guardianship, and in case of disagreement, the law admits a presumption in the executor's favour, as to the expense of his ward's support. On the other hand, the presumption is in favour of the ward, with regard to any sum the executor alleges having paid him after his majority.

BOOK 30.—DEPOSITS

The law forbids any one who is unable to keep it safely from accepting a deposit. Where a person accepts a deposit, being strictly speaking able to keep it, but not quite sure about it, the law regards him as merely blamable. On the other hand, the law considers it a meritorious act to accept a deposit, when one believes oneself to be in all respects capable of performing such a duty of trust. The depositor and the depositary should fulfil the same conditions as the principal and his agent. The contract is expressed on the part of the depositor by the words, "I constitute you depositary of this object," "I ask you to keep it," "I put you in my place to keep it;" †but a verbal and formal acceptance is not required on the part of the depositary, provided he takes possession of the thing.

One should not accept a deposit on the part of a minor or a madman; though one incurs all the obligations of a true depositary if one does so. On the other hand, a minor who has accepted a deposit is not responsible for it in case of loss, †unless that loss is caused by his own personal fault. A person legally incapable through imbecility is subject to the same rule as the minor. The contract ceases upon the death of one of the contracting parties, or upon the madness or unconsciousness of the depositary. The deposit may be claimed back by the depositor, or restored by the depositary at any time.

As regards responsibility, the following modifying circumstances are to be noted:—

1. A depositary who deposits the thing intrusted to him with a third person, without the original depositor's permission, or manifest urgency becomes responsible for any loss or deterioration, even accidental; except, according to some authorities, in the case of a judicial deposit; all without prejudice to the depositary's right to have the object transported by another person under his supervision to the place where he wishes to keep it, or to keep it in a shop of which he is only part proprietor. A depositary who is preparing to make a journey, should restore the deposit, either to the owner or his agent, or, if necessary, to the court. In default of the owner, his agent, and the court, the depositary may even, in these circumstances, deposit the thing with

another person worthy of confidence, without the latter incurring any ulterior responsibility. On the other hand, a depositary who buries the thing somewhere and then starts on a voyage is responsible for any loss or deterioration, even accidental, unless he has communicated the fact to some inhabitant worthy of confidence. If he takes the deposit with him on his journey, he is still responsible for accidental loss or deterioration, except in case of fire or hostile attack, unless he can find some one to whom he can lawfully transfer the deposit. Fire and hostile attack, and the fact that the place of deposit is liable to brigandage, have also, so far as regards the depositary's faculty of transferring the deposit, the same consequences as a voyage he is obliged to undertake. A depositary who falls dangerously ill should also return the deposit either to the owner or his agent, or to the court, or to a person worthy of confidence, or he should instruct his executor to do so, if he does not want to be still responsible for, though unable to exercise any control over it. It is only in case of absolute impossibility, *e.g.* in case of sudden death, that this ulterior responsibility is recognised.

2. A depositary who of his own accord transports a deposit from the original place or from his house to some other spot that is not so safe, becomes responsible for loss or accidental deterioration, but not if the new place is as safe as the original.

3. A depositary is responsible for the consequences of placing a deposit in contact with anything that may cause its loss or deterioration; and also for not giving sufficient fodder to an animal intrusted to his care, ††unless the owner himself so instructed him. He should give the animal the fodder with which the owner supplied him, and if the latter neglected to supply him with any, he should ask for it either from the owner himself, or from his agent, or from the court. †But it is obvious that if the owner sends him, with the animal, a person specially appointed to give it drink, the depositary is not responsible for the consequences that may result from that person's acts. Where a deposit consists of woollen garments, the depositary should expose them to the air so that they may not become worm eaten; and he should even wear them sometimes, if that is necessary to preserve them.

4. A depositary who has not scrupulously observed the directions given him by the owner as to the way the deposit shall be kept is responsible for all loss or deterioration that may result from his negligence. Thus where the owner has told him not to lie down on the top of a chest intrusted to him, and he does so, and the chest gives way beneath his weight, and its contents are crushed, the depositary is responsible; ††but no responsibility is recognised if, in these circumstances, the

deposit has not been crushed and destroyed by the fault of the depositary, but by accident or by another person's fault. The same rule should be observed where the owner has forbidden the locking of the chest with two padlocks, but the depositary has nevertheless done so. If some one is told, "Hold these drahms tight in your coat-sleeve," and he merely holds them in his hand, he is responsible for their loss, according to our school, if he lets them fall by inadvertence or when asleep, but not if the drahms are snatched away by a thief. If instead of holding them fast in his coat-sleeve, he puts them in his pocket, he is not responsible for any accidental loss. But if he holds them fast in his sleeve when he was told to put them in his pocket, he will then be responsible. If the owner, being at the market, gives the drahms to the depositary without indicating any particular manner of keeping them, the latter may, as he pleases, keep them fast in his coat-sleeve, hold them in his hand, or put them in his pocket, without being responsible for accidental loss; except that, if he keeps them in his hand, though no responsibility attaches to him if they are snatched away by a thief, he is responsible where loss is caused by his negligence or by his falling asleep. And where the owner directs the depositary to keep the money in a particular room, he should go there immediately and deposit what has been intrusted to him; for if he puts off doing this without good reason, he is responsible for the consequences.

5. The depositary is responsible for the loss or deterioration of the deposit caused in the following ways: (*a*) by putting it in a place where from its nature, it is not sufficiently secure; (*b*) by in some way imprudently calling a thief's attention to the deposit; (*c*) by indicating the deposit to some one who goes and claims it from the depositor. Even where a criminal forces the depositary to give him the deposit, the owner can none the less proceed in the first instance against the depositary; who, however, in his turn, can take action against the criminal.

6. The depositary is responsible where he makes use of a deposit in bad faith, *i.e.* wears the coat or rides the animal intrusted to his care. He is even responsible for taking a coat intending to wear it, or for taking drahms with the intention of using them; ††but a mere intention to commit such infidelity, followed by no attempt to execute it, is of no account. He is responsible if he mixes things intrusted to him with his own things, so that they are inextricably confused; †as also if he mixes the contents of two purses belonging to the same depositor. This responsibility of a depositary, once admitted from any cause whatever, does not cease by reason of his finally acquitting himself faithfully of his obligations; †but only where the depositor knowingly intrusts him again with the deposit.

A deposit should be returned to the depositor as soon as he calls for it; the law not permitting the depositary to retain it under any circumstances. He is responsible for accidental loss or deterioration wherever, except in case of violence, he is late in restoring the deposit.

In disputes between depositor and depositary, the law admits the following presumptions :—

1. The statement of the depositary on oath must be believed; if he does not allege a cause of accidental loss or deterioration; or if he alleges a cause by nature invisible, as theft; but his word alone, without an oath, is enough where he alleges a visible cause of public notoriety, such as a fire, at least if it is a general conflagration. But if the cause, though visible and of public notoriety, is not a general calamity, *e.g.* a partial conflagration, he must take an oath. A cause visible in its nature, but not of public notoriety, should first be legally proved, and after this the oath of the depositary is enough to show that the fire extended to the deposit in dispute.

2. The depositary's word confirmed on oath is also sufficient to establish a presumption that he has restored the deposit, either to the depositor or *e.g.* to the latter's heir; but there is no such presumption where the depositary's heir maintains that the deposit has been restored by the depositor to the person entitled to it, or that he has deposited it with a person worthy of trust, because he was going on a journey, and the latter asserts that he restored it to the owner himself. On the owner's demand, these facts must be proved.

A refusal to deliver a deposit of which the return is claimed by the depositor is of itself sufficient to cause the depositary to be responsible for any accidental loss or deterioration, even though in ordinary circumstances he would not be so responsible.

BOOK 31.—DISTRIBUTION OF THE PROFITS OF WAR AND OF BOOTY

Section 1

By "profits" are understood everything that the Sovereign collects from the infidels, except booty taken in the battle or in the pursuit by our cavalry. It includes a capitation tax, a tithe on commerce, property abandoned by flying infidels before being attacked, property of an apostate executed or deceased, and the estate of an infidel subject of a Moslem prince, deceased without heirs.

Profits of war should be divided into five equal portions, of which one is devoted to the five following objects :—

1. The public interest, *e.g.* the fortification of the frontiers, the amelioration of judicial institutions or the encouragement of the sciences, whichever at the moment is the most urgent.

2. The support of the Beni Hashim and the Beni Muttalib, *i.e.* the descendants of the Prophet's relatives, without distinction between rich and poor. The proportion between the pension thus allotted to the male members of the family and that of the females is the same as in the succession to a deceased person's estate.

3. The support of orphans, *i.e.* minors who have lost their father, **provided they are really poor.

4. Assistance granted to the indigent.

5. Assistance granted to strangers.

The distribution amongst the four last categories is effected while taking into consideration the number of persons entitled on the whole Moslem territory ; though according to some jurists the yield of each country should be divided amongst those of its inhabitants who are entitled to it, without regard to the portions allotted elsewhere.

*As to the other four-fifths of the profits of war, these are applied to the support of the soldiers composing the permanent army, always held ready for the war against the infidels. Its administration is delegated to a special department organised by the Sovereign for that purpose, and to overseers appointed for each tribe and for each brigade. These overseers must make themselves acquainted with what concerns each soldier and his family ; they should ascertain the sum necessary

for his support and for that of his family, and see that this sum is correctly paid.

The first inscribed on the army registers are the Koraishites, and they are paid first before the others. They include all the descendants of Nadr ibn Kinana—*i.e.* (1) the Beni Hashim and the Beni Muttalib; (2) the descendants of Abd Shams; (3) the descendants of Nawfal; (4) the descendants of Abd-al-Ozza; (5) the descendants of the other relatives of the Prophet, according to the degrees of their respective generations.

After the Koraishites are inscribed upon the registers the descendants of the inhabitants of Medina who took the part of the Prophet against the inhabitants of Mecca, then the other Arabs, and lastly foreign nations converted to Islam. There should be struck out from the registers all those who have become blind, sickly, or for some other reason incapable of taking part in war; but a soldier who is ill or mad still receives his pay if recovery can be hoped for; *otherwise he is pensioned. After his death his pension is paid to his widow and children, *i.e.* to his widow until she remarries, and to his children until they are old enough to support themselves. Any excess of the four-fifths that may be left over should also be distributed amongst the soldiers of the permanent army, in proportion to their respective salaries; though the Sovereign may also apply it to the upkeep of the fortifications, or to the purchase of arms and cavalry horses. It must be noted that all that has been said in this section applies only to movable property; for as to immovable property forming part of the profits of war, it should constitute a *wakaf*, the revenue being then distributed as movable property.

Section 2

By "booty" is understood what is taken upon the infidels, either in the battle or in the pursuit; it being understood that the equipment of a dead enemy belongs *ipso facto* to the slayer.

By "equipment" is understood the clothes, boots, gaiters, cuirass, arms, mount, saddle, bridle, *bracelet, *belt, *ring, and *provisions a soldier has upon him; and also *a spare mount or beast of burden led at his side; but not the truss bound upon the crupper of his horse, at least according to our rite. This right to the equipment exists only when one has personally run some danger, attacking the enemy in front. Where one has merely killed an infidel by means of a projectile thrown from the ramparts of a fortress, or from a distance in the ranks, or where one has killed a sleeping infidel, a prisoner of war, or a person belonging to a routed army, no such recompense can be claimed. To establish

one's right to his equipment, however, it is enough to have put the infidel *hors de combat*, even without killing him, *e.g.* by gouging out his eyes, or cutting off his hands or his feet ; *or it is even sufficient to have made him a prisoner, or cut off his hands or his feet, without putting him entirely *hors de combat*. **Equipment is not included in the distribution of booty.

The booty that remains over after deducting equipments, cost of surveillance, transport, etc., is divided into five equal portions, one of which is divided in the same way and amongst the same persons as the first fifth of the "profits." †Rewards are paid out of the twenty-fifth part devoted to the public interest, at least if such is the order of the Sovereign ; but the latter may also employ for this purpose money paid into the treasury at the end of previous expeditions. By "reward" is meant any extraordinary recompense promised by the Sovereign or the General in command to any one, whether a soldier or not, who accomplishes some feat to the detriment of the infidels, of whatever nature it may be. The amount of the reward depends upon the importance of the feat and the greatness of the danger incurred. The remaining four-fifths of the booty are given in entirety to those who have obtained it ; making no distinction between movable and immovable property. All those are entitled to it who are upon the field of battle intending to fight, even though they may not personally have taken part in the combat. On the other hand, a person who does not arrive upon the field of battle until the issue is decided can claim nothing. Authorities are not agreed as to the right of persons arriving before booty has been gathered, though after the end of the fighting. The rights of combatants who die after the battle, and after the booty has been collected, pass to their heirs ; †and it is the same with the soldier who dies after the battle, but before the collection of the booty. But the heirs of soldiers actually killed during the fighting can claim nothing, according to our rite. *Individuals engaged to conduct beasts of burden, or look after the baggage, and traders and artisans following the army, may all participate in the booty if they have actually fought.

A horseman's share is three times that of a foot soldier ; no distinction being made between those that have one horse and those that have more, or between a man riding an arab horse and one that rides a horse of inferior breed. Soldiers mounted, not on horses, but on camels, etc., receive the same as foot soldiers ; and the same is the case with horsemen mounted on animals that are thin and unfit for service, though one authority maintains that these share like other horsemen, unless the General in command has notified them to remain in the rear. A slave, a minor, a woman, and an infidel subject of a Moslem prince,

taking part in a battle without being obliged to, receive a remuneration to be determined by the Sovereign, but less than that received by those who participate in the booty. *These remunerations are payable out of the four-fifths that remain disposable.

[††An infidel subject of a Moslem prince can claim no remuneration, unless he has served in the war without pay, and with the Sultan's special authorisation.]

BOOK 32.—DISTRIBUTION OF THE PROCEEDS OF THE TAX

Section 1

Those entitled may be divided into eight categories :—

1. The poor, *i.e.* those who have nothing, and cannot gain their living. One may be legally called poor, though having a house, clothing, property at a distance of more than two days' journey, or debts due to one at a fixed date ; and even though able to gain a living by some work not suitable for one. Thus a learned man may be called poor though able, strictly speaking, to provide for his own needs by exercising some trade that would prevent him continuing his studies ; but this cannot be alleged as an excuse by a person who, wishing to perform some voluntary act of devotion, makes it a pretext for not working. To be admitted amongst the number of the poor, it is not necessary to be sickly, nor to abstain from asking for alms, at least according to what Shafii maintained in his second period. †On the other hand, a person is not poor if he has relatives—or if she has a husband—who should provide maintenance.

2. The indigent. In this category are classed those persons who, though possessed of property, or making a living that might, strictly speaking, be called sufficient, yet have not enough for their maintenance in the circumstances in which they happen to be.

3. Those engaged in the administration of the tax, *i.e.* the collectors, registrars, distributors, and the messengers to call together the tax-payers ; but not including the judge, or the prefect of the province.

4. Persons inclined to Islam who need some assistance in order to declare themselves openly to be converts ; or whose high social position gives hope of the conversion of other infidels. According to our rite these two categories of persons are admitted to be entitled.

5. Slaves undergoing enfranchisement by contract.

6. Insolvent debtors, provided their debt has a legitimate cause. [*Insolvent debtors should be assisted, even where their debts have no legitimate cause, if they manifest a firm intention henceforth to introduce better order into their business or their conduct.] *Persons of this category participate by the fact of being in difficulties, though the

debts may not yet be due for payment. [†On the contrary, before the debts become due, they are not entitled.] What we have said about this class of persons applies only to debtors who have contracted obligations in their own interest; for those who have done so with a laudable object should be compensated in all cases, even though they may be rich. Some authors, however, admit an exception in the case of an individual so rich in coin that he can easily meet his engagements.

7. Those "in the way of God," *i.e.* who take part in the war against the infidels, unless they share in the four-fifths of the profits of war. This category of persons are entitled without distinction of fortune.

8. Travellers without means to begin or to continue their journey; on the sole condition that the journey is not undertaken for an illicit purpose.

These persons we have now mentioned as being entitled must also be Moslems, not belonging to the families of the Beni Hashim or the Beni Mottalib, †nor under the patronage of any member of these two families.

Section 2

A person claiming a share in the proceeds of the tax should be admitted amongst the number of those entitled, if the Sovereign is certain that the claim is well founded, or dismissed at once, if the Sovereign is convinced of the contrary. In case of uncertainty a simple declaration of poverty or indigence is enough, without the claimant being obliged to produce proof; but if it is certain that the person in question was formerly in easy circumstances, he must then prove the loss of his property. †This rule applies also to those alleging, as the cause of their poverty, their being charged with the maintenance of a numerous family. A simple declaration is enough in order to share as a combatant for the faith or a traveller; but claimants under these two categories must restore what they have received, if it subsequently appears that they have remained at home. On the other hand, persons employed in the collection, slaves undergoing enfranchisement by contract, and debtors, must in all cases prove the ground of their claim. It is understood that in these cases sufficient proof includes not only the deposition of two witnesses of irreproachable conduct; but also public notoriety, †and a confirmation by creditor or master.

Poor and indigent persons never obtain more at one time than is necessary for the current year. [†According to Shafii's personal opinion, accepted by nearly all authorities, they should be given enough to support them for the rest of their life, according to average mortality, this sum

being devoted to the purchase of some immovable property of which the revenue is applied to their maintenance.

A slave undergoing enfranchisement by contract, and the debtor, receive only what is necessary to pay what they owe. The traveller receives sufficient money to reach his destination or his domicile. The combatant for the faith should be provided with what is required for his maintenance and outfit, there and back, including the period during which he is on the frontier. A horse and arms are given him; and these remain his property, even after the end of the war. The combatant and the traveller may even claim a mount all ready equipped, if they have to go a great distance, or if they are too weak to make the journey on foot; and lastly they have a right to the necessary transport; if their provisions or their baggage are so bulky that they cannot easily carry it themselves.

*A person who wishes to claim on two counts has to be content with what is due to him under one head only.

Section 3

The Sovereign or his subordinates employed for that purpose should divide the proceeds of the tax into eight portions; or, where there are no special collectors, into seven. In default of one or more of the categories their portions go to the others by virtue of the law of increase. The portion of each category should be wholly divided up amongst the individuals composing it; and similarly the taxpayer who prefers to effect the partition himself, should divide up the entire amount due by him, if all the categories of those entitled live in his place. In any case a category cannot legally be admitted to share in the distribution, unless it is composed of at least three individuals. The respective categories have each right to an equal portion; but equality is not required between the shares of the individuals composing a category, unless the distribution is effected by the Sovereign, for in this case inequality of shares is forbidden if there is equality of need.

*The transfer of the tax collected in one district into another is illegal, except in the case of a district where none of the categories entitled exist. In this latter case the transfer is incontestably obligatory. According to those authorities who do not admit the prohibition of a general right of transfer, a transfer is obligatory if all eight categories do not exist in the district. Among the authorities who maintain the prohibition of a transfer, except in the case of a total lack of persons entitled, the majority allows the claim of the categories existing in the district to the share of those that are absent. There are some, however,

who, though rejecting in these circumstances a transfer of the entire proceeds of the tax, admit none the less a transfer of the portions of the categories that do not exist.

A collector should be a free man of irreproachable conduct, and sufficiently instructed in the dispositions of the law relating to the tax. If, however, the amount due by the taxpayers, and the shares of those entitled are mentioned in his instructions, it is not necessary for him to have any profound knowledge of the subject. The month of collection should always be announced beforehand.

The Sonna has introduced the practice of marking animals due for the tax or as profits of war, with a red-hot iron on a part of the body where the hair is thin. It is blamable to mark animals upon the face. [†It is even expressly forbidden, according to a decision of Baghawi; while in the collection of Moslim, called Es-sahih, there is a tradition that the Prophet cursed whoever should commit a similar atrocity.]

Section 4

The Sonna prescribes also a supererogatory tax that may be given even to persons in easy circumstances and to infidels. It is given in secret, in the month of Ramadan, preferably to one's near relatives and neighbours. But it is recommended to those who owe a debt, or have to maintain a family, not to pay a tax on their property by way of charity until they have first discharged these obligations. [†It is even forbidden to spend in charity money required for the maintenance of those dependent on one, or for paying a debt that otherwise one can hope for no means of paying.] †It is commendable to be charitable out of one's superfluity, provided that too great a burden is not thereby incurred.

BOOK 33.—MARRIAGE

CHAPTER I.—GENERAL PROVISIONS

Section 1

Marriage is to be recommended for every man who feels the need of it, provided he is able to undertake the pecuniary obligations that result from it. Otherwise it is better to abstain and repress one's passions by fasting. Marriage is a blamable act for a man who does not feel the need of it, and is not able to support the expense; but not for one who, though not needing it, is yet able to undertake its obligations. It is preferable, however, that such a person should remain a celibate and devote himself entirely to religious practices.

[†Should such a man not possess a temperament suitable for an austere life, it is better for him to take a wife, though it is not strictly necessary. But it is blamable in him to marry if, though able to support the expense, he is physically incapable of fulfilling his marital duties, by reason of decrepitude, chronic malady, impotence, etc.]

One should preferably choose, as a wife, a virgin, of religious sentiments and well-established descent, not too nearly related to the husband.

The Sonna has introduced the practice of seeing a woman one proposes to marry, even without her knowing it, and even several times, before demanding her in marriage; but the suitor must not see any more of his future wife than the face and hands. The law forbids a male adult to look upon the shameful parts of a free adult woman, a "stranger" to him—*i.e.* not his near relative, wife or slave. This prohibition extends, in ordinary circumstances, to the face and hands, ††even though one may be sure of not feeling any lascivious sensations. Relatives within the prohibited degrees need conceal only that part of the body between the navel and the knees; or, according to some authorities, the parts of the body that are invisible when such women are engaged upon their household duties. †As to a female slave any one may see her body, except between navel and knees; and a girl under age need only conceal her *pudendum;* unless upon looking at either one experiences lascivious sensations, in which case they

should cover the whole body. †A slave with regard to his mistress and a eunuch with regard to any woman, are considered as men within the prohibited degrees. A minor of either sex approaching majority should observe the law as if majority were already attained. Men may look at each other, provided they keep concealed the part of the body between navel and knees; but it is forbidden to look upon the body of a beardless youth, if it excites desire.

[†One should avoid altogether looking upon a beardless youth, for fear of exciting an infamous passion; this is Shafii's personal opinion. †The best authors consider a female slave as subject to the same rule as a free woman, so far as regards the prohibition of being seen.]

Women among themselves should observe the rule laid down for men; †though an infidel woman, subject of a Moslem prince, may not look upon a Moslem woman. †A woman may lawfully look upon the body of a foreigner, except between navel and knees, unless fleshly desires are thereby excited. [†It is forbidden for a woman to look upon a man, in the same way as for a man to look upon a woman.] A woman may look upon a relative within the prohibited degrees, as a man may. A prohibition of looking upon implies that of touching; though one may both look upon and touch any part of the body, for the purpose of bleeding, or applying a cupping glass, or dressing a sick or wounded member.

[It is permissible, if necessity requires it, to look upon any woman with whom one wishes to enter into commercial relations, or who is a witness in a court of law, or where it is necessary to give her some instruction, etc.]

A husband has a right to see all parts of his wife's body.

Section 2

One may ask for the hand of any woman who is unmarried, or whose legal period of retirement is finished; but a woman whose period is not yet completed may not be openly demanded in marriage. A woman repudiated in a revocable manner can never be demanded in marriage during her retirement, even indirectly. But one may, if one uses ambiguous terms, make a proposition of this nature to a widow, during her retirement, *or to a woman repudiated irrevocably. The law forbids asking for the hand of a woman who has already received and formally accepted a similar proposition from another, except with the consent of one's rival; *but until a woman has decided as to the first offer, there is no objection to making her a second. When a woman asks advice from a third party as to a man who has made her

an offer of marriage, this third party is bound to give her sincere and truthful information.

It is commendable that a demand in marriage, as well as the contract, should be preceded by some edifying words ; ††though strictly speaking it is enough, for the validity of the marriage, that the bride's guardian should say these words, and that the husband should simply answer : " Glory to God, and grace to his apostle—God grant him his grace and blessing—I accept, etc." [††This fashion is not at all commendable.] The marriage is not legally binding, if the offer is separated from the acceptance by a long religious ceremony.

Section 3

A marriage is not constituted except by an offer, expressed in terms such as : " I give you in marriage," or " I give you for wife," followed by acceptance, expressed in terms such as : "I take her as wife," "I marry her," " I consent to marry her," or " I accept your offer." The validity of the marriage is unaffected by the husband or the guardian being the first to express his will ; but it is rigorously necessary that the guardian should make use of the words "give in marriage," or "give for wife." Arabic †or any other language may be used, provided that consent is expressed on both sides in explicit terms. Consequently, our school does not accept the validity of a marriage where the husband replies, " I accept," without specifying what, to the guardian who says to him, " I give you her in marriage ; " but there is no objection to the consent being expressed in the words : "Give her me in marriage," and "I give her you," or " marry her," and " I marry her."

The parties may not make their consent depend upon any condition ; and our school regards the contract as wholly null where a father, hearing his wife has given birth to a child, cries out, " If it is a daughter, I give her you in marriage ; " or where he says, " If my daughter is repudiated by her present husband, I will give her you in marriage, after her legal retirement. A contract of marriage may not be made for a certain term ; nor have a reciprocal character in such a way that the parties are mutually exempt from dower, *e.g.* by saying : " I give you my daughter in marriage on condition that you give me yours, and that the one's virginity becomes the other's dower," even though such proposal is accepted. †But a reciprocal marriage is perfectly regular, if the value of virginity is not taken into the calculation ; †it is nullified when such value enters however little into the amount of the dowers.

A marriage should be effected before two witnesses, free, male, of irreproachable character, sound in hearing and sight—though the

necessity of being able to see is doubtful. †There is no objection to the witnesses being near relatives, *e.g.* sons of the bridegroom and bride, or their personal enemies. ††Nor does it matter if the reputation of the witnesses is doubtful; provided it is not notoriously bad; but the law insists positively upon their being free and Moslems. Though our school regards as null a marriage effected before witnesses whose incompetence from notorious misconduct was known at the time, this circumstance alleged after the celebration is only admissible if legally proved or admitted by the parties. It is not sufficiently established by a mere subsequent declaration of the witnesses themselves; and if only the husband admits the circumstances, while the wife denies it, the marriage is not null, but the law requires a separation; upon which the husband owes his wife half her dower, if he has not yet had connection with her, or otherwise the whole. It is commendable to choose as witnesses persons agreeable to the bride, at least where her consent is necessary to the marriage. However, it is not necessary to ask her advice as to the witnesses.

Section 4

A woman cannot give herself in marriage, even though her guardian should authorise her to do so. Nor can she give in marriage another woman, even as agent of the latter's guardian; nor effect a marriage as agent for the husband. However, if cohabitation ensues upon a marriage effected without a male guardian, proportional dower is due, and the couple are not guilty of the crime of fornication.

The guardian's admission is accepted as sufficient proof of a marriage where he has a right to dispose of the bride's hand as he pleases; but not where the bride's consent is also necessary. According to the opinion adopted by Shafii in his second period, the wife's admission must also be accepted, provided she is of age, and sane.

A father can dispose as he pleases of the hand of his daughter, without asking her consent, whatever her age may be, provided she is still a virgin. It is, however, always commendable to consult her as to her future husband; and her formal consent to the marriage is necessary if she has already lost her virginity. Where a father disposes of his daughter's hand during her minority, she cannot be delivered to her husband before she attains puberty. In default of the father, the father's father exercises all his powers. Loss of virginity puts an end to the right of disposing of a daughter's hand without her consent; and there is no difference in this respect between a loss caused by licit cohabitation and one that is the consequence of unlawful intercourse. On the other hand, the right remains intact where the loss has taken

place without carnal connection, as for example in consequence of a fall upon the ground. Collateral agnates, such as whole brother, or half brother on the father's side or father's brother, cannot in any way engage the hand of a daughter under age; and a woman who has lost her virginity must manifest her consent in explicit terms, when collateral agnates give her in marriage. As to an adult virgin, it is enough that she does not oppose the choice of her collateral agnates.

The persons who have the right to assist a woman as guardian at her marriage are first of all the father, then father's father, then his father, then the whole brother or half brother on the father's side, then the latter's son or other agnate descendant, then father's whole brother or half brother on father's side; and lastly the other agnates in the order in which they are called to the succession, *it being understood that a whole brother always has priority over a half brother on the father's side. A son, though the nearest agnate, cannot give his own mother in marriage, since a right of guardianship does not pass into the descendant line; he can only do so if he is also son of the son of his mother's father's brother, or by right as patron or as judge representing the Sovereign. In default of agnates in the ascendant or collateral line, a woman should be given in marriage by her patron, †and after him by his agnates in the order in which they are called to the succession. In the case of an enfranchised slave who has no patron, but a patroness, she should be given in marriage by the individual who in these circumstances would be the guardian of the patroness, †without the latter's consent being necessary. After the death of the patroness, the right of assisting the enfranchised slave as guardian devolves upon the same person as does the patronage. Lastly, in default of patron, or agnates of patron or patroness, it is the Sultan who should assist the enfranchised slave who wishes to marry, as guardian of all the women in his empire who have no other, or whose guardian, whether agnate or patron, prevents the marriage by abusing his power. It is considered an abuse of power on the guardian's part, where an adult sane woman wishes to marry a suitable person and the guardian refuses to give her to him; †but not where she wishes to marry a particular individual, and her father wishes to give her to another who is also suitable.

Section 5

The following are incapable of assisting a woman at her marriage as guardian: a slave, a minor, a lunatic, a person whose intelligence is troubled by reason of senility, or by the work of a malicious spirit; and even, according to our school, a person legally incapable by reason

of imbecility. In case of incapacity of persons with a prior claim to guardianship, it falls to those who have second claim and so on. If the guardian is in a state of unconsciousness, and his attacks are usually temporary, it is necessary to wait until he comes to himself again, even though the state of unconsciousness should last several days. Under these circumstances, however, some jurists consider that the right of guardianship passes to the next of those entitled. †Blindness is no obstacle to guardianship ; but notorious misconduct is, at least according to our rite. As to an infidel, he is only capable of assisting as guardian a woman who also is an infidel.

A state of *ihram*, whether of the guardian, or of the bride or bridegroom, is an obstacle to the validity of a marriage ; †but the *ihram* of the guardian does not transfer the right of guardianship. The Sultan, or the judge for him, should then replace the guardian. [Even in the case where one of the two contracting parties, *i.e.* the guardian or the husband, appoints, previously to his state of *ihram*, a competent agent to conclude the marriage in his name, its validity is not to be accepted.

A legitimate guardian who is at a distance of at least two days' journey should be replaced by the Sultan, *i.e.* by the judge ; †but if he be at a less distance, the court cannot proceed without his authorisation.

Guardians that have a right to dispose of the hand of a woman as they please, *i.e.* her father or father's father, can delegate an agent for this purpose, *even without indicating the husband they have in view. In this case the agent may give the woman to whatever man he pleases, provided it is a fitting match and not a mesalliance. As to a guardian who has no right to dispose as he pleases of the hand of the future bride, he should appoint an agent if she desires it, but abstain from doing so if she forbids it ; †but where a woman asks her guardian to give her the requisite assistance for her marriage, without saying anything further the latter has a right to delegate an agent. ††But such guardian can never appoint an agent without first obtaining the woman's consent to the proposed marriage. A legitimate guardian's agent should say, "I give you in marriage the daughter of so-and-so." If it is the husband who is represented by an agent, the guardian says to him, "I give my daughter in marriage to so-and-so," and the agent answers, "I accept her as wife on behalf of my principal."

A father or father's father should, if possible, seek a husband for their adult daughter or grand-daughter in a state of lunacy ; but as to an adult male lunatic his curator should not seek a wife for him, unless he is manifestly in need of one ; and promises of marriage should never be made with regard to lunatics under age of either sex,

A guardian who has the right to dispose as he pleases of the hand of a woman cannot without good reason decline to perform his duty, if he is asked to effect a marriage desired by the woman in question; the same obligation rests upon the other guardians, where they are personally indicated by the law, *e.g.* where the bride has only one whole brother or half brother on the father's side. Where this is not the case, *e.g.* where she has several brothers, †any one of them should undertake the duty upon the woman's demand, though it is to be recommended that those individuals whose degree of relationship calls them equally to the guardianship should intrust this function to the wisest or the eldest, or decide the matter by lot if they cannot otherwise come to an agreement. †In these circumstances, however, if the bride does not object, she may, strictly speaking, be given in marriage by any one of those entitled, even though the lot may have fallen upon another.

If one of the persons entitled to the guardianship gives a woman in marriage to Zaid, and another gives her to Amr, she belongs to the husband who has the priority; and both marriages are void if effected at the same time or if it is not known which is the earlier. This is also the case, at least according to our school, when it is known that one of the marriages preceded the other, but it is not known which; but where one is at first believed to have the priority, and afterwards doubts arise upon the subject, the matter remains in suspense until the doubts are dissipated. When each of the two husbands asserts that the woman in question knows he has the priority, it is impossible, according to the opinion of Shafii in his second period, to admit any presumption in favour of the one or of the other; in default of legal proof the decision then depends upon the wife's admission. Consequently if she denies being married to any one the two husbands can only have an oath administered to her; and if she admits being married to one of them it is this last marriage that is to be accepted as valid, without prejudice to the other husband's right to question the marriage in a court of law, and if necessary have an oath administered to the wife. Such is the doctrine of authorities who allow an admission expressed in the form, "This object is Zaid's, not Amr's," as creating a pecuniary obligation towards the latter as well as a real obligation towards the former; while jurists who do not allow that in such a case Amr can claim any compensation do not allow either that the marriage can be attacked in the circumstances just mentioned.

†Father's father may lawfully effect a marriage by himself alone in his double character as guardian of the daughter of one of his sons, and as guardian or curator of the son of another of his sons. But a cousin on the father's side cannot in this way marry his cousin whose

guardian he is by right of agnation, for in these circumstances the guardianship devolves upon another agnate cousin of the same degree of relationship, and after him upon the judge as representing the Sovereign. A judge who wishes to marry a woman having no other guardian cannot marry her to himself, but must be replaced as guardian by his superior magistrate or by his substitute. With the exception of father's father no one can effect a marriage entirely by himself, neither as guardian of the two parties interested, nor as tutor of the one and agent of the other. †Nor can a marriage be effected by two agents, one of the guardian and the other of the bridegroom.

Section 6

A guardian can never give a woman in marriage to a man of inferior condition, except with her entire consent. Where there are several persons who, by their degree of agnation, are equally competent as guardian, the consent of all is necessary to a mesalliance, though it is only one of them that need preside at the celebration of the marriage. Agnates further removed can never oppose a mesalliance concluded by one more nearly related, acting as guardian, with the full consent of the woman in question ; but a mesalliance concluded by one of the agnates intrusted with the guardianship, without the consent of the others equally competent is wholly illegal, even though the bride should have given her consent. A single authority maintains that in this case the validity of the marriage must be accepted, until the other agnates have demanded its dissolution by the court. A similar controversy exists where a father disposes of the hand of his virgin daughter, whether minor or adult, in favour of a man of inferior condition, without obtaining her consent. According to most authorities such a marriage is null and void, but according to the jurist just mentioned the contract is valid unless the wife applies for its cancellation. An adult wife should bring an action for this purpose at once, but a minor should wait until she has attained her majority. †Finally neither the Sultan as ultimate guardian, nor the judge for him, can legally give a woman in marriage to a man of inferior condition, even though she may desire it.

In order to determine whether the suitor is a good match, the following must be taken into consideration :—

1. Absence of redhibitory defects of body.

2. Liberty. A slave is not a suitable match for a free woman, nor an enfranchised slave for a woman born free.

3. Birth. An Arab woman makes a mesalliance by marrying a

man belonging to another nation ; a woman of the Koraish does so if her husband is not of the Koraish ; a woman who is a descendant of Hashim or of Abd-al-Mottalib, *i.e.* who is of the same blood as the Prophet, can make a suitable match only in the same family. †In the case of marriages between persons belonging to foreign nations, like the Persians, genealogy must be taken into consideration as in the case of Arabs.

4. Character. A man of notorious misconduct is not a suitable match for an honest woman.

5. Profession. A man exercising a humble profession is not a suitable match for the daughter of a man in a more distinguished profession. Thus a sweeper, a barber, a watchman, a shepherd, or a servant at a bathhouse, is not a suitable match for the daughter of a tailor ; while the tailor in his turn is no match for the daughter of a merchant or a second-hand dealer, who in their turn are no suitable match for the daughter of a learned man or a judge.

†Difference of fortune constitutes no cause of mesalliance ; but inequality under one of the aspects above-mentioned is not compensated for by the husband being superior to his wife in other respects.

A father or father's father should never marry his son or his grandson to a slave ; nor, according to our school, to a person with redhibitory defects ; but with these two exceptions the law does not admit that a man can make a mesalliance by marrying a woman in any respect inferior to him.

Section 7

The curator of a lunatic minor cannot effect a marriage in his name ; and the curator of an adult lunatic can do so only if the latter is manifestly in need of it, and then only with one woman at a time. As to a sane minor, his father or father's father can marry him to as many wives as the law permits. An insane woman, whatever her age, and whether she be virgin or not, should, if possible, be given in marriage by her father or father's father, not only if she needs it but also if it is in any way advantageous for her. But a husband ought not to be sought for a mad woman during her minority, unless she is under the guardianship of her father or father's father. †Upon her majority it is the Sultan who should find her a husband if she requires one, but not if it be merely for her advantage.

A person legally incapable by reason of imbecility cannot legally effect a marriage in his own name; his curator's authorisation is necessary

for this purpose, unless the curator prefers to effect it himself in the name of the person legally incapable. Where the latter obtains the authorisation to marry a specified woman he cannot marry any other. He cannot even marry the woman specified unless he promises a proportional dower, or a definite dower, inferior to what the woman could claim as proportional dower. **The promise of even a definite and excessive dower does not, however, prejudice the validity of the marriage; for the promised dower is in that case *ipso facto* reduced to a reasonable amount. An authorisation granted to a person legally incapable to marry a woman not specified for a dower of at most one thousand pieces of money, gives him a right to take what woman he pleases provided her proportional dower does not exceed this sum. †If he is authorised generally without any restriction as to the woman or the dower, he can marry whom he likes provided her proportional dower does not exceed his means. †As to the curator, he can conclude no marriage in the name of the imbecile without his consent. Nor can he allow more than proportional dower, or a dower inferior to what the wife could claim as proportional dower; and if this limit is exceeded, though the marriage remains valid, the dower is *ipso facto* reduced to a reasonable amount. Only one authority is of opinion that in this case the marriage is null and void. Finally a marriage concluded by an imbecile without the authorisation of his curator is absolutely null; even though cohabitation should have resulted, he owes his wife nothing. Others, however, maintain that in this case he owes her proportional dower; and others consider he owes a small present, which should not be something quite without value.

A bankrupt is subject to no restriction as to his right to marry; but the expenses of the marriage must be defrayed out of what he gains personally, and not out of the estate.

The law regards as null and void a marriage effected by a slave without his master's consent, which may lawfully be given either by a general authorisation, or restricted to a specified woman or one of a certain tribe or place, in which case the slave must respect the will of his master. *However, a master cannot lawfully force his male slave to marry, nor, on the other hand, is he obliged to allow him to marry. A female slave cannot oblige her master to give her in marriage, unless according to some authors, cohabitation with her is prohibited to the master himself. †Moreover, when giving a female slave in marriage, a master acts by virtue of his right of ownership and not as guardian; this is why the faculty is granted not only to a Moslem with respect to his infidel slave, but also to a master of notorious misconduct, and to a slave who is undergoing enfranchisement by contract.

CHAPTER II.—PROHIBITED MARRIAGES

Section 1

In the direct line it is forbidden to marry—

1. One's mother, *i.e.* not only the woman that bore one, but any that has borne one's ancestor or ancestress.

2. One's daughter, *i.e.* any woman of whom one is the ancestor. [The prohibition does not extend to children born of a criminal connection, though a woman can never marry her descendant, even a descendant by adultery or incest.]

In the collateral line one may not marry: one's sisters, nieces and aunts; understanding by "aunt" any whole sister, half sister on the father's side or uterine sister of one of his ancestors or ancestresses.

Relationship by fosterage is a cause of prohibition in the same way as relationship properly so called; and this prohibition extends to the same degrees. By foster mother is understood any person: (1) who has given one suck; (2) who has given the breast either to one's nurse, or to one's ancestor or ancestress; (3) who is the ancestress of one's nurse; (4) who is the ancestress of the man from whom is derived one's nurse's milk, and so on.

One may legally marry the nurse of one's brother or of one's grandchildren, the mother or the daughter of the nurse of one's own children, and the uterine sister or foster sister of one's half brother on the father's side or *vice versâ*.

By reason of affinity one may not marry—

1. The wife of one of his descendants or ancestors, there being no distinction between those properly so called and those by fosterage.

2. One's wife's ancestresses, understood in the same way.

3. One's wife's descendants by another husband, similarly regarded.

Affinity does not exist before marriage has been consummated by coition. A master who has cohabited with his slave should subsequently abstain from all commerce with her ancestresses or descendants; and all commerce with her is forbidden to her master's ancestors or descendants. It is the same in the case of illegal cohabitation by error, whether the error was on the man's side, or, according to some authors, on the woman's; but, on the other hand, coition that constitutes the crime of fornication has no legal consequence so far as affinity is concerned. *Affinity exists only in consequence of coition, and not by reason of other lascivious acts.

The fact of being aware that a woman with whom commerce is prohibited to oneself, but whom one does not know, is living in a large town

does not prevent one marrying a woman of that town ; but when one knows that such a woman is amongst a small number of women, but one does not know which she is, then one should abstain from marriage with any of them. If in case of marriage with one of the women of a large town, one perceives too late that one has accidentally married a woman with whom commerce is entirely prohibited one at any time, *e.g.* the wife of one's father or of one's son, cohabitation must be at once discontinued.

One may not have at one time two wives of whom one is the sister or the aunt of the other ; without distinction between parentage properly so called and parentage by fosterage. Thus, if one marries at one and the same time a woman and her sister or her aunt, there is no marriage ; and if one marries the two women the one after the other, the second marriage alone is void. A prohibition to have two women as wives at the same time implies a similar prohibition to have commerce with them by right of property, as in the case of two slaves ; but such prohibition is no obstacle to the mere ownership in itself. Thus, a master who owns two female slaves of whom one is the sister or aunt of the other and who has cohabited with one of them, must abstain from commerce with the other, until commerce with the first has become forbidden him, *i.e.* until he has sold her, given her in marriage, or begun to enfranchise her by contract. The law does not, however, regard as having the same result a temporary cause preventing commerce with the slave in question, such as menstruation, *ihram,* †or having pledged her to a creditor. A master who marries a sister of one of his female slaves, or the husband who becomes the owner of his wife's sister, should cohabit with his wife, and abstain from commerce with his slave.

A slave cannot have more than two wives at a time, and a free man not more than four. A marriage concluded by a free man with five wives at once is null as regards all of them ; but if he marries them one after the other, the fifth alone is void. Consequently the sister of the fifth wife can become the wife of the person in question, unless he must abstain from her on other grounds. Moreover, one has the right to take a fifth wife after repudiating irrevocably one of the four, even while the repudiated wife is still in her period of legal retreat ; but this cannot be done if the repudiation is revocable.

A free man may repudiate his wife twice, and a slave his once, in a revocable way ; but after this triple, or double, revocation, she cannot be taken back again until she has been the legitimate wife of another man, and this intermediate husband has had effective connection with her. Our school insists that this intermediate husband should be capable of performing conjugal functions; consequently an intermediate marriage

of a woman with a young boy and her connection with him would be of no use. Neither can the intermediate marriage be on condition that the new husband shall repudiate his wife immediately after first having connection with her, and that she shall be *ipso facto* repudiated from that moment, or that the intermediate marriage shall *ipso facto* cease to exist from that moment. One authority, however, admits the first condition.

Section 2

One may not marry a woman of whom one is the proprietor, even in part only; and the fact of becoming owner or part owner of a woman with whom one has already contracted marriage is of itself sufficient to annul it. Neither may a woman marry a slave of whom she is owner or part owner. A free man may not even marry the slave of another, except under the following conditions :—

1. That he has no free wife able to satisfy his passion; or, according to some jurists, no free wife at all.

2. That he is unable to marry a free woman able to satisfy his passion; or, according to some jurists, that he is unable to marry any free woman. On the other hand, most authorities permit a free man to marry the slave of another, in the case of the absence of the woman whom he could marry, when it is manifestly difficult for him to go to her, or when he is afraid that the excitement of desire will otherwise make him commit the crime of fornication. †A man who has not the means to pay the proportional dower a free woman could claim, and who finds some one willing to be content with a lower sum not in excess of his means, may not refuse this offer and marry a slave; but when the free woman will not be content with a lower sum, but is disposed to give facilities as to payment, marriage with a slave is not prohibited.

3. That he is afraid of committing the crime of fornication if he does not marry; †but the law admits this excuse only where he is unable to purchase a slave with whom cohabitation would be permitted him by right of ownership.

4. That the slave is a Moslem. A Moslem, whether free **or not, should never marry an infidel slave; ††but an infidel, free or not, member of a religion founded upon a holy scripture, may marry an infidel slave.

A woman partly enfranchised is regarded for this purpose as entirely servile. A free man, who, after marrying a slave in conformity with the law, afterwards becomes enabled to marry a free woman, or who does in fact marry one though strictly speaking his means do not permit of it, keeps the slave all the same as a legitimate wife. But if, on the

other hand, a free man, legally unable to marry a slave, nevertheless does marry both a slave and a free woman, *the contract is void so far as regards the slave, but remains valid as to the free woman.

Section 3

A Moslem may not marry a woman of a religion not founded upon some holy scripture. Thus, he may not marry an idolatress nor a fire-worshipper; but he may marry a Jewess or a Christian; though it is always blamable to marry a woman, whether Jewess or Christian, belonging to a nation not yet subjugated by our arms ††or even a woman belonging to infidel subjects of our Sovereign. By "infidels whose religion is founded upon a holy scripture," are understood those people who follow one of the actually existing divine revelations, though abrogated by the Koran, *i.e.* Jews and Christians; but not adherents of religious sects founded only on the psalms of David, and so on. Jewesses may become wives of Moslems, even when not strictly speaking of the race of Israel, *provided their nation was converted to Judaism before that revelation was abrogated by the Koran, and before the text of the law of Moses had been altered by theologians. Some jurists, however, consider only the first of these two conditions as strictly necessary. A Jewess or a Christian, the legitimate wife of a Moslem, has the same right to maintenance, sharing of marital favours, and with regard to repudiation, as Moslem wives, provided she observes the precepts of the law with regard to menstruation, lochia, *and grave impurities in general, and does not eat pork. A Moslem's wife, of whatever religion she may be, should at her husband's order wash herself, when any part of her body is affected by some impurity.

A Moslem may never marry an idolatress, even where the mother *or father of the woman in question is Jewish or Christian. And women belonging to Samaritan sects that have seceded from Judaism, or Sabaean sects seceded from Christianity, differing in each case as to some essential dogma, are deprived of the right to marry a Moslem. But women of Samaritan or Sabaean sects that differ from Judaism or Christianity only in secondary dogmas may marry a Moslem, just as Jewish or Christian women may. However, *since a Christian converted to Judaism, or a Jew converted to Christianity enjoy no longer the favour of our protection, neither may a woman in similar circumstances become the legitimate wife of a Moslem; and if a Moslem's wife is converted from Christianity to Judaism or *vice versâ*, she should be treated as a Moslem wife who has abjured the faith. A Jew or a Christian who wishes to change his religion should become a Moslem;

unless, according to one author, they are returning to their original religions after abandoning them. The same controversy exists as to whether a Jew or a Christian, who has become an idolater, can return to the religion they have left; but they can never enjoy our protection while remaining idolaters. An idolater who becomes a Jew or a Christian is equally incapable of enjoying our protection; nor can he return to his original religion. There is thus no course open to him but to embrace Islam, as if he were an apostate.

A woman that has abjured Islam can marry no one; and apostasy, whether of husband or wife, or both, before a marriage has been followed by cohabitation, involves *ipso facto* an immediate separation. Where, on the other hand, cohabitation has already taken place, the marriage remains in suspense, in the hope that the guilty party or parties will become convinced of their error before the end of the period of legal retirement. If this occurs, the marriage holds good as if nothing had happened; but otherwise separation is regarded as having taken effect from the moment of apostasy. In all cases, however, carnal enjoyment is forbidden to the parties while their marriage remains in suspense; though an infraction of this precept does not constitute the crime of fornication.

CHAPTER III.—THE MARRIAGE OF INFIDELS

Section 1

An infidel of whatever religion who is converted to Islam while married to a woman whose religion is founded upon some holy scripture keeps her as his wife; but if she is an idolatress or a fire-worshipper, and is not converted with him, separation takes place immediately *ipso facto*, where the marriage has not yet been followed by cohabitation. Otherwise the continuation of the marriage depends upon whether the woman embraces the faith before the end of her period of legal retirement. If, before the expiry of this period the wife's conversion has not yet taken place, the marriage is considered to have been dissolved from the husband's conversion; and the same rule is observed if it is the wife who is converted, while the husband remains in a state of religious blindness. Where, on the other hand, both parties embrace the faith at the same time, the marriage remains valid. The conversion is regarded as simultaneous only where one of the parties begins his declaration before the other has finished.

Where the marriage remains valid, it is of no consequence whether it was originally contracted in contravention of our law, provided that the cause of illegality has ceased to exist at the time of conversion, and that the wife is then a woman who can lawfully be given to her husband. If, however, the cause of illegality still exists at the time of conversion, the marriage is regarded as having never been contracted. Moreover, it is not considered as an absolute illegality if the marriage was not concluded by a guardian, nor before witnesses. A continuation of the marriage must also be accepted in the following cases :—

1. When it has been contracted before the expiration of the period of legal retirement, provided that this period has expired at the moment of conversion.

2. In the case of a temporary marriage, where the parties have stipulated a term equivalent to perpetuity.

3. When, at the time of conversion, the woman is in retirement, owing to a cohabitation due to error, at least according to our school. On the other hand, a marriage with a person within the prohibited degrees cannot continue after conversion ; though our school admits the validity of the marriage, where the husband is first converted and places himself in a state of *ihram*, after which the wife is converted also, before her husband's *ihram* is over.

4. When an infidel who possesses a free wife and a slave wife is converted at the same time as they are, he keeps the free wife, according to our school, but should dismiss the slave. ††Marriages of infidels contracted in conformity with their own laws are recognised by ours as valid ; though some jurists maintain that our law never admits the validity of these marriages, while others consider their validity is recognised only where upon conversion it appears that the parties may lawfully remain together, but otherwise they must be regarded as null and void *ab initio*.

††An infidel who repudiates his wife three times and is converted to Islam can take her back again only after she has belonged to an intermediate husband.

An infidel who promised at his marriage a specified dower according to our law, is liable for it even after his conversion if the marriage is not thereby dissolved as we have explained above. But if the dower consists of prohibited things such as wine and so on, and the marriage remains valid after conversion, then the three following cases must be distinguished :—

1. Where at the moment of conversion the woman has already taken possession of the prohibited objects, she keeps them and can claim nothing further.

2. Where she has not yet taken possession, her husband owes her proportional dower.

3. Where she has only partly taken possession she can claim for the rest a reasonable part of the proportional dower.

A woman whose marriage has been dissolved, either by her conversion to Islam or by her husband's conversion, may claim the specified dower promised, provided it consists of permissible articles, and that the marriage, followed by cohabitation, is not otherwise attackable. If not, she can only claim proportional dower. If cohabitation has not yet taken place, a distinction is made between the case where the dissolution is a consequence of the wife's conversion, and that where it is caused by the husband's. In the first she can claim nothing, but in the second the husband owes her half of the specified dower promised, if consisting of permissible articles, and otherwise half of the proportional dower; all upon the condition already mentioned, that the marriage is dissolved solely by conversion and not from any other cause of nullity.

The court may not refuse to pronounce judgment if one of the parties is an infidel subject of our Sovereign, *or even where both are so; but should decide as if both were Moslems.

Section 2

An infidel who, at the time of his conversion to Islam, possesses more than four wives, should choose four to keep and dismiss the others; it being understood that all the four embrace the faith, either at the same time as their husband or before the termination of their period of retirement, or that they are followers of some religion founded upon a holy scripture. Where, on the other hand, only four wives embrace the faith, either with him or before the termination of their period of retirement, they remain his lawful wives to the exclusion of the others, even though he has not yet cohabited with them. An infidel who, at the time of his conversion is bound by marriage to a mother and to her daughter, and has had commerce with both, must subsequently abstain from both the one and the other. His cohabitation with them is in this case prohibited for ever, even though they may be followers of a religion founded upon a sacred book, or may have embraced the faith. But if he has cohabited with neither, the daughter remains his legitimate wife; though according to one author he may choose whichever he prefers. If he has cohabited with the daughter only, she remains his lawful wife; but if he has cohabited with the mother only, then cohabitation with

both the one and the other is prohibited him for ever, though, according to one author, the mother may in this case remain his lawful wife.

An infidel who, at the time of his conversion, is married to a slave who follows his example either immediately or before the end of the period of retirement, may keep her as his lawful wife, unless coition with her is prohibited him on other grounds; but if the slave remains an infidel at the expiry of that term, separation takes place at once *ipso facto*. A convert married to several slave women who all follow his example either immediately or before the end of their period of retirement, should choose one to remain his wife; but this choice may not fall upon one with whom cohabitation was forbidden him at the time of conversion. Of these he may keep none. A convert married to a free woman and several slaves who are all converted with him, either immediately or before the end of the period of retirement, should keep the free woman as his sole wife and dismiss the others. He may choose one of his slave women only if his free wife perseveres in her errors at the end of her period of retirement. Where the convert has a free wife who embraces the faith at the same time as himself, and where also his slave wives obtain their liberty and are then converted before the end of their period of retirement, it is as if at the time of his conversion he had only free wives, and he may at his choice select the four wives whom he wishes to keep.

When signifying his wishes upon this subject, the convert may use the words: "I choose you," "I confirm our marriage," "I retain you," "I wish you to remain"; and he is considered to have implicitly chosen one of his wives if he repudiates her, †but not if he pronounces against her an injurious assimilation or an oath of continence. The convert may not make his decision subject to any condition; nor may he go back upon his choice. If he should choose five wives instead of four, he must afterwards indicate the one he wishes to dismiss. All the wives of a husband who has become a Moslem have an equal right to maintenance until he has decided which to retain. If he does not decide the court should force him to do so by imprisonment. Where a new convert dies before deciding, all his widows should observe the legal period of retirement; that is to say, a pregnant widow is in retirement until her churching; a widow having no fixed courses, or a widow who has had no commerce with her husband, for four months and ten days; a widow having regular courses, for three periods of purity, in all not less than four months and ten days. From the estate of a deceased convert must be reserved a sum sufficient to give his widows their due, when their respective rights have been ascertained.

Section 3

Where husband and wife embrace Islam together, the husband's obligation to maintain his wife is not interrupted. Where, on the contrary, she is not converted before the expiry of her period of retirement, he owes her nothing for the interval during which she has not been of the same religion as himself. This, at least, was Shafii's decision during his stay in Egypt. Where the woman's conversion precedes the man's, whether the latter takes place before the end of the period of legal retirement, or whether he continues in his errors, the woman may claim maintenance for the whole period of her retirement. A wife who abjures Islam loses at the same time all right to maintenance, even though she returns to the faith before the expiry of her period of retirement ; but a wife whose husband becomes an apostate continues to be maintainable by him during the whole of the period of her retirement.

CHAPTER IV.—RIGHT OF OPTION, IFAF, AND MARRIAGE BETWEEN SLAVES

Section 1

Any one who becomes aware that he has married a person afflicted with madness, elephantiasis or leprosy has a right to renounce the marriage. The law makes no distinction as to which party has been deceived in this way. A husband may also renounce a wife he has just married, on perceiving that she is *ratka* or *karna*, and consequently unsuited for coition ; while a wife may renounce her husband on discovering him to be impotent or castrated. According to some authorities, however, a party possessing a defect discovered in the other has no right of option. Hermaphrodism alone does not give a right of option ; at any rate if the hermaphrodite inclines manifestly towards the sex declared.

A wife's right to renounce her marriage by reason of her husband's defects is not limited to defects existing at the time of the contract, but extends to such as he may have acquired subsequently ; with the exception of impotence, for a husband who becomes impotent after cohabiting with his wife can no longer be renounced by her. As to the husband, according to the opinion of Shafii in his second period, he as well as the wife has a right of option for redhibitory defects, even though these only become manifest during marriage ; but in this case a right of option can never be exercised by the wife's guardian. Nor can he do

this on account of castration or impotence existing at the time of the contract ; but he can in the case of so-existing madness, †elephantiasis or leprosy of the husband. In all cases redhibition during marriage should be exercised soon after the discovery of the defect.

Renunciation of marriage on account of redhibitory defects previous to all carnal intercourse invalidates a woman's right to dower. If, on the contrary, the renunciation takes place after consummation a distinction must be made between proportional and fixed dower. †Proportional dower is due whether the defects existed at the time of the contract, or whether they became manifest between the time of the contract and the first coition ; but in neither case must the party renouncing knowingly indulge in coition. †The fixed dower is due only where renunciation is based upon defects ascertained after the first coition. It is due also if after that event the apostasy of one of the parties entails renunciation. In no case can the husband proceed against the person who has deceived him, whether for dower due in consequence of cohabitation, or for cancellation on account of redhibitory defects ; this is the opinion towards which Shafii inclined in his second period.

Impotence, †and the other redhibitory defects, have no legal effect until brought before the court. Impotence should be accepted as true, not only upon the admission of the party in court, but also upon proof that such admission has been made elsewhere. †It may also be proved by the claimant's oath, if the other party refuses to confirm his denial on oath. In whatever manner impotence has been proved, the court cannot immediately pronounce dissolution of marriage in consequence, but must grant the husband a year's delay in which to acquit himself of the physical obligations resulting from marriage. On its expiry the wife may summons her husband a second time. If the husband alleges cohabitation with his wife in the interval he must confirm this assertion upon oath, otherwise the woman is sworn. If she takes the oath tendered her, or if the husband admits impotence, she can of her own accord declare herself to be free from the bonds of matrimony, though some maintain she has not this right yet, unless the court authorises it or has itself pronounced dissolution of marriage in explicit terms. If during the year's probation the wife refuses to yield herself to coition, or if the husband cannot cohabit with her by reason of her sickness, or if she is imprisoned, the period during which the husband has been prevented from executing the order of the court is not taken account of. And the woman entirely loses her right to declare herself free on account of her husband's impotence, after the year's probation, if she is proved to have accepted him again ††or to have granted him further delay.

*Where there is a stipulation on the part of the husband that his wife

must be a Moslem, or on the part of one of the parties that the other must be of an undisputed genealogy, free, etc., dissolution does not take place *ipso facto* because the party is not of the quality guaranteed. If the party in question is of better condition than that stipulated for, no right of option exists ; otherwise either wife †or husband may exercise this right. *Where the quality of Moslem or free woman has not been expressly guaranteed, but the husband merely had reason to believe the one or the other, he cannot renounce the marriage on perceiving subsequently that his wife is of another religion, provided that religion is founded upon some sacred book, or upon discovering that she is a slave ; provided always that cohabitation with her is not prohibited on other grounds. And similarly the wife, upon her side, after having consented to marry a man she believed was a suitable match for her, without making any express stipulation with regard to it, cannot exercise a right of option upon discovering that she has married a man of notorious misconduct, or that she has made an unsuitable match as regards her husband's genealogy or profession. [On the other hand, if the woman discovers too late that she has married a man with redhibitory defects or a slave she may exercise a right of option.]

Dissolution of marriage on the ground that a party does not answer to the conditions stipulated has the same result as regards dower and damages as dissolution on account of redhibitory defects, with this difference that in the case in question that the deceit must have existed at the time of the contract before it can become a ground for damages.

According to those authors who do not admit a dissolution of marriage follows immediately *ipso facto* where the husband having stipulated that his wife shall be a free woman discovers afterwards that she is a slave, a child born before discovery of the truth is free, and the father owes his wife's master the value of the child by way of damages. All this is without prejudice to his right of action against the person who has deceived him, if such action is permissible, and provided that it is not the master himself who has duped him by giving him his slave in marriage as if she were a free woman. Consequently, the value of the child is only due where the father has been deceived by the master's agent or by the slave herself ; it being understood that deception on the part of the slave also entails her having to compensate her husband as soon as she has the means of doing so, though she cannot be seized for this purpose. If through no one's fault the child is still-born, the husband owes nothing to his wife's master.

A woman who becomes enfranchised during her union with a slave, even a partially enfranchised slave, may claim a dissolution of marriage on this ground alone, *provided she takes proceedings at once. But the

court may allow this last rule to be departed from where the woman declares upon oath her ignorance of the enfranchisement, and puts forward some probable ground for such ignorance, for example the absence of her master ; *or where she declares that she was ignorant of her right of cancellation. Naturally an enfranchised woman whose marriage has been so dissolved, and who has not yet had commerce with her husband, can claim no dower ; but she can claim the fixed dower promised where the dissolution has been demanded by her in consequence of an enfranchisement subsequent to the consummation of the marriage. Where, on the other hand, she does not make use of her right of cancellation until after commerce with her husband, and bases her claim upon a prior enfranchisement, she can only recover proportional dower ; though some authorities allow her fixed dower in this case also. No right of option exists where the wife is only partially enfranchised, or is undergoing enfranchisement by contract. Nor does it exist in favour of an enfranchised husband united in the bonds of matrimony with a slave.

Section 2

Ifaf is an obligation recognised by law. It means that one must see to it that one's father, **father's father, or **mother's father, do not take to evil courses, by coming to their assistance, if they have not sufficient means to procure a female companion. One may acquit oneself of this duty—

1. By giving one's father or grandfather enough for a free woman's dower :

2. by saying to them, " Get married ; I will pay the dower " ;

3. by contracting a marriage in their name, by virtue of an authorisation from them, but promising dower on one's own account ; or

4. by giving them a female slave, or the money necessary to buy one.

The household expenses are also chargeable to the child or grandchild. The father or grandfather must be content with the way in which their child or grandchild wishes to discharge this duty. They cannot insist upon a legitimate wife if child or grandchild wishes to give a slave as concubine. Neither can they insist upon a particular person whose price or dower is very high ; but if they are in agreement with child or grandchild as to the sum, then it is for them to obtain for that sum the person they prefer. One is even bound to supply a new companion to father or grandfather, not only where the first marriage or concubinage has been dissolved by death, apostasy or redhibitory defects in the woman, †but also where father or grandfather has repudiated his wife for some valid reason. *Ifaf* is obligatory only where a father or

grandfather needs a companion but has not the means to procure one. The fact of need is legally established by the declaration of the interested party, which does not require to be confirmed on oath.

In no case may father or grandfather cohabit with a slave of child or grandchild ; though, according to our school, an infraction of this rule entails only an obligation to pay dower, and not liability to punishment for fornication. A child born of such prohibited commerce is free, and his father's legitimate descendant ; but if the contravention has been committed with regard to a slave of son or grandson already enfranchised by reason of maternity, the latter does not become the enfranchised slave of the father or grandfather because she has borne him a son. *But if she was not such an enfranchised slave to the son or grandson, she becomes so to the father or grandfather, who then owes the former her value plus dower, but not the value of the child. In consequence a father or grandfather cannot contract a lawful marriage with a slave of his son or grandson ; †but where the son or grandson becomes the owner of his father's or grandfather's wife, the marriage remains valid. One cannot marry a slave of a male slave who is undergoing enfranchisement by contract ; and where such male slave becomes owner of a female slave who is already his master's wife, this marriage is *ipso facto* dissolved.

Section 3

According to the opinion adopted by Shafii in his second period, a master who has authorised his slave to marry, is not obliged to undertake payment either of the dower or maintenance that the wife or children may claim. For these one may distrain upon what the slave gains by his ordinary work and also upon any accidental profits he may realise. In the case of a slave generally authorised, the profit he makes, †and even the capital furnished by his master, may be distrained upon for dower and maintenance. In the case of a slave who makes no profit and has not been generally authorised, both charges must be defrayed by him after his enfranchisement like a personal debt. Only one authority admits the master's responsibility in this case.

An authorisation to a slave to marry does not prejudice his master's right to acquire his company on a journey even though the slave may be in this way prevented from fulfilling his conjugal duties ; but so long as the master does not take his slave on a journey, he should allow him to pass his nights with his wife. As to the master's right to the slave's services during the day, this exists only where the former has guaranteed payment of dower and maintenance, for otherwise he must dispense with the slave's services, until the latter, by his labour, has gained enough

money for this purpose. If the master has guaranteed payment of dower and maintenance he may dispose of the slave's services and pay him a reasonable salary, or else himself entirely undertake to defray the cost of dower and maintenance, whichever he prefers as being most advantageous. Some authorities, however, allow him no choice in the matter, but consider him obliged to pay dower and maintenance, unless he prefers to forego the slave's services. A slave who, in contravention of the law, marries without his master's authorisation, is personally responsible for proportional dower, if the marriage has been followed by cohabitation. One authority even considers that payment of the dower in such case is a real charge involving if necessary the seizure of the slave after his enfranchisement. If it is not the case of a male but of a female slave whom the master has given in marriage, the latter retains a right to the fruit of her labour during the day, but must surrender her to her husband for the night. †In this case the husband is not liable for maintenance. †Neither is the husband obliged to accept an offer to remain with his wife in the master's house, even though the latter may be willing to allot a room specially for the use of the new *menage*. A master may take with him a married female slave on a journey, but in that case her husband has a right to accompany her.

Our school considers that there is no obligation on the part of the husband to pay dower to the master, if the latter has put the female slave to death, or if she has committed suicide, before the marriage has been really consummated. On the other hand, our school maintains the obligation of paying dower, if it is a free woman who has killed herself in similar circumstances ; or if, instead of the master, it is another person who has killed the slave ; or if the slave has died an accidental death. In all these cases dower is obligatory as in the case of an accidental death after a first cohabitation with a wife whether free or not. The master who sells a married slave may retain the dower obtained for her ; and he may even keep half of it, if she is repudiated by her husband before cohabitation. Dower is not due if both parties belong to the same master.

BOOK 34.—DOWER

Section 1

The Sonna has introduced the practice of stipulating in the contract of marriage a fixed dower, though this stipulation is not rigorously necessary. Anything that may legally be sold may be made use of for dower. The husband who has promised a certain object as dower is liable for its loss before the bride has taken possession of it, as in other agreement, or according to one authority as if it were a deposit intrusted to him. If one admits, with the majority of jurists that a woman's title to a certain object stipulated as dower is not absolute, but merely contractual, before possession of it has been taken, one cannot allow her any right to dispose of it by way of sale, until it has been actually delivered to her.

From this principle it also follows :—

1. That in case of accidental loss, before taking possession, a husband owes proportional dower ; and the wife cannot demand the value of the thing originally promised.

2. That the woman is presumed to have taken possession, if she has herself caused the loss.

3. That in case of loss caused by the fault of another person, she may either claim from her husband the payment of proportional dower, transferring to him her claim against the other person, or transfer to that other person her claim against her husband, and recover damage from that person. That is the doctrine of our school.

Loss caused by the husband's fault has the same consequences as accidental loss ; or, according to others, as loss caused by another person ; and where one has promised as dower two specified slaves, one of whom dies before possession is taken, our school considers the agreement as cancelled so far as the deceased slave is concerned. The wife then has a right of option, *i.e.* she may either renounce the promised dower, or accept the surviving slave. In the first case the husband owes proportional dower ; in the second he must compensate her for the loss of the dead slave by giving her, in addition to the surviving one, a reasonable part of the proportional dower. Our school also grants a right of option to the wife, if the specified object that forms the dower

has been damaged by redhibitory defects, before taking possession ; but in these circumstances she may only choose between proportional dower and acceptance pure and simple of the defective objects. The husband, however, is never liable for accidental loss of produce from objects promised as dower, even where he may have been able to deliver them but have refused such delivery on the ground of his liability for the execution of the contract. Nor does our school consider him obliged to pay any indemnity for the use he may make of the promised object before delivery, *e.g.* by riding an animal included in the dower, or using it in any other way.

On the other hand, the woman is not obliged to place herself at her husband's disposition, until she has taken possession of the dower, at any rate when this consists of certain definite objects, and the parties have not stipulated any time of payment. †Where, on the other hand, dower is promised by a certain date, she cannot refuse cohabitation, on the ground that she has not yet taken possession, even though the time may have expired. In a case where the two parties have stipulated that neither shall be obliged to perform the duties resulting from the marriage contract, before the other has done so, it is the husband, according to one jurist, who should begin by delivering the dower ; while, according to another, neither party can oblige the other to begin by fulfilling his or her engagements, but the one that begins can oblige the other to comply also. *But most authorities maintain that under these circumstances the parties should jointly fulfil their obligations ; that is to say that the husband should begin by depositing the dower with some person of irreproachable conduct, the wife should then place herself at her husband's disposition, and after this the depositary should hand her the dower. A woman who, in spite of this stipulation of joint fulfilment, does not insist upon her husband's beginning by paying the dower, may claim it as soon as she has placed herself at his disposition ; but if the husband does not accept her offer immediately upon her declaring her readiness, she may change her mind and refuse to surrender herself to him until he has discharged his pecuniary obligation. Where, on the contrary, the husband has immediately accepted cohabitation, his wife can no longer draw back. If the husband in spite of a stipulation of joint fulfilment, begins by paying, the woman must place herself at once at his disposition ; and, according to the authority who considers the husband bound to pay in any case, he may even claim back the dower if she refuses without valid excuse. Finally, on insisting that his wife place herself at his disposition, the husband should at her request allow her a little time for her marriage toilet. The length of this delay may be fixed, if necessary, by the

court, but must not exceed three days. A wife can never insist upon any delay on the ground that her menstrues are not yet finished; but a minor and a sick woman are not obliged to surrender themselves to their husband before being physically capable of fulfilling their conjugal duties.

A wife's right to dower becomes irrevocable by the fact of copulation, even where this is a prohibited act, *e.g.* during menstruation. The right becomes irrevocable also upon the death of one of the parties; but not, according to the opinion of Shafii in his Egyptian period, by the fact of the wife's having crossed the threshold of the bridal chamber without giving herself to the work of the flesh.

Section 2

A husband who has promised for dower things that cannot form the basis of a contract, *e.g.* wine, a free man, or something usurped, owes proportional dower, or, according to one jurist, the value the wine would have if it were vinegar, the man would have if he were a slave, or the usurped thing would have if it had remained in the possession of the rightful owner. *A promise to give something of which one is the rightful owner and also something usurped is null as regards the latter but valid as to the former, without prejudice to the wife's right—

1. To renounce the two promised objects, and claim proportional dower, or, according to one authority, the value of the two promised objects; or

2. To accept the object that may lawfully form the basis of a contract, plus a reasonable part of the proportional dower, in compensation for the loss of the other object.

Only one authority maintains that she must in all cases be content with the lawful object and nothing more, unless she prefers proportional dower.

By stipulating as follows: "I give you my daughter in marriage, and I also give you these clothes, if you will give me this slave here," one has legally combined a marriage, *a dower and an exchange, the slave constituting partly an equivalent for the clothes, and partly proportional dower. On the other hand, a stipulation "that the woman shall be given in marriage for a thousand pieces of money, which pieces belong or shall be given to her father," does not constitute, according to our rite, a legal promise of fixed dower; such a stipulation, though not affecting the validity of the marriage, obliges the husband to pay proportional dower.

A marriage cannot be concluded by granting one of the parties a conventional option of cancellation within a certain time ; *but if such option has been stipulated, not with regard to the marriage itself but with regard to the dower, this clause only is null, while the marriage remains valid. As to the other conditions that may be added to a marriage contract, it is necessary to distinguish—

1. Conditions already implicit in the law relating to marriage, and such as are without any object. Both are considered as of no effect ; but the marriage and the stipulation as to the dower remain valid.

2. Conditions inconsistent with the precepts of the law relating to marriage. Such are illicit, and have the effect of invalidating the stipulation as to dower ; but they leave the marriage intact, so long as they are not incompatible with the fundamental object of that institution. Among such conditions are reckoned, for instance, a stipulation that the husband cannot take another wife so long as he is married to the first, or a stipulation that he is not liable for maintenance. Where, however, these conditions are incompatible with the fundamental object of marriage, *e.g.* a stipulation that would deprive a husband of his right of cohabitation with his wife, or a stipulation that he would repudiate her, the marriage itself is null and void.

*If, when marrying several wives at once, one promises a joint dower, the contract is illegal so far as concerns the dower, but the marriage remains intact, and each wife may claim proportional dower. *It is the same where a guardian concludes a marriage for his ward, while granting the bride a larger dower than she could claim as proportional dower ; or where the father or grandfather, who may legally dispose of a girl's hand without asking her consent, stipulates for her a dower less than her proportional dower. When the parties agree in secret upon a certain dower, but declare publicly that they have agreed upon a larger dower, it is the dower which they really have in view that the husband should pay, at least according to our school. A marriage is null and void where a woman's guardian, after receiving from her a request to give her in marriage for a thousand pieces of money, gives her in marriage for a less sum. And similarly, where the woman has given her guardian no instructions as to dower, but he has stipulated for a sum inferior to her proportional dower. A single authority has maintained that in this case the marriage remains intact, but the stipulation is void and the woman can therefore insist upon proportional dower. [*In both of the two cases cited the marriage is valid ; but the husband owes proportional dower.]

Section 3

When a woman whose intelligence is sufficiently developed for her to manage her property, asks her guardian to give her in marriage without dower, and he therefore refuses the dower offered by the husband, or does not stipulate one, this act is considered as a perfectly legal liberality. This is also the case where the master gives in marriage one of his female slaves, declaring at the same time that he wants no dower for her. But a free woman whose intelligence is not yet sufficiently developed for her to manage her property, cannot be legally married without stipulating some dower, even with her consent. *However, this remission of dower has this result only, that the husband owes his wife nothing in virtue of the marriage contract; but it does not prevent him from owing proportional dower if the marriage is consummated, †to be assessed according to the woman's condition at the time of the contract. A free woman thus given in marriage without dower, may also insist upon her husband assigning her a dower before cohabitation; and she need not place herself at her husband's disposition until it has been so assigned, †and delivered. It is also rigorously necessary that the wife should declare herself to be satisfied with the dower assigned her by her husband; *but the law does not require that the two parties should know exactly the amount that the woman would be able to claim as proportional dower. Under these circumstances the husband can validly assign a †dower within a certain time, or of an amount exceeding proportional dower. Only a few authorities have expressed the opinion that dower assigned in this way upon the wife's demand cannot exceed her proportional dower in the case where both dowers would consist in things of the same kind. If the husband refuses to assign his wife a dower under these circumstances, or if the two interested parties cannot come to an agreement upon the subject, the court must determine the amount in money current in the locality, and this amount can be claimed immediately. [The court can only give judgment for an amount that would appear to it to be reasonable as proportional dower; it should first therefore ascertain the amount of this latter.]

†A third party cannot lawfully assign a dower to a woman whose guardian has not stipulated for one, even though such person may be willing to pay it from his own property.

Dower assigned by the husband or determined by the court is subject to the same rules as ordinary fixed dower, that is to say that half is due upon repudiation before cohabitation, while nothing is due upon repudiation not only before cohabitation but even before assignment of the dower. *Death of one of the parties before cohabitation or assignment

takes place does not make proportional dower obligatory. [*On the contrary, in this case proportional dower would really be due.]

Section 4

"Proportional dower" is the amount a woman may claim as dower in due proportion to the dowers stipulated or obtained by other women of the same condition. It is estimated—

1. According to the genealogy of the person in question, *i.e.* according to the dowers granted to the women who are the nearest agnates of the man from whom she derives her origin, such as her whole sister, her sister on the father's side, the daughters of her whole brother or brother on the father's side, her father's sisters, and so on. If there are no agnates who are women, or if they have not yet been given in marriage, or if their dowers are unknown, their relatives on the mother's side, such as mother's mother or sisters, are taken into consideration.

2. According to the wife's age, mental faculties, wealth, virginity, or otherwise, and in general all qualities usually appreciated in a spouse. If a wife has special qualities or defects, that give her greater or less value than her relations, she must also be granted a dower either greater or less as the case may be. The fact that one of her female relatives consented to receive an exceptionally small dower ought not to be taken into consideration; but the fact that they usually consent to receive a smaller dower when given in marriage to a member of the family ought to be so.

Proportional dower is always due after an illegal marriage followed by coition. In this case the amount is estimated according to the value of the woman upon the day the coition took place; or where cohabitation is prolonged, according to the highest value the woman had during the whole period she was in her husband's house.

[Prolonged cohabitation in consequence of an error as to the validity of the marriage obliges the husband to pay only a single dower; but if the error arose from several successive causes, *e.g.* if the husband cohabited with his wife at first under the belief that he had married her, and afterwards under the belief that she was his slave, he owes as many dowers as he has committed errors. Cohabitation with a usurped slave, or with a person forced to undergo forbidden carnal intercourse, has for effect that the woman may claim as many dowers as there have been acts of coition. Cohabitation, however, even prolonged, between a father and his son's slave, between the joint owner of a slave and that slave, or between a master and his slave undergoing enfranchisement by contract, necessitates payment of a single dower only; though there are

some authorities who admit even in these circumstances a plurality of dowers, unless where there has been no separation between the acts of coition.]

Section 5

A separation of the parties before the consummation of the marriage, either at the wife's instance, or in consequence of some fact for which she is responsible, *e.g.* a dissolution of marriage by reason of redhibitory defects in the wife, puts an end to the husband's obligation to pay dower. Where separation before consummation has been caused, either by an act of the husband, such as repudiation, conversion, apostasy, anathema ; or by reason of some third party, as relationship through fosterage, caused by an act of the mother of one of the parties ; the husband is always liable for half the dower which the wife could have claimed had the marriage remained intact. The obligation to leave to the wife half the dower is explained by some authorities in this way that the husband has the right to renounce the marriage at the price of this sacrifice ; ††but most jurists maintain that the half reverts to him *ipso facto* upon repudiation, etc.

Any increase derived from the dower after the separation belongs half to the husband, and if the wife separated from her husband has already taken possession of the dower, she must indemnify the husband if the dower has perished while in her possession. This compensation takes place by replacing the perished objects by other similar ones, if they are sold by measure or weight, or otherwise by paying their value. If the objects that form the dower have not perished but have merely become deteriorated while in the wife's possession, the husband can none the less recover the half if he is satisfied with that, or he can abandon the whole of the dower as it is to the wife, and claim half the value it had before deterioration. Deterioration before the wife has taken possession results under these circumstances in obliging the husband to be satisfied with half the dower as it is ; but if this deterioration has been caused by a third party from whom the wife has recovered damages, she should give over half of this to her husband. As to increase derived from the dower before the separation of the parties, the wife profits by it where the increase has a separate existence from the principal object ; but where this increase remains united to the principal object then half of it goes to the husband if the wife prefers to let him have his half in kind, but if she prefers to give him half of the original value she alone profits by the increase. The husband must in all cases respect the wife's decision as to this. Where an object that forms part of a dower has become both ameliorated and deteriorated before

separation, *e.g.* if a palm tree has grown, or a slave become older or learnt a new trade, but has also become tainted with leprosy, the husband becomes part owner, *i.e.* owns half the object, if the interested parties agree to settle the account in that way, otherwise he receives only the original value of the half that reverts to him. The sowing of a field is considered a deterioration, its mere ploughing an amelioration. The pregnancy of a slave or of an animal counts as both profit and loss, though according to some jurists that of an animal is pure profit.

The production of a spathe on a palm-tree is considered as an increase that remains united to the principal object. Where a palm-tree forming a dower already at the moment of separation bears fertilised fruit, the wife is not obliged to pluck them, and if of her own accord she does so, she indicates by this her desire that the tree shall half belong to her. When, under these circumstances, the husband does not oppose the wife's request that only half the palm-tree shall be given him provided the fruit are not plucked before the season, †the wife cannot draw back from her proposal and must gather the fruits, while the tree becomes the joint and undivided property of the pair. When, on the other hand, it is the husband who makes the suggestion, the wife's consent does not prevent his changing his mind, and paying her half the value of the tree ; provided always that the ownership of the half of the tree is never vested in the husband, so long as the party that has a right of option has not yet decided.

By " original value of dower " is understood the minimum value of the object between the day when dower was promised and the day the wife took possession.

Where a husband has promised his wife, in place of dower, to teach her the Koran, and where, by a repudiation before the instruction is complete, the fulfilment of this promise is impossible, then he owes her proportional dower ; or, if the marriage has not been followed by co-habitation, only half.

A woman repudiated before consummation of marriage, who has already transferred the ownership of the dower of which she had taken possession, owes her husband half the value of what she received ; †but if she has lost the dower and then regained it, it is on the original object itself that the husband may make good his claim.

*A woman who gives her husband her dower after receiving it, and is afterwards repudiated before consummation, still none the less owes him half of what she received ; and by virtue of the same principle a wife who has given her husband only half of what she received, owes him the half of what is left, plus a quarter of the whole dower. Another jurist, however, allows the husband in these circumstances only the half

of the remainder, while according to a third he may choose between half the whole amount of the dower, and half of the remainder plus a quarter of the whole. Where, on the other hand, the dower does not consist in a particular object but in an obligation on the husband's part, our school allows him nothing if, in the above circumstances, his wife has rendered it to him. According to the opinion adopted by Shafii in his second period, the wife's guardian can never give up the rights set out in this section.

Section 6

A woman repudiated before *or after consummation of marriage, to whom the law does not allow half dower, may demand a pecuniary indemnity called *motah*. This is so also in the case of separation, at any rate when this separation is not the result of anything for which the woman is responsible. It is recommended that the *motah* should never be less than thirty drahms, and where the parties cannot agree as to the amount of the *motah*, the decision rests with the court, which should take into account the condition of both the litigants. Some authorities, however, maintain that the court should have regard to the husband's condition only; some only to that of the wife; others admit no legal minimum, provided that the *motah* consists of something that can form the basis of a legal obligation.

Section 7

In case of proceedings as to the amount or the quality of the dower, the court should, in default of proof, administer an oath to the parties, and, if necessary, to their respective heirs. Where both sides take an oath, the law presumes that no fixed dower has been legally promised, and consequently the husband owes proportional dower. †The same rule applies to the case where the wife maintains in court that her husband promised her a specified dower, and he denies it. †If the wife alleges in court the existence of the marriage and the promise of a proportional dower; while the husband admits the marriage, but denies the promise of dower, or says nothing upon this head; the court should ask him to repeat his defence more precisely. If he then mentions an amount inferior to the proportional dower demanded by his wife, the general rule must be followed and an oath administered to both parties. But if the husband still denies the promise, or says nothing, the oath is administered to the woman only, and judgment entered according to her demand. †In the case where proceedings are taken about the amount of dower, not between the husband and wife, but between the husband

and the guardian of a minor or the curator of a lunatic, the rule mentioned above as to the mutual oaths of the parties is observed all the same. Where a wife alleges that her husband married her on such and such a day for a thousand pieces of money, and again on another following day for the same amount, he owes two thousand if the two contracts are established, either by an admission on his part, or by other proof. When the husband, in these circumstances, admits the two contracts, but denies his liability, either on the ground that he has not cohabited with his wife at all, or on the ground that he did not do so after one of the two marriages, and confirms this statement on oath, the presumption is in his favour, but he loses his right to recover half the dower he has paid. But if he asserts that on the second occasion he was merely repeating the words of the former contract, without intending to conclude a second marriage, this means of defence is not admissible.

Section 8

The marriage feast is an institution of the Sonna. According to one authority its observance is strictly necessary ; and some even raise this idea to the rank of a dogma. An invitation to a marriage feast should be accepted as if it were an individual obligation, or, according to others, as one for which the Moslem community is collectively responsible. Some jurists, however, consider such acceptance merely as an obligation introduced by the Sonna, *i.e.* of the same nature as the marriage feast itself. Whatever may be its nature the obligation exists only under the following conditions :—

1. That the invitation is not only sent to rich persons from whom a present may be expected.

2. That the invitation is for one day only ; for if the invitation mentions three consecutive days, the guests may excuse themselves from attending on the second day ; while it will be even blamable in them to accept the invitation for the third day also.

3. That the invitation is not accepted from fear, or as a thing to be proud of.

4. That one is not afraid of meeting among the guests some one from whom one has received an injury, or with whom it is not fitting for one to appear in the same gathering.

5. That the feast is not accompanied by illicit amusements ; unless one feels assured that one's presence will cause the shocking objects to be banished. By "shocking objects" are to be understood, *e.g.* silken carpets, representations of animals upon the ceiling, walls, cushions along the walls, curtains or garments ; but such representations may

lawfully be depicted upon the floor, and upon carpets or cushions spread upon the floor. One may even depict upon the ceiling or the walls images of animals without heads, or representations of trees. For it is only forbidden to depict living things in their natural state.

Fasting is no reason for refusing an invitation to a wedding feast; and so far as regards a supererogatory fast, it is even preferable to break it if one's absence is likely to embarrass the host.

The guests should eat of the dishes offered them, without saying anything. They must not put their fingers in the dishes except to take out a piece of food offered to eat, unless it be from some motive that they know the host will approve. They may blamelessly throw pieces of sugar, etc., at the newly married pair. They may even pick up again what they have thrown; but it is better not to.

BOOK 35.—SHARING OF THE HUSBAND'S FAVOURS; AND DISOBEDIENCE OF WIVES

Section 1

The husband should distribute his favours equally between his wives. If he falls into the habit of passing the night with one of them, he should do so with the others in rotation; but it is not considered a sin if he prefers to sleep by himself, whether he has many wives or only one. But this permission granted to the husband to sleep apart gives him no right to neglect his wives; in that case it would be blamable. A wife who is sick or *ratka* or *karna*, or who has menstrues or lochia that prevent coition, does not on that account lose her right to receive her husband in her turn; but a disobedient wife cannot claim this right.

A husband who has no room reserved for himself alone must visit his wives in their own rooms; and this is the preferable course even where he has a particular room to himself, though strictly speaking he may then make his wives come to him in rotation. But he is forbidden—

1. †To go and see one of his wives in her room, and make another come to his room, unless for some adequate reason, *e.g.* where the former is lodgéd nearer to him than the latter, or where he is afraid to make the former cross a garden or a road, or on account of her youth, etc.

2. To instal himself in the apartment of one of his wives, and there receive the visits of the others in rotation.

3. To lodge two wives in the same room, unless with their consent.

The husband may arrange as he pleases the way in which he visits his wives in turn, whether he goes in the morning and stays till next morning, or goes in the evening and stays till next evening; in any case it is the night that constitutes the essential part of the visit, and the day is merely an accessory. The only exception is for a husband whose occupation is at night, for instance, a watchman, in which case the rule is inverted. Where the night constitutes the basis of the visit, the husband should not leave the wife whose turn it is during the night to visit another wife, except in case of necessity, *e.g.* if the latter becomes dangerously ill. Even then, if the absence is prolonged, the wife whose

turn it was should be afterwards compensated. During the day, however, the husband may go to his other wives, not only in case of necessity, but for any purpose, to arrange his things, etc., provided his absence is not excessively prolonged. †If during the day one leaves the wife whose turn it is, to make a necessary visit into the room of another, one need not compensate the former, provided always one does not have connection with the latter, though there is no objection to caressing her. ††But where, on the other hand, one leaves the wife whose turn it is to go and see another without adequate motive one must always compensate the former ; though in general one is not obliged to pass an equal portion of the day with one's wives when visiting them in rotation.

The husband may regulate the duration of each periodic visit as he pleases, provided that the visits are not for less than one night and one accessory day, and provided, according to our school, that they are not for more than three nights and three days. It is to be recommended not to exceed the minimum. ††On the other hand, the husband may not himself choose which wife shall have the first turn, for this must be decided by lot. This rule, however, has been brought into question by some jurists who maintain that the husband may himself lawfully indicate in what order he shall periodically visit his wives. He may not grant to one of his wives a longer visit than he pays the others ; except that a free wife may demand that her husband shall remain twice as long during each visit to her than with a slave wife ; and with the further exception that if he takes a new wife he must be with her for seven consecutive nights if she is a virgin, or if otherwise, for three ; and in both these cases he owes no compensation to his other wives. Finally, the Sonna has introduced the practice of allowing a new wife who is not a virgin the choice between three nights without subsequent compensation to the other wives, or seven nights with such compensation.

A wife who starts alone upon a journey, without being authorised to do so by her husband, should be considered as a disobedient wife who consequently cannot demand upon her return that her husband shall make up for the visits she has lost by her absence. When, on the contrary, she has undertaken the voyage with her husband's authorisation, one must distinguish, so far as concerns compensation, between a journey undertaken in the husband's interest or in the wife's. In the former case she should be subsequently compensated ; in the latter, Shafii, during his Egyptian period, rejected compensation. A husband may not select some of his wives to accompany him upon a change of domicile ; but in all other cases of change of abode, †whether for a long or a short journey, he may be accompanied by some of his wives, chosen

by lot. He need not afterwards compensate those that remain behind unless at the end of his journey he makes a prolonged stay, in which case he must do so for the length of that stay, †but not for the time occupied in the return journey.

A husband may decline to allow one of his wives to transfer to another her right to his favours, but when he has consented, and one wife has renounced her rights in favour of another specially designated, he must pass with the latter all the nights which he would have passed with both. In these circumstances some authorities allow the husband to let the ordinary visit follow immediately upon that which is the result of this renunciation, even where these visits do not come next to one another in the usual order of rotation. Where a wife renounces her rights generally in favour of all the other wives, the husband should share his nights equally with the others ; where she renounces in favour of the husband the latter may dispose of these free nights as he pleases ; though, according to some jurists, he must even in this case observe an equal distribution.

Section 2

At the first indication of disobedience to marital authority a wife should be exhorted by her husband without his immediately breaking off relations with her. When she manifests her disobedience by an act which, though isolated, leaves no doubt as to her intentions, he should repeat his exhortations, and confine her to her chamber, but without striking her. [*He may have recourse to blows, even where disobedience is manifested by an isolated act.] Only where there are repeated acts of disobedience may a husband inflict corporal chastisement.

A husband who keeps from his wife what she may legally claim, *e.g.* refuses her her proper turn in his visits, or does not give her sufficient for her necessary maintenance, should be ordered by the court to fulfil his obligations. A husband of a worrying temperament, or one who treats his wife harshly without her giving him any cause for it, should first receive an exhortation from the court, and if this is without result must undergo what correction the court may think fit. Where husband and wife accuse each other, the court should appoint some reliable man to ascertain the facts of the case. The latter, after hearing what both parties have to say, should take whatever measures are rendered necessary by the circumstances in order that the party in the wrong may for the future perform his or her duty towards the injured party. In a case of very grave discord the court should appoint two arbitrators, one from the husband's family and one from the wife's, who should then arrange the matter as if they were the agents of the

parties ; or, according to one jurist, by virtue of their nomination by the court. If they are considered as agents, the interested parties must approve their nomination, and the arbitrator for the husband must be authorised by him to pronounce repudiation, or to accept compensation for a divorce ; while the arbitrator for the wife should be authorised by her to offer compensation for a divorce, or to accept repudiation, also for a compensation.

BOOK 36.—DIVORCE

Section 1

Divorce is the separation of husband and wife for a compensation paid by the wife, whether the husband uses the word "repudiation" or the word "divorce." Divorce is permitted only to a husband who can lawfully repudiate his wife. Thus a slave or a man legally incapable by reason of lunacy can divorce only on condition that the master or curator receive the compensation paid. A female slave may claim a divorce even without her master's authorisation, whether the compensation consists in some obligation on her part or in some particular object. If it consists of some particular object the divorced slave is personally responsible to her former husband for proportional dower; or, according to one authority, for the value of the object she has promised. Where her master has authorised the slave to obtain a divorce he may either designate a particular object as compensation or fix the amount of the obligation she may contract towards her husband with this object. In the former case the husband may claim the object as his property, in the latter he may recover the amount from the slave's subsequent earnings, if she has not exceeded the limits of the authorisation. Where the authorisation has been given without any restriction as to the amount, compensation will still be paid from the slave's future earnings, and will consist of the proportional dower of the slave in question. When a husband proposes a divorce or a repudiation for a thousand pieces of money to his imbecile wife, her acceptance merely operates as a revocable repudiation; if she refuses the offer, she is not repudiated. On the other hand, a woman may lawfully obtain a divorce upon her death-bed, in which case the compensation is a debt due from the estate, unless it exceeds the proportional dower, when the excess becomes a charge upon the third of which she may dispose. *A revocable repudiation does not prevent a woman claiming a divorce, but an irrevocable one does.

Compensation has neither a maximum nor a minimum. It may consist of an obligation on the part of the wife, or of some particular thing, or even of the use of such thing. But a woman who has promised,

e.g. an unknown thing, or a quantity of wine, owes proportional dower, instead of the compensation agreed upon. However, according to one jurist, the promise of a quantity of wine obliges the woman to pay its value instead.

Divorce may be effected by means of an agent, both on the one side and on the other ; but the husband's agent may not consent to a divorce for a less sum than that fixed by his principal, nor for a sum less than the proportional dower where his principal has given him no instructions upon the matter. Where the agent has not observed this rule there is no divorce, nor repudiation ; though one authority maintains that in these circumstances the divorce holds good and proportional dower is due *ipso facto*. Where the wife's agent has been authorised by her to offer a thousand pieces of money as compensation, and he has done so, the divorce is of course valid. And this is so also where the agent has promised two thousand pieces instead of one thousand, saying that he was acting in accordance with his instructions ; but in that case the compensation is *ipso facto* reduced to the amount of the proportional dower ; or, according to one authority, either to the sum fixed by the wife, or to the proportional dower, whichever is most advantageous for the husband. If the wife's agent effects the divorce upon his own responsibility, the act is considered as done by a third party, that is to say that the agent is personally responsible for the compensation promised. *If the agent omits to declare his capacity as agent, or the fact that he is acting upon his own responsibility, the wife owes the amount of compensation she had authorised her agent to offer, and the balance offered is owed by the agent. An infidel subject of a Moslem prince, a slave, and a person legally incapable through imbecility, may act as agents for offering or accepting a divorce ; but legal incapacity prevents an agent from taking possession of the compensation. †A husband may lawfully appoint a woman to be his agent for divorce or repudiation. But husband and wife may not appoint the same individual to represent them in a divorce ; though some jurists allow this.

Section 2

Separation in terms of a divorce is really a repudiation, and this must be taken into consideration where it is a question of the necessity of an intermediate husband, if one desires to remarry the woman in question. One jurist, however, maintains that a divorce has the same consequences as a dissolution of marriage for redhibitory defects, which means that in his opinion a divorce does not count as a repudiation, as regards the necessity for an intermediate husband.

According to those authorities who consider divorce as really repudiation, the word "dissolve" should be considered as an implicit term for describing divorce, †but the word "ransom" is, according to them, the equivalent of divorce; while the jurist who likens it to a dissolution of marriage for redhibitory defects is of a contrary opinion. According to the former theory, that divorce is repudiation, †the wife owes the husband as compensation the amount of the proportional dower, unless there is some special stipulation as to the amount. This theory considers also that the divorce is valid even though pronounced in terms that imply repudiation, provided that such is the intention; and even though use is made of some other language than Arabic. It is considered that a divorce is implied where the husband says, "I sell you yourself for so much," and the woman answers, "I buy myself."

Where the husband begins by making the offer, and adds the amount of compensation, *e.g.* by saying, "I want to repudiate you," or "I want to divorce you for so much," it is in any case a conditional offer to effect a bilateral agreement, even according to the theory that considers divorce equivalent to repudiation. Consequently the husband can always withdraw his words, so long as the wife has not declared her acceptance of the offer made her. Moreover, the law requires that in these circumstances acceptance must be declared before any considerable interval has elapsed from the time of the offer. The acceptance must relate to the offer. Thus there is no divorce where the husband says, "I want to repudiate you for one thousand pieces of money," and the wife accepts, replying, "It is agreed, but for two thousand," or *vice versâ*. Nor is there any divorce where the husband says, "I wish to repudiate you three times for one thousand pieces of money," and the wife answers, "I only accept one for a third of that amount." But where, on the other hand, there is no essential difference the divorce is valid. Thus if the husband says, "I wish to repudiate you three times for a thousand pieces of money," and the wife answers, "I accept one repudiation for that sum," he has legally repudiated her thrice for the amount declared. When it is not a conditional offer of divorce that the husband makes, but a conditional divorce that he pronounces, saying for example, "when you give me," or "when you have given me," the law allows no retractation on his part. In this case verbal acceptance is not required nor even immediate payment. The words "if you give me," or "when you have given me," bring about identical legal consequences, except that they require payment to be made as soon as possible. If, instead of the husband, it is the wife who has taken the initiative in asking to be repudiated, and the husband has consented; this is a bilateral contract of the same nature as a piece of job work. In this

case the wife may withdraw her request at any time before her husband has granted it; and he must make up his mind as soon as possible, otherwise the offer is considered as *ipso facto* withdrawn. A request on the wife's part "to be repudiated three times for one thousand pieces of money," granted by the husband for one repudiation only, and for a third of the amount, results in the woman being only once repudiated.

A divorce, or a repudiation for compensation, is never revocable, unless the parties have reserved this right; but such a reservation *ipso facto* annuls the stipulation as to the compensation. Only one authority considers, even where there has been this reserve, that the divorce has the effect of an irrevocable repudiation, and maintains that the wife owes proportional dower in addition. When a wife, after requesting to be repudiated for a certain amount, abjures Islam, and does not retract her error before the end of her period of legal retirement, she is considered to have lost her status as wife by the fact of apostasy, and owes nothing as compensation, whether her husband has or has not granted her request, and whether the marriage has or has not been consummated. But where the wife has returned to the faith before the expiry of her period of retirement; she is considered as repudiated for the sum offered; at least if the husband has in the meanwhile granted her request. A divorce is not rendered invalid because offer and acceptance are separated by some unimportant words.

Section 3

The following words on the part of a husband: "You are repudiated and you owe," or "you owe me so much," constitute merely a revocable repudiation, unless the wife has herself previously asked to be repudiated and offered the same amount as compensation. It does not even matter whether the wife accepts the offer made to her by the husband, for in any case the phrase does not imply that the money is due by her as compensation. †Only where the husband afterwards declares that he meant definitely to repudiate his wife for the amount mentioned, and she accepts this subsequent explanation, must she be considered as divorced. Where the wife has begun by asking for repudiation for a compensation, the above phrase is considered as a favourable reply to her request, and she is consequently divorced. According to our school the phrase, "You are repudiated on condition that you owe me so much," is equivalent to the phrase, "You are repudiated for so much;" that is to say that the wife, if she consents, is divorced, and owes the promised amount. It is the same where the husband says, "You will be repudiated if you will guarantee me a thousand pieces of money," provided

that the wife gives an affirmative reply as soon as possible. The phrase, "When you guarantee me one thousand pieces of money you are repudiated," does not involve repudiation if the wife only guarantees some smaller sum, but it does if she guarantees the amount mentioned or double that amount. Similarly the following words pronounced by a husband against his wife, "If you guarantee me one thousand pieces of money you may yourself pronounce your repudiation," have the effect of divorcing her for one thousand pieces of money if she definitely accepts the entire proposal; but not if she merely guarantees the amount without divorcing herself, or repudiates herself without guaranteeing the amount. A repudiation pronounced on condition that the woman transfers some amount of money has effect as soon as the stipulated amount has been delivered to the husband, †who becomes its owner from that moment. A stipulation to deliver is equivalent, according to some, to a stipulation to transfer; but according to the greater number of authorities it is merely an ordinary suspensive condition. It is understood that in this case possession need not be taken immediately.

[By adding a condition to "deliver" instead of one to "transfer" the compensation, a mere revocable repudiation is pronounced; and the condition is fulfilled by the fact of the husband taking possession of the object, even as the result of some violence.]

A condition that a wife shall give a slave possessing certain specified qualities, as in a contract of *salam,* is not fulfilled if the slave given has not all the qualities stipulated, and the woman is consequently not considered to be repudiated; but if the slave, though possessed of the stipulated qualities, is tainted with redhibitory defects, the condition is fulfilled and the repudiation consummated; but without prejudice to the husband's right to return the slave on account of his defects, and to claim as compensation the amount of the proportional dower. According to one authority, however, he can claim in these circumstances only the value of the slave, had he had no defects. A condition to give "a slave," without further description, is fulfilled by the transfer of any slave, whatever his qualities may be; provided it is not a usurped slave, for in that case the husband can claim as compensation the amount of the proportional dower.

Where a woman asks her husband to repudiate her three times, for a thousand pieces of money, while the husband has only one repudiation left to pronounce, he has a right to demand the entire sum when pronouncing this repudiation. Others, however, maintain that only a third of the amount is due to him under these circumstances; while still others are of opinion that he can demand the thousand pieces if

the woman acted knowingly, but only a third if she made a mistake as to the number of repudiations her husband could still pronounce. If the wife asks for a repudiation for a thousand pieces of money, and the husband replies by repudiating her for a hundred, she owes him only the amount declared by him. Others maintain that in this case she owes him a thousand ; while still others do not admit any obligation, as there has been no consent. A request to be repudiated " to-morrow for a thousand pieces of money," results in the woman being obliged to pay proportional dower, if the husband repudiates her either on the next day or earlier without adding that she shall be free from the next day. According to one authority, however, there are jurists that do not allow this subtle interpretation, but consider the wife liable for the amount mentioned if the repudiation takes place, even though it may be before the day indicated by her. In any case this repudiation is irrevocable.

††Where a husband says to his wife, " When you enter the house you are repudiated for a thousand pieces of money," she is really repudiated if she accepts the proposal and enters the house, and she owes her husband the amount mentioned. A single authority maintains that in this case she owes proportional dower, and others raise this opinion to the rank of a dogma.

A third party may lawfully ask for the divorce of another's wife, even against her will. To this proposal must be applied all we have said about the expressions used in ordinary divorce and their consequences when used by or to the wife herself. A person appointed by the wife as her agent to ask for a divorce may do so either as her agent or upon his own responsibility. A third party may even appoint the wife herself an agent to ask for a divorce in the interests of that third party ; but the wife may of course refuse to act as such agent. If a third party asks for a woman's divorce and falsely states that the wife has appointed such third party her agent, the husband's consent has no legal effect. A father may ask for his daughter's divorce like any other person ; that is to say that when acting in his own name he is personally responsible for the compensation ; but when acting on his daughter's account, either in his quality as guardian, or falsely alleging an appointment by her, there is no divorce. A father who of his own accord promises compensation from his daughter's property is as little justified as if he had promised his son-in-law a usurped object.

Section 4

Where the husband denies the fact of a divorce asserted by his wife, there is a presumption in his favour on his taking an oath. Where,

on the other hand, the husband maintains that he has repudiated his wife for so much, while she asserts that she has been simply repudiated without compensation, the law presumes an irrevocable repudiation without compensation. In proceedings as to the nature or amount of the compensation the court should, in default of proof, administer an oath to the litigants ; when, if both take it, the wife owes proportional dower.

If a divorce has been obtained for a compensation of " a thousand " without specifying what, but the parties are in agreement as to the nature of the things of which this quantity has been stipulated, the wife owes her husband a thousand things of this kind. Some authorities, however, maintain that a stipulation of " a thousand " without adding what, is inadmissible in a court of law, and that the woman always owes in such a case proportional dower. The same controversy exists as to the case where one of the parties maintains that the stipulation of " a thousand " implies " dinars," and the other that it means " drahms " or copper money. According to the first theory the court should administer an oath to both parties ; but according to those authorities who do not admit the validity of such a vague stipulation, the wife owes proportional dower when she does not deny the husband's claim altogether, without its being necessary to administer an oath to the parties.

BOOK 37.—REPUDIATION

Section 1

In order that a repudiation should be valid the law requires that the husband should be a sane adult Moslem. A repudiation may be pronounced in a state of drunkenness. A repudiation is valid, even where pronounced unintentionally, if the husband uses explicit terms; but if he uses implicit terms, he must really intend to repudiate his wife.

By explicit terms are meant, "repudiation," "separation," "dismissal," "I repudiate you," "You are repudiated," "You are discharged," "O repudiated woman!"; †but where the mere words "you" and "repudiation," with or without the article, are pronounced without indicating the relation between them, such a meaningless exclamation has no legal effect. Our school admits that repudiation may be explicitly pronounced in any other language as well as in Arabic, provided the expressions employed correspond to the terms just mentioned. The following expressions are considered to be implicit terms: "I render you your liberty," or "You are free." †Local expressions specially used to denote repudiation, even though not actually mentioning repudiation itself, are considered by law as explicit. Thus some persons say, "the woman I was permitted to enjoy," or "the woman God permitted me to enjoy will henceforth be to me a person with whom connection is forbidden."

[†On the contrary these words should be considered as implicit.] As implicit terms are also considered the following: "You are henceforth isolated," "free," "separated," "cut off," "irrevocably repudiated," "You must observe on my account a period of legal retirement," or "period of purification," "Go back to your family," "Your rope is on your withers," "I have no further need of you," "Leave me," "Go away," "Leave me alone," "Bid me good-bye," etc. Enfranchisement is an implicit manner of announcing repudiation; and *vice versâ*, repudiation implies enfranchisement; but repudiation does not imply injurious comparison, nor *vice versâ*. Such phrases as: "Connection with you is henceforth forbidden me," or "I declare connection with you to be forbidden me," indicate either a repudiation or an injurious

comparison, according to the husband's intention ; and if he had both in view he may afterwards declare which of the two he intends to effect. According to come authorities, however, these phrases always imply a repudiation, while according to others they always imply an injurious comparison. The phrase, "Your eye," or any other part of the body, "is forbidden me," does not render cohabitation with the woman positively prohibited to her husband, but the latter owes the expiation prescribed for perjury, *even though he may have had no intention of forbidding himself cohabitation with her. However, according to another doctrine, such phrases should be considered as not said. Such phrases as we have mentioned, if pronounced against a slave, have the effect of enfranchising her, if such is the master's intention ; but if he intended thus to forbid himself the right of cohabiting with her as regards the part of the body referred to, or if he had no particular intention when using these phrases, they have the same effect as regards the slave as in the case of the wife. If, in repudiation, one uses implicit terms, the intention must accompany the whole sentence ; or, according to some authorities, the first word.

A person who has the use of his tongue may not indicate repudiation by signs ; though some authorities admit signs in these circumstances as equivalent to implicit terms. As to a mute it is agreed that he may legally form and dissolve all kinds of obligations by means of signs ; and, where every one understands what he means, signs constitute on his part an explicit method of repudiation. Where, on the other hand, persons of highly developed intelligence can alone understand the signs, they are considered as an implicit manner of communicating the mute's ideas. A husband who, though having the use of his tongue, writes to his wife that she is repudiated, obtains the desired effect. But if he has so written without serious intention the marriage remains valid. If a husband writes to his wife : "You are repudiated from the time this letter reaches you," the repudiation is effected by the receipt of the letter ; but if he uses the phrase, "from the time you have read my letter," the result depends upon whether the woman can read. If she can, she is repudiated only from the moment she has read it herself, †not if another person reads it to her ; if she cannot and if the letter is read to her, this has the same effect as if she had read it herself.

Section 2

A husband may lawfully grant his wife the right to pronounce her own repudiation, a proceeding which Shafii in his second period likened to a transfer of property. The law requires that a wife so authorised

should exercise the right soon afterwards. Thus one may say to one's wife : " You may yourself pronounce your repudiation for one thousand pieces of money," and after this she is irrevocably repudiated upon pronouncing the repudiation, and also owes the sum mentioned. One jurist, however, compares this proceeding to an appointment as agent by the husband, †and consequently does not insist on the wife's pronouncing the repudiation soon afterwards. Admitting this principle the difficulty arises whether the husband's offer must be formally accepted by the woman to enable her to use her right of pronouncing her own repudiation, a controversy we have discussed when speaking of the agent. However, whatever may be the nature of the proceeding, all are agreed that the husband may retract his words, so long as the wife is not really repudiated. When, on the other hand, the proceeding is admitted to be merely a transfer of property, the phrase, " When we are in the month of Ramadan you may pronounce your repudiation," though used by some, is devoid of meaning and consequently void.

Repudiation takes place also in the following cases :—

1. If the husband says to the wife, " Do the act that obliges me henceforth to abstain from you ; " to which she replies, " I do it ; " at any rate where the intention on both sides was to imply a repudiation, but not otherwise.

2. If the husband uses an explicit phrase, and the wife replies implicitly, intending to indicate repudiation.

3. If the husband uses an implicit phrase, intending to indicate repudiation, and the woman replies explicitly.

In virtue of these principles three repudiations are admitted, if such is the intention on both sides, even where neither the husband on granting his wife the right to repudiate herself, nor the wife on accepting the offer, may have actually spoken of " three." On the other hand, there is only one repudiation—

1. †Where neither of the parties speaks of " three," and only one intends to accomplish a triple-repudiation ; and

2. Where one of the parties uses the number " three," but the other speaks of only one repudiation.

Section 3

Repudiation pronounced in a dream is void ; and it is the same with regard to a repudiation pronounced by a husband by mistake, with no definite intention. The words used should always be interpreted in accordance with the succession of ideas they represent. Thus a woman whose name is Talik is not repudiated by the mere words *O*

Talik, if the intention is to call her, †or where there is no special intention to call her. Even in the case of a woman of the name Tarik or Talib the law admits a presumption in favour of her husband who says to her *O Talik*, if he declares afterwards that he only meant to call her, but made a mistake in the letter. This, however, is without prejudice to the fact that a repudiation pronounced by way of banter or jest carries all the legal consequences of a real repudiation ; as does also a repudiation pronounced against a woman erroneously supposed not to be one's wife, either because her features cannot be distinguished in the obscurity, or because the husband does not yet know her, the marriage having been concluded by his tutor or agent. A stranger who pronounces a repudiation in Arabic without understanding the meaning of his words is not considered to have repudiated his wife ; though, according to some authorities, this repudiation is valid, if the husband's intention is to repudiate, even though he may not understand every word he uses.

A repudiation extorted by violence has no legal effect, unless it duly appears that the husband already had the intention of repudiating his wife, *e.g.* if after being constrained to pronounce a triple repudiation, he reduces it to a single one ; or if after being constrained to pronounce it explicitly or conditionally, he pronounces it implicitly or unconditionally ; or lastly if after having been forced to say, " I repudiate you," he says, " I dismiss you," or *vice versâ*. By " violence " in a legal sense is meant the power to cause a person the ill with which one has threatened him, whether such power consists in authority or legal force, provided the person in question cannot escape and really believes the threat will be carried out if he does not do what is demanded. Thus it is considered " violence " to threaten any one with serious blows, imprisonment, loss of property, etc. ; though, according to some authorities, a menace, to be a cause of nullity, must relate to a person's life, or to the loss of a limb, or to blows that would endanger life. Violence is a cause of absolute nullity, even if the person against whom it is exercised has made no mental reservation upon obeying. Only a few authorities assert that a person neglecting without valid excuse to make a mental reservation, when obeying violence, cannot claim nullity. By " mental reservation " is meant, *e.g.* the act of thinking of another person when repudiating one's own wife under pressure of a menace.

When one has temporarily lost one's reason through liquor or medicine, one is none the less capable of pronouncing repudiation or disposing of one's property in general ; and, according to our school, one is none the less responsible for one's words and actions. Only one of our jurists denies all consequence to the words or actions of a drunken

man; while several admit his responsibility, but maintain that he can never derive any advantage from such a condition.

Repudiation is valid where reference is made to "A quarter of you," "A part of you," "One of your limbs," "Your liver," "One of your hairs," or "One of your nails," as being repudiated. According to our school it is the same where one says, "Your blood is repudiated;" but not if one speaks of that which comes from the human body, as saliva, sweat, sperm, or milk.

Our school does not accept a repudiation where the husband says to his wife whose right hand has been amputated, "Your right hand is repudiated." The phrase, "I am repudiated by you," spoken by the husband, implies a repudiation of his wife if such was his intention; but if by this obscure phrase he did not mean to indicate repudiation, †or even if his intention to repudiate did not specially refer to his wife, a repudiation does not take place. Intention to repudiate is also rigorously necessary where one says to one's wife, "I am irrevocably repudiated by you;" but authorities are not agreed as to whether these words must refer to some particular woman. Finally the phrase, "I am about to observe a period of purification," spoken by the husband is senseless and consequently void; though a few authorities consider it sufficient to repudiate one's wife if such was one's intention.

Section 4

A repudiation pronounced against a woman to whom one is not married is void, even where intended to apply to an eventual marriage. †On the other hand, a slave, though he can only pronounce a repudiation twice, may all the same pronounce a third to take effect upon his eventual enfranchisement, or upon the woman entering such and such a house after that event. In the first case the effect depends upon the enfranchisement, and in the second upon both the enfranchisement and an entry into the house mentioned. The reader, however, should be reminded that this conditional repudiation affects only a wife who has been revocably repudiated, and not one who has been divorced in the meanwhile. Similarly a condition upon which a free man has based a third repudiation, *e.g.* that the woman enters such and such a house, is not fulfilled where she is irrevocably separated for some other reason after the second repudiation, and taken back again by her former husband, and then enters the house mentioned. Under these circumstances it matters little whether she has *or has not previously entered the house when free. Another theory, however, admits these precepts only in case of irrevocable separation by divorce or of dissolution in

consequence of redhibitory defects, but not in case of irrevocable separation caused by a new repudiation thrice repeated, occurring after the second repudiation.

A husband who repudiates his wife once or twice, but takes her back during her period of legal retirement, or marries her again after its expiry, and even after an intervening marriage with another husband, must, if he repudiates her again, take count of the former repudiations when determining whether this last one is or is not revocable. If, on the other hand, the new marriage has been effected after the woman has been previously repudiated thrice, she may again be three times repudiated before the new marriage is irrevocably dissolved.

A repudiation may lawfully be pronounced upon a death-bed. During a period of legal retirement rendered necessary by a revocable repudiation, the parties mutually retain their right of succession. This is not so in the case of an irrevocable repudiation; though Shafii in his first period admitted the wife's right, even in these circumstances.

Section 5

The phrase, "I repudiate you," or "You are repudiated," implies as many repudiations as the husband intends; and similarly with phrases indicating repudiation in an implicit manner. On the other hand, no account is taken of the number intended by the husband if he expressly says only once; though some authorities prefer, even in such a case, to keep to the intention and not to the letter. [On the contrary the majority maintain that in this case also the intention must be regarded; those authorities that would keep to the letter are in the minority.]

Where a husband is upon the point of saying, "You are repudiated thrice," and the phrase is interrupted by the sudden death of the woman, there is no repudiation if death occurs before the termination of the word "repudiated." If she dies between the words "repudiated" and "thrice" three repudiations must be admitted. Some authorities, however, admit in such a case only one repudiation, others none. If a husband says, "You are repudiated," "You are repudiated," "You are repudiated," these phrases equal three repudiations if separated by an interval. If, on the contrary, they follow immediately upon each other they constitute:—

1. A single repudiation, if the second and third phrases were merely intended by the husband to be reaffirmations of the first;

2. Three repudiations, if he intended to reiterate his will, *or had no definite intention in the matter;

3. Two repudiations, if he intended the second to reaffirm the first, and the third to be a reiteration of his will, or *vice versâ ;* or

4. †Three repudiations, if the third phrase was a reaffirmation of the first, and the second a reiteration of his will.

When saying, " You are repudiated, and repudiated, and repudiated," the third " repudiated " may lawfully be used to reaffirm the second, but not so the second to reaffirm the first. All this as to reaffirmation and reiteration relates only to a woman whose marriage has been consummated ; for where these phrases are pronounced against a wife before cohabitation there is only one repudiation. However, if one says to one's wife before cohabitation, " You are repudiated and repudiated, if you enter into such a place," the fact of entering is enough to cause her to be twice repudiated ; and this is also the consequence of the phrase, " You will undergo one repudiation then another," or " accompanied by another," it making no difference in this case whether the marriage has been consummated †or not. The words " a repudiation followed by another," or " preceded by another " constitute two repudiations if the marriage has been consummated, and otherwise one ; and the same with the words " a repudiation which follows another," or " which precedes another." If one says, " a repudiation upon a repudiation," it is necessary to distinguish between the cases where the preposition " upon " has been employed (1) in a conjunctive sense, (2) to indicate time or place, (3) in an arithmetical sense, or (4) without any specially indicated function. In the first case the phrase is admitted to imply two repudiations, and in the three others one. It must also be observed that the words, " The half of a repudiation upon the half of a repudiation," imply in all cases a single repudiation. The phrase, " A repudiation upon two repudiations " admits of the following explanations :—

1. It signifies three repudiations, when " upon " is used in a conjunctive sense.

2. It signifies one, when " upon " is used to indicate time and place.

3. It signifies two, when " upon " is taken in an arithmetical sense, *i.e.* knowingly so taken ; but only one when " upon " is taken in an arithmetical sense by a husband who does not know how to count, even if he intends to attribute to the phrase its ordinary meaning. Some authorities admit two repudiations in this last case.

4. It signifies one only where the husband does not intend to attribute to the word " upon " any special function ; though one authority admits two in these circumstances, at any rate if the husband knows how to count.

" A partial repudiation " is equivalent to a whole one ; and the same

is true of the phrase, "Two halves of a repudiation," unless the husband adds that the two halves are distinct repudiations, for in that case there are two complete repudiations, by virtue of the explanation of "a partial repudiation." †"The half of two repudiations" means one; "three halves," and "the half of one repudiation plus the third of another," imply two; but "the half plus the third of a repudiation" constitutes one only. If one says to one's four wives, "I inflict upon you," or "You can share amongst you—a repudiation," or "two repudiations," or "three," or "four," all are repudiated once. However, where one intends each of the repudiations to be shared amongst the women, all are twice repudiated by two repudiations, and thrice by three repudiations or four repudiations. †It must, of course, be understood that one cannot afterwards declare that one intended the women to share amongst them the fractions of repudiations pronounced against them, as such a complication would be obviously inconsistent with the words themselves. Finally, if a husband repudiates one of his wives and then says to another, "I want you to share the repudiation with her," or "You are as she," they are both repudiated, otherwise not. The same rule applies also to a case where one husband repudiates his wife, and another says to his, "You are as she."

Section 6

A repudiation may be pronounced under some reservation, provided this reservation immediately follows the repudiation, except where one may stop to take breath, or because one is a stammerer. [†It is also rigorously necessary that there should be an intention to make a reservation before the oath is finished, where the repudiation is accompanied by an oath.] The law requires that a reservation should not be of a kind to render the whole act illusory. Hence the phrase, "You are repudiated thrice, less twice plus once," indicates at least one repudiation; and according to some authorities it indicates three. By virtue of the same principle the expression, "Two repudiations, plus one less one," indicates three repudiations, or, according to some authorities, two. A reservation may consist either in the negation of a positive fact, or in the affirmation of a negative. Consequently the words, "Three, less two less one," indicate two; "Three, less three less two," also two, or according to some three, and according to others one. "Five less three," mean two, or according to some jurists three; ††"Three less the half of another," mean three. A repudiation pronounced under the reservation, "If it please God," or "With God's permission," is of no effect where a suspensive condition is intended;

and similarly a repudiation may not be made dependent upon any suspensive condition consisting in some future fact announced under the same reservation of "If it please God," or "By God's permission." This rule applies not only to repudiation, but also to enfranchisement, to an oath or a vow, and in general to all ways of disposing of one's property. †On the other hand, the words, "O repudiated woman! If it please God," must be considered effective; for in this case the repudiation does not depend upon the will of God by way of condition; but the words, "You are repudiated, with God's permission," constitute an illegal reservation.

Section 7

Any ambiguity in the phrasing of a repudiation should be interpreted in a sense favourable to the marriage, whether that ambiguity concerns the fact of the repudiation itself or the number of times it is pronounced. The husband cannot allege natural shyness as an excuse for ambiguity of expression.

When one husband says to his wife, "You are repudiated if this bird is a crow," and another husband adds, "If it is not a crow my wife is repudiated," the double repudiation does not take place where neither husband knows if it be a crow or not. But if the same person pronounces the two sentences against two of his wives, he wishes to divorce one of them; and he must not only ascertain the nature of the bird, but must inform the wife concerned. Where a husband has repudiated one of his wives and forgets which, the affair remains in suspense until he remembers; and under these circumstances he cannot be obliged by the wives concerned to put an end to the uncertainty. †A man who says to his wife and to another woman, "One of you is repudiated," and adds, "It is the other woman I meant," has a presumption in favour of the truth of his words, and the wife is not repudiated. ††Where, however, the wife is called Zainab, and he says, "Zainab is repudiated," he cannot afterwards assert that the words refer to another woman of the same name. The phrase, "One of you is repudiated," pronounced against two wives involves the repudiation of that one who is specially meant, and she must be informed; but if neither be specially intended, it must be decided afterwards to which of the two it is to apply. In either case both wives are free until the husband has informed them of his previous intention or of his subsequent decision. He should do this as soon as possible, and he owes them ordinary maintenance until the matter has been decided one way or the other. The repudiation dates from the time of pronouncement. Only a small number of authorities make it date from the moment the husband communicates his

decision, where he did not intend to indicate one particular wife at the time of pronouncement. It should also be pointed out to the reader that subsequent cohabitation with one of the wives is not enough to indicate which was intended, nor to decide which should be repudiated. Only a few jurists admit cohabitation to be a sufficient indication of a husband's subsequent decision. Where, on the other hand, in these circumstances the husband points to one of the wives and says, "This is the one I have repudiated," it is generally agreed that this is sufficient to indicate which of the two women he had specially in view when pronouncing the repudiation in the alternative; and where he says, "This one and that one," or "This one not more than that one," he has repudiated both. The obligation, either to say which wife was meant, or to decide to whom it shall apply, remains, though one or both should previously decease; for it affects not only the marriage but the right of succession. Consequently, in case of the husband's decease, before accomplishing this duty, *it is necessary to accept the declaration of his heir, as to the wife whom the deceased intended to repudiate; though the heir can never decide which shall be repudiated, if the deceased had not yet definitely decided. The words, "If this bird is a crow my wife is repudiated, and if it is not my slave is free," have as their consequence that the person who had spoken them, while ignorant of the nature of the bird, is deprived of his rights both over the wife and over the slave, until he has ascertained it. In this case, however, our school does not admit the declaration of the heir, in the case of the decease of the speaker; but the matter must be decided by casting lots. If the slave is thus selected he is *ipso facto* enfranchised. If the wife wins, the repudiation is inadmissible. †In this latter case the slave is not reduced to servitude, from which he has been in some sort liberated, but his situation remains in suspense.

Section 8

A repudiation is either in conformity with the Sonna, or contrary to it and consequently forbidden. Repudiations contrary to the Sonna are of two kinds:—

1. A repudiation during the menstruation of a woman with whom one has already cohabited. Some authorities admit repudiation in these circumstances when at the request of the woman herself; and all are agreed that menstruation is no obstacle to divorce, †except when the request is made by a third person. A repudiation in the words, "You are repudiated at the end of your present menstrues," †is in conformity with the Sonna; but our school considers as contrary

to the Sonna the expression, "At the end of your present period of purity," at least if the husband has not cohabited with his wife during that period.

2. A repudiation during a period of purity, when the husband has had connection with his wife in that period, and probably rendered her pregnant, though the existence of the fœtus may not have been ascertained. Neither may one lawfully repudiate a woman during a period of purity, †if one has cohabited with her during the menstruation that preceded that period ; though there is no objection to a divorce in these circumstances, nor even to a repudiation where the existence of a fœtus has already been ascertained.

Where a woman has been repudiated in a manner contrary to the Sonna, the practice has been introduced by it of revoking the repudiation, after which the woman may be again repudiated, in the first following period of purity. If a man says to his wife during her menstrues, "You are repudiated contrary to the Sonna," the repudiation is immediately effected, though it has to be revoked as we have just said. But where, in these circumstances the husband says, "You are repudiated in accordance with the Sonna," it begins from the first following period of purity.

Where the repudiation is pronounced against the woman not during her menstrues, but during her period of purity, the law admits the two following distinctions :—

1. The expression, "You are repudiated in accordance with the Sonna," implies an immediate repudiation, if the wife has not had connection with her husband during her present period of purity ; otherwise the repudiation takes effect from the end of her next menstruation.

2. The expression, "You are repudiated contrary to the Sonna," implies an immediate repudiation, if the wife has had connection with her husband during her present period of purity ; otherwise the repudiation takes effect from the beginning of her next menstruation. In both cases, however, the repudiation may be revoked later.

The words, "A regular repudiation," "The most regular," or "The most perfect," are equivalent to "according to the Sonna," while the words "faulty," "the most faulty," or "the most abominable," are equivalent to "contrary to the Sonna." The expressions, "as much in accordance with as contrary to the Sonna," or "as regular as faulty," always designate an immediate repudiation.

Several repudiations may lawfully be pronounced at one and the same time ; but the law does not permit the husband, after saying, "You are repudiated thrice," or "Thrice in accordance with the Sonna," to spread out these three repudiations over three of his wife's periods of purity ; unless he belongs to a school which, like that of Malik,

forbids pronouncing more than one repudiation at a time. †In this matter the court should respect the prescriptions of the school to which the husband belongs, even where his ideas are not in conformity with the precepts of our school, for it is a matter of personal status. This principle should be observed also in a case where the husband has used such expressions as, "You are repudiated, that is if you enter the house," or "If Zaid approves of it." †Where, on the other hand, the husband says, "All my wives are repudiated," or "Every wife I have is repudiated," adding, "I only meant some of them," no account can be taken of his individual opinions, as they are obviously opposed to common sense and public order. Such a reservation would only be admissible if it formed as it were a single locution with the principal phrase; where, *e.g.* one of his wives reproached a husband with having married other wives instead of confining himself to her, and he were to reply, "I repudiate all my wives," adding, "except you alone."

Section 9

The words, "You will be repudiated in such and such a month," "At the new moon of such and such a month," or "on the first of such and such a month," imply a term expiring at the commencement of the first night of the month. The term "the day" or "the first day" of the month expires upon the appearance of dawn on the first day; while the term "the end of the month" expires at the end of the last day of the month, or according to some at the beginning of the latter half. If one says during the night, "when a day shall have elapsed," one indicates the following sunset; but if one says it during the day one indicates the corresponding hour of the succeeding day. The expression "this day" pronounced during the day indicates a term expiring upon the next sunset; pronounced at night time it becomes a meaningless expression, and in consequence null and void. The terms "month" and "year" must be interpreted upon the same principles.

A repudiation commencing from some past time, *e.g.* "You are repudiated from yesterday," though referring to the past, counts only from the moment it was pronounced, if such was the husband's intention; though some maintain that such an intention is incompatible with the expression mentioned, and that the act is null and void. Where, on the other hand, the husband's intention really is that the repudiation should take effect from the previous day, the woman is already in her period of legal retirement, at the time when the repudiation is pronounced; and in these circumstances a declaration of the husband as to his intention is presumed to be true if substantiated on oath. And

similarly where he declares he was referring to a previous marriage with the same wife; at any rate if his remarriage with her is a fact of public notoriety.

Conditional words or expressions, that is the words "whom," "if," "where," "when," "from the time that," "every time that," "whatever," do not necessarily imply that the act takes effect immediately where they refer to a definite future event, provided always that a divorce be not intended. The single exception to this rule is when the husband says, "You are repudiated if you like," for such a condition can refer only to the wishes of the woman concerned. The phrase "every time that" requires a repetition of the event upon which the repudiation depends; but this is not the case with the other expressions mentioned above. The words, "When I repudiate you, you are already repudiated," followed in fact by a repudiation, simple or conditional, constitute two repudiations, provided in the latter case the condition is fulfilled. The expression, "You are repudiated as many times as I can repudiate you," followed by a repudiation, constitutes three repudiations if the marriage has been consummated but otherwise only one. The words, "If I repudiate one of my wives, one of my slaves is freed; on the repudiation of two wives, two slaves; of three, three; of four, four," pronounced by a husband who has four wives, and followed by the repudiation of all four, either at once or in succession, implies the enfranchisement of ten slaves; ††and even of fifteen, if the condition is expressed by the phrase, "every time that." A condition that a certain event shall not take place, expressed by the word "if," *e.g.* "if you do not enter such and such a house," is fulfilled, according to our school, when it can no longer be reasonably supposed that the event will take place. But when such a negative condition is expressed in some other way, it is fulfilled only by the expiration of the time within which it is possible for the event to happen. Where, on the other hand, the husband has used the following words: "You are repudiated since you have entered the house," or "Because you have not entered it," it is known at once in a positive manner if the woman is repudiated or not. [Unless the husband is not strong in grammar, and consequently does not always observe the difference between the conjunctions "in" and "an"; for in this case the expression is considered as an ordinary condition.]

Section 10

A condition "that the wife is pregnant" is fulfilled as soon as the existence of the fœtus is ascertained. If it is not ascertained, an

accouchement before six months is enough to indicate that the condition was fulfilled at the moment of repudiation; but if an accouchement does not take place until between six months and four years after the conditional repudiation, and if the woman in question has in the meantime cohabited again in such a way as may have rendered her pregnant, the condition is not fulfilled. †In the absence of subsequent cohabitation, the condition is fulfilled by an accouchement up to the extreme limit of four years after the repudiation. The phrase, "If you are pregnant of a son you are once repudiated, but if you are pregnant of a daughter you are twice repudiated," involves three repudiations if the wife gives birth to a son and a daughter; but the phrase, "If the child with which you are pregnant is a son you are repudiated once, and if it is a daughter twice" involves no repudiation in these circumstances. "If you have an accouchement you are repudiated," signifies that a woman giving birth to two children in succession one after the other, by the same husband, is repudiated for the first accouchement, and her period of legal retirement is regarded as terminated by the second; while the words, "Every time you have an accouchement you will be repudiated," implies the consequence that the giving birth to three children, not only by the same husband, but during the same accouchement, one after the other, involves two repudiations for the two first children, and the expiry of the period of legal retirement at the birth of the third. ††Now in this case the third repudiation has not yet taken place. If a husband pronounces against his four wives the words, "Every time one of you has an accouchement the others will be repudiated," and all four have an accouchement at one and the same time, each is repudiated thrice. Where, on the other hand, the accouchements are successive, the fourth wife is repudiated thrice, and also the first, provided that the latter's period of legal retirement has not expired at the time of the former's accouchement. As to the second wife, she is only repudiated once, upon the accouchement of the first; while the third is twice repudiated, *i.e.* upon the accouchements of the first and of the second; and further the periods of legal retirement of the second and third expire upon their respective accouchement. Some authorities, however, arrive at a different result, admitting that in such a case the first wife is not repudiated, and that each of her companions is repudiated once only. A special case exists where the wives in question have their accouchements two by two; then each of the two first is repudiated thrice, or according to some authorities once, and each of the two last twice.

A woman repudiated on condition she has her menstrues has a presumption in her favour on declaring upon oath that menstruation

has begun ; †but no such presumption exists in the case of an accouchement, for that is a fact that can easily be otherwise established. Nor does any presumption exist where one wife's repudiation depends upon the menstruation of another. Consequently where a husband pronounces against two of his wives the words, " I repudiate you both if you are actually both in a period of menstruation," and subsequently denies the simultaneous menstruation alleged by the two women, he has a presumption in favour of his denial upon oath, and the double repudiation he has pronounced does not take effect. If he merely denies the menstruation of one of them, that one is repudiated as a consequence of the menstruation of the other, admitted by the husband.

The words " if," or " When I repudiate you, you are already previously repudiated thrice," followed really by a repudiation, involve only one ; though according to some authorities they constitute three, and according to others have no legal effect at all. This divergence of opinion exists also with regard to the words, " If I pronounce against you an injurious comparison," or " anathema," or " an oath of continence," or " If our marriage is dissolved on my demand on account of redhibitory defects, consider yourself as previously thrice repudiated," at least where these conditions are accomplished. However, a repudiation pronounced as follows, " If I have with you lawful carnal intercourse, you are previously repudiated," is null and void, even though carnal intercourse should take place.

Where a repudiation depends on the will of the wife, it should be declared within a short time, at least when the repudiation has been pronounced while speaking to her ; †but this is not rigorously necessary where the repudiation has been pronounced in the third person, nor where this act depends upon the will of a third party. If the person upon whose will the repudiation depends has really declared his decision, the repudiation has its full legal effect, even though that decision may be contrary to his own wishes ; though according to some jurists it is not in these circumstances mentally accomplished. A repudiation may not depend upon the will of a minor of either sex ; though some jurists admit such a suspensive condition in the case of a minor who has attained the age of discernment. In all cases where a repudiation has been pronounced on condition that either the wife or some third party wishes it, it cannot be retracted before the one or the other has decided. The phrase, " You are repudiated thrice, unless Zaid prefers that it should be only once," is no repudiation if Zaid says he wishes it to be once only ; some, however, admit in these circumstances a single repudiation. *When one has made a repudiation depend upon some act one is about to perform oneself, the fact of having accomplished this act,

either without thinking of the consequences, or as the result of some violence, is not sufficient to fulfil the condition. The same principle must be followed where the repudiation depends upon the act of a third party, in all cases where the latter has an interest in the act, and knows what the consequences will be. For if it is an act indifferent to the third party, or if he is ignorant that the repudiation depends upon it, the fact of his accomplishing it without thinking, or as the result of some violence, is enough for the fulfilment of the condition.

Section 11

The words, "You are repudiated," followed by the act of lifting up two or three fingers, do not constitute two or three repudiations respectively, unless such was the intention of the husband who pronounced it; but where, under these circumstances, the husband adds, "so many times," then there are really either two or three repudiations. But where, even in this case, he declares upon oath that he raised the third finger only with the intention of indicating the two others united, the presumption is in his favour, and there are only two repudiations.

When a slave says to his wife, "At my master's death you will be repudiated twice," after which the master declares that the slave in question will be enfranchised at his death, †the master's decease causes the woman to be twice repudiated. These two repudiations, though originally pronounced by a slave, are considered to emanate from a free man, and are consequently revocable. It follows that the couple can remarry without an intermediate husband.

If a husband calls one of his wives and another answers and he says to her, "You are repudiated," believing himself to be speaking to the wife he called, †it is the wife that answers who is repudiated.

The words, "You are repudiated if you eat a pomegranate, and if you eat the half of a pomegranate," result in a wife being twice repudiated if she eats a whole pomegranate.

The law admits an oath as a way of rendering a repudiation conditional, whether the oath consists in an incitement to perform some act, or in its prohibition, or in the confirmation of some piece of news. Thus, upon saying, "You are repudiated if I confirm my words on oath," or "You are repudiated if you have not come out of such and such a house," or "If you have come out of it," or "If the matter is not as I have told you," a repudiation takes effect, by the fact of taking the oath, or by the fulfilment of the other conditions mentioned. When, on the other hand, the second condition consists in a fact about to happen, such as sunrise or the return of the pilgrimage, one cannot lawfully

complete the repudiation by an oath, since in that case the first condition is replaced by the second.

If any one inquires from a husband whether he has repudiated his wife and he answers, "yes," it is an admission on his part; though he may afterwards declare that he was speaking of a former repudiation he had since revoked; and if he confirms this subsequent declaration upon oath, he has a presumption in favour of the truth of his words. But where the inquiry is not purely interrogative, but made with the intention of requesting the husband to proceed to a repudiation, the affirmative reply is an explicit manner of repudiation; or, according to some authorities, an implicit one.

Section 12

A condition of eating a piece of bread or a pomegranate is not fulfilled so long as there remains a crumb or a pip. Where a husband and wife eat together some dates and mix the seeds, and the husband says to the wife, "If you don't separate your seeds from mine you are repudiated," and the wife puts each seed aside, the condition of repudiation is not fulfilled and the marriage remains intact, unless the husband wishes her to indicate which seeds were hers. When a woman has a date in her mouth and her husband repudiates her on condition she swallows it, and then changes his mind and makes it depend on her spitting it out, and then changes his mind again and makes the repudiation depend upon her taking the date in the hollow of her hand, and the woman on hearing these words quickly swallows half the date and spits out the other half, the condition is not considered to be fulfilled. When a husband accuses his wife of theft, and says to her, "If you do not admit that my words are true you are repudiated," and she replies, "I did steal," adding, "I did not steal," no repudiation takes place. Where a husband says, "If you do not name the number of pips contained in this pomegranate you are repudiated," the fulfilment of the condition may be avoided by the wife first mentioning a number known to be a minimum, and then continuing by naming all numbers from that one up to what is known to be a maximum. It must be understood of course that it was not the husband's intention to ascertain the number of the pips, for in that case the wife could not escape the dilemma by such an evasive reply. This principle applies also to the evasive answer already cited with reference to a wife accused of theft. Where one says to three of one's wives, "I repudiate her who cannot tell me the number of *rakas* that are obligatory in twenty-four hours," and one of them answers "seventeen," and another "fifteen, that is to say, Friday,"

and the third "eleven, that is for a traveller," none are repudiated. When one says, "You are repudiated until such and such a time," or "from such a time," the time is due the moment that a single instant of that term is passed. The condition, "If you see so-and-so," or "If you touch him," or "If you accuse him unjustly of the crime of fornication," is fulfilled by the acts mentioned, whether the individual in question is dead or alive. This, however, is not the case with a condition referring, *e.g.* to the act "of giving him a blow," for this condition clearly implies that the individual in question is alive.

Where a wife pronounces against her husband words considered blamable, *e.g.* "O imbecile," or "O ignoble husband," and he replies, "If I am so you are repudiated," the repudiation really has effect if the husband's intention is to punish his wife for her insulting language, even though he may not be imbecile. Where, on the other hand, the husband, by so replying, wishes to make the repudiation really depend on the condition that he is imbecile, the marriage remains intact if he is not. †And the same is the case where the husband has no special intention in saying this. A charge of imbecility implies that the individual in question has not the free disposition of his property; and that of being ignoble means, according to some, that he sets more store by the things of the world than by religion, which is practically the same as saying that with him cupidity has the better of morality and seemliness.

BOOK 38.—RETURN TO CONJUGAL UNION

A HUSBAND who has repudiated his wife in a revocable manner has a right to take her back so long as she is still in her period of legal retirement; that is to say, he may retract his words and take his wife back again, without for this purpose effecting a new marriage, provided only that in the mean time the marriage has not become illicit for any other reason. ††When a husband, after pronouncing a revocable repudiation, goes mad, it is for his curator to exercise the right of revocation, whenever he would have been permitted to contract a new marriage for the person legally incapable confided to his care.

A return to conjugal union is accomplished by the words, "I take you back," "I return to you," "I bring you back," †and even the words "render" and "retain" are admitted as explicit in this sense. †On the other hand, the expressions "give in marriage" and "marry" are implicit terms. However, in using the word "render" one should add "to me" or "to marriage with me," otherwise this verb is not sufficient. Moreover, in his second period Shafii rejected the doctrine that a return to conjugal union must be effected in the presence of witnesses; and though the revocation may be enunciated in implicit terms, the law does not permit it to be made dependent upon any condition. A return to conjugal union cannot be effected tacitly, *e.g.* by coition; but one must declare that one takes one's wife back.

A right to return of conjugal union exists only—

1. If a woman has really cohabited with her husband.
2. If the repudiation was not pronounced for a compensation.
3. If the repudiation is not the third.
4. If the period of legal retirement is not yet expired.
5. If cohabitation between the parties has not become prohibited for some other reason.
6. If the wife has not in the mean time abjured Islam.

Where the woman pleads that her period of legal retirement is already expired, the following cases must be distinguished:—

1. Where the period is calculated by months, and the husband

denies that the period is expired, the presumption is in his favour, if he takes an oath.

2. †Where she claims that the period has expired by reason of an accouchement, and it is proved that she has menstrues and has not yet passed the age of child bearing, the presumption is in her favour, if she takes an oath, provided the accouchement has taken place within an admissible time. The shortest duration of a normal pregnancy is six months and two instants from the marriage ; but if the pregnancy terminates by an abortion, it is one hundred and twenty days and two instants in a case where the fœtus already has a human form, and eighty days and two instants if the fœtus consists merely of a piece of shapeless flesh.

3. Where she pleads expiry of her period of legal retirement, on the ground that the three periods of purity required are passed, she has a presumption in her favour provided she takes an oath, and provided also that :—

(*a*) A free woman, repudiated during one of her periods of purity does not allege for the three periods together a shorter time than thirty-two days and two instants ; nor, if repudiated during her menstrues, a shorter time than forty-seven days and one instant.

(*b*) A slave, repudiated in these circumstances, does not allege shorter times than sixteen days and two instants, or thirty-one days and one instant, respectively.

These rules must be observed both in a case where the alleged expiration is in conformity with a person's ordinary periods, and also where that person usually has shorter or longer periods.

Coition between a husband and wife revocably repudiated does not operate in prolonging the period of return to conjugal union ; though the woman must begin a new period of legal retirement from the date of that illicit act. For carnal intercourse with the wife is prohibited during her period of legal retirement ; though if the husband has intercourse with her in contravention of this rule, neither the punishment for the crime of fornication, nor any arbitrary punishment, is incurred ; unless the misdeed is committed with full knowledge of this. In all cases, however, such cohabitation involves payment of proportional dower, if a return to conjugal union does not ensue ; or even, according to our school, if it does.

A repudiation that admits of a return to conjugal union does not prevent a husband pronouncing an oath of continence, an injurious comparison, a new repudiation or an anathema, so long as the time of reconciliation has not expired. The right of succession of either party remains intact during this period.

The law also recognises the following presumptions, provided that the party in whose favour they are established confirms on oath the truth of his words :—

1. In favour of the wife ; if the husband alleges having insisted upon a return to conjugal union before the expiry of the term, though admitting that the period of legal retirement had expired before the time of the proceedings, while the woman denies that the husband exercised his right in time. The parties it is supposed are in agreement as to the date of expiry; for example, if they agree that the period expired on Friday, but the husband alleges that there was a return to conjugal union on Thursday, while the wife says it was not till Saturday.

2. In favour of the husband ; if, in these circumstances, the parties agree as to the day upon which a return to conjugal union was demanded, but not as to the day of expiry of the period of legal retirement; for example, if they agree that the husband demanded a return to conjugal union on Friday, alleging that the period expired on Saturday, while the wife says it expired on Thursday.

3. †In favour of the party whose assertion is impugned by an exception; in a case where the husband maintains the priority of his demand, and the wife that of the expiry of her period of legal retirement, without either giving the exact date. There is a presumption in favour of the wife if she maintains that the time is expired, and the husband pleads in bar that he had already demanded a return to conjugal union ; and a presumption in favour of the husband if he maintains that he demanded a return to conjugal union before expiry of the period of legal retirement, and the wife pleads the illegality of the return, as it was only afterwards that the husband demanded it.

[If the parties are simultaneously cited to the court, so that it is not known which is the defendant, it is the wife who has the presumption in her favour upon taking oath.]

4. In favour of the husband, if he claims to have demanded a return to conjugal union, and the period of legal retirement is not yet expired at time of the hearing. Moreover, in all cases where the law admits a presumption in favour of the wife, she may retract it.

5. In favour of the wife, if the husband, after repudiating her once or twice claims to have had commerce with her during the marriage, and to be able in consequence to use his right of return to conjugal union, while the wife denies the coition, and consequently the right of return. Under these circumstances the husband has implicitly admitted that dower is due in virtue of coition, and if the wife has already taken possession of this dower, he cannot reclaim any part of it on the ground of the woman's denial of coition. On the other hand, if she has not taken possession, the wife can claim only half the dower.

BOOK 39.—OATH OF CONTINENCY

Section 1

An oath of continency is an oath uttered by a husband who can legally repudiate his wife not to have carnal commerce with her, either for an indefinite period, or for some period exceeding three months. In his second period Shafii established the doctrine that this oath need not necessarily be expressed by invoking the name of God or one of his qualities but that it is sufficient to make a declaration, under penalty of repudiating a wife or enfranchising a slave in case of non-fulfilment; or even that it is enough to say, for example, "If I henceforth have any carnal commerce with you, I engage before God to accomplish a prayer, or a fast, or a supererogatory pilgrimage," or "to enfranchise such and such a slave." An oath not to have carnal commerce with a woman with whom one is not bound in the bonds of matrimony is an ordinary oath and not an oath of continency, even where one may subsequently marry the woman.

An oath of continence is not permitted by our school: (1) where the wife is *ratka* or *karna;* or (2) where the husband is emasculated.

The following words, "I shall not have commerce with you for four months, and at the end of that period, by God, I shall not for another four months, and so on," †do not constitute an oath of continence, because the original term does not exceed four months. By virtue of the same principle there can be no doubt that two perfectly distinct oaths of continence are implied in the words, "By God, I shall have no commerce with you for five months, and upon the expiry of that time I shall have none for a year." A man who declares he will abstain from his wife until after some event that will certainly not happen in four months, for instance the descent of Jesus Christ upon earth, utters a perfectly regular oath of continence; but this is not so where there is reason to believe that the event will take place within four months, or where it is not certain that the event will occur at a more distant date. An oath of continence may be equally well enunciated in explicit or in implicit terms. By explicit terms are understood those that imply

carnal commerce without any doubt, *e.g.* "introduction of the penis," "coition," "copulation," and in the case of a virgin "deflowering." On the other hand, Shafii, in his second period, considered the following to be implicit terms: "touching," "contact," "cohabitation," "going to see," "covering," "approaching," etc.

Where one says, "If I afterwards cohabit with you, my slave shall be enfranchised," the oath of continence is broken *ipso facto* at the moment of losing in any way the ownership of the slave. The husband who, after pronouncing an injurious comparison against his wife, says to her, "If I cohabit again with you my slave shall be enfranchised in consequence of my injurious comparison," thereby utters a legal oath of continence; and even if he has not really pronounced previously an injurious comparison the court should none the less hold that he has uttered both an injurious comparison and an oath of continence, though perhaps mentally the man had no intention of pronouncing the one or the other. For the court is not concerned with what one thinks, but with what one says. If, however, the husband pronounces the words cited without a previous injurious comparison, and adds, "If I did pronounce an injurious comparison," he does not undergo the consequences of his oath unless such comparison was really uttered. An oath of continence has its full legal effect where one uses the words, "If I still cohabit with you, my other wife so-and-so will be repudiated," and in that case the latter's repudiation is effected *ipso facto* by an ulterior cohabitation with the wife against whom the words were pronounced; while the consequences of the oath cease to exist upon this repudiation.

He who says to his four wives, "By God, I will not cohabit with you any more," has uttered an oath of continence that renders illicit his cohabitation with all four of them, but not his cohabitation in general. Thus if he subsequently cohabits with three of them, he must abstain from the fourth; while the death of one or more of the wives, previous to any subsequent cohabitation, annuls the oath *ipso facto*. Where, on the other hand, he uses the words, "I will not cohabit with any of you," this is an oath of continence that at once renders illicit cohabitation with any one of them. *The words, "I will cohabit with you only once until the end of the year," constitute an oath of continence only on condition that more than four months of the year remain after the one cohabitation of which the husband speaks.

Section 2

Where a husband utters an oath of continence, the wife cannot complain of it to the court until the expiry of the term of four months,

the period of indulgence beginning from the time the oath was pronounced; and, in the case of a woman revocably repudiated, from the moment the husband demands the return to conjugal union. If the marriage has been consummated the oath of continence is interrupted *ipso facto* by the apostasy of one of the parties during the period of indulgence; and the fact of her returning from her errors before the end of her period of legal retirement, causes another such period to be incurred. On the other hand, temporary causes on the husband's part that prevent coition during marriage, without affecting its validity, do not affect either the length or the period of indulgence. Among these causes are cited fasting, *ihram*, sickness, and madness. Where, on the other hand, these temporary causes of prevention are on the part of the woman, they interrupt the course of the period of indulgence if they are physical, *e.g.* minority or sickness, and a new period begins as soon as the causes in question cease to exist. A few authorities require that the time elapsed before the existence of the cause of prevention should be taken into account; consequently they consider the course of the period of indulgence not as interrupted, but as merely suspended. The legal causes of prevention on the woman's part have no influence upon the duration of the period of indulgence, causes among which should be mentioned menstrues, and supererogatory fasting; †while, by way of exception, the obligatory fasting of the woman has the same effect as a purely physical cause.

An oath of continence is broken by coition during the period of indulgence; and in default of coition during this period, the wife may summons her husband, in order that he may decide either to take her back or repudiate her. Her neglect to do this immediately does not prevent her subsequently exercising this right, so long as the term of the oath has not expired. Taking back the woman at her request is consummated only by a real penetration, not by voluptuous actions of any other kind. Consequently this right to summons her husband does not exist where the woman is unfit for coition from any cause, *e.g.* menstrues or sickness. In case of prevention on the husband's part, the woman must observe the two following distinctions:—

1. If the cause of prevention is purely physical, *e.g.* sickness, all she can insist upon is that her husband should declare himself to be ready to fulfil his conjugal duties as soon as he is capable of doing so.

2. If the cause of prevention arises from some legal provision, *e.g. ihram*, the wife, according to our school, can only ask for repudiation.

The wife has no right to summons her husband, if there has been any carnal commerce between them, even where such commerce does not amount to a regular coition. *Where the husband refuses to choose between the two alternative courses open to him, the court should pronounce a repudiation for him, *i.e.* one revocable repudiation, without allowing him a three days' respite. *Coition by order of the court does not excuse the husband from legal expiation for a broken oath.

BOOK 40.—INJURIOUS COMPARISON

Section 1

An injurious comparison may legally be pronounced by any adult sane husband, even by the infidel subject of a Moslem prince, or by an emasculated person. A husband's drunkenness is no obstacle to the validity of an injurious comparison, nor to that of a repudiation.

The formulas by which the comparison may be explicitly announced are as follows :—

1. " You will be for me," or " in regard to me," or " with me," " as the back of my mother."

2. ††" You will be as the back of my mother," and nothing else.

3. " Your body," " your breast," or " your person will be as the breast," or " the body of my mother," or " like all the parts of the body of my mother."

4. *" You will be to me like the hand," " the bosom," or " the chest of my mother ; " and even a comparison to the eye of one's mother must be considered to be valid, if the intention is to abuse one's wife ; but not if the intention is to say something agreeable to her, or if there be no particular intention.

5. *" Your head," " your back," or " your hand will be to me as the back of my mother."

6. A comparison to one's grandmother by these formulas is also injurious, and our school extends this principle to all relatives within the prohibited degrees, with whom relationship is not accidental, *i.e.* with whom the husband could not be bound in the bonds of matrimony at any period of his life. Thus a nurse or a daughter-in-law are not included among relatives within the prohibited degrees, so far as concerns an injurious comparison. A comparison made either to a strange woman, or to a repudiated wife, or to a sister-in-law, or to one's father, or to a woman against whom one has pronounced an anathema, is null and void.

An injurious comparison may be made conditionally. Consequently the words, " If I pronounce an injurious comparison against my other wife, you also will be to me as the back of my mother," result

in the comparison pronounced against the other wife affecting both. Where, on the other hand, instead of speaking of one's wife, one says, "If I pronounce a comparison against so-and-so," *i.e.* a woman with whom one is not bound in the bonds of matrimony, "you," that is one's wife, "will be," etc., the comparison has no consequence as regards either, unless the husband's intention was to make a comparison of his wife depend upon his pronouncing the words of comparison against any other person. It is possible, however, that this conditional comparison may be accomplished later; *i.e.* by marrying the person in question and pronouncing a comparison against her. This rule applies not only to the case where one has spoken of a woman with whom one is not bound in the bonds of matrimony, but also to the case where one says expressly, "So-and-so who is not my wife." However, there are authorities who deny that the rule is applicable to this case; and the following expression, "If I pronounce an injurious comparison against so-and-so, though she is not my wife," is null and void, whatever the circumstances may be.

The words, "You are repudiated like the back of my mother," involve the following consequences, according to the husband's intention:—

1. They constitute merely a repudiation,
   (*a*) if the husband had no definite intention in pronouncing them;
   (*b*) if he intended to repudiate his wife;
   (*c*) if he intended to pronounce merely an injurious comparison;
   (*d*) if he intended as much the one as the other; or
   (*e*) if he intended to pronounce an injurious comparison by the words, "You are repudiated," and a repudiation by the words, "Like the back of my mother."

2. They constitute a repudiation, and, when this is revocable, also an injurious comparison in addition, if the husband intended to repudiate his wife by the words, "You are repudiated," and to pronounce against her an injurious comparison by the words, "Like the back of my mother."

Section 2

After pronouncing an injurious comparison the husband owes an expiation, if he goes back upon his word and takes his wife again before being otherwise separated from her. For such renewal of cohabitation becomes impossible, and the comparison is *ipso facto* annulled, as soon as it is followed by any other sort of separation, *e.g.* death, dissolution of marriage on account of apostasy, or redhibitory defects, repudiation

either irrevocable or revocable but not followed by a return to conjugal union, madness, †or the fact of becoming proprietor of one's wife, or of having pronounced an imprecation against her, at least where the accusation of the crime of fornication that led to the imprecation precedes the comparison. If the repudiation is followed by a return to conjugal union, our school considers this act as implying *ipso facto* a renewal of cohabitation, interrupted on account of the injurious comparison ; but where the marriage has been dissolved on account of the husband's apostasy, his return to the faith has not the same result according to our school. This return would merely permit the husband to resume the interrupted cohabitation. Expiation, once prescribed, remains obligatory, even where a renewal of cohabitation has been followed by another separation. And the husband must first acquit himself of the expiation as a debt towards God before resuming cohabitation, and even before permitting himself any voluptuous act. [*Such acts are lawful even before expiation.]

An injurious comparison may be pronounced to take effect by a particular time, and in that case the term must be duly observed ; though according to one jurist a comparison so limited has the effect of an unlimited comparison ; and according to another it is null and void.

†According to the doctrine of most authorities, resumption of cohabitation can only be effected by carnal commerce while the consequences of the comparison are still in force ; the mere fact of the woman living with her husband is not enough.

A husband who says to his four wives, " You are all to me as the back of my mother," thereby pronounces an injurious comparison against all four ; and if he takes them back as wives, he owes four times the prescribed expiation ; though, in his first period, Shafii maintained the opinion that in these circumstances the husband owes only a single expiation. But where the husband, without stopping, pronounces four times against his four wives the words, " You shall be to me as the back of my mother," there are four different comparisons, the first three of which are retracted. Where, on the other hand, he repeats the same words against one of his wives, it is necessary to distinguish :—

1. If the object of the repetition was to confirm his first words, in which case there is but one comparison ; and—

2. *If the object was to reiterate them, in which case each repetition involves a new comparison, though each implies the retractation of that immediately preceding it.

BOOK 41.—EXPIATION WITH REGARD TO INJURIOUS COMPARISON

Expiation is possible only where the husband intends to reconcile himself with God ; but it is not rigorously necessary that this intention should specially refer to the injurious comparison.

Expiation, in a case of injurious comparison, consists in the enfranchisement of a slave of either sex, a Moslem, with no physical infirmities that would prevent his working for a master or gaining a living. It is enough then to enfranchise a slave who is a minor, or bald, or lame so long as he is not wholly unable to walk, or blind of one eye, or deaf, or deprived of the sense of smell, or one that has lost his nose, his ears, or his toes ; but it is an insufficient expiation to enfranchise a slave affected with some chronic malady, or one that has lost a foot or a ring-finger, or a little finger, or two other fingers [or a thumb].

For the same reason it is insufficient to enfranchise a decrepit old man, a madman even with some rare intervals of lucidity, or a sick person whose recovery cannot be hoped for. †It would be considered sufficient, however, if the sick slave unexpectedly recovered. A person who owes expiation cannot purchase a slave whose degree of relationship would render enfranchisement obligatory with the object of freeing him by way of expiation ; neither can he by way of expiation bestow full liberty upon a woman enfranchised by reason of maternity, or upon a slave undergoing enfranchisement by contract, at least if the contract is valid. On the other hand, one may lawfully, by way of expiation, bestow full liberty upon a slave enfranchised by a will or conditionally ; though it must be understood that after pronouncing a conditional enfranchisement in favour of one's slave, one may not recur to this idea and enfranchise him under the same condition by way of expiation. There is, however, no objection to making an enfranchisement by way of expiation depend upon some condition. One may also legally enfranchise two slaves for two different expiations, in such a way that each of the expiations consists in the enfranchisement of half of the one slave and half of the other. It is even lawful to enfranchise the halves of two slaves for a single expiation ; †on condition, if the expiator is an insolvent debtor, that the other halves have already been enfranchised.

Expiation cannot consist in an enfranchisement for an indemnity, for this would be a bilateral contract, as much as a repudiation for compensation, or a divorce. However, as a general rule, enfranchisement is perfectly legal where a third party says to the master, "Bestow full freedom, for a thousand pieces of money, upon your slave already enfranchised by reason of maternity," and the master agrees to it. The person in question then owes the sum mentioned; †and this rule is applicable not only to the case of a slave enfranchised by reason of maternity, but also to any other enfranchisement. If the third party uses the words, "Enfranchise the slave for me for so much," the enfranchisement, though effected by the master, would be none the less considered by the law as coming from the speaker who consequently owes the sum mentioned. †This means that the latter is supposed to become the owner of the slave, as soon as the enfranchisement is pronounced by the master, after which the enfranchisement is at his charge.

Where the person owing expiation possesses in full property either a slave who can be enfranchised in this way or money necessary to buy one, and where he is not in actual need of one or the other for himself or his family, for maintenance, clothing, lodging, or furniture, he should enfranchise the slave he possesses or can purchase. But it is never necessary to sell one's immovable property or valuable securities for the purpose of obtaining money to buy a slave for an expiatory enfranchisement, when such sale would bring in no more than is necessary for living. †Nor is it necessary to sell for this purpose the house one lives in, or the slave who is an old servant of many years' service, even though their value may be greater than what may be called strictly necessary. The person owing expiation is not obliged to buy a slave in order to acquit himself of the expiation, if this can be done without a sacrifice on his part. *The solvency of the debtor is ascertained at the moment he should perform the expiation.

A person who is not able to enfranchise a slave by way of expiation should in place of this fast for two consecutive months of the lunar year to expiate his fault; †but the law does not require the intention not to interrupt the fast. If the fast is begun in the middle of a month, the remaining days are taken into account, and also a number of days in the third month equal to the number of days in the first month before the fast began. The continuity of the fast is interrupted if a day is allowed to pass without fasting, unless it has been physically impossible to perform this duty, or one has been ill; this is the doctrine maintained by Shafii in his second period. On the other hand, continuity is not interrupted by ceasing to fast on account of menstruation; or even, according to our school, by an attack of madness.

A person owing expiation being unable to fast, either from decrepitude or sickness, may instead of fasting nourish sixty indigent or poor people. Most authorities, however, do not admit sickness as a cause of exemption, except in the three following cases :—

1. Where one cannot reasonably expect to recover.

2. Where fasting would be particularly painful for the sick person.

3. Where the sick person is afraid of aggravating his malady by fasting, even though the actual malady in itself may not be of a nature to justify a deviation from the law.

The indigent and poor persons may not be infidels, nor Banu Hashim nor Banu el Mottalib; and the amount of nourishment due to each is a modd of provisions payable at the end of the annual fast. One may not give to the same indigent person a modd a day for sixty days instead of giving on one occasion sixty modds to sixty indigent persons, although the total quantity of modds is the same in the one case and the other. Nor may one give as provisions flour, or *sawik*, or bread, or provisions specially used at breakfast or supper.

BOOK 42.—IMPRECATION

Section 1

An imprecation may be pronounced only where there has previously been an accusation of the crime of fornication, and where this crime cannot be proved in the manner prescribed by law.

This accusation can be made explicitly or implicitly. It is made explicitly by the expressions, "You have rendered yourself guilty of the crime of fornication," "O man," or "O woman, guilty of fornication," or by an accusation of having knowingly introduced the penis into the vagina of a woman with whom commerce is prohibited, or into the podex of a man or of a hermaphrodite. The words, "You withdrew to the mountain," and even "You withdrew," are implicit; †but the expression, "You rendered yourself guilty of the crime of fornication in the mountain," is explicit. The following incriminatory expressions, "O libertine," and "O man of notorious misconduct," pronounced against a man, or "O wicked woman," and "You like deserted spots" uttered against a woman, or to say to one's wife, "You were no longer a virgin at the time of our marriage," imply an accusation of the crime of fornication, unless the person using them declares he had no such intention. In this latter case the law presumes that he is speaking the truth, provided he takes an oath to that effect. The words, "O son of a public woman," or "As for me I never rendered myself guilty of the crime of fornication," constitute insinuations against the person with regard to whom they are pronounced, but not a formal accusation, even if pronounced with that intention. The words, "I have had prohibited carnal commerce with you," constitute both a confession and an accusation of the crime of fornication. Where a husband says to his wife, "O woman, guilty of the crime of fornication," and she replies, "I never committed fornication except with you," or "You are more guilty than I," there is on the part of the husband an explicit, and on the part of the wife an implicit accusation. Where, on the other hand, the reply is, "It is true I committed the crime of fornication, but you were more guilty in the matter than I," there is a confession on the wife's part combined with an explicit accusation on the husband's.

The expressions, "Your vagina," or "Your penis has committed the crime of fornication," constitute an accusation of this crime; and it is the same where the speaker, instead of naming the genital parts, says, "your hand," or "your eye;" except that our school considers these latter expressions as implicit. Our school also considers as implicit the phrases, "You are not mine," or "You are not my son," spoken against one's child; but the accusation, "You are not the son of so-and-so," pronounced against the child of another is explicit, unless it relates to a child whose father has already disavowed it by a previous imprecation.

An accusation of the crime of fornication constitutes, when its truth cannot be proved in the manner prescribed by law, the crime of defamation. The defamer must suffer definitely prescribed corporal punishment, if the accusation is made against any one who is *mohsan;* otherwise he incurs only an arbitrary correction. By *mohsan* is understood any adult sane free Moslem man or woman abstaining from any carnal commerce that would render him liable to the prescribed penalty for fornication. Our rite regards as incompatible with such abstinence an act of cohabitation with a slave to whom one is related within the prohibited degrees; †but this incompatibility must not be extended to commerce with one's wife during her period of legal retirement, that results from a cohabitation due to error, nor to that with a slave belonging to one's son, nor to that with a woman one has married without the assistance of a guardian. If a person unlawfully accused of the crime of fornication commits this crime later, there is no ground for accusing and punishing as a defamer the person who accused him; but no such impunity results from the former losing his quality of *mohsan* in some other way, *e.g.* by apostasy. When one has once indulged in forbidden carnal commerce, one may never again in all one's life become *mohsan.* The right to demand the punishment of a person guilty of defamation passes to the heirs of an injured party; but this right lapses upon forgiveness. †Each inheritor may exercise this right without the concurrence of the others; and forgiveness by one transfers his right to the others.

Section 2

A husband may with impunity accuse his wife of the crime of fornication, even though he may be unable to furnish legal proof, when he knows for certain she has been guilty of it, or when he has grave and well-founded suspicions upon the subject. Among these may be included the fact of its being of public notoriety that the woman is guilty of the

crime, and that so-and-so is her accomplice, and that the guilty pair were surprised together in a desert place.

If a woman gives birth to a child of whom her husband knows for certain he is not the father, he should disavow it, if he does not want it to be considered his. The law admits such disavowal only where—

1. The husband has had no carnal intercourse with his wife during the whole period of the marriage.

2. The accouchement takes place less than six months after their first coition, or more than four years after the last.

A child born between the limits of six months and four years after the first coition may only be disavowed upon the double condition that not only a menstruation subsequent to the last coition must prove that the woman cannot have been rendered pregnant by her husband, †but also that the child is born more than six months after this purificatory menstruation. ††A husband may never base his disavowal upon an assertion that during copulation he withdrew soon enough not to fecundate his wife. If the crime of fornication, though proved, took place at a moment that admits of the child being either that of the husband or of the woman's accomplice, the law declares illegal, not only the disavowal, ††but also the accusation of the crime of fornication, and the imprecation.

Section 3

An imprecation consists in the solemn declaration four times repeated, "God is my witness that I am sincere in accusing this my wife of the crime of fornication." If this accusation is not pronounced in presence of the accused, the name and descent must be indicated so as to leave no uncertainty as to the person intended. The husband must also invoke upon himself "the malediction of God," if he has brought the accusation in bad faith. If the imprecation is to be accompanied by the disavowal of a child the husband should mention it at once, adding to each enunciation of the formula, "And in asserting that the child to which she has just given birth," or "this child," "is an illegitimate child, of whom I am not the father." The woman on her side may rebut the accusation by repeating four times, "God is my witness that my husband brings this accusation in bad faith," and after that invoking "the wrath of God" upon herself, if her husband is sincere in his accusation. †It is rigorously necessary to use these particular words; an oath may not be lawfully substituted for the phrase, "God is my witness," nor may the words "malediction" and

"wrath" be interchanged, for inserted before the phrase, "God is my witness." It is also rigorously necessary that the imprecation should take place only upon an order of the court, which must contain the formula to be pronounced, with the legal consequences that result from its pronouncement. The woman may not pronounce her formula before the husband has finished his. A mute may choose between signs clearly indicating the meaning, and its reduction to writing. The formula may also be pronounced in a language other than Arabic; except in the case of persons who can speak Arabic even though it may not be their mother tongue.

An imprecation should be rendered more solemn—

1. By the choice of the time when it is pronounced, *i.e.* Friday, at the close of afternoon prayer.

2. By the choice of the place where it is pronounced, *i.e.* the most noteworthy spot in the town. Thus at Mecca an imprecation is uttered between the corner of the Kaba containing the "black stone," and the *Makam Ibrahim;* at Medina close to the pulpit in the sacred Mosque; at Jerusalem near the *Sakhra;* and in other cities near the pulpit in the great mosque. It is understood of course that a woman who is impure by reason of menstruation must pronounce her formula at the door of the building. Infidel subjects of a Moslem prince pronounce the imprecation in their churches or synagogues, and a fire-worshipper may even pronounce it in his temple; but an idolator may not lawfully pronounce it in a temple of idols.

3. By the number of persons present; that is to say that an imprecation must be pronounced in the presence of at least four persons.

These three rules, however, are considered by our school as being merely precepts of the Sonna, and consequently not of rigorous observance. The Sonna also prescribes that the court should give the interested parties such advice as may seem expedient, especially when they are about to pronounce the decisive fifth phrase. The Sonna also requires that an imprecation should be uttered standing.

Though in general a husband cannot pronounce an imprecation unless he is legally capable of repudiating his wife, the act is still valid:—

1. If the husband, apostatised after cohabitation with his wife, accuses her of the crime of fornication, but returns to the faith after the end of her period of legal retirement, and then pronounces an imprecation.

2. If the husband, in the same circumstances, pronounces an imprecation immediately after the accusation, and subsequently returns to the faith, provided always that it is before the expiration of the period of legal retirement.

Where, on the other hand, the husband does not repent from his errors until after the expiration of the period of legal retirement, the fact that the marriage is *ipso facto* dissolved is an obstacle to the imprecation.

An imprecation pronounced by a husband has the following consequences :—

1. The parties are separated, and marriage between them is for ever forbidden, even though the husband subsequently retracts his accusations.

2. The husband is not punishable as a defamer, though unable to furnish the testimony legally required to prove his wife's crime.

3. The wife is punishable for the crime of fornication, unless she in her turn pronounces the imprecation in the terms already mentioned.

4. The child whose paternity is disavowed by the husband's imprecation is not recognised as his by law.

The disavowal is unnecessary, and the child *ipso facto* illegitimate if not only is the husband certain he is not its father, but this is manifest to every one by the nature of things ; for instance, if the mother gives birth to it within six months from the marriage contract, or if the mother was repudiated immediately after the contract, in both cases before the marriage was consummated, or if the marriage was effected when one of the parties was in the East and the other in the West. On the other hand, the child's death does not extinguish the right of disavowal. Shafii maintained, in his second period, that a disavowal should take place after no long interval, without prejudice, however, to its being effected at any time, on alleging some valid excuse for the delay. A husband may at his choice disavow a child of which his wife is pregnant either before or after her lying-in ; and if he excuses his delay in pronouncing his disavowal on the ground that the birth was concealed from him, the presumption is in his favour upon his taking an oath. This presumption, however, only exists where the husband was absent, or if present where the length of the delay is not incompatible with his ignorance. A husband to whom is spoken the following compliment, "May you have much pleasure from your child," or "God grant your son become a good man," and who replies, "Amen," or "Yes," may not subsequently disavow it ; but if, instead of making use of an expression implying avowal, the husband replies, "May God reward you," or "May God bless you," he is free afterwards to pronounce a disavowal. The possibility of furnishing legal proof of the crime of fornication is no obstacle to a husband's pronouncing an imprecation. And the woman's reply to her husband's imprecation according to the

above-mentioned formula results in her not being liable to the definitely prescribed penalty for the crime of fornication, unless the husband produces the proof required by law.

Section 4

A husband may pronounce an imprecation not only in order to enjoy all the legal advantages which result from it; but also with one of the following special intentions:—

1. In order to disavow a child, even though his wife may have already pardoned his defamation, and the marriage been dissolved in some other manner.

2. In order to escape the definitely prescribed penalty for defamation, even though the marriage may have been already dissolved in some other manner, and there is no child to disavow.

3. In order to escape a discretional punishment for defamation, where particular circumstances rendered him not liable to the definitely prescribed penalty.

In any case an imprecation is never an excuse where it is a matter of defamation contrary to common-sense and manifestly false; and in a case of this sort the court is justified in inflicting upon the defamer a discretional punishment for his moral amelioration. Among such groundless defamations may be mentioned that of a girl still a minor and incapable of coition.

An imprecation cannot take place:—

1. If the woman is not pregnant as a result of the crime of which her husband accuses her, and also—

(*a*) She pardons the defamation pronounced.

(*b*) The husband can furnish the proof required by law that she has been guilty of the crime of fornication.

(*c*) The wife's crime is proved by her own avowal.

2. If the woman renounces her right to proceed against her husband before the court.

3. If the woman goes mad in consequence of the defamation pronounced against her.

On the other hand, an imprecation is admissible, even where the wife has been irrevocably repudiated, or where the marriage has been dissolved by her death, in a case where her husband accuses her of the crime of fornication, without being able to furnish legal proof of it, and the defamation is pronounced in general or with reference to a fact subsequent to the dissolution of the marriage, always on condition that there is a child which the husband is obliged to disavow if he does

not wish to be considered its father. But an imprecation can never be pronounced after the irrevocable dissolution of a marriage, on account of a fact that took place before the marriage, †whether there is or is not a child to disavow. In all cases the husband must begin by accusing his wife of the crime of fornication before having recourse to an imprecation; and the law does not permit the husband to disavow one of two twin children and not the other; he must either disavow both or accept their joint paternity without any reservation.

BOOK 43,—PERIOD OF LEGAL RETIREMENT

Section 1

A woman's legal retirement after the dissolution of her marriage is of two categories, the first being that prescribed in consequence of a separation *inter vivos*, whether by repudiation or by any other method of dissolution of marriage. This kind of legal retirement need not be observed except when there has been carnal commerce between the parties; for where it is proved that the womb is intact retirement is not necessary. This, at any rate, was the doctrine maintained by Shafi during his Egyptian period.

The legal retirement of a free woman who has menstrues and regular periods of purity, is composed of three periods of purity; but it is understood that a woman separated in one of her periods of purity concludes her retirement at the beginning of the third menstruation, while one separated during one of her menstruations becomes free only upon the commencement of the fourth, including that during which she was repudiated. One authority insists that twenty-four hours should elapse before it can be said that menstruation has definitely commenced; and there is disagreement on the point whether a woman,who, upon the dissolution of her marriage, has not yet had menstrues but begins to experience them shortly afterwards, should or should not be considered as separated during a period of purity. This controversy derives from the other one as to whether the expression, "period of purity," signifies merely a transition from purity to menstruation or whether it implies an interval of purity between two menstruations. *In this latter controversy the second of these two views is to be preferred. The legal retirement of a woman whose hæmorrhages are prolonged beyond the term of her menstrues is fixed so as to take into consideration her habitual periods of purity and menstruation; but a woman who has irregular fluxes should in all cases observe a legal retirement of three months, or, according to some authorities, a retirement lasting for three months after menstruation has ceased to be manifested. A woman enfranchised by reason of maternity, a woman undergoing enfranchisement

by contract, and in general all slave women, should observe a retirement of two periods of purity. *If they become completely enfranchised during their retirement, they should terminate it, in the case of a revocable repudiation, as if they had been free since the separation; but they should continue their retirement as if they were still slaves in the case of an irrevocable repudiation or any other kind of separation which, like divorce, has the same consequences as an irrevocable repudiation.

A free woman who has no menstrues, or has passed the age for them, should observe a retirement of three months, and, if the repudiation took place in the middle of a month, her retirement is not completed until after the appearance of two new moons plus the number of days wanting to complete thirty in the first month; all without prejudice to her obligation to observe the prescribed periods of purity, should she before the end of this time become subject to menstruation. A slave woman, including a woman enfranchised by reason of maternity, and one undergoing enfranchisement by contract, should, under these circumstances, observe a retirement for one month and a half, when they have no menstrues or have them no longer; though one authority prescribes them a retirement of two months, and another one of three. A woman whose menstrues are interrupted by some cause, such as suckling or sickness, should defer her retirement for three months until menstruation returns, or it appears evident that it will not do so; in his second period Shafii even declared this rule to be applicable to cases where the interruption is not due to any known cause. In his first period our Imam maintained that a woman in such a case, where the cause is not known, should begin by waiting nine months to see whether menstruation is going to return, and after that accomplish the ordinary three months' retirement.

In his second period Shafii also expressed the opinion that if the woman has reasons to think menstruation will not return, and consequently observes a retirement of three months, and the menstruation does return before the expiry of the three months, she should complete her retirement counting by periods of purity. *This is also what she should do, even though menstruation does not reappear until after the expiry of the three months, if she has not meanwhile become engaged in the bonds of another marriage; otherwise she is not obliged to observe a new period of retirement. As to whether a woman has good reason to think her menstruation will not return, this is a question which should be decided according to information obtained in each particular case from previous instances of near relatives both on the father's and mother's side; though, according to one authority, recourse may be

had to observations with regard to women in general. [*I recommend this latter doctrine.]

Section 2

The legal retirement of a woman who is pregnant at the moment of separation terminates upon her accouchement, on the double condition that—

1. The child's father is the woman's lawful husband; whether the paternity is established by law, or whether it can merely be considered possible, *e.g.* in case of disavowal.

2. The accouchement is terminated. This rule applies equally to "twins," though in this case the retirement expires only upon the birth of the last born. By "twins" are understood children born at a less interval than six months. The birth of a still-born child counts as an ordinary accouchement; but not an abortion, at least where the fœtus consists merely in a lump of flesh without human form. On the other hand, if the fœtus already has a human form, though distinguishable only by a mid-wife, the abortion counts as an ordinary accouchement. Our school goes even further and allows that a retirement is terminated by an abortion, where the fœtus is merely a lump of flesh, but the midwives say it contains a principle of vitality.

A woman who begins by counting her retirement by periods of purity or by months, and perceives after its termination that she is pregnant, should still observe her period of retirement as if she had known of her pregnancy at the moment of the separation; and even if she merely suspect her pregnancy without being sure of it, she cannot remarry before her suspicions are either dissipated or realised. Where, on the contrary, her suspicions arise only after the end of periods of purity or of months that constituted her period of legal retirement, the two following cases must be distinguished:—

1. If she has remarried, the second marriage remains intact, and the child has for father the new husband, unless born within six months after the contract.

2. If she has not remarried she should wait until her suspicions are dissipated or realised; though a new marriage effected in contravention of this rule is not considered null by our school, unless the new husband has acted knowingly.

A child born four years after the irrevocable separation of the parties has the husband for father, unless the woman has remarried under the circumstances we have described; but a child born later than this period is always illegitimate. In the case of a revocable repudiation, this period

is counted from the moment of repudiation; though, according to one authority, it should be calculated from the moment the period of legal retirement has expired. When a separated woman remarries after the end of her period of legal retirement, without suspecting her pregnancy, the fact that she has an accouchement within six months from the dissolution of the first marriage is enough to nullify the second; but a child born later than this has for father the second husband.

A new marriage effected before the end of the period of legal retirement is illegal, and a child born during this marriage has for father the former husband, at least where the accouchement takes place within a period that renders this paternity alone admissible. The woman in question has then, by the fact of the accouchement, terminated the period of legal retirement necessary upon her separation from her former husband; but after this must still observe an ordinary period of legal retirement for having cohabited with the second. On the other hand, if the time of the accouchement demonstrates the paternity of the second father the latter is regarded as the child's father, in spite of the illegality of the second marriage; while, if the time of the accouchement admits equally well of the paternity of the one husband and of the other, the matter should be submitted to a physiognomist who should pronounce after examining the child, and whose decision carries with it the same consequences as if the paternity had been indicated by the time of the accouchement.

Section 3

Where a woman has to observe two periods of legal retirement of the same nature, resulting from her cohabitation with the same individual, one of the periods is included in the other. This is what takes place, for instance where a husband, after repudiating his wife revocably, indulges in coition with her before the expiration of her period. In this case it makes no difference—

1. Whether the retirement is calculated by periods of purity, or by months.

2. Whether coition has taken place knowingly or not.

In any case the final period of legal retirement begins from the last act of coition and involves *ipso facto* what remained to be accomplished of the retirement rendered necessary by the previous repudiation. And it is the same where the two periods of legal retirement are of a different kind; for example, if one is calculated by periods of purity and the other is terminated by an accouchement. Then the accouchement determines the end of the final period of retirement, and the husband may exercise his right of return to conjugal union, until the accouchement has taken

place. A small number of authorities do not admit this extension of the right of return to conjugal union where the pregnancy is the consequence of coition subsequent to the repudiation.

Where it is not the same individual whose successive cohabitation has rendered the two periods of legal retirement obligatory, the one is not included in the other. This happens, for instance—

1. Where a woman, repudiated by her husband, or who has committed cohabitation by error, indulges, before the expiration of her period of legal retirement, in coition with another whom she supposes to be her new husband, or who really is so but by virtue of an illegal marriage.

2. Where a woman who perceives that she has cohabited by error and who observes a legal period of retirement in consequence, is repudiated by her real husband before the expiration of that period.

When, in any of these cases, the woman is pregnant, she should always begin by observing the period of retirement rendered necessary by her pregnancy; and after her accouchement, she should observe that rendered necessary by the other cohabitation. If she is not pregnant, two cases must be distinguished.

1. The case mentioned above where the repudiation has priority over the coition committed by error. The woman should then first observe the legal period of retirement for repudiation, and afterwards begin the other period, all without prejudice to the right of return to conjugal union. If the husband exercises this right, the retirement for the repudiation ceases at the same time; but the woman should still accomplish the retirement on account of her coition with her supposed husband, before cohabiting with her true husband.

2. The case where the coition by error has the priority. In this case the retirement on account of the repudiation is first accomplished; though some authorities accord priority to the retirement on account of the coition by error.

Section 4

†Where a husband, after repudiating his wife irrevocably, continues to live with her during her period of legal retirement, counted either by periods of purity or by months, without, however, there being any carnal commerce between the parties, the retirement is carried out all the same, as if the separation had been complete. †Where, on the other hand, in these circumstances the repudiation is revocable, the retirement is not carried out until the parties cease to live together, though the right to return to conjugal union exists only during the prescribed periods of purity or months.

[The repudiation remains revocable as long as the period of legal retirement has not expired ; and the fact of a woman living with any other than her husband causes a retirement rendered necessary by repudiation to terminate *ipso facto*.]

Where a woman who has been repudiated revocably remarries during her period of legal retirement, believing she may lawfully do so, the retirement is interrupted from the consummation of the new marriage ; or, according to one authority, from the contract—an opinion which some elevate to the rank of a doctrine. So that, if the former husband exercises his right of return to conjugal union, and afterwards repudiates his wife a second time, she must begin her retirement again on account of the former repudiation. According, however, to the opinion of Shafii in his first period, the retirement is only suspended by the new marriage, so that the woman in these circumstances need only finish what is left over, provided that the return to the former union is not followed by coition. Where in these same circumstances the woman is rendered pregnant by her second husband and afterwards taken back by the first, the period of legal retirement does not terminate before the accouchement ; and if she is again repudiated by her first husband, she must begin a new period of retirement. According to a small number of authorities there is no need to recommence a new period of legal retirement after the accouchement, unless there has been subsequent cohabitation with the first husband. Finally, where the first husband has successively married again and repudiated the woman from whom he was previously divorced, her final period of legal retirement commences from the repudiation ; and this retirement includes that rendered necessary by the divorce.

Section 5

The second kind of legal retirement is that prescribed for a woman whose marriage is dissolved by the death of her husband. It admits of the following distinctions :—

1. Where the widow is not pregnant. In this case the period of legal retirement lasts for four months and ten days and nights for a free woman, and half of this time for a slave ; it matters little whether the marriage has been consummated or not. A widow who at the moment of her husband's decease was already repudiated revocably should accomplish her retirement as if her husband had died while the marriage was still intact ; but the widow who has been repudiated irrevocably should continue the retirement begun in consequence of the repudiation.

2. Where the widow is pregnant. She should then observe the legal period of retirement until after her accouchement, subject to the reservations already mentioned with regard to a pregnant woman whose marriage has been dissolved *inter vivos*. Consequently, a pregnant widow whose husband was a minor should observe a retirement as if she were not pregnant.

When a husband leaves two widows, of which one has been repudiated but it is not indicated which, they should both accomplish the legal period of retirement for widows that are not pregnant, supposing that there has been no consummation of their marriages. Where there has been consummation but the widows are not pregnant they need only observe the ordinary retirement of widows that are not pregnant, if the repudiation was revocable ; but if in these circumstances the revocation was irrevocable, then both must observe either the ordinary retirement of widows that are not pregnant or that of three periods of purity, whichever be the longer. It must be remembered that the legal retirement of widows commences from the husband's death, but periods of purity are calculated from the repudiation.

A wife whose husband is absent and who has heard no news of him may not contract another union unless certain that he is dead or that he has repudiated her. In his first period Shafii considered such a woman as able to remarry after her husband has been absent for four years and she has then observed a widow's retirement ; but during his stay in Egypt our Imam adopted the doctrine that even a judicial authorisation after four years' absence and a period of retirement are insufficient to render a remarriage unattackable. †But he conceded, during his second period, that a marriage effected in contravention of this rule is quite legal if it subsequently appears that the former husband was dead before its celebration.

A widow should be in mourning for her deceased husband during her period of legal retirement, but a woman revocably repudiated need not do so upon the dissolution of the marriage. On the other hand, this mourning is commendable in the case of a woman irrevocably separated *inter vivos;* one authority even maintains that it is *de rigueur*. A woman's mourning consists firstly in her abstaining from personal adornment in bright-coloured clothing even of a coarse material ; although some jurists permit her to wear material of which the threads are dyed first and woven afterwards, whatever the colour may be. A woman in mourning may legally wear all kinds of cloth, black or white, cotton, wool, linen, or silk. Bright coloured stuff is not forbidden if not worn for adornment. Secondly, a woman in mourning must wear no ornaments of gold or silver †or pearl. She must abstain from perfumes on

the body, on the clothes, in food or in eye-wash, she must not paint her eyes with antimony, except in case of necessity, *e.g.* if she is blear-eyed; nor must she use white-lead nor unguents nor henna, etc. On the other hand, there is no objection to her making use of an ornamented bed or other objects, or to taking care of her person by washing her head, cutting her nails, or removing the dirt from her skin or her clothes.

[She is also permitted to do her hair and go to the bath, provided this is not a pretext for some unlawful outgoing. A woman who does not observe mourning regarded as an obligatory act commits a sin, and should terminate her period of legal retirement in the way to be explained in the next section when speaking of a woman who quits her husband's house during her period of legal retirement. A woman who hears of her husband's death or her repudiation after her period of retirement is terminated, need not observe any further mourning. A woman may wear mourning not only for her husband but also for other near male relatives or for her master; but this mourning may not exceed three days.]

Section 6

A woman who has been repudiated, even irrevocably, may insist upon her husband's giving her a suitable home during her period of legal retirement, unless she is rebellious to marital authority. *This right is accorded also to the widow, and, according to our school, to the wife whose marriage has been dissolved by reason of redhibitory defects, etc. The woman must spend her period of legal retirement in the house or in the apartment in which she was living at the moment of separation, and no one has a right to oblige her to remove elsewhere. Neither has she on her side the right to leave the house of her own accord.

[She may go out in the day-time, if the retirement is due to her husband's decease or to an irrevocable repudiation, provided these outgoings are for some lawful object, *e.g.* to buy provisions, thread, etc. She may even go out of an evening to visit one of her neighbours in order to spin together, or have a talk, etc.; but she must return home to sleep. She has the right to remove only if she is afraid the house is going to fall down, or, in case of a flood, or if her life is in danger, or her neighbours are troublesome, or even if her presence is very disagreeable to them.]

A removal, authorised by the husband, results in the woman being obliged to accomplish her period of retirement in the house he assigns her, at least where the cause of the retirement already existed at the time of the removal. This is Shafii's personal opinion. On the other hand, she should return to the house originally occupied to accomplish

her retirement there if she has removed without authorisation, or if the authorisation was given before the cause of the retirement existed, or after the removal took place. An authorisation given to a wife to take up her residence in another town has the same legal consequences as one given her to remove ; but if the authorisation to remove elsewhere referred only to a journey undertaken either to perform the pilgrimage or for commerce, and the cause of retirement occurred on the way, the woman may either return to her domicile and accomplish her retirement there, or continue her journey while observing the retirement. In the latter case, however, she must, after attaining the object of her journey and finishing her business, return home and remain in retirement for the number of days still to be observed. When a woman goes to a house other than her domicile, and her husband repudiates her on the ground that the removal was unauthorised, there is a legal presumption in favour of the husband's assertion, provided he takes an oath. Our school admits a similar presumption in the husband's favour where the woman maintains that he authorised her to remove, while he alleges that he merely allowed her to go out on some business. The dwellings of nomads, and even their tents, are subject to the same law as fixed abodes.

When the husband owns a house in which his wife can suitably accomplish her period of legal retirement, he should assign it to her for that purpose, and cannot sell it, even by a fixed date, unless his wife calculates her period of retirement by months, and consequently he knows the exact date by which the house will be again at his disposal. In this latter case a sale by a certain date is permitted, in the same way as the sale of a house rented to a third party ; only a few authorities consider such a sale as absolutely null under any circumstances. If a husband allots for the legal retirement of his wife a house lent him by another person, the woman should accept it ; but if the lender asks for it back before the end of the period of legal retirement, and will not lend it any longer, even for a rent, the husband should allot his wife another house. The question of a house rented by the husband, where the lease expires before the end of the retirement, must be decided in accordance with the same principles. If the wife consents to accomplish her retirement in a house belonging to her, she may insist upon the husband paying her a rent for the time she is in it with that object. If the conjugal domicile is of great value, the husband may assign another for his wife's retirement, provided it is a suitable one. On her side the woman may refuse to spend her retirement in any house, even if it be the conjugal domicile, if it is not a suitable house for her to live in.

A husband has no right to remain in the house where his wife is in

retirement, nor even to enter it, unless with her consent, or if it is a house inhabited by her in common with—

1. One of her own relatives within the prohibited degrees, who has attained the age of discernment ; or

2. One of his female relatives within the prohibited degrees, who has attained the age of discernment ; or

3. Another wife of her husband, or his female slave.

A husband may even lodge his wife against her will in an apartment separated from the other parts of the house where he lodges another wife, at least, if the wife in retirement has with her some relative within the prohibited degrees, or if it is an apartment with separate kitchen and latrines. But in this case it is commendable that the doors between these apartments should be locked, and that there should be no other means of communication. An upper storey assigned for a wife's legal retirement is to be regarded in the same way, with reference to the lower storey, as an apartment separated from the rest of a house.

BOOK 44.—PERIOD OF WAITING OF A SLAVE

A WAITING for purification is obligatory in the two following cases :—

1. A man who becomes the owner of a female slave by purchase, succession, donation, right of booty, redhibition, judicial oath, cancellation by agreement, may not lawfully cohabit with her by virtue of right of ownership until she has accomplished her days of waiting, whether she be a virgin or not. This period of waiting must be observed even though the seller abstained from cohabiting with her for a sufficient period, or she was obtained from a minor, or a woman, or any other person incapable of coition. This period of waiting is also *de rigueur* where a female slave undergoing emancipation by contract is unable to fulfil the engagement entered into by her with her master, and is consequently reduced to slavery ; †and also where a female slave after abjuring Islam repents of her errors and so becomes again her master's property. On the other hand, the period of waiting is not observed if the right of cohabitation has been suspended by some accidental circumstance, *e.g.* fasting, religious retirement, or *ihram ;* though as to this last circumstance authorities are not agreed. Waiting is commendable where one purchases a slave with whom one is already engaged in the bonds of matrimony ; some jurists even declare it to be obligatory in this case ; but it is not necessary in a case where one purchases a slave already married or observing her period of legal retirement, as then cohabitation with her by virtue of ownership would be quite illicit. *But an obligation to observe a period of waiting revives at the dissolution of the marriage or the end of the period of retirement.

2. A female slave who has cohabited with her master, or a woman enfranchised by reason of maternity, may not marry until after observing a period of waiting from the moment when they cease to be obliged to share their master's bed, whether he has enfranchised them unrestrictedly or they have obtained their liberty upon his decease. †A woman enfranchised by reason of maternity should observe a period of waiting even where her master, freeing her unrestrictedly or dying, has not cohabited with her for a sufficient time.

[A female slave who after sharing her master's bed is freed by him and left untouched during her period of waiting, need not observe any

further period of waiting, but may be at once given in marriage, as her condition offers no resemblance to that of a married slave.]

One may not give in marriage either a female slave with whom one has cohabited, nor one enfranchised by reason of maternity, until they have observed the prescribed period of waiting; †but if the master himself wishes to marry his female slave enfranchised by reason of maternity, he may do so at once. Nor is there any need for waiting where a slave enfranchised by reason of maternity, after having been given in marriage to another, obtains her full liberty, either by simple enfranchisement by her master, or by his death, for cohabitation with a slave so emancipated was already forbidden him.

The period of waiting for a female slave having ordinary menstruation is composed of a single period of purity, *i.e.* it terminates after a single regular menstruation. This at least was maintained by Shafii in his second period. As to a slave whose period of legal retirement is calculated by months the period of waiting consists of a single month; or, according to one authority, of three months; while a pregnant woman, reduced to slavery in war, and a pregnant slave with whom her master has ceased to cohabit, should observe a period of waiting until the accouchement. As to a purchased slave, pregnant by marriage, we have already found that she need not observe the ordinary period of waiting until after the dissolution of the marriage.

[†An accouchement resulting from the crime of fornication has the same consequence as one resulting from lawful cohabitation.]

If one becomes owner of a female slave whose period of waiting has expired between the date of the conveyance and the taking of possession, it may be taken into consideration where the ownership is acquired by inheritance †or purchase, but not in the case of a gift. Where one purchases a slave with whom cohabitation is forbidden on some personal account, *e.g.* if she be a fire-worshipper, it is not enough that she has her menstrues after her acquisition, nor that the cause of prevention ceases, *e.g.* by her conversion; she must observe her period of waiting before one may cohabit with her.

The period of waiting results in rendering unlawful any corporal enjoyment of the master with the slave in question; but a woman reduced to slavery in war, though she must abstain from coition with her new master, may permit herself other voluptuous acts, though some authorities maintain that her condition is identical with that of other slaves. Moreover, a simple declaration by a female slave that she has had her menstrues is sufficient to establish a presumption in favour of the truth of her words; a similar presumption exists in the master's favour if, after the slave refuses to give herself to him, he asserts that

she has already told him her menstruation is over, and her period of waiting therefore terminated.

A female slave is not considered to have cohabited with her master in a legal sense unless coition has really taken place; and the child born of this cohabitation has the master for his father, provided the accouchement takes place at a time admitting of such paternity. Our school, however, allows the master a right to disavow the child, while admitting the coition, if he can allege in favour of his statement the fact that after coition the slave observed her period of waiting; but if in this case the slave denies the period of waiting the master must assert upon oath that the child is not his. Some jurists even insist that the master must also allege the facts from which it can be concluded that the period of waiting really took place. ††There is no need for the master's oath where he denies cohabiting with his slave who maintains her enfranchisement by reason of maternity, for she then has no presumption in her favour, even if the fact of the accouchement is proved.

BOOK 45.—RELATIONSHIP BY FOSTERAGE

Section 1

Relationship by fosterage exists where a child has taken the breast of a living woman who has at least completed her ninth year, or even if it has received as nourishment †either milk extracted from the breasts of a woman afterwards deceased, or a woman's milk curdled or skimmed, or mixed with some other liquid *in whatever proportion and whether it is all or only partly drunk—this, at least, is the opinion of some authorities. According to our school relationship by fosterage is established not only by the fact of suckling, but also by the introduction of milk into a child's body by the mouth or by the nose ; *but there is no such relationship where the introduction is effected by means of a washing. The law requires, moreover, as conditions essential to the establishment of relationship by fosterage that the nursling is alive at the moment of taking the milk, that it is not yet two years old, and that it has taken or sucked the milk at least five times. Custom must determine what is meant by " times " in this respect, but in any case a nursling takes milk as many times as it ceases to suck, except where it leaves the breast out of caprice to begin again immediately afterwards, or leaves one breast to take the other. When one has five times given a nursling milk at one night from its nurse's breast, or *vice versâ,* it is considered to have sucked only once ; though according to one authority, it has then sucked the five required times. In cases where it is doubtful whether the child has or has not sucked five times, and in cases where it is doubtful whether it has done so before it is two years old, there is no relationship by fosterage. A single jurist is of the contrary opinion where there is a doubt as to the age ; and this opinion is even considered by others as an admitted doctrine.

A nurse is her nursling's foster-mother ; the man who has rendered her pregnant and is consequently the cause of the milk is regarded as its foster-father ; and the prohibition extends not only to the nursling but also to its progeny. †One is even considered a foster-father where one possesses either five slaves enfranchised by reason of maternity or four wives and one such slave, and the nursling has taken the breast of each but once. Marriage with any of these five persons is for ever

forbidden to the nursling as they have all cohabited with his foster-father. *This is why no relationship by fosterage would exist in the case supposed if it were a question not of slaves enfranchised by reason of maternity but daughters or married sisters of the man in question. The ancestors of the nurse on either side become the nursling's ancestors by fosterage, and the nurse's children its foster brothers and sisters, without distinction between natural ancestors and children and those that are so by fosterage. Similarly the nurse's brothers and sisters are the nursling's maternal uncles and aunts by fosterage, and the father of the man who is the cause of the milk its foster grandfather, his brother its paternal uncle by fosterage, and so on.

A woman's milk is held *ipso facto* to be caused by the father of the child to which she gives birth, whether she is rendered pregnant by marriage or by error under the belief that cohabitation is lawful; but not if the pregnancy is the consequence of an act of criminal fornication. The disavowal of a child implies a disavowal of the mother's milk. In the case where a married woman has by error had carnal commerce with another than her husband, and even in the case where a woman has cohabited by error with two different husbands, the milk is considered to be caused by the man whom the law declares to be the father of the child, even where the paternity has been declared, in default of other proof, by a physiognomist. Moreover, relationship by fosterage with the man who is the cause of the milk exists in spite of the previous dissolution of the nurse's marriage by the death of her husband or by her repudiation, however long ago the separation took place, and even if the milk has disappeared from her breast and then returned to it. It is only when a separated woman accepts a new husband and has a child by him that the swelling of her breasts must be attributed to him. Consequently, where a woman who has married again sees her breasts swell before her accouchement of a child of the second marriage it is to the previous husband that this state of the breasts must be attributed, even where a new pregnancy is manifested. One jurist, however, in these last circumstances attributes the appearance of the milk to the second husband, and another to both of them together.

Section 2

If a man's mother, sister, or wife gives her breast to a very young girl who has been promised him in marriage, his marriage with the young girl is *ipso facto* dissolved, and he owes her half dower. He can, however, recover from the woman who without his knowledge has given her breast to the child half the proportional dower, or, according

to one jurist, the whole proportional dower. If the breast has been given unconsciously, *e.g.* during sleep, the woman who has done so is not responsible, nor can the young girl claim anything. When one has two wives, one adult and one still a child, and the former's mother gives her breast to the latter, the marriage is *ipso facto* dissolved both with the one and with the other ; but there is no objection to taking one of them back as wife. Under these circumstances the above principles must be observed as to the young girl's dower and the responsibility of the mother-in-law ; and also to the adult wife's dower, provided she has not yet had commerce with her husband. Where, on the other hand, the husband has already cohabited with his adult wife and consequently owes her the whole dower, *he can recover from her mother what she would have been able to claim as proportional dower. Finally in the case where it is the daughter of one of his wives by a former marriage who has given her breast to the child-wife, commerce with the adult wife who is the nurse's mother is for ever forbidden the husband ; while commerce with the child-wife is prohibited only where there has been cohabitation between him and the mother of the nurse in question.

Where a man, after accepting a minor as his wife, repudiates her, and some woman gives her breast to the child, that woman becomes none the less the husband's mother-in-law by fosterage, and cohabitation with her is consequently forbidden him. Where a repudiated wife remarries with a child she afterwards nourishes with the milk of her previous marriage, commerce with her becomes for ever forbidden both to her former husband and to the child she has accepted as her future husband ; and, by virtue of the same principle, a slave emancipated by reason of maternity and given by her master as future wife to one of his young slaves, may no longer cohabit with the master nor with the slave if she gives the latter her breast, at least, if the master was the cause of the milk. Moreover, when a slave with whom her master has cohabited gives her breast to a young girl promised to the master as his future wife, he can have carnal commerce with neither, whether he or some other is the cause of the milk.

When a man has two wives, one an adult and the other still a minor, and the former gives her breast to the latter, not only is his marriage with the child-wife dissolved, as we have already seen, but even the nurse ceases to be his wife, and commerce with her is for ever forbidden him. Where a man has one adult wife and three child-wives, and the adult gives her breast to the others, coition with the adult wife is for ever forbidden the husband, but that with the child-wives is prohibited him only if he was the cause of the milk, or if he has at least cohabited with the wife who has become their nurse. Where, on the contrary, he

has not yet cohabited with the adult wife the following distinctions should be made :—

1. If she nourishes the children at one and the same time, giving them suck the five required times. In this case the marriage with the young girls is dissolved, but the husband may subsequently marry each one separately.

2. If she nourishes them in a similar manner one after the other. In this case commerce with them is not forbidden for ever, but the marriage with the first and the third is dissolved because they have received the breast of their husband's wife, and the marriage with the second is dissolved as a consequence of the suckling of the third. One authority, however, considers the marriage of the second as remaining intact ; and the same divergence of opinion exists where there are two child-wives instead of three, suckled successively by a strange woman.

Section 3

Where one makes an admission that a certain person is one's daughter, sister, or brother by fosterage, one's marriage with such person is forbidden. Where husband and wife declare that their marriage was effected in contravention of the prescriptions relating to fosterage, this declaration suffices to bring about their separation, and causes the woman to lose her right to fixed dower. In these circumstances she can only claim proportional dower, at any rate if the marriage has been consummated, for otherwise she can claim nothing. Even if the husband alone maintains that there exists between him and his wife some prohibited relationship by fosterage, the marriage is dissolved even though the wife denies this relationship ; but in this case she can insist upon payment of the full definite dower, if there has been cohabitation, and otherwise half. Where, on the other hand, the wife alleges relationship by fosterage and the husband denies it, the law presumes that he is speaking the truth, provided he takes an oath, and provided that the wife consented to the marriage ; †for if she was given in marriage without her consent, the presumption is in her favour. She can in this latter case claim proportional dower, if there has been cohabitation ; otherwise she can claim nothing.

Where an oath is tendered to the party that denies the relationship by fosterage it is enough for him to affirm that he knows nothing of it ; but when it is tendered to the party that asserts that relationship, he must positively affirm its existence. Relationship by fosterage is proved—

1. By the deposition of two male witnesses, or of one man and two women, or of four women.

2. By admission ; but it must be understood that an admission not made at the hearing must be proved by the deposition of two male witnesses.

The nurse herself is admissible as a witness to relationship by fosterage —at any rate where she has not taken a salary for her services. She may confine herself to affirming simply that a relationship by fosterage exists, †or she may prove a fact personal to herself from which that relationship follows, *e.g.* her giving the breast to the child in question. †As to other witnesses, relationship by fosterage is not sufficiently established by a deposition to the effect that "there exists between the husband and wife a prohibited relationship by fosterage," but the date must be mentioned, the number of times the nursling was given suck, and the fact that the milk penetrated into the body. This fact is the direct consequence of the circumstances that one has seen the child sucking, that the milk was introduced into the mouth and that the child swallowed it. It may also be established by indirect indications, *e.g.* that the child took the teat in its mouth, that the lips made a movement as if sucking, or that the throat moved either as if drinking the milk in gulps or as if swallowing it with a continuous movement, supposing it to be proved that the woman's breasts were not dry.

BOOK 46.—MAINTENANCE

Section 1

A man who is quite solvent owes two *modd* of provisions a day to each of his wives, but a man who is insolvent owes only one, and a man of moderate means one and a half. A *modd* is equivalent to one hundred and seventy-three drahms and a third. [†It is equivalent to one hundred and seventy-one drahms and three-sevenths of a drahm.]

By "insolvent" is understood in this connection a man who has been admitted amongst those having right to the charity tax through poverty or indigence. A husband who has no such right is regarded as being of moderate means if he cannot give his wives two *modd* a day without ruining himself or without thus coming to have a claim to the charity tax. Where, on the contrary, his means permit him to give two *modd* without ruining himself, he is called quite solvent.

Provisions due as maintenance are such as form the principal nourishment of the majority of the inhabitants of the locality. [If there is no principal nourishment in general use one must give one's wives some suitable nourishment. Solvency, insolvency, or a condition of moderate means must be determined for each day at dawn.] One may give one's wives provisions either in grain †or in the state of flour or bread; it being understood, however, that neither husband nor wife can be forced to give or to receive them except as grain, unless with their full consent. †The parties may also agree to substitute other objects for the provisions, provided only, according to our school, that the grains once given are not replaced by flour or bread of the same kind. †Moreover, a husband has no need to give provisions to a wife who comes and has her usual meals with him. [Where a wife is of limited intelligence the fact of her taking her meals with him does not free him from the obligation of giving her provisions, unless her curator consents to this.] Besides provisions properly so called, one must give one's wives the condiments in use in the locality, *e.g.* olive oil, butter, cheese, and dates, according to the season; but the court when determining the quantity and quality of the condiments should observe a difference between a solvent and insolvent husband. As to meat, it is local custom

that determines whether it need only be given by a husband who is quite solvent, or whether this obligation exists also for the insolvent husband; condiments, on the other hand, are due by every husband, even though his wife receive no nourishment but bread.

A husband must not only supply his wife with necessary nourishment, but he must also give her—

1. Necessary clothing, that is to say, a chemise, a pair of drawers, a veil and a pair of sandals; and to this must in winter be added a cotton *jobba* †or, if local custom requires it, a *jobba* of some other material, *e.g.* linen or silk.

2. Something to sit on, *e.g.* a carpet, a piece of felt or a mat; †and a bed to lie on with a pillow, and in winter a blanket.

3. What is necessary for her toilet, *e.g.* a comb and pomade; what she requires for washing her head; litharge, etc., for removing the fetid odour of the body; but not eye ointments, nor ingredients for dyeing, nor what only serves for beautifying the person.

4. Medicines, when she is sick, and doctor's and surgeon's fees. She may insist on having her ordinary nourishment during her illness, both the principal nourishment and the condiments.

5. †Money enough for the usual bath, as often as is customary, and also for the special bath prescribed after coition and accouchement; but the husband is not bound to pay for the bath specially prescribed for menstruation and lascivious dreams, as these are impurities of which he is not the cause.

6. Utensils for eating, drinking, and preparing food, such as a pot, a basin, a vase, a jar, etc.

7. A suitable lodging; of which the law does not require the husband to be the owner.

8. Necessary servants, at least where the wife is of a social position which does not permit her to dispense with this. The servant may be either a free woman, or a female slave of the husband, or one he has hired, or a free or slave woman brought for the purpose by the wife from her father's house, whom the husband undertakes to support. As to the duty of procuring a servant for one's wife, the law makes no distinction between a solvent and an insolvent husband, nor even between a free man and a slave. If the servant is a free woman or a slave woman whose services the husband has hired, he is liable merely for the wages agreed upon; but if it is one of his own female slaves whom he has given his wife as servant, he owes her ordinary maintenance by virtue of his right of ownership. A servant brought by the wife from her father's house can claim from the husband the same nourishment as the wife, with the exception that she receives only one *modd* of

provisions from an insolvent husband †or one of moderate means, and one *modd* and a third from one quite solvent. Such a servant can also insist on the husband providing her with clothes †and suitable condiments, but not what is required for her toilet. On the other hand, it is only in case of repulsive dirtiness, *e.g.* the presence of vermin, that the husband may take notice of the servant's toilet and insist upon her taking better care of her person, at his expense. A wife who in conformity with custom may dispense with a servant, may claim one all the same if necessary, *e.g.* in case of sickness either acute or chronic. A slave wife can never claim a servant in ordinary circumstances ; but in the case of a female slave of remarkable beauty jurists are not in agreement.

A wife must have the enjoyment of the premises she occupies ; but her husband need not transfer the ownership to her. On the other hand, what she receives for her maintenance becomes her own, in the case of things that are consumed by use, like provisions. She may also dispose of them as she pleases ; only if she imposes upon herself privations that affect her health, in order to make a profit out of what her husband gives her, has he the right to object. As to things that deteriorate but are not consumed by usage, such as clothes, household utensils, or a comb, these things also become the wife's property ; though some authorities maintain that the husband is merely bound to procure her the enjoyment of them. A wife may insist upon her husband's giving her new clothes twice a year, *i.e.* at the beginning of winter and the beginning of summer ; and where it is admitted that she becomes the owner of the things the husband is not bound to replace them in case of accidental loss. Where this doctrine is held, clothing given to a wife is not returned to the husband if she dies during the season for which such clothing was intended ; but she can claim the clothes or their value even later, if she does not receive them at the prescribed period.

Section 2

During his stay in Egypt Shafii adopted the doctrine that a wife's maintenance is obligatory only if she puts herself at her husband's disposition, and not in virtue of the contract of marriage. The husband has a presumption in favour of his assertions in any proceedings as to the putting of the wife at his disposition. Consequently, a husband owes his wife no maintenance so long as she refuses to come to him ; but owes it from the moment he hears she is willing to put herself at his disposition. If the husband is absent the court should send word to

him that his wife wishes to come to him, through the court at the place where the husband is; and the husband should then either return to receive her, or appoint an agent to do so and supply her with the prescribed maintenance. If he does neither within a reasonable time, the court may apply his property to the maintenance of his wife. As to a wife affected by madness, or one not yet adult, the curator or guardian should place her at her husband's disposition; and this has the same consequence as when an adult or sane wife places herself at her husband's disposition.

A right to maintenance ceases if the wife is rebellious to marital authority; even if it be merely her husband's touch which she refuses to permit without valid excuse. The law considers, among others, as valid excuses, giving a wife a right to refuse herself to her husband, an excessive development of the genital organ in the husband, or a malady of the wife that would be aggravated by coition. Leaving the conjugal domicile without first asking permission also constitutes a fact incompatible with a wife's submission to marital authority, unless the house is threatening to fall down. A journey undertaken with the husband's consent, either to accompany him, or in his interest, does not in any way interrupt his obligation to maintain his wife. Only when the journey is undertaken in the particular and exclusive interest of the wife is she unable to claim maintenance during her absence. †If a disobedient wife returns to her duty during her husband's absence on a journey, she cannot immediately re-enter into the enjoyment of her rights. She must plead her cause before the court, in order that it may communicate the fact to the husband in the manner already explained. A woman who, in the absence of her husband, quits the conjugal domicile, even without leave, to go and see her family, etc., does not lose her right to maintenance. An adult who marries a young girl in her minority is not bound to supply her with the prescribed maintenance; but an adult woman married to a minor may claim this, since it is not her fault that the consummation of the marriage is deferred.

The entering into a state of *ihram* for the pilgrimage or the visit constitutes an act of disobedience on the part of the wife, if the husband has not authorised her to do so, and if he has not the right to break the *ihram*. Where he has this right the woman's conduct is not an act of disobedience, unless she quits the conjugal domicile. †In the latter case she is regarded as having undertaken a journey in her own interest, and must suffer all the consequences. †As to the wife whose husband has permitted her to undertake the *ihram*, she cannot claim ordinary maintenance from the moment of departure. The husband may object to his wife accomplishing a supererogatory fast, *and if she insists upon

doing so in spite of his forbidding her, she is disobedient. †As to a fast which she is obliged to undertake late because the legal time is elapsed, the husband may object to his wife's keeping this as in the case of a supererogatory fast, provided that there is plenty of time; but in no case can he forbid his wife accomplishing her obligatory daily prayers as soon as the legal hour has come. †And the same is the case as to those acts of devotion introduced by the Sonna, that are accomplished at fixed hours.

A woman revocably repudiated may claim during her period of legal retirement everything that was previously her due, excepting the expenses of her toilet. Where in these circumstances a woman is reputed to be pregnant and her husband consequently maintains her beyond the period of ordinary retirement, he may recover what she has unduly received, if the pregnancy appears never to have existed. On the other hand, a woman irrevocably separated, either by divorce, or by three repudiations, cannot claim maintenance, including clothing, during her period of legal retirement, unless she is pregnant, for in this latter case she can claim both on her own account; or, according to one authority, by reason of the child she bears in her womb. Though we admit with the majority that she has this right on her own account, we cannot admit a right to maintenance of a woman who has become pregnant by the error of the husband who thought she was his wife, or who had really married her but in an illegal manner. [A woman whose marriage has been dissolved by her husband's decease can never claim maintenance during the period of her legal retirement out of the estate, even if she is pregnant.]

Maintenance during the period of legal retirement differs in no respect from maintenance during marriage; though, according to some authorities, the former consists only of what is strictly necessary. A woman, however, cannot claim maintenance on account of pregnancy before the existence of the fœtus has been ascertained; but in the latter case it must be accorded her day by day, or, according to others at the time of her accouchement. According to our school a woman's right to claim maintenance is not subject to limitation, *i.e.* her claim is receivable even after the expiration of the period of retirement.

Section 3

When a husband during his marriage becomes so insolvent that he can no longer give the minimum maintenance prescribed, but his wife in spite of this continues to live with him, the maintenance becomes a debt due to her from him and exigible at any moment. *If she no longer

can bear such an insolvent husband, she can at once demand the dissolution of the marriage, since her husband no longer fulfils his obligations; †but no such claim is admissible against a solvent husband refusing his wife the prescribed maintenance. In this latter case it matters little if the husband be present or absent. On the other hand, a claim for dissolution is admissible if the husband is present and solvent but his property is elsewhere, at a distance so great as to admit of prayer being abridged. If this is not the case the woman cannot obtain the dissolution of the marriage; but the court should then order the husband to send for the necessary money. A woman is not obliged to accept from another as a gift the maintenance owed her by her husband.

If a husband gains enough money by his work to maintain his wife, it may be admitted that he has sufficient substance to allow him to discharge his pecuniary obligations towards her. And a claim for dissolution of marriage on account of complete insolvency is not admissible unless the husband is incapable of supplying his wife even with the maintenance due from an insolvent husband in ordinary circumstances. A degree of complete insolvency is manifested where a husband is unable to give not only the provisions that constitute the principal nourishment, but also the clothing, the †condiments, or the habitation that the law requires. [†A claim for dissolution should be rejected if it is founded merely upon the fact that the husband is unable to supply condiments.]

*Where a husband is unable to pay dower, dissolution of marriage is admissible, if the claim is brought by the woman before cohabitation; but not where the marriage has been consummated; and, moreover, the court can pronounce dissolution only where insolvency has been duly established. Where this insolvency is proved the court must either pronounce dissolution of the marriage or authorise the wife to pronounce it herself. *Three days' respite must, however, first be allowed. Only one jurist admits that dissolution may be pronounced without allowing any respite to the husband. Where, with the majority, a respite of three days is insisted upon, the wife is free to leave on the morning of the fourth day, unless the husband then gives her maintenance for this day. Where for two whole days the wife has not received her maintenance and the husband gives it her only on the third day, and then omits to do so on the fourth, the days of omission are added together and the woman is free on the fifth. Only a few authors maintain that three consecutive days' omission is necessary before the respite expires. All agree that during the respite enjoyed by the husband the wife may quit the conjugal domicile to get necessary provisions, provided she returns at night.

A husband cannot oppose a demand for dissolution of marriage by

alleging that his wife has consented to share his pecuniary embarrassments, or that the marriage was entered into by her with full knowledge of the circumstances, for she is not obliged to do without maintenance longer than she likes. Where, on the other hand, it is not the prescribed maintenance but the dower that the husband cannot pay, he may oppose a demand for dissolution of marriage by a plea in bar. A demand for dissolution of marriage cannot be brought by the guardian of a minor wife, nor by the curator of a mad woman, unless a distinction be made between incapacity to furnish maintenance and that to pay dower. A demand for dissolution may be made by a free wife or by a slave wife, but not by a master where the woman wishes to share her husband's lot. A master may only persuade his female slave to demand a dissolution of marriage indirectly, *e.g.* by informing her that he will not maintain her so long as she remains the wife of an insolvent husband, and that she must therefore choose between dissolution of marriage and starvation.

Section 4

Ancestors and descendants should maintain each other mutually without distinction of sex or religion, on the sole condition that the individual against whom the claim is brought, himself possesses more than is necessary for the maintenance of himself and his household. One should even if necessary sell one's property to acquit oneself of this obligation, as if to pay an ordinary debt; †and in default of property that can be realised, one should, if able to do so, work for this purpose. Only the man who has or gains just what he requires in order to live is not bound to maintain his ancestors or descendants; though he should even then admit them to his house and his table, in the case of—

1. A person who has nothing and through illness cannot work.
2. A minor or a madman.

In all other cases the duty of maintaining one's ancestors or descendants is rigorously obligatory; though some authorities do not admit this principle, and others admit it only as to sustenance due to ascendants. [*These last-mentioned authorities are evidently right.]

Maintenance due to ancestors or descendants consists only in what is strictly necessary, and a claim for it is limited to the term for which it is due; unless there is a judgment ordering the performance of this duty, or permitting the claimant to borrow in the case of the absence or the refusal of the opposite party.

A mother should nourish her child with the milk which is manifested immediately after parturition ; she should even continue to suckle it afterwards when no other nurse can be found but a foreign woman. Where, on the other hand, one can procure a nurse in the family, the mother is not obliged to give the child her breast, †and the child's father even has the right to oppose her performing this maternal duty. [†The husband's opposition is inadmissible ; this at least is the opinion of most authorities.] Where husband and wife agree that the suckling shall be done by the mother herself, she may require from him a reasonable but not exorbitant remuneration. *But he is not obliged to agree to this demand for reasonable remuneration on the part of his wife, if a foreign woman offers to nourish the child for nothing, or for some inferior remuneration.

Maintenance is due from all the descendants together, if there is no difference between them ; but if they are not equal under all respects †the obligation is incumbent on the nearest ; and in case of equality of degree of relationship, it exists only for that person who will be called to the succession. Another doctrine, however, tends to consider that a right to the succession constitutes *primâ facie* the basis of the obligation to maintain one's ancestors, while the degree of relationship is of secondary importance ; and besides this jurists are not agreed as to whether the heirs are jointly responsible for the nourishment, or only in proportion to their respective shares.

In the ascendant line a father is the first who should maintain his child ; and it is only in a secondary degree that the child can require maintenance from its mother ; only a few authors maintain that father and mother are equally responsible, at least towards an adult child. In default of father and mother, it is from one's nearest ancestors that one may claim nourishment, either those in the same line, or ancestors on the father's and on the mother's side. Some jurists, however, consider maintenance of descendants as a charge attached to the succession, while others consider it as a charge inhering to the right of guardianship or curatorship.

†A person who has both ancestors and descendants alive should first claim maintenance from the latter, without respect to the distance of degree of relationship. Where, on the other hand, one has several persons dependent upon one, one should first discharge one's duty towards one's wife, and then that towards one's nearest relative ; or, according to some authorities, towards the one who will be called to the succession ; or, according to others, to the one who would be called to the duty of guardian or curator towards oneself.

Section 5

By the education of a child is understood—

1. Its supervision for all those matters in which it could not act for itself.

2. The care given to it, and the cultivation of its mind.

The first of these occupations is more particularly a woman's duty. It is confided first of all to the mother and her female ancestors through women, in order of proximity. During his Egyptian period Shafii embraced the doctrine that, in default of a mother and her female ancestors, through women, the education goes to the father's mother and her female ancestors through women, and after that to the grandfather's mother and her female ancestors through women. In his first period, however, the Imam allowed priority to sisters, and even to maternal aunts, over all female ancestors on the father's side. In any case a sister has priority over a maternal aunt, and the latter over a niece. A niece has priority over a paternal aunt, a full sister over a half sister on either side, †a half sister on the father's side over a half sister on the mother's side, and an aunt who is half sister on the father's side of the father or mother over one who is half sister on the mother's side of the father or mother. †An incapacity to inherit, due to a male degree of relationship between two women, suffices also to exclude female ancestors from the function of education ; but incapacity to inherit is not a reason for the exclusion of other women whose degree of relationship would be no obstacle to marriage, *e.g.* a daughter of a maternal aunt. In default of women the education falls to the charge of all male inheritors within a prohibited degree, in the order in which they would be called to the succession, ††and secondarily it is confided to every male inheritor of a still more distant degree of relationship, such as the son of a paternal uncle. However, a young girl must never be confided to an inheritor with whom marriage is not prohibited and who shows a liking for her ; but if her education falls to his charge, he must confide her to the care of some reliable woman chosen by him. Male relatives, of whatever degree, who are not called to the succession, †are not called to the duty of education ; and in case of claims by male and female relatives, priority is accorded to the mother, then to the female ancestors through women, and lastly to the father ; while according to some authorities even a maternal aunt and a half sister on the mother's side have priority over him. In general the ascendant line has priority always over a collateral one ; where two persons are equally competent in this respect, priority belongs to the nearer ; †if they are of the same degree the woman has

the priority ; and if there is no legal difference the matter should be decided by lot.

The education of a child can never be entrusted to—

1. A slave, a mad man or woman, or a person of notorious misconduct.

2. An infidel, if the child is a Moslem.

3. Its mother, if she has married again ; unless with its paternal uncle, cousin on the father's side, or son of half brother on the father's side.

††The education of a child implies also the duty of suckling it or having it suckled, if it is not yet weaned. Personal incapacity to undertake the duty of education ceases with its cause ; and so does incapacity due to a marriage or repudiation. In case of the mother's absence or incapacity, her mother is invested with all her rights.

The rules mentioned in the present section relate only to a child who has not yet reached the age of discernment. If the child has attained this age it may choose with which of its parents it prefers to stay after their separation, provided neither the father nor the mother are mad, infidel, a slave or of notorious misconduct, and provided the mother has not married again. In any of these cases the child must remain with the other parent. It has the right to choose, not only between its father and mother, but also between its mother and father's father in case of the predecease of its father, and also, if there is occasion for this, between its brother, father's brother and father on the one side, and its sister, half sister, or mother's sister on the other. Even if it has once chosen, there is no objection to its afterwards choosing the other parent ; and if a son chooses his father, this does not prejudice his right to go and visit his mother when he likes. But a daughter loses this right, when she has declared that she prefers to remain with her father instead of with her mother as she would naturally do. But the father may never prevent the mother coming to see her children of either sex, provided there is no more than one visit on one day. In case of sickness a mother has by preference the right of tending her child of either sex, and, if necessary, of having it taken to her house for that purpose, if the father refuses to allow her to go and stay at his house. A son who chooses his mother only remains with her for the night, but must pass the day with his father, in order that the latter may form his character, send him to school, and make him learn a trade. On the other hand, a daughter must in these circumstances remain with her mother, day and night, without prejudice to the father's right to come and see her as often as may be customary. When a child wants to live with its father and with its mother, the matter should be decided by lot ; and if it refuses to choose the mother has the preference as the person to whom the law entrusts

the education in the first place. Only a few authors require that in this case the matter should be decided by lot. If one of the parents has to leave on a necessary journey, a child of either sex must remain with the other, until the return of the former ; but if the journey amounts to a change of domicile a father has a right to take his children with him, provided the place he is going to and the way there are safe. Some authorities also require that the new domicile must be at a distance permitting the abridgment of prayer.

In default of the father his agnates within the prohibited degrees are invested with his rights ; and so is the cousin on the father's side, in the case of a boy, though not in that of a girl. In the latter case the child must be intrusted to the cousin's daughter, if she lives with him.

Section 6

A master must give his slaves the nourishment and clothing of which they have need, even if the slave be blind or sickly, or one enfranchised by the terms of a will, or on account of maternity. Nourishment includes ordinary provisions given to slaves in that locality ; and the same with condiments. As to clothing, it is enough to give slaves merely what is sufficient to cover the shameful parts, but they must be clothed as local custom requires. The Sonna has also introduced the practice of giving them sound nourishment both in the principal food and in the condiments, and of supplying them with clothing suitable for the climate. A slave cannot afterwards claim damages for the maintenance his master has neglected to give him, but he should make a complaint at once to the court, which can proceed immediately to the sale of the master's property and apply the proceeds to the maintenance of the slave ; or, in default of any such property, may order the sale or even the enfranchisement of the slave.

A master may oblige his female slave to suckle a child to which she has given birth ; and even another's child, if she has more milk than is required to suckle her own. He may also oblige her, either to wean her child before the regular period of two years provided the weaning is not injurious to the nursling's health, or to continue suckling it after that term, provided this is not injurious to the health of the mother. It is only a free woman that has rights as to suckling and education which she can insist upon as against her husband. Thus, in case of marriage between free persons neither of the parties can cause the child to be weaned before the expiry of the prescribed period of two years, except with the other's consent ; and this can only be given on condition that the child's health does not suffer by it. On the other hand, either party

may insist upon the child's being weaned at the time prescribed by the law; while they may jointly agree to postpone this until after that term.

One may not exact from a slave any labour incompatible with his strength or aptitudes; nor can he on his part oblige his master to excuse him from performing any suitable task. The law admits the validity of the *mokharaja, i.e.* an agreement between a master and his slave by which the latter may dispose of his labour for a daily or weekly wage to be paid to the former.

One is obliged to maintain one's domestic animals, by giving them necessary fodder and water, and if this duty is neglected the court may oblige the master either to sell the animal or suitably maintain it; or kill it, at least if it is an animal that can be used as human food, otherwise the master has no choice between sale or maintenance. An animal must not be milked in such a way as to injure the young to which she has given birth; but as to inanimate objects, such as an aqueduct or a house, the master may use or abuse them as he pleases, and no one can oblige him to see to their upkeep.

BOOK 47.—CRIMES AGAINST THE PERSON

CHAPTER I.—GENERAL PROVISIONS

Section 1

Homicide is of three categories; it may be premeditated, involuntary, or voluntary; only premeditated homicide involves a penalty under the law of talion. Premeditation in homicide consists in the intention of attacking the person of a particular individual with a cutting, piercing, or blunt instrument, capable in ordinary circumstances of causing death. Where, on the other hand, there is no intention of committing a crime, or a crime against a particular individual, there is involuntary homicide, *e.g.* if one falls upon a person one knows to be underneath and kills that person, or if one wants to shoot at a tree and the projectile strikes some one. Voluntary homicide is intentionally attacking a particular individual with an instrument that under ordinary circumstances does not cause death, *e.g.* striking him with a whip or a stick. Thus premeditated homicide will include the act of introducing a needle into any part of the body if there ensues so painful a wound as to cause the death of the victim; but it is only voluntary homicide where the prick is in some part of body where a wound is not mortal, and has left no visible trace, though death is caused. Other authorities, however, admit premeditation in these circumstances; still others consider that such an act incurs no penalty at all, and all jurists agree in this where death has been caused by thrusting a needle, *e.g.*, into the callosity of the heel, *i.e.* a place where there is no sensation.

The fact of having confined a person, and not only withheld necessary food and drink, but also prevented their being obtained by that person, so that death results, is premeditated homicide. It is understood that this confinement must have lasted long enough to be able in ordinary circumstances to cause death from inanition. It is only voluntary homicide if death occurs earlier than this, unless the victim had been deprived of food and drink before being confined, and the criminal was aware of this circumstance. In this case there is premeditated homicide all the same; *but not where the criminal did not know that the person confined had already previously been deprived of food and drink.

The law of talion is applied not only to the immediate authors of a premeditated homicide, but also to the moral and distant authors. Thus, for example, if two witnesses by their testimony cause an innocent person to be condemned to death, and afterwards declare that they intentionally gave false evidence, they also should be put to death; unless the representative of the person put to death declares that he knew the testimony was false, before the penalty had been pronounced.

A person who receives into his house a minor, or a madman, and offers him poisoned food, so that death results, incurs a penalty under the law of talion; but where a sane adult tastes of a dish whose contents are unknown to him, the guilty person is simply liable for the price of blood, in consequence of his neglect to remove this dangerous dish. In this case there is only voluntary homicide; though, according to one authority there is also premeditation and consequently the law of talion applies. On the other hand, another jurist has maintained that in this case there is no punishable crime, as the stranger takes the dish of his own accord. A similar controversy exists as to the nature of the act of poisoning dishes belonging to another, of which he is in the habit of partaking, and which he does in fact unsuspectingly eat, so that death ensues. One is still punishable under the law of talion though the injured person neglects to have a mortal wound one has given him attended to, at least if he dies in consequence.

Death caused by drowning admits of the following distinctions:—

1. Where the water into which the victim is thrown is so shallow that it cannot be considered likely to drown a man. If the victim rests lying on his side until he is drowned, this is not punishable, as it is the victim himself who has killed himself.

2. Where the water is so deep that escape is only possible by swimming, the following cases must be distinguished:—

(*a*) it is premeditated homicide, if the victim cannot swim, or is prevented from doing so by being pinioned or by some chronic malady such as paralysis.

(*b*) it is voluntary homicide if the victim is prevented from saving himself by swimming owing to some accidental circumstance, such as wind or waves;

(*c*) *the act is not a crime at all, and the guilty person is not even liable to the price of blood, if the victim could have saved himself, but voluntarily abstained from doing so.

Authorities are not agreed as to whether the act of throwing some one into the fire, admits of similar distinctions; or whether this act should not always be regarded as premeditated homicide, where death has ensued.

When one kills a person whom another has seized, or throws him into a well which another has dug; or when one throws him down from a height, and another waits underneath to cut him in two, there is no complicity; and each individual is separately liable, under the law of talion, for killing, throwing down, or cutting in two the victim. *Where, on the other hand, one throws some one into the water in a place where under ordinary circumstances he could be drowned, but he is instead devoured by a fish, one is liable to the law of talion, though not the immediate cause of his death. If the water was not deep enough to drown the victim under ordinary circumstances, but he has nevertheless been devoured by a fish, the guilty person is not liable to punishment.

Premeditated homicide, committed under coercion by violence renders liable under the law of talion not only the person who exercised the coercion *but also the person who allowed himself to be intimidated; for the law regards them as accomplices. In case of homicide that is not premeditated they should jointly pay the price of blood, if this is required; and if one of them is not liable to the law of talion by reason of social superiority to the victim, the other must undergo it none the less. Only where the violence is irresistible, *e.g.* used by an adult to a minor, the former alone is amenable to the law of talion; and this is admitted even by those authorities who in general allow that premeditation may exist in the case of a minor. Moreover, where one forces some one to shoot at a distant object one knows to be a man but the other thinks is game one incurs a penalty under the law of talion as the immediate cause; but that other who has done the material act cannot be considered as an author of the homicide. The law of talion cannot be applied to any one where a hunter, obliged to shoot at game, by misfortune hits a man; nor where some one, obliged to climb a tree, falls, causing death. In the latter case, however, there is voluntary homicide, and according to some jurists, it is premeditated. A person who forces some one to commit suicide is *not punishable under the law of talion; nor, according to our school, if he kills some one who said to him, "Kill me, or I will kill you." In this latter case there is no ground either for a claim for the price of blood. On the other hand, where one person says to another, "Kill either Zaid or Amr, or I will kill you," there is no violence in the legal sense, and the person is punishable if he commits the homicide.

Section 2

Where two persons together attack and kill another, they are accomplices in premeditated homicide, and are both punishable under the law of talion. This rule applies first of all to the case where both criminals

deal the victim an immediately mortal blow, *e.g.* if one cuts off his head, and the other cuts him in two ; but it is just the same if each deals him a blow that causes a grave but not immediately mortal wound, *e.g.* if each cuts off a limb. If one of two persons attacks another and leaves him for dead, *i.e.* unable to see or speak or communicate by signs, and the other gives him a wound that finishes him, the former alone is punishable under the law of talion, the other incurring only a correction at the discretion of the court. When, on the other hand, it is the former who merely deals the wound, and the second attacks the victim and leaves him for dead, the latter is considered guilty of premeditated homicide if the wound dealt by him is one immediately mortal, *i.e.* if he has cut off a wounded person's head. Under these circumstances the person who deals the first blow is punishable for that wound only, *i.e.* he is liable either under the law of talion or to a pecuniary penalty.

The premeditated homicide of a sick person at the point of death is punishable under the law of talion, although he has already lost consciousness.

Section 3

When one kills a Moslem in an enemy's country, under the belief that he is an infidel not subject to Moslem authority, one is liable neither to a penalty under the law of talion *nor to payment of the price of blood ; but when this act occurs in the territory of a believing ruler, the one or the other is applicable according to circumstances ; though one authority calls in question the applicability of the law of talion. On the other hand, our school admits a recourse to the law of talion in a case of premeditated homicide committed against some one designated as an apostate by public notoriety, or an infidel subject of a Moslem ruler, or a slave, or a reputed parricide, if it appears later that the person killed had not the legal character rendering inadmissible an application of the law of talion. It is in accordance with the same principles that a person is liable to the law of talion who strikes a sick person of whose dangerous state he was not aware, but who dies immediately, though in ordinary circumstances the blow would not have been mortal. This, however, is denied by some authorities.

To render applicable the law of talion it is legally necessary—

1. That the deceased was a Moslem, or an infidel enjoying our protection, on some ground or other. An infidel not subject to a Moslem ruler, and an apostate, are proscribed, and may be killed with impunity ; but the premeditated murder of a condemned criminal by any one other than the representative of the murdered man, the magistrate or the executioner is punishable like any other murder. As to a person guilty

of the crime of fornication, if he is *mohsan* and consequently punishable with lapidation, his premeditated murder by an infidel subject of a Moslem prince involves an application of the law of talion; †but this is not so if he is killed by a Moslem.

2. That the criminal is a sane adult. Drunkenness is not considered an excuse by our school. If the guilty person alleges as an excuse his minority or madness on the day of the crime, this assertion is presumed by law to be true, upon the double condition that the criminal takes an oath to that effect, and that his real age is not incompatible with his statement, or that his madness is of public notoriety. In a case where the guilty person declares in court that he has not yet attained his majority, his assertion is sufficient even though not on oath, provided a presumption is admitted in favour of the truth of his statement. An infidel not subject to Moslem authority is not liable to a penalty under the law of talion, as he is already proscribed by virtue of his belief; but religion is not a cause of impunity for an apostate, nor for an infidel in any way under our protection.

3. That the criminal is not of a social position superior to that of the victim. Thus a Moslem cannot be put to death for killing an infidel, even though the latter may be the subject of a Moslem prince; but an infidel who kills a Moslem or an infidel is liable to the law of talion, even though the two infidels are not of the same religion, or the criminal embraces the faith after committing the crime. This rule must also be observed in a case where the infidel in question, having merely wounded another, is immediately converted, and the victim dies of his wounds. But in both these cases the conversion of the criminal has this consequence that neither the Sovereign nor his delegate the judge can of their own initiative pronounce a penalty under the law of talion, but must wait until the representative of the victim claims its application. *An apostate is to be put to death for killing an infidel subject of a Moslem prince or another apostate; but not an infidel subject of a Moslem prince for killing an apostate, nor a free man for killing a slave, even though the latter be partially enfranchised. A slave, a slave enfranchised by testament, a slave undergoing enfranchisement by contract, and a female slave enfranchised by reason of maternity, are all equal in this respect. But a slave enfranchised after killing another, or in the interval between the wounding and death of the victim, follows the rule as to the conversion of an infidel criminal; while the death penalty is never applicable to a slave partially enfranchised who kills another, provided, according to some authorities, that he is free to a greater degree than his victim. By virtue of the same principles the law of talion is inapplicable to a premeditated homicide committed

against a Moslem slave by a free infidel subject of a Moslem prince, or *vice versâ;* and also to an infanticide, *i.e.* a premeditated homicide against one's child or other descendant; but it is applicable to parricide, *i.e.* the premeditated murder of one's ancestor. The premeditated murder by one of two parties of the person whose paternity they dispute is punishable under the law of talion if the paternity is adjudged to the other party, even if this is done upon the expert testimony of a physiognomist, but not if the paternity is adjudged to the party who has committed the crime.

Where one of two brothers commits the premeditated murder of his father and the other of his mother, the following cases must be distinguished:—

1. If the two homicides are committed at the same time, each of the two criminals may claim in court the punishment of the other for killing an ancestor whom he represents; and which of the two is to bring the first accusation must be chosen by lot. When one of the guilty brothers has thus been put to death on the demand of the other, whether the latter has been so designated by lot, or whether he presented himself first of his own accord, it is the representative of the brother that has been executed who should demand an application of the death penalty against the other; at least where one admits that the faculty of representing the victim by virtue of the right of succession is lost as well by the fact of rightful as of unjust killing.

2. If the two homicides are committed one after the other, a case which again admits of two distinctions—

(*a*) If the marriage between father and mother was dissolved before the first homicide, the first criminal must begin by demanding the execution of the other, after which the representative of the latter must demand the execution of the former, without any drawing of lots.

(*b*) If the marriage between the father and the mother still existed intact at the time of the first homicide, it is only the brother who has just committed the second homicide who is put to death upon the demand of the other.

Where several individuals have concurred in the homicide of another they are all punishable under the law of talion, if it is applicable; but the representative of the victim may remit the capital punishment for some of the criminals, and content himself with the price of blood from them, in proportion to the number of criminals whose execution he has claimed. An accomplice in a case of homicide cannot be punished with death, if the principal acted without premeditation and committed only a voluntary or involuntary homicide; but the accomplice of a father in the premeditated murder of one of his children should be put to death

in spite of the principal's impunity. Similarly, a slave who is the accomplice of a free man in the premeditated homicide of a slave, or an infidel subject of a Moslem prince who is the accomplice of a Moslem in the premeditated homicide of an infidel like himself, must none the less undergo the death penalty, though the free man and the Moslem are not liable to it, by reason of their respective personal qualities. *The same principle requires an application of the law of talion in the following cases of complicity :—

1. With an infidel not subject to Moslem authority, who has committed premeditated homicide, though we have just seen that a demand for an application of the law of talion cannot be brought against such infidel.

2. With an executioner or other person who carries out a sentence under the law of talion, or some definitely prescribed penalty, when this consists only in the loss of a bodily member or in a wound ; *e.g.* if a person gives the criminal another wound after he has suffered the penalty, which together with the first causes his death.

3. With a suicide, *e.g.* by giving a wound to some one who has already wounded himself intentionally, but who dies only because of receiving the second as well.

4. With a person on whose part the act constitutes only legitimate self-defence.

On the contrary, the law of talion is not applicable in the following cases :—

1. Where one gives the victim two wounds of which one is premeditated and the other involuntary, death resulting from the two combined.

2. Where one wounds an infidel not subject to Moslem authority or an apostate, who then becomes converted ; and after this one gives him another wound which in conjunction with the first is fatal.

3. Where one gives a wound that is not mortal to a person who applies to it an immediately fatal poison. Where the person in question has, in these circumstances, applied to the wound a substance that does not usually cause death, but appears to be fatal in this instance, the causer of the wound is guilty only of voluntary homicide. Where, however, the substance, though not in the category of immediately fatal poisons, ordinarily causes death in similar circumstances, and the victim knowingly applies it to the wound, the latter commits a suicide of which the causer of the wound is an accomplice. Other authorities, however, maintain that in this case there is only involuntary suicide.

†Where several persons give another cuts with the lash so that death

is the consequence, though each stroke by itself is not mortal, the law of talion is applicable only if the attack is made by a joint agreement. This rule, however, is the subject of controversy. Where, on the other hand, a single person has successively killed several others, he should suffer the penalty of death for the first victim, and his estate is liable for the price of blood as regards the others. In the case of the premeditated homicide of several persons at once, it must first be decided by lot for which of the victims the criminal is to suffer death, after which his estate is liable for the price of blood of the others. [Where in these circumstances the criminal is put to death by the representative of one of the victims other than that one for whose homicide he ought to suffer death, it is a crime rendering that representative himself liable to the law of talion; and the representative of the victim to whose homicide the law of talion applied, can claim the price of blood.]

Section 4

No responsibility is incurred by mortally wounding an infidel not subject to a Moslem prince, or an apostate, even though he should repent of his errors before death. This principle extends also to a master who mortally wounds his slave, and then frees him before his death. Others, however, do not admit impunity in these circumstances, but maintain that one is then liable for the price of blood. Where, on the other hand, one shoots at such infidel, or an apostate or one's own slave, after which the infidel or the apostate is converted, or one frees the slave, before the projectile hits him, our school exacts the price of blood on the lighter scale, for the killing of a free Moslem. This price of blood is exigible either from the criminal or from his *aakila*. Where one wounds an individual who abjures Islam before dying of the wound one is considered to have killed a proscribed person; *but one is nevertheless liable for the wound inflicted, under the law of talion, and the nearest relative of the apostate should claim the application of the penalty. Only a few authorities consider that this is the duty of the Sovereign; while if the nature of the wound does not admit of an application of the law of talion, but requires a pecuniary penalty, the criminal owes either an indemnity or the price of blood, whichever is the more advantageous. Some authorities insist in these circumstances upon the payment of an indemnity always; others maintain that there is no punishable offence. Where one wounds a Moslem who thereupon abjures his faith but afterwards repents before dying of the wound, one is not punishable with death, unless, according to some authorities, the apostasy of the victim has lasted only a very short time. But one is always liable in these

circumstances for the price of blood, or, according to one authority, to half the price of blood. When a Moslem wounds an infidel subject of one of our princes, and he embraces the faith after receiving the wound, or when a free man wounds another's slave who is enfranchised after being wounded, the victim's death in consequence of the wound does not render the criminal liable to the law of talion, but he owes the price of blood prescribed for the homicide of a free Moslem. In the case of an enfranchised slave this price of blood is payable to his former master in proportion to his value as a slave, and to his heirs for the remainder. If the slave's wound consists in the loss of a hand, and his master grants him his freedom before he dies in consequence of the wound, his master can claim either the price of blood due for the mutilation, or half the value of the slave, at the criminal's choice. One authority alone gives the criminal a choice between the price of blood and the full value of the slave. Where one man cuts off the hand of a slave whom his master thereupon frees, and two others then each give the slave a new wound, which combined with the loss of the hand cause the death of the victim, it is these two latter persons who should suffer the penalty under the law of talion, and not the one who cut off the hand.

Section 5

Punishment under the law of talion for the loss of one of the members of the body or for some other wound is regulated by the same principles as we have just explained relating to the application of the law of talion for homicide. Thus, for example, where several persons have concurred in the act of cutting off the victim's hand by placing a sabre upon his wrist and each giving it a blow so as to sever the hand from the arm, each must have his hand cut off under the law of talion.

Wounds on the head and face are of ten different kinds—

1. *Harisa, i.e.* if only the skin has been cut or scraped.
2. *Damia,* if blood has flowed.
3. *Badia,* if the flesh has been injured.
4. *Mutalahima,* if the flesh has been penetrated.
5. *Simhak,* if the membrane enters the flesh and the bone is injured.
6. *Mudiha,* if the bone has been uncovered.
7. *Hashima,* if the bone itself has been injured.
8. *Munakkila,* if the bone is broken, so that the fragments are separated.
9. *Mamuma,* if the membrane of the brain has been injured.
10. *Damigha,* if the brain is injured.

The law of talion is applicable only to wounds of the sixth category ;

or, according to some authorities, to categories 2–6. As to other bodily wounds they involve an application of the law of talion where the bone is exposed, or where there has been mutilation of a part of the nose or of the ears without exposure of the bone. This penalty is also incurred by any one who cuts a member at a joint, even if this is at the beginning of a thigh or of an arm, at any rate where such an amputation can take place without wounding the interior of the body of the criminal. ††If this is impossible a mutilation under the law of talion cannot take place, for fear lest the punishment should exceed the crime. The law of talion applies also to a person who tears out an eye, or cuts off an ear, an eyelid, the nose, a lip, the tongue, the penis, the testicles, †the buttocks, †or the edges of the vagina. On the other hand, the law of talion does not apply to the breaking of a bone ; in this case it is enough to amputate the bone of the criminal at the nearest lower joint, and make him pay the fine, if the amputation is less serious than the hurt to the injured party. In the case of a wound under the category *mudiha* and also under the category *hashima*, the law of talion should be applied for the former, and a price of blood of five camels exacted for the latter. In the case of a wound under the category *mudiha* and also under *munak kila*, an application of the law of talion may be claimed for the former, and a price of blood of ten camels for the latter.

A person who may demand that the criminal's wrist be severed under the law of talion may not aggravate the penalty by exacting a separate amputation of each finger ; and if he has in this way exceeded his just due the court should inflict upon him a discretionary punishment, without, however, condemning him to pay any price of blood. †This punishment for an amputation of the fingers does not prevent an amputation of the criminal's hand.

Where the criminal breaks some one's bone in the upper part of the arm, and afterwards cuts the lower part, an amputation under the law of talion is effected only at the elbow, and a fine is also due for rendering useless the upper part of the arm. †The injured party may also content himself with the amputation of the criminal's wrist, together with the price of blood for the part of the arm comprised between the wrist and the place where the bone was broken.

A criminal who has caused some one a wound on the head under the category *mudiha*, in consequence of which the injured party loses his sight, should suffer a *mudiha* of the same kind under the law of talion ; and if the criminal then loses his sight the matter may be considered at an end. Otherwise he must suffer the loss of his sight in the most expeditious manner possible, *e.g.* by having a red-hot iron held close to his eyeballs. And the same procedure must be followed in a

case where one of the parties has given the other a blow likely in ordinary circumstances to cause loss of sight, a blow which in fact does cause blindness. Hearing is subject to exactly the same principles as sight; and the loss of either of these faculties involves an application of the law of talion, even though it may be an indirect and not an immediate consequence of the wound. †The same principles regulate a case of loss of bodily strength, of taste, or of the sense of smell. On the other hand, where one has cut some one's finger, and the victim loses another in consequence of the wound, one is liable under the law of talion only for the finger one has cut, and not for the other lost as an indirect consequence of the wound.

CHAPTER II.—METHOD OF PUNISHMENT UNDER THE LAW OF TALION, AND THE PERSONS WHO CAN DEMAND ITS APPLICATION.

Section 1

The left hand may not be amputated, by way of talion, in exchange for the right hand; nor the lower lip instead of the upper; nor *vice versâ*. Nor may the end of one finger be substituted for that of another; nor a member at one part of the body for a member at another. On the other hand, it is of no consequence if the member of the criminal to be amputated is thicker, longer, or stronger than that of the victim, whether such member be †or be not an organic member.

As to wounds of the category of the *mudiha*, *i.e.* the only ones that admit of an application of the law of talion, the length and width—but not the thickness—of the flesh and of the skin must be taken into consideration. If the *mudiha* extends to the entire surface of the skull, and the criminal's skull is smaller than that of the victim, it is enough to give him a similar wound extending to the entire surface of the skull, but not affecting the face or the neck. The criminal then owes in addition a pecuniary indemnity proportional to the greater gravity of the victim's wound. Where, on the other hand, the criminal's skull is the greater it is enough to give him a wound of the same extent as that of the victim, even though this does not affect the entire skull; ††and in this case the criminal may even indicate the part of the skull upon which he prefers to receive the wound. In the case of a *mudiha* that removes the scalp, this is applied to the criminal to the same extent, even though that part of the skull should be smaller than in the injured person, and that in consequence the wound inflicted by way of talion

extends beyond the scalp. A person who may demand an application of the law of talion for a *mudiha*, and who exceeds the measure of the *mudiha* received, is liable himself under the law of talion for the excess. In a case where the injured party has involuntarily exceeded this measure, and also where the criminal is contented with a pecuniary penalty for the injury wrongly suffered by him, the injured party owes him the indemnity prescribed for the wound as a whole; though some authorities consider that the injured party is liable merely for an indemnity proportional to the gravity of the excessive punishment he has inflicted. Where several persons jointly inflict a *mudiha* upon another, they are each individually liable to a *mudiha;* or, according to some authorities, to a single *mudiha* in common, so that the total does not exceed the injury suffered by the victim.

A sound hand or a foot is not to be cut off for a mutilated hand or foot, even with the criminal's consent; but if one commits a contravention of this rule, one is not liable under the law of talion, but only for the price of blood. Should, however, the criminal die in consequence of such an abuse, the injured party is liable under the law of talion to the punishment for premeditated homicide. On the other hand, a mutilated hand or foot may be amputated for a sound hand or foot, unless experts declare that it will be impossible to stop the flow of blood. And the injured party must in any case be content with the amputation of the mutilated member, and cannot claim any fine in addition. A sound hand or foot may be amputated for a crooked or lame hand or foot; and no attention need be paid to the colour of the nails of the member to be amputated. ††A place where a nail has disappeared is amputated for an entire nail, but not *vice versâ*. The penis is subject to the same principles as the hand or the foot, so far as regards normal or mutilated state; but it must be understood that the term "mutilated" applies to a penis that has lost its natural elasticity, but not to one that has merely lost its power of erection. Consequently the penis of a man in full enjoyment of his virile faculties may be amputated for that of a castrated or impotent person. Similarly, a sound nose is amputated for a nose that has lost the sense of smell, a sound ear for a deaf one; but not a good eye for a blind eye, nor a sound tongue for a mute tongue.

The law of talion applies to the extraction but not to the breaking of a tooth. Nothing is due for the moment from a person who tears out a tooth from a child that still has its milk teeth, but if it subsequently appears when the child changes its teeth that the tooth in question is not replaced, and experts declare it to be due to a defect in the jaw occasioned by the wound, the criminal is liable to the law of talion, but never before the child comes of age. *In the case of a tooth

torn out from a person who has already lost his milk teeth, an application of the law of talion does not depend upon the ascertainment of a new tooth in the alveole.

If one cuts off a person's sound hand, having oneself a hand with only four fingers, one must suffer the amputation of this incomplete hand, and pay in addition an indemnity for the injured party's other finger. Where, on the other hand, it is the injured party who lacked a finger, he cannot claim the amputation of the criminal's hand, but must limit his demand either to the price of blood of his four fingers and nothing else, or to the amputation of four fingers of the criminal, †plus a fine for the part of the hand where the fingers were joined to it, †all without prejudice to a fine of one-fifth of the price of blood for the hand, due in the one case and in the other. Where, on the other hand, one cuts some one's hand that has no fingers at all, one is not liable under the law of talion unless one has oneself a similar hand. Where one cuts a sound hand, but lacks five fingers oneself, one suffers amputation of the mutilated hand, and pays in addition the price of blood of the victim's five fingers. Where a criminal who has only two mutilated fingers cuts the victim's sound hand, the latter may choose between the amputation of the criminal's three remaining fingers, plus the price of blood for the two others he has lost, and the amputation of the criminal's hand and nothing more.

Section 2

*When one cuts in two a person enveloped in some piece of cloth, and then maintains it was a corpse, the legal presumption is in favour of the representative of the victim, provided he takes an oath, and asserts the victim was alive at the moment of the crime. According to our school this presumption exists in favour of the criminal, though not on oath, when, summoned to court for cutting a member of the body, he alleges that the member had a natural defect, at least in the case of a member usually visible. In any other case the presumption is inadmissible. †Where one cuts some one's two hands and then his two feet, and the victim dies, and one maintains that death was the consequence of the wounds, while the victim's representative alleges the contrary, either on the ground that there was a sufficient interval for the victim to be healed, or because death was due to some other cause, the representative enjoys the benefit of the legal presumption, and the criminal owes the price of blood, not for killing the victim, but for cutting the two hands and the two feet, that is to say, the double. The representative also enjoys this presumption if the criminal has cut only one of the victim's hands, and maintains that death is due to some other cause,

while the representative maintains that it is due to the wound, and that consequently he may claim the price of blood for homicide and not for the wound. When one gives some one two wounds of the category *mudiha*, and then removes a portion of the skin between the two, in order to make them appear to be only one, and so to be liable for only one indemnity, one has a presumption in one's favour if one alleges that the new wound was made before the two others were healed, at least if this is possible. In this case the injured party may confirm on oath his statement that the new wound was caused after the healing of the others, and the criminal must pay two indemnities, or even three, according to some authorities.

Section 3

††The victim's heirs have a joint right to demand the punishment of a criminal guilty of homicide, and if there are among them absentees, minors, or lunatics, the prosecution must be adjourned until the first return, the second come of age, and the last recover their reason. The criminal must remain in prison until then; and he cannot claim to be released on bail. The heirs, however, should designate one of their number to conduct the prosecution in their name as representative of the victim; and if they cannot agree it must be decided by lot who is to discharge this duty. Where, under these circumstances, there is chosen by lot a person who is in some respect unsuitable to perform the task satisfactorily, he should be replaced by a substitute. According to some authorities unsuitable persons should not be among those among whom the lots are cast. *Moreover, where, in contravention of this principle, one of the heirs presents himself of his own accord and proceeds to the application of the death penalty after obtaining the necessary authorisation, he does not himself become liable under the law of talion, and his coinheritors may still claim their share of the price of blood in the criminal's estate. Only one jurist maintains that it is the inheritor who has thus overstepped the limits of his authority who owes them this indemnity. If the heirs had already pardoned the criminal the inheritor who on his own initiative has carried on a prosecution and applied the capital punishment, is himself punishable with death under the law of talion. This rule, however, is limited by some authorities to the case where the inheritor in question, though knowing the others had pardoned the criminal, still proceeded to the application of the penalty in spite of the prohibition of the court.

Punishment under the law of talion may be carried out only after the authorisation of the Sovereign or of his deputy. An injured party or

his representative who acts on his own initiative is liable to punishment at the discretion of the court. In any case the claimant is authorised personally to apply the penalty only when that penalty is death. In the case of all other punishments under the law of talion, such as the amputation of a bodily member, etc., it is the official executioner who must be charged with the duty of carrying them out. The penalty of death must be carried out in the manner ordered by the judgment. Thus a person who has been authorised to cut off the criminal's head, and who intentionally strikes him in another part of the body not indicated in the judgment, is liable to punishment at the discretion of the court, though his right to execute the judgment remains in its entirety. Where, on the other hand, this person declares that he erroneously struck the criminal in a place not indicated by the judgment, and the circumstances admit of the truth of this assertion, the court should transfer the execution of the judgment to some one else, without pronouncing any punishment. ††The hire of the executioner is defrayed by the condemned person.

A penalty under the law of talion must be executed no long time after the condemnation, without paying any attention to whether one is in the sacred territory of Mecca, or whether it is hot or cold, or whether the condemned person is sick. A death penalty or amputation cannot be carried out immediately in the case of a pregnant woman. She must remain in prison not only until she has suckled her child with the first milk occurring after her accouchement, but also until another nurse has been found, and if necessary until the child is weaned, that is, until it is two years old. ††The simple declaration of a condemned woman that she is pregnant is sufficient, even in the absence of visible signs.

Where the victim has been killed by means of an instrument for cutting, or by strangulation, burning, drowning, or starving, etc., the criminal must be put to death in the same way; but if the homicide has been committed by means of magic, he must perish by the sword. †This is also the case where the criminal killed his victim by making him swallow wine, or by pederasty. If in case of homicide by starvation the criminal remains without food for the same number of days as his victim without death resulting, the execution must continue until death ensues. According to one authority, however, the criminal should then perish by the sword. A criminal who has killed his victim by the sword may demand to be executed in the same way. If the victim did not immediately succumb from the wound received, but did so later the representative may at his choice either at once cut off the condemned person's head, or first give him the wound he gave his victim and then either cut his head off or leave him to die of the first wound. If the

victim succumbed to an internal wound, or to the breaking of his upper arm, the criminal should have his head cut off. Only one author maintains that the criminal should then receive the same wound as the victim, *and that if he does not die he cannot be given another wound to finish him. For instance, if the victim's wound consists in the loss of a hand, and he succumbs to the consequences of this wound after amputation of the criminal's hand under the law of talion, the victim's representative may either cut off the criminal's head, or pardon him for half the price of blood for homicide. When, in these circumstances the victim's wound consists in the loss of both hands, the representative may none the less cut off the criminal's head after he has suffered under the law of talion for the two hands; but if he pardons him he can claim nothing more.

No responsibility is incurred where the criminal dies from wounds given him under the law of talion. Thus, where there is the loss of a hand, nothing is due from either side, when both the injured party and the criminal die simultaneously of their wounds. And it is the same where the injured party dies before the criminal. †But if in these circumstances the criminal dies first, the injured party may still claim the half of the price of blood.

Where the criminal, told to present his right hand to be amputated under the law of talion, presents his left, in order to have it also cut off, nothing is due by the person who has obtained the judgment if he in fact cuts off that left hand; and he may then proceed to the amputation of the right hand. †But when, in these same circumstances, the criminal declares that he presented the left hand in order to suffer with it the penalty under the law of talion, and the injured party is not content with this, the amputation of the criminal's right hand may be proceeded with, but the price of blood must be paid for the left hand amputated by mistake. One is not liable under the law of talion in this respect. The same rule is applicable where the criminal declares that he presented the left hand in the confusion of the moment, believing it to be the right, and the injured party says he also made the same mistake.

Section 4

All premeditated crimes are punishable under the law of talion and subsidiarily by the price of blood; or, according to one jurist, either by the one or the other. In any case, however, the representative of the victim has the right to pardon the criminal, *i.e.* to grant him a remission of the penalty under the law of talion and content himself with the price of blood, even though this may be against the criminal's wish. However,

if it be admitted that the price of blood is only a subsidiary penalty in place of that under the law of talion, an unreserved remission of the latter has, according to our school, the effect of implying a remission of the price of blood; while the remission of the price of blood alone is invalid and forms no obstacle to a subsequent remission of the penalty under the law of talion for this same price of blood. A remission of the penalty under the law of talion may take place for an indemnity of some other nature than the price of blood prescribed by law; but in that case the criminal's consent is necessary, and in default of this the remission is considered to be *ipso facto* retracted, so that the law of talion may be applied. Where it is admitted that the law of talion and the price of blood are equally applicable in the first instance, and that consequently a remission of the price of blood alone is possible, a bankrupt may not grant this remission. On the other hand, in the system maintained by the majority of jurists a remission of the penalty under the law of talion by a bankrupt for the price of blood, has the effect of rendering this price of blood claimable, and the unreserved remission of the penalty under the law of talion implies the remission of the price of blood as we have just shown. Even the remission of the penalty under the law of talion on the part of a bankrupt, on the special condition that no pecuniary penalty should be incurred at all, is lawful, at least according to our school. A person legally incapable by reason of prodigality is, so far as regards the subject with which we are now occupied, in the same position as the bankrupt; or, according to other authorities, as the minor. The remission of the penalty under the law of talion for an indemnity of a similar nature to but greater than the price of blood, *e.g.* of two hundred camels, is void, in the second system referred to, even though the criminal consents; †but, according to the authorities who consider the price of blood as a subsidiary penalty, such a compromise would be lawful.

An adult whose intelligence is sufficiently developed to allow of his managing his property may legally ask some one to give him a wound. In such a case there is no crime on the part of the person who gives the wound; nor even where the individual in question asks to be killed at once. One jurist, however, considers such person to be liable for the price of blood.

Remission either of the penalty under the law of talion or of the indemnity has for its consequence that the criminal owes nothing, either in case of homicide or in case of a wound. Even where death is the indirect consequence of a wound for which remission of the penalty has been granted, the remission prevents any application of the law of talion; but as to the indemnity due for the wound it is only considered

to be remitted as well, under these circumstances, where the remission is made—

1. By the terms of a legacy, *e.g.* if one says, " I leave to the criminal the indemnity he owes me " ; or

2. Where one uses the explicit terms " remission," " abolition," or " pardon." According to some authorities this also would be a legacy.

All these provisions relate only to the amount of the original indemnity, that prescribed for the wound ; consequently, in case of subsequent death from the wound, the criminal owes the difference between this indemnity and the price of blood for homicide. Only one jurist considers a remission granted to the person who inflicts a wound as implying also the price of blood prescribed for loss of life, in all cases where one specially stipulates that this remission relates not only to the crime itself but also to its consequences. †Where a wound inflicted upon a member of the body does not cause death, but only the loss of another member, the criminal still owes, in case of a remission of the penalty under the law of talion for the original wound, the price of blood for the second member of the body lost by the victim as an indirect consequence of the crime. When one has the right to claim a criminal's execution because the wound he has inflicted upon the injured party has indirectly caused death, one cannot exact a penalty under the law of talion for that wound, after granting pardon for the loss of life. †But, on the other hand, a pardon granted for the wound does not imply a remission of the capital penalty ; *but the criminal in these circumstances may claim to be executed in the most merciful way, by having his head cut off. Where the penalty for the wound under the law of talion has been already suffered, and the injured party then grants the criminal a remission of what he might claim in case his life was lost in consequence of the wound, this remission is *ipso facto* null and void, if the wound does in reality cause death, unless it has been granted for a consideration.

If the principal, after telling an agent to see to the application of the law of talion, pardons the criminal ; but the agent in ignorance of this carries out his instructions, he is not liable under the law of talion for the blood that has been unnecessarily shed. *But he is personally liable for the price of blood, to the exclusion of his *aakila*, without proceeding against the principal.

Where a woman incurs a penalty under the law of talion for a wound, she is freed from liability by marrying the injured party ; but if the parties are separated before the consummation of the marriage the woman in question owes the half of the indemnity, or, according to one authority, the half of her proportional dower.

BOOK 48.—THE PRICE OF BLOOD

CHAPTER I.—GENERAL PROVISIONS

Section 1

The price of blood for the homicide of a free Moslem is one hundred camels; that is to say—

1. In a case of premeditated homicide—thirty *hikka*, thirty *jazaa*, and forty *khalifa*, or pregnant camels.

2. In a case of involuntary homicide—twenty *bent-makhad*, twenty *bent-labun*, twenty *ibu-labun*, twenty *hikka*, and twenty *jazaa*, or four-year-old camels.

Involuntary homicide committed—

1. Within the sacred territory of Mecca, or

2. In one of the sacred months, *Zulkaida*, *Zul-Hejja*, *Muharram*, or *Rejab*, or

3. Upon a relative within the prohibited degrees, is punishable with the price of blood on the heavier scale, prescribed for cases of premeditation.

The price of blood for involuntary homicide, even when aggravated by one of the three circumstances just mentioned, is a debt for which the *aakila* of the criminal are responsible; but the price of blood for premeditated homicide can only be recovered from the criminal himself, and is due at any moment. As to voluntary homicide, this involves payment of the price of blood under the heavier scale by a certain time, and may be recovered from the *aakila*.

Camels that are sick or that have redhibitory defects cannot be given except with the consent of the injured party; and the state of the *khalifa* should be ascertained by experts. †On the other hand, it is of no consequence whether the *khalifa* have attained their fifth year, before which period camels do not usually become pregnant. One may give camels of one's own herd, without regard to the particular species, provided they have the required qualities; though some jurists maintain that one can only give camels of that locality. Where one is not a camel owner it is agreed that one may only give camels of the locality.

A nomad must give camels of his tribe. If there are no camels of the locality then camels of the nearest locality must be given. But it is forbidden to give camels without the required qualities or not of the necessary age ; or even to pay the value of the camels due, except by mutual consent. If there are absolutely no camels one can oblige the injured party to accept, instead of camels, a thousand *dinar* or twelve thousand drahms. Such was Shafii's original doctrine ; but during his stay in Egypt he changed his opinion, and maintained that in such a case one should substitute for the camels their equivalent in the money current in the locality. Finally in a case where the camels can be procured only in part, it is enough to give as many camels as one can, and the money value of those that are wanting.

A woman, or a hermaphrodite, is worth half a man, whether in a case of homicide or in a case of wounding. A Jew or a Christian is worth the third of a Moslem. A fire-worshipper, or even an idolater who has a safe conduct, is worth a fifth. According to our school individuals belonging to foreign nations who have not yet been invited to embrace the faith, and whose religion has not been expressly abolished by the Prophet, keep their personal status so far as concerns crimes committed against their person. Consequently, if one kills or wounds them, one must pay the price of blood prescribed by their respective religions. Where, however, the invitation to be converted to Islam has been made to them, or where their religion has been expressly abolished, crimes committed against their person incur payment of the price of blood of a fire-worshipper.

Section 2 (1)

As regards wounds on the head or face, the indemnities due for causing such wounds to a free Moslem are as follows :—

1. For a *mudiha*, five camels.

2. For a *hashima*, which is also a *mudiha*, ten camels ; otherwise five. According to some authorities a *hashima* which is not a *mudiha*, is punishable with a fine.

3. For a *munakkila*, fifteen camels.

4. For a *mamuma*, a third of the price of blood prescribed for homicide.

Where, of four individuals, one gives the victim a *mudiha*, another a *hashima*, a third a *munakkila*, and the fourth a *mamuma*, the three first each owe five camels, and the fourth must make up what is wanting to amount to a third of the price of blood for homicide. Wounds on the head and face, classified as less serious than a *mudiha*, necessitate

an indemnity fixed according to their gravity in due proportion to a *mudiha*. Where this proportion cannot be ascertained such wounds involve a fine, just in the same way as all other "external" wounds that do not come under the law of talion. As to "internal" wounds, these are punishable with a third of the price of blood for homicide. By "internal wound" is understood any wound that penetrates into the cavities of the body, such as the stomach, the chest, the hollow at the top of the sternum, the sides and the hips. The indemnity due for a *mudiha* is always the same, whatever the extent may be; but two *mudihas* are counted as two distinct wounds if separated from each other by pieces of flesh and skin; or, according to some jurists, if separated either by pieces of flesh or by pieces of skin. And each *mudiha* constitutes a distinct wound if one has been intentionally and the other involuntarily given; or even if a *mudiha* extends both to the head and to the face. This rule, however, is rejected by some authorities. If one enlarges a *mudiha* one has given to the injured party ††this *mudiha* is still none the less a single wound; but there are two where one enlarges a *mudiha* given by a third party. Internal wounds also follow this rule †except that there are considered to be two wounds if the weapon enters the body on one side and comes out of it on the other. And the same is the case with a wound made by a two-pointed lance. The indemnity is due, even though the wound should close up, without distinction between a *mudiha* and an internal wound.

According to our school the price of blood prescribed for homicide is due to the full amount by a criminal who cuts off some one's two ears; but if they withered away, the offence is punishable by fine only.

The loss of an eye involves payment of half the price of blood prescribed for homicide, even in the case of a squint-eyed, short-sighted, or one-eyed person, or in the case of an eye covered with a white pellicle not affecting the sight. But if the sight is affected only a proportional indemnity is owing, unless the proportion cannot be ascertained, in which case the fine is due.

For the loss of each eyelid the criminal owes a quarter of the price of blood prescribed for homicide, even where the injured party is blind.

For a loss of the nose the full price of blood prescribed for homicide is due. For each side of the nose, or for the diaphragm, the price of blood is one-third, though according to others the loss of the diaphragm involves the fine, and that of the two sides of the nose the full price of blood.

Each lip is paid for by half the price of blood prescribed for homicide. †By "lip" is understood that part of the face comprised from right to

left between the two corners of the mouth, and from above to below in what covers the gums.

A loss of the tongue involves payment of the price of blood for homicide, even if the injured party spoke with difficulty, or if he was a stammerer, or if he had the defect of pronunciation called *tothgha*, or if he stuttered because still a child. However, as to little children, some authorities consider them to be mutes, as long as they give no signs of having the tongue sufficiently developed, such as making a movement of the tongue when crying or sucking. Now in the case of a mute person a loss of the tongue does not involve payment of the price of blood but a fine.

The loss of each tooth of a free Moslem is indemnified by five camels, whether in the case of a broken tooth of which no remains are visible in the mouth, but of which the root remains intact, or in the case of a tooth completely torn out. A tooth in excess of the ordinary number is paid for by a fine ; while a tooth which is a little shaky is considered as a tooth that is quite intact. Only where the tooth is so shaky that it is of no use is the fine prescribed instead of the price of blood ; but it is of no consequence whether a shaky tooth causes trouble in manducation. A person who tears out a milk tooth from a child, owes merely the prescribed indemnity, if it appears at the time of the second teething that the child has no other in the empty alveole owing to a lesion of the jaw. *Consequently nothing is due if the child dies before the time of the second teething ; but a person who tears out a permanent tooth is liable for payment of the indemnity even though another tooth has appeared in the injured place. Moreover, the tearing out of several teeth involves payment of the indemnity as many times as there are teeth torn out ; only one jurist admits the restriction that the indemnity for the whole set can never exceed the amount of the price of blood prescribed for homicide, except where there is more than one offence, and more than one criminal. Half the price of blood is due for each half of the jaw, without prejudice to the indemnity due for the teeth.

The loss of each hand involves half the price of blood prescribed for homicide, provided the wound is not inflicted above the wrist, for in that case one is also liable to a fine. Each finger is paid for by ten camels ; each finger joint by a third of this amount, and each joint of the thumb by the half. The feet follow the same rule.

The two teats of a woman involve the price of blood for homicide ; but if this wound has been suffered by a man, the offender is punishable with fine. One authority, however, does not admit this distinction, and insists upon the price of blood whatever may be the sex of the person wounded.

The price of blood for homicide is also due in a case of the removal of the two testicles or of the penis; even though the wounded person should be incapable of coition through youth, age, or impotence. The price of blood for homicide is due for the loss of the two buttocks, or for that of the two sides of the vagina, as also for flaying the victim. Where it is ascertained that the victim's life was not imperilled by the flaying, the criminal is not punishable with death, even though the victim may have lost his life later, *e.g.* by decapitation at the hands of a third party.

Section 2 (2)

One owes the price of blood for homicide if one causes some one to lose his reason, and if madness is the consequence of a wound itself involving an indemnity or a fine, the criminal should pay one or other in addition. One jurist, however, maintains that in such a case the greater sum includes the less. If the affair took place in some isolated spot, and the injured party declares he lost his reason in consequence of the wound so received, the price of blood is adjudged to him without its being necessary for him to take an oath, even though his declaration may be somewhat incoherent.

The price of blood for homicide is due in case of loss of hearing; and half is due if this loss is limited to one ear. Other authorities, however, admit in the latter case only a price of blood proportional to the damage sustained. The loss of both ears and of the sense of hearing involves payment of twice the price of blood for homicide. Loss of hearing is proved by the oath of the injured party, unless circumstances indicate that his assertion is false, *e.g.* if he jumps up at some cry uttered while he was asleep or not thinking of the part he was playing. In a case of incomplete deafness the criminal owes a proportional price of blood if the degree of deafness can be ascertained, but otherwise a fine of which the court should fix the amount after examination. According to some jurists the degree of deafness can always be ascertained by comparison with the strength of hearing of a normal individual of the same age as the injured person. Thus the proportional degree of deafness even of a single ear may be ascertained by first closing the wounded ear and ascertaining the strength of hearing of that still uninjured, and then closing that one and testing the strength of hearing of the other.

For loss of sight in each eye the criminal owes the half of the price of blood for homicide; and if the eye is torn out nothing more is due. Blindness is ascertained by experts; or, if necessary, by suddenly putting close to the alleged insensible eye a scorpion or a red-hot iron.

when, if the injured party remains motionless the truth of his words may be believed. Partial loss of sight follows the same rule as that already established for cases of partial deafness.

††Loss of smell involves payment of the price of blood for homicide.

Loss of the faculty of speaking also involves payment of the price of blood for homicide ; but a loss of the faculty of pronouncing certain letters is estimated proportionally, taking the Arabic alphabet as a basis, *i.e.* twenty-eight letters, though some authorities do not count labials and gutturals. In the case of a person who cannot pronounce certain letters of the alphabet, the calculation differs according to whether this defect is an original one, or the consequence of some malady sent from heaven or resulting from a lesion. Now, if the defect was original or the consequence of a malady the price of blood is due as if the defect did not exist ; though some authorities in such case admit only a proportional price of blood ; whereas, if the defect was the consequence of a lesion, our school insists upon a proportional price of blood. A loss of half the tongue as well as a loss of the faculty of pronouncing a quarter of the letters renders the criminal liable to a payment of half the price of blood. For a total loss of voice the law exacts payment of the full price of blood for homicide. If the tongue has at the same time lost its mobility, so as no longer to be able to articulate or vibrate, the criminal is liable for twice the price of blood ; but some authorities have called this last rule in question.

The sense of taste is equally rated upon the price of blood for homicide. By taste is understood normally the human faculty of distinguishing if a thing be sweet, sour, bitter, salt, or agreeable ; and a partial loss of the faculty of distinguishing one or several of these five qualities involves payment of a proportional price of blood. If this partial loss means that one can still imperfectly distinguish all five, the criminal owes a fine.

Payment of the price of blood for homicide is, however, incurred for causing the loss of :—

1. The power to masticate.
2. The power to emit sperm, on account of some lesion of the spine.
3. A woman's power to become pregnant.
4. Pleasurable feeling in the act of coition.

The price of blood is claimable also in a case where a husband or another tears the perineum in the act of copulation. Some authorities deduce the same consequence from a tearing by coition of the separation between the vagina and the urethra ; and coition is forbidden, even to the husband, if this act cannot be effected without causing the woman such a wound.

As to loss of virginity, the following cases must be distinguished :—

1. Where it is caused by an individual who has no right to do so. Here again the following distinctions must be made :—

(*a*) If it is caused in some other manner than by the introduction of the penis into the vagina an indemnity is necessary.

(*b*) If it is caused by an introduction of the penis, either by mutual error, or by violation, there is necessary a payment of the proportional dower which the girl could claim after being deflowered, as well as an indemnity for the offence. According to other authorities the girl can claim only the proportional dower that she was worth before her deflowerment.

2. Where it is caused by some one who has the right to do so. In this case there is nothing punishable, though according to some authorities an indemnity is due even in this case, whenever copulation has taken place otherwise than by the introduction of the penis into the vagina.

Loss of muscular force or power of walking involves payment of the price of blood for homicide ; and a fine is due for partial loss of one or the other. Lesion of the spine, involving not only loss of power to walk, but also of pleasurable feeling in the act of coition or of power to emit sperm, is compensated by twice the price of blood for homicide, a rule, however, that is not accepted by some jurists who think that the price of blood is due only once.

Section 2 (3)

The price of blood for the members of the body and for the bodily organs is cumulative ; but if the victim dies from his wounds the price of blood for homicide is due and nothing more. †This is so even if the criminal cuts off his victim's head before the wounds that he has made are healed, provided only that the wounds and the mortal blow are of the same nature, *i.e.* that one of the crimes has not been perpetrated with premeditation and the other involuntarily. There is also plurality in the price of blood, where the wounds and the mortal blow were not caused by the same person.

Section 3

A fine is due for wounds that are not rated by law. The amount is determined by the court in accordance with the seriousness of the case, and in due proportion to the price of blood due for homicide ; or, according to some jurists, with the price of blood due for the wounded member. The proportion to be observed in the application of the fine

is the same as the diminution in the value of a slave of the same qualities as the victim due to a similar mutilation. But a fine for the wounding or partial loss of a bodily member should always be less than the legal indemnity prescribed for the total loss of that member; and where an application of the above rule would lead to another result, the court should reduce the fine to an amount that appears to it to be reasonable. In the case of a member such as the thigh, for which no indemnity has been prescribed, the fine should always be less than the price of blood for homicide. The penalty for a wound should be estimated after healing, and where it appears that the victim has not suffered any appreciable permanent lesion, the gravity of the lesion must be taken into consideration immediately before complete recovery. Other authorities, however, maintain that in such a case the court should fix a reasonable amount as the fine, while yet others think that in these circumstances there is no occasion for a fine. Wounds rated by the law, such as the *mudiha,* may be taken as a basis for fixing the amount of fines due for disfigurement; †but fines for wounds not so rated may never be taken as a basis for fixing the amount of others.

The price of blood for the homicide of a slave is the value of the slave. As to lesions suffered by a slave, the price of blood varies in proportion to his value, at any rate in the case of wounds not rated for a free man. In the case of wounds that are rated by law, the same proportion must be observed between the price of blood and the value of the slave as between the price of blood for a similar wound to a free man, and the price of blood for the homicide of a similar individual. A single authority in these circumstances allows the amount to be estimated according to the diminution in the specific value of the slave. *Cutting off a slave's penis and testicles is punishable with a fine amounting to twice the value of the slave. It is true that another doctrine tends to maintain that even in this case the criminal should indemnify the master for the diminution in the slave's value. Finally the offender owes nothing for wounds that do not appreciably diminish the value of the slave.

CHAPTER II.—OBLIGATION TO PAY THE PRICE OF BLOOD; THE *AAKILA:* AND EXPIATION

Section 1

When a minor who has not yet attained the age of discernment is upon the edge of a terrace, and is frightened at the cry of a passer-by, and falls down and is killed, the passer by owes the price of blood on the

higher scale, and the obligation to pay it falls also on the *aakila.* According to one authority the law of talion may even be applied in these circumstances. †Where, on the other hand, the minor is on the ground, or where it is an adult who is on the edge of the terrace, an unexpected cry causing a fatal fall does not involve a payment of the price of blood. Under the above circumstance, drawing a sword is the same as uttering a cry; while a minor who is almost an adult is the same as an adult in this respect, provided he has a lively intelligence. Where a person utters a cry as a warning of the presence of a wild beast, and thereby so frightens a minor on the edge of a terrace that he falls down and is killed, the price of blood on the lower scale is due by the *aakila.*

If the Sultan, or a judge, etc., sends for a pregnant woman accused of some offence, and frightens her so that she has an untimely birth, he is responsible for the abortion.

There is no punishable offence where a minor placed in a cave of wild beasts is devoured by them; provided, according to some authorities, that he could have saved himself. Nor is there any punishable offence where one pursues with a drawn sword a person who from fear throws himself into the water or into the fire or from the top of a terrace and so kills himself; but if the person so pursued does not throw himself down, but falls accidentally, either through blindness or in the dark, †or if the terrace gives way under him, the pursuer is responsible for the accident. Where a minor, sent to a swimming master to learn how to swim, is drowned, the master is responsible for the price of blood.

One is responsible for digging a well into which some one has fallen, if the digging was in itself illicit. Consequently a man who digs a well on his own ground or on uncultivated ground, is not responsible for the accidents which may result from it; but if he does so in the courtyard of his house, he is responsible for the fall of a person he may invite to such a spot which he knows to be dangerous. And besides this, a responsibility for accidents exists where a well has been dug—

1. On another's land without his knowledge.

2. On a piece of land of which one is only the co-proprietor.

3. On a narrow public way, so as to obstruct it. But where the road is not obstructed there is no responsibility for a person who has dug a well on the public roadway in the following cases:—

(*a*) If the Sovereign has approved it.

(*b*) *If the well is dug for the benefit of the public; for where the profit is merely personal the responsibility does exist.

In this matter a mosque is subject to the same rules as a public road.

One is responsible for accidents caused by the construction of a balcony opening upon a public road ; and even, according to the opinion of Shafii in his second period, for having given too much prominence to the pipes collecting the rainwater from the roofs, although this is an act permitted to each proprietor. If the balcony or the water-pipe partly rests upon a wall, and the protruding portion of the balcony or the pipe falls, the proprietor is entirely responsible for the accident ; †while he is only responsible for half of it, where the part which rests upon the wall and the protruding portion both fall. A wall that leans upon the side of a public road follows the same rule as a balcony ; but no responsibility is incurred for accidents caused by the fall of a wall constructed in vertical equilibrium that afterwards leans over. Other authorities, however, admit this principle only where the proprietor could not have prevented the accident by a demolition or reparation of the wall that threatened to fall down. †The responsibility never extends to accidents that are the remote consequences of the fall of the wall on the public road, *e.g.* if some passer-by stumbles against the *débris* and falls, or where this *débris* affects another's property. ††On the other hand, one is responsible for throwing into the road ordures, melon skins, or other slippery objects that cause a passer-by to fall.

In a case where two causes of accident coincide, it is the more immediate which determines the responsibility. Consequently where one of two persons digs a well and the other places a stone at the edge of it, the latter alone is responsible if another person stumbles against the stone and falls into the well, where both of the two have acted illegally. Where, on the other hand, the person who places the stone thereby commits no illegal act, traditional doctrine admits the responsibility of the person who dug the well. Where one person places a stone somewhere and two others follow his example and together place another stone, and a passer-by stumbles against them and falls, all three are responsible for the accident ; though some authorities maintain that the first individual is responsible for the half, and the two others jointly for the other half. He who stumbles against a stone deposited by another person and so pushes it before him, and another then stumbles against it, is responsible for this latter accident ; but where he stumbles on a big wide road against some one sitting or sleeping upon it, or merely stopping upon it, no responsibility is incurred by either party even if the accident causes the death of either or both. Where, on the other hand, the accident occurs upon a narrow road, our school allows that the death of the person sitting or asleep involves no responsibility in the person who has stumbled against him ; but considers that the former would be responsible for the death of the latter. In similar

circumstances a moving person is responsible for an accident to a person stopping upon the road, but not *vice versâ.*

Section 2

Where two persons inadvertently stumble against each other, the *aakila* of both are mutually liable for half the price of blood on the lighter scale, if the accident has caused the death of both. If the affair is intentional on both sides the *aakila* are responsible for half the price of blood on the heavier scale; if intentional upon one side only, each should be condemned to pay the price of blood prescribed for its particular case. ††In such a collision both estates are charged with double expiation. Where the death of the two individuals is caused by the collision of their respective mounts the consequences are the same except that each estate is charged also with half the value of the other's mount, if the accident involved the death or mutilation of the animals. And similarly where there is a collision, not between two sane adults, but between two minors or two lunatics; though according to some jurists the guardian or the curator must personally guarantee the minor or lunatic committed to their charge from the consequences of the suit if he advised him to ride. Where a third party has caused a minor or a lunatic to ride, jurists unanimously consider him to be responsible for the prices of blood and injuries and damage due on both sides. A collision between two pregnant women resulting in a double abortion is punishable with the price of blood in the way we have explained, ††and four times the expiation in each case; while the *aakila* of the two parties owe each other half the *ghorra* prescribed for abortions. A collision between two slaves that results in the death of both constitutes no offence.

A collision between two ships is regulated by the principles set out with reference to riders, so far as concerns their captains, at any rate where ships and cargoes belong to them. If the ships are loaded with goods belonging to other persons, each captain owes the charterers half the damage sustained by each of them. Finally, in a case where neither the goods nor the ships belong to the captains, these latter are liable for half the value both of the ships and of the goods committed to their charge.

When a vessel is in danger of shipwreck everything in it may be cast into the sea, and this course is even obligatory if it appears that the lives of the crew or of the passengers depend upon it. An indemnity is due for goods so cast that belong to a third party, unless he consented. The words, "Throw out your goods on my account," or "Throw out your goods, I will be responsible," involve an obligation to indemnify

the owner ; but our school does not recognise this obligation where one merely says, even in the midst of a storm, " Throw out your goods," and nothing more. The responsibility we are speaking of exists only where the request to throw away the goods is made through fear of sinking, and not if made when there is no danger ; and it is of no legal consequence whether the casting is or is not profitable to the person making it.

When the projectile from an engine of war rebounds and returns and kills one of the soldiers serving it, the price of blood is divided into as many portions as the original number of soldiers, and each of the dead man's comrades owes his share to the estate. If the victim did not belong to the working of the engine of war the fact constitutes an involuntary homicide, if it is proved that the projectile was not aimed at the victim ; but it becomes a premeditated homicide if the thing is knowingly pointed at the victim, and the projectile can strike at that distance in ordinary circumstances.

Section 3

The price of blood for voluntary or involuntary homicide constitutes a debt recoverable in the first instance from the offender, and subsidiarily from his *aakila, i.e.* his agnates in collateral line. Some authorities also consider a son to be amongst the *aakila,* provided he is at the same time grandson of his father's brother, as may occur where a homicide is committed by a woman who has married her cousin on the father's side. Responsibility falls first upon the nearest *aakila,* and, if all the sum due cannot be recovered from him, then from his nearest full agnate, or, according to Shafii's first doctrine, from his nearest agnates whether full or only on the father's side. After this it is the offender's patron who is responsible as *aakila,* then his agnates, then the patron's patron and his agnates. After this again the responsibility falls upon the patron of the offender's father, then upon his agnates, his patron and his agnates, and so on. The *aakila* of a woman are responsible for that woman's freed slave, and if there is more than one owner, they are jointly responsible for the total amount due ; whereas each agnate of a patron is responsible only for the obligation of his principal. *An enfranchised slave is never considered as being amongst the *aakila* of his patron.

In default of *aakila,* or if their contributions are insufficient, the State is responsible for a Moslem offender ; *and if for some reason or other the amount cannot be recovered from the State, the responsibility relapses entirely upon the offender himself.

The *aakila* should acquit themselves of their obligation within the space of three years, if the price of blood is for the homicide of a free Moslem, *i.e.* a third each year. The price of blood for the homicide of an infidel subject of a Moslem prince must be paid in one year; and that for the homicide of a woman in two years, *i.e.* a third of the full price of blood the first year and a sixth the second. However, according to some jurists, the price of blood for such infidel and that for a woman must be paid for in three years. The *aakila* are responsible just the same *if the victim is a slave; but whatever may have been the slave's value, the *aakila* are never obliged to pay each year more than a third of the ordinary price of blood. According to some other authorities, however, they must see that the total price of the slave is paid up within the three years. In case of a homicide committed upon two victims the two prices of blood must be paid within the three years like a single one; but according to some authorities the debt need only be paid within six years. As for the price of blood for a wound or for the loss of a bodily member, one need not pay more each year than a third of the price of blood prescribed for homicide. Other authorities, however, maintain that this is a debt payable in entirety at the end of the first year. All the limits of time we have mentioned are calculated in case of homicide from the moment of the victim's death, and in case of other offences from the moment the crime is committed.

The decease of one of the *aakila* in the course of the year has for its consequence that his debt falls upon the others; but no such responsibility ever attaches to a poor man, a slave, a minor, or a madman. A Moslem *aakila* is not responsible for an infidel offender, nor an infidel *aakila* for a Moslem offender; *but a Jew may be responsible for a Christian offender, and *vice versâ*. The responsibility of a rich *aakila* never exceeds half a *dinar*, nor that of a man of moderate means a quarter per annum; or, according to others, for the three years. The state of the fortune of the debtor is ascertained at the end of each year; while he who becomes insolvent in the course of the year owes nothing.

Section 4

The person of a slave may be seized in satisfaction of a debt due for an offence committed by him, but his master may, instead of abandoning the culpable slave to be put up to auction, ransom him either with his value or with the indemnity prescribed for a lesion, whichever is the more advantageous for him. In his first period Shafii did not accept this doctrine, maintaining that the prescribed indemnity is due in any case, if the master wishes to avoid the seizure of the slave. *The money

due for the offending slave is a material debt, and not an obligation for which he is personally responsible after being enfranchised. If the slave, after being ransomed by his master, is guilty of another offence, the master has again the choice between seizure and ransom; but if the second offence is committed before the payment of the first ransom the slave may be seized for the total of the two debts, unless his master ransoms him either with his value, or with the indemnities prescribed for the two crimes, whichever is the more advantageous for him. In these circumstances Shafii's first doctrine allowed only the ransom with the two indemnities. In the case of the enfranchisement or sale of the slave after the offence, and supposing that the validity of these acts depends upon the master's solvency, the latter can no longer abandon his slave, but is obliged to ransom him, in the manner already explained. And it is the same if the master kills the slave after the offence. According, however, to other authorities Shafii's first doctrine insisted even in these circumstances upon the prescribed indemnity; but the master owes nothing where the slave, after committing the offence, takes to flight or dies a natural or accidental death, unless the master previously opposes his seizure. If he opposes the seizure he implies an intention to ransom the slave, †and though in ordinary circumstances he may withdraw from a promise to ransom his slave and declare that he prefers to abandon him, such retractation is no longer permissible as soon as the slave's death has rendered his seizure impossible. A master may ransom his female slave enfranchised by reason of maternity in the same way as his other slaves; though according to some jurists Shafii originally insisted for her also upon payment of the indemnity as the only possible ransom. *A plurality of offences committed by such female slave does not in any way affect her master's right of ransom.

Section 5

Abortion involves the *ghorra* as price of blood for the fœtus if brought forth dead in consequence of the crime, without prejudice to the price of blood for the mother, where the abortion causes her death also. †It is the same if the fœtus appears to be dead in the mother's womb in consequence of the crime, and cannot be extracted because of her death. If it is a question not of a fœtus but of a child brought forth by abortive means, and remaining some time alive without showing signs of pain, its death is presumed to be natural and nothing is due for the abortion; but if the child dies immediately after birth, or some time afterwards, but with constant signs of pain, the person causing the abortion owes the ordinary price of blood due in case of homicide.

If there are two fœtuses there are also two *ghorras*. The *ghorra* is due in full even where there issues from the womb merely a hand or a piece of flesh virtually containing a human form, according to the midwives; or even, according to some jurists, where there remains in the womb a piece of flesh which, according to the midwives, could take a human form.

The *ghorra* consists in a male or female slave of the age of discernment without redhibitory defects. †Thus one may give as *ghorra* a slave of a certain age, provided that age does not approach decrepitude. The value of the slave must not be less than one-twentieth of the price of blood due for homicide; and in default of a slave answering all these conditions one owes five camels. Some authorities, however, do not insist upon the slave having the value mentioned. In default of camels their value must be substituted for them. The *ghorra* is payable to the heirs of the fœtus, and is a debt for which the *aakila* of the offender are responsible; though according to some jurists the offender alone is responsible if the abortion has been caused with premeditation. According to some authorities the *ghorra* is the same for a fœtus which at its birth would have been Moslem as for one that would have been Jewish or Christian. According to others nothing is due for the abortion of a fœtus which would have been infidel by birth; †but the majority allow for this fœtus a *ghorra* of the amount of one-third of that for a fœtus which would have been Moslem. The abortion of a female slave is punished with one-tenth of her value upon the day of the offence; or, according to others, on the day of the abortion; and the amount goes to the profit of the master. †If the mother is deprived of a bodily member or organ, but the fœtus is without bodily defects, the value of which one-tenth is due is the mother's original value. *And the tenth due for the abortion of a female slave is also a debt for which the *aakila* are responsible.

Section 6

A homicide requires an expiation, even where the offender is a minor, a lunatic, a slave, or an infidel subject of a Moslem prince; and it makes no difference whether the homicide is premeditated, voluntary, or involuntary. Expiation is even necessary:—

1. In case of excusable homicide, at least where the victim is a Moslem.

2. In case of homicide committed upon the territory of infidels not subject to Moslem authority, at least where the victim is a Moslem.

3. Where the victim is an infidel subject of a Moslem prince.

4. Where the victim is still in his mother's womb.

5. Where the victim is the offender's slave.

6. In case of suicide. This, however, has been called in question.

Expiation is not due—

1. For homicide committed upon an infidel woman or minor not subject to our authority.

2. For homicide committed upon a rebel.

3. In case of legitimate defence.

4. Where homicide is committed under the law of talion.

†An expiation is due for each accomplice. This expiation is equal to that prescribed for injurious comparison; *with the exception of the option of maintaining sixty indigent persons.

BOOK 49.—PROCEDURE IN CASE OF CRIMES AGAINST THE PERSON

Section 1

The accuser must give a precise account of the offence, mentioning whether it was premeditated or involuntary, whether the criminal had accomplices or not, and so on; and if he does not do this the court shall require him to give details of his complaint; or, according to some authorities, it should dismiss him on the ground of there being no case. According to others the accuser should also name in his complaint the particular person alleged to have committed the crime. †Thus where the accuser confines himself to asserting that only one of several accused persons committed a homicide, the court has no right to compel them to take an oath, if they deny it. †This principle applies not only to the procedure we are here concerned with, but also in cases of usurpation, theft, and destruction. Moreover, an accusation can only be received from a sane adult, whether a Moslem or an infidel subject of our Sovereign or enjoying our protection, provided in the two last cases that the accused is of the same quality.

One may not accuse a person of homicide after having previously accused another person of the same offence, at any rate where one asserted there were no accomplices; *but there is no objection to first bringing an accusation of premeditated homicide, and afterwards limiting it to that of voluntary homicide.

An oath fifty times repeated is admissible as legal proof only in case of grave suspicion, *e.g.* if the victim is found in the camp or village of his enemies, if a band of men run away leaving a corpse lying on the ground, or if two bands fight together furiously and a victim remains on the spot. In this last case suspicion falls upon the band to which the victim did not belong; but if the bands did not fight, the fact of the victim remaining dead at that place constitutes a grave suspicion that he was killed by the band to which he belonged. The deposition of a single witness of irreproachable character or that of several slaves or women also constitutes a grave suspicion; on condition, according to some authorities, that the latter are separately examined. †A similar suspicion results from the deposition of persons of notorious

misconduct, of minors, or of infidels. On the other hand, grave suspicion never exists where the matter is open to doubt, *e.g.* where one of two sons of the victim declares that so-and-so is guilty, and the other asserts the contrary. A single jurist admits suspicion, even in these circumstances; while others do not admit as a ground of doubt the denial of a person of notorious misconduct. Where, however, in the circumstances above mentioned, one of the sons declares that the homicide was committed by Zaid in complicity with a person he does not know, and the other declares it was committed by Amr in complicity with a person he does not know, each son may confirm upon oath, fifty times repeated, the truth of his deposition, and then afterwards claim from the person he has indicated one-quarter of the price of blood. As to grave suspicion falling upon a band of men, an accused person who denies having formed part of it has a presumption in his favour if he confirms his statement upon oath. †The oath fifty times repeated is not to be taken by an accuser, if the grave suspicion relates only to the material fact of homicide, and does not indicate whether it is premeditated or not; and it can only be taken in case of homicide, not in cases of wounding or destruction of property, unless the object destroyed is a slave.

This oath consists in the accuser swearing fifty times that his complaint is true; but our school does not insist upon the ceremony taking place without interruption. Consequently an accuser struck with an attack of madness or fainting may continue his oath upon coming to himself. ††But if the accuser dies before finishing the fifty oaths required, no right of continuation devolves upon his heir, who may, however, on his part, pronounce a new series of fifty oaths. Where the victim leaves several heirs who may jointly demand the punishment of the guilty person, the fifty oaths are divided among them in proportion to their respective shares in the estate; except that any one who would in this way take merely part of an oath, must take it in its entirety. One authority even maintains that the oath should be taken fifty times by each heir. The refusal of an heir to take this oath makes his right pass to his coinheritor; and if one of two coinheritors cannot perform his oaths through absence the other may either take by himself the fifty oaths prescribed and receive at once his portion of the price of blood, or await the return of the absent coinheritor. Finally, in cases of crimes against the person, our school insists all the same upon the repetition of the oath fifty times—

1. When it is taken by the accused, in default of grave suspicion.
2. When it is taken by the accuser, or by the accused, in case of grave suspicion.
3. When it is taken to supplement the deposition of a single witness.

The result of the repeating of the oath fifty times is that the price of blood becomes obligatory both for the criminal and for his *aakila*, in case of voluntary or involuntary homicide, and that it is due from the criminal alone in case of premeditated homicide. In his first period Shafii considered that even in this last case the repetition of the oath fifty times was sufficient proof for the law of talion.

Where there is grave suspicion of premeditated homicide against three persons of whom one only has been arrested, the accuser begins by taking an oath fifty times to give his complaint greater force against the one arrested; and after this the latter owes one-third of the price of blood. If afterwards another of the accused persons is arrested, the accuser again repeats the oath fifty times with respect to him; but doubt has been cast on this rule by a jurist who maintains that only twenty-five oaths can be insisted on against the second accused, if the accused does not mention him upon the first occasion. This jurist, however, admits, as do the majority, that on the contrary supposition the new oaths are of no value; †in that case suffice the first fifty oaths legally pronounced in the absence of the second accused.

The oath fifty times repeated is administered also to an individual who can claim only a pecuniary penalty in place of talion, for instance, to the master of a slave, even where the master in question is a slave undergoing enfranchisement by contract. As to an accuser who becomes an apostate it is preferable not to administer to him the oath with which we are concerned, until he returns from his errors; though according to our school the validity of the oath is unquestionable if taken at once. And finally, the oath repeated fifty times is not administered if the victim leaves no heir.

Section 2

No one can be condemned to a penalty under the law of talion unless the fact has been proved, either by a confession, or by two male witnesses of irreproachable conduct. But a criminal's condemnation to a pecuniary penalty may be based as well upon the deposition of a single male witness, corroborated by that of two women or by an oath; †with the single exception that where an accuser demands an application of the law of talion and afterwards finds that he can produce as witnesses only one man and two women, he may not change his mind and remit any proceeding under the law of talion and content himself with asking for a pecuniary penalty; although these witnesses would have sufficed had he in the first instance applied for the imposition of a fine. And, in accordance with the same principle, where a *hashima*, constituting in the first instance a *mudiha*, is established by a man and two women,

the penalty prescribed for a *hashima* cannot be exacted, at least according to our school, as the *mudiha* involves the law of talion, and consequently cannot be proved in that manner. The depositions should indicate precisely the fact with which the accused is charged. Thus a deposition to the effect that "the accused struck the victim with his sword and wounded him and he is dead," is not enough until completed by a deposition to the effect that "death was the consequence of the blow," or that "it was the accused who killed him." A *damia* is proved by a deposition that "the accused struck the victim on the head in such a way as to cause it to bleed," or "to make the blood spurt forth;" a *mudiha* by a deposition that the accused struck him in such a way as to uncover the bone; though according to some authorities it is enough to prove that the accused dealt the victim a *mudiha* upon the head. In the case of a *mudiha* the deposition should also indicate precisely the place and gravity of the wound, as otherwise it would be impossible to apply the law of talion. A homicide committed by means of magic is proved only by the criminal's confession, and not by the testimony of witnesses.

A deposition to the effect that a certain person, of whom one is the heir, has been wounded by another, is admissible only when the wound has been completely healed. Nor may one depose, in a civil action, in favour of any one of whom one is the heir, during that person's last malady; as the principle is admitted that no one may depose in his own favour. Consequently the *aakila* cannot give evidence to the effect that the witnesses for the accuser are of notorious misconduct, at any rate where these same *aakila* would contribute to the price of blood in case of condemnation. If two witnesses assert that two persons have killed some one, but these two accused persons in their turn accuse the two witnesses of being themselves the only guilty parties, the latter are none the less condemned, if the representative of the victim sides with the witnesses. On the other hand, the accusation on both sides should be rejected, if the representative sides with the accused, or if he declares that both the accused and the witnesses are guilty, or if he declares that they are all lying. A penalty may not be pronounced under the law of talion, where some of the heirs of the victim admit that their coheritors have already remitted this penalty; and the depositions of two witnesses who contradict one another as to the time, the place, the instrument or the circumstances of the crime, are void and of no effect. Some authorities admit depositions of this nature merely as establishing grave suspicions.

BOOK 50.—REBELS

Section 1

By rebels are understood those who revolt against the Sovereign, either by attacking him, or by disobeying his orders, or by refusing services or taxes legally due to him. In case of armed rebellion in which the guilty parties are organised under chiefs, they must be marched against and reduced to obedience; provided, according to some authorities, that there exists a Sovereign, recognised as their head by all Moslems. As to persons whose rebellion consists only in their deviation from recognised orthodox doctrine, those, for instance, who no longer observe public prayer, or commit grave sins in secret, these must be left alone, unless they trouble the internal security of the state with armed force, for then they must be fought and punished like brigands.

Rebels remain capable of deposing as witnesses, and the judgments rendered by their courts may be executed, except judgments that would be illegal even if delivered by our courts, or such as approve of hostile acts committed against true believers. †Our courts may reply to letters of requisition addressed to them by rebel courts, and may accept as evidence informations drawn up by them. Definite penalties pronounced and carried into effect by them are recognised as legal; as are also their charity tax, poll-tax, and land-tax, and even the application of the proceeds of the charity-tax to the support of their soldiers. This last rule, however, is doubtful.

Rebels are civilly responsible for all damage caused by them to the property of loyal subjects; and the latter are similarly responsible for all damage caused by them to the property of the rebels otherwise than in the war. One jurist, however, does not admit the responsibility of loyal subjects in any case. Individuals forming part of an organisation, though not united in armed bands, are civilly responsible for any destructive act, just like any other person; but those who, though not organised, are united in armed bands, should be considered in this respect as rebels, even where there are no chiefs among them, and they offer no opposition to lawful authority.

Rebels may not be fought with, until there has been previously sent them some trustworthy and intelligent person, capable of advising

them to lay down their arms. He should begin by inquiring as to their grievances, and if they complain of vexatious treatment or error on the part of the lawful authorities, he should put a stop to this at once, and give the advice that may be necessary for the submission of the rebels. If the rebels refuse to take this advice, the Sovereign should threaten to reduce them to obedience by force of arms; and if they ask for a delay he may accord or refuse it as seems to him best.

It is forbidden to kill rebels when they take to flight, or when disabled or when made prisoners. Prisoners, including minors and women, must be retained until the end of the war and the complete dispersion of the rebel bands, unless they declare their submission to lawful authority. After the pacification captured arms and horses are to be returned to their owners, provided that nothing further is to be feared from them. In warfare against rebels it is forbidden to make use of the arms and horses taken from them, except in case of absolute necessity, or to use methods of great destructiveness, such as fire or warlike machines, unless such a course is rendered necessary by the rebels themselves using these things in their defence, or by there being no other means for our escape when surrounded by them.

It is equally forbidden to reduce rebels to obedience by means of troops recruited from amongst the infidels, or even from amongst Moslems who, like followers of the school of Abu Hanifa, maintain that rebels who have taken to flight may be killed. Infidels not subject to Moslem authority, enrolled by rebels in a war against us, and thus enjoying their protection, have no title to be so considered by us; †the rebels themselves, however, are bound to observe the engagements they have contracted with the infidels in question. Infidel subjects of our Sovereign who take part with the rebels against us, knowingly, and of their own free will, lose all right to our protection; but if they are forced to join in the war, our engagements towards them remain intact. It is the same where the infidels in question declare that they believed in good faith that it was lawful for them to take part in the war, and that the rebels were in the right. At least this is the theory of our school. In all these circumstances infidel subjects of our Sovereign should be treated in warfare like the rebels themselves.

Section 2

Essential requisites for a Sovereign are to be a free, sane, adult, male Moslem of the tribe of the Koraish; of sufficient courage, discretion and knowledge of the law; of sound sight, hearing, and speech.

Sovereignty is conferred—

1. By election; †to be carried out by the best scholars, chiefs, and other persons occupying a high social position, or so many of them as can be united in one place.

2. By designation; the Sovereign having the right to designate his successor, and even to grant to several persons the right of designating one of them to be his successor.

3. By the right of the stronger; and this title to the supreme authority is to be recognised not only where the Sovereign who is thus imposed upon the faithful unites in his person all the requisite qualities, †but also if he possesses none of them, and is even of notorious misconduct, or an ignorant person.

[A tax-payer who alleges that he has paid the rebels the tax due from him, has a presumption in his favour; but this presumption does not exist with regard to the poll-tax †or the land-tax. The same presumption exists in favour of a person who asserts that he has suffered a definite penalty, unless the crime was proved by witnesses; or unless no trace of punishment can be found on the criminal's body.]

BOOK 51.—APOSTASY

Apostasy consists in the abjuration of Islam, either mentally, or by words, or by acts incompatible with faith. As to oral abjuration it matters little whether the words are said in joke, or through a spirit of contradiction, or in good faith. But before such words can be considered as a sign of apostasy, they must contain a precise declaration—

1. That one does not believe in the existence of the Creator, or of His apostles ; or

2. That Muhammad, or one of the other apostles, is an impostor ; or

3. That one considers lawful what is strictly forbidden by the *ijmaa*, *e.g.* the crime of fornication ; or

4. That one considers to be forbidden what is lawful according to the *ijmaa*.

5. That one is not obliged to follow the precepts of the *ijmaa*, as well positive as negative ; or

6. That one intends shortly to change one's religion ; or that one has doubts upon the subject of the truth of Islam, etc.

As to acts, these are not considered to be incompatible with faith, unless they show a clear indication of a mockery or denial of religion, as, *e.g.* throwing the Koran upon a muck heap, or prostrating oneself before an idol, or worshipping the sun. No account is taken of the apostasy of a minor or a lunatic, nor of acts committed under violent compulsion. Even where the guilty person, after pronouncing the words or committing the acts, becomes mad, he may not be put to death until he has recovered his sanity. This favour, however, does not, according to our school, extend to the case of drunkenness. Apostasy, and a declaration of having returned from one's errors, pronounced by a drunken person, have the ordinary legal consequences.

Witnesses need not recount in all their details the facts that constitute apostasy ; they may confine themselves to affirming that the guilty person is an apostate. Other authorities are of the contrary opinion ; but the majority go so far as to make no account of the mere denial of the accused, even where the assertions of the witnesses are made in general terms. But where, on the other hand, the accused declares that he acted under compulsion, and the circumstances render

this assertion plausible, *e.g.* if he has been kept a prisoner by infidels, he has a presumption in his favour, provided he takes an oath ; but this presumption does not arise in the absence of such circumstances. Only where the two witnesses required by law do not declare that "the accused is apostate," but that "the words pronounced by him are words implying apostasy," and the accused then maintains that he only pronounced them under compulsion, the presumption is in his favour, and it is not necessary for him to give more detailed explanations. Where, after the death of an individual whose faith has never been suspected, one of his sons who are both Moslems declares that his father abjured Islam and died impenitent, and adds the cause of the apostasy, this son alone is excluded from the succession, and his portion escheats to the state as a tax ; but his deposition has no effect upon the rights of his coinheritors. *The same rule applies also where the cause of the crime is not mentioned, and the son limits himself to saying that his father died apostate.

An attempt should be made to induce the apostate to return from his or her errors ; though, according to one authority, this is only a commendable proceeding. The exhortation should take place immediately, or, according to one jurist, in the first three days ; and if it is of no effect, the guilty man or woman should be put to death. Where, on the contrary, the guilty party returns from his or her errors, this conversion must be accepted as sincere, and the converted person left alone ; unless, according to some authorities, he has embraced an occult religion such as the Zend, whose adherents, while professing Islam, are none the less infidels in their heart, or some doctrine admitting of a mystic or allegorical interpretation of the Koran.

The child of an apostate remains a Moslem, without regard to the time of its conception, or to one of its parents remaining a Moslem or not. One authority, however, considers the child whose father and mother have abjured the faith to be an apostate ; while another considers such a child to be by origin an infidel. [*The child should be considered as an apostate. This is what the jurists of Irak have handed down to us as the universally accepted theory.]

*As to the ownership of the property of an apostate dead in impenitence, it remains in suspense, *i.e.* the law considers it as lost from the moment of abjuration of the faith, but in case of repentance it is considered to have been never lost. However, there are several other theories upon the subject ; though all authorities agree that debts contracted before apostasy, as well as the personal maintenance of the apostate during the period of exhortation, are charges upon the estate. †It is the same with any damages due in consequence of pecuniary

prejudice caused to other persons, the maintenance of his wives, whose marriage remains in suspense, and the maintenance of his ascendants or descendants. Where it is admitted that ownership remains in suspense, the same principle must be applied to dispositions subsequent to apostasy, in so far as they are capable of being suspended, such as enfranchisement by will, and legacies, which all remain intact where the exhortation is successful, though not otherwise. On the other hand, dispositions which, by their very nature, do not admit of such suspension, such as sale, pledging, gift, and enfranchisement by contract, are null and void *ab initio ;* though Shafii, in his first period, wished to leave them in suspense. All authorities, moreover, are agreed that an apostate's property may in no case be left at his disposition from the moment that a state of apostasy has been ascertained, but must be deposited in charge of some person of irreproachable character. But a female slave may not be so entrusted to a man ; she must be confided to some trustworthy woman. An apostate's property must be leased out ; and it is to the court that his slave undergoing enfranchisment by contract should make his periodical payments.

BOOK 52.—FORNICATION

The crime of fornication consists in the introduction of the penis into the vagina of a woman with whom one has no right of coition, without one being able to allege any cause of error. The crime is punishable with a definite penalty; and this punishment is also applicable, according to our school, to whoever introduces his penis into the podex of a man or of a woman. On the other hand, the penalty does not apply to a person who merely indulges in voluptuous touching of the thighs, nor to coition—

1. With one's own wife or female slave during their menstrues, during a fast, or while in a state of *ihram.*

2. *With one's own female slave married to another man.

3. *With one's wife, during her period of legal retirement.

4. *With a female slave of whom one is the owner, in case of relationship or affinity within the prohibited degrees.

5. *Under violent compulsion.

6. ††In cases where authorities are not in agreement as to the illegality of coition, *e.g.* in case of a marriage concluded without witnesses, of which the Malekites do not admit the absolute nullity.

7. †With a corpse, *or with an animal.

Thus the law only punishes coition with a free woman, or with the slave of another person, in the case of an individual—

1. With whom one is not engaged in the bonds of matrimony, and who has surrendered herself for nothing or for a remuneration.

2. With whom one is related by family or marriage within the prohibited degrees, even though one may have married her in fact, but in contravention of the law.

One is not punishable for the crime of fornication unless one is an adult sane Moslem, and unless one knew the act was forbidden. Drunkenness cannot be pleaded as an excuse.

The penalty is as follows.

1. For a guilty person whom the law considers as *mohsan,* by which word is understood in this respect an adult sane free Moslem man or woman who has already experienced coition in a legitimate marriage, the penalty is lapidation. *If this marriage is attackable in any respect,

the penalty of lapidation cannot be pronounced. †It is necessary that coition under the marriage must have consisted in the introduction of the penis into the vagina, and that the man should have been an adult sane free Moslem at the moment. Infidel subjects of our Sovereign are considered as Moslems so far as regards this matter. †The fact that one of the accomplices in the crime of fornication does not satisfy all the conditions required for lapidation, constitutes no excuse for the other.

2. For a free person who is not *mohsan*, the punishment for fornication is one hundred stripes, followed by banishment for one year to a distance at least permitting prayer to be abridged; †and if the Sovereign designates a particular spot as the criminal's residence, he must submit to this aggravation of his punishment. In any case, during the period of his banishment, the criminal may not remain in the place where the crime was committed, nor in the place of his domicile; †and if he makes his appearance in one or other of these places, the authorities should drive him away. †A banished woman need not set out on her journey alone; she has a right to be accompanied either by her husband, or by some one within the prohibited degrees, at the expense of the state when she has not sufficient means of her own. †But no one can be obliged to accompany the guilty woman, even for hire.

3. For a slave, the punishment for fornication is fifty stripes, followed by banishment for half a year, or according to one authority a whole year. One jurist, however, does not admit banishment as a punishment where the criminal is a slave.

The crime of fornication is proved only by the evidence of witnesses and by confession. A confession need only be uttered once, and has no effect when retracted; †but a retraction is null and void where the guilty party asks for pardon or takes to flight. As to the evidence of witness the reader must note that the law requires four male witnesses; but the definite penalty is not pronounced, even on the deposition of these four witnesses, if four women ascertain that the woman accused is still a virgin. But the deposition of these four women is not enough to convict the accuser of defamation. If one of the witnesses indicates a certain part of the house where the crime was committed, and the three others a different place, the legal proof is not attained.

It is the Sovereign or his delegate who should have the definite penalty executed, where the criminal is free or partially enfranchised; and it is preferable that the execution of the sentence should take place in presence of the person who ordered it, and of the witnesses. In the

case of a slave the execution of the sentence should be ordered either by his master or by the Sovereign, †the latter having priority in case of a dispute. †As to banishment it is always the master who should see to the execution of the sentence in the case of a slave ; but in this matter a slave undergoing enfranchisement by contract is considered as a free man. †The right of the master to see to the execution of a sentence of definite punishment pronounced against his slave exists none the less should the master be a man of notorious misconduct, or an infidel, or himself a slave undergoing enfranchisement by contract ; and in the case of a penalty at the discretion of the court, the right of execution of the sentence belongs exclusively to the master. †The master may also examine the witnesses in a penal matter.

Lapidation takes place by means of pieces of dry earth or of stones of convenient form and size. If the criminal is a man, he is not half buried in the ground ; †but this procedure is commendable in the case of a woman, at least where the crime has been established by the evidence of witnesses. The sickness of the criminal, excessive heat or cold, are no grounds for postponing the execution ; unless, according to some authorities, where the proof of the crime is a confession. On the other hand, sickness is a good ground for postponing the execution of a sentence of flogging, unless no hope can be entertained of a cure. In these circumstances, however, flogging is effected by means of one stroke with a rod with a hundred bands, instead of by means of one hundred strokes with a whip with a thong ; if it is impossible to procure a rod with more than fifty bands, then the flogging consists of two strokes. Even in this case, however, the flogging must be done in such a way that the criminal experiences some pain ; *i.e.* that the bands must all touch him or at least contribute by their weight to make the instrument fall more heavily ; for if the patient unexpectedly recover, that is no reason for repeating the flogging. Flogging should not take place at a moment when it is excessively hot or cold ; though, according to Shafii's personal opinion, the Sovereign, if he proceeds to carry out the execution of the sentence, in spite of the criminal's sickness, is not responsible for the consequences that may ensue. According to that view it is merely commendable to adjourn the punishment in that case, but it is not a rule of rigorous observance.

BOOK 53.—DEFAMATION

Defamation is punishable only when committed by a sane adult Moslem. Drunkenness is no excuse. The law requires that the crime should have been committed spontaneously. As to a minor who has attained the age of discernment, he is punishable at the discretion of the court. Ascendants are not punishable for defamation against their descendants.

The penalty for a free person is eighty stripes, and for a slave forty, provided that the injured party possesses the character of *mohsan*, *i.e.* would be punishable with lapidation if the accusation were well founded. As to the legal meaning of the word *mohsan*, we explained this when treating of imprecation.

There are punishable as defamers: *witnesses who prove in court the crime of fornication, but are not of the prescribed number of four; and even witnesses, of whatever number, who are not male, free, and, according to our school, Moslem. On the other hand, a witness cannot be punished as a defamer who proves that the accused confessed the crime of fornication, even though he be the only witness.

Where two persons mutually defame each other there is no ground for compensation; and where the injured party has himself of his own accord applied the definite prescribed penalty, the flogging has not been legally executed, and must be repeated.

BOOK 54.—CRIMES PUNISHABLE WITH AMPUTATION

CHAPTER I.—THEFT

Section 1

Amputation for theft is applicable only under the following circumstances :—

1. That at least the quarter of an entire *dinar* has been stolen, or an object of that value. †Thus if one steals a piece of unminted gold of the volume of a quarter of a *dinar*, that would not have this volume after being placed under the die, one is not liable to the definite prescribed penalty. This penalty should be pronounced against a thief who takes several *dinars*, believing them to be pieces of copper of less than the required value ; †and also against a person who steals an old coat of less than the required value ; but in the pocket of which, accidentally and without his knowledge, there is something of which the value, added to that of the coat, does amount to the value required. Where one commits two thefts at the same place, each less than the quarter of a *dinar*, but more when taken together, one has committed two non-punishable thefts, if the owner perceived the first before the second took place, and repaired the fastening in the meanwhile. †Otherwise there is considered to be only one theft, of the required amount, and consequently the thief is punishable with amputation. †The penalty is applicable also to the case of a person who makes an opening in a sack of corn, etc., so that its contents are abstracted, to the minimum value required. Two persons committing this abstraction together are punishable with amputation only when they take twice the minimum, as otherwise each would be considered to have taken an inferior amount. Amputation is never applicable to a person who steals things impure in themselves, and consequently without legal value, such as wine, pork, a dog, or the untanned skin of an animal that has died a natural death or been killed in any other manner than by slaughtering or in hunting in accordance with the precepts of the law. ††But where the vessel in which some prohibited liquid is

contained is stolen at the same time, and the value of this vessel reaches the required minimum, amputation should be pronounced, without regard to the contents. And in accordance with this same principle amputation does not take place for the theft of a guitar or other instrument of music, though some authorities exact it where the different fragments of the guitar have the required value. [†These authorities are right.]

2. That the stolen property belongs to another. Consequently amputation does not take place where the stolen object has already become the property of the thief before its abstraction; even though this may be unknown to him, as by succession. Nor does it take place where the original value of the things stolen has already diminished, before their abstraction, below the minimum, as where the owner eats some of his provisions, etc. According to Shafii's personal opinion it is not absolutely necessary that one should be the owner of the object to render amputation inapplicable; it is enough if one has claimed it in a court of justice. †Where only one of two accomplices makes some claim to an object either for himself or for both of them, while the other opposes this claim, the former alone is exempt from amputation; his claim does not save his accomplice from amputation. *And it follows also from this principle that amputation is not rigorously required in the case of theft of an object of which one is co-proprietor, when this object is in a jointly owned shop, however small may be the thief's share.

3. That the abstraction cannot have been committed by error. Consequently amputation does not take place for abstractions to the prejudice of one's ascendants or descendants, nor for those committed by a slave to the prejudice of his master; *though amputation is rigorously necessary for abstractions committed by one of two married persons to the prejudice of the other. As to thefts to the prejudice of the public treasury, they do not involve amputation in the following cases:—

(*a*) Where the stolen object is intended specially for a corporation of which the thief is a member.

(*b*) †Where the thief has a claim to the stolen object under some respect, *e.g.* where a Moslem steals money intended for the public good, or where a poor person steals money forming part of the charity tax.

Our school insists upon amputation for taking a door or a beam from a mosque, but not for taking a mat or a lighted lamp. †On the other hand, amputation is rigorously necessary for any one who steals any fixed object, or carries off a female slave enfranchised on account of maternity, asleep or mad.

4. That the stolen object is kept sufficiently safe, either in sight, or in a sure place. When one deposits an object on a desert plain or in a mosque one ought not to lose sight of it; but when one deposits it somewhere inside an enclosed place, it is sufficient to take the usual amount of care to see to the fastenings. A stable is a sure place for animals, but not for household goods or wearing apparel; the court-yard of a house and the *soffa* are sure places for utensils and daily clothes, but not for finery, nor for gold and silver coin. If one lies down upon a coat in a desert plain or in a mosque, or uses something as a pillow, these objects are kept sufficiently safe, provided the sleeper does not turn over in his sleep and does not lie down to the side. A coat or other object placed upon a desert plain close to the owner are considered to be kept safely so long as he does not lose sight of them, and is able to defend them from attack, either by his own strength or by calling for assistance. A solitary house is a safe place if a strong man is in charge of it, it matters little if the door is open or closed. A house surrounded by other houses is a safe place if the door is closed, and there is a guardian, even though he should be in the habit of going to sleep; but if the guardian goes to bed leaving the door open the house is not a safe place by night, †or by day. †It is the same where a guardian is a person to be easily duped by thieves. An uninhabited house, surrounded by other houses, constitutes a safe place, according to our school, only during the day; provided it is during a time of peace, and the door is closed. A tent in a desert plain, if the ropes are not stretched tight and the lower extremities not firmly attached to the soil, is regarded, with everything it contains, in the same way as objects placed upon the plain. If the ropes are stretched tight, and the extremities attached to the soil, the tent is a safe place, if it has a strong guardian, even though he is in the habit of going to sleep. Cattle in a stable or an enclosed place belonging to a house is sufficiently safe even without a guardian; but such a place in a desert requires a guardian, who need not, however, always be awake. As to camels on a desert plain they are sufficiently guarded if in charge of a herdsman; and the same is the case with camels or elephants attached to one another, so as to walk in file, provided that their conductor ascertains every hour that they are all there, and provided there are no more than nine head. †Animals not attached to one another on the march are not considered to be sufficiently guarded. A shroud is sufficiently guarded in a tomb situated in some closed construction, †or in a cemetery on the outskirts of habitations, but not in a tomb situated in some desert place.

Section 2

The lessor †or the lender of a shop is punishable with amputation for abstracting an object deposited in the shop by the lessee or borrower; but if the shop is occupied by a person who has usurped it, neither the owner †nor any one else is punishable for committing such abstraction.

Nor is amputation applicable :—

1. If a person who has usurped an object places it in a shop which belongs to him, and the owner of the object so usurped comes and takes another object belonging to the usurper and deposited in the same shop.

2. †If any other person takes the usurped object from the shop.

3. In case of open theft, or robbery, or denial of a deposit.

†Amputation is applicable to a person who penetrates a wall and by this means steals something the next night. [Unless before the theft the owner is informed of the fact that a hole has been made in his wall, or the hole is visible to passers by, for under these circumstances the place is insufficiently safe and consequently there is no ground for amputation.]

In a case where one criminal makes a hole in the wall, and another makes use of it for theft, neither are liable to amputation; and where both together make the hole but only one commits the abstraction, the latter alone suffers amputation. Even if one of the two places the stolen object close to the hole and the other takes it, the latter alone is punishable with amputation; *and this principle is carried so far that amputation is not pronounced against the accomplice even though he places the object in the middle of the hole and the value exceeds twice the legal minimum.

Amputation is rigorously necessary where the object is taken from the owner under the following circumstances :—

1. If the thief throws the thing to some one who is about to go away.

2. If he throws it into running water.

3. If he places it on the back of a moving animal.

4. If he exposes it in the open when a violent wind is blowing.

†On the other hand, this penalty is not applicable where the thief merely places the object upon the back of an animal that happens to stop at that place, and goes on with it as a load. A free person, not being an object of commerce, cannot be stolen; consequently one is not punishable with amputation for carrying off a free person; †even though it may be a small child wearing a collar the value of which reaches the legal minimum. It follows from this principle that one

who finds a slave sleeping on a camel and leads the beast far from the caravan without waking the sleeper, should be amputated; †but if the sleeper is a free man he is still in possession of his mount, and consequently amputation is not applicable. On the other hand, amputation is prescribed for transporting an object belonging to another from a closed room into the courtyard of the house if the main door is open, but not if the room is open and the house door shut. According to some authorities amputation is rigorously necessary even where the doors of both room and house are shut; †while the same rules are applicable in the case of a room at an inn from which one has abstracted another's baggage and deposited it in the courtyard.

Section 3

Theft committed by a minor or a lunatic, or under violent compulsion does not involve amputation; but it is of small consequence whether the injured party or the criminal are Moslems or infidel subjects of our Sovereign. As to an infidel living among us by virtue of a safe conduct or an armistice jurists are not in agreement, though the better doctrine tends to regard as liable to amputation those who are expressly subject to our laws in this respect. [The generally accepted doctrine forbids the amputation of such infidel.]

Theft is proved †by the accuser's oath, if the accused challenges him to it; and also by the accused's confession, which may, however be retracted, according to our school. ††Where the accused confesses some crime incurring a penalty of reparation towards God and consequently not remissible, the court should have it explained to him that retractation is permissible, without however, imposing it upon him as an order. Moreover, if any one of his own accord presents himself before the court and admits having stolen the property of another person who is absent, †the penalty of amputation may not be pronounced before the return of the injured party, and his confirmation of the fact; †but execution should take place at once where the accused admits forcing the slave of another to commit the crime of fornication. Theft is also proved by the deposition of two male witnesses; the deposition of one man and two women is not sufficient for pronouncing the definite prescribed penalty, though enough for the civil action resulting from the crime. The witnesses should make a detailed account of the fact, and if the details do not agree, if, for example one of the witnesses declares that it happened at dawn, and the other at the beginning of the night, their depositions cancel each other.

Without prejudice to the penalty incurred the thief should be

condemned to a restitution of the object stolen, or if it be lost to a payment of its value.

Amputation of the right hand takes place for the first offence ; that of the left foot for the second ; that of the left hand for the third, and that of the right foot for the fourth. Subsequent offences are punishable at the discretion of the court. The joint where the amputation is to be effected should first be anointed with boiled fat and oil. This act is considered by some jurists as a necessary accompaniment of the penalty. †The majority, however, regard it as the sufferer's right, so that he has to bear the expense, and the Sovereign need not order it *ex officio*. The hand is amputated at the wrist, and the foot at the joint below the ankle. A person who commits several thefts for the first time suffers only the amputation of the right hand, even though there were missing from it four fingers [†or even five]. The hand is amputated without regard to the fact that it may have an extra finger. If the criminal has already lost the right hand in consequence of some malady, amputation does not take place for the first theft. But, according to our school, it is not a reason for dispensing with the amputation of the right hand that the sufferer has already lost the left, although on that account the penalty is in his case much more serious than it otherwise would be.

CHAPTER II.—BRIGANDS

Section 1

By " brigand " is understood an adult sane Moslem who troubles the security of the roads by armed force ; but not a person who furtively joins the rear of a caravan, intending to escape after a few thefts. Those who confine themselves to attacking and robbing travellers who are alone or in small groups should be considered as brigands in respect to the persons they can get the better of, but not in respect of a large caravan. Besides, in the term brigandage is not included an attack at a moment, when, or in a place where, one can call for help ; but the term does cover an attack when this is not the case, either on account of distance, or on account of the weakness of persons living near by, even though it may be in a town.

Brigands who trouble the security of the roads by menace only, and do not rob or murder travellers should be punished by the Sovereign with imprisonment, etc., by way of punishment at discretion ; but a brigand guilty of theft, to an amount usually involving amputation, should lose the right hand and the left foot ; or, for a second offence,

the left hand and the right foot. Homicide committed by a brigand renders rigorously necessary an application of the death penalty; and homicide accompanied by theft is punished with death; and the corpse is exposed for three days upon a cross. After this period it should be taken down. According, however, to some authorities it should remain until a clear liquid begins to flow from it. One jurist even maintains that the guilty person should first be crucified for some time and then taken down to be put to death.

A person who takes part in the misdeeds of brigands, and joins their band, but is not employed in it, and is not guilty of any criminal act, should be punished with imprisonment, banishment, etc., by way of punishment at discretion. As to banishment, some jurists maintain that the Sovereign should indicate the place where the guilty party should reside.

The death penalty, to which a brigand is liable for homicide, is equivalent to a penalty under the law of talion; though, according to one authority, it is even then a definite prescribed penalty. According to the theory adopted by the majority a brigand cannot be put to death for killing his descendant or an infidel subject of our Sovereign; and if he dies before execution the price of blood due for his victims constitutes a debt payable from his estate. If a brigand has committed several homicides this theory requires that he should be put to death for one of these homicides, while his estate remains burdened with the price of blood due for the others; but even when one adopts that theory the brigand should none the less be put to death as subject to a definite prescribed penalty when the representative of the victim pardons him for a fine, though the talion does not exist in these circumstances. A brigand who kills his victim either by means of a blunt instrument, or by cutting off a limb, should suffer death in the same way; but if his victim recovers from the effects of his wound, the brigand is not punishable under the law of talion. Nor is he liable to the special penalties formulated against him, if he changes his conduct before falling into the hands of the authorities; all without prejudice to the penalties to be pronounced for the special offences of which he is guilty. As to a brigand whose repentance is only manifested after his arrest, our school grants him no such favour; *and in general the other definite prescribed penalties should be undergone in spite of the criminal's repentance.

Section 2

In a case where the offender has to undergo several penalties for offences against men, and consequently capable of being remitted, such

as the death penalty, amputation of a limb, and the penalty for defamation, he is first flogged, then suffers amputation, and is finally put to death. The death penalty should be executed immediately after the amputation. Consequently the latter penalty should be put off in the absence of the person who has the right to demand the penalty of death, †and even if he is present and insists upon proceeding at once to amputation. On the other hand, where the person who has the right to demand the death penalty, wishes the execution to be put off, there is no objection to proceeding at once to the flogging; and this penalty should be followed immediately by amputation, if the person who has the right to exact the death penalty pardons the criminal. In a case where the person who can exact the penalty of amputation, wishes its execution to be put off, the person who can exact the penalty of flogging need not wait; but the penalty of death may not on any consideration be executed before amputation; and the person who proceeds in spite of this to the execution of the criminal owes to the injured party who had the right to exact amputation the price of blood for the limb that should have been amputated. The person who has the right to exact flogging may oblige the two others to wait as long as he pleases; this at least is what strict logic requires. Where the offender has to suffer not penalties capable of remission, but penalties for offences committed against God, the lightest is executed first, and so on in order. If he has to undergo a penalty for an offence against God and also a penalty that may be remitted, a penalty pronounced for defamation has priority over one pronounced for fornication, †or over one pronounced for wine-drinking. †And similarly a penalty under the law of talion, whether of death or of amputation, has priority over a penalty incurred for the crime of fornication.

BOOK 55.—OF FORBIDDEN BEVERAGES, AND OF PUNISHMENT AT THE DISCRETION OF THE COURT

Section 1

Every beverage that induces intoxication when taken in great quantity is forbidden, even when only a small quantity is taken. The fact of taking it involves an application of the definite prescribed penalty. This penalty, however, is applicable neither to a minor, nor to a lunatic, nor to an infidel, whether he be or be not the subject of a Moslem prince, nor to any one into whose mouth the drink has been introduced by force, nor, according to our school, to any one who has been otherwise forced to drink it. He who drinks wine without knowing what it is is not punishable; and it is the same with a new convert to Islam who drinks it without knowing that it is forbidden; the punishment, however, is incurred by a new convert who merely alleges as his excuse that he knew the drink was forbidden but was not aware of the punishment. It is also incurred for taking the lees of wine, but not for eating bread that has been kneaded with wine, or preserves prepared with wine, †nor for introducing forbidden liquid into one's body by means of injection or sniffing. Besides this, one may take wine in case of immediate necessity, *e.g.* if there is in the throat a piece of food which it is difficult to get down, and there is no other liquid handy at the moment; †but one is liable to punishment if one takes wine as medicine or to quench one's thirst.

The definite prescribed penalty for the crime we are here concerned with is forty stripes, if the guilty person is free, and twenty if a slave. In case of attenuating circumstances the strokes may be given not only with a lash, but also with the hand, with a sandal, or with the end of a coat rolled round like a cord. Few authorities require in all cases stripes with a lash. The Sovereign, or his deputy the judge, has a right to increase the number of blows †up to the double if it seems good to him, but in that case these extra blows constitute a punishment at the discretion of the court. According to others they should be considered also as the definite prescribed penalty.

The crime is proved either by the culprit's confession, or by the

testimony of two male witnesses ; the odour of the breath, drunkenness or vomiting are insufficient by themselves to establish it. It is enough that the accused states that he drank wine, etc., or that the witnesses state they saw him drink wine, etc., without its being necessary to enter into more precise details ; provided that it is also established, according to some authorities, that the act was done knowingly and willingly.

Whipping cannot be administered during the state of drunkenness resulting from the crime. It is effected, as in all cases of definite prescribed punishment, by means of a whip with a handle of a thickness between a stalk and a stick, neither green nor quite dry. The stripes should be administered upon all the limbs of the body, except places where the wound would be mortal. One should avoid hitting the face, and, according to some, the head. The hands of the sufferer are not tied, nor is he made to put down his clothes ; but the blows should be repeated rapidly in such a way as to make him cry out and inflict upon him an exemplary chastisement.

Section 2

Contraventions that are not punishable with some definite prescribed penalty, and involve no sort of expiation, should be punished at the discretion of the court either by imprisonment, whipping, a slap, or a reprimand. The nature and gravity of the punishment are at the discretion of the Sovereign or his deputy the judge ; except that, according to some authorities a simple reprimand is not sufficient if the offence is committed against men, but only where it is committed against God. Whipping should always be under twenty strokes in the case of a slave, and forty in the case of a free man ; though some think that twenty is the limit for any person. †Moreover, the principle that a punishment at discretion should always be below the minimum pronounced as a definite prescribed penalty extends to all contraventions.

†Where the injured party grants a remission to the criminal, *e.g.* of the definite prescribed penalty for defamation, the Sovereign may not substitute for it a punishment at his discretion ; but the remission of a punishment at discretion, by the injured party, leaves intact the right of the Sovereign to inflict upon the guilty person the punishment he deserves.

BOOK 56.—EXCUSABLE HOMICIDE, WOUNDING AND RESPONSIBILITY FOR DAMAGE

Section 1

One has a right to resist any attack upon one's life, property, bodily members, or modesty ; and if the person so assailed kills the aggressor, the law admits no responsibility in the matter. Defence against attacks upon one's property, though recognised as legitimate, is not obligatory ; but one ought to defend one's life or one's modesty, *at least when one's life is attacked by an infidel or an animal, but not when attacked by a Moslem. Defence of another is regulated by the same principles as defence of one's own person, though according to some authorities it is always obligatory. †When a jar falls accidentally upon some one who cannot protect himself against it without breaking the jar, he is civilly responsible for damages. An aggressor should be repulsed with the least possible roughness ; thus one should not have recourse to blows if the object can be attained by words or by calling for assistance ; strokes with a whip are forbidden where a slap would be enough ; a stick is forbidden where a whip would be sufficient ; and one must not kill the aggressor, if one could render him incapable of any hurt by cutting a limb. Where one can save oneself by flight our school requires that this should be done, instead of defending oneself ; and where the aggressor has taken one's hand between his teeth, one should withdraw it in such a way as to cause him the least possible pain, *i.e.* by opening the jaws and striking the corners of the mouth ; but if one is obliged to withdraw one's hand by force, one is not responsible for making the aggressor lose some of his teeth.

A person who perceives a man intentionally looking through a skylight or a hole at the women of the house, may throw at the indiscreet man some light object, such as a pebble, and if by accident the missile causes the man to lose his sight, or causes a wound near the eye, the person is not responsible, even should death be the consequence. Only in the case where the woman observed is a relative of the man within the prohibited degrees, or his wife, it is not permissible to use missiles to drive him away. Some authorities also add a reservation that the

woman in question is not veiled ; others require a previous admonition before adopting the extreme course of throwing a missile.

A guardian, chief, husband, or schoolmaster, inflicting punishment upon the persons submitted to their authority are responsible for the consequences, except in the following cases :—

1. In the case of a definite prescribed penalty, applied to the guilty person within the limits allowed by law.

2. ††Where a drinker of forbidden beverages is beaten with a sandal or a piece of clothing.

3. **Where one inflicts upon a drunkard the prescribed forty stripes with a lash ; but where the number of blows exceeds forty, the person ordering them is responsible for the consequences in proportion to the excess, or, according to one jurist, up to half the price of blood. This controversy exists also with regard to the crime of defamation ; where, for example, eighty-one strokes are inflicted upon the guilty party.

Any free, adult, sane person may cut a tumour appearing upon his body, unless the operation would be dangerous, and there is no danger in leaving the tumour, or at any rate the danger of the operation is the greater. In the case of a minor or of a lunatic, it is for the father or grandfather to order the operation, even if there is some danger, provided that in this case the danger incurred by not proceeding with the operation is yet greater. The Sultan may not order an operation in these circumstances as subsidiary guardian, nor may his deputy the judge. It is only where the operation is not dangerous that the Sultan, as well as the father or grandfather, may give his authorisation for the operation to be performed.

†A surgeon who bleeds a patient or applies leeches to him does not incur any responsibility, even though the sick man succumbs, provided that the operator does not overstep the limits imposed by science in operations of that nature. The Sultan, or his deputy the judge, as subsidiary guardian, who goes beyond his competence and orders a minor to undergo an operation, is personally responsible for the price of blood on the higher scale ; while the price of blood due for an error on his part, either in the application of a definite prescribed penalty or in his decisions, is a debt recoverable from his *aakila*, or, according to one authority, from the public treasury. All jurists admit the responsibility of the magistrate who pronounces a definite prescribed penalty upon the deposition of two witnesses who subsequently turn out to be slaves, infidel subjects of a Moslem prince, or minors near their majority, at least if he accepted them as witnesses without preliminary inquiry ; but jurists are not in agreement as to the magistrate's responsibility where he has done all he could in the matter. But where

it is admitted that the *aakila* or the public treasury can be held responsible for the price of blood, due to an error of judgment, †one cannot admit any right to proceed against the witnesses who turn out not to have the requisite qualities. A surgeon who, on proper authorisation, bleeds any one or applies leeches to him, is in no way responsible for the consequences; and an executioner who carries out a sentence of death or of flogging upon the authorisation of the Sovereign is merely the latter's instrument, unless he knows that the order is from a tyrant, or given in error. In these two cases he would himself be liable under the law of talion, unless acting under violent compulsion.

The circumcision of a woman is effected by the removal of a little of her flesh, in the upper part of the vagina, and that of a man by the removal of the foreskin. It is not obligatory before majority, though it is recommended to proceed to this operation on the seventh day after birth, and not to put it off unless the child has not yet sufficient strength to support it. Any one who performs circumcision at an age when the child is not yet strong enough to support it is liable under the law of talion if the operation causes death. This rule, however, does not apply to the child's ascendants. †On the other hand a guardian is not responsible for the consequences of circumcision effected at an epoch when the child has a constitution sufficiently developed to be able to undergo the operation. The hire of the person who performs the circumcision is at the charge of the patient.

Section 2

One is responsible for the damage caused by animals in one's charge, both as regards the person and the property of others, and both by day and by night. However, the person in charge is not responsible for accidents that may happen to people or property by reason of the animal passing water upon the public road or making it filthy with their excrement. But care must be taken that the animals do not do anything extraordinary as, for example, even excessive trampling in the mire. The person in charge is responsible for acts not natural to the animals in question. Any one who carries wood upon his back, or loads an animal with it, is responsible for the consequences of the fall of the wood, if it is caused by a collision with some building. When a person carrying wood, or some one in charge of an animal with a load of wood, enters a market and causes damage to person or property, he is responsible if there is a crowd, but not otherwise. A blind man, or a person with his back turned at the moment the animal passes, may only make a claim against the individual we are speaking of, if he has torn their

clothes without warning them to get out of the way. This responsibility, however, only exists where the owner of the things damaged has committed no imprudence; for if he has, for example, deposited things on the public road, or placed them before the animal, his claim is unfounded. The owner of a domestic animal that has broken its leash and damaged a sown field is not responsible for the accident if the damage is caused by day. On the other hand, he is responsible if it happens by night, unless :—

1. The animal escapes after being properly tied up.

2. The owner of the field was present at the spot, but neglected to protect his crop from the trespassing animal.

3. †The field was surrounded by a wall or other inclosure in which there was a gate that the owner had left open.

†The owner of a cat that has eaten a bird or some food belonging to another person is responsible only if he knew that the animal was particularly voracious. It is of no consequence whether the fact occurred by night or by day. †Where, on the contrary, the owner was ignorant of the cat's voracity he is not responsible for the damage it has caused.

BOOK 57.—MILITARY EXPEDITIONS

Section 1

War against infidels was already during the lifetime of the Prophet an obligation for which the Moslem community was jointly responsible; though some authorities maintain that at that period it was an obligation incumbent upon each individual Moslem. As to the nature of this obligation in modern times the following distinctions must be made:—

1. War against infidels living in their own country is a common obligation; that is to say that if a sufficient number of Moslems acquit themselves of it, the others may lawfully remain at home. Among obligations for which the Moslem community is responsible in common, and not individually, are also included that of defending the faith and refuting infidel errors; that of solving difficulties as to religious practices; that of the study of the sciences relating to the law, such as the interpretation of the Koran and the criticism of traditions; that of the study of the solution of subordinate questions of jurisprudence, so that justice may be done; that of exhorting people to do good and abstain from evil; that of taking care that the sacred temple of Mecca should be visited each year by a large number of the faithful; that of relieving the sufferings of Moslems by giving clothing and nourishment to those that are in need, at any rate if the charity tax and the public treasury do not suffice; that of appearing as witness and making a deposition; and that of making a study of trades, arts, and all that serves to ameliorate the lot of man. For an assembly it is a common obligation to return a salutation. As to this last obligation, the reader should be informed that the Sonna has introduced the practice that a person who is performing a duty of nature, or is at table or in a bath, need not either give or acknowledge a salutation; even individually. To return to the subject, the obligation to take part in the war against infidels does not apply to a minor, a lunatic, a woman, a sick person, a man obviously lame, a man wanting a hand or a foot, or one of whose limbs is mutilated, a slave, nor to a man who has not the arms and equipment necessary for the war. Moreover, any excuse that is valid for not accomplishing the pilgrimage, is also valid for not taking part in the war

for the propagation of the faith, except fear of being assaulted on the way by the infidels, ††or by highway robbers even though Moslems. Debts due instanter are an obstacle to the departure of the debtor, whether for the war against the infidels or for any other journey, unless it is undertaken with his creditor's consent; but debts due upon a certain date to come are no obstacle to one's quitting one's domicile; unless, according to some authorities, the journey is one of exceptional danger. Nor can one lawfully depart for a war against infidels until authorised to do so by one's ascendants, if Moslems; such authorisation, however, is not necessary for a traveller who goes for the purpose of inquiry as to his religious duties, whether individual †or collective. An authorisation by a creditor or by ascendants is revocable so long as one is not actually enrolled; but if the revocation does not occur until one is about to fight, it is rigorously forbidden to pay any attention to it.

2. Infidels who invade our territory should be driven out by armed force by all possible means, and by all the inhabitants of the territory invaded, poor, children, debtors, and slaves, without previous authorisation. According to a few authorities a slave should obtain his master's authorisation where there are enough free men. If it is impossible to offer the enemy an organised resistance, each Moslem attacked by infidels should defend his life by all possible means, if he has to deal with miscreants who do not allow quarter; otherwise he may allow himself to be taken prisoner. Under these circumstances to enroll oneself is a duty not only for persons domiciled in the threatened locality, but also for all who live at a distance not permitting of the abridgment of prayer. Travellers from a greater distance than this, who happen to be temporarily at the spot, are obliged to take arms if the inhabitants of the town and suburbs need assistance; and even this condition is disallowed by some authorities. †When the infidels have made a Moslem prisoner of war, they should be attacked immediately in order to deliver him, if there is any chance of success.

Section 2

It is blamable to invade the territory of infidels without the authorisation of the Sovereign or of his deputy. The Sonna also requires that the Sovereign should give precise and detailed instructions to the commander he has appointed for each detachment ordered upon an expedition, and should have an oath administered to each warrior to remain faithful to the flag.

The Sovereign has a right to enroll as auxiliary troops—

1. Infidels whose treachery he does not fear; provided that the

number of Moslems is always high enough to oppose twice the number of infidels.

2. Slaves, with their master's consent.

3. Minors near their majority, and of sufficient strength to stand a campaign.

All these irregular troops receive their ammunition, equipment, arms, etc., either from the public treasury, or from particular funds of the Sovereign. Moreover, it is not lawful to enroll Moslems, for the war against the infidels, as mercenaries, for the propagation of the faith is a religious duty for each believer; but the Sovereign may legally enroll in that manner his infidel subjects; and indeed, according to some authorities, any person may do so.

It is blamable for a Moslem forming part of an army in campaign to kill his near relatives who are infidels, and all the more his relatives within the prohibited degrees. [Unless he hears them blaspheme God and the Prophet.]

In a war against infidels it is forbidden to kill minors, lunatics, women, and hermaphrodites that do not incline towards the masculine sex; *but one may lawfully kill monks, mercenaries in the service of the infidels, old men, persons that are weak, blind, or sickly, even though they have taken no part in the fighting, nor given information to the enemy. If they are not killed, they must at any rate be reduced to slavery. The wives of infidels should also be reduced to slavery, and infidels' property should be confiscated. It is lawful to besiege infidels in their towns and fortresses, and employ against them inundation, fire, and warlike machines; and to attack them unawares at night, without having regard to the presence among them of a Moslem prisoner or merchant, for whom these general methods of destruction may be equally dangerous. This is the doctrine of our school. By virtue of this same principle one may even shoot women and children, if the infidels continue the combat while hiding behind them; *but this must not be done if the infidels conceal themselves thus with the sole object of saving their own lives, and the nature of the military operations does not make it absolutely necessary to have recourse to extreme measures. †The same principles must be followed where infidels conceal themselves behind Moslems. Our combatants have no right to retire before the infidels, unless the number of the latter exceeds twice that of our troops, except in the case where one retires in order to return to the charge on another side, or where one falls back upon the reserve in order to recruit strength. In such a case one may retire, †even if the reserve is at some distance; but in that case one cannot claim one's share in the booty captured in one's absence; †as one may

do if the reserve is close by. On the other hand, one may legally retire before the enemy, where their number exceeds twice the number of our troops; †with the single exception that if, *e.g.* one hundred able-bodied Moslems are attacked by one hundred and one infidels, the Moslems must hold out against them if the infidels are wholly or partly weak men.

Each Moslem soldier may engage in single combat with an infidel soldier. It is even commendable to accept a challenge; but the Moslem who sends a challenge is praiseworthy only if he is certain of his aptitude in handling his arms, and the Sovereign gives his consent.

It is lawful to destroy the houses and plantations of infidels, where this is necessary from a military point of view, or if it renders the victory easier; it is even a good thing to have recourse to this measure in all cases where it is unlikely that the houses and plantations will one day become our property. Where this is probable it is better not to proceed to destroy them. It is rigorously forbidden to kill infidels' domestic animals, except cattle for our food, and their cavalry horses which can always be killed either in the defence or in the attack. Where it is feared that the cattle taken from the enemy may fall again into their hands, or that this cattle may cause us some annoyance, it may be killed.

Section 3

Women and minors of the infidels made prisoners of war should be reduced to slavery; and slaves taken in their country become ours. As to free adults, males, the Sovereign may choose between the five following courses, as seems to him most advantageous for the Moslems; that is to say he may either :—

1. Put them to death.
2. Give them their liberty.
3. Exchange them for Moslem prisoners of war.
4. Release them for a ransom.
5. Reduce them to slavery.

Where circumstances do not indicate which of these measures is to be preferred, the prisoners should be retained until the best method becomes clear. Some authorities do not allow an idolater to be made a slave, and one jurist considers this to be unlawful for a pagan Arab. An infidel prisoner of war who embraces the faith saves his life in all cases by so doing; and the Sovereign has with regard to him a choice between methods Nos. 2 to 5. According, however, to other authorities, such a prisoner must always be reduced to slavery. The conversion of an infidel before his defeat assures him not only of life but of possession

of his property and of his children who are under age; but our school does not extend this favour to his wife.

A woman who is reduced to slavery ceases immediately to belong to her husband; though, according to some authorities, the marriage, if it has been consummated, remains good until the end of the period of legal retirement, as the woman may be enfranchised before its termination. The wife of an infidel subject of our Sovereign made a prisoner of war, †or a prisoner of war previously enfranchised by such infidel, may be reduced to slavery; but not, according to our school, the infidel wife or infidel enfranchised slave of a Moslem. The captivity of both husband and wife, or of one of them, involves the dissolution of the marriage, in the case of free persons; and even, according to some authorities, in the case of persons already slaves. But captivity does not affect the debts contracted by the prisoner of war during his freedom in favour of a Moslem or of an infidel subject of our Sovereign. These debts are recoverable from the prisoner's property seized after his reduction to slavery. Where two infidels not our subjects have contracted a debt towards each other, or one has bought something from the other, the agreement holds good if both embrace the faith, or become the subjects of our Sovereign liable to a poll-tax. †But damages due for some material loss cannot be recovered if both embrace Islam.

By the term "booty of war" is understood—

1. Property taken by force from the enemy.

2. Property abstracted from the territory of the enemy, either by oneself or in the company of others, in a furtive manner.

3. †Property found upon the enemy's territory that cannot be supposed to belong to a Moslem; for otherwise the regular announcements must be made, and the appropriation take place, in conformity with the requirements of the law relating to things found.

Soldiers may freely take from the booty all necessary food, and also what is required for preparing it, including meat, fat, and other ordinary provisions. They may also take the necessary forage for their animals, straw, barley, and so on; they may kill the infidels' cattle for their personal needs, ††and they may take not only food properly so-called, but also fruit. ††They are not liable for the value of the cattle thus killed, and need not limit themselves to what is strictly necessary; but these requisitions are forbidden to marauders who only join the army after the end of the war, and after the booty has been collected. ††And the portion that has been levied by way of requisition and not yet employed upon return to Moslem territory must go into the total booty to be divided. It is only upon the territory of the enemy that

these requisitions may be levied, †and also upon the space between the utmost Moslem habitations and the boundaries of our Empire.

A lawful claimant may renounce his share in the booty, provided he is capable of administrating his property himself; even if he happens to have been declared bankrupt. The only condition required is that he must declare his intention before the partition, †or rather before the reservation of the fifth to be shared amongst those who have taken the booty. Such renunciation need not be expressed by each individual, but may be the intention of a whole troop. In no case may a member of the Prophet's family renounce his claim to the share reserved to him; nor may one renounce one's right to the equipment of a slain foe. A person renouncing his share in the booty is in the same position as one not present at the battle. The claim of a soldier who dies before receiving his share falls to his heirs.

The booty becomes the property of those entitled to it only by the fact of distribution; though before this they may take possession of it provisionally. Some jurists consider that right of property in the booty is acquired at the moment the booty is taken; and others attribute to the distribution a retroactive force, which means that if the booty taken by a soldier is assigned him as his share, he is considered to have had full ownership of it from the moment he took it, whereas on the contrary supposition his right of ownership has never existed. The immovable property forming part of the booty is, so far as regards appropriation, regulated by the same law as movable property; even objects forbidden to Moslems, such as dogs, may be attributed to the person having a claim to them, and who wishes to accept them, provided he can make some profit out of them. If claims are made to forbidden things by several persons entitled to them, they must be equally divided between them; and where this is impossible, the matter must be decided by casting lots.

††The country of Sawad in Irak was conquered from the infidels and divided amongst the soldiers of the army, who afterwards made a gift of it to the state. It was then made *wakaf* in favour of the Moslem community; and the annual land tax paid by the cultivators has become the rent. The revenue has been employed in the public interest. The country of Sawad extends in length from Abbadan to Haditha in the neighbourhood of Mosul, and in breadth from Kadisia to Holwan. [††The town and suburb of Basra, though included in the country of Sawad, is regulated by this law only so far as concerns one spot situated to the west of the Tigris and another situated to the east of that river.]

The city of Mecca surrendered to the Prophet by virtue of a

capitulation, and was not taken by assault; consequently its houses and cultivated fields remained in the full possession of their inhabitants.

Section 4

An adult, sane Moslem may grant a safe-conduct or quarter to one or more enemies; provided it is for a fixed number, and the act is done of his own free will, and not under any constraint. †Thus a Moslem who is a prisoner of war amongst infidels, cannot grant a safe-conduct. But the law does not insist, for the validity of either safe-conduct or quarter, that any special words shall be used, provided the terms employed clearly express the intention. A document may be drawn up, or the grant may be made by letter, provided only that the infidel whom one wishes to benefit is informed of it. A safe-conduct or a grant of quarter is null and void if the infidel declares that he declines it; †or even if he does not formally accept it; but the acceptance may, however, if necessary, be expressed by signs.

A safe-conduct or a grant of quarter cannot be given for a period exceeding four months; only one authority admits a validity for any period less than a year. Moreover, the law requires that the grant should not prejudice the interest of the Moslems; it is forbidden, for example, to grant a safe-conduct to a spy. On the other hand, the Sovereign should respect a safe-conduct or a grant of quarter duly obtained, so long as he has no reason to fear fraud or intrigue on the part of the infidel. A safe-conduct or a grant of quarter are purely personal, and cannot be transferred to the family or property of the infidel, whether these are still in the enemy's territory, †or the infidel has taken them with him; all without prejudice to any special stipulations that may be made upon the subject.

The law recommends a Moslem inhabiting an infidel country to emigrate, even though he may enjoy there the free exercise of his religion; and this emigration becomes obligatory if he is deprived of the exercise of his religion, and he possesses the means enabling him to emigrate. A Moslem made prisoner of war by infidels should endeavour to escape upon the first opportunity. If released unreservedly he may do the enemy all the harm he can even by means of an ambush. On the other hand, this is forbidden where he has accepted liberty in exchange for granting infidels a safe-conduct, or granting them quarter. Infidels endeavouring to accompany the prisoner must be repulsed, and if necessary, killed; and it is forbidden to keep a promise to remain in the territory of the enemy, after being released on parole.

The Sovereign may take one of the infidels into his service as a guide

to point out the way to some fortress, and promise him by way of recompense some gift such as one of the young women to be made prisoners. Under these circumstances the woman must be given him if the fortress is taken in consequence of the information supplied, †but not if it is taken in some other manner. If the fortress is not taken the guide receives nothing. Some authorities allow him even then a reasonable remuneration in proportion to the service he has rendered ; unless there was an express stipulation that nothing would be due to him in case of failure. Moreover, the contract with the guide admits of the following distinctions :—

1. Nothing is due to him if there is no young woman in the fortress ; or if she was already dead at the time the contract was made ; or even if she died after this, but before the fortress was taken.

2. The guide should be remunerated in some other manner :—

(*a*) If the young woman dies after the taking of the fortress, but before being handed over to the guide.

(*b*) If she embraces the faith, at any rate according to our school.

The remuneration consists in a reasonable sum ; or, according to some authorities, in the value of the young woman.

BOOK 58.—THE POLL-TAX

CHAPTER I.—GENERAL PROVISIONS

Section 1

When it is desired to impose a poll-tax upon infidels the following terms are employed :—" I establish you upon Moslem territory," or " I grant you permission to live there on condition of paying a poll-tax, and submitting to our laws." †It is necessary to stipulate the amount of the tax ; but it is not necessary to add a clause to the effect that the infidels must abstain from uttering insults against God, Mohammed, or Islam. Our school forbids stipulating for a poll-tax for a specified term ; and moreover an agreement to pay the tax is not complete unless it is formally accepted by the infidels. An infidel found upon Moslem territory, without any such agreement, who declares that he has come there either to hear the word of God, or as ambassador, or under a safe-conduct granted by a Moslem, has a presumption in his favour. This presumption is only rebuttable as to the safe-conduct.

An agreement for the payment of poll-tax can be concluded only by the Sovereign or his deputy. The proposals of the infidels with regard to this must be taken into consideration, unless the person charged by them with the negotiation is a suspected person. Such an agreement may be come to only with Jews, Christians, and Fire-worshippers, provided the peoples concerned already practised their religion before the mission of Mohammed, or at any rate at some uncertain date. This benefit extends also to those who think themselves in possession of books revealed to Abraham or of the Psalter of David ; it even extends, according to our rite, to individuals one of whose parents is an adherent of a religion founded upon some holy book, and the other an idolater.

A woman, a hermaphrodite, a slave even when partially enfranchised, a minor and a lunatic are exempt from poll-tax. A lunatic, however, owes the tax, if he has only rare attacks of madness, *e.g.* once a month or once a year ; †as to a lunatic whose attacks are in rapid succession,

e.g. every day, he owes payment of the tax only when his lucid intervals added together amount to a year. The son of an infidel subject of our Sovereign owes, upon his majority the same poll-tax as the other inhabitants of his country ; and as soon as he has paid it, the law assumes that a new agreement has been come to with him to this effect ; though, according to some authorities, the agreement effected with his father should be considered as *ipso facto* extending to him. Our school insists upon the payment of poll-tax by sickly persons, old men, even if decrepit, blind men, monks, workmen, and poor persons incapable of exercising a trade. As to persons who are found to be insolvent at the end of the year, the amount of the tax remains due from them until they become solvent again.

No infidel may establish his domicile in the Hejaz, *i.e.* at Mecca, Medina, Yamama, or the villages situated in the suburbs of these sacred cities. Some jurists, it is true, allow that they may have their domicile on the side of the great roads uniting these towns. An infidel may not even enter the Hejaz without the permission of the Sovereign, even to cross the country, under penalty of being taken to the frontier, and also of having to undergo punishment at the discretion of the court, if he acts knowingly. An infidel, however, who asks for permission to cross the Hejaz should obtain it if his journey is in the interest of Moslems, *e.g.* if he comes as ambassador or to import necessities for the inhabitants. But if he wishes to import other things the Sovereign may not permit it without levying a tax upon his goods and requiring him to leave within three days. Entry into the sacred territory of Mecca is absolutely forbidden to infidels, even as ambassadors. If a duly qualified ambassador should approach, the Sovereign or his delegate should go out to meet him and give him audience upon the limit of the territory. An infidel who, in spite of the prohibition, enters the sacred territory and falls sick there, should be carried out to the boundary, even though this is likely to cause death ; and if he dies upon the sacred territory not only must he not be buried in it, but if the burial has already taken place the corpse must be disinterred. Where, on the other hand, it is not upon the sacred territory of Mecca, but in some other part of the Hejaz, there the infidel falls sick, and the carrying out of the body would involve great difficulty, it may be left at the spot where it is ; otherwise it must be immediately taken away. By virtue of the same principle the corpse of an infidel who has died in any other part of the Hejaz than the sacred territory of Mecca requires merely to be carried out beyond the limits of that province, where this can be done without too great inconvenience, but otherwise it may be buried in the place where it is.

Section 2

The minimum amount of the poll-tax is one dinar per person per annum; but it is commendable to raise the amount, if it be possible to two dinars, for those possessed of moderate means, and to four for rich persons. Infidels who promise payment of the tax at a higher rate are none the less liable for this higher amount, although they may subsequently discover that, strictly speaking, they need not have promised more than the minimum of one dinar; †and if they refuse to pay the amount agreed upon, they should be treated as people who fail to carry out their engagements towards us. An infidel who embraces Islam in the third year after the conquest owes poll-tax only for the two previous years, and not for the third; and the same rule applies to the infidel who dies during the third year. In the latter case the amount due by him is a debt owing by his estate in preference to the legacies, but ranking equal with other civil debts according to our school. In case of conversion or decease during the course of any year a proportional amount of poll-tax is due for that year; according to one jurist nothing at all is due in these circumstances.

An infidel who has to pay his poll-tax should be treated by the tax-collector with disdain; the collector remaining seated and the infidel standing before him, the head bent and the body bowed. The infidel should personally place the money in the balance, while the collector holds him by the beard and strikes him upon both cheeks. These practices, however, according to most jurists, are merely commendable, but not obligatory, as some think. The latter forbid an infidel to commission a Moslem to pay the poll-tax for him, or to pay it by means of the transfer of a debt due to him by a Moslem, or to get a Moslem to be answerable for it. Most jurists, however, permit these usages. [For a collector to act in the manner here described is absolutely forbidden, and it is a grave error to declare it to be commendable.]

The law recommends that the Sovereign should also stipulate that the infidels should as much as possible practice hospitality in regard to Moslem travellers passing through their country, all without prejudice to the legal minimum of the poll-tax. It is true that some jurists maintain that this charge may be taken into account when it is desired to ascertain whether the infidels do pay the minimum. †In any case, however, the duty of hospitality must not be imposed upon the poor, but only upon the rich and those in the enjoyment of moderate means. When stipulating for the practice of hospitality the Sovereign should mention the number of guests each individual must receive, the men and their horses; the nature and the quantity of the food, as well principal

as accessory, due to each individual; and the forage for the animals. The guests should be lodged either in the church or in the synagogue or in the best uninhabited house in the place. The length of stay should be stipulated up to a maximum of three days.

The Sovereign may accept the offer of the infidels to pay the charity-tax, instead of the poll-tax, provided that the interest of the Moslems is not opposed to that course; and provided that the charity-tax paid by the infidels is double that of the ordinary charity-tax; that is to say that they pay two *shahs* for five camels, two "bent *makhad*" for twenty-five camels, one *dinar* for twenty *dinars*, ten *drahms* for two hundred *drahms*, and a fifth instead of a tenth. †Moreover, the excess that the tax-payer may recover by giving two "bent *makhad*" is not doubled in the case of an infidel; *but where the taxable property does not reach the minimum taxable a proportional charity-tax is not exacted. The charity tax levied in this way is legally considered as a poll-tax, and is so distributed. In consequence it follows that nothing is levied from persons who are for some reason exempt from poll-tax, *e.g.* women, even where their property reaches the minimum taxable.

Section 3

The obligations which we undertake, when stipulating for a poll-tax, are as follows:—

1. To abstain from any hostile act against the infidels concerned; that is to say that we are responsible for any damage illegally caused by us to their person or property.

2. To protect them against attacks on the part of infidels not subject to our laws; and also against other enemies, external and internal. This obligation, however, does not exist, according to some jurists, where the tax-payers do not fix their domicile amongst us, but occupy a separate territory.

Infidels who by virtue of the poll-tax are subjects of our Sovereign must be forbidden to build churches or synagogues in a town founded by us and whose inhabitants embraced Islam of their own free will. As to places taken by assault the infidels must abstain, not from building new churches or synagogues there, †but even from using for that purpose any such edifices as may be already there. Where, on the other hand, the country submitted by virtue of a capitulation, the following cases must be distinguished:—

1. If the capitulation is to the effect that the land shall be ours, but the infidels are to remain there by title of hereditary possession, they may continue to make use of it; †but if nothing is decided upon the subject of these edifices, they may not put them to that use.

2. If the capitulation is to the effect that the infidels continue to be owners of the land, they may not only continue to make use of their churches or synagogues, †but may even build new ones.

Some jurists merely recommend, but the majority declare it obligatory, that the infidels should be forbidden to have houses higher than those of their Moslem neighbours, †or even to have them as high; a rule, however, that does not apply to the infidels who inhabit a separate quarter. An infidel subject of our Sovereign may not ride a horse; but a donkey or a mule is permitted him, whatever may be its value. He must use an *ikaf*, and wooden spurs, those of iron being forbidden him, as well as a saddle. He must go to the side of the road to let a Moslem pass. He must not be treated as a person of importance, nor given the first place at a gathering. He should be distinguished by a suit of coloured cloth and a girdle outside his clothes. If he enters a bathing-house where there are Moslems, or if he undresses anywhere else in their presence, the infidel should wear round his neck an iron or leaden necklace, or some other mark of servitude. He is forbidden to offend Moslems, either by making them hear his false doctrines, or by speaking aloud of Esdras or of the Messiah, or by ostentatiously drinking wine or eating pork. And infidels are forbidden to sound the bells of their churches or of their synagogues, or celebrate ostentatiously their sacrilegious rites.

When the infidels do not observe the conditions imposed on them, the agreement made with them remains none the less intact, but they must be forced from that time to fulfil their engagements more strictly. It is only when they make war upon us, or refuse to pay the poll-tax or to submit to our laws, that the agreement is *ipso facto* broken, and we are freed from our obligations in that respect. When an infidel commits the crime of fornication with a Moslem woman, or makes her his wife; or shows our enemies the places where our frontiers are exposed; or seeks to turn a Moslem from the faith, or speaks insultingly of Islam or of the Koran, or defames the Prophet—†the agreement, so far as it concerns him is *ipso facto* broken, provided that this penal clause has been expressly stipulated. *An infidel who breaks the agreement by armed force should be at once resisted and killed. An infidel who breaks the agreement in any other way cannot claim to be deported to his own country; but the Sovereign may have him killed or reduced to slavery, or may pardon him or release him for a ransom, as may seem to him most advantageous. He cannot, however, be made a slave if he embraces Islam before the Sovereign decides upon his fate. †The loss of a safe conduct, or of a grant of quarter, does not affect an infidel's wife or children. An infidel who renounces the agreement made with

us, and asks to be henceforth considered as an enemy, has a right to be conveyed in safety beyond our frontiers.

CHAPTER II.—ARMISTICES

The Sovereign or his deputy has the right to grant an armistice to the infidels, in the case of the inhabitants of a country; in the case of the inhabitants of a town, the governor of the frontier province may also grant it. An armistice is permitted only when there is some advantage for the Moslems; if, for example, we are weak in number; or if money and munitions of war fail us; or if there is reason to hope that the infidels will be converted, or will offer to submit and pay poll-tax. An armistice which, though advantageous, is not caused by our weakness, may be agreed upon for four months; *or more, provided it is for less than one year; but if we are the weaker, a maximum period of ten years may be stipulated for. Where this maximum has been exceeded all jurists regard the armistice as valid for the legal period, and only the excess period to be illegal; but an armistice is invalid where no precise period has been stipulated for; ††or where some illegal clause is included in it. It is considered, for instance, an illegal clause to stipulate that persons made prisoners of war by the infidel shall not be released; or that infidels shall retain property they have captured; or that they shall pay a poll-tax of less than one *dinar* per person; or that we shall pay them tribute, etc. On the other hand, it is quite lawful that the Sovereign, when granting an armistice should reserve the right of recommencing hostilities when he pleases. In any case the Sovereign should abstain from committing any act of hostility so long as the armistice lasts; he should not begin again to wage war until after the legal expiration of the armistice, unless the infidels themselves terminate it by an explicit and formal declaration, or by again taking up arms, or by giving information to our enemies as to the places where our frontiers are exposed, or by killing a Moslem. At the end of the armistice one may attack the enemy immediately, either by day or by night. The armistice is broken as to all the infidels if some of them take up arms again, unless the others oppose it by words or actions. If these latter prove that they do not wish to break the armistice, and separate from those who are recommencing hostilities, and inform our Sovereign that they intend to keep their engagements, the armistice remains intact so far as they are concerned. All this, however, does not prevent the Sovereign from revoking the armistice at any moment, if he has reason

to fear that the infidels have only consented to it in order to weave some intrigue; in this case those who have established themselves in our country upon the faith of the treaty must be conveyed to the frontier. But the Sovereign must never revoke an armistice upon ill-founded suspicions.

In an armistice one may not promise to the infidels the extradition of a Moslem woman who has taken refuge with us; an infraction of this rule renders illegal not only the clause but the whole treaty. *Even in a case where one has stipulated the extradition "of all the refugees," or said nothing about extradition, it is not necessary to restore to her husband the dower of a woman who has taken refuge with us. Extradition is also illegal in the case of a minor, a lunatic, and, according to our school, a slave or a free man who has no near relatives on the father's side. If a refugee has such relatives, the extradition may take place only upon their demand; but if the refugee has some power over the person who demands the extradition, and can consequently return to us when he pleases, extradition is lawful even upon the demand of some person not a near relative on the father's side. Extradition consists in our ceasing to retain or to protect the individual claimed; but the Sovereign should never force him to return to his country. The individual is free to remain amongst us; and he may, if necessary, in the exercise of his right of legitimate defence, kill with impunity any one who seeks to take him. We may exhort him to resist, but may not formally counsel him to kill the person who seeks to take him. A stipulation that the infidels should surrender apostates from us is lawful and should be faithfully executed by them, under penalty of the armistice being considered *ipso facto* broken; *though it may also be stipulated that apostates shall not be extradited.

BOOK 59.—HUNTING AND SLAUGHTER OF ANIMALS

Section 1

In order that one may lawfully eat of the flesh of animals suitable for the nourishment of the body, the neck should be cut if possible either in the upper or the lower part; where this is impossible, as in hunting, it is enough to cause some mortal wound. Flesh of animals otherwise slaughtered is forbidden to Moslems; moreover the butcher and the hunter should be Moslems, or at any rate belong to those religious persuasions among whom Moslems may choose their wives. One may also eat of the flesh of an animal killed by a female infidel slave, professing a religion founded upon some holy book, although she cannot become the wife of a Moslem. The law forbids to eat of the flesh of an animal slaughtered or killed in hunting by a Moslem with the assistance of a fire-worshipper; but where the Moslem and the fire-worshipper have both set their dogs or fired upon a piece of game, and it is the Moslem's dog or arrow that has killed it, before the other's dog or arrow reached it, this game may lawfully be eaten. It is the same where the game was not killed immediately, but left for dead upon the spot. Where, on the contrary, it is the fire-worshipper who has out-distanced the Moslem under these circumstances, or where they have both wounded the animal without causing immediate death, the flesh is forbidden. It does not matter then whether they wounded it at the same moment, or one after the other, or if they do not know which wound was the first. An animal is lawfully killed by a minor, *even though he may not have attained the age of discernment; *by a lunatic; *or by a drunkard; but it is blamable for a blind man to undertake doing so; †and hunting both by shooting and by coursing, is rigorously forbidden him.

Fish and locusts may be eaten, even if they have died a natural death, or been killed by a fire-worshipper; †and the rules about slaughtering do not apply either to worms in food, such as vinegar and certain fruit, provided that these worms are swallowed with the food in which they occur. †And one may, strictly speaking, kill a fish by cutting it in pieces, or swallowing it alive; though these cruelties are always blamable.

When one fires at a piece of game, or a fugitive camel or sheep, or when one lets loose upon these animals a hunting beast or a bird of prey, and when in this way they are wounded and die in a few moments, the flesh may be eaten although the neck has not been cut. A domestic animal that has fallen into a well where its neck cannot be cut is subject to the same law as the fugitive camel. [†One should not kill a domestic animal fallen into a well by letting loose upon it a hunting dog, at any rate it has been so established by Er Royani and Esh Shashi.]

An animal may not be killed in any other than the ordinary way if it is easy to run after it and catch it, or to do so by the help of another person. In any case the law requires that a fugitive domestic animal, or one fallen into a well, should receive a mortal wound; and some jurists even maintain that the wound should cause immediate death.

One may lawfully eat of a piece of game killed by means of an arrow, or of a hunting dog, or of a bird of prey, if one only reached it at the moment it ceased to live, or even after its death, and so could not give it the *coup de grace*, and it died of the wound it had received. This is, however, on condition that it is not the hunter's fault that he was unable to deal the animal the decisive blow, *e.g.* if it was dead before he could draw his knife, or before he could get hold of it so as to kill it. Consequently, an animal killed while hunting in the manner we have just described is forbidden, if the hunter by his fault has let it die of the wound it received, although this wound was not immediately mortal, *e.g.* if he went out hunting without his knife, or if he let another hunter take it, or if the knife was firmly fixed in the sheath. When one fires upon a piece of game so as to cut it in two, the flesh of each half may lawfully be eaten; and even when a member of the animal's body has been cut in this way, both this member and the rest of the body may be eaten, provided the wound was immediately fatal. But if the wound did not immediately cause death, so that the animal has had to be killed either in the normal way, or by giving it a second and decisive blow, the rest of the body may be eaten, but not the member cut by the original wound. Only where it is impossible to give the animal a decisive wound or to kill it in the ordinary way may all the body be eaten. Some authorities, however, consider that the cut member is prohibited even in these circumstances.

The slaughtering of any animal that has been in one's power is effected by cutting the larynx and the œsophagus; it is commendable to cut also at the same time the two jugular veins. To slaughter an animal by cutting the nape of the neck is forbidden; and the flesh of an animal so killed may be eaten only if the butcher perceives his error and cuts at once the larynx and the œsophagus, before the animal ceases to live.

Nor may one eat the flesh of a fox that has been killed by introducing a knife into the ears, as some hunters do in order not to spoil the skin.

The Sonna has introduced the following practices relative to the slaughtering of animals :—

1. Camels are killed by cutting the throat near the chest ; in the case of bullocks and small cattle the throat is cut higher up ; though, strictly speaking, one may do the opposite of this.

2. Camels are killed standing upon their four legs ; as to bullocks and small cattle, they are made to lie upon the left side, the right foreleg being free and the three others strongly bound.

3. The slaughtering knife is sharpened.

4. The animal's head is turned in the direction of the holy temple of Mecca.

5. One should pronounce the formula, "In the name of God," and invoke His blessing upon the Prophet ; but one should never say, "In the name of God and of Mahommed," as do some of the faithful.

Section 2

For the regular slaughtering of animals that one has had in one's power, and for the hunting of animals that one has not had in one's power, one may lawfully use any instrument for cutting, suitable for causing a wound, without caring whether it is an instrument of iron, copper, gold, wood, reed, stone, or glass ; provided it is not of horn, ivory, or bone. The law forbids the eating of the flesh of animals killed by an instrument for bruising, or for both bruising and cutting, such as a ball, a lash, an arrow without a point, and not sharpened, an arrow and a ball together, or an arrow whose point and shaft have both dealt a mortal wound while the game was in motion. The same principle prevents one eating the flesh of animals strangled in a hunter's net, or of an animal wounded by an arrow and fallen from some height and killed by the fall.

Hunting by coursing is lawful, either with hunting beasts or by birds of prey ; as *e.g.* with a dog, a cheetah, or a white or ordinary falcon, provided that these animals are trained to remain quiet upon their master's order, to attack the game the moment they are let loose, and to seize it with their claws or their teeth without eating it. *This last condition, however, concerns only birds of prey and not dogs, etc. Its training must have accustomed the beast to hunting so that one may be sure that it will not eat the game. Where the hunting beast devours the game in spite of this, the flesh is prohibited, and the beast must be trained again. It matters little if the beast licks the blood of its prey. As to the part of the body rendered impure by the dog's bite, it need

merely be washed with water and sand, in order to become lawfully edible. It is not necessary to take out and throw away this part of the body. *It is also lawful to eat a piece of game attacked by a hunting beast or a bird of prey and killed by the beast's weight or the force of the fall.

The law forbids eating—

1. A piece of game wounded by a knife dropped from the hand by accident.

2. A sheep that has rubbed or knocked against a knife held in the hand, so that the throat is cut, even though both larynx and œsophagus may be cut through.

3. A piece of game pursued and killed by a dog of its own accord; even though the master, seeing the dog started, may have urged it on.

On the other hand, the game is lawfully killed where an arrow reaches it driven accidentally by the wind; †though its flesh is forbidden if the arrow has been drawn at random, to test it, or upon some object, and then driven by the wind upon the game so as to kill it. A person who fires upon a piece of game that he took for a stone, or upon a troop of gazelles of which he hit only one, may eat of the flesh of the slain animal. †And similarly, if he fires upon a particular piece of game and kills another. When a dog let loose upon a piece of game flies away out of sight of the hunter, and the game is afterwards found dead, the law forbids that it should be eaten. *The same principle requires one to abstain from eating the flesh of a piece of game that has escaped from the hunter's sight after he has wounded it, and the body of which has only been found later.

Section 3

A hunter becomes owner of the game he has seized in his hand, or upon which he has inflicted an immediately mortal wound, or which he has rendered incapable of defending itself or of escaping, or whose wings he has broken, or which he has taken in a net placed for that object, or which he has driven into a place from which it cannot escape. †The owner of a piece of land has not yet acquired the ownership of a piece of game that comes upon his land and remains in the mud, etc., until he actually takes possession of it. The ownership of the game, once acquired, remains until the animal escapes, by its own effort or by the act of the owner. Thus a pigeon perched upon another person's dove-cot should be restored to the owner, and where the pigeon is so mixed up among the other pigeons of the dove-cot that it can no longer be distinguished, then neither the owner of the dove-cot where it is, nor the owner of the pigeon, can by sale or gift transfer the ownership of

any of the pigeons of the dove-cot ; †though such a transfer, made by the owner of the pigeon to the owner of the dove-cot is perfectly valid. The owner of the pigeon and that of the dove-cot can, moreover, jointly transfer the whole of the dove-cot and pigeons to any one else, provided that the number of the pigeons is known, and that they are all of the same value.

Where two persons fire, one after the other, upon the same piece of game, and both wound it, the following cases must be distinguished :—

1. If the second hunter causes the game a wound immediately mortal or so serious as to render the animal incapable of defending itself or of escaping, it belongs to him. In this case the wound given by the first hunter is of no consequence.

2. If the wound caused by the first hunter is immediately mortal or so serious as to render the animal incapable of defending itself or of escaping, the game belongs to him unless the wound caused by the second hunter cuts the larynx and the œsophagus. In these latter circumstances the game belongs to the second hunter, and may be lawfully eaten provided he pays the first hunter damage for having killed the game which the first hunter had already secured. If the second hunter kills the game, already incapable of defending itself or of escaping, not by cutting the larynx and œsophagus but in some other manner, or if he gives it a wound not immediately mortal in itself, but fatal in combination with the previous wound, the flesh of that game is forbidden. But the second hunter must pay the first its value.

Where the two hunters fire at the same time and wound the game, either in some way immediately fatal, or so seriously as to render it incapable of defending itself or of escaping, the game belongs to them both in common. If only one of the two caused the wound in question, the game belongs to him.. But our school forbids that the game should be eaten if one of the hunters causes a wound immediately fatal, and the other a wound rendering it incapable of defending itself or of escaping, and it is not known which of the two wounds was given first.

BOOK 60.—SACRIFICES

Section 1

The Sonna has introduced the custom of sacrifices that are obligatory only for the person who has imposed them upon himself as a duty. The Sonna prescribes moreover to him who would immolate a victim upon the tenth day of the month Zul Hejja not to cut his hair or his nails before completing this act of devotion, and to discharge the duty in person, or at least be present. One cannot immolate by way of sacrifice any other animals but camels, bullocks, and small cattle ; and the camels must have attained their sixteenth year, the bullocks and goats their third, and the sheep their second. It matters little if the animal be male or female or castrated. Though a camel or a bullock suffices for seven persons, and one head of small cattle for one person only, it is preferable to immolate a camel on one's own account, a bullock taking the second rank, a sheep the third, and a goat the last. Seven head of small cattle are preferable to a camel. It is commendable to immolate a single head of small cattle on one's own account, rather than to join with others in immolating a camel. The animal sacrificed should be exempt from defects that prejudice the quantity or quality of the flesh ; one cannot take a thin animal, or one attacked by rabies ; or an animal wanting an ear or an eye ; or a lame, sickly or manifestly mangy beast. But there is no objection to immolating an animal that is but slightly affected by one of these physical defects, or one that has lost its horns, or one that has its ears split, torn, or pierced.

[†As to mange, it is enough that the animal should be affected by it, to however slight an extent, to render it unsuitable for sacrifice. This is Shafii's personal opinion.]

The hour of sacrifice on the occasion of the pilgrimage, on the prescribed day called *yaum en nahr*, is that when the sun has reached the height of a lance, after which one must still pray two *rakas* and listen to two short sermons before proceeding to the ceremony. It must be finished by the last of the three following days, called *ayyam at tashrik*, at sunset. [It is merely preferable, but not obligatory, that the sun should have risen to such and such a height ; for, strictly speaking, one

may proceed to the ceremony as soon as the sun has risen and the time necessary for the *rakas* and the sermons has elapsed.]

The believer who has made a vow to immolate a particular animal by saying, " By God, I undertake to immolate such-and-such an animal," must keep his engagement at the hour prescribed ; but if the animal dies before this he owes nothing unless he killed it himself. In the latter case he must buy another animal of equal value and sacrifice it. On the other hand, the believer who vows to sacrifice an animal, and afterwards specifies a particular beast, must keep his engagement at the hour prescribed ; †but if the animal dies the original vow still remains obligatory.

The act of immolation should be accompanied by an intention ; except in case of a particular victim, †or where one has already uttered the words, " This animal will serve for my sacrifice." A person who does not perform the sacrifice himself may express his intention either at the moment he gives the animal to his agent or when the latter proceeds to the immolation.

The sacrificer may himself eat the flesh of a supererogatory victim, or give it to his guests, even though the latter may be rich enough to pay for their own meal ; in this latter case, however, they may not be permitted to take away any of the flesh. For one's private table one may only dispose of a third, or, according to one authority, of a half, of the flesh. The rest, or, better still, the whole, should be given to the poor ; with the exception, however, of one or two mouthfuls which must always be eaten as a sacrament. As to the skin one may either give it away or make use of it oneself, as one chooses. In the case of an obligatory sacrifice a believer has a right to eat the whole of the victim, as well as the young of the animal immolated, which, though it has a separate existence, follows the same rule as its mother. Milk left in the udder of the animal may be drunk.

A slave may not sacrifice. If his master authorises him to perform such act of devotion, it is in his master's favour. Even a slave undergoing enfranchisement by contract may not sacrifice without his master's consent. Nor may one immolate a victim for a third party without his consent ; nor for a deceased person who has not so directed in his will.

Section 2

The Sonna has also introduced the practice of a sacrifice upon the occasion of the first shaving of a child's head. This sacrifice consists of two *shahs* for a boy, and one *shah* for a girl ; it being of course understood that the victim is subject to the already mentioned prescriptions

as regards age, absence of physical defects, and also as to the permission of eating the flesh or giving it to other persons to eat.

The Sonna requires for this sacrifice in particular—

1. That the victim should be cooked without breaking the bones.

2. That it should be immolated upon the seventh day after the birth of the child.

3. That on the same day the child should be given a name.

4. That the child's head should be shaved after the sacrifice ; and the weight of the hair in gold or silver given to the poor.

5. That the first call to prayer should be uttered into the child's ear immediately after birth.

6. That its palate should be rubbed with dates.

BOOK 61.—EATABLES

All manner of fish may serve as lawful nourishment, however they have been killed or if they have died a natural death ; †and it is the same with aquatic animals that are not fish properly so called. Some authorities, however, maintain that aquatic animals not comprised under the denomination of fish cannot be eaten ; others consider that this depends upon whether their terrestrial namesakes are eatable or not. Consequently neither the dog-fish nor the sea-hog can be eaten any more than a dog or a pig. Amphibians such as frogs, crayfish, and serpents are all forbidden food.

Amongst animals living only upon the land, the flesh of which may lawfully be eaten, may be mentioned cattle belonging to the camel, bovine, caprine, or ovine race ; one may also eat the flesh of the horse, the antelope, the onager, the gazelle, the hyæna, the African lizard, the hare, the fox, the jerboa, the fennec and the sable. On the other hand, the law forbids eating the mule and the domestic ass ; all quadrupeds and birds that have means of defence such as claws and talons, *e.g.* the lion, leopard, wolf, bear, elephant, monkey, falcon of any kind, vulture, and eagle ; †as well as the jackal and wild cat. †Forbidden also is any animal which it is recommended to slay, such as a serpent, scorpion, Egyptian crow, kite, rat, and in general any carnivorous animal, and even the *rakhama* and the *baghath*. †The harvest crow may lawfully be eaten ; but not the parrot, nor the peacock. One may eat the ostrich, crane, duck, goose, fowl, pigeon—by which term is legally understood any bird that drinks by sucking in the water and that coos—sparrow of any colour and species, *e.g.* nightingale, bull-finch, starling ; but one may not eat swallows, ants, bees, flies, nor any kind of vermin, such as beetles or worms. All animals born of an animal that can be eaten and of one that cannot are forbidden.

As to those animals about which the law makes no express provision, they can be eaten if well-to-do and respectable Arabs eat them under ordinary circumstances ; but one must abstain from food that such persons regard with abhorrence and eat only in time of famine. Where there is a doubt as to the proper name by which an animal should be described these same persons should be consulted. If even they do not

know the proper name of it, it may be called by the name of the animal that is like it.

An animal of any kind is forbidden as food if it eats ordure, and its skin shows traces of this habit. According to others, however, the use of such an animal's skin is merely blameworthy. [†This latter doctrine seems to me to be preferred.] The flesh of such an animal may, however, be eaten when the skin has lost its repulsive quality, through the animal being fed for some time on pure and wholesome food.

It is also forbidden to make use of provisions that have become impure, at least where it is impossible to purify them, or to cut away the contaminated portion, as in the case of liquids, such as vinegar or liquefied date syrup. This principle is carried so far that it is considered blamable to eat food obtained as the wages of some impure labour such as applying leeches or sweeping a house. Such eatables are given, in conformity with the Sonna, to slaves and beasts of burden, not to free men. A fœtus found dead in the body of an animal killed in accordance with the precepts of the law may serve as lawful nourishment.

Any one who fears that he will die of inanition, or at least fall dangerously ill, should make use of any sort of eatable, even those most rigorously forbidden, if there is a hope of saving his life by so doing. According, however, to other authorities an individual who fears death from inanition is never obliged to eat forbidden food, he is merely permitted to do so; and if he has near by him eatables that are forbidden, he may in no case partake of more forbidden food than is absolutely necessary to keep him alive. Where there are no eatables not forbidden within reach, he can, according to one authority, eat forbidden food until he is replete; *but most jurists insist that no more may be taken than is absolutely necessary to keep one alive, unless one fears death if the appetite is not completely satisfied. In case of urgency one may even eat a human corpse, or kill an apostate or an infidel not subject to Moslem authority in order to eat him; but one may never kill for this purpose an infidel subject of a Moslem prince, or an infidel minor not so subject, nor an infidel who has obtained a safe-conduct. [†In case of urgency one may kill and eat even a minor or a woman among infidels not subject to Moslem authority.]

A person suffering from hunger who can only find eatables belonging to an absent person, has a right to take them on condition of restoring their equivalent in kind or money; but the owner of eatables who has immediate want of them himself, is not obliged to share them with another suffering from hunger who asks him to do so. Such a sacrifice is even forbidden unless it is a Moslem who makes the request. But the person who is not in immediate want of his own provisions should

give to another who asks for food, saying he is suffering from hunger, provided that other is either a Moslem or an infidel subject of one of our princes ; and in case of a refusal the owner may even be forced to comply, under menace of death. Those who use their right to take another's provisions should restore the value immediately, if they have money with them ; but otherwise they should be allowed time for payment. †A person who gives nourishment to a really famished person, without stipulating for any recompense, is considered to have acted from generosity, and can claim nothing for it. A person suffering from hunger who finds a corpse, and at the same time eatables not forbidden but belonging to another, should, according to our school, eat the corpse, rather then take the eatables that do not belong to him. Our school extends this rule even to a person in a state of *ihram* who finds upon the sacred territory a corpse and a piece of game that he could kill if hunting were not forbidden him. †The law forbids a Moslem to cut off a limb of his body and eat it. [†This act is lawful if one is upon the point of dying of inanition and cannot find even a corpse to eat, and has a better chance of remaining alive by cutting off a bodily member than by braving hunger. But one may in no case cut off a limb of one's own body in order to nourish another person, nor cut off the limb of another person under one's protection in order to nourish oneself.

BOOK 62.—RACING AND SHOOTING COMPETITIONS

THE Sonna permits challenges to racing matches or shooting competitions even for a prize. The shooting may lawfully be effected not only with arrows, but according to our school also with javelins, lances, stones, balisters, or other weapon of war. On the other hand, the law forbids challenges to a game of mall on horseback, throwing the ball, swimming, chess, or the game of rings; it forbids also challenges to certain bodily exercises, such as standing upon one foot; and challenges to certain games of chance, as, for instance, guessing the number of the objects held closed in the hand. The law allows challenges as to horse races, *and even as to races of elephants, mules or donkeys; †challenges are forbidden only in case of a flight of birds, or of a fight.

*Challenges to racing matches or shooting competitions become obligatory on both sides once they have been accepted; neither of the parties can then cancel the agreement of his own accord without the other's consent. A person who accepts a challenge cannot withdraw from it, either before acting in prosecution of it or after. And neither the conditions of the challenge, nor the prize, can be altered in any way after it has been accepted.

Essential conditions for a challenge to a racing match are—

1. That both parties are acquainted with the place of departure and the goal of the course.

2. That each has an equal chance with regard to the line travelled and the distance.

3. That it is a matter of certain specified horses, belonging to certain specified persons.

4. That it is possible for either party to reach the goal first.

5. That both know the amount of the prize.

The prize may be offered by one of the parties or by a third person, *e.g.* the Sovereign. In this last case it is offered in the following words:—"To whichever of you two whose courser arrives first I will give a draft upon the Treasury for so much," or "I will pay so much." A prize offered by one of the competitors is in these terms: "If you win this race I will pay you so much," and one may if one likes add, "and

if I win you need not give me anything." The parties are forbidden to offer each other an equal prize, unless a third competitor takes part in the race, without any wager, and his courser is strong enough to rival the coursers of the two parties who have challenged each other. In this last case, however, the law admits the following distinctions :—

1. If the third courser, whose master has offered no prize, reaches the goal first, his master takes the wagers of both the other competitors.

2. If the coursers of the parties who gave the challenge beat the third courser, or if the three arrive together at the goal, no one pays anything.

3. If the third courser reaches the goal at the same time as one of the others, the master of the latter keeps his wager and divides that of the one who has lost with the master of the third courser.

4. If the courser of one of the parties who gave the challenge wins and the courser of the third party comes in second, †the owner of the winning horse takes the wager of the other challenging party.

Where three or more persons challenge one another, the agreement becomes illegal if the second party stipulates for a prize equal to that of the first ; †but if the price stipulated by the second person remains lower than that which the first reserves to himself in case of success, the validity of the contract is admitted.

In a camel race the animal whose shoulder first reaches the goal wins the prize ; in a horse race the result depends on whether the neck reaches the goal ; according to some authorities victory is always decided by the forefeet reaching the goal.

In a shooting competition it is necessary to stipulate in advance—

1. Whether it is of the kind called *mobadara*, where the prize is gained by whoever first hits the mark a certain number of times ; or of the kind called *mohatta*, where the winner is the man who first hits the mark a certain number of times in excess of his rival.

2. The number of times each person may fire, as a maximum ; and the number of times he must hit the mark.

3. The distance, the length and the breadth of the target, except in case of a habitual known shooting range.

4. What is meant by "hitting the target." Thus it may be agreed that it is enough to hit the target without leaving a mark, or that the projectile must pierce the target without necessarily remaining fixed in it, or that it must remain so fixed, or that it must traverse it. Where not otherwise specified the first of these arrangements is assumed to have been come to.

The prize at a shooting competition is subject to the same rules as in the case of a racing match, both as regards the cases in which it is permitted to be offered, and as regards the conditions that must be

satisfied. But it is not necessary to use certain particular bows and arrows, and a clause to that effect would even be null and void. Thus, at any moment a bow or an arrow may be changed for another of the same sort ; and any stipulation interfering with this liberty to change would cause the agreement to become illegal. *It is necessary to stipulate in advance which of the competitors is to shoot first.

Where a great number of competitors wish to take part in the shooting match, it is lawful for two of them to be chosen as chiefs, and for these in their turn to choose the shooters who will form their troop ; but the law does not permit this to be decided by casting lots. When one of the chiefs has placed in the number of the shooters some one he supposed had come to take part in the shooting, but who appears later to have been present at the contest merely by chance, the choice is null and void as regards that individual, and one of the competitors in the rival group must abstain from taking part in the shooting. As to the other individuals chosen to make up the two groups, there is the same divergence of opinion as upon the subject of the combination of an illegal with a valid contract ; but if it is admitted that the choice of the others remains intact, each competitor should be given a right of option, as to whether he desires to adhere to the agreement or to withdraw from it. Even where all declare that they wish to continue the shooting, the agreement is *ipso facto* dissolved, if no agreement can be come to as to which person shall be eliminated for the individual wrongly chosen by the chief of the opposite troop. In this sort of shooting the prize is shared among the winners in proportion to the number of times they have each hit the mark ; or, according to other authorities, in equal parts.

When special stipulations are made as to what is to be understood by "hitting the mark," arrows that do not hit it in the manner agreed upon do not count ; but it is of no consequence if the shooter when discharging the arrow breaks the bow-string or the bow, or if the arrow hits the mark only by glancing off from some object, unexpectedly presenting itself between the shooter and the target. Even where the wind carries the target away after the arrow has sped, it must be considered to have hit the mark, if it touches the place where the target was at the moment it left the bow. Arrows that miss the mark, either because they glance off from something, or because the target is carried away by the wind, are not counted in favour of the opponent. But if it is agreed that an arrow must remain fixed in the target, an arrow that pierces it and remains fixed there may be counted, even though it afterwards falls out. And it is the same with an arrow that does not pierce the target, because it hits it at some spot of exceptional hardness.

BOOK 63.—OATHS

Section 1

An oath creates an obligation for the person uttering it only when there is invoked one of the attributes or qualities of God, *e.g.* in the phrases "by God," "by the Master of all created things," "by Him that lives and never dies," "by Him in whose hand is my life," and in general for all expressions employed to designate the supreme being. When one makes use of one of these expressions one may not add a reservation to the effect that one did not intend to take an oath; but if one makes use of an expression which, though it may be used to designate God, may also be used of a human being, such a reservation may be added. Such expressions are "the merciful," "the creator," "the nourisher," "the lord," etc. Expressions that are strictly applicable both to God and man, such as "being," "he who exists," "the wise," or "he who is in life," constitute an oath only where such is the intention of the person using them. The use of one of the qualities of God as a substantive, *e.g.* "by the greatness of God," "by His glory," "by His word," "by His majesty," "by His knowledge," "by His power," or "by His will," constitute an oath if one had not the intention of designating the knowledge, power, etc., that emanate from him upon men. Thus the expression "by the *hakk* of God" implies an oath where the word *hakk* is used in the sense of "justice"; but not where it is used in the sense of "law," for then it means the religious ceremonies of which God may exact the accomplishment as His right. Arabic prefixes, denoting an oath are *bi, wa, ta;* it being understood that the prefix *ta* is only employed with the noun *Allah;* in default of these prefixes the noun *Allah,* without distinction between the nominative, the accusative, and the genitive, implies an oath only where such is the intention of the person using it. The words, "I swear" or "I will swear," "I take oath" or "I will take oath by God that I will do such and such a thing," constitute an oath whether such is the intention or whether they are pronounced without any special intention. Only when one formally declares that one did not intend to make an oath, but merely to state a present or future fact, one has a presumption in one's favour that one merely intended to state that fact, and nothing more, and to state it in

explicit terms, according to our school. He who says to some one, "By God, I implore you," or "By God, I ask you to do such-and-such a thing," has taken an oath if such was his intention; but it is no oath if he says, "If I did that I am a Jew," or "I abjure Islam," whatever his intention may be. And it is the same where, without thinking of their meaning, one utters words which necessarily imply an oath. But it is of small consequence whether one uses the past tense or the aorist.

It is blamable to take an oath that has not for its special object a work pleasing to God. A person commits a grave sin who takes an oath to neglect an obligatory act of devotion, or to accomplish some forbidden act. In such case he must perjure himself and have recourse to expiation. And the Sonna prescribes expiation to any one who swears to abstain from some commendable act, or to accomplish a blamable action; but in the case of some indifferent act one may have sworn to refrain from or to accomplish, it is always better to keep one's oath. Some authorities, however, prefer even then that a person should perjure himself and have recourse to expiation, on the principle that any oath is blamable when its object is not some work certainly pleasing to God. Where the expiation does not consist in a fast, one may acquit oneself of it in anticipation, before perjuring oneself, in all cases where such perjury is lawful; and even, according to some authorities, where it is forbidden. [†I adopt the doctrine of the latter.]

By virtue of this principle one may acquit oneself of an expiation due for injurious comparison, before resuming cohabitation; or of one due for homicide before the death of the victim; and one may perform the expiation prescribed for the non-fulfilment of a vow before that non-fulfilment has occurred, provided that the vow consists merely in a money obligation.

Section 2

A person who owes expiation for perjury may at his choice either enfranchise a slave, of the same quality as one enfranchised to expiate an injurious comparison, or give to each of ten indigent persons a *modd* of vegetables, forming the principal nourishment of that locality, or clothe them by giving them, *e.g.* a shirt, a turban, or a cloak, but not boots, a pair of gloves, or a belt. The law does not require that the person receiving the clothes must be able to wear them; and one may give a short pair of trousers to a tall individual, and garments of cotton, linen, or silk indifferently to a man or to a woman, and such old clothes as have not quite lost their utility. A person who cannot perform his expiation in one of these three ways must fast for three days, *not necessarily consecutive; but where this incapacity of performance is

only temporary, as when he has property elsewhere, he should wait until the means of performing his expiation reach him, rather than have recourse immediately to a fast. It is understood that a slave cannot impose upon himself a pecuniary expiation, unless his master supplies him with the provisions and clothing necessary for acquitting himself of his obligation, and unless it is admitted that he may become owner. In default of such liberality on the master's part, or when it is not admitted that the slave can ever become owner, and consequently donator, the slave must in all cases have recourse to a fast, provided that this act does not prejudice his work or his health. And in this case the fast can take place without the master's special authorisation only when he has authorised the slave to take the oath and then avoid its fulfilment. But where, on the other hand, these two acts have taken place without previous authorisation the master may object to a fast prejudicial to the slave's work or health. †Where the master has authorised his slave to swear but not to forswear, or *vice versâ*, it is the authorisation or want of authorisation that decides, according to the principles we have mentioned, whether he can or cannot oppose a prejudicial fast. A partially enfranchised slave, who possesses savings, should acquit himself of his expiation by giving food and clothing, but not by freeing a slave.

Section 3

An oath taken *e.g.* by a tenant "to stop no longer," or "to live no longer" in a house obliges him to quit it immediately, under penalty of becoming perjured if he personally remains in it without lawful excuse. The time required to remove his effects or his family or to dress himself does not constitute a case of perjury. An oath "not to remain as the neighbour of so-and-so in such and such a house" is accomplished by the swearer or his neighbour quitting the house immediately, †or even by the house being divided into two by a wall, each part with a separate entrance. An oath "not to enter a certain house," or "not to leave it," uttered when respectively inside or outside, implies no obligation to change one's position; for he who remains where he is neither leaves nor enters. Where, however, the act from which one must abstain does not consist in a simple isolated fact, like entering or leaving a house, but in some continuous course of action, as, for example, when one swears not to marry, or wash, or dress, or ride, or stand up, or sit down while being already married, etc., one becomes perjured by the fact of remaining married, etc. [This rule is a mistake as to marriage or ablution; †and similarly one cannot regard as "perfuming oneself"

the mere fact of not having removed the perfumes with which one had previously scented oneself. The rule is also applicable to an oath not to indulge in coition, not to fast, or not to pray.]

A person who swears not to enter such-and-such a house becomes perjured if he enters the vestibule; and it does not matter whether the vestibule is situated between the door and the rooms, or between the front door and the back door; but there is no breaking of the oath if he enters the arcade in front of the door, or mounts upon the terrace surrounded or not by a wall. Nor is there any breaking of the oath by putting into the house one's hand, head, or foot; but the introduction of both feet supporting the body constitutes a perjury. The prohibition to enter remains intact in the case of a fall of the house, as long as the foundations of the walls are still visible, and then applies to the site. It ceases only when the land has been completely levelled, or when the house has become a place open to the public, such as a mosque or a bath-house, or where the site has become a garden with the outer walls partly left standing as an inclosure.

A person who swears "not to enter Zaid's house" cannot enter a house occupied by Zaid as owner, but may enter one occupied by Zaid as borrower, lodger, or usurper; unless one intended to refer in general to any house inhabited by Zaid, for in that case the prohibition applies to any house which Zaid borrows, rents or usurps. The phrase cited includes also any house of which Zaid is the owner, though not living in it; unless one intended to refer specially to his habitation and not to his ownership. In accordance with the same principles an oath "not to enter Zaid's house" or "not to speak to Zaid's slave" or "wife," ceases to be of effect as regards a house or slave which Zaid has sold, or a wife whom he has repudiated; but where one refers to such-and-such a house, or such-and-such a wife, or such-and-such a slave of Zaid, one is understood to refer to that particular building or person. In that case words indicating that they belong to Zaid merely make the definition more exact. These last quoted expressions would only admit that the validity of the oath should cease with the actual right of property or status of marriage if such was manifestly the intention of the person taking the oath. †An oath "not to enter the house by such-and-such a door" does not prevent one's entering by that door when it has been removed to another place. An oath "not to enter any room" applies to every room, large or small, or any shed made of clay, stone, brick, or wood, and even to a tent; but not to a mosque, a bath-house, a church, or a mountain cave. Similarly, an oath "not to go to Zaid's" is violated by entering the chamber occupied by Zaid in common with another person, at least according to one jurist, unless the

person taking the oath intended to visit this person and not Zaid. As to the consequences of a visit to a place where the presence of Zaid was not known there is the same controversy as to whether the violation of an oath by inadvertence constitutes perjury. [*An oath "not to salute Zaid" is violated by saluting a group of men including Zaid, unless he is specially excepted.]

Section 4

An oath "not to eat animals' heads," without specifying any particular animals, implies an obligation not to eat the head of any animal whose head is sold separately. This oath does not apply to birds, fish, or game that are ordinarily prepared for food without cutting off the head, unless local custom has introduced the practice of selling separately the heads of these animals. The word "eggs" includes all eggs that are eaten without killing the animal that lays them, such as hen's eggs, ostrich eggs, and pigeon's eggs; but not the eggs of fish, that are only eaten as roe after the fish has been killed; nor locust's eggs, that are not eaten at all unless in the body of the animal that bears them. The word "meat" is used of cattle, horses, game, and birds, but not of fish, nor of fat in the interior of the body, †nor of the intestines, the liver, the spleen, nor the heart. †The word "meat" includes the flesh of the head or the tongue, and the fat of the back and sides. The word "fat" in general does not include the fat upon the back nor on the thighs nor on the hump, parts of the animal's body to which the word "meat" does not apply either. The "fat upon the thighs" may not be confounded with "the fat upon the hump," and where one wishes to indicate both one must use the Arabic word *dasam*, which signifies all the fat parts of the body and consequently implies not only the fat properly so called, but also the fat upon the back or in the interior of the body. Any expression signifying beef applies also to buffalo meat.

When one indicates wheat and swears "not to eat any," one must abstain from wheat in grains, as well as from wheat in the state of flour or loaf; but when one swears, "I will not eat of this wheat," and utters the word wheat, one need abstain from it only when the grains have been cooked, mixed with fat, or fried; not when flour, a decoction, a paste, or bread, has been made of it. An oath as to "dates freshly gathered" includes neither dry dates nor dates that are not yet ripe, though they may be large enough, and *vice versâ*. The word "grape" does not include raisins, and *vice versâ*. †And a person who swears not to eat "these freshly plucked dates" is not obliged to abstain from them when they are dry. Similarly, if he swears "not to speak to such-and-such a young man," he can speak to him all the same when he has become an

old one. The word "bread" includes as well wheaten bread as barley bread, or bread made of rice, beans, millet, chick peas, etc., and an oath to abstain from it applies also to bread cut in pieces and dipped in soup. An oath "not to eat of a certain decoction" includes an obligation not to introduce it into the mouth with the tongue or the fingers; but the decoction may freely be drunk when diluted with water. Where, on the other hand, one has used the expression "not to drink the decoction," one may introduce it into the mouth with the tongue or the fingers, but not dilute nor drink it. An oath "not to eat milk" or any other liquid requires abstention from eating bread prepared with milk, but not from drinking milk; an oath "not to drink" the liquid in question requires one to abstain from this act but not from eating bread prepared with the liquid. An oath "not to eat butter" is violated by eating it upon one's bread either in a solid or a liquid state, but not by drinking it in a liquid state, nor by eating it in the preparation called *asida*, unless the butter is manifestly apparent. The word "fruit" (*fakiha*) includes dates, grapes, pomegranates, and citrons, either immediately after plucking, or dried. [It is the same with lemons and lotus-fruit, melons and pistachio nuts or filberts. On the other hand, the word "*fakiha*" does not include cucumbers, nor egg-plants, nor parsnip; while the word "*thamar*," though a synonym of *fakiha*, does not include dried fruits.

A person who speaks of melons, dates, or nuts, and nothing more, is not understood to refer to those called "Indian," *i.e.* water-melons, tamarinds, and coco-nuts. In "foodstuffs" are included both the principal nourishment and also fruit, seasoning, and cakes. An oath "not to eat of a certain cow" only applies to the flesh, but not to the calf nor to the milk; a similar oath with regard to a "tree" includes only the fruit, and not the leaves nor the ends of the branches.

Section 5

An oath "not to eat such-and-such a date" is not violated when that date is mixed with other dates, and one eats all but one date, without knowing exactly whether it is the date in question. On the other hand, an oath "to eat such-and-such a date" can only be accomplished by eating all the dates with which it is mixed; and an oath "to eat such-and-such a pomegranate" by eating all the pips. If one swears "not to wear these two coats" one becomes perjured by doing so either at once or one after the other, but one need have no fear in wearing one. To render such an act unlawful it would be necessary to have said "neither this coat nor that coat."

An oath "to eat certain food to-morrow" has no consequence if the

person who takes it dies before the time comes ; but if he dies, or if the food is destroyed, upon the day on which he should have kept his oath, it is necessary to make the following distinction :—

1. In a case where the person's death or the loss of the food takes place at an hour by which he could already have eaten it, he becomes perjured, even though the day be not entirely passed by.

2. In a case where the person's death or the loss of the food takes place at an hour by which the person in question has not been able to eat the food there exists the same controversy as about a person who becomes perjured in consequence of some violence used towards him.

Where the person taking the oath is himself the cause of the loss of the food before the time indicated, either by eating it or in any other manner he has *ipso facto* failed to fulfil his obligation. Here one must again decide in accordance with the principles relating to violence when the food is lost accidentally or by the fault of a third party before the expiry of the time. An oath in the following terms : " I will pay you your debt at the beginning of next month " obliges the debtor to pay at sunset on the last day of the current month ; but the oath is violated by an anticipated payment, or if the debtor allows to pass by, after the sunset, an interval in which he might have acquitted his engagement. However, one is not perjured if in these circumstances one has begun to measure out the articles promised, even though the quantity does not admit of the operation being finished in a short time.

An oath " not to speak " does not prevent one exclaiming, " Praise to God," nor does it prevent a recitation of the Koran ; but a person who swears " not to speak to so-and-so," violates his oath by merely saluting him. Shafii, however, in his second period, did not consider as a violation the fact of writing him a letter, or sending him a message, or pointing him out with the hand. This oath does not permit one to intimate to such person what one wants by reciting a verse of the Koran, unless this act is accomplished with the single intention of making a recitation.

An oath to the effect " that so-and-so has no property " means that the individual in question possesses nothing at all of any value, not even the coat he wears, nor a slave to be enfranchised by will, nor a slave whose enfranchisement depends upon a condition, nor an object he has bequeathed to another person, nor a debt due †or to become due. †On the other hand, this oath is not violated by the circumstance that the individual in question has a slave undergoing enfranchisement by contract, *i.e.* one who has ceased to be marketable.

An oath to " beat so-and-so " is accomplished by any act constituting " a blow," without its being necessary that the patient should experience

any pain, unless one added the adverb "soundly." The mere fact, however, of touching the patient's body with a whip cannot be considered as a blow, nor merely biting him, nor partly strangling him, nor tearing out his hair, nor even, according to some authorities, giving him a buffet or pushing him away. An oath "to inflict upon some one one hundred lashes with a whip" is fulfilled by inflicting a single blow with one hundred whips or batons bound together, or with a bough with a hundred branches, provided only that one is certain that each whip and branch has touched, or at least that all together, one upon another, have contributed to the sufferer's pain. [In case of doubt it should be admitted that all the whips, batons, or branches have had their effect; this is Shafii's personal opinion.] Where, on the other hand, the oath was to the effect that one would go and beat the patient one hundred times one may not limit oneself to a single blow in this way.

If one swears to the effect that "I will not leave you until the payment of my debt," one is not perjured if the debtor runs away and one is not able to pursue him. [††Even if one can pursue the debtor one is not obliged to do so, and one does not become perjured by allowing him to escape.] For an oath in these terms only obliges one not to separate from the debtor; not to stop when he walks on; not to remit the debt if one is walking with him; not to quit him, even after transferring the debt to a third party, or after the debtor is declared bankrupt, and even though in this latter case it should be in order to allow him to put his affairs in order. On the other hand, one can always leave the debtor after the debt has been paid. It matters little then if one discovers afterwards that one has not received all that one might claim, *e.g.* if the debtor has given things of inferior quality, though of the stipulated kind. Where the creditor accepts articles of another kind, but not knowingly, there is the same controversy as to becoming perjured by inadvertence.

An oath to bring to the knowledge of the judge any blamable act to which one may be a witness is violated if the person bound by it, on seeing a bad action committed, omits to bring a complaint before the court, though he is able to do so; and if he dies before repairing his neglect. By the word "judge" is understood the judge of the locality, for one cannot bring the matter before another court; but one may bring it before the successor of the man who was the judge at the time, in case of the death or dismissal of the latter. Where, on the other hand, one does not say "before the judge," but "before a judge," one may bring the case in any court. The expression "before such-and-such a judge" admits of a distinction—

1. It may mean "before so-and-so, as long as he is a judge." In

this case one becomes perjured, if, upon seeing some blamable action, one does not bring it to the knowledge of the judge indicated, though one is able to do so, even though the judge may be subsequently dismissed. If it is impossible to bring the matter before the judge while he remains in office, one is then in the same position as a person perjured in consequence of some violence.

2. It may mean the judge personally and not officially. In this case the matter should be brought before him even after his dismissal.

Section 6

A person who swears "not to sell" or "not to buy" should abstain from selling or buying, whether upon his own account or for another; but he may sell or buy through an agent. Similarly an oath not to "give in marriage" or "repudiate" or "enfranchise" or "beat" is no obstacle to doing these things through an agent, unless one intended to say that one would not do these things either personally or through a third party. On the other hand, an oath "not to marry" prevents marriage by proxy, but does not prevent one accepting a woman in marriage as agent for a third party. An oath not to sell Zaid's things refers only to a sale with Zaid's consent. An oath "not to make a donation to Zaid" is not violated by offering him something he does not accept, †or something he accepts but does not take possession of; but such an oath prevents giving him a life interest, or a donation revocable at the donor's death, or a charitable gift. On the other hand, one may lend or bequeath him something, or even immobilise property in his favour. †A man who swears "not to give some one an alms," is not perjured by making him a donation properly so called. A person swearing "not to eat the provisions Zaid has just bought," may eat those purchased by Zaid jointly with another person. †And it is the same if the expression is "provisions" instead of "the provisions." Such an oath refers not only to a sale properly so called but also to a sale by advance. Where food bought by Zaid is mixed with food bought by another, eating the mixture does not involve perjury unless one is certain to have really taken food bought by Zaid. And an oath "not to enter the house Zaid has just bought" does not include a house acquired by Zaid in virtue of his right of redemption.

BOOK 64.—VOWS

Section 1

Vows are of two kinds—

1. A vow with a penalty, consisting, *e.g.*, in the following words :—" If I speak to him I engage before God to fast," or " to enfranchise a slave." If not kept this vow obliges the person formulating it to accomplish the expiation prescribed for perjury, or, according to one authority, to accomplish the expiatory action promised. A single authority gives the person who owes expiation a choice between the expiation for perjury and the expiatory act promised. [†It is to this latter doctrine I give the preference, as do the jurists of Irak.] On the other hand, a person who says, " If I enter such-and-such a house I engage to perform the expiation prescribed for perjury, need only undergo the expiation for perjury.

2. A vow of gratitude, consisting in an engagement towards God to acquit oneself of some good work in the hope of obtaining from Him some favour or of avoiding some calamity. This vow may be formulated, for example, in the following terms :—" If God heals my sickness I engage to accomplish before Him such-and-such an act," or " I engage to perform such-and-such an action." A promise such as this should be accomplished if the event hoped for takes place, *i.e.* if the condition is fulfilled. *The accomplishment of the promise is obligatory even where it is not made dependent upon a condition, for example, if one says, " I engage before God to fast."

A vow may not have for its object an action that is unjust or that is already obligatory. A person who vows to perform some indifferent action, or to abstain from it, need not keep his engagement, provided he acquits himself of the expiation for perjury, at least according to the theory which is to be preferred.

Where one vows to fast for several days it is commendable to do this as soon as possible. One may even fast for the promised number of days separately as well as together, unless a special restriction was made as to this. A vow to fast for a specified year renders a fast obligatory during the whole of this year, with the exception of the days of the great

annual festivals, and of the days called *ayyam at tashrik;* and it is understood of course that the fast of the month of Ramadan must be accomplished as it is by everybody, without its being afterwards necessary to repeat it by way of reparation for the month thus deducted from the vow. *When a woman makes such a vow, but is obliged to break her fast in consequence of menstruation or lochia, she must make up subsequently for the days thus lost. [*This precept is not obligatory, in the opinion of most authorities.] The vow in question involves, however, the obligation to accomplish afterwards every other day of fasting lost without this being caused by *force majeure.* And the reader should also be informed that the believer need not begin a new fast of a whole year when he accomplishes afterwards in this way the days of fasting that have been lost, †unless he has expressly announced that the days of fasting are to be uninterrupted.

A vow to fast for a year, without specifying what year, admits of the following distinctions :—

1. Even in the case where one promises to observe the days of the fast without interruption, it does not lose its validity by the intercalation of the obligatory fast of Ramadan, nor by the forced interruption of the days of the two great annual festivals, and of the days called *ayyam at tashrik,* during which fasting is not permitted. But all the fasting days not kept should be made up for during the next year by an equal number of consecutive days. Nor is this fast invalidated by an interruption consequent upon menstruation; though it is true that there is upon this subject the same divergence of opinion we have mentioned already with regard to a similar interruption of a vow to fast during a specified year.

2. Where the vow does not make any mention of an uninterrupted succession of days the difficulties mentioned under No. 1 do not exist, and the fast lasts only for a lunar year, *i.e.* for 360 days chosen at those periods which are most convenient with regard to one's other duties to God.

A vow "to fast every Monday" does not oblige one to fast over again for the Mondays in Ramadan, nor for the Mondays upon which the fasting is suspended in consequence of the two festivals or the days called *ayyam-at-tashrik.* But where, on the other hand, it is a question of the Mondays belonging to the period during which one has to fast for two consecutive months by way of expiation, one must then make up for the Mondays not observed. A single authority does not admit this theory in a case where the obligatory expiation was antecedent to the vow. [*It is the doctrine maintained by this latter jurist that I prefer.] *In the case of a vow of this kind a woman should make up

later for the Mondays upon which the fast is interrupted by menstruation or lochia.

A vow "to fast upon a certain day" cannot be regarded as properly observed if the fast is anticipated. A person who makes a vow to fast upon a certain day of a certain week, and then forgets the day of observance, should fast upon the last possible day of that week, *i.e.* the Friday. This fast can then be taken into account as an act of devotion accomplished too late, if it should transpire that the specified day was not a Friday. ††And a supererogatory fast becomes obligatory for whoever makes a vow to complete, while he is accomplishing it. A vow "to fast for a part of a day" has no legal consequences, though, according to some authorities one should fast then for a whole day. *A vow to fast "the day of Zaid's arrival" should be accomplished, unless Zaid arrives during the night or the day of one of the two annual festivals, or in the month of Ramadan, for in these cases the vow is considered as void. The arrival of Zaid upon a day upon which one has already broken one's fast, or begun another fast one had vowed to perform, obliges one to fast another day. And it is the same if Zaid arrives upon a day when one is already engaged in performing some supererogatory fast. Some authorities, however, maintain that in this latter case one need only terminate the fast already begun, which then counts for the fast one vowed to observe. When one utters the following vow:—"If Zaid arrives I will fast the day after his arrival, and if Amr arrives I will fast the first Thursday after his arrival," and both Zaid and Amr arrive on the same Wednesday, the fast is put off for a day, that is to say, one fasts on Thursday for the arrival of Zaid, and afterwards on another day for that of Amr.

Section 2

A vow "to walk to the holy temple of Mecca" or "to go there" renders it obligatory, according to our rite, to accomplish the pilgrimage or the visit; with this one difference that a vow "to go there" does not necessarily imply going on foot. *Walking is obligatory only if one has formulated a vow to "walk to the holy temple," or "to accomplish either the pilgrimage or the visit on foot." Where this last-mentioned expression is made use of, it is enough to begin walking on placing oneself in a state of *ihram;* †but if one says, "I will walk to the holy temple," the journey must be made on foot from the place where one has left one's family. This journey on foot does not prevent the believer taking a ride, *if he cannot otherwise continue his journey, **or even if he allow himself this convenience without valid excuse. *But in either case he must make up for his fault by an expiatory

sacrifice. This pilgrimage or this visit that one has vowed to accomplish should be made in person unless the pilgrim is physically incapable of going to Mecca, in which case he may be replaced by an agent. In any case it is commendable to acquit oneself of the journey as soon as possible. If a person puts the journey off and is surprised by death before he has accomplished it, though he was capable of doing so, the law prescribes that the cost of sending an agent to perform the pilgrimage or the visit must be borne by the estate. A vow " to accomplish the pilgrimage in a particular year " obliges the person taking the oath to accomplish it during the year specified, if this is possible ; and if he is prevented from doing this by sickness, he must acquit himself of it subsequently. *But the law requires nothing of this sort where the preventing cause is wholly objective, *e.g.* a state of war. As to a prayer or a fast one has vowed to accomplish on a particular day or at a particular hour, one must always acquit oneself of it afterwards if prevented, whether the cause be sickness or a state of war.

A vow " to sacrifice a victim," without anything else, implies that one must conduct the victim to Mecca and give it to the proper persons there ; but where one has specially mentioned that the victim must be given to the proper persons in a particular locality, the victim must be sacrificed there. On the other hand, a vow " to fast " does not imply that the fast must be accomplished in the place where the vow is taken. And the same is the case with a vow to accomplish a prayer, unless it is uttered in the great mosque at Mecca, or, according to one authority, in that of Medina or that of Jerusalem. [*These two mosques are, so far as regards this subject, to be regarded exactly in the same way as that of Mecca.]

A vow " to fast," and nothing else, obliges one to fast for a single day only ; while that " to fast for a few days " implies a fast of at least three days.

A vow of " an alms " is accomplished by a gift of anything. A vow to accomplish " a prayer " implies two *rakas*, or, according to one jurist, a single one, even without adding the *kiyam*. This act is, on the other hand, obligatory in each *raka*, according to the authorities who insist upon two, unless the believer is unable to accomplish it.

A vow to " enfranchise a slave " means a slave capable of being enfranchised by way of expiation, or, according to one authority, any slave. [*It is the latter who is right.]

Where one has vowed to enfranchise " an infidel slave with redhibitory defects one may acquit oneself of one's vow by the enfranchisement of an infidel slave exempt from such defects, unless the particular defects have been specially mentioned. By virtue of this same principle one

cannot remain seated when making a prayer, if one has vowed to accomplish it standing; but the contrary is quite lawful. One must adhere rigorously to the terms of one's vow with regard to a recitation of the Koran for a certain lapse of time, or of a certain chapter of the Koran, or with regard to a public prayer. ††One may promise, by way of a vow, to perform any work, provided it be one agreeable to God, and not an obligatory act, such as looking after a sick person, making a salutation, or accompanying a funeral to the grave.

BOOK 65.—ADMINISTRATION OF JUSTICE

CHAPTER I.—GENERAL PROVISIONS

Section 1

The Moslem community is collectively responsible for the administration of justice. A Moslem who feels himself specially capable of exercising the functions of a judge, should solicit those functions; but any individual may accept these duties if the Sovereign entrusts them to him, even though some other individual may be more capable than he. Some jurists, however, have thrown doubt upon this rule. But in such a case it is undoubtedly blamable to solicit the function of judge; and some authorities even go further and wholly forbid any such solicitation. Where one considers oneself not inferior to another in juridical capacity, one may, it is universally agreed, accept the position of judge; it is even commendable to solicit it where, being learned but obscure, one hopes in this way to be able to make one's light shine for the good of humanity, or create for oneself a respectable social position. [††Solicitation is always blamable, except in case of eminent capacity.] To know whether one has special aptitudes for the magistracy, it is only necessary to compare oneself with the other inhabitants of the district.

A judge must be Moslem, adult, sane, free, male, of irreproachable character; sound of hearing, sight, and speech; educated, and enjoying a certain degree of authority in matters of law. Such an authority can be attributed only to one who understands the Koran and the Sonna, and all the texts relating to jurisprudence; and who knows, moreover, whether these texts have a general or special significance; whether they are or are not still in need of explanation; whether they abrogate other texts, or are themselves abrogated by later ones; whether a certain tradition is or is not based upon an uninterrupted line of reporters; whether the origin of a tradition goes back to the companions of the Prophet, or only to the first generation after him; and whether the authority of the reporters is strong or weak. A person wishing to obtain a certain amount of authority in matters of law should also know—

1. The Arabic language, both as to the employment of words and as to grammatical rules; and also the opinions of jurists, beginning with the companions of the Prophet.

2. Whether these opinions are in harmony with one another, or if there is some divergence between them.

3. The reasonings upon which these opinions are based.

Where, however, there is no one fulfilling these requirements, the Sultan may, if necessary, appoint as judge an individual of notorious misconductor one absolutely incompetent, in order to decide a particular question. It is then admitted, so far as regards that case, that the decisions of the individual so appointed are regarded as final, provided only that he has been nominated by a prince really invested with supreme authority.

The Sovereign is recommended to authorise a person appointed judge to choose his own substitute. Where, however, this authorisation has been formally refused him, a judge has no right to choose his own substitute; and where nothing has been said about it he may only choose one for the cases he is unable to decide personally, not for the others. The substitute must possess the same qualifications as the ordinary judge, unless he has been designated for some special duty, *e.g.* the hearing of witnesses. In this latter case only the qualifications necessary for that particular duty can be insisted on. A substitute who enjoys a certain amount of authority in matters of law may decide cases himself; but otherwise he should in all cases refer to the authority of the jurist whose opinions he has embraced; and one has no right to give him any other instructions.

All proceedings may be compounded, except where penalties are incurred for offences against God, *i.e.* unremissible penalties, provided that the arbitrator is a man capable of exercising the functions of judge. A single authority does not admit arbitration; while others limit it to cases where there is no judge in the locality, and yet others to proceedings that only involve pecuniary consequences and so deny its legality in disputes as to the penalty of talion, marriage, etc. In no case, however, is an arbitration of effect as against third parties. Thus, even where a composition is admitted on the part of a person guilty of homicide, the arbitral decision cannot be enforced against his *aakila* for the price of blood. Either party may revoke his offer of composition so long as the arbitrator has not pronounced his decision; *but once this has been done no one's approval is necessary for the execution of the judgment.

The Sovereign may appoint two judges in the same district, either nominating each one to special judicial functions, or to a particular

portion of the locality, or for a particular time or for a certain kind of proceedings ; or nominating both of them to the same functions, except that it is not lawful to order them to give judgment together.

Section 2

Lunacy or unconsciousness on the part of the judge, or loss of sight or of any of the intellectual or moral qualifications required, or carelessness or forgetfulness, has the consequence of annulling his decrees ; †and it is the same where he is of notorious misconduct. †A judge who becomes incompetent for one of these reasons cannot resume his duties of his own accord, even where the cause of his incompetence has ceased to exist.

The Sovereign may dismiss any judge who appears to him to be incapable of performing his duties ; or even a judge who is in every respect capable, if he can find one still more capable. Where the Sovereign has found an individual neither more nor less capable than the actual judge, he may, nevertheless, effect the change if it be for the public interest, or if, for instance, he hopes thereby to appease a sedition. †And the dismissal of a judge has full legal validity in spite of its being in contravention of the principles we have mentioned. According to our school the dismissal of a judge has effect from the moment he is informed of it. Thus where the Sovereign writes to him, " Consider yourself dismissed from the moment you have read this letter," the judge is dismissed, not only when he reads the letter himself, †but also when another person reads it to him.

A person specially nominated by a judge for some particular judicial duty, *e.g.* the sale of the property of a deceased person, ceases *ipso facto* to be so authorised, either upon the death or upon the destitution of the judge who nominated him. And it is the same in the case of a substitute, if the Sovereign had not empowered the judge to choose one ; or if the authorisation was given in the following terms, " You may choose a substitute of your own accord," or without mentioning if the substitute was to be appointed by the Sovereign or the judge. Where, on the other hand, the authorisation is to the effect that the judge may take a substitute, but the latter's authority is to be derived from the Sovereign alone, the substitute remains in the exercise of his duties in spite of the death or dismissal of the judge who nominated him. The death of the Sovereign does not *ipso facto* involve the dismissal of the judges appointed by him ; nor does the death of the judge involve the dismissal of the persons he has charged with the administration of the property of orphans, or of *wakafs*.

A judge who has been dismissed no longer enjoys a legal presumption in favour of the truth of his words, where he wishes to establish by a simple declaration the contents of a judgment he delivered before his dismissal; ††and a declaration of this nature from him is no longer accepted in evidence, even though confirmed by the testimony of another witness. But a dismissed judge may depose as an ordinary witness to prove the existence of a legally delivered arbitration award. A judge who is not yet dismissed may establish by his mere declaration the contents of the judgments he has delivered; provided always, however, that these judgments were within his competence, for otherwise he should be considered in the matter as a judge already dismissed.

Where, after his dismissal, a judge is accused of pronouncing an unjust pecuniary award, either because he was bribed or because, for example, he has accepted as sufficient the evidence of two slaves, legal proceedings should be taken against him for damages. An accusation is even admissible, and a summons may be issued, upon the evidence accepted by the judge, *e.g.* the deposition of two slaves, without the plaintiff having to plead that he has suffered any pecuniary loss; though according to some authorities the dismissed judge can only be summoned where this is the case, unless the facts alleged have already been proved. †If, when he is accused, the judge appears in person and denies the charge, the presumption is in his favour without his taking an oath. [†He does not enjoy this presumption unless he takes an oath.]

The accusation of a magistrate in the exercise of his functions, implying deceit or fraud upon his part, is never admissible, unless the facts alleged have been already proved.

In every proceeding against a judge, even when not amounting to an accusation; his functions should be performed by his substitute, and the case should, if necessary, be transferred to the court of another district.

Section 3

An appointment of a judge by the Sovereign should not only be drawn up in writing, but must be before two witnesses, who should accompany the new judge to his district in order to prove the authenticity of his appointment. †Public notoriety, however, is sufficient as to this authenticity; but our school never admits in any case the nomination of a judge by means of an ordinary letter.

The new judge should begin by making inquiries as to the learned jurists and persons of irreproachable character in the principal town of his district; he should make his entry there upon a Monday; and

he should alight in the centre of the town, and first of all inspect the prisons. He should order those prisoners who admit having been lawfully incarcerated to remain there; but if any of them maintain that they have been wrongfully imprisoned, and produce plausible arguments in support of their allegations, the judge should examine into the matter, and issue a summons to the adverse parties if they are not upon the spot. Secondly, after that the new judge should meet all testamentary executors and make inquiries under what circumstances the administration of the legacies was entrusted to them. He should also examine into their conduct and their administration, and if he perceives that either the one or the other leaves something to be desired, he should withdraw from their custody the funds entrusted to them. Where, on the contrary, he perceives that errors have been committed in the administration in good faith, and merely through want of capacity and firmness, he should limit his action to attaching to the testamentary executors a special adviser to assist them in their duties. In the third place the judge should choose a *mozakki*, *i.e.* an employé to give him information as to the witnesses, and an usher. This latter should be a Moslem of irreproachable character and of sufficient education to be able to draw up the record of proceedings and the judgments; and it is recommendable that he should have some knowledge of law, a quick intelligence, and a good hand-writing. *The judge should also appoint the interpreters, who must be free persons of irreproachable character; but it is not necessary that they shall be able to see. If the judge is hard of hearing several interpreters must be nominated. And, finally, the judge must prepare the instruments necessary for the execution of his sentences, *e.g.* a whip for flagellation, and a prison for bodily restraint and for punishment at the discretion of the court.

It is to be recommended that the judge should hold the sittings of the court in some large open court, where the audience may be sheltered from heat and cold, adapted to the season and to the object of the hearing. It is forbidden to hold sittings in a mosque. It is blamable in a judge to deliver a judgment when he is angry, or hungry, or in a state of excessive satiety, or in general when he is in any physical state likely to trouble his mind. The law recommends a judge to consult the jurists of the town before pronouncing a decision.

A judge is recommended not to go personally to make his purchases or sell his goods, and even not to have a recognised man of business. He is rigorously forbidden to receive a present from one of the litigants, unless such person was in the habit of making him similar presents before his appointment; but he need have no fear in continuing to receive presents as usual from those who already gave him such presents

before his appointment, and who are not concerned in any proceedings before him. But even in this case it is preferable to return the presents received.

A judgment delivered by a judge in his own favour, or in that of his slave, or of his partner in the same firm, has no legal effect ; ††and similarly with a judgment in favour of his ancestors or descendants. In all these cases the judge should decline to hear the case, and should refer the matter to the Sovereign, or to another judge, or to his substitute.

On the demand of a successful litigant the judge should have it established by witnesses that the defendant has made a judicial admission, or that the defendant has won his case upon taking an oath administered to him, etc. He cannot evade the obligation to pronounce sentence before witnesses, where the case is ripe for decision. It is to be recommended that the judge should cause to be delivered to the successful litigant upon his request a minute of all the proceedings in court together with a copy of the judgment delivered in his favour. According to some authorities this is even obligatory. It is also commendable that the proceedings and judgments should be made out in duplicate, one for the successful litigant and the other to be deposited in the archives of the court. A judgment that subsequently appears to be at variance with a text of the Koran, with the Sonna, or with the general opinion of jurists, or with common-sense, should be quashed, either by the judge who delivered it, or by his colleagues, substitutes, or successors, even where there is no doubt as to his competence. Where, on the other hand, the only flaw in the judgment is of a subtle nature, the decision holds good and cannot become the subject of new proceedings. And it must be observed in this connection that the meaning of a judgment depends upon what is formally decided in it, not upon what the magistrate meant to say. And there is general agreement that even where the matter is legally proved a judge should never pronounce a sentence against any one unless he is himself convinced that that party is in the wrong ; *and he may even sentence a person upon his own conviction alone, except in the case of an irremissible penalty for which a special proof is required by law.

Where some one presents to the judge a document containing one of his judgments, or where two witnesses declare to him that he delivered a certain judgment, he may not accept the document or the testimony unless he remembers the judgment in question. This principle applies also to witnesses who, unless they can remember the matter, may not refer either to a document containing their deposition, or to the assertions of other persons affirming that they were witnesses of the event.

Authorities are not, however, agreed upon these principles in the case of a document carefully kept by the judge or by the interested witness. One may affirm upon oath that a person to whom one is heir had a claim or acquitted himself of an obligation, on no other ground than documents written by him, at least where one can recognise the deceased's hand-writing, and has faith in his sincerity. ††And, finally, one may depose upon the faith of a document, containing the affirmation of a fact, provided that it has always remained in the possession of the witness.

Section 4

A judge should treat the parties who appear before him in an impartial manner. If he gets up or remains seated upon the entry of the one he should do the same for the other; and he should listen to their respective pleadings without giving any sign of approbation or of blame. He should return the salutations of both and make them sit in the same row. †But where one of the adversaries is a Moslem, and the other an infidel subject of our Sovereign, he is permitted to show more respect to the former than to the latter. As soon as the parties have taken their places the judge should cause silence to be made in the court, then call upon the plaintiff to address him, and it is only after the plaintiff has finished what he has to say that the defendant is called upon. Where the defendant admits the claim the matter is simple, and the plaintiff wins his case; but if the defendant denies, the judge should call upon the plaintiff to produce proof of his allegations, and then be silent. If the plaintiff, though able to produce the required proof, declares that he prefers that an oath to determine the matter should be administered to the opposite party, this request should be complied with; †and the plaintiff still be permitted to produce his proof, even though at first he said he had none. Where several persons wish to be admitted to the hearing, the first applicant has the priority; where it is not known which applied first, or where all applied at the same time, recourse must be had to casting lots to decide which case should be heard first. Priority must always be given to urgent cases of travellers, and to women's cases, even though of later application, unless their number is exorbitant. Priority accorded to some one either in consequence of prior application, or because the lot was drawn in his favour, applies only to a single case, and not to all the cases he may claim to bring before the court.

A judge is forbidden to designate certain persons to have the exclusive right of deposing before him as witnesses. If a judge knows that a certain witness who comes to make a deposition is of irreproachable

character, or if he knows that another such witness is of notorious misconduct, he should accept or reject the testimony without further inquiry; but if he has not this knowledge for certain, he cannot either accept or reject the deposition until he has made inquiry as to the moral character of the witness. This he may do by taking note of the name, etc., of the witness and of the two litigants, ††and the substance of the claim, and referring the matter to the *mozakki* or officer employed in obtaining further information upon the subject. The latter then makes a verbal report to the judge of the result of his inquiries; though, according to some authorities, the report may, if necessary, be made in writing. A *mozakki* should not only possess all the qualifications required of a witness; he should also have an intelligence sufficiently developed to decide whether a witness is or is not of irreproachable conduct. He cannot make this declaration unless he knows the witness intimately, either as his friend or his neighbour, or as having had business dealings with him. †The *mozakki* when making his report, should make use of the formal words of a deposition, "I bear witness that," but he need not enter into the reasons for considering a person to be irreproachable. Only a few authorities require that the *mozakki* should state it to be his personal opinion. On the other hand, when the *mozakki* declares that some one's testimony should be rejected in consequence of his notorious misconduct, he must give his reasons for that opinion, founded either upon what he has himself observed, or upon public notoriety. The proof that a witness is of notorious misconduct has the value of a positive fact, and has preponderance over the negative proof that he is irreproachable; unless the person who maintains his character to be irreproachable cannot give any positive fact as the ground of his opinion, *e.g.* where he declares that the witness, though formerly of notorious misconduct, has since become an honourable citizen. †In order to establish an irreproachable character it is not sufficient that the defendant should admit this circumstance, while declaring that the witness is mistaken in his deposition.

CHAPTER II.—JUDGMENTS BY DEFAULT

Section 1

Judgment may be given against some one by default, where the plaintiff alleges that his adversary denies the claim and produces sufficient proof of his case. †A plaintiff may also be allowed to prove the facts

alleged by him, though he make no declaration as to the position taken up by the defaulting party, and in no case is it necessary for the judge to appoint some one to maintain before him the denial of the absent defendant. The plaintiff, after proving his case, is obliged to swear that his claim still exists and has not been satisfied, *e.g.* by payment on the part of the debtor. According, however, to other authorities, it is only commendable and not obligatory to administer this additional oath ; and the same controversy exists as to this oath when administered in proceedings against a minor or a lunatic who has no legal representative at the hearing. Where the proceedings against the defaulter are not taken by the plaintiff in person, but by his agent, the oath we have spoken of is not administered to the latter ; and should the defendant be present and reply to the agent, " Your principal has freed me from my obligation," this assertion, unless proved, is not enough even to cause the judgment to be postponed. A judgment against a defaulter may be executed upon the property which he possesses within the jurisdiction of the court ; and if he has none, the plaintiff may demand that the case be transferred to the court in whose jurisdiction the defaulter is. This transfer may take place either by having sent to the latter court the depositions of the witnesses, in order that judgment may be entered there and executed without any further informations being necessary ; or by sending the judgment of the first court to the second to be executed. For the transfer it is enough to establish by two witnesses of irreproachable character what has taken place at the first hearing ; but the first court is recommended to have sent to the second a document sealed with its seal in which the defaulter is indicated in a way sufficient to establish his identity. The two witnesses should give evidence against the defaulter if he perseveres in his denial ; where, on the other hand, he declares, without admitting or denying anything, that he does not bear the name indicated in the letter of requisition, he has a presumption in his favour, provided he confirms his declaration upon oath ; and in this latter case the plaintiff must prove that the person in question is really the adverse party whose name and parentage are mentioned in the letter. When this proof is forthcoming, and the adverse party maintains that though bearing the same name he is not the person meant by the former court, such a defence cannot be admitted, unless there be in that locality a similar name answering to the same qualities. In this case the person of the same name is summoned, and if he admits he is the person described, the proceeding should be continued against him, and the former defendant dismissed. Where, on the other hand, the person of the same name denies that he is the person described, the matter should be sent back to the former court, in order

to obtain by the evidence of witnesses fuller information as to the identity of the person to be summoned, and the minutes of these fresh proceedings should then be forwarded to the second court. If the judge in whose jurisdiction the defaulter is, arrives at the place where the proceedings were originally taken, he should consult his colleague as to the decision to be come to. As to the question whether the judge, on returning to his jurisdiction, may give judgment in accordance with the personal information he has thus obtained, there is the same divergence of opinion as to whether he should give judgment in accordance with his own certain knowledge without attending to the legal proof. But a judge may order the execution of the judgment whether the defaulter is upon the boundary of his jurisdiction or whether he has summoned him before him at the ordinary hearing.

Where, in a case of default, the court limits itself to a hearing of witnesses, it should have minutes drawn up of the depositions it has received, and add the name of the party against whom these depositions have been made. It should also add the names, etc., of the witnesses, in all cases where it has not itself acknowledged their character to be irreproachable, in order that the judge before whom the proceedings are continued may be able to make inquiries upon the subject. †But where the court before which the depositions were made certifies in the minutes of the proceedings that the witnesses are of irreproachable character, no further information is required upon the matter.

A case may be transferred, however short may be the distance between the courts; ††but requisitorial letters for the hearing of witnesses cannot be addressed to a court whose jurisdiction is not distant at least as far as would permit of having recourse to hear-say evidence to establish the depositions of the original witnesses.

Section 2

When a case is about a certain, definite object, not in the jurisdiction of the court, but not of a kind to be easily confused with any other object, such as a piece of immovable property, a slave, or a horse, all of which are known, the court may permit the parties to prove their rights, and then give judgment; and after this he should communicate in writing with the court in whose jurisdiction the subject of the suit is situated, in order that the latter may have it given into the possession of the successful litigant. In the case of immovable property it is sufficient in these circumstances to indicate its limits. *Where, on the other hand, the object in dispute is of a nature to be easily confused with other things the court cannot allow the parties to prove their claims

until the plaintiff has first given as minute a description of it as possible, and stated its value. *Then the court should hear the parties, but not decide immediately in a case of this sort; he should communicate in writing with the court in whose jurisdiction the thing is, and inform him of its distinctive marks, in order that the latter may order it to be seized and sent to him. The witnesses that have been summoned should then declare whether they recognise the object; *and this cannot be handed over to the plaintiff in the meantime unless he furnishes a personal security for it. The security can only be released when the court that has given the plaintiff the object receives from the court before which the proceedings are being taken a letter informing it that the object has been recognised by the witnesses. And if the object is not recognised by the witnesses the plaintiff who has obtained temporary possession of it must pay the expense of restoring it to the original owner. In the case of something which is in the jurisdiction of the court but is not brought to the hearing, this must first of all be sent for, if it is possible, in order that the witnesses may establish its identity, for in such a case recourse may not be had, even provisionally, to a mere description.

Where the defendant declares that he possesses no object of the kind claimed from him, he has a presumption in his favour, provided he confirms his declaration upon oath; and unless the plaintiff is able to prove that it is false, he must confine himself to an action for damages. If the defendant refuses to take the oath, and the plaintiff is ready to swear that the defendant really has the thing in his possession, or if he can prove it, the defendant should be ordered to produce the object in dispute, and if necessary imprisoned until he complies with the order, or until he proves in court that the object no longer exists. In case of doubt on the part of the plaintiff as to the loss of the object, so that he does not know whether to claim its return or its value, he may formulate his claim as follows: "The adverse party has usurped such-and-such a thing which belongs to me, and I demand its restitution, or in case it has been destroyed, its value." Some authorities, however, do not allow of such an alternative claim; they insist first upon a claim for the return, and then an oath, according to the procedure we have mentioned; and only after this has been done do they allow of a claim being made for the value. This same controversy exists also in a case where one gives a coat to a broker to sell, and he denies the fact, so that one does not know whether he has sold, lost, or kept it; and as to whether one should bring against him a personal action for payment of the price obtained, or for the value, or for its return.

Where it is admitted that the object should be brought to the

hearing, the expense of its transport must be borne by the defendant, in the case where the claim of the plaintiff upon the thing in dispute is recognised by the court; and if the claim is dismissed, the plaintiff must pay not only the expense of bringing the thing to the hearing, but also that of restoring it to the defendant.

Section 3

As to procedure in case of absence, the law insists that the defaulter must be at a "considerable" distance, that is to say that if one starts in the morning to look for him, one has not returned by the following night. Other authorities say that the distance should be such as enables to abbreviate prayer. On the other hand, where the defendant is in the neighbourhood, the court may not proceed in his absence to the hearing of the plaintiff's witnesses, nor give judgment; unless he keeps himself hidden, or occupies too high a social position to be summoned to attend the court.

*Judgment by default is permitted not only in civil matters, but also in cases of crimes against the person, and in cases of defamation; but a person guilty of any other crime may not be sentenced in his absence.

Evidence given in court against a defaulter who appears before judgment is pronounced does not need to be given a second time in his presence; it is enough to inform him of what has been done in his absence in order that he may have an opportunity of challenging the witnesses, etc. On the other hand, the whole proceedings must be begun afresh if, after the plaintiff's witnesses have been heard, the judge is dismissed and then reappointed.

The summonsing of an individual who is in the district in which the court is held is effected either by sending him the seal of the court upon a piece of clay, etc., or by means of an usher. If the defendant refuses to appear without valid excuse the court may have him brought before it by force, and may also inflict upon him a punishment at its discretion. On the other hand, in the case of an absent person the following cases must be distinguished:—

1. If the absent person is not within the jurisdiction of the court, he cannot be summonsed, nor made to appear by force.

2. If the absent person is within the jurisdiction of the court at a place where the judge has a substitute, the court should limit itself to hearing the witnesses for the plaintiff, and then send the proceedings to the substitute.

3. If the absent person is within the jurisdiction of the court at a place where the judge has no substitute, he may be summonsed and, if

necessary, brought by force, provided that the distance does not prevent this; *i.e.* provided that the bearer of the summons can leave in the morning and be back again by the next night.

†A young woman, even though she lives close to the court, may not be summonsed, when she is *mokhaddara, i.e.* when she is not in the habit of going out, except in case of absolute necessity.

CHAPTER III.—DISTRIBUTION OF ESTATES

The distribution of an inheritance or of a joint estate is effected either by the inheritors or the persons entitled themselves, or by an expert chosen by them, or by an expert appointed by the Sovereign. The official expert must be a free male of irreproachable character, versed in geometry and arithmetic. Where the distribution necessitates a valuation of some sort, this must be made by two experts; but in all other cases one is enough. One jurist maintains that two experts are always necessary. The expert appointed by the Sovereign to preside at distributions may also be authorised to decide difference in the matter of valuation; in which case the valuation itself is effected by two special experts having the qualifications of irreproachable witnesses; while a distribution properly so called is always effected by the official expert himself. The official expert receives a remuneration from the public treasury; and it is only in times of penury that his payment has to be borne by the inheritors or other persons entitled. In a case where the sharers themselves choose an expert, and agree with him upon the amount of his remuneration, and the proportion of it to be paid by each of them, each one owes him the amount stipulated. In default of any special agreement about it the stipulated remuneration is levied proportionately upon the shares; a single authority maintaining that the sharers are then separately responsible.

Where there are articles that it is not possible to divide up without a considerable diminution in their value, such as a valuable diamond, a costly dress, or a pair of boots, the court may not order their distribution, even upon the request of all the parties entitled. But it cannot oppose it, if the parties entitled carry out the division themselves, and the object does not thereby lose all its utility; as, *e.g.* in the case of a sabre which can still cut though broken into pieces. †Even in the case of something which by its division, without precisely losing much of its value, can no longer serve the purpose for which it was made, such as a bath or a small millstone, the court cannot accede to an

application to order its distribution. Such a request could only be complied with where, for example, the bath is of a size that admits of its being made into two. †By virtue of the same principle if of two proprietors of a house one is entitled to nine-tenths, and the other to one-tenth, only the former may apply for its distribution if the tenth by itself is uninhabitable.

As to things whose nature admits of their being effectively divided without any considerable diminution in their value, the following cases must be distinguished :—

1. The distribution may be effected by a simple division into equal parts in the case, *e.g.* of things that can be estimated by measure, of a house that consists of several constructions of the same kind, or of a piece of land of the same quality or nature throughout. In this case any person entitled may oblige his co-proprietors to proceed to a division, which is carried out in the following way. As many equal lots are made as there are persons entitled, these lots being determined by measure or weight ; and after this there is written upon a piece of paper either the name of each sharer, or the description of each lot, mentioning, for example, its boundaries and situation. These pieces of paper are rolled round little balls of equal size, and finally these balls are drawn by some one who was not present on the spot at the moment when the pieces of paper were rolled round them. The first ball is drawn for the first lot which is in consequence given to the person whose name is upon the piece of paper, and so on with the others. Where, on the other hand, it is the lots that have been mentioned on the pieces of paper, the first ball is for that one of the sharers previously designated ; he is given the lot indicated on the first to come out, and so on with the others. Where all the coproprietors are not entitled to the same fraction, *e.g.* where three persons may claim respectively the half, the third and the sixth of a parcel of land, the land must be divided into as many lots as is indicated by the denominator of the smallest of the fractions, and after this has been done the distribution should proceed in the manner already explained. But in these circumstances care must be taken not to assign to one person lots that are separated from one another, and so do not form one continuous bit of land.

2. Equal distribution, *i.e.* a division into lots of different sizes, but of equal value, is called for in the case of land that is not of uniform value throughout, in consequence of one corner being more fertile or nearer water than another. *This circumstance does not prevent distribution taking place upon the application of each coproprietor. Equal distribution is impossible in the case of two houses or of two shops, even where of equal intrinsic value ; in this case neither of two persons entitled may insist upon one being assigned to him

and the other to his coproprietor. In the case of movable property, *i.e.* slaves or clothes of the same value and kind, one may ask for equal distribution; but where the slaves or the clothes, though having the same value, are of different kinds, such an application is inadmissible.

3. Adjustment is called for where, for example, a parcel of land is divided into several lots in one of which is a well or a tree which it is impossible to distribute. In this case the person so favoured owes to the other a proportional compensation; but no one can force his coproprietor to such a division, as it is in reality a sale, and this principle is extended by our school even to an equal distribution as explained under the preceding paragraph No. 2. On the other hand, distribution by a simple division, as in No. 1, is in truth merely the act of rendering to each the exclusive possession of what was already his property. A distribution by adjustment and compensation requires also the consent of the interested parties after their respective portions have been assigned them by lot. †And subsequent consent is always necessary where one of the coproprietors could not have forced the others to proceed to a distribution, being expressed as follows: "We accept the distribution that has been effected," or "We accept what has been assigned to us by lot."

Obligatory distribution should be rescinded upon the application of any person entitled who can prove that there has been error or fraudulent infraction of his rights. Even where such claimant cannot furnish any legal proof of this, he may still have an oath administered to his former coproprietors. Where, however, the distribution is really a sale, there is no ground for rescission on account of error, and an application for rescission could not be received. [In cases where the distribution is merely the act of rendering to each person the exclusive possession of what is already his property, there is ground for rescission in case of error legally proved or established by oath.] Legal seizure of a portion of the succession or joint estate has the effect of annulling the distribution as far as concerns the property seized. As to the question whether in spite of this the distribution remains good for the remainder there is the same difference of opinion as with regard to the partial dissolution of a bargain. Where the seizure concerns something certain and definite, the distribution remains good if each lot is subject to an equal or proportional diminution in value; but in all other cases the distribution is *ipso facto* annulled by the circumstances mentioned.

BOOK 66.—EVIDENCE OF WITNESSES

Section 1

No one can be a witness except a free, adult, sane Moslem of irreproachable and serious character, not liable to suspicion. It is necessary, to constitute irreproachable character, that the witness should have abstained entirely from committing capital sins, and should not be in the habit of committing sins of a less serious nature. Amongst illicit pleasures that offend respectability are counted the game of backgammon ††which is rigorously forbidden, and that of chess which is merely blamable where there is a stake, for in this case chess is considered as a true game of chance, and in consequence rigorously forbidden. It is lawful to sing and listen to the song to which the camel-drivers make their animals walk; but the law blames all other singing not accompanied by instruments of music; and it forbids the use and the sound of any musical instrument tending to excite to the use of forbidden drinks, such as the guitar, lute, cymbal, and Persian flute. †On the other hand, the flageolet is an instrument of music which the law permits. [The flageolet also is rigorously forbidden.] A tambourine may be used at a marriage or a circumcision †or any other festival, even when bells are attached to it; but one must never beat the *kuba*, *i.e.* a long drum narrow in the middle.

The law permits dancing, provided it is not of an enervating character like that of effeminate persons. The declamation and recitation of poetry is permitted, provided there are no satiric or obscene verses, nor any allusion to some particular woman.

By a man of "serious" character is meant one who models his conduct upon the respectable among his contemporaries and fellow-countrymen. Certain actions are essentially incompatible with a serious character. One should regard, for example, as wanting in seriousness a person who eats in public places and walks there bare-headed; who embraces his wife or his slave in the presence of other persons; who is always telling funny stories; who wears a gown and pointed cap as a professional jurist though this is not the custom of the place; who habitually plays chess or sings or listens to singing, or who dances for an excessively long time. It is well, however, so far as these acts are

concerned, to take into consideration the individuals, circumstances and places. Besides this, there are occupations so base in themselves as to be incompatible with the character of a witness; for example, that of a person who applies leeches, or sweeps houses, or tans leather; persons following such occupations, even though they may be of as high social position, cannot depose as witnesses. †These occupations, however, when exercised as a trade by an individual whose father before him was a barber, a sweeper, or a tanner, form no obstacle to a deposition. By "liable to suspicion" is meant a person who allows himself to be influenced by the idea of procuring some advantage, or protecting himself against some damage.

Interested witnesses may always be challenged. Consequently one cannot depose in favour of one's slave or dependent undergoing enfranchisement by contract, nor can one give evidence with regard to an estate inherited by one's debtor, nor in favour of one's debtor who has been declared bankrupt. For the same reason may be challenged a witness with regard to a matter about which he has been appointed an agent, or with regard to the remittance of a debt for which he is security, or with regard to an assault against a person of whom he is the heir. On the other hand, there is objection to accepting in a question of real property or of money the deposition of a sick or wounded person in favour of another of whom he is the heir, even before his recovery. The *aakila* cannot testify to the notorious misconduct of the witnesses of a homicide, nor can the creditors of a bankrupt testify to the notorious misconduct of witnesses called by another person to establish another debt. †Where, however, two witnesses prove a testamentary disposition in favour of two other persons, and these latter subsequently declare that the witnesses themselves were mentioned in the same will, none of this evidence can be challenged as it really relates to different things. And finally, one cannot depose in favour of one's ancestors or descendants, though one may legally do so against them, *and the law even specially allows a son the privilege of deposing against his father as to a repudiation or a defamation uttered by the latter against a wife who is not the mother of that son. *Evidence given in favour both of one's own descendants and also of a third party, is valid only for the latter. [Husband and wife may give evidence in favour of each other, and one may even depose in favour of one's brother or of one's friend.]

The deposition of an enemy is not admissible, *i.e.* of an individual who hates the adverse party to such a degree as to wish to see him fall into misery, to envy his prosperity, and rejoice in his misfortune; but the favourable deposition of such an enemy is admissible. An enemy's

testimony should be accepted in all cases where the ill-feeling is not personal, for example, if it is the result of a difference of religion. Consequently a Moslem may depose against an infidel or a heretic, and a heretic whom we do not regard as an infidel does not lose his right to give evidence. It is permitted to challenge the testimony of persons who are too eager to give evidence, or so indifferently careless that one can put no trust in their words; but one must accept the evidence of police agents or of other persons as to the accomplishment of a person's obligations towards God, and the actions of private life that confer an irrevocable right to a third party, *e.g.* repudiation, enfranchisement, remission of a penalty under the law of talion, existence or expiration of a period of legal retirement, penalties of a non-remissible character, ††and even affiliation.

Judgments delivered upon the testimony of two witnesses who afterwards are found to be infidels, slaves, or minors, should be quashed either by the court that delivered them or by any other court; *and the same is the case where it appears too late that the witnesses were of notorious misconduct. But the depositions of an infidel, a slave, or a minor should be accepted if they repeat them after the cause of their incapacity has ceased to exist; though the law does not accord this favour to individuals of notorious misconduct who afterwards lead a changed life. It is only after a sufficient interval has elapsed to admit of the sincerity of the change that they can again be accepted as witnesses, and most authorities fix the duration of this interval at one whole year. Where the notorious misconduct is the consequence of a verbal insult to some one, it is enough to make a verbal retractation; where, for example, a person proceeded against for defamation declares that he withdraws the insulting expressions used, and adds that he feels for them profound regret, and that he will in future abstain from such a crime, the court may accept his testimony. This rule applies also to false evidence. [Insults not expressed in words but by acts are made reparation for by ceasing to manifest them, by showing one's regret, and proposing to abstain from such things in future; and also by compensating the insulted party, so far as this is within human power.]

Section 2

The testimony of a single individual is not enough to prove any fact, *except the appearance of the new moon in the month of Ramadan. In order to prove the crime of fornication four male witnesses must be produced, and two to prove the culprit's confession, though in this latter case also one jurist considers that four are necessary. Real

property claims, and contracts having consequences that are merely pecuniary, such as sale, cancellation by consent, transfer of debts due to one, and security, as well as the rights resulting from these contracts, such as right of option, or a term for payment, may all be proved by the testimony of two male witnesses, or of one male witness and two women. Two male witnesses are rigorously required in all other contested cases, whether it be a matter of non-remissible penalties, except that for fornication, or of remissible ones, or of some dispute as to an act of private life ordinarily affected before men and in their sight, such as marriage, repudiation, return to conjugal union, conversion, apostasy, notorious misconduct, irreproachability, death, insolvency, appointment of an agent, testamentary dispositions, and the testimony which two witnesses have made a certain deposition. On the other hand, what is specially liable to come under the observation of women, and in general facts which do not usually take place in the presence and in the sight of men, such as the existence of virginity, accouchement, menstruation, suckling, redhibitory defects in women and in parts of the body usually covered, are proved as well by the evidence of two men as by that of four women.

Facts which cannot be proved by the evidence of one male witness and of two women, cannot be so either by the deposition of one male witness and by a supplementary oath; but this oath may replace the evidence of two women in all cases where their deposition together with that of a man is admissible, except only that of women's redhibitory defects. In no case can the deposition of two women, plus a supplementary oath, be accepted as sufficient proof of anything. A supplementary oath is administered to a plaintiff only after the hearing of his witness, and after the latter has been recognised to be of irreproachable character. This oath should contain an affirmation of the truth of the deposition. But the plaintiff has a right to waive his claim to take the oath, and to have it offered to his opponent, who in his turn has also a right to refuse to take it. *In this latter case the plaintiff may still take it. Where some one owns a slave and her child another person may prove enfranchisement by reason of maternity, producing in support of it a single male witness, and swearing that the slave is the child's mother; *but neither affiliation nor the freedom of the child can be established in this way. Our school admits that a slave ceases to be his master's property and becomes free when another person declares upon oath that the slave in question belonged to and was enfranchised by him, and these facts are corroborated by the evidence of a male witness. Where some one's heirs claim some property which they allege to have belonged to the deceased, though they can only produce a single male witness

of the truth of this, while only a part of these heirs are ready to confirm their claim by a supplementary oath, the property in question must be adjudged to these latter only, in proportion to their respective shares in the succession. As to the other heirs who have not taken the oath, not only are they not admitted as persons entitled to the property adjudged to their coinheritors, but any claim on their part is rejected, at any rate if they have refused to take the oath while capable of doing so. But if they have been prevented from taking the oath, *e.g.* in case of absence, minority, or lunacy, our school, though rejecting their claim, allows them the right of taking the oath afterwards, so soon as the cause of their incapacity has been removed. The part they claim should then be adjudged them, without its being necessary for them to produce again the witness who has already deposed in their favour.

Witnesses called to prove a material fact, such as fornication, usurpation, destruction of property, or accouchement, should have actually seen the fact themselves; consequently a deaf man may lawfully give evidence in such cases. On the other hand, witnesses called to prove that the adverse party has spoken certain words; for example, that he has made a bargain, or made an admission, or repudiated a wife, should not only have seen the individual in question, but also heard the words in dispute. Thus a blind man cannot give evidence, ††unless it be in the case, *e.g.* of an admission uttered in his ear by a person who has not since left him, until the moment of the deposition. And it is understood, of course, that a blind person can give evidence of a fact which he saw before he was struck with blindness, provided that he knows the name and origin of the two litigants. A witness who has heard the words and seen the act of a person he knows, and whose name and origin he knows, should point out that person if present at the hearing; but he need merely mention the name and origin, if the person be absent or deceased. A witness who has forgotten the name and origin of the person in question cannot depose. In the case of a veiled woman a witness cannot rely upon her voice to prove her identity, unless he could recognise her figure, and knows her name and origin. Even in these circumstances the witness should limit himself to declaring, as to her identity, what he knows for certain, without adding his conclusions. Strictly speaking, he cannot either identify the woman by referring to one or two persons, even though these may be of irreproachable character; but the practice does not accord with the precept. Where the plaintiff, after proving his claim against some one present at the hearing, demands a sentence in writing, the judge should describe that person by his appearance, and add his name and origin only where these have been proved before him.

A witness may prove in court some one's name and origin, according to what he has heard as to the names of the father, the tribe, †or the mother. Our school also permits to be established in the same way upon the ground of public notoriety, the decease of any person, without its being necessary for the witness to have seen the dead body himself. †Such hearsay evidence, however, is inadmissible in case of enfranchisement, patronage, conversion of property into real estate, marriage, or ownership. [†According to the majority of authorities of repute evidence grounded upon public notoriety is accepted in all these cases. Public notoriety consists in the fact of hearing an occurrence related in the same manner by several individuals whose words can be trusted ; though, according to some authorities it is enough to have heard it told by two persons of irreproachable conduct. A witness cannot declare that a certain individual is owner on the mere ground that the latter possesses the object in dispute, nor even because he has had possession of it and disposed of it for a short time. †Where, on the other hand, the period during which the individual has had possession of and has disposed of the object is long, this fact must be accepted as affording a presumption of ownership, on the sole condition that the ways in which it has been disposed of are of such a nature that such a conclusion may be deduced from them, *e.g.* if they consist in the fact of having inhabited, demolished, built, sold, or pledged a house. Insolvency may be proved by alleging indications and arguments showing that the individual in question has been struck by a series of misfortunes and has lost his fortune.

Section 3

The Moslem community is collectively responsible for the presence of witnesses at marriages, †confessions, pecuniary, or real property dispositions, and the drawing up of documents, in order to give these different acts the necessary authority. If an affair of this sort happens in presence of two persons only they cannot refuse to be witnesses. This principle is carried so far that one cannot shirk this obligation if the other declares he is ready to undertake it, even where the party claiming their services only needs a single witness, to be supplemented by an oath in case of proceedings. When the affair happens in the presence of several persons, the joint obligation requires that if the interested party claims the services of two of them they should consent, †and have no right to refer the interested party to other witnesses. When the affair happens in the presence of a single individual he must give his services, unless it is a fact that cannot be proved by a single witness and a supplementary oath, for in this case the

testimony of a single witness would be of no use. According, however, to some jurists the obligation to serve as a witness is incumbent only upon those who are intentionally present at the act, not upon the persons who happen accidentally to be there.

The law requires also for a person's appearance as a witness :—

1. That the distance from the home of the witness does not exceed that within which the court may order a personal summons; or, according to some authorities, that the distance should be less than that permitting of the abridgment of prayer.

2. That the witness should be of irreproachable character; for notorious misconduct may be a reason for refusing his services as useless. However, a refusal to be a witness, founded upon notorious misconduct, is admissible only in the case of conduct that every one disapproves. Only a few authorities maintain that such refusal may also be founded upon misconduct of which some doubt the perversity.

3. That the witness should not be prevented from appearing through sickness, etc. And in this case the evidence of the witness who does not appear may be proved at the hearing by two other witnesses, or the court may send some one to take the deposition of the said witness at his domicile.

Section 4

Hearsay or secondary evidence is a deposition to the effect that a certain witness has proved this or that fact. This evidence is admissible in civil cases, and according to our school in criminal cases also, except in those in which the penalties are not remissible. Such evidence, however, is only to be admitted in the following cases :—

1. Where the original says to the secondary witness, " I was a witness of such-and-such fact, and I call you to be a witness of my statement," or " Be a witness to this statement."

2. Where the secondary witness has heard the original witness give evidence in court.

3. Where the secondary witness has heard from the original witness a detailed account, for example as follows : " I bear witness that so-and-so owes so-and-so a thousand pieces of money as the price of such-and-such a thing bought," or on some other ground ; and it is necessary in this case that the original witness should have specially asked the second to bear witness to his words.

The validity, however, of hearsay evidence in the circumstances set out under sub-section 3 is not to be relied upon ; and it is never enough for the secondary witness simply to say—

1. That he has " heard say " by so-and-so that one of the

litigants owes such-and-such a sum; that is, without adding that the person whose words he is repeating uttered them as a piece of evidence.

2. That he has heard say by so-and-so, "I am a witness of that debt," or "I can be called as a witness to that;" that is, without adding the cause of the obligation.

A deposition by hearsay should contain the cause of its validity; though, strictly speaking, the court can also accept a hearsay piece of evidence where the cause is not expressed, if the judge is morally certain of the truth of the deposition. Hearsay evidence may never rest upon the words of a witness who is to be rejected; nor can one produce women as secondary witnesses, even where it is a matter of facts that may be proved by women as original witnesses. But the validity of hearsay evidence is not invalidated where the original witness is prevented from deposing by some physical cause such as death, absence, or sickness; though where the right of deposition has been lost owing to apostasy, notorious misconduct, or enmity, one cannot have recourse to hearsay evidence in order to bring in a deposition that has become inadmissible. ††Lunacy has the same effect as death. It matters little whether the witness giving hearsay evidence is of notorious misconduct or a slave at the moment of hearing the original statement, provided he is capable of deposing at the moment of the hearing.

The deposition of the original witnesses is proved legally by two hearsay witnesses; though, according to one jurist the deposition of each original witness should be proved separately, without distinction of sex, by at least two male witnesses.

In any case secondary evidence is only permissible:—

1. Where the original witness has been prevented from coming, or can only come personally with difficulty, *e.g.* in consequence of disease, blindness, serious illness or absence, at least if the distance is such that the court could not order a personal summons, or, according to some authorities, if the distance is such as to permit of the abridgment of prayer.

2. Where the names of the original witnesses are given at the hearing by the witnesses who give the hearsay evidence, though the latter need not guarantee their irreproachability. There is, however, no objection to their affirming at the same time the irreproachability of the original witnesses. Hearsay evidence in which the names of the original witnesses are not given is valueless, even where the persons making the original statements are really irreproachable, and more than sufficient in number.

SECTION 5

The retractation of a piece of evidence before judgment has been delivered has as its consequence that the court cannot take this evidence into consideration as a ground for its decision. Where the retractation takes place after sentence has been delivered, but before it has been executed, the order holds good in a civil, but not in a criminal matter. A retractation after execution of sentence has no effect upon the validity of the judgment, either in a civil or in a criminal case.

Where, after execution of a death penalty, either under the law of talion, or for apostasy, or even by stoning or whipping, the witnesses declare that they have made a false declaration, intentionally, against the executed person, they are punishable either with death under the law of talion, or with payment of the price of blood on the higher scale, according to circumstances. If the judge himself, in such a case, declares that he has intentionally delivered an unjust sentence, he should be punished with death by way of talion, whether the victim has undergone capital punishment, or suffered death in consequence of the application of some other penalty. Where judge and witnesses both declare they have intentionally contributed to the condemnation, and consequently to the death, of the victim, they are all punishable under the law of talion ; but where they merely declare that they have committed injustice by error, half the price of blood should be borne by the judge, and the other half by the witnesses jointly. A *mozakki* who subsequently declares that he has given false information with regard to the irreproachability of witnesses, should be punished himself as a false witness ; while the representative of the victim who confesses that he has wrongly slain an innocent person under the law of talion, after that person had been sentenced for premeditated homicide, incurs a penalty under the law of talion, or liability to payment of the price of blood, according to circumstances, whether his retractation is or is not accompanied by those of the witnesses. In this latter case, however, some authorities consider the representative and the witnesses as accomplices, each owing only a portion of the price of blood, where this is due.

Where two witnesses prove an irrevocable repudiation, relationship by fosterage, or imprecation, and the court decrees in consequence a separation, this separation is not annulled by a subsequent retractation of the depositions ; but the false witnesses owe the woman proportional dower ; or, according to one authority, they owe the half of this dower if the marriage has not yet been consummated. On the other hand, where the separation is decreed, *e.g.* for a cause of repudiation, upon the testimony of two persons who subsequently declare that their evidence

is false, but it is proved that the marriage was nevertheless illegal in consequence of relationship by fosterage, the false witnesses owe no reparation.

*False witnesses in monetary matters or matters of real property are only liable, upon retractation of their depositions, for damages where these have really been sustained. This means that, if all retract, they must make joint reparation for the wrong that they have done; but the retractation of one or some of them has no consequence, provided that the number of witnesses who maintain the truth of their depositions is sufficient to make the judgment valid. However, according to some authorities, the witnesses who have in this way retracted their statements, are liable in any case for damages, in proportion to their number, or having regard to the number of witnesses maintaining their statements. Where, on the other hand, after retractation by some of the witnesses, there are not enough left to furnish legal proof, the following cases must be distinguished:—

1. Where the total number of witnesses heard does not exceed the number required by law, the witnesses who retract are liable for damages in proportion to the number of witnesses required.

2. Where the total number of witnesses heard exceeds the number required by law, the witnesses who retract are liable for damages, in proportion to the number of witnesses required; or, according to some authorities, in proportion to the total number of witnesses heard.

In accordance with the same principles it is necessary to determine whether the witnesses were not of the same sex. Where, for example, a fact has been proved by the deposition of a man and two women, and all retract their statements, the man is liable for half the damages, and the two women jointly for the other half. Where it is a matter of some fact, such as relationship by fosterage, to prove which the law requires either the evidence of one man and two women, or that of four women, while the fact has actually been proved by one man and four women, the consequence of a retractation by all of them is that the man owes merely one-third of the damages, and the four women jointly two-thirds. †Where, on the contrary, in the instance just mentioned either the man, or two of the four women, retract their deposition, there is no liability, for the fact remains legally proved. †Finally, in the case of a real or pecuniary obligation, where the law requires the evidence of two men, or that of one man and two women, but in which one man and four women actually testify, a retractation by two of the women is of no consequence; while that of all four women renders them liable for half the damage. The other half has then to be borne by the man in case of a retractation on his part. According, however,

to some authorities, one must decide in this case as in a matter of relationship by fosterage, which can, strictly speaking, be proved by four women. †In proceedings for the crime of fornication, a retractation of witnesses who have merely established the status of *mohsan* has no consequence so far as they are concerned ; and the same is the case with witnesses who retract their statements in a matter of repudiation of enfranchisement, in which they have merely proved the modality or suspensive condition.

BOOK 67.—PROCEDURE

Section 1

In a criminal matter, even a case under the law of talion, or the case of a penalty for defamation, no one may exercise his right to carry out the law against the guilty party until he has obtained against him a judgment delivered by the court. But when it is the case of a real right, such as the ownership of some particular object, one may of one's own accord seize the object in question, without having recourse to the court, unless one fears thereby to commit some injustice. Where it is the matter of a debt due from some one who does not refuse to pay, one must confine oneself to asking for payment, and never seize the debtor's goods of one's own accord ; but one may seize objects of the same kind as those that are due, if the debtor denies his obligation, and one is unable to prove its existence. This seizure may, if necessary, according to our school, be extended to things of a different nature from those due, where the debtor has no things of a similar kind. One may act in the same way towards a debtor who admits his obligation but refuses to pay, and against one who denies the debt which the creditor is able to prove. But in this case some authors require a previous recourse to the decision of the court.

A person who may legally seize something of his own accord has the right, if necessary, to break a door, or pierce through the walls of a shop or house where it is. If the objects thus seized are of the same kind as those due, the creditor becomes their owner by the fact of the seizure ; otherwise he must put them up to auction, and repay himself out of the amount so realised. Some jurists maintain that this sale can only take place after a new authorisation by the court. †Things seized are at the risk and peril of the person seizing them ; that is to say that he is responsible for their loss, even if accidental, before he becomes their owner, or before the sale, as the case may be. The person seizing them should not seize more than is necessary for recovering his debt, except where the nature of the things seized does not permit this to be limited exactly to the amount due. Finally the law recognises the legality of a seizure of things in the possession of the debtor's debtor.

*By "plaintiff" is understood that party who maintains that the ordinary appearance of things is not the truth; and by "defendant" is understood the party that maintains the contrary. Thus where husband and wife embrace Islam before cohabitation, and the husband maintains that the two conversions took place together, and that therefore the marriage remains valid, while the woman maintains that the one conversion preceded the other, it is the husband who is the plaintiff, and the burden of proof is upon him. The claim should be precise; thus, in the matter of a sum of money, the nature and coinage of the pieces should be mentioned, their amount and whether they were intact or not, where these details have any bearing upon the value. In the case of some particular object that may be sufficiently well described by its qualities, *e.g.* an animal, a description of it must be given, as in a contract of *salam;* and according to some jurists the price must also be mentioned. And this is without doubt rigorously necessary where the claim is for damages for the loss of something not capable of measurement. Where the plaintiff maintains the existence of a marriage, †it is not enough to mention this engagement and nothing more, but he should say, "I married such-and-such a woman; she was given me by a guardian capable of so doing, before two witnesses of irreproachable character." It is even necessary to add that it was with the full consent of the woman in question, if the law requires her consent for the validity of the marriage. †Where the wife is a slave the husband should add that he took the woman because he had not the means of paying the dower of a free woman, and that he was afraid of his misconduct if he remained celibate. †It is only when one maintains the existence of a contract having merely pecuniary consequences, such as a sale, a lease, or a gift, that it is enough to mention it, without entering into fuller details as to the formalities or the cause.

A party against whom a fact has been proved has no right to have the supplementary oath administered again to the plaintiff; unless he opposes to it a rebuttal such as payment, return, purchase, gift followed by a taking of possession, etc., for then the defendant may demand from the plaintiff his oath that the rebutting circumstance is unfounded. †And it is the same where the defendant alleges that the plaintiff knew of the notorious misconduct or the want of veracity of his own witnesses. Where the defendant asks for a postponement to produce proof of the contrary, he must be allowed three days.

When the plaintiff maintains in court that a certain adult individual is a slave, and the latter alleges that he is free, this latter assertion is presumed to be true; but a claim of this nature brought against a minor not in one's power is inadmissible, even with the consent of the minor in

question. In this case the plaintiff must always prove his allegation. But in the case of a minor already in one's power a simple declaration that this possession is due to a right of ownership is enough for the child to be adjudged to one, unless the court is certainly aware that the possession of the child is due to having found it. In all these cases a contrary affirmation upon the part of the minor is of no effect, even though he may have already attained the age of discernment; some authorities, however, consider a minor who has attained the age of discernment as subject to the same rules as an adult.

†The payment of a debt not yet due can never be claimed in a court of law.

Section 2

A defendant who refuses to say anything at the hearing should be treated as being contumacious; but his silence cannot be considered as an admission. Where the claim, for example, is for ten pieces of money, the defendant cannot even limit himself to declaring that he does not owe this amount; he must also add that he does not owe any portion of it before it is possible, in default of proof, to have an oath administered to him in order to confirm the presumption that exists in favour of every one who denies owing anything. Where, then, the defendant is only willing to swear that he does not owe the amount claimed, instead of swearing that he owes nothing at all, he must be treated as contumacious, and the plaintiff may swear that the defendant owes him any sum not exceeding the ten pieces originally claimed, and proceed to the seizure of the amount definitely adjudged. Where the claim of a sum of money is accompanied by the reason, for example, where the plaintiff alleges that such-and-such a sum was lent to the defendant, it is enough for the latter to reply that "the plaintiff has no claim against me," without its being necessary for him to deny the loan in so many words. Thus one may oppose to a claim of pre-emption the simple statement that "the plaintiff has no claim against me," or "the plaintiff cannot insist upon delivery of the share in the immovable property in question." In this case the defendant need only swear to the truth of his statement; but if he has also formally denied the claim, he should also, upon the order of the court, confirm his denial of it by an oath. According to some authorities, however, it is enough, even in this case, to confirm upon oath a general denial.

The person who has actual possession of something that has been engaged or hired by him, may reply to the owner, "that he is not obliged to return it to him," and nothing more; ††but if he admits the ownership alleged by his adversary, and bases his refusal to surrender the

object upon the terms of the contract of pledge or lease, this defence throws upon him, in case it is denied, the burden of proving the existence of this contract. Where, in these circumstances, the defendant is unable to prove the contract, and is afraid that if he admits the ownership at the beginning, the plaintiff will not admit on his part the pledging or the hiring, he may oppose to the claim the following reply :—" If you claim the thing simply because you are its owner, I have no need to return it to you ; but if you claim it as a pledge or a thing hired, then say so, in order that I may make my reply to that." †Where the plaintiff claims some particular object, and the defendant replies that he cannot return it, " because he is not the owner," or " because the thing belongs to a third party whom he does not know," or " because the object belongs to his son who is a minor," or " because it is a capital invested for the profit " either " of the poor," or " of such-and-such a mosque," the defendant is not thereby dismissed. But the plaintiff cannot proceed immediately to seize the object in dispute, until he has proved his case, or, in default of proof, had an oath administered to the defendant, to the effect " that he is not obliged to return him the thing in dispute." Where, on the other hand, the defendant declares that the object belongs to such-and-such a third party, and this person can be summoned to appear in court, so that the proceedings may be begun again against him, and an oath if necessary administered to him, that person should be summoned. Where he admits the truth of the assertion of the original defendant, he alone should be proceeded against ; but if he denies it, the proceedings should be continued against the original defendant. And until the court delivers judgment, the original defendant should remain in possession of the object claimed, in spite of his admission that in any case the thing is not his. According to some jurists, however, the thing should in this case be given provisionally to the plaintiff, while others require the court to order its sequestration until the rightful owner be known. †Where the defendant admits that the object belongs to a third party who cannot be summoned by reason of absence, the proceedings must be adjourned until the return of that person, unless the plaintiff can prove the truth of his case and take the oath required by the law in cases of default. According to some authorities there is no default in the case mentioned, and consequently the supplementary oath is not to be administered.

In a criminal matter the confession of a slave is admissible. The case should be brought against the guilty slave personally, and it is he who should plead ; but in a claim for damages, *i.e.* a case in which the admission of a slave is not binding, proceedings should be taken against his master, even though arising out of an act of the slave.

Section 3

A judicial oath, whether of a plaintiff or of a defendant, should be rendered more solemn by repetition in all cases where the proceedings do not relate exclusively to some real property claim, or to some pecuniary obligation. This aggravation is even obligatory in proceedings about some merely pecuniary claim, where the amount in dispute reaches the minimum subject to the charity tax. We have already explained, when speaking of imprecation, what an aggravation of the oath implies.

The oath should contain a pertinent declaration as to the fact attested, where this is to the personal knowledge of the party, and even when the act has been done by some one else, if one affirms its existence; but where one denies a fact alleged to have been done by another, it is enough to declare that one knows nothing of it. Thus, where one has summoned the debtor of a person of whom one is the heir, and the debtor pleads a remission of the debt by the deceased, it is enough to declare upon oath that one knows nothing of this remission. †On the other hand, where, for example, one maintains that the slave of the adverse party has committed a crime by which damage has been caused one, the master should, if the fact is denied, swear positively that the slave did not commit the alleged crime, if it is to his personal knowledge. [Even where the damage is alleged to have been caused by an animal, the responsible owner should, if he can, affirm upon oath that the animal has not caused the damage of which the plaintiff complains.]

One may take an affirmative oath, not only where one has personally examined or observed the thing in dispute, but also where one believes firmly in the authenticity of some fact upon the faith of one's own writing or that of one's father.

The full bearing of a judicial oath depends upon the intention of the judge, and not upon that of the individual who takes it. Consequently, neither a mental reservation, nor an interpretation contrary to the meaning of the words, nor a reservation made in an undertone which the judge cannot hear, can free the witness from having committed the sin of perjury.

A person who admits the claim against him should be ordered to fulfil the resulting obligation; but one who denies should confirm his denial upon oath, if the plaintiff is unable to prove his case. A judge, however, who has been called to account, can never be called upon to swear "that he has not delivered judgment in bad faith"; nor can a witness be made to swear "that his deposition is in conformity with the truth;" as the

refusal to take such an oath would be the self-accusation of the person in question. Where the defendant alleges "that he has not yet attained his majority, this assertion is presumed to be true, without his being obliged to confirm it upon oath; and this simple declaration is enough to adjourn the proceedings until he has come of age. Moreover, an oath taken by the defendant, in default of proof on the part of the plaintiff, results only in a lapse of the proceedings, not in destroying the plaintiff's right. Consequently the latter, after losing his case in this way, can begin it again, if he can prove in court the truth of the facts upon which his claim is founded. †Where, however, the plaintiff begins his case again, without being able to prove his facts otherwise than by having an oath administered to the defendant, the latter may plead the previous judgment, and the fact that the oath has been already administered to him. If the plaintiff denies this previous decision, the defendant may insist upon his confirming this denial by an oath, before taking new proceedings. Where in these circumstances the defendant, instead of refusing, proposes that the oath offered him in default of plaintiff's proof, should be administered to the plaintiff instead, the latter may still affirm upon oath that his case is well founded, and win it, without, however, the defendant being thereby considered to be contumacious. For one is only contumacious where one declares formally, "I refuse to obey the order of the court to take an oath," or where one replies to the order of the court by saying, "I will not swear." Then one is contumacious by the mere fact of uttering these words; but if the defendant, when ordered by the court to swear, merely keeps an obstinate silence, he is not *ipso facto* contumacious. But the court may declare him to be contumacious; even implicitly, by administering an oath to the plaintiff.

An oath, whether administered to the plaintiff at the instance of the defendant, or by the judge in case of the plaintiff's contumacy, has the same effect, according to one jurist, as if the claim were proved; *but according to most authorities this oath is equivalent to the admission of the defendant. It results from this latter doctrine that the defendant is estopped from subsequently proving a previous extinction of the debt by payment or remission. A plaintiff who declines to take the oath so offered to him loses his right to take it afterwards, and cannot in any case begin the proceedings again, even though he may be able to furnish the necessary proof. Where, on the contrary, he declines the oath because he prefers to prove his claim, or because he wishes first to verify his accounts, he must be given a respite of three days; and, according to some authorities, the hearing should even be suspended until he desires that it should be resumed. If it is the plaintiff who, before deciding as

to the oath offered him, asks for a respite in which to verify his accounts, his application should be rejected ; though, according to some jurists, the court should allow him also a delay of three days. The application for adjournment can only be made by the plaintiff before he has entered into the merits of the case, and he cannot be allowed for this purpose a longer delay than to the end of the hearing.

†A person asked to pay in his share of the charity tax cannot limit his defence to stating that he has paid it to another collector, or that the expert has made a mistake ; he must also take an oath ; and if he refuses to do this he must be sentenced to perform his duty again, even where it is impossible for him to have an oath administered to the plaintiff. All this is, however, upon condition that the oath of the tax-payer is required by law when he acquits himself of his obligation in ordinary circumstances. A guardian who, on the account of his pupil, claims in court the payment of a debt, cannot be obliged to take an oath, in case of a denial of the claim and a refusal to be sworn on the part of the defendant ; unless, according to some authorities, the cause of the debt is a fact within the personal knowledge of the guardian.

Section 4

Where two persons claim a certain particular object in the possession of a third party, and both are in a position to prove their statements, the two claims mutually annul one another. However, according to one jurist, the usufruct of the thing in dispute should in this case be adjudged to the two claimants jointly ; according to another, the object should be divided between them ; according to a third, recourse should be had to casting lots ; while a fourth is of opinion that the thing should be sequestrated, until the truth of the matter is manifested, or the interested parties have come to a settlement. In a case where two persons have undivided possession of something of which both can prove exclusive ownership, nothing is changed in the mutual relation of the parties with regard to the object in question. Where, however, a third party claims an object and proves his right of ownership, while the actual possessor does the same, the latter has a presumption in his favour. A possessor's claim to prove his right of ownership is inadmissible, unless a case is brought against him.

Where one has been obliged to give up a thing in one's possession in consequence of a legally proved claim, to which one was able to oppose a mere denial, in consequence, *e.g.*, of the absence of witnesses, one may still take proceedings to prove that one is the rightful owner, and, in consequence, the legitimate possessor. And in these circumstances, the

fact of the possession one has lost constitutes a presumption in one's favour. This rule, however, has been denied by some authorities.

Where the plaintiff claims a thing, and alleges that he has become the owner of it because the defendant has sold it to him, and the latter merely opposes to this claim his right of ownership, without denying the transfer asserted by the plaintiff, the fact that the defendant is actually in possession of the thing in dispute gives rise to no presumption in his favour, where both parties produce evidence in support of their case. A person who admits that a certain thing belongs to so-and-so cannot afterwards claim that thing except by virtue of a subsequent transfer; †but such a transfer need not be alleged by a person who, after surrendering his property in consequence of a claim brought and legally proved against him, subsequently obtains the required proof to show that he is the rightful owner. Should he then come and claim the object, his claim is still admissible, as we have just seen. Where two parties both produce evidence in support of their assertions, our school allows no preponderance to the party that happens to have the greater number of witnesses; nor to one who has two male witnesses, while the other has one male and two female. *But where one of the parties can produce two male witnesses, and the other only one whose deposition is confirmed by a supplementary oath, the preponderance is, by an exception, accorded to the former, though strictly speaking, one witness and the oath would be enough to prove the fact. *In a case where one of the parties can prove he has been owner for a longer period, he wins his case; and he may claim from the third party actually in possession the rent and profits since that time. According to our school, however, such a preponderance cannot be accorded to a party who proves that he has been owner from a definite date, over one that proves he has been owner, without mentioning any date. But our school maintains a presumption in favour of the possessor in all cases where he can prove a right of more recent date than the right of the adverse party. Our school does not admit as sufficient proof of actual ownership a deposition that "yesterday so-and-so was still owner," without adding who the present owner is, unless the witnesses declare that the person in question has not lost the ownership since the date mentioned, or, at least, that they are not aware of anything likely to cause such loss. The witnesses may even in this way prove that so-and-so is the actual owner, where they know that the ownership has been acquired by him by way of succession, purchase, etc., and are not aware of any subsequent transfer. An admission that the plaintiff is owner, made just before by the defendant, and duly established at the hearing, is presumed to apply still to the actual ownership.

From the fact that one is the rightful owner of an animal or of a tree it does not follow that one is also the owner of the fruit actually upon the tree, or of the young of the animal; †but the fœtus belongs in all cases to the owner of the mother by right of accession.

The purchaser of an object seized in consequence of a claim, even though the latter be indefinite as regards the date of the claimant's ownership, has a remedy against the vendor for the amount of the price he has paid; though, according to some authorities, such recovery is admissible only where the claimant's title is prior to the purchase. The testimony is not invalidated because the plaintiff alleges his right of ownership without mentioning the transfer of title, while the witnesses add by what title he obtained the object; but where the claimant alleges some particular title, and the witnesses another, their deposition is of no value.

Section 5

Where one ligitant maintains that he has rented a room to another for ten pieces of money, and the other says that the whole house was rented to him for that sum, and both can bring evidence in support of their case, the two claims mutually annul one another. According to one jurist, however, the tenant has a presumption in his favour.

Where two persons claim something in the possession of a third, each alleging that he has bought and paid for the object in question, and each bringing evidence in support of their claim, the object should be adjudged to that purchaser whose contract has the priority. Where it is not clear which is the earlier, the two claims mutually annul each other. Where two persons prove in court that they have sold an object to a third, for such-and-such an amount, the two claims mutually annul each other, if the alleged sales are of the same date. On the other hand, the purchaser should pay twice the amount agreed upon, where the two claimants prove that the sales took place at different times; †or if neither of the sales is of a certain date; or if one of the sales is proved to have been effected at a certain date, but not the other.

Where a deceased person leaves two sons, one a Moslem and the other a Christian, who each maintain that their father died in the religion he professes, the following cases must be distinguished :—

1. Where it is a matter of public notoriety that the father was a Christian, then—

(*a*) In default of proof, the assertion of the Christian son is presumed to be true.

(*b*) The same presumption exists in favour of the Moslem son, if both sons have furnished general legal proof of the truth of their statements.

(*c*) If the proofs furnished do not concern generally the religion professed by the father, but special circumstances from which his religion may be inferred, *e.g.* his last words, the two claims are mutually annulled.

2. Where the religion of the deceased is not a matter of public notoriety, and each son produces proof of the truth of his statements, in this case also the two claims are mutually annulled.

A Christian leaves a Moslem son and a Christian son. The former declares that he only embraced the faith after his father's death, so that he ought not to be excluded from the succession in consequence of difference of religion, while the son who has remained a Christian alleges that his brother was already converted. In this case the Moslem, in default of legal proof, has a presumption in his favour, provided he takes an oath to that effect. On the other hand, if in these circumstances, both sons prove the truth of their assertions, the presumption is in favour of the Christian. And the latter also has the presumption in his favour, in default of proof, where both brothers agree that the conversion took place, *e.g.* in the month of Ramadan, but the Moslem maintains that their father died in the preceding month of Shaban, while according to the Christian the decease did not take place until the following month of Shawal. Where, however, both sons can call evidence in support of their assertions, the presumption is in favour of the Moslem. Where the deceased has left an infidel father and mother, and two Moslem sons, who all maintain that the deceased died in their religion, the parents enjoy a presumption in their favour, provided they take an oath; though according to one jurist, the matter should then remain in suspense until the truth is known or the litigants come to a compromise.

In a case where one litigant proves that the deceased enfranchised upon his death-bed a slave called Salim, while the adverse party brings proof to show that it was Ghanim who was thus freed, and the enfranchisement of either would just exhaust the third capable of being disposed of, the law considers to be preponderant the proof of the earlier enfranchisement. If it is proved that the enfranchisements took place simultaneously, whether Salim or Ghanim shall be freed must be decided by casting lots. According to some authorities this method of decision should also be had recourse to where neither of the enfranchisements are of certain date; according to others one jurist maintained the opinion that the two slaves are both half-freed. [This latter theory is that of our school.] Finally, in a case where two persons unconnected with the deceased declare that he bequeathed his liberty to his slave Salim, while two residuary inheritors declare that the deceased retracted

this disposition and left his liberty to another of his slaves called Ghanim, and the enfranchisement of either would exhaust the third capable of being disposed of, it is Ghanim that the law considers to be enfranchised. Where, however, the two inheritors may be challenged as witnesses on account of notorious misconduct, the retractation cannot be proved by their deposition, and Salim is freed altogether. In order to punish the inheritors, Ghanim also is enfranchised, up to the amount of the third of the succession that remains, after deducting the value of Salim.

Section 6

A physiognomist cannot be summoned as a witness unless he is a Moslem of irreproachable character and of long experience. †The law also requires that he should be free, and a man; but it does not insist upon recourse being always had to more than one physiognomist, nor that he must belong to the Arab tribe of the Beni Modlij. The report of a physiognomist is indispensable in the case of proceedings relative to filiation; or with regard to a person whose parentage is not known, for example, a foundling; or a person of whom two others may consider themselves to be the father, for example, a child born of a woman who has had commerce with two men within a short interval. This can happen, even in good faith, in the following cases:—

1. Where each has exercised coition with her, believing her to be his own wife.

2. Where the woman was their joint slave.

3. Where one repudiates his wife immediately after coition; and the other then has her in his bed by error, or by virtue of an illegal marriage.

4. Where a master sells his female slave after coition, and the purchaser cohabits with her without observing her period of purification.

5. †Where a master cohabits with his married slave.

In all these cases the matter must be submitted to a physiognomist, where a child is born within a period between six months after the later and four months after the earlier act of coition, and each man claims the child as his. But where there has been a menstruation between two cohabitations the law considers the later as the sole cause of the pregnancy. To this rule there is but one exception, that is to say, where the earlier act of coition has been accomplished by the legal husband, and the later by error or by fornication; but it is of little consequence whether the persons who consider themselves to be the father are or are not free Moslems.

BOOK 68.—SIMPLE MANUMISSION

Section 1

The manumission of a slave is legal only on the part of a master who has the free disposition of his property. Enfranchisement may be made to depend upon a condition, and may be limited either to a member of the body or to a fraction of the slave; but in these two last cases the slave is none the less wholly freed in accordance with the distinctions which we shall afterwards set out.

Enfranchisement may be expressed in explicit terms, such as, "I make you free," "I enfranchise you," †or "You are no longer liable to the law of property." It is then of no consequence whether one has or has not the intention to manumit. On the other hand, such intention is rigorously necessary where one makes use of implicit terms, such as, "I have no longer upon you the right of property," "I have no longer any power over you," "There is no longer any bond between you and me," "I have no longer the right to make use of your services," "You can go where you please," "You will be henceforward under my patronage." Moreover, the law considers as implicit terms for expressing manumission all phrases that declare repudiation, explicitly or implicitly. The words, "You are free," said to a slave of either sex constitute an explicit manumission; and the validity of the act is in no way affected if the master in saying them commits a fault against grammatical gender. Where a master says to his slave, "Your enfranchisement is given you," or "I permit you to choose between slavery and liberty," intending to grant him his freedom, the slave is free as soon as he declares that he wishes to make use of this permission. And the same is the case where—

1. The master says, "I enfranchise you for one thousand pieces of money," or "You are free for one thousand pieces of money," and the slave accepts.

2. The slave asks his master to free him for one thousand pieces of money, and the master consents to do so.

In both cases the sum mentioned is immediately due by the slave. When the master offers to allow the slave to redeem himself for one thousand pieces of money, and the slave accepts, this sale is, according

to our school, not only perfectly valid, but the slave is immediately free, though liable to his master for the amount mentioned, and remaining under his patronage.

The manumission of a pregnant female slave at the same time includes *ipso facto* the freedom of the fœtus in her womb ; and any special reservation of this at the time of the mother's enfranchisement is null and void. Granting freedom to the fœtus alone, and nothing more, does not imply that of the mother, and where mother and fœtus belong to different persons the manumission of the one never implies that of the other.

A slave belonging in common to two masters, of whom one manumits him, either entirely or partially, obtains his liberty in this way only as regards the share of that master ; and if the latter is insolvent, the part share of the other is unaffected by this act. Where, however, the master who enfranchises a slave of whom he is coproprietor is solvent, the share of the slave that has not been freed returns to him all the same by virtue of the right of redemption, but he must indemnify his coproprietor in proportion to the latter's rights, and according to the value of the slave upon the day of manumission. Then, where the master who enfranchises can only pay a portion of the value of the slave, he must indemnify the coproprietor according to his means, and the slave remains, so far as the latter is concerned, in his original condition, due proportion being kept between the manumitted share and the indemnity received. Enfranchisement by virtue of right of redemption is an immediate consequence of the original manumission ; or, according to one jurist, a consequence of the payment of the indemnity. Another authority maintains, however, that the payment of the indemnity has retrospective force, in the sense that this fact indicates the existence of the manumission by virtue of the right of redemption from the moment of the original enfranchisement. Manumission by reason of maternity on the part of one of two coproprietors has the same consequence as regards right of redemption as simple manumission, with the exception that the part owner who enfranchises in this way, though solvent, should not only indemnify the other part-owner for the slave but also for the proportional dower. As to the question from what moment a manumission by virtue of right of redemption in these circumstances counts, opinions are divided as we have explained when speaking of simple manumission ; but it must be understood that the theories set out upon this subject, both firstly and lastly, do not imply that the part-owner who enfranchises must indemnify the other for the value of the child born to the slave. Enfranchisement by will on the part of one of the coproprietors does not imply a right of redemption ; *but the fact

that a part-owner who enfranchises, though solvent, has contracted debts that exhaust his fortune, is no obstacle to this right. When one says to one's coproprietor, "You have enfranchised your share in the slave, and so you should indemnify me for mine," he has a presumption in his favour, provided he takes an oath, if the manumission is denied. However, those jurists who consider enfranchisement by virtue of a right of redemption as an immediate consequence of the original manumission maintain that in this case, the share of the speaker is *ipso facto* enfranchised, by reason of his implied admission; but without admitting a right of redemption in consequence of this secondary manumission. According to these same jurists there is even ground for a right of redemption and indemnity when one's coproprietor says to one, "If you enfranchise your share in our slave, my share will also be free after your manumission," but on condition that the person to whom this phrase is addressed is solvent. Where, however, in this phrase, one uses the words, "My share will be free before yours," an enfranchisement by the coproprietor thus addressed, has for its effect that the share of the other owner becomes free, even if he is insolvent, by the accomplishment of the condition, and not by reason of the right of redemption. The patronage falls in these circumstances to the two masters by their own right. Where, on the other hand, the co-proprietor who spoke the words in question is solvent, the same effect is caused only where the validity of such a retrospective condition is not admitted. Where it is admitted, and the speaker is solvent, there is no manumission by virtue of right of redemption. In the case where a slave belongs for a half, a third, and a sixth to three different masters, of whom the two last enfranchise their respective shares, our school considers that each owes the first half the indemnity. Moreover, an essential condition for right of redemption is that manumission takes place willingly. Consequently, there is no right of redemption where, by right of succession, for instance, a father becomes coproprietor of his son. And, finally, a person who is dangerously ill should be considered insolvent, so far as regards this point, as to any amount exceeding the third of which he can dispose; and a deceased person should even be considered as absolutely insolvent. Consequently, right of redemption cannot be exercised where a testamentary executor is charged with manumitting a slave of whom a share belonged to the deceased.

Section 2

Where a person, capable of alienating his property for nothing becomes owner of one of his ascendants or descendants who are slaves, that ascendant or descendant is *ipso facto* freed, without distinction of

sex or degree. In the case of a person who is incapable of alienating his property for nothing, his guardian or curator may not purchase for him one of his ascendants or descendants. If a minor obtains the ownership of one of his ascendants by way of gift or legacy, his guardian should accept the liberality only where the slave in question is capable of exercising a trade. In this case the slave is *ipso facto* enfranchised; but he need not be maintained by the donee, because of the relationship. Where, on the other hand, the slave in question is not in a state to maintain himself, the guardian should accept only in the case of the insolvency of his pupil, because then the relative has to be maintained out of the public treasury; but he is rigorously forbidden to accept the gift or legacy of an ascendant or descendant incapable of exercising a trade, if his pupil is solvent and maintenance will consequently have to be paid for by him.

Where some one upon his death-bed becomes gratuitously the owner of his ascendant or descendant, that relative is *ipso facto* freed, and his value is levied upon the third of which the testator can dispose; or, according to some authorities upon the estate; but where the acquisition is effected for a consideration, the two following cases must be distinguished.

1. If the acquisition for a consideration is effected without the seller, when stipulating the price, making any sacrifice upon his part, the enfranchisement must be paid for out of the third of which the deceased can dispose, and the slave has no share out of the succession. If the sick man, when making the acquisition was insolvent, some authorities do not admit the validity of such a purchase; but the majority consider that the acquisition holds good, though in that case enfranchisement does not result. In these circumstances the slave should be sold again to satisfy the creditors.

2. If, on the other hand, the acquisition for a consideration is affected for a very low price, with which the vendor is content out of consideration for the purchaser, the difference between the price stipulated and the real value of the slave constitutes a gift upon the part of the vendor, so that the manumission is a charge upon the third of which the testator can dispose only for the amount of the stipulated price.

Where a third party makes a gift to a slave of a share in another slave, who is the ascendant or descendant of the donee, and the slave accepts this donation, the share of the ascendant or descendant thus given is *ipso facto* enfranchised; at least where it is admitted that the slave can accept a gift of his own accord. And besides, the master must indemnify the coproprietors of the relative by reason of the right of redemption.

Section 3

Where some one upon his death-bed voluntarily manumits a slave, the sole property he possesses, the enfranchisement is valid only for one-third; and, in case of the master's insolvency, the act has no effect at all. By virtue of the same principle, the manumission upon a death-bed of three slaves, all of equal value, effected by an individual having no other property, should be limited in its effect to one of them; and which of the three is to be freed must in this case be determined by casting lots. And recourse must also be had to casting lots when the deceased in these circumstances says to his three slaves all of equal value, "I enfranchise a third of you three," "A third of you three is free," or "I enfranchise a third of all my slaves." In this last case, however, according to some jurists, all the three are free for one-third.

A recourse to casting lots takes place as follows:—Three pieces of paper are taken of equal size; on two of them is written the word "slavery," and upon the third the word "enfranchisement," and they are rolled round three balls, as we mentioned before. A ball is then drawn for one of the slaves, and if it is that upon which is the paper with "enfranchisement" written upon it, that slave is free, and the others remain slaves. Where, on the other hand, the one drawn contains the word "slavery," that slave remains a slave; and a second ball is drawn for one of the two others. The names of the three slaves may also be written upon papers, and the slave whose name is first drawn be freed, while the others remain slaves. When the decision has to be made between three slaves of different value, for example, when one is worth one hundred pieces of money, the second two hundred, and the third three hundred, and the deceased has left no other property, two balls are placed in the urn with the word "slavery" on them, and a single one with the word "enfranchisement." If the one with the word "enfranchisement" is drawn for the slave worth two hundred, he alone is free and entirely free; but if this word is drawn for the one worth three hundred, he is freed only for two-thirds. Finally, if the word has been drawn for the slave worth one hundred pieces, not only is this slave entirely free, but there must be another drawing with two balls labelled "slavery" and "enfranchisement." That one of the two slaves for whom this latter ball is drawn becomes enfranchised up to the limit of what remains of the third of which the testator could dispose, deducting the former manumission. Where, in these circumstances, there are more than three slaves, of whom the number and value permit of a threefold partition, for example, six slaves all of the same value, the same procedure is adopted in casting lots, except that each of the

three lots refer to two persons instead of one. Where, on the other hand, it is only the total value and not the number that can be divided into three portions, where, for example, of six slaves one is worth one hundred pieces of money, two others one hundred together, and also the three others together one hundred, one lot must be made for the first slave, one for the next two, and one for the three others. But where neither the number nor the value permit of being divided into three lots, for example, where there are four slaves all of an equal value not divisible by three, one authority recommends to proceed as follows:—The number of the slaves is divided into three lots, two of which are composed of a single slave and the third of two slaves, and when the ball bearing the word "enfranchisement" is drawn for one of the two first lots, the slave included in this lot is freed. After this it is decided by casting lots which of the three other slaves is to be freed, up to the amount that remains of the third that can be disposed of, deducting the cost of the first manumission. Where it is the third lot that wins, the two slaves that compose the first and second lots remain slaves, and lots must be drawn to decide between the two slaves forming the third lot, to know which of the two is to be completely enfranchised, and which is to be enfranchised only up to what remains of the third of which one can dispose, deducting the cost of the first enfranchisement. Another jurist, however, recommends writing the names of the slaves upon four different pieces of paper, and afterwards proceeding to the drawing; the one whose name first comes out of the urn is enfranchised up to the amount that remains of the third that can be disposed of, after deducting the cost of the first manumission. [*The former procedure is preferable.] But the entire controversy as to procedure in drawing lots refers only to precepts of the Sonna. Some authorities, however, regard these precepts as obligatory.

Where the manumission can only be partially effected, because a complete enfranchisement would exceed the third that can be disposed of, but other property belonging to the estate is found afterwards, the manumission must be continued up to the third of the total net assets. Slaves manumitted afterwards in this way may keep for themselves what they have gained by their labour from the day of their enfranchisement by the deceased; and the heir may not even claim the restitution of what he has already spent for their maintenance. Where it transpires later that the deceased, besides the slaves manumitted, had another slave whom he had just enfranchised, the latter has a right to be admitted to the drawing of lots for manumission. A slave, enfranchised by drawing lots, is considered as free from the day when the deceased declared his manumission; and the value of this slave to be allowed

for in the partition is his value at that moment. In consequence what the slave gains is really his, and cannot be included when determining the amount of the third that can be disposed of. On the other hand, those that remain slaves because the drawing of the lots was unfavourable to them should be assessed according to their value upon the day of the decease; they form a portion of the two-thirds due to the heirs, including what they have gained from that moment, provided that this gain is composed of things still existing in kind. Gain earned after the decease goes always, not to the estate, but to the heir to whom the slave is assigned at the distribution. Thus, where the deceased only had three slaves whom he enfranchised upon his death-bed, each of whom is worth one hundred pieces of money, but one of whom has made, between the manumission and the decease, a gain of one hundred pieces, lots are first of all drawn, and if this slave wins, not only is he enfranchised, but he keeps as well the hundred pieces which he has gained. Where, on the other hand, the result of the drawing is to manumit one of the two slaves who have gained nothing by their labour, lots must be drawn again, and if the other slave that has gained nothing wins he is freed for one-third. But where upon this second drawing the slave that has made some gain wins, he is only free for one quarter. Over and above this he must be given as earnings one-quarter of what he has gained, and the other three-quarters of this gain go to the heir whose property he becomes for three-quarters on distribution.

Section 4

A person who frees a slave retains over him a right of patronage, without any distinction between simple manumission, or liberation under the terms of a will, or enfranchisement by contract, or on account of maternity or relationship or right of redemption. In case of the master's decease the right passes to his agnates. A woman is never called to the succession by right of patronage, unless it be to that of some one she herself has manumitted, or of his children or enfranchised slaves. For example, where a daughter becomes the owner of her father who is a slave the latter is *ipso facto* liberated; and where the father in his turn manumits one of his slaves, and then dies, and later this slave also dies, and neither leaves heirs, the daughter is called to the succession as the slave's patroness, and not as his patron's daughter. In case of the patron's decease the patronage can be exercised only by the nearest agnate as a personal right, and in general a manumitted slave can have no other patron but his master or his master's agnates. If a slave marries an enfranchised woman, the child born of this union is free and

under the patronage of its mother's patron ; but if the father is afterwards enfranchised, the patronage of the child passes to the father's patron. If the father dies a slave, and afterwards the father's father is manumitted, the patronage of the child passes to the patron of this relative ; and it is the same where the liberation of the father's father takes place during the lifetime and slavery of the father, except that in this case the patronage is transferred to the father's patron, if the father is afterwards enfranchised. According to other authorities, however, the patronage remains with the mother's patron, so long as the father is a slave, and is only transferred to the patron of the father's father by the father's death. Where, finally, the child in question becomes the property of his slave father, he is *ipso facto* liberated ; but, if there is occasion for it, the patronage of the father's other children, *i.e.* his brothers and sisters, and half brothers and half sisters on the father's side, †and of himself, is acquired by that child. [†According to Shafii's personal opinion this patronage of a person over himself cannot exist.]

BOOK 69.—TESTAMENTARY MANUMISSION

Section 1

Enfranchisement by will may be expressed explicitly by the phrase "You will be free after my death," "when I am dead," or "as soon as I am dead," or by the phrase, "I manumit you after my death." According to our school the expressions "I make you," or "You will be my testamentary enfranchised slave," are also explicit. This manumission may also be legally expressed by all terms that imply a simple manumission, such as, "My death will dissolve the bond between you and me," but in such a case the master must have really had the intention to accomplish that act. One may pronounce a testamentary manumission subject to a restriction, *e.g.* "If I die this month," or "in this sickness," "you are free;" or make it depend upon a condition, as for example, "If you enter the house you will be free after my death." In these cases the enfranchisement depends upon the operation of the restriction or the accomplishment of the condition. In the example last given the slave must enter the house before his master's death; but the entry should, on the contrary, be after that event if the master says, "You will be free if you enter the house after my death." In this latter case, however, the slave need not make his entry immediately after his master's death, and the heir cannot sell him in the mean time. Where the master says, "You will be free as soon as one month has passed after my death," the heir cannot sell the slave during this period, but there is no objection to his employing him in his service in the meantime, both in this case and in the preceding one. Manumission in the words, "If you like you can be my testamentary enfranchised slave," or "If you like you can be my enfranchised slave after my death," requires that the slave should say at once what he decides to do, but if the master says, "As soon as you have expressed your wishes in the matter," the slave need not do so immediately. Where two part-owners of a slave declare that he will be free "after their death," he is not completely enfranchised until after the death of both of them; though after the death of one, his heir cannot sell the share of the slave forming part of the inheritance.

Testamentary manumission is forbidden to the lunatic or the minor, *even where the latter has attained the age of discernment. On the other hand, it is permitted to imbeciles and infidels. As to an apostate there is the same divergence of opinion as about his right of ownership. Our school, however, maintains in all cases a testamentary manumission spoken before apostasy ; and the apostasy of a slave, enfranchised by will while he was still a believer, does not cause him to lose his liberty. An infidel who is not a subject has a right to take his testamentary enfranchised slave who is an infidel into his own country ; but when an infidel of any kind grants his liberty to a Moslem slave by his will, the act is null and void, because the law prescribes that such a slave should be seized and sold on his account. In the case of an infidel slave, enfranchised by his master's will, his master also an infidel, who after his manumission embraces the faith, without his master revoking his former disposition, this conversion is enough to withdraw him from his master's control, and he can then work for his master's account and repay him the gain resulting from this labour. According to one jurist, however, even in this case the enfranchised slave should be sold, and the price given to his master.

The master of a testamentary enfranchised slave may sell him, and this sale *ipso facto* annuls the manumission. For a testamentary enfranchisement is nothing more than a simple manumission, depending upon a condition, or according to one authority a legacy. According to our school the enfranchisement remains none the less annulled where one again becomes the owner of the testamentary enfranchised slave that one had sold. As to the revocation of the sort of manumission with which we are here occupied, excepting the case where it is a necessary consequence of the sale, it is not lawful unless it be admitted that the act constitutes a legacy. One may then express the revocation by the words—" I annul," " I declare dissolved," " I break," or " I revoke the testamentary manumission." If, on the other hand, one admits, with most authorities, that the act constitutes a simple manumission depending on a condition, one cannot revoke it.

There is no objection to manumitting in the ordinary way a slave one has already enfranchised by will, and making this later manumission depend upon a condition, or naming a specified time for its operation. In the latter case the slave becomes free as soon as one of the following things happens—the master's death, or the accomplishment of the condition, or the expiry of the term. The testamentary manumission of a slave does not prevent her master, during his lifetime, having the right to cohabit with her, and this act leaves the previous enfranchisement intact, unless the slave becomes a mother, in which

case the testamentary manumission is annulled and becomes a liberation on account of maternity. On the other hand, enfranchisement on account of maternity cannot become a testamentary manumission. The liberation under the terms of a will of a slave undergoing enfranchisement by contract, and the manumission by contract of a testamentary enfranchised slave are both permitted by law.

Section 2

*When a testamentary enfranchised slave gives birth to a child during her master's lifetime either in consequence of her marriage, or of the crime of fornication, it remains a slave until the master's death. Where, on the other hand, testamentary enfranchisement is granted to a pregnant slave our school permits not only that the child should be included in its mother's manumission, but also that it should be considered a testamentary enfranchised slave, where the manumission of the mother does not actually take place, either in consequence of her previous death, or of a revocation. Some authorities, however, maintain that the child, before its birth, follows its mother's condition in case of revocation. Moreover, a fœtus in the mother's womb is capable of testamentary enfranchisement before birth, and this manumission does not involve that of the mother, though her sale before accouchement implies *ipso facto* the revocation of the enfranchisement of the fœtus. Where a slave, manumitted in the ordinary way, under some condition, gives birth to a child, it is not *ipso facto* enfranchised with its mother when that condition is fulfilled. According to a single authority the child is *ipso facto* manumitted when the condition is accomplished during the mother's lifetime, but remains a slave when the condition is only fulfilled after the mother's death. A testamentary manumission in favour of a male slave never extends to his children.

In the matter of crimes against the person a testamentary enfranchised slave of either sex remains during the master's lifetime subject to the ordinary law applicable to slaves. At his master's death the testamentary enfranchised slave obtains his entire freedom, and his value is debited to the third of the estate of which the master could dispose, after deducting the debts. If this third is not sufficient, the slave becomes only partially free. For the same reason is debited to the third of the estate a simple manumission depending upon a condition relative to the last illness; for example, where the deceased declares, "You will be free if you enter the house during my last sickness;" *but where the condition may be fulfilled while the testator is in good health, the fact that it is accidentally accomplished during his last

malady does not prevent the manumission being debited to the entire estate.

Where a slave maintains in a court of law that he was enfranchised by will, and the master denies this, the latter must take an oath and declare that this contradiction is equivalent to a revocation, and that in consequence the claim is inadmissible. This rule is admitted even by the authority who assimilates testamentary manumission to a legacy, and who consequently admits its revocability.

Where a testamentary enfranchised slave, on becoming free, finds himself in the possession of a sum of money, and declares that he gained it after his master's death, while the heir maintains that it is his earnings amassed during the master's lifetime, and that in consequence it should be paid in to the assets of the estate, the enfranchised slave has a presumption in his favour, provided he takes an oath. Even where, in these circumstances, the two parties can bring evidence in support of their assertions, the enfranchised slave still has the presumption in his favour.

BOOK 70.—ENFRANCHISEMENT BY CONTRACT

Section 1

Enfranchisement by contract is a meritorious act upon the master's part, when asked for by a slave worthy of confidence and capable of exercising a trade. According to some authorities even this last condition is not necessary to render the act meritorious, and in any case enfranchisement by contract is never blamable. The words by which the master may legally manifest his wish to enfranchise in this way are, "I make you my enfranchised slave by contract for such and such a sum which you will pay by periodical instalments; and when the whole has been paid you will be free." The number of instalments must be mentioned, and the amount of the debt to be paid upon each occasion; but the contract remains valid even where one may have omitted to add the condition upon which the liberation depends, *i.e.* the concluding phrase, "and when," etc.; provided always that the intention to enfranchise is not wanting, for in that case our school does not admit the validity of the act. And, moreover, the law insists that the slave should formally declare that he accepts the offer made by his master, and that the contracting parties, that is to say both the slave and his master, are adult sane Moslems capable of the free disposition of their property. It follows from this latter condition that enfranchisement by contract effected by a master in his last illness is debited to the third of the estate of which he can dispose. Where in these circumstances a master leaves three slaves all of equal value, the enfranchisement by contract of one of them is perfectly legal. And it is the same where the slave thus enfranchised, though the only property of the deceased, has already paid during his master's lifetime two hundred pieces of money, while he was only rated at one hundred. If the slave had only paid one hundred his enfranchisement would have counted only for two-thirds. The validity of an enfranchisement by contract effected by an apostate depends upon the question whether his right of ownership ceases to exist or not. Where it is admitted that his right of ownership remains in suspense, there must be admitted also the nullity of the enfranchisement by contract, according to the opinion

adopted by Shafii during his stay in Egypt. A slave pledged or hired can no longer be enfranchised by contract by his master during the continuance of the engagement.

The equivalent that is due by the slave for his liberty is upon his part a debt for a term, even where this debt only consists in the use of something, or of his services. The debt should be paid in at least two instalments; although, according to some jurists, one may also stipulate that the whole debt shall be due immediately where the slave is only partially owned by the master, and is otherwise free. If one has stipulated, as an equivalent, that the slave should continue to give his services for a month, and pay at the end of it one *dinar*, a regular enfranchisement has been contracted for; but it would be irregular if the master stipulated as an equivalent that the slave should sell him such and such an object. Where the master stipulates as follows: "I contract to make you my enfranchised slave, if you buy from me this coat for one thousand pieces of money, payable by instalments, your liberation not to take place until the debt has been paid," our school admits only the validity of the enfranchisement, but not that of the debt. Where one manumits several slaves at once for a single sum of money to be paid by instalments, on condition that no one of them is to be free before the whole of the debt is paid, this enfranchisement is valid, according to Shafii's personal opinion. Then, however, the sum mentioned is *ipso facto* divided in proportion to the respective value of each of the slaves upon the day of the contract, so that the one who pays his becomes free, and the one who does not remains a slave.

Enfranchisement by contract may also be effected with regard to a slave who has already been previously and partially enfranchised, *and a contract to enfranchise such a slave entirely is limited *ipso facto* to the portion still capable of being enfranchised. Enfranchisement by contract cannot be effected by one of two coproprietors even if the other subsequently consents to it, at least according to our school; and a contract to partially enfranchise a slave of whom one is the sole owner is also forbidden by our school. Enfranchisement by contract of a slave belonging to two masters may lawfully take place when both at the same time give their consent either personally or by agent, and both stipulate the same terms of payment. The sum stipulated is then divided in proportion to their reciprocal rights. Where the slave is not in a condition to fulfil his engagement, and one of the coproprietors considers that for this reason the contract should be cancelled—but the other thinks it should remain good, it is as if the contract for enfranchisement had been effected only by one of the coproprietors, and the act is then illegal. According to other authorities, however, these

circumstances do not invalidate the contract. Where, finally, one of the co-proprietors remits what the slave owes, or manumits him later in the ordinary way, then only this owner's portion becomes free, subject to indemnity and right of redemption, if the coproprietor is solvent.

Section 2

The master is obliged either to remit the slave a portion of his debt, or to return him a part of the sum received. Remission, however, is preferable, especially in the case of the last instalment. †The law does not prescribe either a maximum or a minimum for remission or restitution, but either must be something capable of being the subject of obligation. †Remission or restitution should take place immediately before complete enfranchisement, and it is commendable to make it consist of a quarter or a seventh of the sum stipulated.

The law forbids a master to cohabit with his female slave undergoing enfranchisement by contract, in the exercise of his right of ownership ; but a contravention of this rule does not incur the definite penalty for fornication. The master, however, in these circumstances is liable for dower, and a child born of this illicit union is free. On the other hand, the master is not obliged as well to pay the mother the value of the child, at least according to our school. As to the slave herself, she becomes enfranchised on account of maternity ; without prejudice to the contract of enfranchisement, that is to say that in case of non-execution of her obligations under it, she none the less becomes free upon her master's death. *A child born of a slave under a contract of enfranchisement, either in consequence of a marriage or of the crime of fornication, is also under the contract and follows the condition of his mother, whether slave or free. The child, however, owes nothing for his own liberty, though he remains the property of the master, or, according to one authority, the property of his mother, until his complete liberation. In case of homicide the value of the child goes to the owner, but the pecuniary consequences of a crime committed by the child must be borne by itself. The profits which it gains, either by its work or in any other way, *e.g.* as dower, should be employed in the first place for its necessary maintenance, and the remainder should be sequestrated in order to be returned to it on its freedom, or to the master if it is not freed.

A slave under a contract of enfranchisement does not obtain his liberty, even partially, until he has paid the whole of the amount he owes. Where such slave wishes his master to accept in payment something which the latter is of opinion cannot be given, in default

of legal proof it is the slave who has a presumption in his favour, and should swear that it is a thing the use of which is permitted him. The master is then obliged to accept it, or to give a receipt for the amount offered by the slave; or if necessary the latter may deposit the thing in court. Should the slave under the contract refuse to take an oath, it should be administered to the master. Where the thing is seized by legal process the master may insist upon the slave giving him another thing of the same kind and value, and where a dispute of this sort arises as to the last of the periodic payments, complete enfranchisement is suspended until the legal claim has been dismissed, or the slave has given something else. This rule must be observed, even where the master on receiving the object says, "Now you are free." Restitution on account of redhibitory defects has the same consequences as legal seizure.

A slave under contract of enfranchisement cannot be married without the master's consent, until he has paid up the whole of the debt. Our school even forbids him to cohabit with one of his slaves by virtue of his right of ownership, even though the master authorises him to do so. This prohibition to cohabit with one of his slaves does not, however, prevent his purchasing slaves, *e.g.* for trading in them. Besides, a contravention in this respect does not involve a penalty for the crime of fornication, and a child born of such illicit union is none the less its father's legitimate child. Such child follows the condition of his father as regards freedom or slavery, when he is born either before his father's complete enfranchisement, or within six months after that event; *but in these circumstances the mother never becomes enfranchised on account of maternity. But a child born of such a union six months or more after the father's complete manumission is free, and then the mother also becomes free by reason of maternity.

A master is not obliged to accept payment in anticipation, where he can give a valid reason for his refusal, *e.g.* that thus the expense of keeping the money or other things received will fall upon him, or that he is afraid of losing them. On the other hand, where there is no valid reason the master cannot object to a slave under contract of enfranchisement paying him before the due date, and the latter may then, if necessary, be liberated by a judicial order. But an anticipation of the instalments can never be a ground for any diminution in the debt, even with the consent of the interested parties. These instalments cannot be transferred by sale, or exchange, before the master takes possession; *and when the slave under contract of enfranchisement pays a purchaser of the debt, he does not obtain his liberty. For the master may none the less insist upon full payment; though in this

case the slave has a remedy against the purchaser for the amount he has erroneously paid him.

According to the opinion of Shafii in his second period a slave under contract of enfranchisement cannot any longer be sold by his master, and if sold in spite of this does not become free upon making the stipulated payments to his new master. Gift is equivalent to sale in this respect. Nor can the master dispose of the earnings of a slave under contract of enfranchisement, nor liberate nor give in marriage a slave of such slave.

Finally, where a third party asks a master "to liberate immediately his slave under contract of enfranchisement for such and such an amount," and the master agrees, it is this third party and not the slave who is liable for the sum promised.

Section 3

An enfranchisement by contract, legally executed, does not admit of a revocation by the master, except where its terms are not carried out by the slave; but the latter may renounce it when he pleases, simply by ceasing to make the periodic payments, though he may be quite capable of continuing them. Where a slave under a contract of service declares himself to be incapable of paying, the master may either give him time or dissolve the agreement. This dissolution for non-execution has no need to be pronounced by the court; it can not only be enounced by the master, but even by the slave himself, where the master is not willing to cancel the contract in spite of the slave's wishes. When at the end of one of the periods the slave under contract of enfranchisement asks for some delay, it is recommendable to grant it him; but this indulgence on the part of the master leaves intact his right to insist later, whenever he pleases, upon a dissolution of the contract for non-execution. Where the slave cannot pay but still possesses some property, the delay allowed should be long enough to allow of its realisation; but where the goods are unsaleable the master is not obliged to grant for this purpose a longer delay than three days. As to the property of the slave under contract of enfranchisement, property that is in another place, the master must grant him merely the delay necessary to send for them if the distance is less than two days' march. If upon the expiry of a period the slave is absent, the master may cancel the contract for non-execution, even although the slave has in the place property in sufficient quantity. For no one, not even the court, may use these things to pay the debt, without the previous authorisation of the slave in question. Enfranchisement by contract

is not vitiated by the slave's lunacy, for then the court can proceed to the payment of the instalments, but in this case the slave should pay his curator, and cannot obtain his liberty by payments to the master in person.

Premeditated homicide of a master by his slave under contract of enfranchisement gives the master's heir the right to demand an application of the law of talion; and in the case of pardon or of voluntary or involuntary homicide all the slave's property may be seized to satisfy the price of blood. †In default of property the heir may dissolve the contract for non-execution, so that the slave resumes his previous state of slavery. If it is not a case of homicide, but of a wound, it is the master himself who can demand either an application of the law of talion, or the price of blood, as we have explained in reference to the heir in the case of homicide. Premeditated homicide or wounding, committed by a slave under contract of enfranchisement with respect to any other person than his master, also involves an application of the law of talion, unless the injured party or his representative grants pardon. In this latter case, as also in case of voluntary or involuntary homicide, not only all that the slave possesses, but also all that he subsequently gains, can be seized, up to the value of the slave himself or of the indemnity, whichever is the more advantageous for him. In default of goods to seize the injured party or his representative may ask the court to declare the slave incapable of fulfilling his obligation; and after this the slave returns to ordinary servitude, and is put up to auction, up to the amount of the indemnity. If his value exceeds this amount the contract of enfranchisement remains intact, and even in the contrary hypothesis the master always has the right to ransom him for this amount and thus keep him as his slave under contract of enfranchisement. Simple manumission, or a remission of instalments upon the part of the master, after the slave has committed the crime, cannot be attacked by the injured party; but the master must then pay ransom, because the slave's sale has become impossible. A contract of enfranchisement is annulled by the premeditated homicide of the slave, for in these circumstances he is considered to have died in a state of slavery. Consequently the master may demand an application of the law of talion if the criminal is not of a social position superior to that of his victim; otherwise he may exact payment of the value of the slave killed.

A slave under contract of enfranchisement may of his own accord freely dispose of his property, provided that it is not for nothing, or part of a hazardous speculation, *unless the master has authorised acts of this nature. He may even buy a slave whose enfranchisement would be obligatory for his master; and such a slave becomes in fact

free *ipso facto*, if he falls into the master's possession by a dissolution of the contract in consequence of non-execution. Where, on the contrary, it is a case of the purchase of a slave whose enfranchisement would be obligatory for the slave himself who is under contract, the act is illegal if without the master's authorisation, but not where this has been obtained. Where the validity of the act in question is admitted the slave whose enfranchisement should *ipso facto* take place, becomes the master's slave under contract of enfranchisement. But our school forbids a slave under a contract of enfranchisement to manumit another slave in his turn, either simply or by contract, even though authorised so to do.

Section 4

A contract of enfranchisement into which there has been introduced an illicit condition, equivalent, or term, is illegal, but not absolutely null. Such an enfranchisement has the same consequences as a regular contract of enfranchisement for all that concerns the slave's capacity to gain money on his own account, the obligation to pay an indemnity for a crime, the right to claim dower, even for erroneous cohabitation, complete enfranchisement upon payment of the entire sum stipulated, and the right to keep for himself any gain that may have been made in the mean time. The illegal contract of enfranchisement of which we are here speaking is assimilated to a regular contract of enfranchisement depending upon a condition in respect that the slave does not become free when the master remits his debt ; that the master's death annuls the agreement ; that the master may dispose by will of the slave ; and that the latter does not participate in the portion of the charity tax appropriated to the use of slaves under contract of enfranchisement. And this illegal contract has another peculiarity in that the master may revoke it when he pleases, and that the master does not become the owner of the property acquired by the slave ; these revert in kind to the latter at the moment of complete enfranchisement if they are of any value. The slave, however, should then pay the master his own value upon the day of his liberation. Where master and slave each owe the other something in these respects, a balance is struck between them, and the excess alone can be claimed. [†The striking of the balance extinguishes the smaller sum due, *ipso facto*, and whether the parties are aware of it or not. According to another opinion, however, this can only take place with their consent. According to a third opinion it takes place upon the desire of one of the parties ; while according to a fourth it is not a cause of extinction at all.]

The illegal contract of enfranchisement with which we are concerned

can be revoked by the master. This revocation should take place before witnesses ; for in default of legal proof the slave who denies this revocation has a presumption in his favour, provided he takes an oath. Thus a master cannot refuse an offered payment upon the ground of such revocation. †Lunacy, unconsciousness, or legal incapacity, on the part of the master, annul *ipso facto* this illegal contract of enfranchisement ; but the slave's lunacy does not do so. A master or his heir who denies the contract alleged by his slave, has a presumption in favour of the truth of his statement. The heir should also swear that he is ignorant of the fact. Where the proceedings relate only to the quantity or the nature of the periodic payments, the parties should, in default of legal proof, swear to the truth of what they maintain ; after which the following cases must be distinguished :—

1. ††If the master has not yet taken possession of what he alleges he stipulated, the enfranchisement by contract, not yet being *ipso facto* broken, should be declared to be dissolved by the court where the parties cannot agree.

2. If the master has already taken possession of what he alleges to have been stipulated, while the slave maintains that the master has received a portion of that sum, not as periodic payments, but as a deposit ; the slave obtains immediately his complete freedom ; and the master must return him all he has received. On the other hand, the slave owes the master, as an equivalent, his own value ; but these debts may be balanced against each other, if there is occasion for this.

A master who declares that he effected a contract of enfranchisement while in a state of lunacy or legal incapacity in other respects, has a presumption in his favour if the slave denies it, provided that it is a matter of public notoriety that he was in the condition alleged ; otherwise there is a presumption in favour of the slave who maintains that he was legally enfranchised. The master still enjoys a presumption in his favour, where he alleges that he remitted the first instalment, or a portion of the periodic payments ; while the slave maintains that it was the last or all of the instalments that were remitted.

Where a master leaves two sons and a slave who maintains that the master enfranchised him by contract, the two sons have a presumption in their favour if they both deny it. If both admit it the slave becomes under contract of enfranchisement. †Where, in this latter case, one of the sons manumits his portion later in the ordinary way, this portion does not become free immediately but remains in suspense until the slave has acquitted himself of his obligation towards the other son. Then the patronage falls to the sons, not on their own account, but as their father's heirs. Where in these circumstances it appears that the

slave is unable to complete his engagement, there is a right of redemption and the value of the slave should be paid by the son who has just manumitted him, if he is solvent. If not, only the enfranchised portion of the slave becomes free immediately, without prejudice to the other son's right of ownership over the portion remaining in slavery. [*On the contrary, a simple manumission of his portion by one of the sons does not remain in suspense, but takes effect immediately.] Where, in these circumstances, one of the two sons admits the contract of enfranchisement, his portion becomes enfranchised, while the other portion remains as before. Where, however, the son who admits the contract afterwards, manumits the slave for his portion in the ordinary way, there is still a right of redemption, at least according to our school; and the son who thus manumits should indemnify his brother, if he is solvent.

BOOK 71.—FREEDOM ON ACCOUNT OF MATERNITY

When a master has cohabited with one of his female slaves, and rendered her pregnant, she becomes free upon her master's death, whether the child to which she gives birth is living or dead. But if it is still-born the law insists that it must have attained a development sufficient to be an occasion for *ghorra* in case of abortion. A child born of a slave belonging to another, to whom one is married, is not free but remains the property of that slave's master. Such a slave does not become free on account of maternity where her husband afterwards becomes her master. Where, on the other hand, a child is born of the slave of a third party, with whom one has cohabited through error, the child is free, and is regarded as its father's legitimate son; but the mother does not become free on account of maternity should the man who rendered her pregnant subsequently become her master.

Freedom on account of maternity leaves intact the master's right to cohabit with the slave during his lifetime by reason of his ownership; he may even employ her in his service, or hire out her services to another; she may be seized for the indemnity if she commits a crime; †and the master may even give her in marriage without her consent. Her sale, pledging, or gift are the only things forbidden him. The master also remains the owner of any child born of the slave, either in consequence of marriage with another person, or of the crime of fornication, but the child is always free upon the master's death. On the other hand, children that the woman in question gave birth to before her enfranchisement on account of maternity remain slaves and do not become free upon the master's death; whether they were conceived in marriage or by the crime of fornication. Consequently the master may sell these children as he pleases. Finally, upon the master's death, the consequences of enfranchisement on account of maternity must be defrayed out of the whole estate, and not out of the third of which he can dispose.

Glory to God, the lord of all created things. God grant His grace to our master Muhammad. God grant him His grace and His blessing; to him and his family and his companions. May He grant them all His grace and His blessing. God sufficeth for us. He is the supreme mediator. There is no force nor power but in God Most High.

GLOSSARY

OF ARABIC WORDS AND NAMES

Aakila, male relatives of a criminal or other person, who are liable to pay penalty due for injury, 424.

Aariya, loan, 195.

Aashura, tenth, *i.e.* tenth day of the month of Muhurram, 103.

Aatakaf, religious retirement, 104.

Aatidal, a posture of the body at prayer, 27.

Abu Hanifa, 434. Abu Hanifa ibn Thabit, an eminent Muhammadan scholar, was born A.D. 699 at Kufa, where he lectured on law, and died at Baghdad in 767. He made considerable use of analogy and equity, like other jurists; but more especially of a doctrine of preference for such rules as suit local conditions. Some eighty or ninety million Moslems now belong to his school, being the bulk of the Muhammadan population of the Indian, Ottoman, Russian, and Chinese empires.

Adhhar, literally, clearer; indicates a doctrine preferred by Nawawi, though the contrary opinion is widely accepted, xii., xiv.

Adhiya, sacrifices, 477.

Ahia-el-muat, vivification of the dead, so, occupation of waste land, 226.

Akdariya, a particular case of succession, 253.

Alas, a species of wheat, 84.

Arafa, Mount, 115. A small hill on a plain a few hours to the east of Mecca, where the pilgrims assemble in the afternoon of the 9th of Dulhejja and utter pious ejaculations, and loud shouts of **labbaika.**

Araya, a permissible bartering of certain fruits, 144.

Asahh, literally, surer; indicates a doctrine preferred by Nawawi, though the contrary opinion is maintained by authorities of repute, xii., xiv.

Ashriba, beverages that are forbidden, 451.

Atama, eatables, 480.

Awl, proportional reduction in share of estate, 252.

Ayyam-at-tashrik, the three days after the great festival, *i.e.* the 11th, 12th, and 13th of the pilgrim month, 477.

Azan, the first call to prayer, 21.

Badana, an expiatory sacrifice, 120.

Badia, a wound, when the flesh has been injured, 403.

Baghawi, el, 280. Abu Muhammad of Bagh in Khorasan was a jurist of the school of Shafii, in the eleventh century of our era. He compiled the *Masabih es Sunna* or book of traditions arranged in each chapter according to their worth, *i.e.* sound traditions from the collections of Bokhari and Muslim, others merely good, and others unsound.

Banu Hashim, Hashim was the great-grandfather of the prophet Muhammad, 274.

Banu Muttalib, Abdul Muttalib was the grandfather of the prophet, 274.

Banu Shaiba, 112. The family to whose custody were entrusted the keys of the Kaba. The gate was apparently that now represented by the circular archway to the north-east of the sanctuary in the court of the Musjid-el-haram.

Bent-labun, 80, two-year-old she-camel.

Bent-makhad, 80, yearling she-camel.
Bia, sale or barter, 123.
Bokhari, el. 40, 67. Muhammad ibn Ismail, of Bokhara. He was born in A.D. 810 and died in 870; and was the author of the principal canonical collection of 7275 sound traditions of the teaching and practice of the prophet Muhammad. It was known, like that of Muslim, as the *Sahih*. He was apparently of the school of Shafii.
Bowaiti, 67. A contemporary and friend of Shafii.
Bughat, rebels, 433.

Damia, a wound, where blood has flowed, 403.
Damigha, a wound, where the brain is injured, 403.
Dawa, prosecution, 428, 526.
Debah, slaughtering, 472.
Deman, responsibility, for damage, 455.
Dhihar, injurious comparison, 352.
Dhohr, midday prayer, 19.
Dinar, denarius aureus; a gold coin, of 66 grains, worth about ten shillings, 124.
Diya, price of blood, 412.
Doha, a late morning prayer, 41.
Drahm, drachme; a silver coin, worth about sixpence, 124.

Fatiha, "opening" chapter of the Koran, 26.
Feraid, distribution of estates, succession, 246.

Ghasb, usurpation, 198.
Ghorra, price of blood in case of crime or njury causing abortion, 426.

Hadd el Kazf, defamation, 442. *Literally*,, limit of censure.
Hajj, pilgrimage to Mecca, 107.
Harim, 226, land that may not be occupied, owing to its proximity to other land.
Harisa, a wound where only the skin has been cut or scraped, 403.
Hashima, a wound where a bone has been injured, 403.
Hiba, gifts, 234.
Hikk, or **hikka,** 80, three-year-old camel, or she-camel.

Ibu-labun, 80, two-year-old camel.
Idda, period of retirement of a widow or divorced woman, 364.
Ifaf, an obligation to assist a father or grandfather in certain circumstances, 302.
Ifrad, performing the hajj and then the omra, 118.
Iftirash, a manner of sitting, in prayer, 25.
Ihram, state of a person accomplishing the pilgrimage, 109, 386.
Ijara, contract of hiring, 218.
Ijmaa, general agreement of the Moslem community, 436. It is defined by Professor Goldziher as "the general usage of the community which has been established by agreement in the larger circles of believers independent of the written traditional or inferred law."
Ikama, the second call to prayer, 21.
Ikrar, admission, 188.
Ila, oath of continency, 348.
Imam, leader, at public prayer, 44. Of a school of law, *E.g.* esh-Shafii, 234, 366. Also means the Sovereign, the Caliph.
Irak, 437, 495. Babylonia and Persia. The expression "jurists of Irak" is practically synonymous with that of the school of Hanifa. Its most distinguished other representatives were his teacher Hammad b. Abi Suleiman, his two pupils Abu Yusuf and Muhammad, and el Khassaf, author of *Adab-el-Kadi*.
Isha, the prayer of the night, 19.
Istibra, period of waiting of a slave, 375.

Itk, simple manumission, 537.
Izar, a garment worn at the pilgrimage, 111.

Jaala, job-work, 244.
Jama masjid, 104. *Lit.* "assembly place of prostration," *i.e.* mosque for public prayer on Fridays.
Jamrat-al-akaba, heap of stones at Mina, 116.
Jazaa, 81, four-year-old she-camel.
Jaziya, poll-tax, 465.
Jelus, a sitting posture, at prayer, 28.
Jenaza, funeral ceremonies, 70.
Jerah, wounds; and so, crimes against the person, 395.
Jesus Christ, 348. Like the Christians of the first century, the early Moslems would seem to have believed in the imminence of the last judgment. The glorious appearing of the Nabi Isa was, however, to be preceded by the seven years' reign of the Mahdi, and this is presumably the meaning of the passage referred to.
Jobba, a cloak, 384.

Kada, administration of justice, 500.
Kafara, expiation, with regard to injurious comparison, 355.
Kafiz, a measure, 223.
Kanut, a formula of prayer, 27.
Karna, a defect in a woman giving rise to right of option upon marriage, 299.
Kataba, writing; contract of enfranchisement, 549.
Kati et trik, brigands, 448.
Kaud, a sitting posture, at prayer, 29.
Kesm, partition, thus sharing of husband's favours, 316.
Kesm el fi wa el ghanima, distribution of the profits of war and of booty, 273.
Kesm es Sadakat, distribution of the proceeds of the charity tax, 277.
Keta-es-sarika, body-cutting; *i.e.* crimes punishable with amputation, 440.
Khalifa, pregnant camel, 413.
Khula, divorce, 320.
Kibla, direction of prayer, 23.
Kiraa, recitation, of the Koran, at prayer, 26.
Kirad, a joint-stock company, 210.
Kiran, joint accomplishment of hajj and omra, 111.
Kisas, law of talion, 405.
Kiyam, standing up, in prayer, 25.
Kolla, 1, 2, a jar or pitcher, a measure.
Kuba, a forbidden kind of drum, 515.

Lekit, foundlings, 240.
Lian, imprecation, 358.
Lokta, things found, 236.

Maghrib, evening prayer, 19.
Mahr, dower, equivalent of sadak, 305.
Majlis, *lit.* sitting; right to cancel a contract before separation of the parties, 129.
Makam Ibrahim, a small building to the eastward of the Kaba, in the Masjid-et haram, at Mecca, where the imam of the School of Shafii takes his station, and leads the prayers of the congregation, 361.
Malik, 337, 338, 439. Malik ibn Anas was born in A.D. 718 and died in 795. He was a judge and jurist, and lived and died at Medina, where he lectured on law. In his teaching he emphasized the principles of public advantage and general agreement. His book the *Muwatta* is one of the earliest collections of traditions, and contains about 1700. To his school belong nearly all the Muhammadans of Africa, with the single important exception of those of Lower Egypt, a total of some thirty millions.

Mamuma, a wound, where the membrane of the brain has been injured, 403.
Marwa, a spot in Mecca, a little to the north-west of the Masjid-el-haram, 115.
Mashhur, *literally*, well-known ; indicates a doctrine preferred by Nawawi, and that the contrary opinion is not widely accepted, xii., xiv.
Masjid-el-haram, the great court and colonnades round the Kaba at Mecca, 119.
Mihrab, a niche or other sign in a mosque wall denoting the kibla or direction of prayer towards Mecca, 59.
Mina, a valley to the east of Mecca, where the pilgrims perform their sacrifices on the tenth of Dulhejja, 116.
Minhaj, a guide or manual, (title-page). *Minhaj-et-Talibin* may therefore mean the students' guide.
Mithkal, a weight, equal to one drahm and a half, 85.
Mobadara, a kind of shooting competition, 484.
Modaraba, a joint-stock company, 210.
Modd, a measure of capacity of about four gallons, 383.
Mohakala, a forbidden bartering of corn in the ear for husked corn, 143.
Moharrar, *literally*, the freed ; title of a law book upon which the *Minhaj-et-Talibin* is based, xi., xii.
Mohatta, a kind of shooting competition, 484.
Mohsan, a respectable man, 359, 439, 442.
Mokhabara, a kind of lease, 215.
Mokhaddara, a young woman not in the habit of going out, 512.
Mokharaja, hire of a slave for his master's profit, 394.
Mosaka, a farming lease, 215.
Mosharaka, a particular case of succession, 250.
Mosinna, a two-year-old calf, 81.
Motah, a pecuniary indemnity in certain cases of repudiation, 313.
Mozabana, a forbidden bartering of dates on the tree for dry dates, 143.
Mozakki, an *employé* for informing a court as to the character of witnesses, 504, 507.
Mozaraa, a kind of lease, 215.
Mozdalifa, a village between Mount Arafa and Mina, where the pilgrims to Mecca pass the night between the ninth and tenth of Dulhejja, 116.
Muballigh, 47, a repeater of the imam's words and movements at public prayer.
Mudiha, a wound, where the bone has been uncovered, 403.
Muezzin, the man who utters the call to prayer, 22.
Munadala, shooting competitions, 483.
Munakkila, a wound, where a bone is broken so that the fragments are separated, 403.
Musabaka, racing, 483.
Muslim, 29, 67, 280. Muslim ibn el Hajjaj, jurist of Nishapur, was born in A.D. 815 and died in 875. He compiled a canonical collection of sound traditions, known, like that of his friend el-Bokhari, by the name of *Sahih*, and of yet greater accuracy. His introduction treats fully of the science of tradition in general.
Mutalahima, a wound, where the flesh has been penetrated, 403.

Nafakah, maintenance, 383.
Nawawi, (title-page). Abu Zakariya ibn Sharaf en Nawawi was born in A.D. 1233, at the town of Nawa, between Galilee and the Hauran. He became professor of tradition at the Ashrafiya school in Damascus, in 1267, and was the author of a number of works, including the present book, the *Minhaj-et-Talibin*. He died in 1278.
Nazr, vows, 495.
Neshuz, disobedience of wives, 318.
Nikah, marriage, 281.
Nisab, taxable minimum, 83.
Niya, intention, 24.

Omra, visit to Mecca, 107.

Radaa, relationship by fosterage, 378.

Rafii, er, Abu Kasim er Rafii, author of the Moharrar, upon which the *Minhaj-et-Talibin* is based. He lived about half a century before Nawawi, xi., xii.

Rahn, pledge or security, 152.

Raka, the recital of a prayer; thus "two rakas" means a prayer said twice, 216.

Ramal, a way of making the circuit of the Kaba, 113.

Ratka, a defect in a woman giving rise to a right of option upon marriage, 299.

Rda, a garment worn at the pilgrimage, 111.

Rejaa, return to conjugal union, 345.

Retel, about 1 lb. av. dry measure; about 17¼ lbs. av. weight, 83, 84.

Ridda, apostasy, 436.

Rokna, bending of the body at prayer, 27.

Royani, er, 473. A medieval writer, author of the *Bahr-el-Madhab*.

Saa, a measure, equal to about eight handfuls of corn, 124.

Sabæans, 294. These Sabæan sects should more properly be called Sabians, and are not to be confused with the ancient people of Yemen. They were a semi-Christian sect of Babylonia, also known as Elkesaites, and were regarded by the early Moslems as possessing a written scripture, and so entitled to toleration. A little later the surviving pagans of Harran also came to be regarded as Sabæans.

Sadak, dower, 305.

Safa, a small mound in Mecca to the south-east of the Masjid-el-haram, and corresponding gate, 114.

Sahih, *literally* authentic; indicates a doctrine preferred by Nawawi, and that the contrary opinion is not maintained by authorities of repute, xii., xiv.

Sakhra, the "rock," possibly part of the great altar of sacrifice in front of the Jewish temple, now within the building known as the Kubbet-es-Sakhra, in the Haram-esh-Sherif at Jerusalem, 361.

Sala, prayer, 19.

Salam, salutation; at prayer, 30.

Salam, contract of; a sale by advance, 147.

Salat el jemaa, public prayer, 43.

Sawad, 462, a district in Irak.

Sawik, a kind of infusion or decoction, 357.

Sayd, hunting, 472.

Sejud, prostration at prayer, 28.

Shafii, xii. Muhammad ibn Idris esh-Shafii was born in A.D. 767 at Gaza or Ascalon. After studying law under Malik at Medina he went to Baghdad and was taught there by jurists of the school of Hanifa. He himself lectured at Baghdad between 811 and 814, but afterwards went to Egypt, where he lived at Fostat or Old Cairo, and taught with great authority until 820, when he died. Professor Goldziher says that "he systematized the method for the deduction of laws from the sources of law and laid down the exact limits within which each might be used. In his *Risala* he created the science of the use which could be made of speculative deduction without lessening the undisputed prerogatives of scripture and tradition; he regulated their application and limited their arbitrary use by strict rules." The adherents of the school of Shafii number some sixty or seventy million persons, of whom about a half are in the Netherlands Indies, and the rest in Egypt and Syria, the Hadramaut, Southern India and Malaya.

Shah, 80, a young lamb or kid.

Shahada, testimony, 515.

Shashi, esh, 473. A medieval writer, author of the *Hilyat-el-Ulema*.

Shefaa, pre-emption, 205.

Sherka, partnership, 179.

Sherkat-al-abdan (with Sh^{t}-al-mofawada and sh^{t}-al-wujuh). Forbidden kinds of partnership, 179.

Sherkat-al-inan, the only permissible kind of partnership, 179.
Siaf, excusable homicide, 453.
Siam, fasting, 95.
Siar, military expeditions, 457.
Simhak, a wound, if the membrane enters the flesh, and the bone is injured, 403.
Sobh, the morning prayer, 19.
Soffa, bench, porch or vestibule of a Moslem house in Egypt, 445.
Solt, a species of grain, 84.
Sonna, 336, 361, 542. The word Sonna or Sunna is used in more senses than one. In its commoner signification it means the way or usage of the prophet Muhammad as handed down by oral tradition. This Sonna is an integral portion of the law and of the same binding force as a precept of the Koran. But in the *Minhaj-et-Talibin* the word generally signifies later practices which, though observed by the majority of the faithful, have not acquired the binding force of the *ijmaa*, but are merely regarded by most persons as commendable.

Tabia, a yearling calf, 81.
Tadbir, testamentary manumission, 545.
Taflis, bankruptcy, 161.
Tahajud, an early morning prayer, 41.
Tahallol, normal condition, in contrast to a state of ihram, 117.
Tahara, purity, 1.
Takbir, 25, the exclamation "Allah akbar," "God is most great."
Talak, repudiation, 327.
Talibin, students, (title-page).
Tamatto, performing the omra and then the hajj, 119.
Tashahud, the confession of faith, 29.
Tasua, ninth, *i.e.* ninth day of the month of Muharram, 103.
Tawarok, a sitting posture, at prayer, 29.
Tertib, regular ordering; at prayer, 30.
Thaniya, 81, five-year-old she-camel.

Umhat-el-awlad, *literally,* motherhood of children; and so, freedom on account of maternity, 558.

Wadiya, deposits, 269.
Wakaf, 230, a religious or charitable foundation.
Wakala, agency, *i.e.* relations between principal and agent, 181.
Wars, 83, a plant, *memecylon tinctorium.*
Wasaya, wills, 259.
Wask, 83, a measure; *lit.* a cargo.
Witr, a prayer consisting of an odd number of rakas, 40.

Yeman, oaths, 486.
Yum-en-nahr, day of immolation of victims at Mina on the tenth of the pilgrim month, 477.

Zakat, alms contribution or charity tax, 80.
Zam-zam, a spring to the east of the Kaba, in court of the Masjid-el-Haram at Mecca, the water of which is drunk by the pilgrims, 118.
Zina, fornication, 439.

SUBJECT INDEX

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Reliance of the Traveller

Revised Edition

The Classic Manual of Islamic Sacred Law 'Umdat al-Salik
by Ahmad ibn Naqib al-Misri (d. 769/1368) in Arabic with
Facing English Text, Commentary, and Appendices
Edited and Translated by Nuh Ha Mim Keller

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Beltsville, Maryland U.S.A

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IN THE NAME OF ALLAH, MOST MERCIFUL AND COMPASSIONATE

INTRODUCTION

Praise to Allah Most High, who inspired His slave Muhammad the Koran and Wisdom, as a mercy unto the worlds. Allah bless him and give him peace.

The four Sunni schools of Islamic law, Hanafi, Maliki, Shafi'i, and Hanbali, are identical in approximately 75 percent of their legal conclusions, while the remaining questions, variances within a single family of explainers of the Holy Koran and prophetic sunna, are traceable to methodological differences in understanding or authentication of the primary textual evidence, differing viewpoints sometimes reflected in even a single school. The present volume, *'Umdat al-salik* [The reliance of the traveller], represents one of the finest and most reliable short works in Shafi'i jurisprudence, a school with perhaps fewer scholarly differences on rulings than others because its main resource is the recension of Imam Nawawi, the great thirteenth-century Shafi'i hadith scholar and jurisprudent who upgraded the work of previous generations in terms of the authenticity and application of hadith evidence. The author of *'Umdat al-salik*, Ibn Naqib, closely follows the order and conclusions of Nawawi's encyclopedic *al-Majmu': sharh al-Muhadhdhab* [The compendium: an exegesis of "The rarefaction"] with its addendum, *al-Takmila* [The completion], by Ibn Naqib's own sheikh, Taqi al-Din Subki. The present volume is virtually an index of the conclusions of the *Majmu'*, and readers interested in the evidence from Koran and hadith for the rulings of the present volume can find them there, or, Allah willing, in a forthcoming sister-work to be called *The Guidance of the Traveller*.

In an age when some Muslims are calling for an end to the four schools of jurisprudence in order to make way for a single school exclusively taken, it is claimed, from the texts of the Koran and hadith, it might be wondered: why offer Muslims a book from a particular school at all? The answer, in part, is that each school does not merely comprise the work of a single Imam, but rather represents a large collectivity of scholars whose research in Sacred Law and its ancillary disciplines has been characterized by considerable division of labor and specialization over a very long period of time. Among the specialists in the field of hadith, for example, who were Shafi'is are such scholars as Bukhari, Muslim, Tirmidhi, Nasa'i, Ibn Majah, Abu Dawud, Ibn Kathir, Dhahabi, and Nawawi; while the school has also had many Koranic exegetes, scholars of the sciences of Arabic, and legal specialists, most of whom were actively involved in contributing to the school's jurisprudence. The result of this division of labor has been a body of legal

texts that are arguably superior in evidence, detail, range, and in sheer usefulness to virtually any recent attempt to present Islam as a unified system of human life. For most nontraditional works seen up to the present have been one-man efforts, while the classic texts have been checked and refined by a large number of scholars, and the difference is manifest. At the same time, it is fairly safe to say that there is no single work from any of the schools that has everything, and an impartial student of jurisprudence must surely feel that the research of the schools should not only be learned and transmitted, but also sorted out and recast into a form accessible and suited to Muslim needs today.

Regarding this need for relevance, it will be noticed that the basic text *'Umdat al-salik* is by no means the only thing in the present work. Three introductory sections in the form of a "user's guide to Sacred Law" precede the basic text, which is likewise followed by eight major appendices on subjects ranging from personal ethics and character (akhlaq) to Islamic spirituality and tenets of faith, while a final biographical section tells readers who the figures mentioned throughout the book's legal texts are. Though these separate parts cover a considerable range of topics within the Islamic ethic, the aim in gathering them has been to achieve a unitary reference work that is eclectic in neither subject matter nor scholarly sources.

As for subject matter, the emphasis of the book is on the path we now travel, to paradise or hell, and it is this that unites the work and determines the relative importance of the questions treated: why, for example, a legal discussion from Nawawi's *Kitab al-adhkar* [The book of the remembrances of Allah] on unlawful slander (ghiba) must be given equal weight to a section on the sunnas of ablution (wudu) from *'Umdat al-salik,* and so on.

As for sources, the authors translated are, with few exceptions, well-known scholars of the Shafi'i school of jurisprudence and Ash'ari school of tenets of faith, as appears in their biographies. The many who were Sufis were of the strictest observance of the Sacred Law. While such affiliations, and indeed much of what can be termed traditional Sunni Islam, have not been spared the criticism of certain post-caliphal Muslim writers and theorists, the authors of the present volume and their positions do represent the orthodox Muslim intellectual and spiritual heritage that has been the strength of the Community for over a thousand years, and the means through which Allah has preserved His religion, in its purest and fullest sense, to the present day.

The Interpretive Method

The style of translating the basic text is an explanative one with interlinear commentary. The reason for commentary, briefly, is that this book, like others in Islamic law, is less the achievement of a particular author than the shared effort of a whole school of research and interpretation in explaining rules of divine origin. The cooperative nature of this effort may be seen in the *multilayered* character of its texts, whose primary authors often merely state the ruling of an act, lawful or unlawful, leaving matters of definition, conditions, and scriptural evidence for the commentator to supply, who in turn leaves important details for both writers of marginal notes and for living sheikhs to definitively interpret when teaching the work to their students. The sheikhs form a second key resource of textual commentary, a spoken one parallel to the written, and in previous centuries of

traditional Islamic learning it was well known that no student could dispense with it. Living teachers were and are needed to explain terminological difficulties, eliminate ambiguities, and correct copyists' mistakes. The present translator was no exception to the need for instructors, but went to sheikhs to learn, studying with them during the course of preparing the translation, asking, and listening to their explanations of matters of Sacred Law, many of which are recorded below. The entire book's Arabic texts have been reviewed separately with each of the scholars, Sheikh 'Abd al-Wakil Durubi and Sheikh Nuh 'Ali Salman. Both ably represent the tradition, links in an unbroken succession of masters leading back to the founder of the school himself. Sheikh 'Abd al-Wakil acquired his Shafi'i jurisprudence in the course of eighteen years of instruction with his own teacher, Ibrahim al-Ghazzi, before becoming imam of the Darwishiyya in Damascus, while Sheikh Nuh spent a similar number of years reading and studying the law with various sheikhs before his appointment as mufti in Jordan. Few Western vocations require as much specialized learning. If it be objected that their comments are not part of the original text, or even intrusive, the reply is that such teaching is recommended by long Islamic tradition with good reason, as may be seen by readers who compare the clarity, for example, of the present work's sections on estate division (L4 to L10) with any English translation of comparable sections from other works. Moreover, care has been taken throughout the volume to assign each statement to the person who said it. Finally, close contact with these scholars as Muslims leaves one with a firm impression of godfearingness, the first condition of real knowledge and its most important fruit.

Some Points About the Book

Ahmad ibn Naqib al-Misri (d. 769/1368) is the author of the basic text, *'Umdat al-salik wa 'uddat al-nasik* [The reliance of the traveller and tools of the worshipper] (y89), which is vowelled in the Arabic. Not a single omission has been made from it, though rulings about matters now rare or nonexistent have been left untranslated unless interesting for some other reason. Parts untranslated are enclosed in brackets.

'Umar Barakat (d. after 1307/1890) wrote the text's commentary, *Fayd al-Ilah al-Malik fi hall alfaz 'Umdat al-salik wa 'uddat al-nasik* [The outpouring of the Sovereign Divinity: an interpretation of the words of "The reliance of the traveller and tools of the worshipper"] (y27), from which excerpts have been selected and introduced into the basic text by the translator. These are parenthesized in the Arabic and unvowelled, and distinguished in the English by parentheses and the capital letter *O*. Similarly, the comments of Sheikh Nuh 'Ali Salman are parenthesized in both languages, in the Arabic unvowelled and introduced by the letter ha' (ح), and in the English by the letter *N*. The comments of Sheikh 'Abd al Wakil Durubi are presented in the same way, but marked in the English with the capital letter *A*, and in the Arabic, where given, by the letter 'ayn (ع). Notes from the sheikhs that are not given in the Arabic text are from discussions (often partly in colloquial Arabic) recorded at the time in English alone, whose precise classical Arabic wording the translator did not try to reconstruct, though they have been well understood, and the English, Allah willing, adequately conveys their meaning. The translator's own remarks are parenthesized, and introduced by a lowercase *n* in the English and by the letter ta' (ت) if given in Arabic.

Other supplementary texts begin with the author's name at the first of the quote, and finish with the source's title, volume, and page number at the end of it, with the addition in the English of the work's reference number from the present volume's bibliographical section, book y. All works cited about Islamic faith or practice are by Muslim authors. Biographical information on those quoted or mentioned throughout the present work is given in book x, where they are listed alphabetically, first name first.

The rulings of the text have been *numbered* both to increase the work's accessibility to users of the tables of contents and to facilitate cross-reference, since the definition and range of many important terms are governed by conditions and stipulations classical authors typically mention but once, their students mastering such definitional points by prodigious memories, for which a system of cross-reference is, in our own times, perhaps the only effective substitute.

Within the rulings themselves, columns of necessary *conditions* or *integrals*, meaning that all of them must be present for the ruling to hold true, are itemized by letters: (a), (b), (c), etc. An example is the conditions for the validity of the prayer, which must all be met for the prayer to be valid. Columns of *examples* or *instances* of a ruling's applicability are itemized by numbers: (1), (2), (3), etc., indicating that not all need exist but any one of them suffices to apply the ruling, such as the things which invalidate fasting, the existence of any of which invalidates it.

Editing the Texts

The editorial preferences of *The Chicago Manual of Style* have generally been followed in preparing the texts of the present volume, though by the nature of their special challenges, the manner of citing the texts differs from the manual's recommendations for handling quotations in the following ways:

(1) The old Arabic texts were free of need for any punctuation because of the language's syntactic precision, and were originally written without it, while it was introduced in a somewhat haphazard manner in comparatively recent times, attested to by the books printed within the last hundred years in the Arab world, which show wide discrepancies in both the extent to which punctuation is used and in the meaning of such devices as quotation marks, commas, semicolons, parentheses, brackets, and the rest. In editing the Arabic of the present volume, the translator has standardized its punctuation according to the practice of most Arab publishers in the 1980s, with the exception of the use of parentheses and brackets, which Arab writers often use for emphasis, while the translator has employed them as in English, for the purposes of interlinear commentary and indicating untranslated passages, as described above.

(2) The Arabic chapter and section titles extant in the original texts have been shortened to the name of the topic alone, for example, from *Bab al-Hiba* ("Chapter of Gift Giving") to *al-Hiba* ("Gift Giving"), and so forth.

Passages introducing a new topic that is not separately distinguished in the original Arabic, or merely distinguished by the word *fasl* ("section") have been separated into sections and given English titles, such as section n6, "Doubts About the Fact of Having Divorced," and subsection titles have been added

where expedient, such as before j17.9, "Hunting." The reason for this retitling and regrouping was to improve the work's accessibility to English-speaking users, to whom an effective reference tool is worth more than a well-kept antique. The Arabic titles of such sections were supplied by Sheikh Nuh after their English titles had been written, according to the expressions he felt best summarized the sections' contents, not by way of translating the English titles, so there is not always a strict correspondence between the titles of the two languages. "Hunting," for example, became "The Rulings of Hunting" (Ahkam al-Sayd) in Arabic, and so forth.

As for major regroupings, books *d* through *o* of the present volume correspond to the books of *'Umdat al-salik* with only three exceptions: book d, "The Author's Introduction"; the sections of book L on bequests (L1–3), which have been moved there from book k ("Trade"); and "The Book of Dowry" (Kitab al-Sadaq), originally from m8 to n12, from which book n ("Divorce") has been separated, since it seemed fitter to include dowry, wife support, and so forth, under the rubric of marriage, and place matters connected with divorce in a separate book.

(3) As previously mentioned, parts of the Arabic left untranslated into English are distinguished in the Arabic alone by square brackets. For the sake of fluency and readability, such untranslated portions are not marked by ellipsis points (...) in the English, as the existence of the contents of the ellipsis in the parallel column of Arabic was felt to suffice in their stead. The occasional use of ellipsis points in the English has been confined to indicating editorial omissions in the Arabic, and where such an ellipse is not indicated in the English, the ellipsis points appear in brackets in the facing column of Arabic alone.

(4) In the course of editing the commentary and some of the supplementary material of the present volume, though not the basic text, the sequence of some passages has occasionally been altered for the sake of coherence of argumentation, the need for which will not be lost on anyone familiar with medieval Arabic texts, whose authors sometimes seem to have not reedited their work with a view towards logical sequencing or eliminating digressions. Passages in which this has been done have been reviewed and checked by both Sheikh 'Abd al-Wakil and Sheikh Nuh, like the other texts of the present work, and are indicated at the end of their Arabic texts by the words *bi taqdim wa ta'khir* ("put ahead and behind") as is done by Muslim scholars when a passage is quoted in this way.

Other Details

As an aid to non-Arabic-speakers, transliteration section w1 has been added to help people pronounce the supplications (du'a') and invocations (dhikr) mentioned in the course of the book, with the observation that it is best to also tape-record a native speaker of Arabic reading the texts so as to master them by imitating the tape, and to facilitate this there is an index of the relevant Arabic texts at w2.

The untranslatability of the Holy Koran is fully acknowledged by the translator, whose only effort where it is quoted in the present volume has been to explain the significance of its verses, giving a *map* as it were to the wide lands of its

magnificent Arabic. The English by no means purports to be or to imitate the word of Allah Most High.

It is related that Imam Shafi'i (Allah have mercy on him) rechecked his masterpiece on legal principles, *al-Risala*, forty times before he finally said, "Allah has refused to give divine protection from error ('isma) to anyone besides His prophets." The matter is as he said, and one can only strive one's utmost for accuracy and ask Allah to forgive one's mistakes and oversights. If readers benefit from these pages, perhaps they will pray for those who had a hand in them and thank Allah Most High, who attributes all that exists to Himself by saying,

"This is Allah's creation, so show me what those besides Him have created." (Koran 31:11).

﴿هَـٰذَا خَلْقُ اللَّهِ فَأَرُونِي مَاذَا خَلَقَ الَّذِينَ مِنْ دُونِهِ﴾ [لقمان: ١١].

May Allah Most High bless His beloved, Muhammad, and give him peace, and his folk and Companions one and all.

*

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DOCUMENTS

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[WARRANT OF SHEIKH 'ABD AL-WAKIL DURUBI]

IN THE NAME OF ALLAH, MOST MERCIFUL AND COMPASSIONATE

Praise be to Allah, Lord of the Worlds. Allah bless our liegelord Muhammad, his folk, and his Companions and give them peace. The writer of these words, 'Abd al-Wakil Durubi, says: Brother Nuh Ha Mim Keller has heard from me all the chapters of this book, whose basic text is *'Umdat al-salik wa 'uddat al-nasik*, together with the additions he has made to the text from the commentary entitled *Fayd al-Ilah al-Malik*, as well as other chapters on principles of law and faith (usul) and particular rulings (furu') that he has placed before and after the main work; he understands the texts of this volume and is qualified to expound it and translate it to his native English. This took place in sessions, the first of which was in the month of Rajab, A.H. 1405, and the last of which was in the month of Sha'ban, A.H. 1408. Written by the slave in need of Allah Most High,

Sha'ban, A.H. 1408 [April, 1988]

'Abd al-Wakil Durubi [stamped]
Imam of the Mosque of Darwish Pasha
Damascus, Syria

Witnessed by the needy of Allah Most High, Yasin 'Arafa.

I attest to what the teacher and sheikh Yasin 'Arafa has witnessed [signed] Muhyiddin Mahmalji.

I attest to what the teacher and sheikh 'Abd al-Wakil Durubi (Allah Most High protect him) has written. I am the needy slave, 'Abd al-Rahman Shaghouri [signed].

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بسم الله الرحمن الرحيم

الحمد لله رب العالمين وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم يقول راقم هذه الاحرف عبد الوكيل الدروبي قد سمع مني الأخ نوح هم كلرجميع أبواب هذا الكتاب الذي اصله عمدة السالك وعدة الناسك مع ما اضافه هو الى المتن من الشرح المسمّى بفيض الآله المالك ومع أبواب أخرى في الاصول والفروع اثبتها قبل المتن وبعده وأنه يفهم نصوص هذا المصنف وأنه أهل لشرحه ونقله الى لغته الانكليزية وذلك في مجالس اولها في شهر رجب من سنة ١٤٠٥هـ وآخرها في شهر شعبان من سنة ١٤٠٨هـ كتبه العبد الفقير الى الله تعالى

عبد الوكيل الدروبي
إمام جامع درويش باشا بدمشق الشام

شهر شعبان ١٤٠٨

عبد الوكيل الدروبي

شهد بذلك
الفقير الى الله تعالى
ياسين عرفه

شهد بما شهد به
الاستاذ الشيخ ياسين عرفه

اشهد على ما رقمه
الاستاذ الشيخ عبد الوكيل
الدروبي حفظه الله تعالى

انا العبد الفقير عبد الرحمن
الشاغوري

السيد الحلبي

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[WARRANT OF SHEIKH NUH 'ALI SALMAN]

IN THE NAME OF ALLAH, MOST MERCIFUL AND COMPASSIONATE

Praise be to Allah, Lord of the Worlds. May Allah bless our liegelord Muhammad and give him peace, and his folk and Companions one and all.

To commence: I have read all the chapters of this book, whose basic text is *'Umdat al-salik wa 'uddat al-nasik*, made notes on some matters of it, and reviewed it with brother Nuh Ha Mim Keller in numerous sessions, the first of which was in the month of Safar, A.H. 1405, and the last of which was in the month of Jumada II, A.H. 1409; during which I found the above-mentioned brother knowledgeable in what it contains and qualified to expound it and translate it into his native English, and I observed his accuracy and integrity in quoting the texts he has added before and after the main work, of principles of law and faith (usul) and particular rulings (furu'). He has interspersed the texts of the above-mentioned work with passages from its commentary entitled *Fayd al-Ilah al-Malik*, and he was successful in this, choosing passages needed to clarify the text and distinguishing the latter from the commentary with symbols. I ask Allah to give him success, reward him the best reward for it, and to benefit him and benefit others through him.

May Allah bless our liegelord Muhammad and give him peace, and his folk and Companions. Composed in Jumada II, A.H. 1409 [February, 1989] and written by:

Nuh 'Ali Salman [signed]
Mufti of the Jordanian Armed Forces

Witnessed by Yunus Hamdan [signed].

Witnessed by 'Adil Yusuf Rayhan [signed].

Witnessed by Kamal 'Abd al-Majid Muhammad [signed].

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بسم الله الرحمن الرحيم

الحمد لله رب العالمين ، وصلى الله وسلم على سيدنا محمد وعلى آله وصحبه أجمعين .

أما بعد : فقد قرأت جميع أبواب هذا الكتاب الذى أصله كتاب «عمدة السالك وعدة الناسك» وعلقت على بعض مسائله ، وراجعته مع الأخ نوح حم كلر في مجالس متعددة ، اولها في شهر صفر ١٤٠٥هـ وآخرها في شهر جمادى الآخرة ١٤٠٩هـ ، ومن خلال ذلك وجدت الأخ المذكور متفهماً لما فيه وأهلاً لشرحه ونقله الى لغته الانكليزية ، ولاحظت دقته وأمانته في نقل النصوص التى أثبتها قبل المتن وبعده من أصول وفروع ، وقد مزج نصوص الكتاب المذكور بنصوص من شرح للكتاب اسمه «فيض الاله المالك» وكان موفقاً في ذلك لأنه اختار نصوصاً لابد منها لتوضيح الأصل ، وميز بين عبارات الأصل والشرح باشارات ، وأسأل الله أن يوفقه ويجزيه على ذلك خير الجزاء ، وان ينفعه وينفع به .

وصلى الله وسلم على سيدنا محمد وآله وصحبه .

حرر في شهر جمادى الآخرة ١٤٠٩

وكتبه : نوح علي سلمان

مفتي القوات المسلحة الأردنية

شهد به

يونس حمدان

شهد به

كمال عبد المجيد محمد

شهد به

عادل يوسف ريحان

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[REPORT OF THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT]

IN THE NAME OF ALLAH, MOST MERCIFUL AND COMPASSIONATE

1 Jumada II 1411/18 December 1990

Report on the English translation of '*Umdat al-salik* by Ahmad ibn Naqib al-Misri al-Shafi'i undertaken by the scholar Nuh Ha Mim Keller:

(1) There is no doubt that this translation is a valuable and important work, whether as a textbook for teaching Islamic jurisprudence to English-speakers, or as a legal reference for use by scholars, educated laymen, and students in this language.

(2) As for the correctness of the translation, its accuracy, and its fidelity to the meanings and objects, we had our colleague in the Research Department of the International Institute of Islamic Thought, the scholar Yusuf Talal DeLorenzo, member of the Fiqh Council of North America and former chief of the Translation Bureau at the International Islamic University, Islamabad, review its texts and check it against the Arabic original. He found that the translation presents the legal questions in a faithful and precise idiom that clearly delivers the complete meaning in a sound English style. The translation is far from literalism, but does not exceed the author's intent, thereby demonstrating the translator's knowledge of Sacred Law and ability in jurisprudence as well as his complete command of both the Arabic and English languages.

(3) In view of the utility of this eminent work of Islamic jurisprudence and its rank among well known standard Shafi'i legal texts, its translation into English is regarded as a useful, auspicious step, as is the translator's work, which, in clarifying fine shades of meaning and abstruse legal questions, succeeds in serving the book, making its objects accessible, and rendering it of general benefit to both followers of the Shafi'i school and others of the Muslim community. The book will be of great use in Southeast Asia in particular, and in America, Britain, and Canada.

(4) From a purely academic point of view, this translation is superior to anything produced by orientalists in the way of translations of major Islamic works, in that while faithfully maintaining the required scholarly level, its aim is to imbue the consciousness of the non-Arabic-speaking Muslim with a sound understanding of Sacred Law, and the success of the translator lies in the notes, commentaries, appendices, and indexes he has added that help give the Muslim access to what will benefit him in his religion and this-worldly concerns and earn him the pleasure of Allah Most High. And this is the great triumph.

Dr. Taha Jabir al-'Alwani [signed]
President of the International Institute of Islamic Thought
Member of Islamic Fiqh Academy at Jedda
President of the Fiqh Council of North America

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١ جمادى الآخرة ١٤١١هـ الموافق ١٨ ديسمبر ١٩٩٠م

تقرير عن : الترجمة الانجليزية لعمدة السالك

لأحمد بن النقيب المصري الشافعي التي قام بها الأستاذ نوح حاميم كيلر

أولا : لاشك أن هذه الترجمة عمل مهم ومفيد إما ككتاب دراسي يستخدم في تدريس الفقه للناطقين بالانجليزية أو كمرجع فقهي يعتمده الباحث والمثقف والطالب في هذه اللغة .

ثانيا : أما بالنسبة لصحة الترجمة ودقتها ووفائها بالمعاني والمطالب فقد كلفنا زميلنا في قسم البحوث بالمعهد العالمي للفكر الإسلامي الأستاذ يوسف طلال اللوريتزي ، عضو المجلس الفقهي لشمال أمريكا ورئيس قسم الترجمة بالجامعة الإسلامية العالمية بإسلام آباد سابقا ، بمراجعة نصوصها ومقابلتها بالأصل العربي ، فوجد الترجمة تقدم المسائل الفقهية في عبارة دقيقة وأمينة تؤدي المعنى الكامل بوضوح في أسلوب انجليزي سليم . فالترجمة بعيدة عن الحرفية ومع ذلك لا تتجاوز حدود ما أراد المؤلف رحمه الله . ومن هنا تدل الترجمة على تفقه المترجم وملكته الفقهية بالإضافة إلى تمكنه التام من اللغتين العربية والانجليزية .

ثالثا : ونظرا إلى فائدة هذا الكتاب الفقهي الجليل وإلى مكانته بين المتون الفقهية الشافعية المعروفة فإن ترجمته إلى اللغة الانجليزية تعتبر خطوة مباركة نافعة ، كما أن عمل المترجم في توضيح المعاني الدقيقة والمسائل العويصة عمل مجد يهدف خدمة الكتاب وتسهيل مطالبه وتعميم فائدته لاتباع الفقه الشافعي ولغيرهم من أبناء الأمة . وسوف يكون الكتاب عظيم الفائدة في جنوب شرق آسيا بصفة خاصة وكل من أمريكا وبريطانيا وكندا .

رابعا : من الناحية الأكاديمية البحتة فإن هذه الترجمة تفوق ، كل ما قدمه المستشرقون من ترجمات لأمهات كتب التراث الإسلامي ، وذلك لأن هذه الترجمة - مع وفائها بالمستوى العلمي المطلوب - فإنها تهدف إلى توعية المسلم غير الناطق بالعربية توعية فقهية سليمة ، ونجاح المترجم فإن ذلك فيما أضافه من التعليقات والهوامش والملاحق والفهارس التي تساعد المسلم في الحصول على ما ينفعه في دينه ودنياه ، ويكسب له رضا الله تعالى . وهذا هو الفوز الكبير .

أ . د . طه جابر العلواني

رئيس المعهد العالمي للفكر الإسلامي
وعضو مجمع الفقه الإسلامي بجدة ورئيس المجلس الفقهي لشمال أمريكا

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[CERTIFICATION OF AL-AZHAR]

IN THE NAME OF ALLAH, MOST MERCIFUL AND COMPASSIONATE

al-Azhar
Islamic Research Academy
General Department for Research, Writing, and Translation

Mr. Nuh Ha Mim Keller
Amman, Jordan

Peace be upon you, and the mercy of Allah and His blessings.

To commence: In response to the request you have submitted concerning the examination of the English translation of the book *'Umdat al-salik wa 'uddat al-nasik* by Ahmad ibn Naqib in the Shafi'i school of jurisprudence, together with appendices by Islamic scholars on matters of Islamic law, tenets of faith, and personal ethics and character: we certify that the above-mentioned translation corresponds to the Arabic original and conforms to the practice and faith of the orthodox Sunni Community (Ahl al-Sunna wa al-Jama'a). There is no objection to printing it and circulating it.

The stamping of the pages of the above-mentioned work with the seal of the department has been completed.

May Allah give you success in serving Sacred Knowledge and the religion. Peace be upon you, and the mercy of Allah and His blessings.

Composed on 26 Rajab 1411 A.H./11 February 1991 A.D.

General Director of Research, Writing, and Translation
Fath Allah Ya Sin Jazar [signed]

Muhammad 'Umar Muhammad 'Umar [signed]

Seal of al-Azhar [stamped]
General Department for Research, Writing, and Translation

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بسم الله الرحمن الرحيم

الازهـــــر	AL-AZHAR
مجمـــع البحـــوث الاســـــلامية	ISLAMIC RESEARCH ACADEMY
الادارة العـــــامة	GENERAL DEPARTMENT
للبحـــوث والتـــاليف والترجمـــة	For Research, Writing & Translation

السيد / نوح حاميم كلـــر

عمان / الاردن

السلام عليكم ورحمة الله وبركاته وبعد ٠

فبناء على ماجاء بطلبكم بشأن فحص الترجمة الانجليزية لكتـــاب:

(عمدة السالك وعدة الناسك) لاحمد بن النقيب في الفقه الشافعـــي

مضافا اليه ملاحق لبعض العلماء في مادة الفقه والعقيدة والاخـــلاق

نفيد بأن الترجمة المذكورة مطابقة للاصل العربي وموافقة لمنهـــج

وعقيدة أهل السنة والجماعة ولامانع من طبعها وتداولها ٠

وقد تم ختم صفحات الكتاب سالف الذكر بخاتم الادارة ٠

وفقكم الله لخدمة العلم والديـــن ٠

والسلام عليكم ورحمة الله وبركاته ٠٠٠

تحريرا في ٢٦ من رجب ١٤١١ هـ

١١ من فبراير ١٩٩١ م

مدير عام

البحوث والتأليف والترجمة

فتح الله يس جـــــزر

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ABBREVIATIONS

A: .... comment by Sheikh 'Abd al-Wakil Durubi
Ar. ... Arabic
ca. .... approximately
cm. ... centimeters
d. ..... died
def: ...defined at another ruling
dis: ... discussed at another ruling
ibid. ..from the work previously cited
km. ...kilometers
lit. .... literally
mi. ... miles
N: .... comment by Sheikh Nuh 'Ali Salman
n: ..... remark by the translator
O: .... excerpt from the commentary of Sheikh 'Umar Barakat
par. .. paragraph
pl. .... plural
syn. ...a synonym for

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BOOK A

SACRED KNOWLEDGE

كتاب العلم

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a1.0 THE KNOWLEDGE OF GOOD AND BAD

a1.1 ('Abd al-Wahhab Khallaf:) There is no disagreement among the scholars of the Muslims that the source of legal rulings for all the acts of those who are morally responsible is Allah Most Glorious.

a1.2 The question arises. Is it possible for the mind alone, unaided by Allah's messengers and revealed scriptures, to know rulings, such that someone not reached by a prophet's invitation would be able through his own reason to know Allah's rule concerning his actions? Or is this impossible?

a1.3 The position of the Ash'aris, the followers of Abul Hasan Ash'ari, is that the mind is unable to know the rule of Allah about the acts of those morally responsible except by means of His messengers and inspired books.

For minds are in obvious disagreement about acts. Some minds find certain acts good, others find them bad. Moreover, one person can be of two minds about one and the same action. Caprice often wins out over the intellect, and considering something good or bad comes to be based on mere whim. So it cannot be said that an act which the mind deems good is therefore good in the eyes of Allah, its performance called for and its doer rewarded by Allah; or that whatever the mind feels to be bad is thus bad in the eyes of Allah, its nonperformance called for and its doer punished by Allah.

a1.4 The basic premise of this school of thought is that the *good* of the acts of those morally responsible is what the Lawgiver (syn. Allah or His messenger (Allah bless him and give him peace)) has indicated is good by permitting it or asking it be done. And the *bad* is what the Lawgiver has indicated is bad by asking it not be done. The good is not what reason considers good, nor the bad what reason considers bad. The measure

a1.0 معرفة الحسن والقبح

a1.1 (عبد الوهّاب خلّاف:) لا خلاف بين علماء المسلمين في أن مصدر الأحكام الشرعية لجميع أفعال المكلفين هو الله سبحانه.

a1.2 وهل يمكن العقل أن يعرفها بنفسه من غير وساطة رسل الله وكتبه بحيث أن من لم تبلغه دعوة رسول يستطيع أن يعرف حكم الله في أفعاله بعقله أم لا يمكن؟

a1.3 مذهب الأشاعرة، أتباع أبي الحسن الأشعري هو أنه لا يمكن العقل أن يعرف حكم الله في أفعال المكلفين إلا بواسطة رسله وكتبه.

لأن العقول تختلف اختلافاً بيناً في الأفعال، فبعض العقول يستحسن بعض الأفعال وبعضها يستقبحها، بل عقل الشخص الواحد يختلف في الفعل الواحد، وكثيراً ما يغلب الهوى على العقل فيكون التحسين أو التقبيح بناء على الهوى فعلى هذا لا يمكن أن يقال ما راه العقل حسناً فهو حسن عند الله ومطلوب لله فعله، ويثاب عليه من الله فاعله، وما رآه العقل قبيحاً فهو قبيح عند الله، ومطلوب لله تركه، ويعاقب من الله فاعله.

a1.4 وأساس هذا المذهب أن الحسن من أفعال المكلفين هو ما دل الشارع على أنه حسن بإباحته أو طلب فعله، والقبيح هو ما دل الشارع على أنه قبيح بطلبه تركه وليس الحسن ما رآه العقل حسناً ولا القبيح ما رآه العقل قبيحاً. فمقياس الحسن والقبح في هذا

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of good and bad, according to this school of thought, is the Sacred Law, not reason (dis: w3).

المذهب هو الشرع لا العقل [. . .].

a1.5 According to this school, a person is not morally obligated by Allah to do or refrain from anything unless the invitation of a prophet and what Allah has legislated have reached him (n: w4 discusses Islam's relation to previous prophets' laws). No one is rewarded for doing something or punished for refraining from or doing something until he knows by means of Allah's messengers what he is obliged to do or obliged to refrain from.

So whoever lives in such complete isolation that the summons of a prophet and his Sacred Law do not reach him is not morally responsible to Allah for anything and deserves neither reward nor punishment.

And those who lived in one of the intervals after the death of a prophet and before a new one had been sent were not responsible for anything and deserve neither reward nor punishment.

This view is confirmed by the word of Allah Most High,

"We do not punish until We send a messenger" (Koran 17:15).

(*'Ilm usul al-fiqh* (y71), 96–98)

a1.5 وعلى هذا المذهب لا يكون الإنسان مكلفاً من الله بفعل شيء أو ترك شيء إلّا إذا بلغته دعوة رسول وما شرعه الله. ولا يثاب أحد على فعل شيء ولا يعاقب على ترك أو فعل، إلا إذا علم من طريق رسل الله ما يجب عليه فعله وما يجب عليه تركه.

فمن عاش في عزلة تامة بحيث لم تبلغه دعوة رسول ولا شرعه فهو غير مكلف من الله بشيء ولا يستحق ثواباً ولا عقاباً. و[أهل الفترة وهم] من عاشوا بعد موت رسول وقبل مبعث رسول غير مكلفين بشيء ولا يستحقون ثواباً ولا عقاباً.

ويؤيد هذا المذهب قوله سبحانه: ﴿وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولاً﴾ [الإسراء: ١٥]. [محرّر من علم أصول الفقه: ٩٦-٩٨].

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a2.0 THE SUPERIORITY OF SACRED KNOWLEDGE OVER DEVOTIONS

a2.0 ترجيح الاشتغال بالعلم

a2.1 (Nawawi:) Allah Most High says:

(1) "Say, 'Are those who know and those who do not know equal?' " (Koran 39:9).

(2) "Only the knowledgeable of His slaves fear Allah" (Koran 35:28).

(3) "Allah raises those of you who believe and those who have been given knowledge whole degrees" (Koran 58:11).

a2.1 (الإمام النووي:)

- قال الله تعالى: ﴿قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لَا يَعْلَمُونَ﴾ [الزمر: ٩].

- وقال تعالى: ﴿إِنَّمَا يَخْشَى اللَّهَ مِنْ عِبَادِهِ الْعُلَمَاءُ﴾ [فاطر: ٢٨].

- وقال تعالى: ﴿يَرْفَعِ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَالَّذِينَ أُوتُوا الْعِلْمَ دَرَجَاتٍ﴾ [المجادلة: ١١].

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a2.2 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever Allah wishes well, He gives knowledge of religion."

(2) "The superiority of the learned Muslim over the devotee is as my superiority over the least of you."

Then the Prophet (Allah bless him and give him peace) said,

"Allah and His angels, the inhabitants of the heavens and the earth, the very ant in its anthill and the fish bless those who teach people what is good."

(3) "When a human being dies his work comes to an end except for three things: ongoing charity, knowledge benefitted from, or a pious son who prays for him."

(4) "A single learned Muslim is harder on the Devil than a thousand worshippers."

(5) "Whoever travels a path seeking knowledge Allah makes easy for him a path to paradise.

"Angels lower their wings for the seeker of knowledge out of pleasure in what he seeks.

"Those in the heavens and the earth, and the very fish in the water ask Allah to forgive the person endowed with Sacred Knowledge.

"The superiority of the learned Muslim over the devotee is like the superiority of the moon over all the stars.

"The learned are the heirs of the prophets. The prophets have not bequeathed dinar nor dirham, but have only left Sacred Knowledge, and whoever takes it has taken an enormous share."

(6) "He who calls others to guidance shall receive the like of the reward of those who follow him without this diminishing their own reward in the slightest. And he who calls others to misguidance shall bear the like of the sins of those who follow him without this diminishing their own sins."

(7) "He who goes forth to seek Sacred

a2.2 [وعن معاوية رضي الله عنه قال:] قال رسول الله ﷺ: «من يُرد الله به خيراً يفقّهه في الدين» [رواه البخاري ومسلم].

[وعن أبي أمامة الباهلي رضي الله عنه قال: قال رسول الله ﷺ:] «فضل العالم على العابد كفضلي على أدناكم» ثم قال رسول الله ﷺ: «إن الله وملائكته وأهل السموات والأرض حتى النملة في جحرها وحتى الحوت ليصلون على معلمي الناس الخير» [رواه الترمذي وقال حديث حسن].

[وعن أبي هريرة رضي الله عنه أن رسول الله ﷺ قال:] «إذا مات ابن آدم انقطع عمله إلا من ثلاث صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له» [رواه مسلم].

[وعن ابن عباس رضي الله عنهما أن رسول الله ﷺ قال:] «فقيه واحد أشد على الشيطان من ألف عابد» [رواه الترمذي].

[وعن أبي الدرداء رضي الله عنه قال: سمعت رسول الله ﷺ يقول:] «من سلك طريقاً يلتمس فيه علماً سهّل الله له طريقاً إلى الجنة، وإن الملائكة لتضع أجنحتها لطالب العلم رضاً بما يطلب، وإن العالم ليستغفر له من في السموات ومن في الأرض حتى الحيتان في الماء، وفضل العالم على العابد كفضل القمر على سائر الكواكب، وإن العلماء ورثة الأنبياء إن الأنبياء لم يورثوا ديناراً ولا درهماً وإنما ورثوا العلم فمن أخذه أخذ بحظ وافر» [رواه أبو داود والترمذي وغيرهما].

[وعن أبي هريرة رضي الله عنه قال: قال رسول الله ﷺ:] «من دعا إلى هدى كان له من الأجر مثل أجور من تبعه لا ينقص ذلك من أجورهم شيئاً، ومن دعا إلى ضلالة كان عليه من الإثم مثل آثام من تبعه لا ينقص ذلك من آثامهم شيئاً» [رواه مسلم].

[وعن أنس رضي الله عنه قال: قال رسول الله ﷺ:] «من خرج في طلب

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Knowledge is in the way of Allah [syn. *jihad*, def: o9] until he returns."

العلم فهو في سبيل الله حتى يرجع» [رواه الترمذي].

(8) "This world and what is in it are accursed [dis: w5] except for the remembrance of Allah, that which Allah loves, someone with Sacred Knowledge, or someone learning it."

[وعن أبي هريرة رضي الله عنه قال: سمعت رسول الله ﷺ يقول:] «الدنيا ملعونةٌ ملعونٌ ما فيها إلا ذكر الله وما والاه وعالماً ومتعلماً» [رواه الترمذي وقال حديث حسن].

a2.3 'Ali ibn Abi Talib (Allah be well pleased with him) said,

"The religious scholar is greater in reward than the fighter in the way of Allah who fasts the day and prays the night."

a2.3 وعن علي رضي الله عنه: «العالم أعظم أجراً من الصائم القائم الغازي في سبيل الله».

a2.4 Abu Darda' (Allah be well pleased with him) said,

"Teaching Sacred Knowledge for a brief time is better than spending a night in prayer."

a2.4 وعن أبي الدرداء: «مذاكرة العلم ساعة خير من قيام ليلة».

a2.5 Yahya ibn Abi Kathir said,

"Studying Sacred Knowledge is a prayer."

a2.5 وعن يحيى بن أبي كثير: «دراسة العلم صلاة».

a2.6 Sufyan al-Thawri and Shafi'i said,

"There is nothing after what is obligatory that is superior to seeking Sacred Knowledge."

a2.6 وعن سفيان الثوري والشافعي: «ليس شيء بعد الفرائض أفضل من طلب العلم».

a2.7 (Nawawi:) There are similar statements from whole groups of early Muslims I have not mentioned that are like those I have quoted, the upshot of which is that they concur that devoting one's time to Sacred Knowledge is better than devoting it to voluntary fasting or prayer, better than saying "Subhan Allah" (lit. "Exalted is Allah above any limitation"), or other supererogatory devotions.

Among the proofs for this, besides the foregoing, is that:

a2.7 (النووي:) وجاء عن جماعات من السلف ممن لم أذكره نحو ما ذكرته. والحاصل أنهم متفقون على أن الاشتغال بالعلم أفضل من الاشتغال بنوافل الصوم والصلاة والتسبيح ونحو ذلك من نوافل عبادات البدن. ومن دلائله سوى ما سبق: أن نفع العلم يعم صاحبه والمسلمين، والنوافل المذكورة

(1) the benefit of Sacred Knowledge affects both its possessor and the Muslims, while the

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above-mentioned supererogatory works are confined to oneself;

(2) Sacred Knowledge validates, so other acts of worship require it, though not vice versa;

(3) scholars are the heirs of the prophets, while devotees are not characterized as such;

(4) the devotee follows the scholar, being led by and imitating him in worship and other acts, obeying him being obligatory and not the other way around;

(5) the benefit and effect of Sacred Knowledge remain after its possesser departs, while supererogatory works cease with the death of their doer;

(6) knowledge is an attribute of Allah Most High;

(7) Sacred Knowledge, meaning the knowledge we are discussing, is a communal obligation (def: c3.2), and it is thus better than the supererogatory. The Imam of the Two Sanctuaries (A: Juwayni) says in his book *al-Ghiyathi* that "the communal obligation is superior to the personal obligation in that the person performing it fulfills the need of the Islamic Nation (Umma) and lifts the obligation from it, while the obligation of the individual is restricted to himself." And success is through Allah (*al-Majmu'* (y108), 1.18–22).

مختصة به.

ولأنّ العلم مصحح، فغيره من العبادات مفتقر إليه ولا ينعكس.

ولأن العلماء ورثة الأنبياء ولا يوصف المتعبدون بذلك.

ولأن العابد تابع للعالم مقتد به مقلد له في عبادته وغيرها واجب عليه طاعته ولا ينعكس.

ولأن العلم تبقى فائدته وأثره بعد صاحبه، والنوافل تنقطع بموت صاحبها.

ولأن العلم صفة لله تعالى.

ولأن العلم فرض كفاية أعني العلم الذي كلامنا فيه فكان أفضل من النافلة.

وقد قال إمام الحرمين [رحمه الله] في كتابه الغياثي: «فرض الكفاية أفضل من فرض العين من حيث أن فاعله يسدّ مسدّ الأمة ويسقط الحرج عن الأمة، وفرض العين قاصر عليه». وبالله التوفيق [محرر من المجموع: ١/ ١٨-٢٢؛ بتقديم وتأخير].

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a3.0 THE BLAMEWORTHINESS OF SEEKING SACRED KNOWLEDGE FOR OTHER THAN ALLAH

a3.0 ذم من أراد بطلب العلم غير الله تعالى

a3.1 (Nawawi:) Know that what we have mentioned about the merit of seeking Sacred Knowledge only applies to the seeker who thereby intends Allah Himself, not some end concerned with this world.

a3.1 (النووي:) اعلم أن ما ذكرناه من الفضل في طلب العلم إنما هو في من طلبه مريداً به وجه الله تعالى، لا لغرض من الدنيا. ومن أراده لغرض دنيوي

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Whoever seeks it for a worldly aim such as money, leadership, rank, prestige, fame, people inclining towards him, defeating opponents in debate, or similar motive, is blameworthy.

(A: When the basic reason is Allah but other motives play a role, they diminish the merit in the proportion that they enter into it.)

كمال أو رياسة أو منصب أو وجاهة أو شهرة أو استمالة الناس إليه أو قهر المناظرين أو نحو ذلك فهو مذموم.

a3.2 Allah Most High says:

(1) "Whoever wants to cultivate the afterlife We shall increase for him his tillage, while whoever wants to cultivate this world, we shall give him of it, but he will have no share in the next" (Koran 42:20).

(2) "Whoever wants the present world We hasten for him therein whatever We will, for whomever We want, and then consign him to hell, roasting in it condemned and rejected" (Koran 17:18).

(3) "Verily, your Lord is ready at ambush" (Koran 89:14).

(4) "They were not ordered except to worship Allah, making their religion sincere unto Him as pure monotheists" (Koran 98:5).

a3.2 قال الله تعالى: ﴿مَنْ كَانَ يُرِيدُ حَرْثَ الآخِرَةِ نَزِدْ لَهُ فِي حَرْثِهِ وَمَنْ كَانَ يُرِيدُ حَرْثَ الدُّنْيَا نُؤْتِهِ مِنْهَا وَمَا لَهُ فِي الآخِرَةِ مِنْ نَصِيبٍ﴾ [الشورى: ٢٠].

وقال تعالى: ﴿مَنْ كَانَ يُرِيدُ الْعَاجِلَةَ عَجَّلْنَا لَهُ فِيهَا مَا نَشَاءُ لِمَنْ نُرِيدُ ثُمَّ جَعَلْنَا لَهُ جَهَنَّمَ يَصْلاهَا مَذْمُومًا مَدْحُورًا﴾ [الإسراء: ١٨].

وقال تعالى: ﴿إِنَّ رَبَّكَ لَبِالْمِرْصَادِ﴾ [الفجر: ١٤].

وقال تعالى: ﴿وَمَا أُمِرُوا إِلاَّ لِيَعْبُدُوا اللهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ﴾ [البينة: ٥].

a3.3 The Prophet (Allah bless him and give him peace) said:

(1) "The first person judged on Resurrection Day will be a man martyred in battle.

"He'll be brought forth, Allah will reacquaint him with His blessings upon him and the man will acknowledge them, whereupon Allah will say, 'What have you done with them?' to which the man will respond, 'I fought to the death for you.'

"Allah will reply, 'You lie. You fought in order to be called a hero, and it has already been said.' Then he will be sentenced and dragged away on his face to be flung into the fire.

"Then a man will be brought forward who learned Sacred Knowledge, taught it to others, and who recited the Koran. Allah will remind him of His gifts to him and the man will acknowledge

a3.3 [وروينا في صحيح مسلم عن أبي هريرة رضي الله عنه قال: سمعت رسول الله ﷺ يقول:] «إن أول الناس يقضى يوم القيامة عليه رجل استشهد فأتي به فعرّفه نعمه فعرفها. قال: فما عملت فيها؟ قال: قاتلت فيك حتى استشهدت. قال: كذبت لكنك قاتلت ليقال جريء فقد قيل. ثم أمر به فسحب على وجهه حتى ألقي في النار. ورجل تعلّم العلم وعلّمه وقرأ القرآن فأتي به فعرّفه نعمه فعرفها. قال: فما عملت فيها؟ قال:

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them, and then Allah will say, 'What have you done with them?' The man will answer, 'I acquired Sacred Knowledge, taught it, and recited the Koran, for Your sake.'

"Allah will say, 'You lie. You learned so as to be called a scholar, and read the Koran so as to be called a reciter, and it has already been said.' Then he will be sentenced and dragged away on his face to be flung into the fire."

(2) "Anyone who seeks Sacred Knowledge to argue with fools, vie with scholars, or draw people's attention to himself, will take a place in hell."

(3) "The most severely tortured on Resurrection Day shall be the scholar who did not benefit from his knowledge."

a3.4 Sufyan al-Thawri said,

"No servant increased in knowledge and then in desire for the things of this world, save that he increased in distance from Allah."

(Ibid., 1.23–24)

تعلّمت العلم وعلّمته وقرأت فيك القرآن. قال: كذبت ولكنك تعلمت ليقال عالم وقرأت القرآن ليقال قارىء فقد قيل. ثم أمر به فسحب على وجهه حتى ألقي في النار.

[وعن أنس وحذيفة قالا: قال رسول الله ﷺ:] «من طلب العلم ليماري به السفهاء ويكاثر به العلماء أو يصرف به وجوه الناس إليه فليتبوأ مقعده من النار» [رواه الترمذي].

[وعن أبي هريرة رضي الله عنه أن رسول الله ﷺ قال:] «أشد الناس عذاباً يوم القيامة عالم لا ينتفع بعلمه».

a3.4 وعن سفيان «ما ازداد عبد علماً فازداد في الدنيا رغبة إلا ازداد من الله بُعداً» [محرر من المرجع المذكور: ١/ ٢٣-٢٤].

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a4.0 PERSONALLY OBLIGATORY KNOWLEDGE

a4.1 (Nawawi:) There are three categories of Sacred Knowledge. The first is the *personally obligatory* (fard al-'ayn, def: c2.1), which is a morally responsible individual's learning the knowledge that the obligatory acts he must perform cannot be accomplished without, such as how the ablution (wudu) and prayer are done and so forth.

Its obligatory character is how groups of scholars have interpreted the hadith in the *Musnad* of Abu Ya'la al-Mawsuli, from Anas, who relates that the Prophet (Allah bless him and give him peace) said,

a4.0 العلم الذي هو فرض عين

a4.1 (النووي:) أقسام العلم الشرعي ثلاثة: الأول فرض العين وهو تعلُّم المكلف مالا يتأدى الواجب الذي تعين عليه فعله إلا به ككيفية الوضوء والصلاة ونحوهما وعليه حمل جماعات الحديث المروي في مسند أبي يعلى الموصلي عن أنس عن النبي ﷺ: «طلب

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"Seeking knowledge is an obligation upon every Muslim."

The meaning of this hadith, though the hadith itself is not well authenticated (A: being *weak* (dis: p9.5)), is true.

a4.2 As for the basic obligation of Islam, and what relates to tenets of faith, it is adequate for one to believe in everything brought by the Messenger of Allah (Allah bless him and give him peace) and to credit it with absolute conviction free of any doubt. Whoever does this is not obliged to learn the evidences of the scholastic theologians. The Prophet (Allah bless him and give him peace) did not require of anyone anything but what we have just mentioned, nor did the first four caliphs, the other prophetic Companions, nor others of the early Muslim community who came after them.

Rather, what befits the common people and vast majority of those learning or possessing Sacred Knowledge is to refrain from discussing the subtleties of scholastic theology, lest corruption difficult to eliminate find its way into their basic religious convictions. Rather, it is fitter for them to confine themselves to contentment with the above-mentioned absolute certainty.

Our Imam Shafi'i (Allah Most High have mercy on him) went to the greatest possible lengths in asserting that engaging in scholastic theology is forbidden. (A: What he meant thereby was the heretical scholastic theology that proliferated in his time and put rationalistic theories ahead of the Koran and sunna, not the science of theology ('ilm al-tawhid) by which Ash'ari and Maturidi scholars (dis: x47) have clarified and detailed the tenets of faith of Sunni Islam, which is an important part of the Islamic sciences.) He insistently emphasized its unlawfulness, the severity of the punishment awaiting those who engage in it, the disgrace of doing it, and the enormity of the sin therein by saying,

"For a servant to meet Allah with any other sin than idolatry (shirk) is better than to meet Him guilty of anything of scholastic theology."

العلم فريضة على كل مسلم». وهذا الحديث وإن لم يكن ثابتاً فمعناه صحيح.

a4.2 وأما أصل واجب الإسلام وما يتعلق بالعقائد فيكفي فيه التصديق بكل ما جاء به رسول الله ﷺ واعتقاده اعتقاداً جازماً سليماً من كل شك. ولا يتعين على من حصل له هذا تعلم أدلة المتكلمين [. . .] فإن النبي ﷺ لم يطالب أحداً بشيء سوى ما ذكرناه، وكذلك الخلفاء الراشدون ومن سواهم من الصحابة فمن بعدهم من الصدر الأول. بل الصواب للعوام وجماهير المتفقهين والفقهاء الكف عن الخوض في دقائق الكلام مخافة من اختلال يتطرق إلى عقائدهم يصعب عليهم إخراجه. بل الصواب لهم الاقتصار على ما ذكرناه من الاكتفاء بالتصديق الجازم [وقد نص على هذه الجملة جماعات من حذاق أصحابنا وغيرهم] وقد بالغ إمامنا الشافعي رحمه الله تعالى في تحريم الاشتغال بعلم الكلام أشد المبالغة وأطنب في تحريمه وتغليظ العقوبة لمتعاطيه وتقبيح فعله وتعظيم الإثم فيه فقال: «لأن يلقى الله العبد بكل ذنب ما خلا الشرك خير من أن يلقاه بشيء من الكلام». وألفاظه بهذا

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His other statements expressing the same meaning are numerous and well known.

But if someone has doubts (Allah be our refuge) about any of the tenets of faith in which belief is obligatory (def: books u and v), and his doubt cannot be eliminated except by learning one of the theologians' proofs, then it is obligatory for him to learn it in order to remove the doubt and acquire the belief in question.

المعنى كثيـرة مشهـورة.

ولـو تشكـك والعيـاذ بالله في شيء من أصـول العقـائد مما لا بد من اعتقاده ولم يزل شكـه إلا بتعـلم دليـل من أدلـة المتكلمين وجب تعلم ذلك لإزالة الشك وتحصيل ذلك الأصل.

a4.3 Scholars disagree about the Koranic verses and hadiths that deal with the attributes of Allah (n: such as His 'hand' (Koran 48:10), His 'eyes' (52:48), or His 'nearness' (50:16)) as to whether they should be discussed in terms of a particular *figurative interpretation* (ta'wil, def: w6) or not.

Some say that they should be figuratively interpreted as befits them (n: interpreting His 'hand,' for example, as an allusion to His omnipotence). And this is the more well known of the two positions of the scholastic theologians.

Others say that such verses should not be given a definitive interpretation, but rather their meaning should not be discussed, and the knowledge of them should be consigned to Allah Most High, while at the same time believing in the transcendence of Allah Most High, and that the characteristics of created things do not apply to Him. For example, it should be said we believe that

"the All-merciful is 'established' [Ar. istawa, dis: v1.3] on the Throne" (Koran 20:5),

but we do not know the reality of the meaning of that, nor what is intended thereby, though we believe of Allah Most High that

"there is nothing whatsoever like unto Him" (Koran 42:11),

and that He is above indwelling in created things (hulul, dis: w7), or having the characteristics of temporal, contingent existence (huduth, dis: w8). And this is the path of the early Muslims, or the vast majority of them, and is the safest, for a person is not required to enter into discussions about

a4.3 اختلفـوا في آيـات الصفـات وأخبـارهـا هل يخـاض فيها بالتأويل أم لا. فقـال قائلون تتأول على ما يليق بهـا وهذا أشـهـر المـذهبين للمتكلمين. وقـال آخرون لا تتأول بل يمسك عن الكلام في معناها ويوكل علمها إلى الله تعالى ويعتقد مع ذلـك تنـزيه الله تعالى وانتفاء صفات الحـادث عنـه. فيقـال مثلاً نؤمن بأن ﴿الـرَّحْمَنُ عَلَى الْعَرْشِ اسْتَوَى﴾ ولا نعلم حقيقـة معنى ذلـك والمراد به مع أنا نعتقـد أن الله تعـالى ﴿لَيْسَ كَمِثْلِهِ شَيْءٌ﴾ وأنه منزه عن الحلول وسمات الحدوث. وهـذه طريقـة السـلف أو جماهيرهم وهي أسـلم إذ لا يطـالب الإنسـان بالخوض في

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this. When one believes in Allah's transcendence above created things, there is no need for debate on it, or for taking risks over what there is neither pressing necessity nor even any real call for.

But if the need arises for definitive interpretations to refute someone making unlawful innovations and the like, then the learned may supply them, and this is how we should understand what has come down to us from scholars in this field. And Allah knows best.

ذلك. فإذا اعتقد التنزيه فلا حاجة إلى الخوض في ذلك والمخاطرة فيما لا ضرورة بل لا حاجة إليه.

فإن دعت الحاجة إلى التأويل لرد مبتدع ونحوه تأولوا حينئذ. وعلى هذا يحمل ما جاء عن العلماء في هذه، والله أعلم.

a4.4 A person is not obliged to learn how to perform ablution, the prayer, and so forth, until the act itself is obligatory for him.

As for trade, marriage, and so forth, of things not in themselves obligatory, the Imam of the Two Sanctuaries (A: Juwayni), Ghazali, and others say that learning their means and conditions is personally obligatory for anyone who wants to do them.

It has also been said that one should not call this knowledge "personally obligatory," but rather say, "It is unlawful to undertake them until one knows the conditions for their legal validity." And this expression is more accurate.

a4.4 لا يلزم الإنسان تعلّمُ كيفية الوضوء والصلاة وشبههما إلا بعد وجوب ذلك الشيء.

أما البيع والنكاح وشبههما مما لا يجب أصله فقال إمام الحرمين والغزالي وغيرهما يتعين على من أراده تعلم كيفيته وشرطه. وقيل لا يقال يتعين بل يقال يحرم الإقدام عليه إلا بعد معرفة شرطه. وهذه العبارة أصح.

a4.5 It is obligatory for one to know what is permissible and what is unlawful of food, drink, clothing, and so forth, of things one is unlikely to be able to do without. And likewise for the rulings on treatment of women if one has a wife.

a4.5 تلزمه معرفة ما يحل وما يحرم من المأكول والمشروب والملبوس ونحوها مما لا غنى له عنه غالباً. وكذلك أحكام عشرة النساء إن كانت له زوجة.

a4.6 Shafi'i and colleagues (Allah have mercy on them) say that fathers and mothers must teach their children what will be obligatory for them after puberty. The guardian must teach the child about purification, prayer, fasting, and so forth; and that fornication, sodomy, theft, drinking, lying, slander, and the like are unlawful; and that he acquires moral responsibility at puberty and what this entails.

It has been said that this education is merely recommended, but in fact it is obligatory, as the plain content of its scriptural basis (n: mentioned below) shows. Just as it is mandatory for a guardian to wisely manage his charge's property,

a4.6 قال الشافعي والأصحاب رحمهم الله على الآباء والأمهات تعليم أولادهم الصغار ما سيتعين عليهم بعد البلوغ. فيعلمه الولي الطهارة والصلاة والصوم ونحوها ويعرّفه تحريم الزنا واللواط والسرقة وشرب المسكر والكذب والغيبة وشبهها، ويعرّفه أن بالبلوغ يدخل في التكليف ويعرّفه ما يبلغ به. وقيل هذا التعليم مستحب والصحيح وجوبه وهو ظاهر نصه. وكما يجب عليه النظر في

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this is even more important. The merely recommended is what exceeds this, such as teaching him the Koran, Sacred Law, etiquette, and teaching him what he needs to earn a living.

The evidence for the obligation of teaching a young child is the word of Allah Mighty and Majestic,

"O you who believe, protect yourselves and families from a fire" (Koran 66:6).

'Ali ibn Abi Talib (Allah be well pleased with him), Mujahid, and Qatada say it means, "Teach them that with which they can save themselves from hell."

ماله وهذا أولى . وإنما المستحب ما زاد على هذا من تعليم القرآن وفقه وأدب، ويعرّفه ما يصلح به معاشه .

ودليل وجوب تعليم الولد الصغير [والمملوك] قول الله عز وجل : ﴿يا أيها الذين آمنوا قوا أنفسكم وأهليكم ناراً﴾ [التحريم : ٦] .

قال علي بن أبي طالب رضي الله عنه ومجاهد وقتادة معناه علموهم ما ينجون به من النار .

a4.7 As for knowledge of the heart, meaning familiarity with the illnesses of the heart such as envy, pride, and the like (dis: books p, r, and s), Ghazali has said that knowledge of their definitions, causes, remedy, and treatment is personally obligatory.

(A: And this is what Ghazali meant when he said that Sufism (Tasawwuf, dis: w9) is personally obligatory for every Muslim. He did not mean that taking a *way* (tariqa) and a sheikh are obligatory, but rather the elimination of unlawful inner traits, which one could conceivably accomplish through the companionship of a single sincere brother.)

Others hold that if the morally responsible individual is endowed with a heart free of all these unlawful diseases, it suffices him, and he is not obliged to learn what will cure them. But if not safe from them, he must reflect: if he can purify his heart from them without instruction then he must purify it, just as he must shun fornication and the like without learning the evidence proving he must. But if he cannot rid himself of these unlawful traits except through learning the above-mentioned knowledge, then he is personally obliged to. And Allah knows best (*al-Majmu'* (y108), 1.24–26).

a4.7 أما علم القلب وهو معرفة أمراض القلب كالحسد والعجب وشبهها فقال الغزالي : معرفة حدودها وأسبابها وطبها وعلاجها فرض عين .

وقال غيره : إن رُزِق المكلف قلباً سليماً من هذه الأمراض المحرمة كفاه ذلك ولا يلزمه تعلم دوائها . وإن لم يسلم نظر : إن تمكن من تطهير قلبه من ذلك بلا تعلم لزمه التطهير كما يلزمه ترك الزنا ونحوه من غير تعلم أدلة الترك . وإن لم يتمكن من الترك إلا بتعلُّم العلم المذكور تعيَّن حينئذ والله أعلم [محرر من المجموع : ١/ ٢٤-٢٦] .

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a5.0 COMMUNALLY OBLIGATORY KNOWLEDGE

a5.0 العلم الذي هو فرض كفاية

a5.1 (Nawawi:) The second category (n: of Sacred Knowledge) is what is *communally obligatory* (fard al-kifaya, def: c3.2), namely the attainment of those Sacred Sciences which people cannot do without in practicing their religion, such as memorizing the Koran and hadith, their ancillary disciplines, methodological principles, Sacred Law, grammar, lexicology, declension, knowledge of hadith transmitters, and of *scholarly consensus* (ijma', def: b7) and nonconsensus.

a5.1 (النووي:) القسم الثاني فرض الكفاية وهو: تحصيل ما لا بد للناس منه في إقامة دينهم من العلوم الشرعية كحفظ القرآن والأحاديث وعلومها والأصول والفقه والنحو واللغة والتصريف ومعرفة رواة الحديث والإجماع والخلاف.

a5.2 As for learning which is not Sacred Knowledge but is required to sustain worldly existence, such as medicine and mathematics, it too is a communal obligation (ibid., 1.26).

a5.2 وأما ما ليس علماً شرعياً ويحتاج إليه في قوام أمر الدنيا كالطب والحساب ففرض كفاية أيضاً [نقل من المرجع المذكور: ١/ ٢٦].

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a6.0 RECOMMENDED KNOWLEDGE

a6.0 العلم المندوب

a6.1 (Nawawi:) The third category is the *supererogatory* (def: c4.2), such as in-depth research into the bases of evidences, and elaboration beyond the amount required by the communal obligation, or such as an ordinary Muslim learning the details of nonobligatory acts of worship for the purpose of performing them; though not the work of scholars in distinguishing the obligatory from the nonobligatory, which is a communal obligation in respect to them. And Allah knows best (ibid., 1.27).

a6.1 (النووي) القسم الثالث النفل وهو كالتبحر في أصول الأدلة والإمعان فيما وراء القدر الذي يحصل به فرض الكفاية، وكتعلم العامي نوافل العبادات لغرض العمل، لا ما يقوم به العلماء من تمييز الفرض من النفل، فإنّ ذلك فرض كفاية في حقهم والله أعلم [نقل من المرجع المذكور: ١/ ٢٧].

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a7.0 SUBJECTS THAT ARE NOT SACRED KNOWLEDGE

a7.0 العلم غير الشرعي

a7.1 (Nawawi:) Having mentioned the categories of Sacred Knowledge, the subjects it

a7.1 (النووي:) قد ذكرنا أقسام العلم الشرعي. ومن العلوم الخارجة عنه

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excludes are those that are unlawful, offensive, or permissible.

ما هو محرم أو مكروه أو مباح.

a7.2 *Unlawful* knowledge includes:

(1) learning sorcery (dis: p3), since according to the most reliable position, it is unlawful, as the vast majority of scholars have decisively stated;

(2) philosophy (dis: w10);

(3) magic (sha'badha, meaning sleight of hand, etc.);

(4) astrology (dis: p41);

(5) the sciences of the materialists (dis: w11);

(6) and anything that is a means to create doubts (n: in eternal truths). Such things vary in their degree of unlawfulness.

a7.2 فالمحرم كتعلم السحر. فإنه حرام على المذهب الصحيح وبه قطع الجمهور [...]
وكالفلسفة والشعبذة والتنجيم وعلوم الطبائعيين وكل ما كان سبباً لإثارة الشكوك. ويتفاوت في التحريم.

a7.3 *Offensive* knowledge includes such things as post-classical poetry which contains romance and uselessness.

a7.3 والمكروه كأشعار المولدين التي فيها الغزل والبطالة.

a7.4 *Permissible* knowledge includes post-classical poetry which does not contain stupidity or anything that is offensive, incites to evil, hinders from good; nor yet that which urges one to do good or helps one to do it (n: as the latter would be recommended) (ibid., 1.27).

a7.4 والمباح كأشعار المولدين التي ليس فيها سخف ولا شيء مما يكره ولا ما ينشط إلى الشر ولا ما يثبط عن الخير ولا ما يحث على خير أو يستعان به عليه [نقل من المرجع المذكور: ١/٢٧].

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BOOK B

THE VALIDITY OF FOLLOWING QUALIFIED SCHOLARSHIP

كتاب مشروعية التقليد

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b1.0 INTRODUCTION

b1.1 (Muhammad Sa'id Buti:) What is the proof that it is legally valid and even obligatory to accept the authority of qualified scholarship (taq-

b1.0 المقدمة

b1.1 (محمد سعيد البوطي:) [...] فما الدليل على مشروعية التقليد

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lid) when one is not capable of issuing expert legal opinion (ijtihad) on matters of Sacred Law? There are several aspects to it (n: discussed in the sections that follow) (*al-Lamadhhabiyya akhtar bid'a tuhaddidu al-shari'a al-Islamiyya* (y33), 70).

ووجوبه عند عدم التمكن من الاجتهاد؟ الدليل من وجوه [نقل من اللامذهبية أخطر بدعة تهدد الشريعة الإسلامية: ٧٠].

b1.2 (n:) For the key term *qualified to issue expert legal opinion* (Ar. *mujtahid*, this ability being *ijtihad*), please turn to book o and read o22.1(d), the qualifications of an Islamic judge (qadi). The difference between the qualifications for the Imam of a school and those for a judge or a mufti is that the former's competence in giving opinion is absolute, extending to all subject matters in the Sacred Law, while the competence of the judge or mufti is limited respectively to judging court cases or to applying his Imam's *ijtihad* to particular questions.

No age of history is totally lacking people who are competent in *ijtihad* on particular questions which are new, and this is an important aspect of Sacred Law, to provide solutions to new ethical problems by means of sound Islamic legal methodology in applying the Koranic and hadith primary texts. But while in this specific sense the door of *ijtihad* is not and cannot be closed, Islamic scholarship has not accepted anyone's claims to absolute *ijtihad* since Imams Abu Hanifa, Malik, Shafi'i, and Ahmad. If one studies the intellectual legacy of these men under scholars who have a working familiarity with it, it is not difficult to see why.

As for those who decry "hidebound conservatism" and would open the gate of *ijtihad* for themselves while lacking or possibly not even knowing the necessary qualifications, if such people have not studied the rulings of a particular school and the relation between these rulings, the Koranic and hadith primary texts, and the school's methodological principles, they do not know how *ijtihad* works from an observer's standpoint, let alone how to employ it. To ask them, for example, which of two equally authenticated primary texts that conflict on a legal question should be given precedence, and why, is like asking an aspiring drafting student for the particulars of designing a suspension bridge. Answers may be forthcoming, but they will not be the same as those one could get from a qualified contractor. To urge that a *mujtahid* is not divinely protected from error (ma'sum) is as of little relevance to his work as the fact that a major physicist is not divinely protected from simple errors in calculus; the probability of finding them in his published work is virtually negligible. Regarding other, long-dead schools, such as the Zahiriyya, the difference between their work and that of the four living schools is firstly one of quality, as their positions and evidence have not been reexamined and upgraded by succeeding generations of first-rank scholars like those of the four schools (dis. w12), and secondly the lack of verification of the actual positions of their *mujtahid*s through reliable chains of transmitters, as described below at b7.6.

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b2.0 THE KORANIC EVIDENCE FOR FOLLOWING SCHOLARS

b2.1 (Muhammad Sa'id Buti:) The first aspect of it is the word of Allah the Majestic,

"Ask those who recall if you know not" (Koran 16:43).

By consensus of all scholars (ijma', def: b7), this verse is an imperative for someone who does not know a ruling in Sacred Law or the evidence for it to follow someone who does. Virtually all scholars of fundamentals of Islamic law have made this verse their principle evidence that it is obligatory for the ordinary person to follow the scholar who is a *mujtahid*.

b2.2 Similar to the above verse in being evidence for this is the word of Allah Most High:

"Not all of the believers should go to fight. Of every section of them, why does not one part alone go forth, that the rest may gain knowledge of the religion to admonish their people when they return, that haply they may take warning" (Koran 9:122).

Allah Most High prohibited the people to go out altogether in military expeditions and jihad, and ordered a segment of them to engage solely in becoming knowledgeable in the religion of Allah, so that when their brothers returned to them, they would find someone qualified to give them legal opinion on the lawful and unlawful and to explain the rule of Allah the Glorious and Exalted (ibid., 71).

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b3.0 THE PRACTICE OF THE PROPHETIC COMPANIONS (SAHABA)

b3.1 (Muhammad Sa'id Buti:) A second aspect is the consensus of scholars that the Companions

b2.0 الأدلة القرآنية

b2.1 (محمد سعيد البوطي:) الوجه الأول قوله جل جلاله: ﴿فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لا تَعْلَمُونَ﴾ [النحل: ٤٣].

أجمع العلماء على أن الآية أمر لمن لا يعلم الحكم ولا دليله باتباع من يعلم ذلك. وقد جعل عامة علماء الأصول هذه الآية عمدتهم الأولى في أن على العامي تقليد العالم المجتهد.

b2.2 ومثل هذه الآية في نفس الدلالة قوله تعالى: ﴿وَمَا كَانَ الْمُؤْمِنُونَ لِيَنْفِرُوا كَافَّةً، فَلَوْلا نَفَرَ مِنْ كُلِّ فِرْقَةٍ مِنْهُمْ طَائِفَةٌ لِيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنْذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ﴾ [التوبة: ١٢٢].

فقد نهى الله تعالى أن ينفر الناس كافة للغزو والجهاد، وأمر ببقاء طائفة منهم يتفرغون للتفقه في دين الله حتى إذا عاد إخوانهم إليهم وجدوا فيهم من يفتيهم في أمر الحلال والحرام وبيان حكم الله عز وجل [نقل من المرجع المذكور: ٧١].

b3.0 طريق الصحابة رضوان الله عليهم

b3.1 (محمد سعيد البوطي:) الوجه الثاني ما يدل عليه الإجماع من أن

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of the Prophet (Ar. Sahaba, anyone who personally met the Prophet (Allah bless him and give him peace) and died while believing in Islam) were at various levels of knowledge in religion; not all of them were capable of giving formal legal opinion (fatwa), as Ibn Khaldun has noted, nor was the religion taken from all of them.

أصحاب رسول الله ﷺ كانوا يتفاوتون في العلم ولم يكن جميعهم أهل فتيا - كما قال ابن خلدون - ولا كان الدين يؤخذ عن جميعهم.

b3.2 Rather, there were those of them capable of legal opinion and *ijtihad*, and these were a small minority in relation to the rest, and there were those of them who sought legal opinion and followed others therein, and these were the vast majority of them.

(n: Suyuti, in *Tadrib al-rawi*, quotes Ibn Hazm's report that most of the Companions' legal opinions came from only seven of them: 'Umar, 'Ali, Ibn Mas'ud, Ibn 'Umar, Ibn 'Abbas, Zayd ibn Thabit, and 'A'isha; and this was from thousands of the Companions (*Tadrib al-rawi fi sharh Taqrib al-Nawawi* (y109), 2.219).)

b3.2 بل كان فيهم المفتي المجتهد، وهم قلة بالنسبة لسائرهم، وفيهم المستفتي المقلد وهم الكثرة الغالبة فيهم. (ت: نقل السيوطي في تدريب الراوي عن ابن حزم أن أكثر فتاوى الصحابة صدرت عن سبعة: عمر وعلي وابن مسعود وابن عمر وابن عباس وزيد بن ثابت وعائشة. وذلك من آلاف الصحابة [تدريب الراوي: ٢/ ٢١٩]).

b3.3 Nor did the individual Companion giving a legal opinion necessarily mention the evidence for it to the person who had asked about it. Al-Amidi notes in his book *al-Ihkam*: "As for scholarly consensus [ijma', dis: b7.2], it is that ordinary people in the times of the Companions and those who immediately followed them, before there were dissenters, used to seek the opinion of *mujtahid*s and would follow them in rules of Sacred Law.

"The learned among them would unhesitatingly answer their questions without alluding to mention of evidence. No one censured them for doing this; a fact that establishes scholarly consensus on the absolute permissibility of the ordinary person following one capable of *ijtihad*."

b3.3 ولم يكن المفتي من الصحابة يلتزم مع ذكر الحكم بيان دليله للمستفتي.

قال الآمدي في كتابه الإحكام: وأما الإجماع فهو أنه لم تزل العامة في زمن الصحابة والتابعين قبل حدوث المخالفين يستفتون المجتهدين، ويتبعونهم في الأحكام الشرعية والعلماء منهم يبادرون إلى إجابة سؤالهم من غير إشارة إلى ذكر الدليل، ولا ينهونهم عن ذلك من غير نكير. فكان إجماعاً على جواز اتباع العامي للمجتهد مطلقاً.

b3.4 The Prophet (Allah bless him and give him peace) used to dispatch the most knowledgeable of the Companions to places whose inhabitants knew nothing more of Islam than its five pillars. The latter would follow the person sent to them in everything he gave his judgement upon and had them do, of works, acts of worship, deal-

b3.4 وقد كان الرسول ﷺ يبعث الفقيه من الصحابة إلى المكان الذي لا يعلم سكانه من الإسلام إلا عقيدته والاعتقاد بأركانه، فيتبعونه بكل ما يفتيهم به ويحملهم عليه من الأعمال والعبادات

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ing with one another, and all matters of the lawful and unlawful.

Sometimes such a person would come across a question on which he could find no evidence in the Koran or sunna, and he would use his own personal legal reasoning and furnish them an answer in light of it, and they would follow him therein.

والمعاملات وعامة شؤون الحلال والحرام.

وربما اعترضه أمر لم يجد فيه دليلاً من كتاب ولا سنة فيجتهد فيه ويفتيهم بما هداه إليه اجتهاده فيقلدونه في ذلك.

b3.5 As for the era of those who came after them (Ar. tabi'in, those who had personally learned from one or more of the Companions but not the Prophet himself (Allah bless him and give him peace)), the scope of legal reasoning had expanded, and the Muslims of this time followed the same course as had the Companions of the Prophet (Allah bless him and give him peace), except that the legal efforts were represented by the two main schools of thought, that of *juridical opinion* (ra'y) and that of *hadith* (n: the former in Iraq, the latter in Medina) because of the methodological factors we previously mentioned when we quoted Ibn Khaldun....

There were sometimes discussions and sharp disputes between leading representatives of the two schools, but the ordinary people and learners not at the main figures' level of understanding were unconcerned with this disagreement, and followed whomever they wanted or whomever was near to them without anyone censuring them for this (*al-Lamadhhabiyya akhtar bid'a tuhaddidu al-shari'a al-Islamiyya* (y33), 71–73).

b3.5 أما في عهد التابعين فقد اتسعت دائرة الاجتهاد، وسلك المسلمون في هذا العهد نفس الطريق الذي سلكه أصحاب رسول الله ﷺ. إلاّ أنّ الاجتهاد تمثل في مذهبين رئيسيين هما مذهبا الرأي والحديث بسبب العوامل الاجتهادية التي ذكرناها عندما نقلنا كلام ابن خلدون...

وقد كان بين أقطاب هذين المذهبين مناقشات وخصومات حادة في بعض الأحيان ولكن العوام والمتعلمين ممن كانوا دونهم في العلم والفقه لم يكن يعنيهم شأن تلك الخصومة إذ كانوا يقلدون من شاءوا أو من كان قريباً منهم دون أي إنكار من أحد عليهم [محرر من اللامذهبية أخطر بدعة تهدد الشريعة الإسلامية: ٧١ - ٧٣].

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b4.0 THE RATIONAL EVIDENCE FOR FOLLOWING SPECIALISTS

b4.0 الدليل العقلي

b4.1 (Muhammad Sa'id Buti:) A third aspect is the obvious rational evidence, which we express in the words of Sheikh 'Abdullah Diraz, who says: "The logical proof is that, assuming that a person does not have the qualifications for *ijtihad*, when an instance of a particular religious ruling arises, he will either not worship by any means at all, which all concur is impermissible, or, if he wor-

b4.1 (محمد سعيد البوطي:) الوجه الثالث هو الدليل العقلي البين، ونعبر عنه بما قاله العلامة الشيخ عبد الله دراز: [...] والدليل المعقول هو أن من لم يكن عنده أهلية الاجتهاد إذا حدثت به حادثة فرعية، فإما أن لا يكون متعبداً بشيء أصلاً، وهو خلاف الإجماع، وإن

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ships by means of something, it will either be by examining the proof that verifies the ruling or by following a competent authority.

"The former is inadmissible because it would lead, in respect to him and all others like him, to in-depth examination of the evidences for all such instances, preoccupation with which would obviate the earning of livelihoods, disrupting trades and occupations, ruining the world by neglect of tillage and offspring, and preventing anyone's following another's *ijtihad*, placing everyone under the most extreme hardship. The sole remaining alternative is to follow another, which is the means through which one must worship in such a case" (ibid., 73).

كان متعبداً بشيء فإما بالنظر في الدليل المثبت للحكم أو بالتقليد.

والأول ممتنع لأن ذلك مما يفضي في حقه وحق الخلق أجمع إلى النظر في أدلة الحوادث والاشتغال عن المعايش وتعطيل الحرف والصناعات وخراب الدنيا بتعطيل الحرث والنسل ورفع التقليد رأساً وهو منتهى الحرج فلم يبق إلا التقليد وأنه هو المتعبد به عند ذلك الفرض». [نقل من المرجع المذكور: ٧٣].

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b5.0 THE OBLIGATORINESS OF FOLLOWING QUALIFIED SCHOLARSHIP

b5.0 وجوب التقليد

b5.1 (Muhammad Sa'id Buti:) Because scholars accept the evidence from Koran, sunna, and reason as complete and intersubstantiative that the ordinary person or learned one not at the level of textual deduction and *ijtihad* is not entitled but to follow a qualified *mujtahid* who has a comprehensive grasp of the evidence—they say that a formal legal opinion (fatwa) from a *mujtahid* is in relation to the ordinary person just as a proof from the Koran and sunna is in relation to the *mujtahid*. For the Koran, just as it obligates the scholar thoroughly versed in it to hold to its evidences and proofs, also obligates (n: in the verse quoted above at b2.1) the uninformed person to adhere to the formal legal opinion of the scholar and his *ijtihad* (ibid., 73).

b5.1 (محمد سعيد البوطي:) ولما رأى العلماء تكامل كل من دليل الكتاب والسنة والعقل على أن العامي أو العالم الذي لم يبلغ درجة الاستنباط والاجتهاد ليس له إلا أن يقلد مجتهداً متبصراً بالدليل ـ قالوا إن فتوى المجتهد بالنسبة للعامي مثل دليل الكتاب والسنة بالنسبة للمجتهد لأن القرآن كما يلزم العالم به التمسك بدلائله وبراهينه، فقد ألزم الجاهل بالتمسك بفتوى العالم واجتهاده [نقل من المرجع المذكور: ٧٣].

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b6.0 WHY QUALIFIED SCHOLARS DIFFER ON LEGAL QUESTIONS

b6.0 لمحة موجزة عن سبب اختلاف الفقهاء

b6.1 (Salih Mu'adhdhin:) Muslims of the Sunna and Community are in agreement that we

b6.1 (صالح مؤذن:) إن من المجمع عليه عند جمهور أهل السنة

have arrived at all the rulings of Sacred Law through evidence that is either of *unquestionably established transmission* (qat'i al-wurud) or *probabilistically established transmission* (zanni al-wurud).

The suras of the Koran, all of its verses, and those hadiths which have reached us by so many channels of transmission that belief in them is obligatory (mutawatir, def: o22.1(d(11))) are all of unquestionably established transmission, since they have reached us by numerous means, by generation from generation, whole groups from whole groups, such that it is impossible that the various channels could all have conspired to fabricate them.

As for the evidentiary character of these texts, regardless whether they are of unquestionably or probabilistically established transmission, they are of two types.

The first type, *unquestionable as evidence* (qat'i al-dalala), is a plain text that does not admit of more than one meaning, which no mind can interpret beyond its one meaning, and which there is no possibility to construe in terms of other than its apparent sense. This type includes Koranic verses that deal with fundamental tenets of faith in the oneness of Allah, the prayer, zakat, and fasting; in none of which is there any room for disagreement, nor have any differences concerning them been heard of or reported from the Imams of Sacred Law. Everything in this category is termed *unquestionable as evidence*.

The second type, *probabilistic as evidence* (zanni al-dalala), is a text that can bear more than one meaning, whether because it contains a word that can lexically have two different meanings, or because it was made by way of figure of speech or metaphor, or because it can be interpreted in other than its apparent sense in the context without this contradicting what was intended by the Wise Lawgiver. It is here that we find scope for scholarly difference of opinion to a greater or lesser extent depending on the number of meanings a text can imply, how much interpretation it will bear, and so forth.

All of the derivative rulings of Sacred Law are of this type, probabilistic as evidence, so we naturally find differences among Islamic legal scholars as to their interpretation, each scholar interpreting them according to his comprehension

والجماعة أن الأحكام الشرعية كلها وصلت إلينا إما بدليل قطعي الورود أو دليل ظني الورود.

فسور القرآن الكريم وآياته كلها والأحاديث الشريفة المتواترة كلها قطعية الورود لأنها نُقلت إلينا بالتواتر جيلاً عن جيل وجمعاً عن جمع يستحيل تواطؤهم على الكذب.

أمّا دلالة هذه النصوص سواء كانت قطعية الورود أو ظنية الورود فإنها على قسمين:

آ: قطعي الدلالة: وهو النص الذي لا يحتمل أكثر من معنى واحد ولا يمكن لأي عقل أن يحمّله أكثر من معناه الواحد ولا مجال لتأويله على غير ظاهره والآيات التي تبحث في أصل العقيدة من توحيد وصلاة وزكاة وصيام [. . .] مما لا مجال للاختلاف فيه ولم يسمع أو ينقل فيها خلاف بين أئمة الفقه كلها من هذا القبيل «قطعي الدلالة».

ب: ظني الدلالة: وهو النص الذي يحتمل أكثر من معنى واحد إما لأنه لفظ مشترك بين معنيين في أصل اللغة أو لأنه جاء على سبيل الكناية والاستعارة أو يمكن صرفه عن ظاهره إلى معنى آخر بقرينة دون أن ينبني على ذلك إخلال بمقصود الشارع الحكيم. وهنا نرى أن المجال للاختلاف يتسع ويضيق بقدر ما يحتمل هذا النص من المعاني أو بحسب ما يحتمله من التأويل وما شابه ذلك.

وسائر الأحكام الشرعية الفرعية هي من هذا القبيل «ظني الدلالة»، فنجد فيها خلافاً بين الفقهاء في تفسيرها فكلٌ يفسّر بحسب فهمه وسعة أفقه دون أن يحمّل

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and the broadness of his horizons. while not giving the text a reading it does not imply, and then corroborating his interpretation with evidence acceptable to scholars. Scholarly differences are thus something natural, even logically necessary, as a result of the factors we have just described.

Allah Mighty and Majestic has willed that most texts of the Sacred Law be probabilistic as evidence because of a wisdom He demands, namely, to give people more choice and leave room for minds to use *ijtihad* in understanding His word and that of His messenger (Allah bless him and give him peace).

النص ما لا يحتمل ومؤيداً فهمه بدليل من الأدلة المعتبرة لدى العلماء.

فكان الخلاف أمراً طبيعياً بل حتمياً نتيجة لما قلنا.

ولقد اختار الله عز وجل أن تكون أكثر النصوص الشرعية ظنية الدلالة لحكمة اقتضاها وهي التوسعة على الناس وفسح المجال أمام العقول لتجتهد في كلامه وكلام رسوله ﷺ.

b6.2 We conclude this short summary with an example to clarify what we have said. Consider the word of Allah,

"Divorced women shall wait by themselves for three periods" (Koran 2:228),

as opposed to His saying, in the same sura,

"Those who forswear their women have a wait of four months" (Koran 2:226).

Allah's saying "three" in the former and "four" in the latter are texts that are decisive as evidence, in that neither admits of more than one interpretation, namely, the well-known numbers.

But in contrast with this, when Allah says "periods" (Ar. quru') in the first, and "months" (ashhur) in the second, we find that the former word can have more than one sense in its Arabic lexical root meaning, while *months* cannot, the latter being decisive in meaning and incapable of bearing another interpretation. Concerning this question, Imam Qurtubi says in his Koranic exegesis: "Scholars differ about the word *periods*. Those of Kufa hold that it means menstrual periods, and this is the position of 'Umar, 'Ali, and Ibn Mas'ud. But those of the Hijaz hold it means the intervals of purity between menstrual periods, and this is the view of 'A'isha, Ibn 'Umar, and Shafi'i."

Considering this, is it not natural that there should be various opinions about understanding the verse "three periods" but only one about

b6.2 ونختم هذه اللمحة الموجزة بمثال يوضح ما ذكرنا: قوله تعالى [في سورة البقرة]: ﴿وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ﴾.

لنقابله مع قوله عز وجل في نفس السورة: ﴿لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ﴾.

فقوله في الآية الأولى ﴿ثلاثة﴾ وفي الأخرى ﴿أربعة﴾ نص قطعي لا يحتمل أكثر من معنى واحد وهو العدد المعروف.

وبمقارنة ذلك مع قوله عز وجل في الأولى ﴿قُرُوءٍ﴾ وفي الأخرى ﴿أَشْهُرٍ﴾ نجد أن اللفظة الأولى ﴿قُرُوءٍ﴾ تحتمل أكثر من معنى واحد في الوضع اللغوي العربي خلافاً للفظة ﴿أَشْهُرٍ﴾ فإنها قطعية المعنى لا تحتمل أكثر من معنى واحد.

وفي هذا يقول الإمام القرطبي في تفسيره: «اختلف العلماء في الأقراء. فقال أهل الكوفة هي الحيض وهو قول عمر، وعلي، وابن مسعود [...] وقال أهل الحجاز هي الأطهار، وهو قول عائشة وابن عمر والشافعي». اهـ.

أليس بعد هذا أن يكون من الطبيعي أن تتعدد الآراء في فهم هذه الآية الكريمة ﴿ثلاثة قُرُوءٍ﴾ وتتحد في فهم

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understanding Allah's saying "four months"? If Allah had wanted all opinions to coincide on this question, He might have said, for example, "three menstrual periods" (hiyad), or "three intervals of purity between menstrual periods" (athar), just as He said "four months." And all the texts of Sacred Law that can bear more than one meaning are comparable to this example (*'Umdat al-salik* (y90), 11–13).

قوله تعالى ﴿أَرْبَعَةِ أَشْهُرٍ﴾؟ فلو أراد الله عز وجل أن تتوحد الآراء في هذه المسألة لقال مثلاً «ثلاث حيض»، أو «ثلاثة أطهار» كما قال ﴿أَرْبَعَةِ أَشْهُرٍ﴾. ويقاس على ذلك جميع النصوص الشرعية المحتملة لأكثر من معنى واحد [محرر من مقدمة عمدة السالك: ١١-١٣].

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b7.0 SCHOLARLY CONSENSUS (IJMA')

b7.0 الإجماع

b7.1 ('Abd al-Wahhab Khallaf:) *Scholarly consensus* (ijma') is the agreement of all the *mujtahid*s (def: o22.1(d)) of the Muslims existing at one particular period after the Prophet's death (Allah bless him and give him peace) about a particular ruling regarding a matter or event. It may be gathered from this that the integral elements of scholarly consensus are four, without which it is invalid:

(a) that a number of *mujtahid*s exist at a particular time;

(b) that all *mujtahid*s of the Muslims in the period of the thing or event agree on its ruling, regardless of their country, race, or group, though non*mujtahid*s are of no consequence;

(c) that each *mujtahid* present his opinion about the matter in an explicit manner, whether verbally, by giving a formal legal opinion on it, or practically, by giving a legal decision in a court case concerning it;

(d) and that all *mujtahid*s agree on the ruling, for if a majority of them agree, consensus is not effected, no matter how few those who contradict it, nor how many those who concur.

b7.1 (عبد الوهاب خلاف:) الإجماع [في اصطلاح الأصوليين] هو اتفاق جميع المجتهدين من المسلمين في عصر من العصور بعد وفاة الرسول على حكم شرعي في واقعة [...]. ومن هذا يؤخذ أن أركان الإجماع التي لا ينعقد شرعاً إلا بتحققها أربعة:

الأول: أن يوجد في عصر وقوع الحادثة عدد من المجتهدين [...].

الثاني: أن يتفق على الحكم الشرعي في الواقعة جميع المجتهدين من المسلمين في وقت وقوعها بصرف النظر عن بلدهم أو جنسهم أو طائفتهم [...] ولا عبرة بغير المجتهدين.

الثالث: أن يكون اتفاقهم بإبداء كل واحد منهم رأيه صريحاً في الواقعة سواء أكان إبداء الواحد منهم رأيه قولاً بأن أفتى في الواقعة بفتوى، أو فعلاً بأن قضى فيها بقضاء [...].

الرابع: أن يتحقق الاتفاق من جميع المجتهدين على الحكم، فلو اتفق أكثرهم لا ينعقد باتفاق الأكثر إجماعاً مهما قل عدد المخالفين وكثر عدد المتفقين.

b7.2 When the four necessary integrals of consensus exist, the ruling agreed upon is an

b7.2 إذا تحققت أركان الإجماع الأربعة [ت: والمؤلف يكررها هنا

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authoritative part of Sacred Law that is obligatory to obey and not lawful to disobey. Nor can *mujtahid*s of a succeeding era make the thing an object of new *ijtihad*, because the ruling on it, verified by scholarly consensus, is an absolute legal ruling which does not admit of being contravened or annulled.

. . .] كان هذا الحكم المتفق عليه قانوناً شرعياً واجباً اتباعه ولا يجوز مخالفته، وليس للمجتهدين في عصر تال أن يجعلوا هذه الواقعة موضع اجتهاد، لأن الحكم الثابت فيها بهذا الإجماع حكم شرعي قطعي لا مجال لمخالفته ولا نسخه.

b7.3 The proof of the legal authority of scholarly consensus is that just as Allah Most Glorious has ordered the believers, in the Koran, to obey Him and His messenger, so too He has ordered them to obey *those of authority* (ulu al-amr) among them, saying,

"O you who believe, obey Allah and obey the Prophet and those of authority among you" (Koran 4:59),

such that when those of authority in legal expertise, the *mujtahid*s, agree upon a ruling, it is obligatory in the very words of the Koran to follow them and carry out their judgement.

And Allah threatens those who oppose the Messenger and follow other than the believers' way, saying,

"Whoever contraverts the Messenger after guidance has become clear to him and follows other than the believers' way, We shall give him over to what he has turned to and roast him in hell, and how evil an outcome" (Koran 4:115).

b7.3 والبرهان على حجية الإجماع [ما يأتي:] أولاً أن الله سبحانه في القرآن كما أمر المؤمنين بطاعته وطاعة رسوله أمرهم بطاعة أولي الأمر منهم [ولفظ الأمر معناه الشأن] فقال تعالى: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ﴾ [. . .]، فإذا أجمع أولو الأمر في التشريع وهم المجتهدون على حكم وجب اتباعه وتنفيذ حكمهم بنص القرآن [. . .]. وتوعد سبحانه من يشاقق الرسول ويتبع غير سبيل المؤمنين، فقال عزَّ شأنه: ﴿وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَى وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّى وَنُصْلِهِ جَهَنَّمَ وَسَاءَتْ مَصِيراً﴾.

b7.4 A second evidentiary aspect is that a ruling agreed upon by all the *mujtahid*s in the Islamic Community (Umma) is in fact the ruling of the Community, represented by its *mujtahid*s, and there are many hadiths that have come from the Prophet (Allah bless him and give him peace), as well as quotes from the Companions, which indicate that the Community is divinely protected from error, including his saying (Allah bless him and give him peace):

(1) "My Community shall not agree on an error."

b7.4 وثانياً: أن الحكم الذي اتفقت عليه آراء جميع المجتهدين في الأمة الإسلامية هو في الحقيقة حكم الأمة ممثلة في مجتهديها. وقد وردت عدة أحاديث عن الرسول، وآثار عن الصحابة تدل على عصمة الأمة من الخطأ منها قوله ﷺ:

«لا تجتمع أمتي على خطأ». وقوله:

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(2) "Allah is not wont to make my Community concur on misguidance."

(3) "That which the Muslims consider good, Allah considers good."

(*'Ilm usul al-fiqh* (y71), 45–47)

«لم يكن الله ليجمع أمتي على الضلالة» [ت: أخرجه الحاكم ١/ ١١٦ بسند صحيح ولفظه: لا يجمع الله أمتي على ضلالة أبداً، ويد الله على الجماعة]. وقوله:

«ما رآه المسلمون حسناً فهو عند الله حسن» [ت: من حديث أخرجه أحمد رقم (٣٦٠٠) وإسناده حسن] [محرر من علم أصول الفقه: ٤٥-٤٧].

b7.5 (n: Another hadith that scholars quote in connection with the validity of scholarly consensus is the following, given with its commentary.)

The Prophet (Allah bless him and give him peace) said,

"Allah's hand is over the group, and whoever dissents from them departs to hell."

Allah's hand is over the group

(al-'Azizi:) Munawi says, "Meaning His protection and preservation of them, signifying that the collectivity of the people of Islam are in Allah's fold, so be also in Allah's shelter, in the midst of them, and do not separate yourselves from them." The rest of the hadith, according to the one who first recorded it (n: Tirmidhi), is,

and whoever dissents from them departs to hell.

Meaning that whoever diverges from the overwhelming majority concerning what is lawful or unlawful and on which the Community does not differ has slipped off the path of guidance and this will lead him to hell (*al-Siraj al-munir sharh al-Jami' al-saghir* (y18), 3.449).

b7.5 قال النبي ﷺ: «يد الله على الجماعة ومن شذ شذ إلى النار» [رواه الترمذي].

قال الشارح العزيزي في حديث يد الله على الجماعة: (قال المناوي: أي حفظه وكلاءته عليهم يعني أن الجماعة أهل الإسلام في كنف الله فأقيموا في كنف الله بين ظهرانيهم ولا تفارقوهم. وتمامه عند مخرجه:) ومن شذ شذ إلى النار (أي من خرج من السواد الأعظم في الحلال والحرام الذي لم تختلف فيه الأمة فقد زاغ عن سبيل الهدى وذلك يؤديه إلى دخول النار). [رواه الترمذي عن ابن عباس، وقال العلقمي بجانبه علامة الحسن] [نقل من السراج المنير شرح الجامع الصغير: ٣/ ٤٤٩].

b7.6 (n: In addition to its general interest as a formal legal opinion, the following serves in the present context to clarify why other than the four Sunni schools of jurisprudence do not necessarily play a role in scholarly consensus.)

('Abd al-Rahman Ba'alawi:) Ibn Salah reports that there is scholarly consensus on its being unlawful to follow rulings from schools other than those of the four Imams, meaning in one's personal works, let alone give court verdicts

b7.6 (عبد الرحمن باعلوي:) نقل ابن الصلاح الإجماع على أنه لا يجوز تقليد غير الأئمة الأربعة، أي حتى العمل لنفسه فضلاً عن القضاء والفتوى، لعدم

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or formal legal opinions to people from them, because of the untrustworthiness of the ascription of such rulings to the scholars who reportedly gave them, there being no channels of transmission which obviate the possibility of textual corruption and spurious substitutions.

The Zaydis, for example, who trace themselves to Zayd ibn `Ali ibn Husayn (n: son of `Ali and Fatima), the beatitude of Allah be upon them, despite the fact that Zayd was one of the Imams of the religion and a renowned figure well qualified to give guidance to those seeking it, his followers identify him with extreme permissiveness on many questions, ascriptions based on failure to check as to what his positions actually were (n: by naming the intermediate transmitters and establishing their reliability). It is quite otherwise with the four schools, whose Imams (Allah reward them) have spent themselves in checking the positions of their schools, explaining what could be rigorously authenticated as the position of the person it was attributed to, and what could not be. Their scholars have thus achieved safety from textual corruption and have been able to discern the genuine from the poorly authenticated (*Bughya al-mustarshidin fi talkhis fatawa ba'd al-a'imma min al-muta'akhkhirin* (y19), 8).

الثقة بنسبتها إلى أربابها بأسانيد تمنع التحريف والتبديل كمذهب الزيديين المنسوبين إلى الإمام زيد بن علي بن الحسين السبط رضوان الله عليهم وإن كان هو إماماً من أئمة الدين وعلماً صالحاً للمسترشدين غير أن أصحابه نسبوه إلى التساهل في كثير لعدم اعتنائهم بتحرير مذهبه بخلاف المذاهب الأربعة فإن أئمتهم جزاهم الله خيراً بذلوا نفوسهم في تحرير أقوالها وبيان ما ثبت عن قائلها وما لم يثبت. فأمن أهلها التحريف وعلم الصحيح من الضعيف [نقل من بغية المسترشدين في تلخيص فتاوى بعض الأئمة من المتأخرين: ٨].

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BOOK C

THE NATURE OF LEGAL RULINGS

كتاب الحكم الشرعي

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c1.0 KINDS OF RULINGS

c1.1 ('Abd al-Wahhab Khallaf:) A *legal ruling* is a statement from the Lawgiver (syn. Allah or His messenger (Allah bless him and give him peace)) concerning the acts of those morally responsible which:

(1) requires something;

(2) allows a choice;

(3) or gives stipulations.

c1.2 An *injunctive* ruling is one that enjoins the morally responsible individual to either do or refrain from an act, or gives him an option to do or refrain from it.

An example of enjoining one to *do* an act is Allah's saying,

"People owe Allah to make pilgrimage to the House" (Koran 3:97).

An example of enjoining one to *refrain* from an act is His saying,

"Let no people mock another people" (Koran 49:11).

And an example of *giving an option* to do or refrain from an act is His saying,

c1.0 أنواع الحكم

c1.1 (عبد الوهاب خلاّف:) الحكم الشرعي هو خطاب الشارع المتعلق بأفعال المكلفين طلباً أو تخييراً أو وضعاً.

c1.2 فالحكم التكليفي هو ما اقتضى طلب فعل من المكلف، أو كفه عن فعل، أو تخييره بين فعل والكف عنه.

فمثال ما اقتضى طلب فعل من المكلف قوله تعالى: ﴿وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ﴾.

ومثال ما اقتضى طلب الكف عن فعل قوله تعالى: ﴿لا يَسْخَرْ قَوْمٌ مِنْ قَوْمٍ﴾.

ومثال ما اقتضى تخيير المكلف بين فعل والكف عنه قوله تعالى: ﴿فَإِذَا

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"When the prayer is finished, go forth in the land" (Koran 62:10).

قُضِيَتِ الصَّلاةُ فَانْتَشِرُوا فِي الأَرْضِ ﴾ .

c1.3 As for *stipulatory* rulings, they entail that something is made a legal reason (sabab) for another thing, a condition (shart) for it, or a preventive (mani') of it.

An example of being stipulated as a *reason* for something is Allah's saying,

"O believers, when you go to pray, wash your faces and wash your forearms to the elbows" (Koran 5:6),

which stipulates wanting to pray as a reason for the obligation of performing *ablution* (wudu).

An example of something being made a *condition* for another thing is His saying,

"People owe Allah to make pilgrimage to the House, whoever is able to find a way" (Koran 3:97),

which implies that the ability to get to the House (n: Kaaba) is a condition for the obligatoriness of one's pilgrimage. Another example is the Prophet's saying (Allah bless him and give him peace),

"There is no marriage unless there are two witnesses,"

which means the presence of two witnesses is a condition for the validity of a marriage.

An example of being made a *preventive* of something is the Prophet's saying (Allah bless him and give him peace),

"The killer does not inherit,"

which entails that an heir's killing the deceased is preventive of his inheriting an estate division share from him (*'Ilm usul al-fiqh* (y71), 100–102).

c1.3 وأما الحكم الوضعي فهو ما اقتضى وضع شيء سبباً لشيء أو شرطاً له أو مانعاً منه.

فمثال ما اقتضى وضع شيء سبباً لشيء قوله تعالى: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ﴾ اقتضى وضع إرادة إقامة الصلاة سبباً في إيجاب الوضوء.

ومثال ما اقتضى وضع شيء شرطاً لشيء قوله تعالى: ﴿وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلاً﴾ اقتضى أن استطاعة السبيل إلى البيت شرط لإيجاب حجه. وقوله ﷺ: «لا نكاح إلا بشاهدين» اقتضى أن حضور الشاهدين شرط لصحة الزواج.

ومثال ما اقتضى جعل شيء مانعاً من شيء قوله ﷺ: «ليس للقاتل ميراث» اقتضى جعل قتل الوارث مورثه مانعاً من إرثه [محرر من علم أصول الفقه: ١٠٠-١٠٢].

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c2.0 TYPES OF HUMAN ACT

c2.0 أقسام الحكم التكليفي

c2.1 (N:) The *obligatory* (fard) is that which the Lawgiver strictly requires be done. Someone who performs an obligatory act out of obedience to Allah is rewarded, while a person who refrains from it without excuse deserves to be punished.

(A: In the Shafi'i school there is no difference between *obligatory* (fard) and *requisite* (wajib) except in the pilgrimage, where nonperformance of a requisite does not invalidate the pilgrimage, but necessitates an expiation by slaughtering. For any act of worship, obligatory or nonobligatory, all conditions necessary for its validity and all of its *integrals* (rukn, pl. arkan) are obligatory, since it is unlawful to intentionally perform an invalid act of worship.)

c2.1 (ح:) الفرض ما طلبه الشارع طلباً جازماً. وفاعل الفرض طاعةً لله يثاب، وتاركه بلا عذر يستحق العقاب.

(ع: لا فرق عند الشافعية بين الفرض وبين الواجب إلا في باب الحج؛ حيث تركُ واجبٍ لا يفسد الحج ولكنه يجبر بالدم. وفي كل عبادة، واجبة كانت أو نافلة، يجب القيام بجميع شروطها وأركانها، إذ لا يجوز أداء عبادة فاسدة).

c2.2 The *sunna* (n: or *recommended* (mandub)) is that which the Lawgiver asks be done, but does not strictly require it. Someone who performs it out of obedience to Allah is rewarded, though someone who refrains from it is not punished.

c2.2 السنة ما طلبه الشارع طلباً غير جازم. ومن فعلها طاعة لله يثاب، ومن تركها لا يعاقب.

c2.3 The *permissible* (mubah) is what the Lawgiver has neither requested nor prohibited, so the person who does it is not rewarded or punished. Rather, doing or not doing it are equal, though if a person does it to enable him to perform an act of obedience to Allah, or refrains from it for that reason, then he is rewarded for it. And if he does such an act to enable him to perform an act of disobedience, he is sinning.

c2.3 المباح ما لم يطلبه الشارع ولم ينه عنه. فلا يثاب فاعله ولا يعاقب. بل يستوي فعله وتركه لكن لو فعله الإنسان ليستعين على طاعة الله كان له ثواب، وكذا لو تركه لذلك. ولو فعله ليستعين على معصية كان آثماً.

c2.4 The *offensive* (makruh) is that which the Lawgiver has interdicted but not strictly forbidden. A person who refrains from such an act out of obedience to Allah is rewarded, while the person who commits it does not deserve to be punished.

c2.4 المكروه ما نهى عنه الشارع نهياً غير جازم ومن تركه طاعة لله يثاب ومن فعله لا يستحق العقاب.

c2.5 The *unlawful* (haram) is what the Lawgiver strictly forbids. Someone who commits an unlawful act deserves punishment, while one who

c2.5 الحرام ما نهى عنه الشارع نهياً جازماً. ومن فعله يستحق العقاب

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refrains from it out of obedience to the command of Allah is rewarded.

ومن تركه امتثالاً لأمر الله يثاب.

(n: Scholars distinguish between three levels of the unlawful:

(1) *minor sins* (saghira, pl. sagha'ir), which may be forgiven from prayer to prayer, from one Friday prayer (jumu'a) to another, and so forth, as is mentioned in hadith;

(2) *enormities* (kabira, pl. kaba'ir), those which appear by name in the Koran or hadith as the subject of an explicit threat, prescribed legal penalty, or curse, as listed below at book p;

(3) and *unbelief* (kufr), sins which put one beyond the pale of Islam (as discussed at o8.7) and necessitate stating the Testification of Faith (Shahada) to reenter it.

Repentance (def: p77) is obligatory for all three (*al-Zawajir 'an iqtiraf al-kaba'ir* (y49), 1.5–9).)

c2.6 (Nawawi:) There is no doubt that the merit of an act varies. Fasting, for example, is unlawful on 'Eid Day, obligatory before it, and recommended after it. The prayer is highly desirable most of the time, but offensive at some times and situations, such as when restraining oneself from using the lavatory. Reciting the Koran is desirable, but offensive when bowing in the prayer or prostrating. Dressing one's best is good on the 'Eid or on Friday, but not during the drought prayer. And so forth.

Abul Qasim al-Junayd (Allah have mercy on him) said, "A sincere person changes forty times a day, while the hypocritical show-off stays as he is forty years."

The meaning of this is that the sincere person moves with what is right, wherever it may lead, such that when prayer is deemed better by the Sacred Law, then he prays, and when it is best to be sitting with the learned, or the righteous, or guests, or his children, or taking care of something a Muslim needs, or mending a broken heart, or whatever else it may be, then he does it, leaving aside what he usually does. And likewise for fasting, reciting the Koran, invoking Allah, eating or drinking, being serious or joking, enjoying the good life or engaging in self-sacrifice, and so on. Whenever he sees what is preferred by the Sacred Law under the circumstances, he does it, and is

c2.6 (النووي:) ولا شك في اختلاف أحوال الشيء في الأفضلية فإن الصوم حرام يوم العيد واجب قبله مسنون بعده. والصلاة محبوبة في معظم الأوقات وتكره في أوقات وأحوال كمدافعة الأخبثين. وقراءة القرآن محبوبة وتكره في الركوع والسجود [وغير ذلك]. وكذلك تحسين اللباس يوم الجمعة والعيد وخلافه يوم الاستسقاء. وكذلك ما أشبه هذه.

قال أبو القاسم الجنيد بن محمد رحمه الله إن الصادق يتقلب في اليوم أربعين مرة والمراءي يثبت على حالة واحدة أربعين سنة (قلت) معناه أن الصادق يدور مع الحق حيث دار فإذا كان الفضل الشرعي في الصلاة مثلاً صلى وإذا كان في مجالسة العلماء والصالحين والضيفان والعيال وقضاء حاجة مسلم وجبر قلب مكسور ونحو ذلك فعل ذلك الأفضل وترك عادته. وكذلك الصوم والقراءة والذكر والأكل والشرب والجد والمزح والاختلاط والاعتزال والتنعم والابتذال ونحوها. فحيث رأى الفضيلة الشرعية في شيء من هذا فعله ولا يرتبط

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not bound by a particular habit or kind of devotion as the show-off is. The Prophet (Allah bless him and give him peace) did various things, of prayer, fasting, sitting for Koran recital and invocation, eating and drinking, dressing, riding, lovemaking with his wives, seriousness and jest, happiness and wrath, scathing condemnation for blameworthy things, leniency in punishing those who deserved it and excusing them, and so on, according to what was possible and preferable for the time and circumstances (*al-Majmu'* (y108), 1.17–18).

بعادة ولا بعبادة مخصوصة كما يفعله المراءي. وقد كانت لرسول الله ﷺ أحوال في صلاته وصيامه وأوراده وأكله وشربه ولبسه وركوبه ومعاشرة أهله وجده ومزحه وسروره وغضبه وإغلاظه في إنكار المنكر ورفقه في عقوبته مستحقي التعزير وصفحه عنهم وغير ذلك بحسب الإمكان والأفضل في ذلك الوقت والحال [محرر من المجموع: ١/ ١٧-١٨: بتقديم وتأخير].

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c3.0 OBLIGATORY ACTS

c3.0 الواجب

c3.1 ('Abd al-Wahhab Khallaf:) Obligatory acts are distinguished in four ways, according to various considerations.

One distinction is whether current performance is time-restricted or non-time-restricted.

A *time-restricted* obligatory act is one the Lawgiver demands be done at a particular time, such as the five obligatory prayers, for each of which the time for current performance is set, such that the particular prayer is not obligatory before it, and the individual is guilty of serious sin if he delays it past its time without excuse.

A *non-time-restricted* obligatory act is one which the Lawgiver strictly demands, but does not specify a time for its current performance, such as the expiation obligatory for someone who swears and oath and breaks it (def: o20).

c3.1 (عبد الوهاب خلاف:) ينقسم الواجب إلى أربعة تقسيمات باعتبارات مختلفة.

التقسيم الأول: الواجب من جهة وقت أدائه، إما مؤقت وإما مطلق عن التوقيت.

فالواجب المؤقت هو ما طلب الشارع فعله حتماً في وقت معين كالصلوات الخمس، حدد لأداء كل صلاة منها وقتاً معيناً بحيث لا تجب قبله ويأثم المكلف إن أخرها عنه بغير عذر.

والواجب المطلق عن التوقيت هو ما طلب الشارع فعله حتماً ولم يعين وقتاً لأدائه، كالكفارة الواجبة على من حلف يميناً وحنث.

c3.2 A second distinction between obligatory acts is made on the basis of who is called upon to perform them, namely, whether an act is personally obligatory or communally obligatory.

A *personally obligatory* (fard al-'ayn) act is what the Lawgiver requires from each and every morally responsible person. It is insufficient for someone to perform such an act on another's behalf, such as the prayer, *zakat* (def: h1.0), pilgrimage, keeping agreements, and avoiding wine or gambling.

c3.2 التقسيم الثاني: ينقسم الواجب من جهة المطالب بأدائه إلى واجب عيني وواجب كفائي.

فالواجب العيني هو ما طلب الشارع فعله من كل فرد من أفراد المكلفين ولا يجزىء قيام مكلف به عن آخر كالصلاة والزكاة والحج والوفاء بالعهود واجتناب الخمر والميسر.

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A *communally obligatory* (fard al-kifaya) act is what the Lawgiver requires from the collectivity of those morally responsible, not from each one of them, such that if someone undertakes it, then the obligation has been fulfilled and the sin and responsibility (n: of nonperformance) is lifted from the rest, while if no one undertakes it, then all are guilty of serious sin for neglecting the obligation. Examples include commanding the right and forbidding the wrong (def: book q), praying over the dead, building hospitals, lifesaving, fire fighting, medicine, industries people require, the existence of Islamic courts and judges, issuing formal legal opinions, responding to someone who says "as-Salam 'alaykum," and testifying in court. The Lawgiver requires that these obligatory acts exist in the Islamic Community regardless of who does them. But He does not require they be done by each person, or some particular one, since the interests of the Community are realized by the existence of these things through the efforts of some of those morally responsible, and do not entail every particular person's performance of them.

Someone able through himself or his property to perform the communally obligatory act is obliged to perform it, and someone unable to do it himself is obliged to urge and have the person do it who can. If the obligatory act is done, all are cleared of the sin, and if neglected, all are guilty of serious sin. The person capable of it is guilty because he neglected a communally obligatory act he could have done, and the rest are guilty because they neglected to urge him and have him perform the obligatory act he was capable of.

When an individual is the only one available who can perform a communally obligatory act, it becomes personally obligatory for him.

والواجب الكفائي هو ما طلب الشارع فعله من مجموع المكلفين لا من كل فرد منهم، بحيث إذا قام به بعض المكلفين سقط الإثم والحرج عن الباقين، وإذا لم يقم به أي فرد من أفراد المكلفين أثموا جميعاً بإهمال هذا الواجب.

كالأمر بالمعروف والنهي عن المنكر والصلاة على الموتى وبناء المستشفيات وإنقاذ الغريق وإطفاء الحريق والطب والصناعات التي يحتاج إليها الناس والقضاء والإفتاء، ورد السلام وأداء الشهادة. فهذه الواجبات مطلوب للشارع أن توجد في الأمة أياً كان من يفعلها. وليس المطلوب للشارع أن يقوم كل فرد أو فرد معين بفعلها. لأن المصلحة تتحقق بوجودها من بعض المكلفين ولا تتوقف على قيام كل مكلف بها.

فالقادر بنفسه أو ماله على أداء الواجب الكفائي عليه أن يقوم به وغير القادر على أدائه بنفسه عليه أن يحث القادر ويحمله على القيام به.

فإذا أدي الواجب سقط الإثم عنهم جميعاً، وإذا أهمل أثموا جميعاً: أثم القادر لإهماله واجباً قدر على أدائه وأثم غيره لإهماله حث القادر وحمله على فعل الواجب المقدور له.

وإذا تعين فرد لأداء الواجب الكفائي كان واجباً عينياً عليه.

c3.3 A third way obligatory acts are distinguished is by the amount of them required, that is, whether the act is of a defined amount or an undefined amount.

Obligatory acts of *defined amount* are those for which the Lawgiver has determined a particular quantity, such that the subject is not free of the obligation until he has done the amount stipulated by the Lawgiver, as with the five obligatory

c3.3 التقسيم الثالث: ينقسم الواجب من جهة المقدار المطلوب منه إلى محدد وغير محدد.

فالواجب المحدد هو ما عين له الشارع مقداراً معلوماً بحيث لا تبرأ ذمة المكلف من هذا الواجب إلا إذا أداه على ما عين الشارع كالصلوات الخمس

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prayers, or zakat.

Obligatory acts of *undefined amount* are those which the Lawgiver has not stipulated the amount of, but rather demands them from the subject in an undetermined quantity, such as spending in the way of Allah, cooperating with one another in good works, feeding the hungry, helping those in distress, and so forth.

والزكاة.

والواجب غير المحدد هو ما لم يعين الشارع مقداره بل طلبه من المكلف بغير تحديد، كالإنفاق في سبيل الله والتعاون على البر وإطعام الجائع وإغاثة الملهوف وغير ذلك.

c3.4 A fourth distinction between obligatory acts is whether an act is a specific obligation, or an obligation to choose between certain alternatives.

Specific obligations are those in which the Lawgiver demands the act itself, such as the prayer, fasting in Ramadan, paying for merchandise, rent from a tenant, or returning something wrongfully taken; such that the individual is not free of the obligation until he does that very act.

An obligation to choose between certain *alternatives* is when the Lawgiver requires the performance of one of a given number of actions, such as one of the options in expiating a broken oath, where Allah Most High requires the person who has broken his oath to feed ten poor people, clothe them, or free a slave ('abd, def: w13), and the obligation consists of doing any of these three things (*'Ilm usul al-fiqh* (y71), 106, 108–11).

c3.4 التقسيم الرابع: ينقسم الواجب إلى واجب معين وواجب مخيّر.

فالواجب المعين ما طلبه الشارع بعينه كالصلاة والصيام وثمن المشترى وأجر المستأجر ورد المغصوب، ولا تبرأ ذمة المكلف إلا بأدائه بعينه.

والواجب المخير ما طلبه الشارع واحداً من أمور معينة، كأحد خصال الكفارة فإن الله تعالى أوجب على من حنث في يمينه أن يطعم عشرة مساكين أو يكسوهم أو يعتق رقبة فالواجب أي واحد من هذه الأمور الثلاثة [محرر من علم أصول الفقه: ١٠٦-١١١].

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c4.0 RECOMMENDED ACTS

c4.1 ('Abd al-Wahhab Khallaf:) Recommended acts are divided into three categories.

The first is recommended acts whose demand is *confirmed*. Someone who neglects such an act does not deserve punishment, but does deserve censure and blame. This includes the sunnas and recommended acts that are legally considered to complete obligatory acts, such as the call to prayer (adhan) or performing the five obligatory prayers in a group, as well as all religious matters that the Prophet (Allah bless him and give him peace) diligently performed and did not omit except once or twice to show that they were not obligatory, like

c4.0 المندوب

c4.1 (عبد الوهاب خلاف:) المندوب ينقسم إلى ثلاثة أقسام:

مندوب مطلوب فعله على وجه التأكيد ولا يستحق تاركه العقاب ولكن يستحق اللوم والعتاب. ومن هذا السننُ والمندوبات التي تعد شرعاً مكملة للواجبات كالأذان وأداء الصلوات الخمس جماعة. ومنه كل ما واظب عليه الرسول ﷺ من شؤونه الدينية، ولم يتركه إلا مرة أو مرتين ليدل على عدم تحتيمه

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rinsing out the mouth when performing ablution, or reciting a *sura* or some verses of the Koran after the *Fatiha* during the prayer. This category is called the *confirmed sunna* (sunna mu'akkada) or *sunna of guidance*.

كالمضمضة في الوضوء وقراءة سورة أو آية بعد الفاتحة في الصلاة. ويسمى هذا القسم السنة المؤكدة أو سنة الهدى.

c4.2 The second category is those acts whose performance is sanctioned by Sacred Law such that the person who performs them is rewarded, though someone who omits them deserves neither punishment nor blame. This includes acts the Prophet (Allah bless him and give him peace) did not diligently perform, but did one or more times and then discontinued. It also includes all voluntary acts, like spending on the poor, fasting on Thursday of each week, or praying *rak'as* (units) of prayer in addition to the obligatory and confirmed sunna prayers.

This category is called the *extra sunna* or *supererogatory* (nafila).

c4.2 ومندوب مشروع فعله وفاعله يثاب وتاركه لا يستحق عقاباً ولا لوماً. ومن هذا ما لم يواظب الرسول ﷺ على فعله بل فعله مرة أو أكثر وتركه. ومنه جميع التطوعات كالتصدق على الفقير أو صيام يوم الخميس من كل أسبوع أو صلاة ركعات زيادة عن الفرض وعن السنة المؤكدة. ويسمى هذا القسم السنة الزائدة أو النافلة.

c4.3 The third category consists of the superlatively recommended, meaning those acts considered part of an individual's perfections. It includes following the Prophet (Allah bless him and give him peace) in ordinary matters that proceeded from him as a human being, as when a person eats, drinks, walks, sleeps, and dresses like the Prophet used to. Following the example of the Prophet (Allah bless him and give him peace) in these and similar matters is an excellence and considered among one's refinements, as it shows one's love for the Prophet and great attachment to him. But someone who does not follow the Prophet (Allah bless him and give him peace) in matters like these is not considered a wrongdoer, because they are not part of his lawgiving (A: though such acts are rewarded when one thereby intends to follow the Prophet (Allah bless him and give him peace), and every desirable practice one performs means a higher degree in paradise which the person who neglects it may not attain to).

Acts of this category are called *desirable* (mustahabb), *decorum* (adab), or *meritorious* (ibid., 112).

c4.3 ومندوب زائد أي يعد من الكماليات للمكلف. ومن هذا الاقتداء بالرسول ﷺ في الأمور العادية التي تصدر عنه بصفته إنساناً كأن يأكل ويشرب ويمشي وينام ويلبس على الصفة التي كان يسير عليها الرسول فإن الاقتداء بالرسول في هذه الأمور وأمثالها كمالي، ويعد من محاسن المكلف لأنه يدل على حبه للرسول ﷺ وفرط تعلقه به. ولكن من لم يقتد بالرسول ﷺ في مثل هذه الأمور لا يعد مسيئاً، لأن هذه ليست من تشريعه ﷺ. ويسمى هذا القسم مستحباً وأدباً وفضيلة [نقل من المرجع المذكور: ١١٢].

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c5.0 UNLAWFUL ACTS

c5.1 ('Abd al-Wahhab Khallaf:) The unlawful is of two kinds.

The first is the *originally unlawful in itself*, meaning the Sacred Law forbids it from the outset, such as adultery, theft, prayer without ritual purity, marrying a member of one's unmarriageable kin while knowing them to be such, selling unslaughtered dead animals, and so forth, of things that are intrinsically unlawful because they entail damage and harm, the prohibition applying from the outset to the very act.

The second is the *unlawful because of an extrinsic reason*, meaning that the initial ruling of an act was that it was obligatory, recommended, or permissible, but an extrinsic circumstance became linked with it that made it unlawful, such as a prayer performed in a garment wrongfully taken, or a sale in which there is fraud, or a marriage whose sole purpose is to allow the woman to remarry her previous husband who has pronounced a threefold divorce against her, or fasting day after day without breaking the fast at night, or an unlawfully innovated divorce (def: n2.3), and so forth, of things unlawful because of an external circumstance. The prohibition is not due to the act itself, but because of something extrinsic to the act; meaning the act is not damaging or harmful in itself, but something has happened to it and become conjoined with it that makes it entail damage or harm.

c5.2 One consequence of the above distinction is that an *intrinsically* unlawful act is uncountenanced by the Law to begin with, so it cannot be a legal cause or reason, or form the basis for further legal consequences. Rather, it is *invalid*. Because of this, prayer without ritual purity is invalid, marriage to a close unmarriageable relative when one knows them to be such is invalid, and the sale of an unslaughtered dead animal is invalid. And something legally invalid is without other legal efficacy.

But an act that is unlawful because of an *extrinsic* circumstance is intrinsically lawful, and can thus be a legal reason and form the basis for

c5.0 المحرم

c5.1 (عبد الوهاب خلاّف:) المحرم قسمان: محرم أصالة لذاته، أي أنه فعل حكمه الشرعي التحريم من الإبتداء، كالزنا والسرقة والصلاة بغير طهارة وزواج إحدى المحارم مع العلم بالحرمة وبيع الميتة وغير ذلك مما حرم تحريماً ذاتياً لما فيه من مفاسد ومضار، فالتحريم وارد ابتداءً على ذات الفعل.

ومحرم لعارض أي أنه فعل حكمه الشرعي ابتداءً الوجوب أو الندب أو الإباحة ولكن اقترن به عارض جعله محرماً كالصلاة في ثوب مغصوب والبيع الذي فيه غش والزواج المقصود به مجرد تحليل الزوجة لمطلقها ثلاثاً وصوم الوصال والطلاق البدعي وغير ذلك مما عرض له التحريم لعارض، فليس التحريم لذات الفعل ولكن لأمر خارجي أي أن ذات الفعل لا مفسدة فيه ولا مضرة ولكن عرض له واقترن به ما جعل فيه مفسدة أو مضرة.

c5.2 ومما يبنى على هذا التقسيم أن المحرم أصالة غير مشروع أصلاً، فلا يصلح سبباً شرعياً ولا تترتب أحكام شرعية عليه، بل يكون باطلاً. ولهذا كانت الصلاة بغير طهارة باطلة. وزواج إحدى المحارم مع العلم بالحرمة باطلاً. وبيع الميتة باطلاً. والباطل شرعاً لا يترتب عليه حكم.

وأما المحرم لعارض فهو في ذاته مشروع فيصلح سبباً شرعياً وتترتب عليه

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further legal consequences, since its prohibition is accidental to it and not essential. Because of this, a prayer while wearing a garment wrongfully taken is legally *valid*, though the person is guilty of serious sin for having taken it; a sale in which there is fraud is legally valid (N: though the buyer has the option to cancel the sale and return the merchandise for a full refund); and an unlawfully innovated divorce is legally effective.

The reason for this is that the prohibition of an act because of an extrinsic event or circumstance does not vitiate either the basis of its being a legal cause or its identity, provided all its integrals and conditions exist. As for intrinsic unlawfulness, it negates the basis of an act's being a legal cause and vitiates its identity by the nonexistence of one of its integrals or conditions, so that it is no longer something that is of legal consideration (ibid., 113–14).

آثاره، لأن التحريم عارض له وليس ذاتياً. ولهذا كانت الصلاة في ثوب مغصوب صحيحة ومجزئة وهو آثم للغصب. والبيع الذي فيه غش صحيح. والطلاق البدعي واقع.

والعلة في هذا أن التحريم لعارض لا يقع به خلل في أصل السبب ولا في وصفه مادامت أركانه وشروطه مستوفاة. وأما التحريم الذاتي فهو يجعل الخلل في أصل السبب ووصفه بفقد ركن أو شرط من أركانه وشروطه فيخرج عن كونه مشروعاً [نقل من المرجع المذكور: ١١٣-١١٤].

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c6.0 DISPENSATION (RUKHSA) AND STRICTNESS ('AZIMA)

c6.0 الرخصة والعزيمة

c6.1 ('Abd al-Wahhab Khallaf:) *Strictness* is what Allah initially legislates, of general rulings not concerned with one circumstance rather than another, or one individual rather than another.

c6.1 (عبد الوهاب خلاّف:) العزيمة هي ما شرعه الله أصالة من الأحكام العامة التي لا تختص بحال دون حال ولا بمكلف دون مكلف.

c6.2 *Dispensation* is when what is normally forbidden is made permissible because of necessity or need.

For example, if someone is forced to make a statement of unbelief (kufr) it is made permissible, to ease his hardship, for him to do so as long as faith remains firm in his heart. Likewise with someone who is forced to break his fast in Ramadan, or forced to destroy the property of another; the normally prohibited act which he is forced to do becomes permissible for him, to ease the hardship. And it is made permissible for someone forced by extreme hunger or severe thirst to eat from an unslaughtered dead animal or drink wine. (A: The latter is not permissible even under such

c6.2 والرخصة هي إباحة المحظور للضرورة أو الحاجة. فمن أكره على التلفظ بكلمة الكفر أبيح له ترفيهاً عنه أن يتلفظ بها وقلبه مطمئن بالإيمان. وكذا من أكره على أن يفطر في رمضان أو يتلف مال غيره أبيح له المحظور الذي أكره عليه ترفيهاً عنه. ومن اضطرّه الجوع الشديد أو الظمأ الشديد إلى أكل الميتة أو شرب الخمر أبيح له أكلها وشربها.

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conditions in the Shafi'i school.)

Dispensation also includes being permitted to omit an obligatory act when an excuse exists that makes its performance a hardship (dis: e7.2, second par.) upon the individual. Thus, someone who is ill or travelling in Ramadan is permitted not to fast. And someone who is travelling is permitted to shorten prayers of four rak'as to only two rak'as (ibid., 121–22).

ومن الرخص إباحة ترك الواجب إذا وجد عذر يجعل أداءه شاقاً على المكلف. فمن كان في رمضان مريضاً أو على سفر أبيح له أن يفطر. ومن كان مسافراً أبيح له قصر الصلاة الرباعية أي أداؤها ركعتين بدل أربع. [محرّر من علم أصول الفقه].

e6.3 (n:) Since it is permissible for a Muslim to follow any of the four Imams in any of his acts of worship, comparison of their differences opens another context for discussing dispensation and strictness, a context in which classical scholars familiar with various schools often use the term "dispensation" to refer to the ruling of the school easiest on a particular legal question, and "strictness" to refer to the ruling of the school that is most rigorous. Which school this is varies from question to question. The following entry discusses how and when it is permissible for ordinary Muslims to use dispensations in the sense of following easier rulings from a different school, while entry e6.5 discusses the *way of greater precaution* (al-ahwat fi al-din) taken by those Muslims who purposely select the strictest school of thought on each legal question because of its being more precautionary and closer to godfearingness (taqwa).

e6.4 Scholars frequently acknowledge that the difference of the Imams is a mercy, and their unanimity is a decisive proof. Sheikh 'Umar Barakat, the commentator of *'Umdat al-salik*, says:

"It is permissible to follow each of the four Imams (Allah be well pleased with them), and permissible for anyone to follow one of them on a legal question, and follow a different one on another legal question. It is not obligatory to follow one particular Imam on all legal questions" (*Fayd al-Ilah al-Malik* (y27), 1.357).

(الشيخ عمر بركات:) يجوز تقليد كل واحد من الأئمة الأربعة رضي الله عنهم ويجوز لكل واحد أن يقلد واحداً منهم في مسألة ويقلد إماماً آخر في مسألة أخرى ولا يتعين تقليد واحد بعينه في كل المسائل [نقل من فيض الإله المالك: ١/٣٥٧].

This does not, however, imply that it is lawful to indiscriminately choose dispensations from each school, or that there are no conditions for the above-mentioned permissibility. Imam Nawawi was asked for a formal legal opinion on whether pursuing dispensations in such a manner was permissible:

(Question:) "Is it permissible for someone of a particular school to follow a different school in matters that will be of benefit to him, and to seek out dispensations?"

He answered (Allah be well pleased with him), "It is not permissible to seek out dispensations [A: meaning it is unlawful, and the person who does is corrupt (fasiq)], and Allah knows best" (*Fatawa al-Imam al-Nawawi* (y105), 113).

(مسألة:) هل يجوز لمن تمذهب أن يقلد مذهباً آخر فيما يكون به نفع، ويتبع الرخص؟

(أجاب رضي الله تعالى عنه:) لا يجوز تتبُّع الرخص، والله أعلم [نقل من فتاوى الإمام النووي: ١١٣].

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But when forced by necessity or hardship to take such a dispensation (A: even retroactively, as when one has finished the action, and then makes the intention to have followed another Imam's school of thought on the question), then there is nothing objectionable in it, provided that one's act of worship together with its prerequisites is valid in at least one of the schools. One may not simply *piece together* (talfiq) constituent parts from various schools in a single act of worship, if none of the schools would consider the act valid. An example is someone who performs an ablution that is minimally valid in the Shafi'i school by wetting only a few hairs of his head in the ablution sequence, something not permitted by Hanafis, and then prays behind an imam without himself reciting the Fatiha, something permitted by Hanafis but not Shafi'is. His ablution, the necessary condition for his prayer, is inadequate in the Hanafi school, and his performance of the prayer is inadequate in the Shafi'i school, with the result that neither considers his prayer valid, and in fact it is not. Whoever follows a ruling mentioned in this volume from another school must observe the conditions given at w14, and make sure his worship is valid in at least one school, which for prayer can best be achieved by performing *all recommended measures* in the present volume relating to purity, for example, e5, e11, and so on, as if *obligatory*.

c6.5 A second way to use differences between schools is to take the *way of greater precaution* by following whoever is most rigorous on a given question. For example, when performing the *purificatory bath* (ghusl), rinsing the mouth and nostrils with water is a nonobligatory, sunna measure according to the Shafi'i school, but obligatory and necessary for the purificatory bath's validity according to Hanafis. The way of greater precaution is for the Shafi'i to perform it as diligently as if it were obligatory, even though omitting it is permitted by his school.

('Abd al-Wahhab Sha'rani:) My brother, when you first hear of the two levels of this scale (n: dispensation and strictness), beware of jumping to the conclusion that there is absolute free choice between them, such that an individual may without restriction choose either dispensation or strictness in any ruling he wishes. It does not befit a person able to perform the stricter ruling to stoop to taking a dispensation permissible to him. (A: The more rigorous is always preferable in the Shafi'i school, even when the dispensation is permissible.) For as you know, my brother, I do not say that the individual is free to choose between taking the dispensation or taking the stricter ruling when he is able to perform the stricter ruling obligatory for him. I take refuge in Allah from saying such a thing, which is like making a game of religion. Of an absolute certainty, dispensations are only for someone unable to perform the stricter ruling, for in such a case, the dispensation *is* the stricter ruling in relation to him.

Moreover, I hold that mere sincerity and

(عبد الوهاب الشعراني:) إياك يا أخي أن تبادر أول سماعك لمرتبتي الميزان إلى فهم كون المرتبتين على التخيير مطلقاً حتى أن المكلف يكون مخيراً بين فعل الرخصة والعزيمة في أي حكم شاء [...] وليس الأولى لمن قدر على فعل العزيمة أن ينزل إلى فعل الرخصة الجائزة [...] فقد علمت يا أخي أنني لا أقول بتخيير المكلف بين العمل بالرخصة والعزيمة مع القدرة على فعل العزيمة المتعينة عليه معاذ الله أن أقول بذلك فإنه كالتلاعب بالدين [كما مرّ في الميزان]. إنما تكون الرخصة للعاجز عن فعل العزيمة المذكورة قطعاً لأنه حينئذ تصير الرخصة في حقه عزيمة. بل أقول إن من الواجب على كل مقلد من

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honesty demand of anyone who follows a particular school not to take a dispensation that the Imam of his school holds is permissible unless he is someone who needs to; and that he must follow the stricter ruling of a different Imam when able to, since rulings fundamentally refer back to the word of the Lawgiver, no one else; this being especially necessary when the other Imam's evidence is stronger, as opposed to what some followers do.

We find among the dictums of the Sufis that one should not follow a position in Sacred Law for which the evidence is weaker except when religiously more precautionary than the stronger position. For example, the Shafi'i opinion that (n: a male's) ablution is nullified by touching a girl who is a child or touching the nails or hair of a woman: though this position is considered weaker by them (n: than the position given at e7.3), it is religiously more precautionary, so performing ablution for the above-mentioned things is better (*al-Mizan al-kubra* (y123), 1.10–11).

طريق الإنصاف أن لا يعمل برخصة قال بها إمام مذهبه إلا إن كان من أهلها وأنه يجب عليه العمل بالعزيمة التي قال بها غير إمامه، حيث قدر عليها لأن الحكم راجع إلى كلام الشارع بالأصالة لا إلى كلام غيره لا سيما إن كان دليل الغير أقوى، خلاف ما عليه بعض المقلدين [...] وفي كلام القوم لا ينبغي لأحد العمل بالقول المرجوح إلا إن كان أحوط في الدين من القول الأرجح كالقول بنقض الطهارة عند الشافعية بلمس الصغيرة والشعر والظفر. فإن هذا القول وإن كان عندهم ضعيفاً فهو أحوط في الدين فكان الوضوء منه أولى اهـ [محرر من الميزان الكبرى: ١/ ١٠-١١].

(A: Because more rigorous rulings necessarily meet the requirements of less rigorous ones (though not vice versa), following more rigorous rulings from another school is unconditionally valid, unlike following its dispensations. And Allah knows best.)

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c7.0 THINGS ONE MAY BE HELD LEGALLY RESPONSIBLE FOR

c7.0 المحكوم فيه

c7.1 ('Abd al-Wahhab Khallaf:) Three conditions must exist in any act that it is legally valid to make an individual responsible for.

The first is that the act be well enough known to the individual that he can perform it in the way required of him. It should be noted that the individual's *knowledge* of what he is responsible for means *the possibility of his knowing it*, not his actual knowledge of it. Whenever a person reaches puberty, of sound mind and capable of knowing the rulings of Sacred Law by himself or by asking those familiar with them, then he is considered to know what he is responsible for, and rulings are carried out on him, their consequences exacted of him, and the excuse of being ignorant

c7.1 (عبد الوهاب خلاّف:) يشترط في الفعل الذي يصح شرعاً التكليف به ثلاثة شروط.

أولها: أن يكون معلوماً للمكلف علماً تاماً حتى يستطيع المكلف القيام به كما طلب منه. ويلاحظ أن المراد بعلم المكلف بما كلف به إمكان علمه به، لا علمه به فعلاً. فمتى بلغ الإنسان عاقلاً قادراً على أن يعرف الأحكام الشرعية بنفسه أو بسؤال أهل الذكر عنها، اعتبر عالماً بما كلف به ونفذت عليه الأحكام وألزم بآثارها ولا يقبل منه الاعتذار

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of them is not accepted from him.

The second condition is that it is known that the ruling has been imposed by someone who possesses the authority to do so and whose rules the individual is obliged to observe, since it is through this knowledge that the individual's will can be directed to obey him. This is the reason that in any proof for a ruling of Sacred Law the first point discussed is why it is legally binding for individuals.

The third condition is that the act the subject is responsible for be possible and within the capacity of the subject to do or to refrain from. This condition in turn implies two things: first, that it is legally invalid to impose something impossible, whether impossible in itself or impossible because of another thing; and second, that it is invalid to ask that a particular individual be responsible for someone else's performing an act or refraining from one, since someone else's action or inaction is not within the individual's own capacity. Hence, a person is not responsible for his father's paying zakat, his brother's performing the prayer, or his neighbor's refraining from theft. As regards others, all a person is obliged to do is to advise, to command the right and forbid the wrong, for these are acts he is capable of.

Nor is it legally valid to make a person responsible for various innate human states which are the results of natural causes that are not of the person's acquisition or choice, such as emotional arousal when angry; turning red when embarrassed; love, hate, grief, elation, or fear when reasons for them exist; digestion; breathing; being short or tall, black or white; and other innate traits with which people are born and whose presence or absence is subject to natural laws, not to the individual's will and choice, and which are thus beyond his capacity and not among the things possible for him. And if some primary texts have reached us that apparently show that there is responsibility for some of the things that are not within a person's capacity, these are not as they seem. For example, the order of the Prophet (Allah bless him and give him peace),

"Do not become angry."

is outwardly an order to refrain from something natural and unacquired, namely, anger when

بجهلها.

وثانيها: أن يكون معلوماً أن التكليف به صادر ممن له سلطان التكليف، وممن يجب على المكلف اتباع أحكامه لأنه بهذا العلم تتجه إرادته إلى امتثاله. وهذا هو السبب في أن أول بحث في أي دليل شرعي هو حجيته على المكلفين.

وثالثها: أن يكون الفعل المكلف به ممكناً أو يكون في قدرة المكلف أن يفعله أو أن يكف عنه. ويتفرع عن هذا الشرط أمران: أحدهما أنه لا يصح شرعاً التكليف بالمستحيل سواء أكان مستحيلاً لذاته أم مستحيلاً لغيره. وثانيهما أنه لا يصح شرعاً تكليف المكلف بأن يفعل غيره فعلاً أو يكف غيره عن فعل، لأن فعل غيره أو كف غيره ليس ممكناً له هو. وعلى هذا لا يكلف إنسان بأن يزكي أبوه أو يصلي أخوه أو يكف جاره عن السرقة. وكل ما يكلف به الإنسان مما يخص غيره هو النصح والأمر بالمعروف والنهي عن المنكر، وهذا من فعله المقدور له.

وكذلك لا يصح شرعاً أن يكلف الإنسان بأمر من الأمور الجبلية للإنسان التي هي مسببات لأسباب طبيعية ولا كسب للإنسان فيها ولا اختيار، كالانفعال عند الغضب، والحمرة عند الخجل، والحب والبغض، والحزن والفرح، والخوف حين وجود أسبابها، والهضم والتنفس، والطول والقصر، والسواد والبياض، وغير ذلك من الغرائز التي فطر عليها الناس ووجودها وعدمها خاضع لقوانين خلقية وليس خاضعاً لإرادة المكلف واختياره. فهي خارجة عن قدرته وليس من الممكنات له.

وإذا ورد في بعض النصوص ما يدل ظاهره على أن فيه تكليفاً بما ليس مقدوراً للإنسان من هذه الأمور فهو ليس على ظاهره. مثلاً قوله ﷺ: «لا تغضب» ظاهره التكليف بالكف عن أمر طبيعي غير كسبي وهو الغضب عند وجود داعيته

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motives for it exist. But the real meaning is "Control yourself when angry and restrain yourself from its bad consequences."

فالمراد اضبط نفسك حين الغضب وكفها عن آثاره السيئة.

c7.2 From the condition that an act must be within the individual's capacity before he can be held accountable for it, one should not jump to the conclusion that this implies there will not be any hardship whatsoever for the individual in the act. There is no contradiction between an act's being within one's capacity and its being hard. Nothing a person is responsible for is completely free of hardship, since moral responsibility is being obliged to do that in which there is something to bear with, and some type of difficulty.

Hardship, however, is of two types. The first is that which people are accustomed to bear, which is within the limits of their strength, and were they to continue bearing it, it would not cause them harm or damage to their persons, possessions, or other concerns. The second is that which is beyond what people are accustomed to bear and impossible for them to continually endure because they would be cut off, unable to go on, and damage and harm would affect their persons, possessions, or one of their other concerns. Examples include fasting day after day without breaking it at night, a monastic life, fasting while standing in the sun, or making the pilgrimage on foot. It is a sin for someone to refuse to take a dispensation and insist on the stricter ruling when this will probably entail harm (*'Ilm usul al-fiqh* (y71), 128–33).

c7.2 ولا يتبادر إلى الذهن من اشتراط أن يكون الفعل مقدوراً للمكلف لصحة التكليف به شرعاً أن هذا يستلزم أن لا تكون في الفعل أية مشقة على المكلف، لأنه لا منافاة بين كون الفعل مقدوراً وكونه شاقاً. وكل ما يكلف به الإنسان لا يخلو من نوع مشقة، لأن التكليف هو الإلزام بما فيه كلفة ونوع مشقة.

غير أن المشقة نوعان: النوع الأول مشقة جرت عادة الناس أن يحتملوها وهي في حدود طاقتهم ولو داموا على احتمالها لا يلحقهم أذى ولا ضرر لا في نفس ولا في مال ولا في أي شأن من شؤونهم. النوع الثاني مشقة خارجة عن معتاد الناس ولا يمكن أن يداوموا على احتمالها، لأنهم إذا داوموا عليها انبتّوا وانقطعوا ونالهم الضرر والأذى في أنفسهم أو أموالهم أو أي شأن من شؤونهم، كالمشقة في صوم الوصال والمثابرة على قيام الليل والترهب والصيام قائماً في الشمس والحج ماشياً. وحُكم بإثم من ترك الرخص واستمسك بالعزيمة محتملاً ما فيه من ضرر [محرر من علم أصول الفقه: ١٢٨-١٣٣].

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c8.0 WHO MAY BE HELD RESPONSIBLE

c8.0 المحكوم عليه

c8.1 ('Abd al-Wahhab Khallaf:) Two conditions must exist in an individual for it to be legally valid to hold him responsible.

The first condition is that he is able to understand the evidence that he is responsible for something, such that it is within his capacity to

c8.1 (عبد الوهاب خلاف:) يشترط في المكلف لصحة تكليفه شرعاً شرطان:

أولهما: أن يكون قادراً على فهم دليل التكليف بأن يكون في استطاعته أن يفهم

understand legal texts from the Koran and sunna by which the ruling is imposed, whether by himself or through another (dis: b5.1). Since human reason is something hidden, unobservable by outward sense perception, the Lawgiver has conjoined responsibility for rulings with something manifest and perceptible to the senses from which reason may be inferred, namely, puberty. Who ever reaches puberty without showing signs of impaired intellectual faculties, his capacity for responsibility exists. And conversely, neither an insane person nor child are responsible, because of their lack of intellect, which is the means of understanding the evidence that something is a ruling. Nor are those responsible who are in a state of absentmindedness or sleeping, because while they are heedless or asleep it is not within their capacity to understand. The Prophet (Allah bless him and give him peace) said,

"The pen has been lifted from three: the sleeper until he awakens, the child until his first wet dream, and the insane person until he can reason."

The second condition (n: for the legal validity of holding someone responsible) is that he be legally eligible for the ruling. Eligibility is of two types, eligibility for *obligation*, and eligibility for *performance*.

النصوص القانونية التي يكلف بها من القرآن والسنة بنفسه أو بالواسطة.

ولما كان العقل أمراً خفياً لا يدرك بالحس الظاهر، ربط الشارع التكليف بأمر ظاهر يدرك بالحس هو مظنة للعقل وهو البلوغ. فمن بلغ الحلم من غير أن تظهر عليه أعراض خلل بقواه العقلية فقد توافرت فيه القدرة على أن يكلف. وعلى هذا لا يكلف المجنون ولا الصبي لعدم وجود العقل الذي هو وسيلة فهم دليل التكليف. ولا يكلف الغافل والنائم لأنهم في حال الغفلة أو النوم [. . .] ليس في استطاعتهم الفهم. ولهذا قال رسول الله ﷺ: «رفع القلم عن ثلاثة: النائم حتى يستيقظ، وعن الصبي حتى يحتلم، وعن المجنون حتى يعقل».

وثانيهما: أن يكون أهلاً لما كلف به. فالأهلية تنقسم إلى قسمين: أهلية الوجوب وأهلية الأداء.

c8.2 *Eligibility for obligation* is the capacity of a human being to have rights and duties. This eligibility is established for every person by the mere fact of being human, whether male, female, fetus, child, of the age of discrimination, adolescent, intelligent, foolish, sane or insane, healthy or ill; because its basis is an innate attribute found in man. Every human being, whoever he or she may be, has eligibility for obligation and none lacks it because one's eligibility for obligation is one's humanness.

There are only two human states in relation to eligibility for obligation, partial and full. One could have *partial eligibility for obligation* by being entitled to possess rights over others but not have obligations towards them, like a fetus in its mother's womb, which has rights, since it can be

c8.2 فأهلية الوجوب هي صلاحية الإنسان لأن تثبت له حقوق وتجب عليه واجبات. [. . .] وهذه الأهلية أي أهلية الوجوب ثابتة لكل إنسان بوصف أنه إنسان سواء أكان ذكراً أم أنثى، وسواء أكان جنيناً أم طفلاً أم مميزاً أم بالغاً أم رشيداً أم سفيهاً، عاقلاً أو مجنوناً، صحيحاً أو مريضاً، لأنها مبنية على خاصة فطرية في الإنسان. فكل إنسان أياً كان له أهلية الوجوب ولا يوجد إنسان عديم أهلية الوجوب لأن أهليته للوجوب هي إنسانيته. والإنسان بالنسبة لأهلية الوجوب له حالتان اثنتان فقط: فقد تكون له أهلية وجوب ناقصة إذا صلح لأن تثبت له حقوق لا لأن تجب عليه واجبات

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an heir, inherit a bequest, and the proceeds of an endowment (waqf) can accrue to it, but it does not have any obligations to others. *Full eligibility for obligation* means a person has rights upon others and obligations towards them. Every human being acquires it at birth.

كالجنين في بطن أمه فإنه تثبت له حقوق لأنه يرث ويوصى له ويستحق في ريع الوقف، لكن لا تجب عليه لغيره واجبات. وقد تكون له أهلية وجوب كاملة إذا صلح لأن تثبت له حقوق وتجب عليه واجبات. وهذه تثبت لكل إنسان من حين ولادته.

c8.3 *Eligibility for performance* is the capacity of an individual for words and actions that are legally significant, such that if an agreement or act proceeds from him, it legally counts and entails the rulings applicable to it. If he prays, fasts, makes the pilgrimage, or does anything obligatory, it is legally acknowledged and discharges the obligation. And if he commits a crime against another's person, possessions, or honor, he is held accountable for his crime and is bodily or financially penalized.

So eligibility for performance is *responsibility*, and its basis in man is intellectual discrimination. There are three states which a person may have in relation to eligibility for performance:

(1) a person could *completely lack or lose eligibility for performance*, like a young child during his childhood or an insane person during his insanity (regardless of his age), neither of whom has eligibility for performance because they lack human reason, and for neither of whom are there legal consequences entailed by their words or actions. Their agreements and legal dispositions are null and void, the limit of which is that if either of them commits a crime against another's person or possessions, he is responsible for paying the indemnity out of his own property, but not subject to retaliation in his own person. This is the meaning of the scholars' expression, "The intentional act of a child or insane person is an honest mistake."

(2) A person could have *partial eligibility for performance*, an example of which is the child who has reached the age of mental discrimination (def: f1.2) but not puberty (k13.8), or the retarded person, who is not disturbed in intellect nor totally bereft of it, but rather is weak-minded and lacking

c8.3 وأما أهلية الأداء: فهي صلاحية المكلف لأن تعتبر شرعاً أقواله وأفعاله بحيث إذا صدر منه عقد أو تصرف كان معتبراً شرعاً وترتبت عليه أحكامه، وإذا صلى أو صام أو حج أو فعل أي واجب كان معتبراً شرعاً ومسقطاً عنه الواجب. وإذا جنى على غيره في نفس أو مال أو عرض أخذ بجنايته وعوقب عليها بدنياً ومالياً. فأهلية الأداء هي المسؤولية وأساسها في الإنسان التمييز بالعقل. والإنسان بالنسبة لأهلية الأداء له حالات ثلاث:

١ـ قد يكون عديم الأهلية للأداء أصلاً أو فاقدها أصلاً. وهذا هو الطفل في زمن طفوليته والمجنون في أي سن كان، فكل منهما لكونه لا عقل له لا أهلية أداء له وكل منهما لا تترتب آثار شرعية على أقواله ولا على أفعاله، فعقوده وتصرفاته باطلة، غاية الأمر إذا جنى أحدهما على نفس أو مال يؤاخذ مالياً لا بدنياً [. . .] وهذا معنى قول الفقهاء «عمد الطفل أو المجنون خطأ».

٢ ـ وقد يكون ناقص الأهلية للأداء وهو المميز الذي لم يبلغ الحلم وهذا يصدق على الصبي في دور التمييز قبل البلوغ ويصدق على المعتوه، فإن المعتوه ليس مختل العقل ولا فاقده ولكنه ضعيف العقل ناقصه، فحكمه حكم

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in intellect, so that the Sacred Law treats him as it does the child with discrimination.

Because each of these two possesses the basis of eligibility for performance by the fact of having discrimination, those of their legal actions which are absolutely beneficial to them, such as accepting gifts or alms, are valid without their guardian's permission.

As for those of their legal actions which are wholly harmful to them, such as giving donations or waiving their rights to something, these are not in any way valid, even with the guardian's permission. The gift, bequest, endowment, and divorce of such persons are not valid, and the guardian's permission is irrelevant to these actions.

The legal actions of the child with discrimination or the retarded person which are between absolute benefit and absolute harm to him are valid, but only on condition that the guardian gives his permission for them. If the guardian gives permission for the agreement or disposition, it is implemented, and if he does not permit it, the action is invalid.

(3) Or a person could have *full eligibility for performance* by the fact of having reached puberty sound of mind.

Events, however, may befall this eligibility. They include those that happen to a person without affecting his eligibility for performance by eliminating or diminishing it, but which alter some rulings concerning him because of considerations and interests that arise through these events, not because of loss or lessening of eligibility for performance. Examples include the foolhardy and the absentminded person. Both have reached puberty with normal intelligence and have full eligibility for performance, but to protect their own property from loss and prevent them from becoming a financial burden on others, they are declared legally incompetent in financial dealings such that neither their financial transactions nor donations are valid. This is not because of a lack or lessening of their eligibility for performance, but rather to protect their own property.

A debtor has likewise reached puberty with normal intelligence and possesses full eligibility for performance, but to protect the rights of his creditors, he is declared legally incompetent to

الصبي المميز. وكل منهما لوجود وثبوت أصل أهلية الأداء له بالتمييز تصح تصرفاته النافعة له نفعاً محضاً كقبوله الهبات والصدقات بدون إذن وليه.

وأما تصرفاته الضارة بما له ضرر محض كتبرعاته وإسقاطاته فلا تصح أصلاً ولو أجازها وليه، فهبته ووصيته ووقفه وطلاقه [وإعتاقه] كل هذه باطلة ولا تلحقها إجازة وليه. وأما تصرفاته الدائرة بين النفع له والضرر به فتصح منه ولكنها تكون موقوفة على إذن وليه بها. فإن أجاز وليه العقد أو التصرف نفذ، وإن لم يجزه بطل.

٣ـ وقد يكون كامل الأهلية للأداء وهو من بلغ الحلم عاقلاً، فأهلية الأداء الكاملة تتحقق ببلوغ الإنسان عاقلاً [. . .] غير أن هذه الأهلية قد تعرض لها عوارض [. . .] منها ما يعرض للإنسان فلا يؤثر في أهليته لا بإزالتها ولا بنقصها ولكن يغير بعض أحكامه لاعتبارات ومصالح قضت بهذا التغير لا لفقد أهلية أو نقصها. كالسفه والغفلة فكل من السفيه وذي الغفلة بالغ عاقل له أهلية أداء كاملة ولكن محافظة على مال كل منهما من الضياع ومنعاً من أن يكون كل منهما عالة على غيره حجر عليهما في التصرفات المالية فلا تصح معاوضة مالية منهما ولا تبرعات مالية لا لفقد أهليتهما أو نقصها ولكن محافظة على مالهما.

وكذلك المدين بالغ عاقل له أهلية أداء كاملة، ولكن محافظة على حقوق دائنيه حجر عليه أن يتصرف في ماله بما

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make transactions with his money that infringe on the rights of his creditors, such as charitable donations (*'Ilm usul al-fiqh* (y71) 134–40).	يضـــر بحقـوق الـدائنين كالتبـرعـات. [محرر من علم أصول الفقه: ١٣٤-١٤٠].

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BOOK D

AUTHOR'S INTRODUCTION TO 'UMDAT AL-SALIK

مقدمة المؤلف لعمدة السالك

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d1.0 AUTHOR'S INTRODUCTION

d1.0 المقدمة

d1.1 In the name of Allah, Most Merciful and Compassionate.

Praise be to Allah, Lord of the Worlds. Allah bless our liegelord Muhammad, his folk, and his Companions one and all.

d1.1 بِسْمِ اللهِ الرَّحْمنِ الرَّحِيمِ
الحمدُ للهِ ربِّ العالمينَ وصلَّى اللهُ على سيدِنا محمَّدٍ وعلى آلِهِ وصحبِهِ أجمعينَ.

d1.2 This is a summary of the school of Imam Shafi'i (the mercy and bliss of Allah Most High be upon him) in which I have confined myself to the most dependable positions (al-sahih) of the school according to Imam Rafi'i and Imam Nawawi, or according to just one of them. I may mention a difference of opinion herein, this being when their recensions contend (dis: w12), giving Nawawi's position first (O: as he is the foremost reference of the school), and then as opposed to it, that of Rafi'i (n: generally left untranslated because it is the weaker position where mentioned).

d1.2 هذا مختصرٌ على مذهبِ الإمامِ الشافعيِّ رحمةُ اللهِ عليْهِ ورضوانُهُ اقتصرتُ فيهِ على الصحيحِ منَ المذهبِ عندَ الرَّافعيِّ والنوويِّ أوْ أحدِهِما وقدْ أذْكُرُ فيهِ خلافاً، وذلكَ إذا اخْتَلَفَ تصحيحُهُما مقدِّماً لتصحيحِ النوويِّ (لأنَّه العمدة في المذهب) فيَكُونُ مقابلُهُ تصحيحَ الرافعيِّ.

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d1.3 I have named it *The Reliance of the Traveller and Tools of the Worshipper*.

(O: *Reliance* means that which is depended upon, since the author meant that this text should be a reliable resource work for whoever goes by it, because it contains the most dependable positions of the school and omits the weak ones.

Traveller (salik) derives from *travel* (suluk), meaning to proceed along, the allusion being to the spiritual journey, meaning one's seeking knowledge of the rules of religion with seriousness and effort, to thereby reach Allah Most High and be saved from perdition.

Tools are physical instruments their owner depends on in his work, like those of a carpenter. The tools here are knowledge of the rules of Sacred Law found in this text which the validity of worship depends upon.)

d1.3 وسَمَّيْتُهُ «عُمْدَةَ السَّالِكِ وعُدَّةَ النَّاسِكِ». (والعمدة ما يعتمد عليه فأراد المصنِّف أن يكون هذا المتن عمدة لمن تمسك به لأنه قد اشتمل على المسائل المعتمدة في المذهب دون الضعيفة. والسالك من السلوك وهو السير والمراد منه هنا السير المعنوي وهو طلبه لمعرفة أحكام الدين بالجد والاجتهاد فيصل بهذا إلى الله تعالى وينجو حينئذ من الهلاك. والعدة اسم للآلة الحسية التي يعتمد عليها صاحبها في أشغاله كآلة النجار مثلاً وتلك الآلة هي معرفة ما في هذا المتن من الأحكام الشرعية التي تتوقف صحة العبادة عليها)

d1.4 I ask Allah to give benefit through it, and He is my sufficiency, and best to rely on.

d1.4 واللهَ أسألُ أنْ ينفعَ به وهو حسبي ونِعْمَ الوكيلُ.

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BOOK E

PURIFICATION

كتاب الطهارة

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e1.0 WATER

e1.1 Water is of various *types*:

(1) purifying;

(2) pure;

(3) and impure.

e1.2 *Purifying* means it is pure in itself and it purifies other things.

(O: *Purification* (Ar. tahara) in Sacred Law is lifting a state of *ritual impurity* (hadath, def: e7), removing *filth* (najasa, e14), or matters similar to these, such as purificatory baths (ghusl) that are merely sunna or renewing ablution (wudu) when there has been no intervening ritual impurity.)

e1.3 *Pure* means it is pure in itself but cannot purify other things (O: such as water that has already been used to lift a state of ritual impurity).

e1.4 *Impure* means it is neither purifying nor pure. (O: Namely:

e1.0 أقسام المياه

e1.1 المياهُ أقسامٌ، طهورٌ وطاهرٌ ونجسٌ.

e1.2 فالطهورُ هو الطاهرُ في نفسِهِ المطهِّرُ لغيرِه.

(والطهارة [. . .] شرعاً رفع حدث أو إزالة نجس أو ما في معناهما كـ[التيمم و] الأغسال المسنونة وتجديد الوضوء).

e1.3 والطاهرُ هوَ الطاهرُ في نفسِهِ ولاَ يُطهِّرُ غيرَهُ (كالماء المستعمل في رفع حدث).

e1.4 والنَّجِسُ غيرُهُما. (وهو الذي

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(1) less than *216 liters of water* (qullatayn) which is contaminated by filth (najasa), even when none of the water's *characteristics* (n: i.e. taste, color, or odor) have changed;

(2) or 216 liters or more of water when one of its characteristics of taste, color, or odor have changed (n: through the effect of the filth. As for the purity of water that has been used to wash away filth, it is discussed below at e14.14).)

حلت فيه نجاسة وهو دون القلتين ولو لم يتغير أحد أوصافه، أو كان قلتين فأكثر وتغير أحد أوصافه من طعم أو لون أو ريح).

e1.5 It is not permissible (O: or valid) to lift a state of ritual impurity or remove filth except with *plain water* (O: not *used* water (def: (2) below), or something other than water like vinegar or milk), meaning purifying water as it comes from nature, no matter what quality it may have (O: of taste, such as being fresh or saline (N: including sea-water); of color, such as being white, black, or red; or of odor, such as having a pleasant smell).

e1.5 فلا يجوزُ (ولا يصح) رفعُ حدثٍ ولا إزالةُ نجسٍ إلا بالماءِ المطلقِ (لا بغيره من الماء المستعمل ولا بغير الماء كالخل واللبن)، وهُوَ الطهورُ على أيِّ صفةٍ كانَ منْ أصلِ الخلقةِ (من طعم ككونه حلواً أو ملحاً، أو لون ككونه أبيض أو أسود أو أحمر، أو ريح كأن كان له رائحة طيبة).

e1.6 [ويُكْرَهُ بالمشمَّسِ في البلاد الحارّة في الأواني المنطبعة وهي ما يُطْرَقُ بالمطارق، إلّا الذهب والفضة، وتزُولُ بالتبريد].

e1.7 It is not permissible to purify (def: e1.2(O:)) with:

(1) water that has changed so much that it is no longer termed *water* through admixture with something pure like flour or saffron which could have been avoided;

(2) less than 216 liters of water that has already been used for the obligation (dis: e2.1(A:), end) of lifting a state of ritual impurity, even if only that of a child;

(3) or less that 216 liters of water that has been used to remove filth, even if this resulted in no change in the water.

e1.7 وإذا تَغَيَّرَ الماءُ تغيُّراً كثيراً بحيثُ يُسْلَبُ عنهُ اسمُ الماءِ بمخالطةِ شيءٍ طاهرٍ يُمْكِنُ الصونُ عنهُ كدقيقٍ وزعفرانٍ أو استُعْمِلَ دونَ القلتينِ في فرضِ طهارةِ الحدثِ ولَوْ لصبيٍّ أو لنجسٍ ولَوْ لمْ يتغيَّرْ لمْ تَجُزِ الطهارةُ بهِ.

e1.8 It is permissible to purify with water:

(1) (non-(1) above) that has been only slightly changed by saffron or the like;

e1.8 فإنْ تغيَّرَ بالزعفرانِ ونحوِهِ

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(2) that has been changed by proximity with something such as aloes or oil that are (O: i.e. even if) fragrant;

(3) that has been changed by something impossible to prevent, such as algae, tree leaves falling in it, dust, or the effects of standing too long;

(4) (non-(2) of the previous ruling) that has already been used for a nonobligatory use such as the sunnas of rinsing out the mouth, renewing ablution when there has been no intervening state of ritual impurity, or a sunna purificatory bath;

(5) or water that has already been used (n: to lift a state of ritual impurity) and has now been added together until it amounts to 216 liters or more.

يسيراً أوْ بمجاورة (بسببها) كعودٍ ودُهْنٍ (ولو كانا) مطيبَيْن أوْ بما لا يُمْكِنُ الصونُ عنهُ كطُحْلُبٍ وَوَرَقِ شجرٍ تناثرَ فيه وبتراب وطول مكثٍ أو استُعْمِلَ في النفل كمضمضةٍ وتجديدِ وضوءٍ وغسلٍ مسنونٍ أوْ جُمِعَ المستعملُ فبلغَ قلتَيْن جازَتِ الطهارةُ به.

e1.9 With less than 216 liters, if a person performing ablution (after washing his face once) or the purificatory bath (after making intention for it) makes the intention in his heart to use his hands to scoop up the water, then the introduction of his hands into this amount of water does not make the water used. But if not (O: if he does not make this intention at all, or does so after putting his hands in the water, which is less than 216 liters), then the rest of the water is considered as already used (n: and no longer purifying. But in the Maliki school (dis: c6.4(end)), it is valid (though offensive) to lift a state of ritual impurity with water that has already been used for that purpose (*al-Sharh al-saghir `ala Aqrab al-masalik ila madhhab al-Imam Malik* (y35),1.37)).

e1.9 ولوْ أدْخلَ مُتَوضِّيءٌ يدهُ بعدَ غسلِ وجهِهِ مرَّةً أو جُنُبٌ بعدَ النيةِ في دونِ القلتَيْنِ فاغْتَرَفَ ونَوَى الاغترافَ لمْ يَضُرَّهُ. وإلاَّ (أي وإن لم ينو الاغتراف أصلاً أو أتى بهذه النية بعد أن أدخل يده في الماء القليل) صارَ الباقي مستعْملاً.
(ت: أي: وغيرَ مطهِّر. لكن في المذهب المالكي يجوز رفع الحدث بالماء المستعمل، مع الكراهة [الشرح الصغير على أقرب المسالك إلى مذهب الإمام مالك: ١/ ٣٧]).

e1.10 As for 216 liters or more of water, even if two or more persons in a state of *major ritual impurity* (janaba, def: e10) are immersed in it, whether simultaneously or serially, their impurity is lifted and the water does not thereby become used (n: but remains purifying).

e1.10 ولو انْغَمَسَ جُنُبانِ فأكثرُ دُفْعَةً أوْ واحداً بعدَ واحدٍ في قلتينِ ارْتَفَعَتْ جَنابَتُهُمْ ولا يَصِيرُ مُسْتَعْمَلاً.

e1.11 *Qullatayn* (lit. "two great jars") roughly equal five hundred Baghdad *rits*, and their vol-

e1.11 والقلتانِ خَمْسُمائةِ رطلٍ

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ume is one and a quarter *dhira'* in height, width, and length. (n: The definition of *qullatayn* as being 216 liters is based on estimating the *dhira'* at forty-eight centimeters. Metric equivalents of Islamic weights and measures are given at w15.)	بغدادِيَّةٍ تقريباً ومساحتُهُما ذراعٌ وربعٌ طولاً وعرضاً وعمقاً.
e1.12 Two hundred and sixteen liters of water does not become impure by mere contact with filth, but only becomes so by changing (n: in taste, color, or smell) because of it, even when (O: this change is) only slight.	e1.12 فالقلتانِ لا تَنْجُسُ بمُجَرَّدِ مُلاقاةِ النجاسةِ بل بالتَّغَيُّرِ بها ولَوْ (كان التغير بالنجاسة) يسيراً.
e1.13 If such change (n: in 216 liters or more of water) disappears by itself (O: such as through standing at length) or by water (O: added to it, even if the additional water is used or impure) then the water is again purifying.	e1.13 ثُمَّ إنْ زالَ التغيُّرُ بنفسِهِ (وذلك كطولِ مكثٍ) أوْ بماءٍ (انضم إليه ولو مستعملاً ولو متنجساً) طَهُرَ.
e1.14 But the 216 liters of water does not become purifying if the change disappears by (O: putting) such things as musk (O: in it, or ambergris, or camphor, which mask the scent; or putting saffron and the like in it which mask the color) or vinegar (O: which masks the taste) or earth.	e1.14 أوْ (بوضع) نحوِ مِسْكٍ (فيه وعنبر وكافور وغيرهما مما يستر الريح ووضع زعفران وغيره فيه مما يستر اللون) أوْ بخَلٍّ (مما يستر الطعم) أوْ بترابٍ فلا.
e1.15 Less than 216 liters becomes impure by mere contact with filth, whether the water changes or not, unless filth falls into it whose amount (N: before it falls in is so small that it) is indiscernible by eyesight (A: *eyesight*, here and for all rulings, meaning an average look, not a negligent glance nor yet a minute inspection), or if something dead falls into it of creatures without flowing blood, such as flies and the like, in both of which cases it remains purifying. This is equally true of running or still water.	e1.15 ودونَهُما يَنْجُسُ بمجرَّدِ ملاقاةِ النجاسةِ وإنْ لمْ يتغيَّرْ إلاَّ أنْ يقعَ فيه نجسٌ لا يَرَاهُ البصرُ أوْ ميتةٌ لا دمَ لَهَا سائلٌ كذبابٍ ونحوِهِ فلا يَضُرُّ، وسواءٌ الجاري والراكدُ.
e1.16 When less than 216 liters of impure water is added to (O: even if with impure water) until it amounts to 216 liters or more and no change (def: below) remains in it, then it is (O: has become) purifying.	e1.16 فإنْ كُوثِرَ القليلُ النجسُ (ولو بماء نجس) فَبَلَغَ قلتين ولا تَغَيُّرَ طَهُرَ (أي صار طهوراً).

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e1.17 *Change,* resulting from something pure or impure, means in color, taste, or smell.

(N: But the least change caused by filth makes water (n: even if more than 216 liters) impure, while change caused by something pure does not hurt as long as it can still be termed *water*. For example, when sugar and tea leaves have been added to water and it is called *tea*, it has become *pure but not purifying*. As for a slight discoloration by tea leaves, or a slight sweetness from sugar, this does not negate water's being purifying.)

e1.17 والمـرادُ بالتغيُّـر بالطـاهـر أوْ بالنجـس إمَّـا اللونُ أو الطعمُ أو الـريحُ (ح: لكن أدنى تغير بالنجاسة يجعل الماء نجساً، والتغير بالطاهر لا يضر ما لم يمنع إطلاق اسم الماء عليه، كالماء إذا وضع فيه سكر وشاي فصار اسمه شاياً وصار طاهراً غير مطهر. أما قليل من لون الشاي أو حلاوة السكر فلا يسلب الطهورية).

e1.18 [ويُنْـدَبُ تغطيـةُ الإنـاءِ، فلوْ وقـعَ في أحد الإناءين نجسٌ توضَّأ من أحدهما باجتهادٍ وظهورِ علامةٍ سواءٌ قَدَرَ على طاهرٍ بيقينٍ أمْ لا. فإن تحيَّرَ أراقهُما وتيمَّـم بلا إعادةٍ. والأعمى يجْتهِدُ. فإنْ تحيَّرَ قلَّد بصيراً. ولو اشتبه طهورٌ بماءٍ وردٍ توضَّأ بكلٍّ واحدٍ مرةً. أوْ ببولٍ أراقهُما وتيمَّم].

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e2.0 CONTAINERS AND UTENSILS

e2.0 الأواني التي تجـوز الطهارة فيها

e2.1 Purification is permissible with water from any pure container, except those of gold or silver, or those to which enough gold or silver has been applied that any of it could be collected from the vessel by heating it with fire (N: meaning that if the vessel were exposed to fire, the metallic coat would melt and separate from the container, even if not drop by drop). Such containers or utensils are unlawful for men or women to use in purification, eating, drinking, or other use (O: of any type whatever). It is unlawful to acquire such a container or utensil even if one does not use it. Even a small eye-liner stick of silver is unlawful.

e2.1 تَحِـلُّ الطهـارةُ منْ كلِّ إنـاءٍ طاهـرٍ إلاَّ الـذَّهَـبَ والـفضَّـة والمطْليَّ بأحدهمـا بحيثُ يُتحصَّلُ منْهُ شيءٌ بالنارِ (ح: يعـني لوْ عرض الإنـاء المطلي على النار لذاب الطلاء وانفصل عن الإناء وإن لم يتقـاطـر). فيَحْـرُمُ استعمـالُـهُ على الـرجـالِ والنسـاءِ في الطهـارةِ والأكـلِ والشـربِ وغيـرِ ذلـكَ (من سائـر وجـوه الاسـتعـمـالات) وكـذا اقـتـنـاؤُهُ بلا استعمالٍ، حتَّى المِيلُ من الفضَّةِ.

e2.2 Vessels soldered with gold are absolutely unlawful.

It is unlawful to use a vessel to which *much* (def: f4.5) silver solder has been applied by way of decoration; permissible to use a vessel to which only a little silver solder has been applied by way of a needed repair; and offensive but not unlawful to use a vessel to which only a little silver has been applied for decoration, or much out of necessity.

e2.2 المـضـبَّـبُ بالـذَّهَـبِ حرامٌ مطلقاً. [وقيـلَ كالفضـةِ] وبـالفضـةِ إنْ كانتْ كبيـرةً للزينـةِ فهيَ حرامٌ. أوْ صغيرةً للحـاجـةِ حَلَّ. أوْ صغيـرةً للزينةِ أوْ كبيرةً للحـاجة كُرِهَ ولَمْ يَحْرُمْ. ومعنى التضبيب

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Solder means that a part of the vessel has been broken and then silver is put there to hold it together.

أنْ يَنْكَسِرَ موضعٌ منه فيُجْعَلَ موضعَ الكسرِ فضةٌ تُمْسِكُهُ بها.

e2.3 It is offensive to use the vessels of non-Muslims (N: before washing them) (O: to be certain of the purity of the vessels used, since non-Muslims are not as concerned about purity as Muslims are) or wear their clothes (O: for the same reason).

e2.3 وتُكْرَهُ أوانِي الكُفَّارِ (حرصاً على يقين الطهارة والكفار لا يحافظون على الطهارة كالمسلمين) وثيابُهُمْ (لما مرّ).

e2.4 It is permissible to use a vessel made of any precious gem, such as a ruby or emerald.

e2.4 ويُباحُ الإناءُ مِنْ كلِّ جوهرٍ نفيسٍ كياقوتٍ وزمردٍ.

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e3.0 USING A TOOTHSTICK (SIWAK)

(O: In Sacred Law it refers to the use of a twig or the like on the teeth and around them to remove an unpleasant change in the breath or similar, together with the intention (n: of performing the sunna).)

e3.0 السواك

(.. وهو شرعاً استعمال عود ونحوه في الأسنان وما حولها لإذهاب التغير ونحوه بنية).

e3.1 Using a *toothstick* is recommended any time, except after noon for someone who is fasting, in which case it is offensive. (A: Using toothpaste is also offensive then, and if any reaches the stomach of someone fasting, it is unlawful (n: if the fast is obligatory, as this breaks a fast).)

e3.1 يُنْدَبُ السواكُ في كلِّ وقتٍ إلا لصائمٍ بعدَ الزوالِ فيُكْرَهُ.

e3.2 It is especially desirable to use the toothstick for every prayer, for reading (O: the Koran, hadith, or a lesson), ablution, yellowness of teeth, waking from sleep, entering one's house, and for any change of breath from eating something with a bad odor or from not eating.

(A: When there exists a demand for an act, such as using the toothstick before reading the Koran, and an equal demand not to, as when it is after noon on a fast-day, then the proper course is not to do it.)

e3.2 ويتأكدُ استحبابُهُ لكلِّ صلاةٍ وقراءةٍ (أي للقرآن أو للحديث أو للدرس) ووضوءٍ وصفرةِ أسنانٍ واستيقاظٍ مِنَ النومِ ودخولِ بيتِهِ وتغيُّرِ الفمِ مِنْ أكلِ كلِّ كريهِ الريحِ وتركِ أكلٍ.

(ع: إذا استوى طلبُ فعلٍ، كندبِ السواكِ للقرآن، وتركُ فعلٍ، ككراهيةِ السواكِ للصائمِ بعدَ الزوالِ، فالترك أولى).

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e3.3 Anything coarse is adequate (n: to fulfill the sunna) except rough fingers, though the best is a twig from the *arak* (n: a desert shrub) that is dried (N: meaning previously cut from the shrub long enough to have dried) and then moistened.

e3.3 ويُجْزِىءُ بكلِّ خشنٍ إلا إصبعَهُ الخشنةَ. والأفضلُ بأراكٍ ويابسٍ (ح: أي قطع من الشجرة قبلَ مدة بحيث يبس) نديٍّ.

e3.4 It is best to clean the teeth laterally, beginning on the right and paying particular attention to the bases of the back teeth, and to intend the sunna thereby.

e3.4 وأنْ يَسْتاكَ عرضاً ويَبْدأَ بجانبِهِ الأيمنِ ويَتَعهَّدَ كراسيَّ أضراسِهِ ويَنْوِيَ بِهِ السنةَ.

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e4.0 THE BODY

e4.0 بعض السنن التي تتعلق بالبدن

e4.1 It is sunna:

(1) to trim the fingernails and toenails;

(2) to clip one's mustache (O: when it grows long. The most one should clip is enough to show the pink of the upper lip. Plucking it out or shaving it off is offensive.) (A: Shaving one's beard is unlawful according to all Imams except Shafi'i, who wrote two opinions about it, one that it is offensive, and the other that it is unlawful. A weak chain of narrators ascribes an opinion of offensiveness to Imam Malik. It is unbelief (kufr) to turn from the sunna in order to imitate non-Muslims when one believes their way to be superior to the sunna);

(3) for those used to it, to pluck away the hair of the underarms and nostrils, though if plucking the underarms is a hardship, then shaving them; and to shave the pubic hair;

(4) and to line the eyes with *kohl* (n: an antimonic compound that one should be careful to see contains no lead), each eye an odd number of times, preferably three.

e4.1 ويُسَنُّ قلمُ ظفرٍ، وقصُّ شاربٍ (طَالَ وغايتُهُ بدو حمرة الشفة ويكره استئصاله وكذا حلقه)، ونتفُ إبطٍ، وأنفٍ لِمَنِ اعْتَادَهُ، فإنْ شقَّ نتفُ الإبطِ حَلَقَهُ، وحَلْقُ عانةٍ، والاكتحالُ وتراً ثلاثاً في كلِّ عينٍ [وغسلُ البراجم وهي عقدُ ظهورِ الأصابع].

e4.2 It is offensive to shave part of the head and leave part unshaven (A: though merely cutting

e4.2 ويُكْرَهُ القزعُ وهوَ حلقُ بعضِ الرأسِ وتركُ بعضِهِ ولا بأسَ بحلقِ كلِّهِ

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some of the hair shorter than another part is not objectionable). There is no harm in shaving it all off (O: but it is not recommended except for the rites of *hajj* and *'umra* (n: the greater and lesser pilgrimages)).

(ولا يكون حلقه مندوباً إلا في باب النسك من حج وعمرة).

e4.3 Circumcision is obligatory (O: for both men and women. For men it consists of removing the prepuce from the penis, and for women, removing the prepuce (Ar. bazr) of the clitoris (n: not the clitoris itself, as some mistakenly assert). (A: Hanbalis hold that circumcision of women is not obligatory but sunna, while Hanafis consider it a mere courtesy to the husband.)

e4.3 ويجبُ (على كل من الذكر والأنثى) الختانُ (وهو قطع الجلدة التي على حشفة الذكر وأما ختان الأنثى فهو قطع البظر [ويسمى خفاضاً]).

e4.4 It is unlawful for men or women to dye their hair black, except when the intention is jihad (O: as a show of strength to unbelievers). Plucking out gray hair is offensive. It is sunna to dye the hair with yellow or red. (N: It is unlawful for a woman to cut her hair to disfigure herself (n: e.g. for mourning), though if done for the sake of beauty it is permissible.) It is sunna for a married woman to dye all of her hands and feet with *henna* (n: a red plant dye), but it is unlawful for men to do so unless it is needed (N: to protect from sunburn, for example).

e4.4 ويَحْرُمُ خضبُ شعرِ الرجلِ والمرأةِ بسوادٍ، إلاّ لغرضِ الجهادِ (لإظهارِ القوةِ للكفارِ). ويُكْرَهُ نتفُ الشيبِ. ويُسَنُّ (ت: خضبُ الشعرِ) بصفرةٍ أوْ حمرةٍ. وخضبُ يدَيْ مزوَّجةٍ، ورجلَيْها تعميماً بحناءٍ. ويَحْرُمُ على الرجالِ إلاّ لحاجةٍ.

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e5.0 ABLUTION (WUDU)

(N: Meaning to wash certain parts of the body with water, with the intention of worship.)

(O: The legal basis for ablution, prior to scholarly consensus, is the word of Allah Most High,

"O believers, when you go to pray, wash your faces, and wash your forearms to the elbows, wipe your heads, and [wash] your feet to the two anklebones" (Koran 5:6),

and the hadith related by Muslim,

"A prayer is not accepted without purification.")

e5.0 **الوضوء**

(ح: وهو غسل أعضاء مخصوصة بالماء بنية العبادة).

(والأصل فيه قبل الإجماع قوله تعالى: ﴿يا أيها الذين آمنوا إذا قمتم إلى الصلاة فاغسلوا وجوهكم وأيديكم إلى المرافق وامسحوا برؤوسكم وأرجلكم إلى الكعبين﴾ [المائدة: ٥].

وخبر مسلم: «لا تقبلُ صلاةٌ بغيرِ طُهورٍ».)

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THE INTEGRALS OF ABLUTION

e5.1 Ablution has six obligatory integrals:

(a) to have the intention when one starts washing the face;

(b) to wash the face;

(c) to wash the arms up to and including the elbows;

(d) to wipe a little of the head with wet hands;

(e) to wash the feet up to and including the anklebones;

(f) and to do these things in the order mentioned.

The sunnas of ablution are all its actions besides the above. (N: The obligatory minimum is to perform (b), (c), (d), and (e) once, though the sunna is to perform them each three times.)

أركان الوضوء

e5.1 فروضُهُ ستةٌ: النيةُ عند غسل الوجه، وغسلُ الوجه، وغسلُ اليدَيْن إلى المرفقَيْن، ومسحُ القليل من الرأس، وغسلُ الرجلَيْن إلى الكعبَيْن، والترتيبُ على مَا ذَكَرْنا. وسنتُهُ ما عدا ذلك.

THE INTENTION

e5.2 The person performing ablution intends:

(1) to lift a state of lesser ritual impurity (hadath) (O: since the purpose of ablution is to eliminate that which prevents prayer and the like);

(2) to purify for the prayer;

(3) or to purify for something not permissible without purification, such as touching a Koran, or something else.

(N: The simple intention to perform the obligation of ablution suffices in place of all the above.)

النية

e5.2 فَيَنْوِي المتوضِّئُ رفعَ الحدثِ (لأن القصد من الوضوء رفع مانع الصلاة ونحوها) أوْ الطهارةَ للصلاةِ أوْ لأمرٍ لا يُستَبَاحُ إلاّ بالطهارة كَمَسِّ المصحفِ أوْ غيرِه. (ح: ويغني عن كل هذا أن ينوي فرض الوضوء).

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e5.3 The above intentions are not used by three types of people when performing ablution:

(1) a woman with chronic vaginal discharge (def: e13.6);

(2) a person unable to hold back intermittent drops of urine coming from him (n: or with some similar state of chronic annulment of ablution (e13.7));

(3) or a person intending to perform dry ablution (tayammum, def: e12).

Such people merely intend permission to perform the obligation of the prayer as they begin their ablution.

(O: The intention to lift a state of minor ritual impurity is inadequate for these people because their state of impurity is not lifted.) (n: Rather, the Sacred Law gives them a dispensation to perform the prayer and so forth without lifting it.)

e5.3 إلا المستحاضة ومَنْ به سَلَسُ البول ومتيمماً فَيَنْوِي استباحةَ فرض الصلاة (فلا يكفي كل واحد من هؤلاء نية رفع الحدث [...] لأن حدثهم لا يرتفع).

e5.4 The necessary condition of ablution is that the intention for it exist in the heart and that it accompany one's washing the first part of the face.

It is recommended to pronounce it aloud, and that it be present in the heart from the first of ablution (O: during the preliminary sunnas before washing the face, so as to earn their reward). It is obligatory that this intention persist in the heart until one washes the first part of the face (O: as that is the first integral). If one confines oneself to making the intention when washing the face, it suffices, but one is not rewarded for the previous sunnas of rinsing the mouth and nostrils and washing the hands (N: provided that one merely intended cleanliness or something else by them, and the intention of worship did not come to one's mind).

e5.4 وشرطُهُ النيةُ بالقلب وأنْ تقترنَ بغسل أوّلِ جزءٍ مِنَ الوجه. ويُنْدَبُ أنْ يتلفّظ بها وأنْ تكونَ مِنْ أولِ الوضوء (حتى يثاب على جميع السنن المطلوبة قبل غسل الوجه). ويَجِبُ استصحابُها (أي استدامتها بالقلب) إلى غسل أولِ الوجه (لأنه أول الفروض).

فإنِ اقْتَصَرَ على النية عندَ غسلِ الوجهِ كَفَى لكنْ لا يُثابُ على ما قبلَهُ مِنْ مضمضةٍ واستنشاقٍ وغسلِ كفٍّ (ح: إن كان قد نوى مجرد النظافة أو غيرها ولم يخطر بباله قصد العبادة).

HOW TO PERFORM ABLUTION

كيفية الوضوء

e5.5 It is recommended to begin ablution by mentioning (n: in Arabic, like the other invocations in this volume (def: w1)) the name of Allah

e5.5 ويُنْدَبُ أنْ يُسَمِّيَ اللهَ تعالى

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Most High (O: by saying "In the name of Allah," which is the minimum.

The optimum is to say, "In the name of Allah, Most Merciful and Compassionate." Before this, it is sunna to say, "I take refuge in Allah from the accursed Devil," and to add after the *Basmala*: "Praise to Allah for Islam and its blessings. Praise to Allah who made water purifying and Islam a light. My Lord, I take refuge in You from the whispering of devils and take refuge in You lest they come to me." It is sunna to say all the above to oneself.)

If one intentionally or absentmindedly omits saying the name of Allah (n: at the first of ablution), then one pronounces it during it (O: by saying, "In the name of Allah, first to last").

(بأن يقول «بسم الله» وهو أقلها فإن أراد الأكمل قال بسم الله الرحمن الرحيم». ويسن التعوّذ قبلها وأن يزيد بعدها: «الحمدُ لله على الإسلام ونعمته الحمدُ لله الذي جعل الماءَ طهوراً والإسلامَ نوراً ربِّ أعوذُ بك مِنْ همزاتِ الشياطين وأعوذُ بك ربِّ أنْ يحضرون» ويسن الإسرار بها) فإنْ ترك التسمية عمداً أو سهواً أتى بها في أثنائه (فيقول: «بسم الله أوّلَهُ وآخرَهُ»).

e5.6 It is recommended to wash the hands three times.

(O: By saying "three times," the author indicates the sunna character of performing such acts thrice, and that it is an independent sunna (N: rewarded apart from the sunnas it is conjoined with).)

If one has doubts as to whether or not one's hands are free of filth, it is offensive to dip them into less than 216 liters of water without first washing them three times. (O: When sure they are pure, it is not offensive to immerse them. When sure they are impure, it is unlawful to dip them into this amount of water (N: since it spoils it by making it impure).)

e5.6 وأنْ يَغسِلَ كفَّيه ثلاثاً (فأشار المصنِّف بقوله ثلاثاً إلى سنية التثليث وأنه سنة مستقلة).

فإنْ شكَّ في نجاسةِ يدِه كُرِهَ غَمْسُها في دُونِ القلتين قبلَ غسلِها ثلاثاً (فإن تيقن طهرها لم يكره له الغمس، وإن تيقن نجاستها حرم عليه غمسها في ماء قليل) (ح: لأنه يفسده بالتنجيس).

e5.7 One next uses the toothstick (def: e3), and then rinses the mouth and nose out three times, with three handfuls of water. One takes in a mouthful from a handful of water and snuffs up some of the rest of the handful into the nostrils (n: swishing the water around the mouth, and expelling the water of the mouth and the nose simultaneously), then again rinses the mouth and then the nostrils from a second handful of water, followed by rinsing the mouth and then the nostrils from a third handful of water.

One lets the water reach as much of the mouth and nostrils as possible, unless fasting, when one goes lightly.

e5.7 ثمَّ يَستاكُ ويَتمضمضُ ويَستنشقُ ثلاثاً وبثلاثِ غرفاتٍ فيَتمضمضُ مِنْ غرفةٍ ثمَّ يَستنشقُ ثمَّ يَتمضمضُ مِنْ أخرى ثمَّ يَستنشقُ ثمَّ يَتمضمضُ مِنَ الثالثةِ ثمَّ يَستنشقُ ويُبالغُ فيهما إلَّا أنْ يكونَ صائماً فيُرفِّقُ.

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e5.8 Then one washes the face three times. *face* meaning from the point where the hairline usually begins to the chin in height, and from ear to ear in width.

e5.8 ثُمَّ يَغْسِلُ وجهَهُ ثلاثاً وهوَ ما بينَ منابتِ شعرِ الرأسِ في العادةِ إلى الذقنِ طولاً ومنَ الأذنِ إلى الأذنِ عرضاً [فمنْه موضعُ الغممِ وهوَ ما تحتَ الشعرِ الذي عمَّ الجبهةَ أوْ بعضَها].

e5.9 It is obligatory to wash all facial hair—inner, outer, and the skin beneath, whether the hair is thick or thin—such as eyebrows, mustache, and so forth; except for the beard, since:

(1) if it is thin, its inner and outer hair and the skin beneath must be washed;

(2) but if thick, then the outer hair is enough, though it is recommended to saturate it by combing it from beneath with wet fingers.

It is obligatory to cause the water to flow over the outer (O: hair of the) part of the beard that hangs below the chin (O: though not its inner hair).

It is obligatory to wash part of the head in every direction beyond the bounds of the face, to make sure everything has been completely covered.

It is sunna to use new water to saturate one's beard (O: if it is thick) by combing it from beneath with the fingers.

e5.9 ويجبُ غسلُ شعورِ الوجهِ كلِّها ظاهرِها وباطنِها والبشرةِ تحتَها خفيفةً كانتْ أوْ كثيفةً كالحاجبِ والشاربِ [والعنفقةِ والعذارِ والهدبِ وشعرِ الخدِّ] إلا اللحيةَ [والعارضَيْنِ] فإنَّهُ يجبُ غسلُ ظاهرِهما وباطنِهما والبشرةِ تحتَهما عندَ الخفَّةِ، فظاهرِهما فقطْ عندَ الكثافةِ لكنْ يُندبُ التخليلُ حينئذٍ.

ويجبُ إفاضةُ الماءِ على ظاهرِ (الشعرِ) النازلِ مِنَ اللحيةِ عنِ الذقنِ (أي دونَ باطنِه).

ويجبُ غسلُ جزءٍ منَ الرأسِ وسائرِ ما يُحيطُ بالوجهِ ليتحقَّقَ كمالُهُ.

ويُسنُّ أنْ يُخلِّلَ اللحيةَ (الكثيفةَ) مِنْ أسفلِها بماءٍ جديدٍ.

e5.10 Then one washes the hands up to and including the elbows three times.

(If the arm has been amputated between the hand and elbow, it is necessary to wash the remaining forearm and the elbow. If amputated at the elbow, then the end of the upper arm must be washed. If it has been amputated between the elbow and shoulder, then it is recommended to wash the rest of the upper arm.)

e5.10 ثمَّ يَغْسِلُ يدَيْهِ مَعَ مِرْفَقَيْهِ ثلاثاً.

فإنْ قُطِعَتْ مِنَ الساعِدِ وَجَبَ غسلُ الباقي أوْ مِنْ مِفصلِ المرفقِ لزِمَهُ غسْلُ رأسِ العضدِ أوْ مِنَ العضدِ نُدِبَ غسلُ باقيهِ.

e5.11 Then one wipes the head with wet hands, beginning at the front of the head, sliding the paired hands back to the nape of the neck, and then returning them to where one began. (O: This is an explanation of the best way, for otherwise,

e5.11 ثمَّ يَمْسَحُ رأسَهُ فَيَبْدَأُ بمقدَّمِ رأسِهِ فيَذْهَبُ بيَدَيْهِ إلى قفاهُ ثمَّ يَرُدُّهُما إلى المكانِ الذي بَدَأَ مِنْهُ (هذا بيانُ الأفضلِ وإلا فالفرضُ لا يتوقفُ على

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fulfilling the obligation does not depend on starting at the front, but may be from any part of the head.) One does this three times.

If one is bald, or one's hair never grew, or is long, or braided, then it is not recommended to slide the hands back to the front.

Each of the following suffices as *wiping the head:*

(1) to place the hand on the head without moving it so that one wets any of what is referred to by "wiping the head," the minimum of which is part of a single hair, provided this part does not hang below the limits of the head;

(2) to drip water on the head without making it flow over it;

(3) or to wash the head.

(If it is difficult to remove one's turban, then after wiping the minimum of the head required, one may finish by wiping the turban.)

مسح المقدم بل يحصل من أي جانب من جوانب الرأس). يَفْعَلُ ذلك ثلاثاً.

فإنْ كانَ أقرعَ أوْ ما نَبتَ شعرُهُ أوْ كانَ طويلاً أوْ مضفوراً لمْ يُنْدَبْ الردُّ.

فلَوْ وضعَ يدَهُ بلا مدٍ بحيثُ بَلَّ ما يَنطلِقُ عليْهِ الاسمُ وهُوَ بعضُ شعرةٍ لمْ تَخْرُجْ بالمدِّ عنْ حدِّ الرأسِ، أوْ قطَرَ ولمْ يُسِلْ، أوْ غسلَهُ، كفى.

فإنْ شقَّ نزْعُ عمامتِهِ كمَّلَ عليْها بعدَ مَسْحِ ما يَجِبُ.

e5.12 One then wipes the ears inside and out with new water, three times, and then the ear canals with one's little fingers with more new water, three times (O: though this second sunna is not separately mentioned in the more well known books, which speak of the two sunnas together, making "wiping the ears" include the ear canals).

e5.12 ثمَّ يَمْسَحُ أذنيهِ ظاهراً وباطناً بماءٍ جديدٍ ثلاثاً ثمَّ صماخيْهِ بماءٍ جديدٍ ثلاثاً فيُدخِلُ خنصرَيْهِ فيهِما (وهي غير مذكورة في الكتب المشهورة استقلالاً وقد جمعوا في عباراتهم بين السنتين وجعلوا مسح الأذنين شاملاً لهما أي لمسح الصماخين).

e5.13 Then one washes the feet up to and including the anklebones three times.

e5.13 ثمَّ يَغْسِلُ رِجْلَيْهِ مَعَ كعبَيْهِ ثلاثاً.

e5.14 If one does not know whether one washed a particular limb or the head three times (N: as is sunna), then one assumes one has washed it the least number that one is sure of, and washes as many additional times as it takes to be certain one has reached three.

e5.14 فلَوْ شكَّ في تثليثِ عضوٍ أخذَ بالأقلِّ فيُكَمِّلُ ثلاثاً يقيناً.

e5.15 One begins with the right when washing arms and legs, but not the hands, cheeks, and ears, which are washed right and left simultaneously.

e5.15 ويُقدِّمُ اليمنى مِنْ يدٍ ورِجْلٍ لا كفٍّ وخدٍّ وأذنٍ فيُطهِّرُهُما دُفْعةً.

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e5.16 One washes more than is obligatory of the face by adding part of the head and neck, and likewise with the arms and legs by washing above the elbows and ankles, the maximum of which is the whole upper arm or lower leg.

e5.16 ويُطِيلُ الغرةَ بأنْ يَغْسِلَ مَعَ وجهِهِ مِنْ رأسِهِ وعنقِهِ زائداً عَنِ الفرضِ ، والتحجيلَ بأنْ يَغْسِلَ فوقَ مرفقَيْهِ وكَعْبَيْهِ وغايتُهُ استيعابُ العضدِ والساقِ.

e5.17 One washes the parts of the body successively and without pausing between them (O: such that in normal weather the last part would not dry before one began the next), though if one pauses between them, even for a long time, one's ablution is still valid without renewing the intention.

e5.17 ويُوالِي الأعضاءَ (بحيثُ لا يجفُ الأولُ قبلَ الشروعِ في الثاني مع اعتدالِ الهواءِ والمزاجِ) فإنْ فَرَّقَ ولَوْ طويلاً صَحَّ بغيرِ تجديدِ نيةٍ.

e5.18 After finishing, one says: "I testify that there is no god but Allah, alone, without partner, and I testify that Muhammad is His slave and messenger. O Allah, make me one of the oft-repentant, one of the purified, one of Your goodly slaves. O Allah, I declare Your exaltedness above every imperfection and Your praise. I testify there is no god but You. I ask Your forgiveness and turn to You in repentance."

There are supplications said for each limb washed, but these are not authenticated as being of the sunna.

e5.18 ويقولُ بعدَ فراغِهِ: «أشهدُ أنْ لا إلهَ إلاَّ اللهُ وَحْدَهُ لا شريكَ لهُ، وأشهدُ أنَّ محمداً عبدُهُ ورسولُهُ، اللّهُمَّ اجْعَلْنِي مِنَ التَّوَّابِينَ، واجْعَلْنِي مِنَ المُتَطَهِّرِينَ، واجْعَلْنِي مِنْ عِبَادِكَ الصَّالِحِينَ سُبْحَانَكَ اللّهُمَّ وبِحَمْدِكَ أشْهَدُ أنْ لا إلهَ إلاَّ أنْتَ، أسْتَغْفِرُكَ وأتُوبُ إلَيْكَ».

وللأعضاءِ أدْعِيَةٌ تُقالُ عندَها لا أصْلَ لَها.

OTHER RECOMMENDED MEASURES

آداب الوضوء

e5.19 Other recommended measures (adab) include:

(1) facing the direction of prayer;

(2) not to talk during ablution for other than a necessity;

(3) and to begin with the top of the face and not slap water upon it.

e5.19 وآدابُهُ استقبالُ القِبْلَةِ، ولا يَتَكَلَّمُ لغيرِ حاجةٍ ويَبْدَأُ بأعلى وجهِهِ، ولا يَلْطِمُهُ بالماءِ.

e5.20 If another person is pouring one's water (N: or if using a tap) one begins washing the arms from the elbows, and the feet from the anklebones. If pouring one's own water (N: from

e5.20 فإنْ صَبَّ عليْهِ غيرُهُ بَدَأَ بمرفقَيْهِ وكعبَيْهِ. وإنْ صَبَّ على نفسِهِ بَدَأَ

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a jug, for example), one begins washing the arms from the fingers and the feet from the toes.

بأصابعه.

e5.21 One should take care that water reaches the inner corners of the eyes, and the heels (N: up to the level of the anklebones) and similar places it is feared one may neglect, especially during the winter.

e5.21 ويتعهد أماقي عينيه وعقبيه ونحوهما مما يخاف إغفاله سيما في الشتاء.

e5.22 One moves one's ring when washing the hand to allow water to reach the skin beneath. (O: If the water cannot otherwise get under it, it is obligatory to move the ring.)

e5.22 ويحرك خاتما ليدخل الماء تحته (وأما إذا لم يصل الماء إلى ما تحته إلا بالتحريك فيجب حينئذ).

e5.23 One saturates between the toes using the little finger of the left hand. One begins with the little toe of the right foot, coming up through the toes from beneath, and finishes with the little toe of the left.

e5.23 ويخلل أصابع رجليه بخنصر يده اليسرى يبدأ بخنصر رجله اليمنى من أسفل ويختم بخنصر اليسرى.

THINGS OFFENSIVE IN ABLUTION

مكروهات الوضوء

e5.24 It is offensive:

(1) to have another person wash one's limbs, unless there is some excuse (O: such as old age or the like);

(2) to wash the left before the right;

(3) or to waste water.

e5.24 ويكره أن يغسل غيره أعضاءه إلا لعذر (ككبر سن أو نحوه) وتقديم يساره والإسراف في الماء.

e5.25 It is recommended:

(1) not to use less than *0.51 liters* (mudd) of water for ablution;

(2) not to use less than *2.03 liters* (sa') of water for the purificatory bath (ghusl);

(3) not to dry off the parts washed in ablution (N: unless there is an excuse such as illness or cold weather) or shake the water off one's hands;

e5.25 ويندب أن لا ينقص ماء الوضوء عن مد [وهو رطل وثلث بغدادي] ولا ينقص ماء الغسل عن صاع [والصاع خمسة أرطال وثلث رطل بالعراقي] ولا ينشف أعضاءه (ح: إلا لعذر كمرض أو

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(4) not to ask another to pour water for one's ablution;

(5) and not to wipe the neck.

برد)، ولا ينفض يديه، ولا يستعين بأحد يصب عليه، ولا يمسح الرقبة.

OTHER PROVISIONS

أحكام أخرى

e5.26 If dirt under the nails prevents the water (O: of ablution or the purificatory bath from reaching the skin beneath) then the ablution (O: or bath) is not valid.

(N: The same is true of waterproof glue, paint, nail polish, and so forth on the nails or skin: if it prevents water from reaching *any part* of the nails or skin, no matter how small, one's ablution or purificatory bath is not valid.)

e5.26 ولو كان تحت أظفاره وسخ يمنع وصول الماء (أي ماء الوضوء أو الغسل إلى ما تحتها من البشرة) لم يصح الوضوء (ولا الغسل).

e5.27 If one has doubts during the course of the ablution that one has washed a particular limb or the head, then it is obligatory to wash it again and everything that follows it in the ablution sequence.

But if these doubts arise after one has finished ablution, one need not repeat anything. (A: The same is true of the purificatory bath (ghusl).)

e5.27 ولو شك في أثناء الوضوء في غسل عضو لزمه مع ما بعده، أو بعد فراغه لم يلزمه شيء (ع: وكذلك الغسل).

e5.28 It is recommended to renew the ablution (N: when there has been no intervening state of minor ritual impurity) when one has performed any prayer, obligatory or nonobligatory, with it.

e5.28 ويندب تجديد الوضوء لمن صلى به فرضاً أو نفلاً.

e5.29 Ablution is recommended for someone in a state of major ritual impurity (janaba) who wishes to eat, drink, sleep, or make love again.

And Allah knows best.

e5.29 ويندب الوضوء لجنب يريد أكلاً، أو شرباً أو نوماً أو جماعاً آخر، والله أعلم.

*

e6.0 WIPING FOOTGEAR

(N: Wiping one's *footgear* (Ar. khuff) with wet hands is a dispensation that can take the place

e6.0 المسح على الخفين

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of the fifth ablution integral of washing the feet. The footgear Muslims generally use for this are ankle-high leather socks that zip up and are worn inside the shoes.)

e6.1 Wiping footgear is permissible for 72 hours (lit. "three days and nights") to a traveller on a lawful trip (N: one not undertaken for purposes of disobeying Allah) that fulfills the conditions permitting one to shorten prayers on journeys (def: f15.1-5).

Wiping them is permissible to a nontraveller for 24 hours (lit. "a day and a night"). (n: At the end of these periods, one removes the footgear to perform ablution, or, if one has ablution at the time, to wash the feet, before putting them on again and starting a new period of permissibility, as at e6.7.)

The beginning of the period is reckoned from the time of the first minor ritual impurity (hadath) that occurs after having put them on while in a state of ablution.

Wiping footgear is permissible for only 24 hours:

(1) when one has wiped both of a pair of footgear for ablution or just one of the pair (n: leaving the other for later) when not on a trip, and then begun travelling;

(2) or (O: when one has wiped both of a pair of footgear or just one) when on the trip and then finished travelling;

(3) or when one is in doubt as to whether one first wiped one's footgear for ablution while travelling or whether it was while not travelling.

Wiping footgear is permissible for 72 hours if one's ablution is nullified when not travelling and one then lifts that state of minor ritual impurity by wiping them for the ablution while travelling.

e6.2 When one doubts as to whether or not the permissible period for wiping them has expired, then one may not wipe them while the doubt exists. (A: Because dispensations cannot be taken

e6.1 يَجُوزُ المسحُ على الخُفَّيْنِ في الوضوء للمسافرِ سفراً مباحاً تُقْصَرُ فيه الصلاةُ ثلاثةَ أيامٍ ولياليهنَّ، وللمقيمِ يوماً وليلةً.

وابتداءُ المدةِ مِنَ الحدثِ بعدَ اللبسِ.

فإنْ مَسَحَهُمَا أوْ أحدَهُمَا حضراً ثمَّ سافرَ، أوْ (مسحهما أوْ أحدهما) سفراً ثمَّ أقامَ، أوْ شكَّ هل ابْتَدَأَ المسحَ سفراً أوْ حضراً أتمَّ مَسْحَ مُقيمٍ فقطْ.

ولَوْ أحْدَثَ حضراً ومَسَحَ سفراً أتمَّ مدةَ مسافرٍ [سواءٌ مضى عليْهِ وقتُ الصلاةِ بكمالِهِ في الحضرِ أمْ لا].

e6.2 فإنْ شكَّ في انقضاءِ المدةِ لمْ يَمْسَحْ في مدةِ الشكِّ (ع: لأنَّ الرخصةَ لا

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unless one is certain (N: of their necessary conditions).) If one has doubts (n: when near the end of the permissible period for wiping them, for example, and uncertain exactly when it began) about whether one nullified one's ablution at the time of the noon prayer, or whether it was at the time of the midafternoon prayer, then one proceeds on the assumption that it was at the time of the noon prayer.

يصار إليها إلا بيقين).
فإنْ شَكَّ هَلْ أَحْدَثَ وقتَ الظهرِ أو العصرِ بَنَى أمْرَهُ على أنَّهُ الظهرُ.

e6.3 If a state of major ritual impurity (janaba) occurs during the permissible period for wiping footgear, then one must take them off for the purificatory bath (ghusl).

e6.3 ولَوْ أَجْنَبَ في المدةِ وَجَبَ النزعُ للغُسلِ.

e6.4 The conditions for the permissibility of wiping footgear are:

(a) that one have full ablution when one first puts them on;

(b) that they be free of filth;

(c) that they cover the whole foot up to and including the anklebones;

(d) that they prevent water (N: if dripped on them drop by drop from directly) reaching the foot (O:—if water reaches the foot through the holes of a seam's stitches, it does not affect the validity of wiping them, though if water can reach the foot through any other place, it violates this condition);

(e) and that they be durable enough to keep walking around upon as travellers do in attending to their needs (O: when encamping, departing, etc.):

—no matter whether they are of leather, felt, layers of rags (N: including thick, heavy wool socks that prevent water from reaching the foot (A: not modern dress socks (n: due to non-(d) and (e) above), which are not valid to wipe in any school, even if many are worn in layers)), wood, or other; nor whether they have a cleavage laced up with eyelets (O: provided none of the foot

e6.4 وشرطُهُ أنْ يَلْبَسَهُ على وضوءٍ كاملٍ، وأنْ يَكُونَ طاهراً ساتراً لجميعِ محلِّ الفرضِ مانعاً لنفوذِ الماءِ (ح: لو نقط عليه، أن يصل مباشرة) (فلو وصل الماء من موضع الخرز لا يضر في صحة المسح، وأما وصول الماء إلى الرجل من أي موضع كان من غير محل الخرز فإنه يضر) يُمْكِنُ متابعةُ المشي عليْهِمَا لتردُّدِ مسافرٍ لحاجاتِهِ (عند الحط والترحال وغيرهما).
سواءٌ كانَ مِنْ جِلْدٍ أوْ لبدٍ أوْ خرقٍ مطبقةٍ أوْ خشبٍ أوْ غيرِ ذلكَ، أوْ مشقوقاً شُدَّ بشرجٍ (على أنه لا يظهر شيء من محل الفرض).

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shows).

One may not wipe footgear if wearing just one of a pair, washing the other foot. Nor if any of the foot shows through a hole in them.

ولـوْ لَبِسَ خفـاً في رجـلٍ لِيَمْسَحهُ ويَغْسِـلَ الأخـرى، أوْ ظَهَـرَ مِنَ الـرجـلِ شيءٌ وإنْ قَلَّ مِنْ خرقٍ في الخفِ لَمْ يَجُزْ.

e6.5 [والجرموقُ هو خفٌّ فوق خفٍّ، فإنْ كانَ الأعلى قوياً والأسفلُ مخرّقاً فلهُ مسحُ الأعلى، وإن كانا قويين أو القويُّ الأسفلُ لمْ يَكْفِ مسحُ الأعلى (في الصورتين هذا إذا لم يصل البلل من الأعلى إلى الأسفل). فإنْ وَصَلَ البللُ منهُ إلى الأسفلِ كَفى سواءٌ قَصَدَ مسحهُمَا أو الأسفلَ (بالمسح على الأعلى) فقطْ أو أطْلَقَ (المسح أي لم يقصد واحداً بعينه)، لا إنْ قَصَدَ الأعلى فقطْ].

e6.6 It is sunna to wipe the footgear on the top, bottom, and heel in lines (N: as if combing something with the fingers), without covering every part of them or wiping them more than once.

One puts the left hand under the heel and the right hand on top of the foot at the toes, drawing the right hand back towards the shin while drawing the left along the bottom of the foot in the opposite direction towards the toes.

It is sufficient as *wiping the footgear* to wipe any part of their upper surface (N: with wet hands), from the top of the foot up to the level of the anklebones. It is not sufficient to only wipe some of the bottom, heel, side of the foot, or some of the footgear's inner surface that faces the skin.

e6.6 ويُسَنُّ مسحُ أعلى الخفِّ وأسفلِه وعقبِه خطوطاً بلا استيعابٍ ولا تكرارٍ فيضعُ يدهُ اليُسرى تحتَ عقبِه ويمناهُ عند أصابعِه ويُمِرُّ اليمنى إلى الساقِ واليسرى إلى الأصابعِ.

فإن اقْتَصَرَ على مسحِ أقلِّ جزءٍ مِنْ ظاهرٍ أعلاهُ محاذياً لمحلِّ الفرضِ كَفى. وإنِ اقْتَصَرَ على الأسْفَلِ أو العقبِ أو الحرفِ أو الباطنِ ممَّا يلي البشرةَ فلا.

e6.7 When on an ablution that was performed by wiping the footgear, and then some part of the foot shows because of taking them off, or through a hole, it's sufficient (N: to complete one's ablution) to merely wash the feet again (O: without repeating the ablution).

e6.7 ومتى ظَهَرَتِ الرجلُ بنزعٍ أوْ بخرقٍ وهو بوضوءِ المسحِ كَفاهُ (ح: لإتمامِ وضوءه) غسلُ القدمينِ فقطْ (أي من غير إعادة للوضوء).

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e7.0 THE FOUR CAUSES OF MINOR RITUAL IMPURITY (HADATH)

(N: Meaning the things that nullify one's ablution.)

e7.0 أسبـاب الأحـداث الأربعة

(ح: أي نواقض الوضوء).

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ANYTHING THAT EXITS FROM THE PRIVATE PARTS

e7.1 The first is anything that exits from the front or rear private parts, whether a substance (O: such as urine or feces) (N: or the mucus that exits from the vagina with or without sexual stimulation, though not a woman's sexual fluid that appears through orgasm, discussed below) or wind, and whether something usual or something uncommon such as a worm or stones. But not a male's sperm or female's sexual fluid (Ar. maniyy, that which exits with orgasmic contractions, whether a man's or a woman's (def: e10.4)), which necessitates the purificatory bath (N: as it causes major ritual impurity) but does not necessarily nullify ablution, an example of this being someone firmly seated (dis: e7.2, second paragraph) who sleeps and has a wet dream, or someone who looks at something lustfully and sperm or sexual fluid come. Otherwise, if one makes love to one's spouse, or has an orgasm while lying asleep, ablution is nullified (n: respectively) by touching the spouse's skin (e7.3) or by sleep (below).

الخارج من القبل أو الدبر

e7.1 أحدُها الخارجُ مِنْ قبلٍ أوْ دبرٍ [أوْ ثقبةٍ تحتَ السرةِ مع انسدادِ المخرجِ المعتادِ] عيناً (كالبول والغائط) أوْ ريحاً، معتاداً أو نادراً كدودةٍ وحصاةٍ، إلاَّ المنيَّ فإنَّهُ يُوجِبُ الغسلَ ولا يَنْقُضُ الوضوءَ وصورةُ ذلكَ أنْ يَنامَ مُمَكِّناً مَقْعَدَهُ فيَحْتلِمَ أوْ يَنْظُرَ بشهوةٍ فيَنْزِلَ. وإلاَّ فلوْ جامعَ أوْ نامَ مضطجعاً فأنْزَلَ انْتَقَضَ باللمسِ وبالنومِ.

LOSS OF INTELLECT THROUGH SLEEP ETC.

e7.2 The second cause of minor ritual impurity is loss of intellect (O: meaning the loss of the ability to distinguish, whether through insanity, unconsciousness, sleep, or other. *Loss of intellect* excludes drowsing and daydreaming, which do not nullify ablution. Among the signs of *drowsing* is that one can hear the words of those present, even if uncomprehendingly).

Sleep while *firmly seated* on the ground (A: or any other surface firm enough to prevent a person's breaking wind while seated on it asleep) does not nullify ablution, whether riding mounted, leaning on something which if removed would cause one to fall, or otherwise seated.

If one sleeps when firmly seated and one's rear moves from its place before one awakens, this nullifies one's ablution. But not if:

(1) one's rear moved after or during awaken-

زوال العقل

e7.2 الثاني زوالُ عقلِه (والمراد به زوال التمييز سواء كان زواله بجنون أو إغماء أو نوم أو غيرها، وخرج بزوال العقل النعاس وحديث النفس فلا ينقض بهما. ومن علامات النعاس سماع كلام الحاضرين وإن لم يفهمه) إلا النوم قاعداً ممكِّناً مقعدَهُ من الأرض سواءٌ الراكبُ والمستندُ ولوْ لشيءٍ لوْ أُزيلَ لَسَقَطَ وغيرُهُما.

فلوْ نامَ ممكِّناً فزالتْ ألْيتاهُ قبلَ انتباهِهِ انْتقضَ. أوْ بعدهُ أوْ معهُ لوْ شَكَّ أوْ سَقَطَتْ

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ing, or if one is uncertain about whether it happened before awakening or during;

(2) one's arm dropped to the ground while one was firmly seated;

(3) or when one drowses while not firmly seated, hearing but not comprehending, or if one is uncertain as to whether one drowsed or slept, or uncertain as to whether one slept while firmly seated or not firmly seated.

يدُهُ على الأرض وهو نائمٌ ممكّنٌ مقعدَهُ أوْ نَعَسَ وهو غيرُ ممكّنٍ وهو يَسْمَعُ ولا يَفْهَمُ، أوْ شَكَّ هلْ نامَ أوْ نَعَسَ أوْ هَلْ نَامَ ممكّناً أوْ غيرَ ممكّنٍ فلا يَنْقُضُ.

CONTACT OF MAN AND WOMAN'S SKIN

التقاء بشرتي رجل وامرأة

e7.3 The third cause of minor ritual impurity is when any, no matter how little, of the two skins of a man and woman touch (N: husband and wife, for example) when they are not each other's unmarriageable kin (Ar. mahram, def: m6), even if they touch without sexual desire, or unintentionally, and even if with tongue or a nonfunctional or surplus limb; though *touching* does not include contact with teeth, nails, hair, or a severed limb.

Ablution is also nullified by touching an aged person or a corpse (N: of the opposite sex) but not by touching a member of one's unmarriageable kin, or a child who is younger than the age that usually evokes sexual interest.

One's ablution is not nullified when one is uncertain about:

(1) whether one touched a male or female;

(2) whether one touched hair or skin;

(3) or whether the person one touched was of one's unmarriageable kin or not.

e7.3 الثالثُ التِقاءُ شيءٍ وإنْ قَلَّ مِنْ بشرتَيْ رَجُلٍ وامْرأةٍ أجْنَبِيَّيْنِ، ولوْ بغيرِ شهوةٍ وقصدٍ، حتى اللسانِ والأشلِّ والزائدِ إلا سِنّاً وظفراً وشعراً وعضواً مقطوعاً.

ويَنْقُضُ هَرِمٌ وميِّتٌ لا مَحْرَمٌ وطفلٌ لا يُشْتَهى في العادةِ.

فلوْ شَكَّ هلْ لَمَسَ امرأةً أمْ رَجُلاً، أوْ شعراً أوْ بشرةً، أوْ أجنبيةً أوْ محرماً لَمْ يَنْقُضْ.

TOUCHING HUMAN PRIVATE PARTS WITH HAND

مس الفرج

e7.4 The fourth cause of minor impurity is touching human private parts with the *palm or inner surface of the fingers only* (N: i.e. those parts which touch when the hands are put together palm

e7.4 الرابعُ مَسُّ فرجِ الآدميِّ بباطنِ الكَفِّ والأصابعِ خاصةً، ولوْ سهواً

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to palm), whether one touches the private parts:

(1) absentmindedly;

(2) without sexual desire;

(3) in the front or rear;

(4) of a male or female;

(5) of oneself or another, even if deceased, or a child;

—but not if one touches them with one's fingertips, the skin between the fingers, with the outer edge of the hand, or touches the corresponding parts of an animal.

أوْ بلا شهوةٍ قُبُلاً أوْ دبراً ذكراً أوْ أنثى من نفسِهِ أوْ غيرِه ولوْ من ميتٍ وطفلٍ [ومحلُّ جبٍّ وإنْ اكتسى جلداً أوْ أشلُّ ولوْ مقطوعاً وبيدٍ شلاء]، لا برؤوسِ الأصابعِ وما بينَها وحرفِ الكفِّ ولا فرجِ بهيمةٍ.

e7.5 Ablution is not nullified by vomiting, letting blood, nosebleed, laughing during the prayer, eating camel meat, or other things (N: not discussed above).

e7.5 ولا يَنْقُضُ قَيْءٌ وفصدٌ ورُعافٌ وقهقهةُ مُصَلٍّ وأكلُ لحمِ جزورٍ وغيرُ ذلك.

e7.6 When certain that a minor ritual impurity has occurred, but uncertain whether one subsequently lifted it (N: with ablution), then one is in a state of minor ritual impurity (A: because in Sacred Law, a state whose existence one is certain about does not cease through a state whose existence one is uncertain about).

When certain that one had ablution, but uncertain that it was subsequently nullified, then one still has ablution.

e7.6 ومَنْ تيقَّنَ حدثاً وشكَّ في ارتفاعِه فهوَ مُحْدِثٌ (ع: لأنَّ في الشرعِ اليقينَ لا يزول بالشك)، ومَنْ تيقَّنَ طهراً وشكَّ في ارتفاعِهِ فهوَ متطهرٌ.

e7.7 [وإنْ تيقَّنَهُما وشكَّ في السابقِ منْهُما فإنْ لمْ يَعْرِفْ ما كانَ قَبْلَهُما. أوْ عرَفَهُ وكانَ طهراً وكانتْ عادتُهُ تجديدَ الوضوءِ لَزِمَهُ الوضوءُ، فإنْ لمْ يَكُنْ عادتُهُ تجديدَ الوضوءِ، أوْ كانَ حدثاً فهوَ الآنَ متطهرٌ].

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e8.0 ACTIONS UNLAWFUL DURING MINOR RITUAL IMPURITY

e8.0 محرمات الحدث

e8.1 The following are unlawful for someone in a state of minor ritual impurity:

(1) to perform the prayer;

(2) to prostrate when reciting the Koran at verses in which it is sunna to do so (def: f11.13);

(3) to prostrate out of thanks (f11.19);

(4) to circumambulate the Kaaba (j5);

(5) or to carry a Koran, even by a strap or in a box, or touch it, whether its writing, the spaces between its lines, its margins, binding, the carrying strap attached to it, or the bag or box it is in.

e8.1 ومَنْ أحْدَثَ حَرُمَ عليْهِ الصلاةُ، وسجودُ التلاوةِ والشكرِ، والطوافُ، وحملُ المصحفِ ولوْ بعلاقتِهِ أوْ في صندوقِهِ ومَسُّهُ سواءُ المكتوبُ وما بينَ الأسطرِ والحواشي وجلدُهُ وعلاقتُهُ وخريطتُهُ وصندوقُهُ وهوَ فيهِمَا.

(n: Other aspects of proper manners (adab) towards the Book of Allah are treated below at w16.) (A: The opinion expressed in *Fiqh al-sunna* that it is permissible to touch the Koran without ritual purity is a deviant view contrary to all four schools of jurisprudence and impermissible to teach (dis: r7.1(3), except to explain that it is aberrant.) (n: Though in the Hanafi school, it is permissible for someone in a state of minor ritual impurity to touch or carry a Koran that is inside a cover not physically attached to it, such as a case or bag, as opposed to something joined to it, like a binding (*al-Lubab fi sharh al-Kitab* (y88), 1.43). And Allah knows best.)

e8.2 It is also unlawful (n: when without ablution) to touch or carry any of the Koran written for the purpose of study, even a single verse or part of one, as when written on a slate or the like.

(O: But this is permissible for nonstudy purposes such as when the Koran is intended to be an amulet (def: w17). It is not prohibited to touch or carry such an amulet even if it contains whole suras, or even, as Sheikh (N: Shirbini) al-Khatib has said, if it contains the whole Koran.)

It is permissible to carry a Koran in one's baggage and to carry money, rings, or clothes on which Koran is written.

It is permissible to carry books of Sacred Law, hadith, or Koranic exegesis which contain Koran, provided that most of their text is not Koran (O: because the non-Koranic part is the

e8.2 وكَذا يَحْرُمُ مَسُّ وحملُ ما كُتِبَ لدراسةٍ ولوْ آيةً (ولو بعضها) كاللوحِ وغيرِهِ (وحمل لغير الدراسة كما إذا قصد للتميمة ولو مع القرآن فلا يحرم مسها ولا حملها وإن اشتملت على سور بل قال الشيخ الخطيب وإن اشتملت على جميع القرآن).

ويَحِلُّ حملُ مصحفٍ في أمتعةٍ، وحَلَّ حملُ دراهمَ ودنانيرَ وخاتمٍ وثوبٍ كُتِبَ عَلَيْهِنَّ قرآنٌ.

وكُتُبِ فقهٍ وحديثٍ وتفسيرٍ فيها قرآنٌ بِشَرْطِ أنْ يَكُونَ غيرُ القرآنِ أكثرَ (لأن غير

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purpose, though this is unlawful if half or more is Koran).

Boys who have reached the age of discrimination (def: f1.2(O:)) may touch or carry the Koran while in a state of minor ritual impurity (O: because of the need to learn it and the hardship of their keeping ablution, and likewise for young girls, though this is for study alone, as opposed to nonstudy, when it is unlawful. As for children under this age, their guardian may not give a Koran to them) (A: as this is an insult to it. Also, teachers should remind children that it is unlawful to moisten one's fingers with saliva to turn its pages).

Someone in a state of minor or major impurity may write Koran if he does not touch or carry what he has written.

القرآن هو المقصود فإن كان القرآن أكثر أو مساوياً حرم ذلك).

وَيُمَكِّنُ الصبيُّ (أي المميز) المحدثُ مِنْ حملِهِ ومَسِّهِ (لحاجة تعلمه ومشقة استمراره متطهراً ومثل الصبي في هذا الحكم الصبية وهذا إذا كان لدراسة بخلاف ما إذا كان لغيرها فإنه يمنع. أما غير المميز فلا يجوز للولي تمكينه من ذلك).

ولَوْ كَتَبَ محدثٌ أوْ جنبٌ قرآناً ولمْ يَمَسَّهُ ولمْ يَحْمِلْهُ جازَ.

e8.3 When one fears that a Koran may burn, get soaked, that a non-Muslim may touch it, or that it may come into contact with some filth, then one must pick it up if there is no safe place for it, even if one is in a state of minor or major ritual impurity, though performing the dry ablution (tayammum, def: e12) is obligatory if possible.

e8.3 ولَوْ خافَ على المصحفِ مِنْ حرقٍ أوْ غرقٍ أوْ يدِ كافرٍ أوْ نجاسةٍ وَجَبَ أخذُهُ مَعَ الحدثِ والجنابةِ إنْ لمْ يَجِدْ مستودعاً لَهُ لكنْ يَتَيَمَّمَ (وجوباً) إنْ قَدَرَ

e8.4 It is unlawful to use a Koran or book of Islamic knowledge as a pillow (O: except for fear of theft, when it is permissible to do so).

And Allah knows best.

e8.4 ويَحْرُمُ تَوَسُّدُهُ وغيرِهِ مِنْ كتبِ العلمِ (إلا إن خاف عليه من سرقة فيجوز حينئذ) واللهُ أعلمُ.

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e9.0 GOING TO THE LAVATORY

e9.0 آداب الذهاب إلى الخلاء

e9.1 It is recommended when one intends to use the lavatory:

(1) to put something on one's feet, unless there is an excuse (O: such as not having shoes);

(2) to cover the head (O: even if only with a handkerchief or other);

e9.1 يُنْدَبُ لمريد الخلاء أنْ يَنْتَعِلَ إلا لعذرٍ (كأن لا يجد النعل).

- ويَسْتُرَ رأسَهُ (ولو بمنديل أو غير ذلك).

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(3) to set aside anything on which there is the mention of Allah Most High, His messenger (Allah bless him and give him peace), or any revered name (O: like those of prophets or angels). If one enters with a ring (O: on which something worthy of respect is written), one closes one's hand around it;

(4) to ready stones (N: or other suitable material (def: e9.5)) (O: if one uses them) to clean oneself of filth (N: though water alone is sufficient);

(5) to say before entering:

"In the name of Allah, O Allah, I take refuge in You from demons, male and female,"

and after leaving,

"[O Lord,] Your forgiveness. Praise be to Allah who rid me of the hurt and gave me health";

(6) to enter with the left foot first and depart with the right foot first (and this, together with (3) and (5) above, are not only for indoors, but recommended outdoors as well);

(7) not to raise one's garment until one squats down to the ground (O: to keep one's nakedness covered as much as possible) and to lower it before one stands up;

(8) to put most of one's weight on the left foot while squatting;

(9) not to spend a long time;

(10) not to speak;

(11) when finished urinating, for men to squeeze the penis with the left hand from base to head (O: recommended because this is where the urethra is, and for women to squeeze their front between thumb and forefinger) (N: so urine does not exit later and nullify one's ablution) pulling lightly three times (O: this being recommended when one thinks the urine has stopped, though if one thinks it has not, this is obligatory);

ـ وَيُنَحِّيَ مَا فيه ذكرُ اللهِ ورسولِه وكلُّ اسمٍ معظمٍ (كأسماء الأنبياء والملائكة) فإنْ دَخَلَ بالخاتمِ (الذي كتب عليه شيء معظم) ضَمَّ كفَّهُ عليْهِ.

ـ ويُهَيِّءَ أحجارَ الاستنجاءِ (إنْ كان يستنجي بها).

ـ ويَقُولَ عند الدخول: «بِسْمِ اللَّهِ، اللَّهُمَّ إنِّي أعُوذُ بكَ مِنَ الخُبُثِ والخَبَائِثِ» وعندَ الخروجِ: «غُفْرَانَكَ، الحَمْدُ لِلَّهِ الَّذِي أَذْهَبَ عَنِّي الأذَى وَعَافَانِي».

ـ ويُقَدِّمُ داخلاً يسارَهُ وخارجاً يمينَهُ، ولا يَخْتَصُّ ذكرُ الدخولِ للخلاءِ والخروجِ، وتقديمُ اليُسرَى واليمنَى وتنحيةُ ذكرِ اللهِ تعالى ورسولِه بالبنيانِ، بلْ يُشْرَعُ بالصحراءِ أيضاً.

ـ ولا يَرْفَعُ ثوبَهُ (محافظةً على الستر ما أمكن) حتَّى يَدْنُوَ مِنَ الأرضِ، ويُرْخِيَه قبلَ انتصابِه.

ـ ويَعْتَمِدَ في الجلوسِ على يسارِه.

ـ ولا يُطِيلَ.

ـ ولا يَتَكَلَّمَ.

ـ فإذا انْقَطَعَ البولُ مَسَحَ بيسارِه مِنْ دبرِه إلى رأسِ ذكرِه (ندباً لأنَّ هذا المكانَ مجرى البولِ، وأما المرأةُ فتعصر عانتها) وَيَنْتُرَ بلطفٍ ثلاثاً (فإذا غلب على ظنه انقطاعه فيكون مندوباً وإذا غلب على ظنه عدم الانقطاع فيكون حينئذ وجوباً).

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(12) not to urinate while standing (O: which is offensive) unless there is an excuse (N: such as when standing is less likely to spatter urine on one's clothes than sitting, or when sitting is a hardship);

(13) not to clean oneself with water in the same place one relieved oneself, if it might spatter, though if in a lavatory one need not move to a different place;

(14) to distance oneself from others if outdoors and to screen oneself;

(15) not to urinate into holes, on hard places, where there is wind, in waterways, where people gather to talk, on paths, under fruit trees, near graves, in still water, or in less than 216 liters of running water;

(16) and not to relieve oneself with one's front or rear facing the sun, moon, or the Sacred Precinct in Jerusalem.

- ولا يَبُولَ قائماً (فيكره له حينئذ وذلك) بلا عذرٍ.
- ولا يَسْتَنْجِي بالماءِ في موضعِهِ إنْ خافَ ترشُّشاً، ولا يَنْتَقِلَ في المراحيضِ.
- ويُبْعِدَ في الصحراءِ ويَسْتَتِرَ.
- ولا يَبُولَ في جحرٍ، وموضعٍ صلبٍ، ومَهَبِّ ريحٍ، ومواردٍ، ومُتَحَدَّثِ للناسِ، وطريقٍ، وتحتَ شجرةٍ مثمرةٍ وعندَ قبرٍ وفي الماءِ الراكدِ وقليلٍ جارٍ، ولا مستقبِلَ الشمسِ والقمرِ وبيتِ المقدسِ ومستدبِرَهُ.

e9.2 It is unlawful to urinate on anything edible, bones, anything deserving respect, a grave, or in a mosque, even if into a receptacle.

e9.2 ويَحْرُمُ البولُ على مطعومٍ وعظمٍ ومعظَّمٍ وقبرٍ وفي مسجدٍ ولوْ في إناءٍ.

e9.3 It is unlawful to urinate or defecate with one's front or rear towards the direction of prayer when outdoors and there is no barrier to screen one, though it is permissible when outdoors or indoors within a meter and a half of a barrier at least 32 cm. high, or in a hole that deep. When one is not this close to such a barrier, it is not permissible except in a lavatory, where, if the walls are farther from one than the maximal distance or are shorter than the minimal height, relieving oneself with front or rear towards the direction of prayer is permissible, though offensive.

e9.3 ويَحْرُمُ استقبالُ القبلةِ واستدبارُها ببولٍ أوْ غائطٍ في الصحراءِ بلا حائلٍ، ويُباحانِ في البنيانِ إذا قَرُبَ من الساترِ نحوَ ثلاثةِ أذرعٍ، ويَكْفي مرتفعٌ ثلثَيْ ذراعٍ من جدارٍ ووهدةٍ [ودابةٍ وذيلِهِ المرخيِّ قبالةَ القبلةِ، والاعتبارُ في الصحراءِ والبنيانِ بالسترةِ فحيثُ قَرُبَ منها على ثلاثةِ أذرعٍ وهي ثلثا ذراعٍ جازَ فيهما]. وإلا فلا. إلا في المراحيضِ فيَجوزُ مَعَ كراهةٍ وإن بَعُدَ جدارُها أوْ قَصُرَ.

e9.4 It is obligatory to clean oneself of every impure substance coming from one's front or rear, though not from gas, dry worms or stones, or excrement without moisture.

e9.4 ويَجِبُ الاستنجاءُ من كلِّ عينٍ ملوِّثةٍ خارجةٍ من السبيلينِ لا ريحٍ ودودةٍ وحصاةٍ وبعرةٍ بلا رطوبةٍ.

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e9.5 Stones suffice to clean oneself, though it is best to follow this by washing with water. Anything can take the place of stones that is a solid, pure, removes the filth, is not something that deserves respect or is worthy of veneration, nor something that is edible (O: these being five conditions for the validity of using stones (N: or something else) to clean oneself of filth without having to follow it by washing with water).

But it is obligatory to wash oneself with water if:

(1) one has washed away the filth with a liquid other than water, or with something impure;

(2) one has become soiled with filth from a separate source;

(3) one's waste has moved from where it exited (n: reaching another part of one's person) or has dried;

(4) or if feces spread beyond the inner buttocks (N: meaning that which is enfolded when standing), or urine moved beyond the head of the penis, though if they do not pass beyond them, stones suffice.

It is obligatory (N: when cleaning oneself with a dry substance alone) to both remove the filth, and to wipe three times, even when once is enough to clean it, doing this either with three pieces (lit. "stones") or three sides of one piece. If three times does not remove it, it is obligatory to (N: repeat it enough to) clean it away (O: as that is the point of cleaning oneself. Nawawi says in *al-Majmu'* that cleaning oneself (N: with a dry substance) means to remove the filth so that nothing remains but a trace that could not be removed unless one were to use water) (N: and when this has been done, any remaining effects of filth that could have only been removed with water are excusable). An odd number of strokes is recommended. One should wipe from front to back on the right side with the first piece, similarly wipe the left with the second, and wipe both sides and the anus with the third. Each stroke must begin at a point on the skin that is free of impurity.

e9.5 ويُكْفِي الأحجارُ [ولو في نادرٍ كدمٍ] وتعقيبُها بالماءِ أفضلُ ويُغْنِي عن الحجرِ كلُّ جامدٍ طاهرٍ قالعٍ للنجاسةِ غيرِ محترمٍ ومطعومٍ (فهذه خمسةُ قيودٍ لصحةِ الاستنجاءِ بالأحجارِ من غيرِ أن يتبعها بالماءِ) [كجلدِ المذكّى قبلَ الدباغِ].

فلو اسْتَعْمَلَ مائعاً غيرَ الماءِ، أوْ نجساً، أوْ طَرَأَتْ نجاسةٌ أجنبيةٌ، أو انتقلَ ما خَرَجَ منهُ عنْ موضعِهِ، أوْجَفَّ، أو انْتَشَرَ حالَ خروجِهِ وجاوَزَ الأليةَ (ح: والمقصودُ صفحةُ الأليةِ من الداخلِ وهو ما انضَمَّ من الأليتينِ عندَ القيامِ) أو الحشفةَ، تعيَّنَ الماءُ. فإنْ لمْ يُجاوِزْهُمَا كَفَى الحجرُ.

ويَجِبُ إزالةُ العينِ واستيفاءُ ثلاثِ مَسَحاتٍ إما بثلاثةِ أحجارٍ، أوْ بحجرٍ لهُ ثلاثةُ أحرفٍ، وإنْ أنْقَى بدونِها. فإنْ لمْ تُنْقِ الثلاثةُ وَجَبَ الإنقاءُ (لأنه المقصودُ من الاستنجاءِ والإنقاءِ قال في المجموعِ هو أنْ يزيلَ العينَ حتى لا يبقى إلا أثرٌ لا يزيلُه إلا الماءُ).

ونُدِبَ إيتارٌ. ويُنْدَبُ أنْ يَبْدَأَ بالأولِ منْ مقدمِ صفحةِ اليمنى ويُمِرُّهُ إلى موضعِ ابتدائِهِ ثمَّ يَعْكِسُ بالثاني ثمَّ الثالثُ على الصفحتَيْنِ والمسربةِ وجَبَ وضْعُهُ أولاً بموضعٍ طاهرٍ ثُمَّ يُمِرُّهُ.

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It is offensive to use the right hand to clean oneself of filth.

ويُكْـرَهُ الاستنجـاءُ بيمينِهِ [فَلْيَأْخُذِ الحجرَ بيمينِهِ والذكرَ بشمالِهِ ويُحرِّكُهَا].

e9.6 It is best to clean oneself of filth before ablution, though if one waits until after it to clean, the ablution is nevertheless valid (N: provided that while cleaning, the inside surface of the hand (def: e7.4) does not touch the front or rear private parts).

If one waits until after one's dry ablution (tayammum, def: e12) to clean away filth, the dry ablution is not valid (A: because lack of filth is a condition for it).

e9.6 والأفضلُ تقديمُ الاستنجاءِ على الـوضـوءِ فإنْ أخَّرهُ عنهُ صَحَّ (ح: لكن بشرط أن لا يلمس بباطن كفه القبل أو الدبر)، أوْ عنِ التيمّمِ فلا.

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e10.0 MAJOR RITUAL IMPURITY (JANABA)

e10.0 الجنابة ومحرماتها

e10.1 The purificatory bath (ghusl, def: e11) is obligatory for a male when:

(1) sperm exits from him;

(2) or the head of his penis enters a vagina;

and is obligatory for a female when:

(1) sexual fluid (def: below) exits from her;

(2) the head of a penis enters her vagina;

(3) after her menstrual period;

(4) after her postnatal lochia stops or after a child is born in a dry birth.

(n: The Arabic term *maniyy* used in all these rulings refers to both male sperm and female sexual fluid, i.e. that which comes from orgasm, and both sexes are intended by the phrase *sperm or sexual fluid* wherever it appears below.)

e10.1 يَجِبُ الغسلُ على الرجُلِ منْ خروجِ المنيِّ ومنْ إيلاجِ الحشفةِ في [أيِّ] فرجٍ [كانَ قبلاً أوْ دبراً ذكراً أوْ أنثى ولـوْ بهيمةً (ت: وهـذه الصـور الشـاذة محرمـة شديدة التحريم كما سيأتي بيانه في كتاب الكبائر، وإنما ذكرت هنا على سبيل الاستيعاب لأسباب الجنابة، وذلك لاعتنـاء العلمـاء القدمـاء بالشمـول في البحـوث الشرعية، ولو في نوادر الوقائع) أوْ صغيـراً في صغيـرة]. ويَجِبُ على المرأةِ منْ خروجِ منيِّها ومنْ أيِّ ذكرٍ دَخَلَ في قُبلِهَا [أو دبرِهَا ولوْ أشلَّ أوْ منْ صبيٍّ أوْ بهيمةٍ] ومِنَ الحيضِ والنفاسِ وخروجِ الولدِ جافاً.

e10.2 ولَوْ رأى منياً في ثوبٍ أوْ فراشٍ يَنامُ فيه معَ مَنْ يُمْكِنُ كونُهُ منْهُ نَدَبَ لَهُمَا الغُسلُ ولا يَجِبُ (ح: لأن كلاً منهما لم يجـزم بأن المني منه ولا يجب الغسـل إلا بعد الجزم) ولا يَقْتَدِي أحدُهُمَا بالآخرِ (ح: لأن كلاً منهما يعتقد أن الآخر

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حنب) فإنْ لمْ ينمْ فيه غيرُهُ لزمهُ الغسلُ ويجبُ إعادةُ كلِّ صلاةٍ لا يحتملُ حُدوثُ المنيِّ بعدها. لكنْ يُندبُ إعادةُ ما أمكن كونُها بعدهُ]

e10.3 When a woman who has been made love to performs the purificatory bath, and the male's sperm afterwards leaves her vagina, then she must repeat the ghusl if two conditions exist:

(a) that she is not a child, but rather old enough to have sexual gratification (A: as it might otherwise be solely her husband's sperm):

(b) and that she was fulfilling her sexual urge with the lovemaking, not sleeping or forced.

e10.3 ولوْ جُومِعتْ في قبلِها فاغتسلتْ ثمّ خرجَ منيُّهُ منْها لزمها غسلٌ آخرُ بشرطيْن: أحدُهُما أنْ تكونَ ذاتَ شهوةٍ لا صغيرةً، الثاني أنْ تكونَ قضتْ شهوتَها لا نائمةً ومكرهةً.

e10.4 Male sperm and female sexual fluid are recognised by the fact that they:

(a) come in spurts (n: by contractions);

(b) with sexual gratification;

(c) and when moist, smell like bread dough, and when dry, like egg-white.

When a substance from the genital orifice has any one of the above characteristics, then it is sperm or sexual fluid and makes the purificatory bath obligatory. When not even one of the above characteristics is present, it is not sperm or sexual fluid. Being white or thick is not necessary for it to be considered male sperm, and being yellow or thin is not necessary for it to be considered female sexual fluid.

e10.4 ويُعْرفُ المنيُّ بتدفُّقٍ أوْ تلذُّذٍ أوْ ريحِ [طلْعٍ أوْ] عجينٍ إذا كان رطباً أوْ بياضِ بيضٍ إذا كان جافاً. فمتى وُجِدَ واحدٌ منها كانَ منيّاً موجباً للغسلِ.
ومتى فُقِدتْ كلُّها لمْ يكنْ منياً. ولا يُشترطُ البياضُ والثخانةُ في منيِّ الرجلِ ولا الصفرةُ والرقةُ في منيِّ المرأةِ.

e10.5 The purificatory bath is not obligatory:

(1) when there is an unlustful discharge of thin, sticky, white fluid (madhy) caused by amorous play or kissing;

(2) or when there is a discharge of the thick, cloudy white fluid (wady) that exits after urinating (O: or carrying something heavy).

e10.5 ولا غسلَ في مذْيٍ وهوماءٌ أبيضُ رقيقٌ لزجٌ يخرجُ بلا شهوةٍ عندَ الملاعبةِ. ولا في ودْيٍ وهوماءٌ أبيضُ كدرٌ ثخينٌ يخرجُ عقبَ البولِ (أو عندَ حملِ شيءٍ ثقيلٍ).

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e10.6 If one does not know whether one's discharge is sperm or whether it is *madhy* (def: (1) above), then one may either:

(1) consider it sperm, and perform the purificatory bath (O: in which case washing the portions of clothes and so forth affected with it is not obligatory, as it is legally considered a pure substance);

(2) or consider it *madhy*, and wash the affected portions of the body and clothes (N: which is obligatory, as it is legally considered filth), and perform ablution, though not the purificatory bath.

The best course in such cases of uncertainty is to do all of the above (O: of bathing, washing the affected portions, and ablution, so as to take due precaution in one's worship).

e10.6 فإنْ شكَّ هَلْ الخارجُ منيٌّ أوْ مذيٌ تخيَّرَ إنْ شاءَ جَعلَهُ منيًا واغْتسلَ فقطْ (ولا يجب عليه حينئذ غسل ما أصابه من ذلك الخارج لأنه محكوم عليه بالطهارة) وإنْ شاءَ جَعلَهُ مذياً وغسلَ ما أصابَ بدنَهُ وثوبَهُ منْهُ وتوضَّأَ ولا يغْتسلُ.

والأفضلُ أنْ يفْعلَ جميعَ ذلكَ (من الاغتسال، وغسل ما أصاب بدنه وثوبه، والوضوء احتياطاً للعبادة).

e10.7 All things unlawful for someone in minor ritual impurity (def: e8.1) are also unlawful for someone in a state of major ritual impurity (N: or menstruation). In addition, it is likewise unlawful for such a person:

(1) to remain in a mosque;

(2) or to recite any of the Koran, even part of a single verse, though it is permissible to use its invocations (dhikr) when the intention is not Koran recital (O: such as saying in disasters, "Surely we are Allah's, and unto Him we will return," and the like). If one intends Koran recital, it is disobedience, but if one intends it primarily as invocation (dhikr), or as nothing in particular, it is permissible.

It is permissible to pass through a mosque (A: though not to enter and leave by the same door (Ar. taraddud), which is unlawful) when one is in a state of major ritual impurity, but this is offensive when there is no need.

e10.7 ويحْرُمُ بالجنابةِ (ح: والحيض) ما حَرُمَ بالحدثِ، وكذا اللبثُ في المسجدِ وقراءةُ القرآنِ، ولوْ بعضَ آيةٍ، ويُباحُ أذكارُهُ لا بقصدِ القرآنِ (وذلك كقوله عند المصيبة إنَّا للهِ وإنَّا إليْهِ راجعُونَ) فإنْ قصدَ القرآنَ عصَى أوِ الذكرَ أوّلاً أوْ لا شيءَ جازَ. ولَهُ المرورُ في المسجدِ، ويُكْرَهُ لغيرِ حاجةٍ.

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e11.0 HOW TO PERFORM THE PURIFICATORY BATH (GHUSL)

e11.1 When performing the purificatory bath, one:

(1) begins by saying, "In the name of Allah, Most Merciful and Compassionate";

(2) removes any unclean matter on the body (O: pure or impure);

(3) performs ablution (wudu) as one does before the prayer;

(4) pours water over the head three times, intending to lift a state of major ritual impurity (janaba) or menstruation, or to be permitted to perform the prayer, and running the fingers through one's hair to saturate it;

(5) and then pours water over the body's right side three times, then over the left side three times, ensuring that water reaches all joints and folds, and rubbing oneself.

(6) If bathing after menstruation, a woman uses some musk to eliminate the afterscent of blood (O: by applying it to a piece of cotton and inserting it, after bathing, into the vagina as far as is obligatory (def: (b) below) for her to wash). (N: What is meant thereby is a substance that removes the traces of filth, by any means, and it is fine to use soap.)

Two things (N: alone) are obligatory for the validity of the purificatory bath:

(a) having the intention ((4) above) when water is first applied to the parts that must be washed;

(b) and that water reaches all of the hair and skin (N: to the roots of the hair, under nails, and the outwardly visible portion of the ear canals, though unlike ablution the sequence of washing the parts is not obligatory), even under the foreskin of the uncircumcized man, and the private

e11.0 كيفية الغسل

e11.1 يبدأ المغتسل بالتسمية ثم بإزالة قذر (طاهراً كان أو نجساً) ثم وضوء كوضوء الصلاة ثم يفيض الماء على رأسه ثلاثاً ناوياً رفع الجنابة أو الحيض أو استباحة الصلاة، ويخلل شعره ثم على شقه الأيمن ثلاثاً ثم الأيسر ثلاثاً ويتعهد معاطفه ويدلك جسده.

وفي الحيض تتبع إثر الدم فرصة مسك (بأن تجعله على قطنة وتدخلها فرجها بعد اغتسالها إلى المحل الذي يجب غسله) [فإن لم تجد قطناً غيره فإن لم تجد قطناً فإن لم تجد كفى الماء] (ح: والمراد به مادة تقلع أثر النجاسة بأي أسلوب كان، فإن استعملت الصابون فحسن).

والواجب منه شيئان: النية عند أول غسل مفروض، وتعميم شعره وبشره بالماء حتى ما تحت قلفة غير المختون

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parts of the nonvirgin woman which are normally disclosed when she squats to relieve herself.

(n: In the Hanafi school, rinsing out the mouth and nostrils (def: e5.7) is obligatory for the validity of the purificatory bath (*al-Lubab fi sharh al-Kitab* (y88), 1.14). It is religiously more precautionary for a Muslim never to omit it, and Allah knows best.)

وما يَظْهَرُ مِنْ فرجِ الثيِّبِ إذا قعدتْ لحاجتِها.

(ت: في المذهب الحنفي يجب المضمضة والاستنشاق لصحة الغسل [اللباب في شرح الكتاب: ١/ ١٤]، والأحوط للمسلم في دينه أن لا يهملهما أبداً والله أعلم).

e11.2 If one begins the purificatory bath while on ablution (wudu) but nullifies it (def: e7) before finishing, one simply completes the bath (N: though one needs a new ablution before praying).

e11.2 ولوْ أحْدثَ في أثنائه تمّمهُ. [ولوْ تلبّد شعرُهُ وَجَبَ نقْضُهُ إنْ لمْ يصلِ الماءُ إلى باطنِه].

e11.3 If there is filth (najasa) on the body, one washes it off by pouring water on it and then performs the purificatory bath, though washing oneself a single time suffices for both removing it and for the purificatory bath.

e11.3 ومَنْ عليْهِ نجاسةٌ يَغْسِلُها ثمّ يَغْتسِلُ ويَكْفي لَهُمَا غسلةٌ [في الأصحّ].

e11.4 When a woman who is obliged to both lift a state of major ritual impurity (janaba) and purify after menstruation performs the purificatory bath for either of these, it suffices for both.

Whoever performs the bath one time with the intention to (n: both) lift a state of major ritual impurity and fulfill the sunna of the Friday prayer bath has performed both, though if he only intends one, his bath counts for that one but not the other.

e11.4 ولوْ كانَ عليْها غسلُ جنابةٍ وغسلُ حيضٍ فاغْتسلَتْ لأحدِهِما كفى عنْهُما. ومَنِ اغْتسلَ مرةً واحدةً بنيّةِ جنابةٍ وجُمُعةٍ حصلا أوْ نيّةِ أحدِهِما حصلَ دونَ الآخرِ.

e11.5 The purificatory bath is sunna:

(1) for those who want to attend the Friday prayer (def: f18) (O: the bath's time beginning at dawn);

(2) on the two 'Eids (f19) (O: the time for it beginning from the middle of the night);

(3) on days when the sun or moon eclipse;

(4) before the drought prayer (f21);

e11.5 ويُسَنُّ غسلُ الجمعةِ (ووقته من الفجر)، والعيدَيْنِ (ويدخل وقت هذا الغسل بنصف الليل)، والكسوفَيْنِ، والاستسقاءِ، ومنْ غسلِ الميتِ (ويسن

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(5) after washing the dead (O: and it is sunna to perform ablution (wudu) after touching a corpse);

(6) after recovering one's sanity or regaining consciousness after having lost it;

(7) (N: before) entering the state of pilgrim sanctity (ihram, def: j3), when entering Mecca, for standing at 'Arafa (j8), for circumambulating the Kaaba (j5) and going between Safa and Marwa (j6), for entering Medina, at al-Mash'ar al-Haram (j9.2), and for each day of stoning at Mina (j10) on the three days following 'Eid al-Adha.

الوضوء من مسه)، والمجنون والمغمى عليه إذا أفاقا وللإحرام ولدخول مكة المشرفة وللوقوف بعرفة وللطواف والسعي ولدخول مدينة [رسول الله صلى الله عليه وسلم] وبالمشعر الحرام وثلاثة لرمي الجمار أيام التشريق.

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e12.0 DRY ABLUTION (TAYAMMUM)

(N: When unable to use water, dry ablution is a dispensation to perform the prayer or similar act without lifting one's minor or major impurity, by the use of earth for one's ablution.)

e12.0 التيمم

(ح: هو رخصة عند العجز عن استعمال الماء لأداء نحو الصلاة باستعمال تراب التيمم بدل الماء الطهور؛ لكنه لا يرفع الحدث الأصغر ولا الأكبر).

e12.1 Three conditions must be met for the legal validity of performing dry ablution.

(a) The first is that it take place after the beginning of the prayer's time if it is for an obligatory prayer or a nonobligatory one that has a particular time. The act of lifting earth to the face and arms (N: the first step of dry ablution) must take place during that time. If one performs dry ablution when unsure that the prayer's time has come, then one's dry ablution is invalid, even if it coincides with the correct time (dis: e6.2(A:)). If one performs dry ablution in the midmorning for the purpose of making up a missed obligatory prayer, but the time for noon prayer comes before one has made up the missed obligatory prayer, then one may pray it (N: the noon prayer) with that dry ablution (N: because one did not perform dry ablution for it before its time, but rather performed dry ablution for a different prayer in that prayer's time, which clarifies why this does not

e12.1 شروط التيمم ثلاثة:

- أحدها أن يقع بعد دخول الوقت إن كان لفرض أو نفل مؤقت بل يجب نقل التراب في الوقت. فلو تيمم شاكاً في الوقت لم يصح وإن صادفه. ولو تيمم لفائتة ضحوة فلم يصلها حتى حضرت الظهر فله أن يصليها (ح: أي صلاة الظهر) به (ح: لأنه لم يتيمم لها قبل وقتها بل تيمم لغيرها في وقتها وبذلك يتضح

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violate the conditions of praying with dry ablution), or one could pray a different missed prayer with it (O: as one is not required to specify which obligatory prayer the dry ablution is for).

أنه لا مخالفة لشروط التيمم) أوْ فائتةً أخرى (ولا يشترط تعيين الفرض الذي يتيمم له).

(b) The second condition is that dry ablution must be performed with plain, purifying earth that contains dust, even the dust contained in sand; though not pure sand devoid of dust; nor earth mixed with the likes of flour; nor gypsum, pottery shards (O: which are not termed *earth*), or earth that has been previously used, meaning that which is already on the limbs or has been dusted off them.

- الثاني أنْ يكُونَ بترابٍ طاهرٍ خالصٍ مطلقٍ لهُ غبارٌ ولوْ بغبار رملٍ لا رملٍ متمحِّضٍ ولا بترابٍ مختلطٍ بدقيقٍ ونحوه ولا بجصٍّ وسحاقة خزفٍ (وكل من الجص وسحاقة الخزف لا يسمى ترابا) ومستعملٍ وهوَ ما على العضو أوْ تناثرَ عنْهُ.

(c) The third condition is inability to use water. The person unable to use water performs dry ablution, which suffices in place of lifting all forms of ritual impurity, permitting the person in a state of major ritual impurity (janaba) or woman after her menstrual period to do everything that the purificatory bath (ghusl) permits them to do. If either of them subsequently has a minor ritual impurity (hadath), then only the things prohibited on minor impurity are unlawful for them (def: e8.1) (N: not those prohibited on major impurity (e10.7), that is, *until they can again obtain water* to lift their state of major impurity, when they must, for the dry ablution is only a dispensation to pray and so forth while in states of impurity and is nullified by finding water).

- الثالث العجزُ عن استعمال الماء. فيتيمَّمُ العاجزُ عن استعمالِهِ ويكُونُ عن الأحداث كُلِّها ويستبيحُ به الجنبُ والحائضُ ما يستبيحانِ بالغسلِ. فإنْ أحْدثا بعدَهُ حرُمَ عليْهِما ما يحْرُمُ بالحدثِ (الأصغر). (ح: أي: حتى يقدرا على رفع الحدث الأكبر بالماء، فحينئذ يتعين عليهما الغسلُ؛ لأن التيمم رخصة لأداء الصلاة ونحوها عند العجز عن الماء ويبطل بالقدرة على استعماله).

e12.2 *Inability to use water* has (O: three) causes (n: lack of water, fear of thirst, and illness).

e12.2 وللعجز أسبابٌ (ثلاثة):

LACK OF WATER

فقد الماء

e12.3 The first is lack of water. When one is sure there is none, one performs dry ablution without searching for it. If one thinks there might be some, one must look through one's effects and inquire until one has asked all of one's party or (N: if too numerous) there is no time left except for the prayer. One does not have to ask each person individually, but may simply call out, "Who has water, even for a price?" Then one looks around,

e12.3 أحدُها فقدُ الماء. فإنْ تيقَّنَ عدمَهُ تيمَّمَ بلا طلبٍ. وإنْ توهَّمَ وجودَهُ وجَبَ طلبُهُ منْ رحْلِه ورفقتِه حتى يسْتوعبَهُمْ أوْ لا يبْقى من الوقت إلا ما يسَعُ الصلاة. ولا يجبُ الطلبُ منْ كلِّ واحدٍ بعينِه بلْ يُنادي: «منْ معَهُ ماءٌ ولوْ بالثمن». ثمَّ ينظُرُ حوالَيْهِ إنْ كانَ في

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if on level ground. If not level, one checks on foot within the range at which one's group could be expected to respond to a cry for help, provided there is no threat to life or property. Or one may climb a nearby hill.

The search for water must occur after the particular prayer's time has come.

When one checks, does not find water, performs dry ablution, (N: prays an obligatory prayer with it,) and remains at the place, one need not search again before performing dry ablution for another obligatory prayer (N: when the next prayer's time comes), provided one made sure there was no water the first time, and nothing has happened to change one's mind. But if one did not make sure, or if something has happened to suggest that there might now be water, like the appearance of rain clouds or riders, one is obliged to check again for water.

أرضٍ مستويةٍ وإلا تَرَدَّدَ إلى حدِّ الغوث وهُوَ بحيثُ ما لو استغاثَ برفقتِه [مع اشتغالِهِمْ بأقوالِهِمْ وأفعالِهِمْ] لأغاثُوهُ إنْ لَمْ يَخَفْ ضررَ نفسٍ أوْ مالٍ أوْ صَعَدَ جبلاً صغيراً قريباً.

ويَجِبُ أنْ يَقَعَ الطلبُ بعدَ دخولِ الوقتِ.

فإنْ طَلَبَ فَلَمْ يَجِدْهُ وتَيَمَّمَ ومَكَثَ مَوْضِعَهُ وأرادَ فرضاً آخَرَ فإنْ لَمْ يَحْدُثْ ما يُوهِمُ ماءً وكانَ تَيَقَّنَ العدمَ بالطلبِ الأولِ تَيَمَّمَ بلا طلبٍ.

وإنْ لَمْ يَتَيَقَّنْهُ أوْ وَجَدَ ما يُوهِمُهُ كسحابٍ وركبٍ وَجَبَ الطلبُ الآنَ [إلاّ مِنْ رحلِه].

e12.4 [وإنْ تَيَقَّنَ وجودَ الماءِ على مسافةٍ يتردَّدُ إليها المسافرُ للاحتطابِ والاحتشاشِ وهي فوقَ حدِّ الغوثِ أو عَلِمَ أنه يصلُهُ بحضرٍ قريبٍ وَجَبَ قصدُهُ إنْ لَمْ يَخَفْ ضرراً (ويشترطُ أيضاً الأمنُ على خروجِ الوقتِ). وإنْ كانَ فوقَ ذلكَ فلهُ التيممُ]

e12.5 When sure that one can obtain water by waiting until the last of a prayer's time, then it is better to wait. But if one thinks otherwise, then it is better to perform dry ablution (n: and pray) at the first of the time.

e12.5 ولكنْ إنْ تَيَقَّنَ أنَّهُ لوْ صَبَرَ إلى آخرِ الوقتِ وَجَدَهُ فانتظارُهُ أفضلُ. وإنْ ظَنَّ غيرَ ذلكَ فالأفضلُ التيممُ أولَ الوقتِ.

e12.6 (N: This entry's rulings apply equally to obtaining water for purification and to obtaining clothing to fulfill the prayer's condition of covering one's nakedness (def: f5).)

If a person gives or loans one water, or loans one a bucket (O: when it is the sole means of obtaining the water) then one must accept it, though not if the person loans or gives one the price of these things (O: because of the burden of accepting charity that it involves).

If one finds water or a bucket for sale at the usual price for that locality and time, then one is obliged to buy it, provided one's money is in excess of one's debts, even if they are not due until a future date; and provided one's money exceeds the amount required for the journey's expenses.

e12.6 (ح: ينطبقُ ما يأتي من الأحكامِ على المحتاجِ لماءِ الطهارةِ والمحتاجِ لسترِ العورةِ على حدٍ سواءٍ).

ولوْ وَهَبَهُ إنسانٌ ماءً أوْ أقْرَضَهُ إيّاهُ أوْ أعارَهُ دلواً (ولم يمكنْ تحصيلُ الماءِ إلا به) لزِمَهُ القبولُ وإنْ وَهَبَهُ أوْ أقْرَضَهُ ثمنَهُما فلا (يلزمه القبول لثقل المنة في ذلك).

وإنْ وَجَدَ الماءَ والدلوَ يُباعانِ بثمنِ مثلِهِ وهُوَ ثمنُهُ في ذلكَ الموضعِ وذلكَ الوقتِ لَزِمَهُ شراؤُهُ إنْ وَجَدَ ثمنَهُ فاضلاً عنْ دَيْنٍ ولوْ مؤجَّلاً ومؤنةِ سفرِهِ ذهاباً

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round trip.

When someone has water he does not need but will not sell, one may not simply take it from him by force, except when compelled by thirst (N: provided the water's owner is not also suffering from thirst, and provided one pays him the normal price for it in that locality and time, because one's need does not eliminate another's rights).

ورجوعا.

فإن امْتَنَعَ مِنْ بيعِهِ وهوَ مستغنٍ عنْهُ لمْ يأخذْهُ غصبا إلاَّ لعطشٍ (ح: بشرط أن لا يكون صاحب الماء عطشان، ويضمن قيمة المثل في ذلك المكان والزمان لأن الاضطرار لا يبطل حق الغير).

e12.7 If one finds some water, but not enough to complete purification, one must use it as far as it will go, and then perform dry ablution in place of the rest. For minor ritual impurity, one uses the water on the face, then the arms, and so forth, in the usual ablution sequence. For major ritual impurity (janaba), one begins wherever one wishes, though it is recommended to start at the top of the body.

e12.7 ولَوْ وَجَدَ بعضَ ماء لا يَكْفي طهارتَهُ لزِمَهُ استعمالُهُ ثمَّ تيمَّمَ للباقي. فالمحدثُ يُطَهِّرُ وجهَهُ ثمَّ يديْهِ على الترتيبِ والجنبُ يَبْدأُ بِمَا شَاءَ ويُنْدَبُ أعالي بدنِهِ.

FEAR OF THIRST

خوف العطش

e12.8 The second cause of inability to use water is fear of one's own thirst, or that of worthy companions and animals with one, even if in the future (O: *worthy* meaning those whose killing is unlawful, such as a trained hunting dog or other useful animal, while *unworthy* includes non-Muslims at war with the Muslims, apostates from Islam (def: o8), convicted married adulterers, pigs, and biting dogs).

Ablution (N: as well as the purificatory bath (ghusl)) is unlawful in such a case. One should conserve one's water for oneself and others, and may perform dry ablution for prayer with no need to make up the prayer later (A: provided lack of water predominates in that place (dis: e12.19(N:))).

e12.8 الثاني خوفُ عطشٍ نفسِهِ ورفقتِهِ وحيوانٍ محترمٍ مَعَهُ ولَوْ في المستقبل (والمحترم هو الذي يحرم قتله ومنه كلب ينتفع به ونحوه وغير المحترم منه الحربي والمرتد والزاني المحصن والخنزير والكلب العقور).

ويَحْرُمُ الوضوءُ (ح: والغسل) حينئذٍ فيتزوَّدُ لرفقتِهِ ويَتيَمَّمُ بلا إعادةٍ.

ILLNESS

المرض

e12.9 The third cause is an ailment from which one fears (N: that performing a normal ablution or purificatory bath would cause):

e12.9 الثالثُ مرضٌ يَخافُ مَعَهُ تلفَ

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(1) harm to life or limb;

(2) disability;

(3) becoming seriously ill;

(4) an increase in one's ailment;

(5) a delay in recovering from one's illness;

(6) considerable pain;

(7) or (n: a bad effect from the water such as) a radical change in one's skin color on a visible part of the body.

One may depend on one's own knowledge (N: as to whether one of the above is to be apprehended) (O: if one is knowledgeable in medicine) (N: though it is not a condition that one be knowledgeable in medicine, for one's own previous experience may be sufficient to establish the probability that one of them will occur if a full ablution or bath (ghusl) is performed). Or one may depend on a physician whose information concerning it is acceptable (A: meaning one with skill in medicine whose word can be believed, even if he is not a Muslim).

النفس أوْ عضو أوْ فواتَ منفعة عضو أوْ حدوثَ مرضٍ مَخوفٍ أوْ زيادةَ مرضٍ أوْ تأخيرَ البرء أوْ شدةَ ألمٍ أوْ شيناً فاحشاً في عضوٍ ظاهرٍ.

ويُعْتَمدُ فيه معرفتُهُ (إن كان عالماً بالطب) أوْ طبيباً يُقْبَلُ فيه خبرُهُ.

e12.10 (n: Rulings e12.11–13 below have been left in Arabic and deal with a person who has injuries that prevent a normal ablution or bath for one of the above reasons. Strictness on the question ('azima) is to follow the Shafi'is, while dispensation (rukhsa) is to follow the Hanafi school ((2) below).

(1) The Shafi'i school is the hardest in this matter, insisting on a full ablution except for the injured part, where a full dry ablution must be performed at the proper point in the ablution sequence in place of washing the injured part, as at e12.11 below.

If someone has a cast or dressing harmful to remove, as at e12.12, it must be first applied when one has ablution, and thereafter one must wipe it with water when one comes to it in the ablution sequence in addition to performing a complete dry ablution at that point.

Finally, when someone with such a bandage on the members of dry ablution (the face or arms) recovers and has his cast or dressing removed, he is obliged to make up (repray) all the prayers he performed with such an ablution, as at e12.13(O:).

(2) The Hanafi school requires someone with an injury who wants to pray to

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make a complete ablution (N: or bath, if needed). But if this would entail harm, such as one of the things mentioned above at e12.9, then when he comes to the injury in the ablution sequence, he is merely required to wipe it with wet hands so as to cover more than half of the injury. If this would also entail harm, or if he has a bandage that cannot be removed without harm, or he cannot reapply the dressing by himself and has no one to help him to do so, then he simply wipes more than half the bandage when he comes to it in his ablution. He may pray with such an ablution and need not repeat the prayer later (*al-Hadiyya al-'Ala'iyya* (y4) (43–44).

It is not necessary that he be free of minor or even major impurity (janaba) at the time the dressing is applied (*al-Lubab fi sharh al-Kitab* (y88), 1.41).

(3) (N: There is strong evidence for performing dry ablution (tayammum) in place of washing such an injury. To add it at the proper point of the ablution sequence as a precautionary measure (dis: e6.5) would not interfere with the validity of following the Hanafi position just discussed.)

e12.11 [فإنْ خاف مِنْ جرحٍ ولا ساتر عليه غسل الصحيح بأقصى الممكن. فلا يَتْرُكُ إلا ما لوْ غسلهُ تعدّى إلى الجرح وتيمّم للجرح في الوجه واليدين (ح: أي يتيمم بمسح وجهه ويديه بالتراب سواء كانت الجراحة فيهما أو في غيرهما) في وقتِ جوازِ غسلِ العليل، فالجنبُ يَتيمّمُ متى شاء، والمحدثُ لا يَنتقلُ عنْ عضوٍ حتّى يَكْمل غسلاً وتيمماً، مقدماً ما شاءَ فإنْ جُرِحَ عضواهُ فتيمّمانِ. ولا يجبُ مسحُ الجرح بالماءِ وإنْ لمْ يَضُرّهُ (المسح وإنما يتلطف بوضع خرقة مبلولة بقربه وينحامل عليها لينغسل بالمتقاطر منها ما حواليه من غير أن يسيل إليه). فإنْ كانَ الجرحُ على عضوِ التيمم وَجَبَ مسحُهُ بالتراب (ما أمكن (ح: فإن لم يمكنه لكونه يتضرر بالتراب لم يجب مسحه) وهو غير مستور لأن مسحه بالتراب بدل عن غسله بالماء)].

e12.12 [فإنِ احْتاجَ لعصابةٍ أوْ لصوفٍ أوْ جبيرةٍ وَجَبَ وضعُها على طهرٍ (ح: وطهر كل عضو بحسبه فطهارة أعضاء الوضوء عدم الحدث الأكبر والأصغر وطهارة بقية الجسم عدم الجنابة وهذا عند الإمكان) ولا يَسْتُرُ إلا ما لا بُدَّ مِنْهُ.

فإنْ خافَ مِنْ نزعِها ضرراً وَجَبَ المسحُ عليْها كلّها بالماءِ مَعَ غسلِ الصحيحِ والتيمم كَمَا تقدّم.

فإنْ كانتْ (ح: الجراحة) في غيرِ عضوِ التيمم لمْ يَجِبْ مسحُها بتراب.

فإنْ أرادَ أنْ يُصلّيَ فرضاً آخرَ لمْ يُعِدِ الجنبُ غسلاً (للصحيح بعد تيممه، لبقاء طهره) وكذا المحدثُ (لا يعيد غسلاً للصحيح ولا مسحاً للساتر لأن طهارته باقية فلم ترتفع بإرادة صلاة أخرى، وإنما وجب عليه إعادة التيمم) وقيلَ يَغْسِلُ ما بعدَ عليلِهِ.

وإنْ وُضِعَ بلا طهرٍ وَجَبَ النزعُ فإنْ خافَ فعلَ ما تقدّم وهوَ آثمٌ (وهذا الإثم إثم الابتداء (ح: إن كان بإمكانه أن يتطهر فلم يفعل كما تقدم وإلا فلا إثم) وأما إثم الاستمرار فقد زال عنه لوجود العذر وهو خوف الضرر) ويُعيدُ الصلاة (وجوباً سواء كان في أعضاء الوضوء أو في أعضاء التيمم)].

e12.13 [ولا يُعيدُ إنْ وُضِعَ على طُهْرٍ ولمْ يكنْ في أعضاءِ التيمم (فإن كان فيها وجبت الإعادة مطلقاً سواء وضع على طهر أم لا وسواء أخذ الساتر شيئاً من الصحيح أم لا، لنقصان البدل والمبدل) ولاَ مَنْ تَيَمّمَ لمرضٍ أو جرحٍ بلا ساترٍ إلاّ مَنْ بجرحِهِ دمٌ كثيرٌ يخافُ مِنْ غسلِهِ فَيُعيدُ].

e12.14 ولوْ خافَ مِنْ شدةِ البردِ مرضاً

e12.14 If it is so cold that one fears an illness or one of the things previously mentioned (e12.9)

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from the use of water and one lacks means of heating the water or warming one's limbs up afterwards, then one performs the dry ablution (N: prays), and repeats the prayer later.

مِمَّا تَقَدَّمَ ولَمْ يَقْدِرْ على تسخينِ الماءِ وتدفئة عضوٍ تَيَمَّمَ وأعادَ.

e12.15 When one lacks both water and earth, one is obliged to pray the obligatory prayer by itself, and later make up the prayer when one again finds water or finds earth, if in a place where dry ablution suffices as purification for a prayer that need not be made up later (N: such as in the desert (dis: e12.19(N:))).

e12.15 ومَنْ فَقَدَ ماءً وتراباً وَجَبَ أنْ يُصَلِّي الفرضَ وحدَهُ ويُعِيدَ إذَا وَجَدَ الماءَ أو التراب حيثُ يُسقِطُ التيممُ الإعادةَ [فلا يُعيدُ إذا وَجَدَ تراباً في الحضر].

THE INTEGRALS OF DRY ABLUTION

واجبات التيمم

e12.16 Dry ablution has seven obligatory integrals:

(a) the intention, one intending permission to perform the obligation of the prayer, or that which requires dry ablution (N: such as carrying the Koran when there is no water for ablution). It is inadequate to intend to lift a state of minor ritual impurity (dis: e5.3(O:)) or intend the obligation of dry ablution.

If one is performing dry ablution for an obligatory prayer, one must intend its being obligatory, though need not specify whether, for example, it is for the noon prayer or the midafternoon prayer. If one were to intend it for the obligation of performing the noon prayer, one could (N: instead) pray the midafternoon prayer with it (N: though not both, as at e12.20).

If one intends a dry ablution for both an obligatory prayer and a nonobligatory prayer, then both may be prayed with that same dry ablution. But if one's intention is merely for a nonobligatory prayer, a funeral prayer (janaza), or simply *prayer*, then one may not pray an obligatory prayer with that dry ablution. If one intends an obligatory prayer, one may pray nonobligatory prayers only, or pray them before and after an obligatory prayer during the obligatory prayer's time, or after the obligatory prayer's time has expired.

The intention must occur when one conveys

e12.16 وواجباتُهُ سبعةٌ:

- النيةُ فينوي استباحةَ فرضِ الصلاةِ أو استباحةَ مفتقرٍ إلى التيممِ. ولا يَكْفي نيّةُ رفعِ الحدثِ ولا فرضِ التيممِ فإنْ تَيَمَّمَ لفرضٍ وَجَبَ نيةُ الفرضيّةِ، لا تعيينُهُ مِنْ ظهرٍ أوْ عصرٍ بلْ لوْ نَوَى فرضَ الظهرِ استباحَ بهِ العصرَ. ولوْ نَوَى فرضاً ونفلاً أبيحا، أوْ نفلاً أوْ جنازةً أوِ الصلاةَ لمْ يَسْتَبِحْ الفرضَ أوْ فرضاً فلهُ النفلُ مُنْفرداً وكذا النفلُ قبلَهُ وبعدَهُ في الوقتِ وبعدَهُ.

ويَجِبُ قرنُها بالنقلِ واستدامتُها إلى

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the earth (O: meaning when one first strikes the earth) and must continue until one wipes part of the face;

(b and c) that one's hands contact the earth and convey it (N: up to the face and arms, after having shaken the excess dust from one's hands);

(d and e) to wipe the face (N: not missing under the nose) and arms including the elbows;

(f) to do the above in the order mentioned;

(g) and that the dry ablution be performed by striking the earth twice, once for wiping the face, and a second time for wiping the arms.

It is not obligatory to make the earth reach under the hair (N: of the arms and face).

مسح شيء من الوجه (والمرادُ بالنقل الضرب).

- الثاني والثالثُ قصدُ التراب ونقلُهُ.

[فلَوْ كانَ على وجهِهِ ترابٌ فمَسَحَ بِهِ لَمْ يَكْفِ. ولَوْ أَمَرَ غيرَهُ حتَّى يَمَّمَهُ جازَ وإنْ كانَ قادراً على الأظهر].

- الرابعُ والخامسُ مسحُ وجهِهِ ويَدَيْهِ مَعَ مرفقَيْهِ.

- السادسُ الترتيبُ.

- السابعُ كونُهُ بضربتَيْنِ ضربةٍ للوجهِ وضربةٍ لليدَيْنِ. [وقيلَ إنْ أمكن بضربةٍ كَفَى كخرقةٍ ونحوِه].

ولا يَجِبُ إيصالُهُ باطنَ شعرٍ خفيفٍ.

THE SUNNAS OF DRY ABLUTION

سنن التيمم

e12.17 The sunnas of dry ablution are:

(1) to say, "In the name of Allah, Most Merciful and Compassionate";

(2) to wipe the upper face before the lower;

(3) to wipe the right arm before the left;

(4) and for wiping the arms, (N: holding the palms up,) to place the left hand crosswise under the right with the left hand's fingers touching the backs of the fingers of the right hand, sliding the left hand up to the right wrist. Then, curling the fingers around the side of the right wrist, one slides the left hand to the right elbow, then turns the left palm so it rests on the top of the right forearm with its thumb pointed away from one before sliding it back down to the wrist, where one wipes the back of the right thumb with the inside of the left thumb. One then wipes the left arm in the same manner, followed by interlacing the fingers, rubbing the palms together, and then dusting the hands off lightly.

(N: This method is not obligatory, but rather any way will suffice that wipes all of both arms.)

e12.17 وسنَّتُهُ التسميةُ وتقديمُ يمينِهِ، وأعلى وجهِهِ، وفي اليدِ يَضَعُ أصابعَ اليسرَى سِوَى الإبهامِ على ظهورِ أصابعِ اليُمْنَى سِوَى الإبهامِ ويُمِرُّهَا إلى الكوعِ، ثمَّ يَضُمُّ أطرافَ أصابعِهِ إلى حرفِ الذِّراعِ ويمرُّهَا إلى المرفقِ ثمَّ يُديرُ بطنَ كفِّهِ إلى بطنِ الذراعِ ويُمِرُّهَا وإبهامُهُ مرفوعةٌ، فإذا بَلَغَ الكوعَ مَسَحَ ببطنِ إبهامِ اليسرَى ظَهْرَ إبهامِ اليمنى، ثمَّ يَمْسَحُ اليسرَى باليمنَى كذلكَ، ثمَّ يُخَلِّلُ أصابعَهُ ويَمْسَحُ إحْدَى الراحتَيْنِ بالأخرَى، ويُخَفِّفُ الغبارَ (ح: وهذه الكيفيةُ ليستْ واجبةً بل تكفي كل كيفيةٍ تؤدي إلى تعميمِ اليدينِ بالمسحِ).

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e12.18 One separates the fingers when striking the earth each of the two times, and must remove one's ring for the second (N: before wiping the arms).

e12.18 ويُفرِّقُ أصابعَهُ عندَ الضربِ على التراب فيهما، ويَجِبُ نزعُ الخاتمِ في الثانية.

THINGS WHICH NULLIFY DRY ABLUTION

مبطلات التيمم

e12.19 Dry ablution is nullified by both the things which nullify ablution (def: e7) and by the mere belief that one can now obtain water when this belief occurs before one begins praying, such as by seeing a mirage or a troop of riders.

This belief also nullifies dry ablution when it occurs during one's prayer if the prayer is one which must be later made up, like that of someone at home who performs dry ablution for lack of water (N: because if one performs dry ablution in a place where water is generally available during the whole year, it is obligatory to make up one's prayer, in view of the fact that the dry ablution has been performed for a rare excuse. The rule is that whoever performs the prayer without full ritual purity because of a rare excuse is obliged to make up his prayer, as when the water of a city or village is cut off for a brief period of time during which those praying perform dry ablution, while if one has performed it in a place where water is seldom available during the year, it is not obligatory to make up one's prayer, as when one performs dry ablution in the desert). But if not of those prayers that must be made up later, such as that of a (N: desert) traveller who has performed dry ablution, then it (N: the belief that one can now obtain water, when it occurs during prayer) does not (N: nullify one's dry ablution) and one finishes the prayer, which is adequate, though it is recommended to interrupt it in order to begin again after one has performed ablution.

e12.19 ويُبطِلُ التيممُ عن الوضوء بنواقض الوضوء وبتوهُّم قدرته على ماءٍ يجبُ استعمالُهُ كرؤية سرابٍ أوْ ركبٍ قبلَ الصلاةِ أوْ فيها وكانتْ مِمَّا تُعادُ (بأن كانت في محل يغلب فيه وجود الماء) كتيمم حاضر لفقد الماء (ح: لأنه إذا تيمم في موضع يغلب فيه وجود الماء طيلة أيام السنة فإن الإعادة واجبة، نظراً لأن التيمم هنا لعذر نادر، والقاعدة أن من يصلي بغير طهارة كاملة لعذر نادر وجب عليه الإعادة. وذلك كما لو انقطع الماء في مدينة أو قرية فترة وجيزة من الوقت فتيمم المصلون خلالها. فإن كان قد تيمم في موضع يغلب فيه عدم وجود الماء طيلة أيام السنة لم يجب عليه الإعادة وذلك كما لو تيمم في الصحراء). فإنْ لمْ تُعدْ كتيمم مسافر فلا (ح: أي لا تبطل الصلاة) ويُتمُّها وتُجزئُهُ لكنْ يُندبُ قطعُها ليستأنفها بوضوء. [وإنْ رآهُ في نفل ونوى عدداً أتمَّهُ، وإلاَّ فركعتين].

e12.20 One may not perform more than one obligatory prayer with one dry ablution, whether one of the prescribed obligatory prayers or one vowed (def: j18), though one may pray any number of nonobligatory prayers or funeral prayers with it.

e12.20 ولا يجُوزُ بتيمم أكثرُ مِنْ فريضة واحدةٍ مكتوبةٍ أوْ منذورة، و[(ح: له أنْ يصلي)] ما شاءَ مِنَ النوافلِ والجنائز.

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e13.0 THE MENSTRUAL PERIOD

e13.0 الحيض

e13.1 The minimal age for menstruation is about 9 full years. There is no maximal age for the end of it, as it is possible until death.

The minimal menstrual period is a day and a night. It generally lasts 6 or 7 days. The maximal period is 15 days.

The minimal interval of purity between two menstruations is 15 days. There is no maximal limit to the number of days between menstruations.

e13.1 أقلُّ سنٍّ تحيضُ فيه المرأةُ استكمالُ تسعِ سنينَ تقريباً. [فلوْ رأتْهُ قبلَ تسعِ سنينَ لزمنٍ لا يَسَعُ طهراً وحيضاً فهوَ حيضٌ، وإلاَّ فلا]. ولا حدَّ لآخرِه، فيُمْكِنُ إلى الموتِ.

وأقلُّ الحيضِ يومٌ وليلةٌ وغالبُهُ ستٌّ أو سبعٌ وأكثرُهُ خمسةَ عشرَ يوماً.

وأقلُّ الطهرِ بينَ الحيضتينِ خمسةَ عشرَ يوماً، ولا حدَّ لأكثرِه.

e13.2 Whenever a woman who is old enough notices her bleeding, even if pregnant, she must avoid what a woman in her period avoids (def: e13.4). If it ceases in less than 24 hours (lit. "the minimum"), then it is not considered menstruation and the woman must make up the prayers she has omitted during it. If it ceases at 24 hours, within 15 days, or between the two, then it is menstruation. If it exceeds 15 days, then she is a woman with chronic vaginal discharge (dis: e13.6).

Yellow or dusky colored discharge is considered menstrual flow.

If a woman has times of intermittent bleeding and cessation during an interval of 15 days or less, and the times of bleeding collectively amount to at least 24 hours, then the entire interval, bleeding and nonbleeding, is considered menstruation.

e13.2 فمتى رأتْ دماً في سنِّ الحيضِ ولوْ حاملاً وَجَبَ تركُ ما تتْرُكُ الحائضُ. فإنِ انْقَطَعَ لدونِ أقلِّه تَبيَّنَ أنَّهُ غيرُ حيضٍ فتَقْضي الصلاةَ. فإنِ انْقَطَعَ لأقلِّه أوْ أكثرِه أوْ ما بينهما فهوَ حيضٌ. وإنْ جاوَزَ أكثرَهُ فهيَ مستحاضةٌ [ولها أحكامٌ طويلةٌ مذكورةٌ في كتبِ الفقهِ].

والصُّفْرَةُ والكُدْرَةُ حيضٌ.

وإنْ رأتْ وقتاً دماً ووقتاً نقاءً ووقتاً دماً وهكذا ولمْ يُجاوِزِ الخمسةَ عشرَ ولمْ يَنْقُصْ مجموعُ الدماءِ عنْ يومٍ وليلةٍ فالدماءُ والنقاءُ المتخلِّلُ كلُّها حيضٌ.

e13.3 Postnatal bleeding (nifas) lasts at least a moment, generally 40 days, and at most 60. If it exceeds this, the woman is considered to have chronic vaginal discharge (dis: e13.6).

e13.3 وأقلُّ النفاسِ لحظةٌ وغالبُهُ أربعونَ يوماً، وأكثرُهُ ستونَ يوماً. فإنْ جاوَزَهُ فمستحاضةٌ.

e13.4 All things unlawful for someone in a state of major ritual impurity (janaba) (dis: e10.7) are unlawful for a woman during her menstruation and postnatal bleeding. It is also unlawful for her to fast then, and the (N: obligatory) fast-days she misses must be made up later, though not missed prayers.

It is unlawful for her:

e13.4 ويَحْرُمُ بالحيضِ والنفاسِ ما يَحْرُمُ بالجنابةِ. وكذا الصومُ ويَجِبُ قضاؤُهُ دونَ الصلاةِ.

ويَحْرُمُ عبورُ المسجدِ إنْ خافَتْ تلويثَهُ

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(1) to pass through a mosque when she thinks some of her blood might contaminate it (N: and it is unlawful for her to *remain* in the mosque under any circumstances (n: when menstruating or during postnatal bleeding));

(2) to make love, or take sexual enjoyment from what is between her navel and knees;

(3) to be divorced;

(4) or to perform purification with the intention to raise a state of ritual impurity.

When her bleeding ceases, then fasting, divorce, purification, and passing through the mosque are no longer unlawful for her, though the other things remain unlawful for her until she performs the purificatory bath (ghusl, def: e11).

(ح: ويحرم عليها المكث فيه مطلقاً) والوطء والاستمتاع فيما بين السرة والركبة، والطلاق، والطهارة بنية رفع الحدث.

فإن انقطع الدمُ ارتفع تحريمُ الصوم والطلاق والطهارة وعبور المسجد ويبقى الباقي حتى تغتسل.

e13.5 If a woman claims to be having her period, but her husband does not believe her, it is lawful for him to have sexual intercourse with her.

e13.5 ولو ادّعتْ الحيض ولمْ يقعْ في قلبه صدْقُها حلّ لهُ وطؤها.

e13.6 A woman with chronic vaginal discharge (N: preparing to pray) should wash her private parts, apply something absorbent to them and a dressing, and then perform ablution (N: with the intention discussed above at e5.3). She may not delay (N: commencing her prayer) after this except for reasons of preparing to pray such as clothing her nakedness, awaiting the call to prayer (adhan), or for a group to gather for the prayer. If she delays for other reasons, she must repeat the purification.

She is obliged to wash her private parts, apply a dressing, and perform ablution before each obligatory prayer (N: though she is entitled, like those mentioned below, to perform as many nonobligatory prayers as she wishes, carry and read the Koran, etc. until the next prayer's time comes (n: or until her ablution is broken for a different reason), when she must renew the above measures and her ablution).

e13.6 وتغسلُ المستحاضةُ فرجَها وتشدُّهُ وتعصبُهُ ثمّ تتوضأ ولا تؤخّرُ بعدَ الطهارة إلاّ للاشتغال بأسباب الصلاة كستر عورة وأذان وانتظار جماعة. فإنْ أخّرتْ لغير ذلك استأنفتِ الطهارة.

ويجبُ غسلُ الفرج وتعصيبُه والوضوءُ لكلّ فريضة.

(ح: ولكن لها أن تصلي [بذلك الوضوء] ما شاءت من النوافل وتحمل المصحف وتتلو القرآن ونحوها (ت. ما لم ينتقض وضوؤها بسبب آخر) حتى دخول وقت صلاة ثانية، فعندئذ يتعين تجديد الوضوء مع هذه الإجراءات. وكذلك أصحاب الأعذار التي سيأتي ذكرها)

e13.7 People unable to hold back intermittent drops of urine coming from them must take the

e13.7 ومَنْ بِهِ سَلَسُ البول

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same measures (def: above) that a woman with chronic vaginal discharge does. (N: And likewise for anyone in a state of chronic annulment of ablution, such as continually breaking wind, excrement, or *madhy* (def: e10.5), though washing and applying an absorbent dressing are only obligatory when filth exits.)

(A: If a person knows that drops of urine will not stop until the time for the next prayer comes, then he takes the above measures and performs the prayer at the first of its time.)

كالمستحاضة فيما تقدّم. (ح: وكذا كل صاحب حدث دائم، كمن يخرج منه ريح دائماً، أو غائط أو مذي لكن الغسل والتعصيب لا يجب إلا في سلس النجاسة).

(ع: فإن علم استمرار سلس البول حتى دخول وقت صلاة ثانية فعل ما ذكر وأدى صلاته في أول وقتها).

*

e14.0 FILTH (NAJASA)

e14.0 النجاسات

e14.1 *Filth* means:

(1) urine;

(2) excrement;

(3) blood;

(4) pus;

(5) vomit;

(6) wine;

e14.1 النجاسةُ هي البولُ، والغائطُ، والدمُ، والقيحُ، والقيءُ، والخمرُ، [والنبيذُ]، وكلُّ مسكرٍ مائعٍ.

(7) any liquid intoxicant (n: including, for the Shafi'i school, anything containing alcohol such as cologne and other cosmetics, though some major Hanafi scholars of this century, including Muhammad Bakhit al-Muti'i of Egypt and Badi al-Din al-Hasani of Damascus, have given formal legal opinions that they are pure (tahir) because they are not produced or intended as intoxicants.(N: Other scholars hold they are not pure, but their use is excusable to the extent strictly demanded by necessity.) While it is religiously more precautionary to treat them as filth, the dispensation exists when there is need, such as for postoperative patients who are unable for some time after their surgery to wash away the alcohol used to sterilize sutures. And Allah knows best.)

(N: As for solid intoxicants, they are not filth, though they are unlawful to take, eat, or drink);

(ح: وأما الجامد فليس بنجس لكن يحرم تعاطيه وأكله وشربه)، والكلبُ والخنزيرُ، وفرعُ أحدِهِما، والوديُ،

(8) dogs and pigs, or their offspring;

(9) *wady* and *madhy* (def: e10.5);

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(10) slaughtered animals that (N: even when slaughtered) may not be eaten by Muslims (def: j16);

(11) unslaughtered dead animals other than aquatic life, locusts, or humans (A: which are all pure, even when dead, though amphibious life is not considered aquatic, and is filth when dead);

(12) the milk of animals (other than human) that may not be eaten;

(13) the hair of unslaughtered dead animals;

(14) and the hair of animals (other than human) that may not be eaten, when separated from them during their life (N: or after their death. As for before it is separated from them, the hair is the same as the particular animal, and all animals are pure during their life except dogs and swine).

(n: In the Hanafi school, the hair of an unslaughtered dead animal (other than swine), its bones, nails (hoofs), horns, rennet, and all parts unimbued with life while it was alive (A: including its ivory) are pure (tahir). That which is separated from a living animal is considered as if from the unslaughtered dead of that animal (*Hashiya radd al-muhtar 'ala al-Durr al-mukhtar sharh Tanwir al-absar* (y47), 1.206–7).)

والمذيُ، وما لا يُؤكلُ لحمُهُ إذا ذُبحَ، والميتةُ إلا السمكَ والجرادَ والآدميَ، ولبنُ ما لا يُؤكلُ لحمُهُ غيرَ الآدميِّ وشعرُ الميتةِ، وشعرُ غيرِ المأكولِ إذا انفصلَ (ح: أما قبلَ انفصاله عن الحيوان فحكمه حكم ذلك الحيوان، والحيوانات كلها طاهرة في حياتها إلا الكلب والخنزير) في حياته (ح: وكذا إذا انفصل بعد موته) إلا الآدمي، [ومنيُّ الكلبِ والخنزير].

(ت: في المذهب الحنفي شعر الميتة (غير الخنزير) وعظمها وحافرها وقرنها وكل ما لا تحله الحياة، حتى الأنفحة (ع: والعاج) طاهرٌ. والمنفصل من الحي كميتته [حاشية رد المحتار على الدر المختار: ١/ ٢٠٧ - ٢٠٨]).

e14.2 Rennet (n: a solidifying substance used in cheese-making) is pure if taken from a slaughtered (def: j17) suckling lamb or kid that has eaten nothing except milk.

e14.2 والأنفحةُ طاهرةٌ إنْ أُخذتْ مِنْ سخلةٍ مذكاةٍ لمْ تأكلْ غيرَ اللبن.

e14.3 That which comes from the mouth of a sleeping person is impure if from the stomach, but pure if from the saliva ducts.

e14.3 وما يسيلُ مِنْ فمِ النائمِ إنْ كانَ مِنَ المعدةِ [بأنْ كانَ لا يَنْقطعُ إذا طالَ نومُهُ] نجسٌ وإنْ كانَ مِنَ اللهواتِ [بأنْ كانَ يَنْقطعُ] فطاهرٌ.

e14.4 [والعضوُ المنفصلُ من الحيِّ حكمُهُ حكمُ ميتةِ ذلكَ الحيوانِ. إنْ كانَتْ طاهرةً كالسمكِ فطاهرٌ وإلاّ كالحمارِ فنجسٌ].

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e14.5 The following are pure:

(1) seminal fluid that has reached the stages of gestation in the womb, becoming like a bloodclot and then becoming flesh;

(2) the moisture (N: mucus) of a woman's private parts (O: as long as it remains inside the area that need not be washed in the purificatory bath (def: e11.1(b), end), though if it exits, it is impure);

(3) the eggs of anything;

(4) the milk, fur, wool, or feathers of all animals that may be eaten, provided they are separated from the animal while living or after properly slaughtered;

(5) human milk, male sperm, and female sexual fluid (def: e10.4).

e14.5 والعلقةُ والمضغةُ ورطوبةُ فرجِ المرأةِ (ما لم تخرج من محلٍ لا يجب غسله وإلا فهي نجسة)، وبيضُ [المأكولِ وغيره] ولبنُهُ وشعرُهُ وصوفُهُ [ووبرُهُ] وريشُهُ إذا انفصلَ في حياته أو بعدَ ذكاته. [وعرقُ الحيوانِ الطاهرِ طاهرٌ حتى الفأرةُ وريقُهُ ودمعُهُ] ولبنُ الآدميِّ ومنيُّهُ غيرُ نجسٍ [وكذا منيُّ غيرِهِ غيرَ الكلبِ والخنزيرِ وقيلَ نجسٌ].

e14.6 No form of filth can become pure, except:

(1) wine that becomes vinegar;

(2) the hide of an unslaughtered dead animal that is tanned;

(3) new animate life that comes from filth (O: such as worms that grow in carrion);

(4) (n: and for the Hanafis, filth which is transformed [molecularly changed] into a new substance, such as a pig becoming soap, etc. (*al-Hadiyya al-'Ala'iyya* (y4), 54)).

Wine that becomes vinegar without anything having been introduced into it is pure, as are the sides of the container it touched when it splashed or boiled. But if anything was introduced into the wine before it became vinegar, then turning to vinegar does not purify it. (A: In the Hanafi school it is considered pure whether or not anything has been introduced into it.)

Tanning means removing from a hide all excess blood, fat, hair, and so forth by using an acrid substance, even if impure. Other measures

e14.6 ولا يَطْهُرُ شيءٌ مِنَ النجاساتِ إلا الخمرُ إذا تَخَلَّلَ والجلدُ إذا دُبِغَ، ونجساً يَصيرُ حيواناً (كالدود المتولد من نحو الجيف).

فإذا تَخَلَّلَتِ الخمرُ بغيرِ إلقاءِ شيءٍ فيها [إمَّا بنفسِها أوْ بنقلِها مِنَ الشمسِ إلى الظلِّ وعكسِهِ أوْ بفتحِ رأسِها] طَهُرَتْ مَعَ أجزاءِ الدنِّ الملاقيةِ لَها ومَا فوقَها ممَّا أصابتْهُ عند الغليانِ. وإنْ أُلقِيَ فيها شيءٌ فلا.

والدبغُ هو نزعُ الفضلاتِ بكلِّ جرِّيفٍ ولَوْ نجساً ولا يَكفي ملحٌ وترابٌ وشمسٌ.

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such as using salt, earth, or sunlight, are insufficient. Water need not be used while tanning, though the resultant hide is considered like a garment affected with filth, in that it must be washed with purifying water before it is considered pure. Hides of dogs or swine cannot be purified by tanning. Any hair that remains after tanning has not been made pure, though a little is excusable.

ولا يَجِبُ استعمالُ ماءٍ في أثنائِهِ لكنَّهُ بعدَ الدبغِ كثوبٍ متنجِّسٍ فيَجِبُ غسلُهُ بماءٍ طهورٍ.
ولا يَطْهُرُ به جلدُ كلبٍ وخنزيرٍ.
ولو كانَ على الجلدِ شعرٌ لم يَطْهُرِ الشعرُ بالدبغِ ويُعْفَى عنْ قليلِه.

e14.7 Something that becomes impure by contact (def: below) with something from dogs or swine does not become pure except by being washed seven times, one of which (recommended not to be the last) must be with purifying earth (def: e12.1(b)) mixed with purifying water, and it must reach all of the affected area. One may not substitute something else like soap or glasswort in place of earth.

e14.7 ومَا تَنَجَّسَ بملاقاةِ شيءٍ مِنَ الكلبِ والخنزيرِ لمْ يَطْهُرْ إلاَّ بغسلِهِ سبعاً إحداهنَّ بترابٍ طاهرٍ يُتَّوعبُ المحلَّ ويجبُ مَزْجُهُ بماءٍ طهورٍ ويُنْدَبُ جعلُهُ في غيرِ الأخيرةِ ولاَ يَقُومُ غيرُ الترابِ مقامَهُ كصابونٍ وأُشْنانٍ.

(n: The contact referred to is restricted, in the Shafi'i school, to contamination by traces of *moisture* from dogs or swine, whether saliva, urine, anything moist from them, or any of their dry parts that have become moist (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 1.83). (A: If something dry such as the animal's breath or hair touches one's person, it need only be brushed away.) In the Maliki school, every living animal is physically pure, even dogs and swine (*al-Fiqh 'ala al-madhahib al-arba'a* (y66), 1.11) (A: and they consider the above sevenfold washing as merely a sunna). While more precautionary to follow the Shafi'i school, the dispensation exists for those who have difficulty in preventing contamination from dogs, provided their prayer with its prerequisites is considered valid in the Maliki school (dis: c6.4(end) and w14.1(6)). And Allah knows best.)

e14.8 [ولوْ رأى هرةً تأكُلُ نجاسةً ثمَّ شربتْ مِنْ ماءٍ دونَ قلتينِ قبلَ أنْ تَغيبَ عنْهُ نَجَّسَتْهُ. وإنْ غابتْ زمناً يُمْكِنُ فيهِ ولوغُها في قلتينِ ثمَّ شربتْ مِنَ القليلِ لمْ تُنَجِّسْهُ.
ودخانُ النجاسةِ نجسٌ ويُعْفَى عنْ يسيرِهِ. فإنْ مَسحَ كثيرَهُ عنْ تنّورٍ بخرقةٍ يابسةٍ فزالَ طَهُرَ، أوْ رطبةٍ فلا. فإنْ خُبِزَ عليْهِ فظاهرٌ وأسفلُ الرغيفِ نجسٌ].

e14.9 The urine of a baby boy who has fed on nothing but human milk can be purified from clothes by sprinkling enough water on the spot to wet most of it, though it need not flow over it. The urine of a baby girl must be washed away as an adult's is.

e14.9 ويكْفِي في بولِ الصبيِّ الذي لمْ يأكُلْ غيرَ اللبنِ الرشُّ مع غلبةِ الماءِ ولاَ يُشْتَرطُ سيلانُهُ. وبولُ الصبيةِ [وكذا الخنثى] يُغْسَلُ كالكبيرةِ.

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WASHING AWAY FILTH	تطهير المتنجس
e14.10 As for kinds of filth that are "without substance" (N: i.e. *without discernible characteristic* (najasa hukmiyya) such as a drop of dry urine on a garment that can not be seen), it is sufficient (N: to purify it) that water flow over it. But if it is a substance (N: *with discernible characteristic* (najasa 'ayniyya)), it is obligatory to remove all taste of it, even if difficult, and to remove both color and odor if not difficult. If the odor alone is difficult to remove, or the color alone, then the fact that one of these two remains does not affect a spot's purity, though if both the odor and color of the filth remain in the spot, it is not considered pure.	e14.10 وما سوى ذلك من النجاسات إنْ لمْ يكنْ لهُ عينٌ كفى جريُ الماءِ عليه. وإنْ كان لهُ عينٌ وَجَبَ إزالةُ طعمٍ وإنْ عَسُرَ، ولونٍ وريحٍ إنْ سَهُلا. فإنْ عَسُرَ إزالةُ الريحِ وحدَهُ أو اللونِ وحدَهُ لمْ يَضُرَّ بقاؤهُ. وإنِ اجْتَمعا ضَرَّا.
e14.11 When using less than 216 liters of water to purify a spot affected by filth, it is obligatory that the water *flow* over it (N: and it may not be simply immersed in the water (dis: e1.15), though this would be permissible with more than 216 liters), but is not obligatory to wring it out. After one purifies it, it is recommended to wash it a second and third time.	e14.11 ويُشترطُ ورودُ الماءِ القليلِ على المحلِّ لا العصرُ. ويُنْدَبُ بعد طهارتِهِ غسلةٌ ثانيةٌ وثالثةٌ.
e14.12 When the ground (A: or floor, or carpet) is affected with liquid filth (A: like wine or urine), it is enough to drench the place with water and is not necessary that the filth sink into the ground. If the effects of sun, fire, or wind remove the traces of the filth, the ground is still not pure until one drenches it with water.	e14.12 ويكْفِي في أرضٍ نجسةٍ بذائبِ المكاثرةُ بالماءِ ولا يُشترطُ نضوبُهُ. ولوْ ذَهَبَ أثرُ نجاسةِ الأرضِ بشمسٍ أوْ نارٍ أوْ ريحٍ لمْ تطْهُرْ حتى تُغْسَلَ.
e14.13 Liquids other than water, such as vinegar or milk, cannot be purified after they become affected with filth. But if a solid is affected, such as shortening, one discards the filth that fell into it and the shortening around it, and the remainder is pure.	e14.13 وكلُّ مائعٍ غيرِ الماءِ كخلٍّ ولبنٍ إذا تنجّسَ لا يُمْكِنُ تطهيرُهُ. فإنْ كان جامداً كالسمنِ الجامدِ ألْقى النجاسةَ وما حولَها والباقي طاهرٌ.
e14.14 Water used to wash away filth is impure when:	e14.14 وما غُسِلَ بهِ النجاسةُ إنْ تغيّرَ

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(1) it changes (def: e1.17);

(2) its weight increases;

(3) (O: or if neither of the above have occurred, but some trace (N: i.e. an inexcusable amount (def: e14.10, second par.)) of filth remains on the place to be purified);

—but if none of the above occurs, then it is not impure (O: i.e. then the water is pure but not purifying to other things); though if it amounts to (N: or is added to until it amounts to) 216 or more liters (dis: e1.16), then it is purifying. If less, it is considered the same as the spot it washed: if the spot is pure (N: i.e. an inexcusable trace does not remain) then the water is pure, but if the spot is still impure, then the water is impure.

أَوْ زَادَ وزنُهُ (أَوْلم يزد وزنه ولمْ يتغير لكن المحل لم يطهر بأن بقي عليه شيء من أوصاف النجاسة) فنجسٌ. وإلا فَلا (أي فلا ينجس ذلك الماء، بل يحكم عليه بأنه طاهر في نفسه غير مطهِّر لغيره).
فإنْ بَلَغَ قلتين فمطهِّرٌ. وإلا فحكمُهُ حكمُ المحلِّ بعد الغسلِ بِهِ، إنْ كَانَ قدْ حُكِمَ بطهارتِهِ فطاهرٌ. وإلا فنجسٌ.

e14.15 (n: In the Hanafi school, if a garment's damp spot of filth, whose quantity is too slight to wring out any drops, touches another dry, pure garment, the latter does not become impure (*Maraqi al-falah sharh Nur al-idah* (y126), 31).)

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BOOK F

THE PRAYER (SALAT)

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f1.0 WHO MUST PRAY

(O: The legal basis for the prayer, prior to scholarly consensus, is Koranic verses such as the word of Allah Most High,

"And perform the prayer" (Koran 2:43),

and hadiths such as the word of the Prophet (Allah bless him and give him peace):

"On the night I was taken from Mecca to Jerusalem [dis: Koran 17:1], Allah imposed fifty obligatory prayers upon my Community. So I kept petitioning Him in the matter, asking they be lightened, until He made them but five each day and night";

a hadith related by Bukhari, Muslim, and others.)

f1.0 المخاطب بوجوب الصلاة

(والأصل فيها قبل الإجماع آيات كقوله تعالى: ﴿وأقيموا الصلاة﴾ [البقرة: ٤٣]، وأخبار كقوله ﷺ: «فرض الله على أمتي ليلة الإسراء خمسين صلاة فلم أزل أراجعه وأسأله التخفيف حتى جعلها خمساً في كل يوم وليلة» رواه الشيخان وغيرهما).

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f1.1 The prayer is only obligatory for Muslims who have reached puberty, are sane, and in purity (O: meaning not during menstruation or postnatal bleeding).

Those who lose their reason through insanity or illness do not have to make up the prayers they miss while in this state, and nor do converts to Islam (N: make up prayers from before their Islam).

An apostate from Islam (murtadd, def: o8) who then returns must make up every prayer missed. (n: w18 discusses why making up prayers missed without excuse is obligatory.)

f1.1 إنّما تَجِبُ (ت: الصلاة) على كلِّ مسلمٍ بالغٍ عاقلٍ طاهرٍ (فلا تجب على الحائض والنفساء).

فلا قضاءَ على مَنْ زَالَ عقلُهُ بجنونٍ أو مرضٍ، وكافرٍ أصليٍّ.

ويَقْضِي المُرتدُّ.

f1.2 When a child with discrimination (O: meaning he can eat, drink, and clean himself after using the toilet unassisted) is seven years of age, he is ordered to perform the prayer, and when ten, is beaten for neglecting it (N: not severely, but so as to discipline the child, and not more than three blows).

f1.2 ويُؤْمَرُ الصبيُّ المميزُ بها لسبعٍ (والمميز هو الذي يأكل وحده ويشرب وحده ويستنجي وحده) ويُضْرَبُ عليها لعشرٍ (ح: ضرباً غير مبرح، أي غير شديد، على وجه التأديب، ولا يزيد على ثلاث ضربات).

f1.3 Someone raised among Muslims who denies the obligatoriness of the prayer, zakat, fasting Ramadan, the pilgrimage, or the unlawfulness of wine and adultery, or denies something else upon which there is scholarly consensus (ijma', def: b7) and which is necessarily known as being of the religion (N: *necessarily known* meaning things that any Muslim would know about if asked) thereby becomes an unbeliever (kafir) and is executed for his unbelief (O: if he does not admit he is mistaken and acknowledge the obligatoriness or unlawfulness of that which there is scholarly consensus upon. As for if he denies the obligatoriness of something there is not consensus upon, then he is not adjudged an unbeliever).

f1.3 ومَنْ نَشَأَ بينَ المسلمينَ وجَحَدَ وجوبَ الصلاةِ أو الزكاةِ أو الصومِ أو الحجِّ أو تحريمَ الخمرِ أو الزنا أو غيرَ ذلكَ ممَّا أُجْمِعَ على وجوبِهِ أو تحريمِهِ وكانَ معلوماً مِنَ الدينِ بالضرورةِ (ح: وهو الذي لو سئل أي مسلم عنه يعرفه) كَفَرَ وقُتِلَ بكفرِهِ (إن لم يرجع ويقرّ بالوجوب ويعتقد تحريم المجمع على تحريمه. وأما إذا أنكر شيئاً لم يجمع على وجوبه فلا يحكم عليه بالكفر).

f1.4 A Muslim who holds the prayer to be obligatory but through lack of concern neglects to perform it until its proper time is over has not committed unbelief (dis: w18.2).

Rather, he is executed, washed, prayed over, and buried in the Muslim's cemetery (O: as he is one of them. It is recommended, but not obligatory, that he be asked to repent (N: and if he does, he is not executed)).

f1.4 ومَنْ تَرَكَ الصلاةَ تهاوناً مَعَ اعتقادِ وجوبِها حتّى خَرَجَ وقتُها [وضاق وقتُ ضرورتِها] لَمْ يَكْفُرْ.

بلْ يُضْرَبُ عنقُهُ ويُغَسَّلُ ويُصَلّى عليه ويُدْفَنُ في مقابرِ المسلمينَ (لأنه منهم. و[المعتمد أنه] يستتاب ندباً لا وجوباً (ح: وإن تاب فلا يقتل)).

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f1.5 No one has an excuse to delay the prayer beyond its time except:

(1) someone asleep (N: when its time first came who remained so until the time ended);

(2) someone who forgot it;

(3) or someone who delayed it to combine two prayers during a journey (dis: f15.12).

f1.5 ولاَ يُعْذَرُ أحدٌ في التأخيرِ إلا نائماً (ح: من دخول الوقت إلى خروجه) أوْ ناسياً أوْ مَنْ أخَّرَ لأجلِ الجمعِ في السفرِ.

*

f2.0 PRAYER TIMES AND MAKING UP MISSED PRAYERS

f2.0 أوقات الصلاة وقضاء الفوائت

PRAYER TIMES

مواقيت الصلاة

f2.1 The prescribed prayers are five:

(1) The time for the *noon prayer* (zuhr) begins after the sun's zenith for that day, and ends when an object's shadow, minus the length of its shadow at the time of the sun's zenith, equals the object's height.

(2) The time for the *midafternoon prayer* ('asr) begins at the end of the noon prayer's time, and ends at sunset, though when an object's shadow (N: minus the length of its shadow at the sun's zenith) is twice as long as the object's height, the preferred time is over and the merely permissible time remains.

(3) The time for the *sunset prayer* (maghrib) begins when the sun has completely set. It only lasts long enough to perform ablution (wudu), clothe one's nakedness, make the call to prayer (adhan) and call to commence (iqama) and to pray five moderate-length rak'as (units) of prayer. It is a sin to delay commencing the sunset prayer beyond this, and if one does, one is making up a missed prayer (O: i.e., according to the position the author has adopted, which contradicts the more reliable opinion that one's prayer is not a

f2.1 المكتوباتُ خمسٌ:

- الظهرُ وأولُ وقتِهَا إذا زالَتِ الشمسُ، وآخرُهُ مصيرُ ظِلِّ كلِّ شيءٍ مثلَهُ سِوى ظلِّ الزوالِ.
- والعصرُ وأولُهُ آخرُ الظهرِ، وآخرُهُ الغروبُ لكنْ إذا صارَ ظلُّ كلِّ شيءٍ مثليْهِ خرجَ وقتُ الاختيارِ وبَقِيَ الجوازُ.
- والمَغْرِبُ وأولُهُ تكامُلُ الغروبِ. ثمَّ يمتدُّ بقدرِ وضوءٍ وسترِ عورةٍ وأذانٍ وإقامةٍ وخمسِ ركعاتٍ متوسطاتٍ. فإنْ أخَّرَ الدخولَ فيها عنْ هذا القدرِ عَصَى وهي قضاءٌ (على ما ذهب إليه المصنف وهو خلاف المعتمد والصحيح أنها لا تكون

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makeup until after the red has disappeared from the sky), though if one begins it within the right time, one may continue until the red disappears from the sky.

قضاء إلا إذا غاب الشفق الأحمر) وإنْ دَخَلَ فيها فلَهُ استدامتُها إلى غيبوبةِ الشفقِ الأحمر.

(4) The time for the *nightfall prayer* ('isha) begins when the red of sunset leaves the sky, and ends at true dawn (n: *true dawn* being when the sky around the horizon begins to grow light. Before this, a dim light sometimes appears overhead for some minutes, followed by darkness, and is termed the *deceptive dawn* (al-fajr al-kadhib) (*al-Iqna' fi hall alfaz Abi Shuja'* (y7), 1.95). But after a third of the night has passed, the preferred time for nightfall prayer has ended and the merely permissible remains.

ـ والعِشَاءُ وأوّلُهُ غيبوبةُ الشفقِ الأحمرِ وآخِرُهُ الفجرُ الصادقُ. لكنْ إذا مَضَى ثلثُ الليلِ خَرَجَ وقتُ الاختيارِ وبَقِيَ الجوازُ.

(5) And the time for the *dawn prayer* (subh) begins at true dawn and ends at sunrise, though the preferred time for it ends when it becomes light outside, after which the merely permissible remains.

ـ والصُّبْحُ وأولُهُ الفجرُ الصادقُ، وآخِرُهُ طلوعُ الشمسِ، لكنْ إذا أسْفَرَ خَرَجَ وقتُ الاختيارِ وبَقِيَ الجوازُ.

(n: Prayer times vary a little each day with the season and the year, and from one town to another through the effects of latitude and longitude. One can keep abreast of the changes by obtaining the whole year's times in a printed calendar from one's local Muslim association or mosque, or by using the pocket computer mentioned below at w19, which discusses how one fasts and prays at northerly latitudes (including much of North America and Europe during the summer months) lacking the features that legally define the true prayer and fasting times, such as nightfall or true dawn.)

f2.2 It is best to pray every prayer at the first of its time, taking the necessary steps at its outset, such as purification, clothing one's nakedness, giving the call to prayer (adhan) and call to commence (iqama), and then praying.

f2.2 والأفضلُ أنْ يُصَلِّيَ أولَ الوقتِ، ويَحْصُلُ بأنْ يَشْتَغِلَ أولَ دخولِهِ بالأسبابِ كطهارةٍ وسترِ عورةٍ وأذانٍ وإقامةٍ ثمَّ يُصَلِّي. [ويُسْتَثْنَى الظهرُ فيُسَنُّ الإبرادُ بها في شدةِ الحرِّ ببلدٍ حارٍ لمنْ يَمْضي إلى جماعةٍ بعيدةٍ، وليْسَ في طريقِهِ كنٌّ يُظِلُّهُ. فيُؤَخِّرُ حتَّى يَصيرَ للحيطانِ ظلٌّ يُظِلُّهُ فإنْ فُقِدَ شرطٌ منْ ذلكَ نُدِبَ التعجيلُ].

f2.3 If less than one rak'a of one's prayer occurs within the proper time (A: meaning that one does not lift one's head from the second prostration of the rak'a before the time ends) and the

f2.3 ولوْ وَقَعَ في الوقتِ دونَ ركعةٍ

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remainder takes place after it, then the whole prayer is considered a makeup. If one rak'a or more takes place within the prayer's time and the remainder is after it, then the prayer is considered a current performance, though it is unlawful to intentionally delay the prayer until part of it occurs after the time is finished.

والباقي خارجهُ فكلُّها قضاءٌ. أوْ ركعةٌ فأكثر والباقي خارجهُ فكلُّها أداءٌ. لكنْ يَحْرُمُ تعمُّدُ التأخير عن الوقت حتّى يَقَعَ بعضُها خارجَ الوقت.

f2.4 [ومَنْ جهلَ دخولَ الوقت (لغيم أو حبس ببيت مظلم) فأخْبَرَهُ ثقةٌ عنْ مشاهدةٍ وَجَبَ قبولُهُ. أوْ عن اجتهادٍ فلا. فللأعمى أو البصير العاجز عن الاجتهاد تقليدُهُ لا القادر عليه].

f2.5 It is permissible to rely (N: for knowledge that a prayer's time has come) on a knowledgeable, dependable *muezzin* (caller to prayer). If one lacks someone to inform one of the time, then one may reason on the basis of reciting a scheduled period of invocation or Koran recital (Ar. wird) (n: referring to those whose *wird*s normally take the whole time between two prescribed prayers such that when they finish, they know the time for the second prayer has come. The legal basis of *wird*s is discussed at w20), and the like (N: including modern clocks, and prayer time calendars issued by experts on the times in various localities).

f2.5 ويَجُوزُ اعتمادُ مؤذنٍ ثقةٍ عارفٍ [وديكٍ مجرَّبٍ]. فإنْ فقدَ [الأعمى أو البصيرُ] مخبراً اجْتَهدَ بوردٍ ونحوه (ح: ومنه الساعات الحديثة والتقويمات التي يصدرها الخبراء بالمواقيت في مختلف الأزمنة والأمكنة). [وإنْ أمْكَنَهُما اليقينُ بالصبر، فإنْ تحيَّرا صَبَرا حتى يَظُنّا، فإنْ صَلَّيا بلا اجْتهادٍ أعادا، وإنْ أصابا].

MAKING UP MISSED PRAYERS

قضاء الفوائت

f2.6 When enough of a prayer's time has elapsed to have performed the prayer during it, and someone who has not yet prayed loses their reason or their menstrual period begins, they are obligated to make up that missed prayer (O: as soon as they are able).

f2.6 وإنْ مضى مِنْ أول الوقت ما يُمْكِنُ فيه الصلاةُ فَجُنَّ أوْ حاضتْ وَجَبَ القضاءُ (لما فاته فوراً).

f2.7 Whenever a prescribed prayer is missed for a valid reason (def: f1.5), it is recommended to make it up immediately.

If missed without a valid reason, it is obligatory to make it up (dis: w18) immediately (A: meaning during all one's time that is not occupied by necessities. In the Shafi'i school, it is not even permissible for such a person to perform sunna prayers (N: before having finished making up the

f2.7 ومتى فاتت المكتوبةُ بعذرٍ نُدِبَ الفورُ في القضاءِ.

وإنْ فاتتْ بغير عذرٍ وَجَبَ الفورُ (ع: يعني في جميع الوقت الذي يزيد عن ضرورياته ولا يجوز له عند الشافعية أنْ

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يصلي السنة) والصومُ كالصلاةِ ويَحْرُمُ تراخيه لرمضانَ القابلِ .

missed ones)). The same applies to making up missed obligatory fasts (N: by fasting a day in place of each day missed), and it is unlawful to delay doing so until the following Ramadan (dis: i1.33).

f2.8 وَيُنْدَبُ ترتيبُ الفوائتِ .

f2.8 It is recommended that missed prayers be made up in the order they were missed. (n: The call to prayer (adhan) and call to commence (iqama) when making up missed prayers are discussed at f3.5, and whether to recite prayers aloud or to oneself at f8.25.)

f2.9 وتقديمُها على الحاضرةِ إلا أنْ يَخْشَى فواتَ الحاضرةِ فَيَجِبُ تقديمُها .

وإنْ شَرَعَ في فائتةٍ ظانّاً سعةَ الوقتِ فَبانَ ضيقُهُ وَجَبَ قَطْعُها وفَعَلَ الحاضرةَ .

f2.9 It is recommended to make up missed prescribed prayers before performing the current one, unless one fears its time will pass, in which case it is obligatory to pray the current one first.

If one begins making up a missed prayer thinking that there will be time for both it and the current prescribed prayer, but finds that there is only enough time left for the latter, then one must discontinue the makeup in order to perform the current one.

f2.10 ومَنْ عليه فائتةٌ فوجدَ جماعةَ الحاضرةِ قائمةً نُدِبَ تقديمُ الفائتةِ منفرداً ثمَّ الحاضرةَ .

f2.10 If one has a prayer to make up and finds the current prayer being performed by a group, it is recommended to perform the makeup by oneself before praying the current one.

f2.11 ومن نَسِيَ صلاةً فأكثرَ مِنَ الخمسِ ولَمْ يَعْرِفْ عَيْنَها لَزِمَهُ الخمسُ ويَنْوِي بكلٍّ واحدةٍ الفائتةَ .

f2.11 If one misses one or more of the five prayers but does not remember which of them it was, then one must pray all five, intending for each one making up the missed prayer.

f2.12 (n: If someone finds he has been consistently mistaken day after day in praying, for example, the dawn prayer (subh) before its time, or some similar timing error, then each prayer performed after the first day of the whole series of prayers thus mistakenly prayed is considered the makeup of the day before it, and when such a person discovers the error, he has only one prayer to make up, namely the one on the last day prior to learning of the mistake (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 1.127).)

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f3.0 THE CALL TO PRAYER (ADHAN) AND CALL TO COMMENCE (IQAMA)

f3.0 الأذان والإقامة

f3.1 The call to prayer (adhan) and call to commence (iqama) are two sunnas for the prescribed prayers, even when praying alone or in the second group to pray (N: in a mosque, for example), such that there is public cognizance (O: of both the call to prayer and to commence, whether in a large or small town).

f3.1 هما سنتان في المكتوبات حتى لمنفرد وجماعة ثانية بحيث يظهر الشعار (بهما في البلد الكبيرة والصغيرة).

f3.2 To give the call to prayer (adhan) is better than being the imam for a group prayer (O: though to be imam is superior to giving the call to commence (iqama)).

f3.2 والأذان أفضل من الإمامة (وهي أي الإمامة أفضل من الإقامة) [وقيل عكسه].

f3.3 When praying alone in a mosque where a group has already prayed, one does not raise one's voice in giving the call to prayer, though if no group has yet prayed, one raises it. The same applies to a second group to pray: they do not raise their voice.

f3.3 فإن أذن المنفرد في مسجد صليت فيه جماعة لم يرفع صوته وإلا رفع. وكذا الجماعة الثانية لا يرفعون صوتهم.

f3.4 It is sunna for a group of women who are praying together to give the call to commence without giving the call to prayer.

f3.4 ويسن لجماعة النساء الإقامة دون الأذان.

f3.5 When making up one or more missed prescribed prayers, one gives the call to prayer only for the first (N: in the series), but gives the call to commence for each one.

f3.5 [ولا يؤذن للفائتة في الجديد ويؤذن لها في القديم الأظهر] فإن فاتته صلوات لم يؤذن لما بعد الأولى [وفي الأولى الخلاف]. ويقيم لكل واحدة.

f3.6 The words of the call to prayer and call to commence are well known.

(n: The words of the call to prayer mean: "Allah is greatest, Allah is greatest. Allah is greatest, Allah is greatest. I testify there is no god but Allah. I testify there is no god but Allah. I testify that Muhammad is the Messenger of Allah. I testify that Muhammad is the Messenger of Allah. Come to the prayer. Come to the prayer. Come to success. Come to success. [n: At this point,

f3.6 وألفاظ الأذان والإقامة معروفة

(ت: وهي: «الله أكبر الله أكبر الله أكبر الله أكبر، أشهد أن لا إله إلا الله، أشهد أن لا إله إلا الله، أشهد أن محمداً رسول الله، أشهد أن محمداً رسول الله، حي على الصلاة، حي على الصلاة، حي على الفلاح، حي على

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before the dawn prayer only, one adds: "Prayer is better than sleep. Prayer is better that sleep."] Allah is greatest, Allah is greatest. There is no god but Allah."

The words of the call to commence mean: "Allah is greatest, Allah is greatest. I testify there is no god but Allah. I testify that Muhammad is the Messenger of Allah. Come to the prayer. Come to success. The prayer is commencing. The prayer is commencing. Allah is greatest, Allah is greatest. There is no god but Allah.")

الفلاح ، (وقبل الصبح فقط : «الصلاةُ خيرٌ مِنَ النَّوْمِ ، الصلاةُ خيرٌ مِنَ النَّوْمِ») اللهُ أكبرُ اللهُ أكبرُ، لا إلهَ إلاَّ اللهُ).

(ت : وألفاظ الإقامة هي : اللهُ أكبرُ اللهُ أكبرُ، أشهدُ أنْ لا إلهَ إلاَّ اللهُ، أشهدُ أنَّ محمداً رسولُ الله، حَيَّ على الصلاة، حَيَّ على الفلاح ، قد قامت الصلاةُ قد قامت الصلاةُ اللهُ أكبرُ اللهُ أكبرُ لا إلهَ إلاَّ اللهُ).

f3.7 Each word (N: of both of them) must be recited in the order mentioned above.

If one remains silent for long or speaks at length between the words of the call to prayer (O: or call to commence), it is not valid and must be begun again, though a short remark or silence while calling it does not invalidate it.

When giving the call to prayer or call to commence by oneself, the minimal audibility permissible is that one can hear oneself. The minimum when calling them for a group is that all their contents can be heard by at least one other person.

f3.7 ويَجِبُ ترتيبُهُمَا (ح: أي ترتيب ألفاظ كل منهما).

فإنْ سَكَتَ أوْ تكلَّمَ في أثنائه طويلاً بَطَلَ أذانُهُ (ومثل الأذان الإقامة في ذلك) فيَسْتَأْنِفُهُ. وإنْ قَصُرَ فلا.

وأقلُّ مَا يَجِبُ أنْ يُسْمِعَ نفسَهُ إنْ أذَّنَ وأقامَ لنفسِهِ. فإنْ أذَّنَ وأقامَ لجماعةٍ وَجَبَ إسماعُ واحدٍ جميعهُمَا.

f3.8 It is not valid to give the call to prayer before a prayer's time has come, except for the dawn prayer, when it is permissible to give the call to prayer from the middle of the night onwards (N: as is done in Mecca and Medina).

f3.8 ولا يَصِحُّ الأذانُ قبلَ الوقتِ، إلاَّ الصبحَ فإنَّهُ يَجُوزُ أنْ يُؤَذَّنَ لَهَا بعدَ نصفِ الليلِ.

f3.9 When giving the call to prayer and call to commence, it is recommended to have ablution (wudu), stand, face the direction of prayer, and to turn the head (not the chest or feet) to the right when saying, "Come to the prayer," and to the left when saying, "Come to success."

It is offensive to give the call to prayer while in a state of minor ritual impurity (hadath), more offensive to do so in a state of major ritual impurity (janaba), and even worse to give the call to commence (iqama) while in either of these two states.

It is recommended:

(1) to give the call to prayer from a high place near the mosque;

f3.9 ويُسْتَحَبُّ الطهارةُ والقيامُ واستقبالُ القبلةِ والالتفاتُ في الحيعلتَيْنِ في الأولى يميناً وفي الثانية شمالاً فَيَلْوي عنقَهُ ولا يُحَوِّلُ صدرَهُ وقدمَيْهِ.

ويُكْرَهُ للمحدثِ، وكراهةُ الجنبِ أشدُّ، وفي الإقامةِ أغلظُ.

وأنْ يُؤَذِّنَ على موضعٍ عالٍ وبقربِ

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(2) to put one's fingertips in one's ears while calling it;

(3) to take one's time in giving the call to prayer (A: pausing for an interval after each sentence equal to the sentence's length) (O: except for repetitions of "Allah is Greatest," which are said in pairs);

(4) and to give the call to commence rapidly, without pause.

المسجد ويجعل إصبعيه في صماخيه ويُرتِّل الأذانَ (إلا التكبير فيجمع فيه بين كل تكبيرتين بصوت) ويُدرِج الإقامة.

f3.10 It is obligatory for the muezzin (O: or person giving the call to commence):

(a) to be Muslim;

(b) to have reached the age of discrimination (def: f1.2);

(c) to be sane;

(d) and if calling for a men's group prayer, to be male.

It is recommended that he be *upright* (def: o24.4) and have a strong, pleasant voice.

It is offensive for a blind person to give the call to prayer unless a sighted person is with him (O: to tell him when the time has come).

f3.10 ويُشترَطُ كونُ المؤذِّن (ومثله المقيم) مسلماً عاقلاً مميِّزاً ذكراً إنْ أذَّنَ للرجال.

ويُندَبُ كونُه [حراً] عدلاً صيِّتاً حسنَ الصوتِ [مِنْ أقارب مؤذِّني النبيِّ ﷺ].

ويُكرَهُ للأعمى إلاَّ أنْ يكونَ مَعَهُ بصيرٌ (يخبره بدخول الوقت).

f3.11 When one hears the call to prayer (N: or call to commence), it is recommended to repeat each phrase after the muezzin, even if in a state of major ritual impurity (janaba), during menstruation, or when reciting the Koran (N: and *a fortiori* when reading or reciting something else).

One does not repeat the phrases "Come to the prayer" or "Come to success," but rather says after them, "There is no power or strength except through Allah." And at the call to prayer at dawn, one does not repeat "Prayer is better than sleep," but instead says, "You have spoken the truth, and piously."

When the person giving the call to commence says, "The prayer is commencing," one replies, "May Allah establish it and make it endure as long

f3.11 ويُندَبُ لسامعِه ولَوْ جنباً أو حائضاً أوْ في قراءة (ح: أي قراءة القرآن وقارىء غير القرآن من باب الأولى) أنْ يَقولَ مثلَ قوله (ح: أي المؤذن والمقيم) عقبَ كلِّ كلمة.

وفي الحيعلتَيْن: «لا حَوْلَ ولا قُوَّةَ إلاَّ بالله».. وفي «الصلاةُ خيرٌ من النوم»: «صَدَقْتَ وبَرَرْتَ».

وفي كلمتَيْ الإقامة: «أقامَها اللهُ

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as the heavens and earth, and make me one of the righteous of its folk."

If one hears it while making love, going to the lavatory, or performing the prayer, one says the words when finished.

وأدامها ماداميت السموات والأرض وجعلني من صالحي أهلها».

فإن كان مجامعاً أو على الخلاء أو مصلياً أجاب بعد فراغه.

f3.12 It is recommended for the muezzin, after he finishes, and those hearing him to bless the Prophet (Allah bless him and give him peace). (A: It is unobjectionable in the Shafi'i school for the muezzin to do so as loudly as the call to prayer.) Then one adds, "O Allah, Lord of this comprehensive invitation and enduring prayer, grant our liegelord Muhammad a place near to You, an excellence and exalted degree, and bestow on him the praiseworthy station that You have promised him."

f3.12 ويُندب للمؤذن وسامعه بعد فراغه الصلاة على النبي ﷺ ثم يقول: «اللهم رب هذه الدعوة التامة والصلاة القائمة آت سيدنا محمداً الوسيلة والفضيلة والدرجة الرفيعة وابعثه مقاماً محموداً الذي وعدته».

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f4.0 PURITY OF BODY, CLOTHES, AND PLACE OF PRAYER

f4.0 طهارة البدن والثوب وموضع الصلاة

f4.1 It is a necessary condition (shart) for the validity of prayer that one have purity (N: absence of filth (najasa, def: e14.1)) in:

(a) body;

(b) clothing, whether or not it moves with the person (N: who is praying);

(c) anything that touches the body or clothing (O: though if one's chest overhangs something impure while prostrating without touching it, this does not hurt);

(d) and the place on which one is standing during the prayer.

f4.1 وطهارة البدن والملبوس وإن لم يتحرك بحركته (ح: أي المصلي) وما يمسهما (فإن حاذى صدره في حال سجوده نجاسة مع عدم المماسة لم يضر) وموضع الصلاة (أي موضع الوقوف فيها) شرط لصحة الصلاة.

f4.2 One's prayer is invalid if one is holding the end of a rope connected with something impure.

One's prayer is valid if performed on the pure portion of a rug which is affected with some filth

f4.2 ولو قبض طرف حبل [أو ربطه معه] وطرفه الآخر متصل بنجس لم تصح صلاته. ولو تنجس بعض بساط

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فَصَلَّى على موضعٍ طاهرٍ منهُ وتحرَّكَ الباقي بحركتِهِ (ح: أي حركة البساط) أوْ على سريرٍ قوائمُهُ على نجسٍ وتحرَّكَ بحركتِهِ (ح: أي السرير) صَحَّتْ صلاتُهُ.

(N: on another part) or on a bed whose legs rest on something impure, even if the rug or bed moves when one's own portion moves. (N: The rule illustrated by these examples is that it is not permissible for the person praying to support or carry something affected by filth, but is permissible for him to be supported by it, provided he is not in direct contact with the filth.)

f4.3 والنجاسةُ غيرُ الدمِ إنْ لمْ يُدرِكْهُ طرفٌ (ع: معتدل) يُعْفَى عنها. وإنْ أدْرَكَها لمْ يُعْفَ عنها (ع: فإن أدركها بصر معتدل يضر، وإن أدركها بصر حاد فلا). [إلاَّ عنْ دمٍ براغيثَ وقملٍ وغيرِهما ممَّا لا نفسَ لهُ سائلةً (أي دم سائل فالنفس هنا بمعنى دم) فيُعْفَى عنْ قليلِهِ وكثيرِهِ، وإنِ انْتَشَرَ بعرقٍ].

f4.3 Impure substances (najasa) other than blood (dis: below) that are indiscernible by (A: average) vision are excusable, though if visually discernible, they are inexcusable. (A: That which is seen by a normal look is not excusable, while that which can only be seen by minute scrutiny is excusable.)

f4.4 وأمَّا الدمُ والقيحُ، فإنْ كانَ مِنْ أجنبيٍّ (من إنسانٍ وغيرِه) عُفِيَ عنْ يسيرِهِ، وإنْ كانَ مِنَ المصلِّي عُفِيَ عنْ قليلِهِ وكثيرِهِ سواءٌ خَرَجَ مِنْ بثرةٍ عَصَرَها أوْ مِنْ دُمَّلٍ أوْ قرحٍ أوْ فصدٍ أوْ حجامةٍ أوْ غيرِها.

f4.4 As for blood or pus, if it is from another, (O: human or otherwise,) then only a *little* (def: below) is excusable, though if from the person praying, it is excusable whether much or little, regardless if from a squeezed pimple, a boil, a sore, being bled, cupped, or something else.

f4.5 (N: In rulings of Sacred Law, the application of key descriptive terms like *little, much, near, far, briefly, at length,* and so forth, is governed by the concept of *common acknowledgement* ('urf). To know whether something is *little* or *much*, which could be stipulations in a particular ruling, we stop to reflect whether it is commonly acknowledged as such, namely, whether most people would describe it as such when speaking about it.

Common acknowledgement also takes into consideration what is normal or expected under the circumstances. For example, a few drops of animal blood on the clothes of a butcher would be little, while the same amount on the clothes of a student would be *much*.)

f4.6 [وأمَّا ماءُ القروحِ والنفاطاتِ إنْ كانَ لهُ رائحةٌ كريهةٌ فهوَ نجسٌ (ح: لكن له حكم الدم فيعفى عن قليله وكثيره إن كان من المصلي) وإلاَّ فلا].

f4.7 ولوْ صَلَّى بنجاسةٍ جهلَها أوْ

f4.7 If one prays with (N: an inexcusable amount of) something impure (N: on one's per-

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son, place, or clothes) that one did not know of or forgot, and notices it after finishing, one must repeat the prayer. It invalidates the prayer if noticed during it.

نَسِيَهَا ثُمَّ رآها بعدَ فراغِهِ أعادَها. أوْ فِيها بَطَلَتْ.

f4.8 If one gets some mud on oneself from the street and but is not certain it contains filth, then it is is considered pure (N: the rule being that the initial presumption for all things is that they are pure, as long as their impurity has not been decisively established).

f4.8 ولوْ أصابَهُ طينُ الشارعِ، فإنْ لَمْ يَتحقَّقْ نجاستَهُ فهوَ طاهرٌ. (ح: والقاعدة أن الأصل في الأشياء الطهارة ما لم يقطع بنجاستها). [وإنْ تَحقَّقَها عُفِيَ عنْ قليلِهِ عُرْفاً وهُوَ ما يَتعذَّرُ الاحترازُ مِنْهُ، وَيَخْتَلِفُ بالوقتِ كأنْ كانَ أيامَ الأمطارِ، وبموضعِهِ مِنَ البدنِ والثوبِ (فيعفى عنه في أسفل الثوب ما لا يعفى في أعلاه) وَلاَ يُعْفَى عنْ كثيرِهِ].

f4.9 Someone unable to remove filth from his person or who is being held in an impure place must pray and later make up the prayer when capable of purity.

(N: When being held in an impure place,) one bows the head as close to the ground as possible without actually contacting the filth, which is unlawful to place the forehead upon.

f4.9 ومَنْ عَجَزَ عنْ إزالةِ نجاسةٍ ببدنِهِ أوْ حُبِسَ في موضعٍ نجسٍ صَلَّى (وجوباً) وأعادَ ويَنْحَني لسجودِهِ بحيثُ لوْ زادَ أصابَها، ويَحْرُمُ وَضْعُ الجبهةِ عليْها.

[ولوْ عَجَزَ عنْ تطهيرِ ثوبِهِ صَلَّى عرياناً بلا إعادةٍ. ولوْ لَمْ يَجِدْ إلاَّ حريراً صَلَّى فيهِ].

f4.10 If one loses track of a spot of filth on a garment, then all of it must be washed without trying to decide where the spot might be, though if someone reliable knows where it is and informs one, one may accept this.

f4.10 وإنْ خَفِيَتِ النجاسةُ في ثوبٍ وَجَبَ غسلُهُ كلُّهُ ولاَ يَجْتَهِدُ. فإنْ أخْبَرَهُ ثقةٌ بموضعِهِ اعْتَمَدَهُ.

f4.11 If a spot of filth is on one of two garments (N: one of which the person wants to pray in) and the person is not sure which, then he may reason and choose the one he believes is pure (N: to pray in), regardless of whether another pure one is available or whether he can wash one to use. (N: But it is not obligatory to try to decide which is pure. Rather, he may wash one, or both, and pray in them, or pray in some other garment.)

If one washes the garment believed to have filth on it, then one may pray wearing both garments, or pray in each garment alone, though if one makes no attempt to decide which garment is impure, but rather performs a prayer in each one separately, then neither prayer is valid.

f4.11 وإنِ اشْتَبَهَ طاهرٌ بمتنجسٍ اجْتَهَدَ (ح: إن أراد الصلاة بأحدهما)، وإنْ أمْكَنَ طاهرٌ بيقينٍ أوْ (ح: أمكن) غَسْلُ أحدِهما (أي اجتهد وإن أمكن الخ) (ح: ولا يجب عليه الاجتهاد بل له أن يغسلهما أو أحدهما أو يصلي في غيرهما). [فإنْ تَحَيَّرَ صَلَّى عرياناً وأعادَ إنْ لَمْ يُمْكِنْهُ غسلُ ثوبِهِ، فإنْ أمْكَنَ وَجَبَ].

وإذا غَسَلَ ما ظَنَّهُ نجساً صَلَّى فيهما معاً أوْ في كلٍّ منفرداً. ولوْ صَلَّى بلا اجتهادٍ في كلِّ ثوبٍ مرةً لَمْ تَصِحْ.

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f4.12 If one loses track of the location of filth on the ground in open country, one may pray wherever one wishes.

But if one loses track of its location on a small plot of ground or in a room (*bayt*, lit. "house," meaning a one-room dwelling), then all the ground or floor must be washed (def: e14.12) before one may pray on any of it.

f4.12 ولـوْ خفِيَتِ النجـاسـةُ في فلاةٍ صَلّى حيثُ شاءَ بلا اجتهادٍ.

أوْ في أرضٍ صغيرةٍ أوْ في بيتٍ وجَبَ غسلُ الكلِّ. [ولو اشْتَبَهَ بيتانِ اجْتَهَدَ].

f4.13 [ولا تصحُّ في مقبرةٍ عَلِمَ نبشَها واختلاطَها بصديدِ الموتى (وذلك بغير حائل بينه وبينها وأما مع وجود الحائل فالصلاة فيها صحيحة مع الكراهة). فإنْ لمْ يعْلَمْ نبشَها (بأنْ حفرت الأرض ولم يدفن فيها أحد) كُرِهَتْ وصَحَّ].

f4.14 It is offensive to pray:

(1) in a bathhouse or its outer room where clothes are removed;

(2) in the middle of a path;

(3) at a rubblish dump;

(4) at a slaughterhouse;

(5) in a church;

(6) in places where taxes (dis: p32) are gathered or taken;

(7) in places likely to be contaminated by wine;

(8) on top of the Kaaba;

(9) or towards a tomb (dis: w21).

f4.14 وتُكْـرَهُ في حمـامٍ ومسلخةٍ [(أي المكـان الـذي تلقى الثياب فيه عند إرادة الدخول للاغتسال)] وقارعةِ الطريقِ (أي في وسطـه) ومـزبلةٍ ومجزرةٍ وكنيسةٍ وموضعِ مكسٍ وخمرٍ وظهرِ الكعبةِ وإلى قبرٍ مُتوجِّهاً إليْه. [وأعطـان الإبلِ، لا مراحِ غنمٍ].

f4.15 Prayer is unlawful in a garment or on land wrongfully taken, being legally valid (dis: c5.2), but without reward.

f4.15 وتَـحْـرُمُ في ثوبٍ وأرضٍ مغصوبَيْنِ وتَصِحُّ بلا ثوابٍ.

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f5.0 CLOTHING ONE'S NAKEDNESS

f5.1 Clothing one's nakedness (O: from the eyes of men as well as *jinn* (def: w22) and angels, for these too see people in this world) is obligatory, by scholarly consensus (ijma', b7), even when alone, except when there is need to undress. (O: Zarkashi states (A: and it is the authoritative position for the school) that the nakedness it is obligatory to clothe when alone consists solely of the front and rear private parts for men, and of that which is between the navel and the knees for women.)

f5.2 Clothing one's nakedness is a necessary condition for the validity of the prayer (O: when one is able).

Seeing a hole in one's clothes after a prayer is like seeing a spot of filth (n: meaning the prayer must be repeated, as at f4.7, unless one covers the hole immediately, as below at f5.5).

f5.3 The *nakedness* of a man (O: *man* meaning the counterpart of the female, including young boys, even if not yet of the age of discrimination) consists of the area between the navel and knees. The nakedness of a woman (O: even if a young girl) consists of the whole body except the face and hands.

(N: The *nakedness* of women is that which invalidates the prayer if exposed (dis: w23). As for looking at women, it is not permissible to look at any part of a woman who is neither a member of one's unmarriageable kin (mahram, def: m6.1) nor one's wife, as is discussed below in the book of marriage (m2).)

f5.4 It is a necessary condition that one's clothing:

(a) prevent the color of the skin from being perceptible (n: Nawawi notes, "A thin garment beneath which the blackness or whiteness of the skin may be seen is not sufficient, nor a garment of thick, gauzelike fabric through which part of the nakedness appears" (*al-Majmu'* (y108), 3.170));

f5.0 ستر العورة

f5.1 هوَ واجبٌ بالإجماع (عن أعين الناس ومثل الناس في ذلك الجن والملك فيطلب سترها عن أعينهم لأنهم يرون بني آدم في الدنيا) حتى في الخلوات إلا لحاجة. (قال الزركشي والعورة التي يجب سترها في الخلوة السوأتان فقط من الرجل وما بين السرة والركبة من المرأة) (ع: وعليه الاعتماد في المذهب).

f5.2 وهوَ شرطٌ لصحة الصلاة (عند القدرة).

فإنْ رَأى في ثوبه بعدَ الصلاة خرقاً فكرؤية النجاسة.

f5.3 وعورةُ الرجل (والمراد بالرجل ما قابل المرأة فيدخل الصبي ولو غير مميز) [والأمة] ما بينَ السرة والركبة. وعورةُ الحرة (ولو صغيرة) كلُّ بدنها إلا الوجه والكفين. (ح: عورة النساء ما تبطل الصلاة بانكشافه، وأما في حق النظر فلا يجوز النظر إلى شيء من بدن الأجنبية - غير المحرم والزوجة - كما سيأتي في كتاب النكاح).

f5.4 وشرطُ الساتر أنْ يَمْنَع لونَ البشرة [فلا يَكْفي زجاجٌ وماءٌ صافٍ ويَكْفي التطيينُ ولوْ مَعَ وجود الثوب ويجبُ عندَ فقده]. (ت: قال النووي: «... فلا يكفي ثوب رقيق يشاهد من ورائه سواد البشرة أو بياضها، ولا يكفي أيضاً الغليظ المهلهل النسج الذي يظهر بعض العورة من خلله». [نقل من

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(b) enclose the body as a garment, for a prayer performed without clothes in a small tent would not be valid;

(c) and conceal the nakedness from view on all sides and above, though it need not do so from below.

المجموع: ٣/ ١٧٠] وأنْ يَشْمَلَ المستورَ لُبْساً فلوْ صَلَّى في خيمةٍ ضيقةٍ عرياناً لَمْ تَصِحَّ وَيُشْتَرَطُ السترُ مِنَ الأعلى والجوانبِ لاَ الأسفلِ [فلوْ صَلَّى مرتفعاً بحيثُ تُرَى عورتُهُ مِنَ الأسفلِ (جاز)].

f5.5 One's prayer is valid when there is a tear through which one's nakedness shows that one covers with one's hand (A: immediately, i.e. one must do so before enough time passes to say "Subhan Allah") (O: that is, one must cover it with one's hand when not prostrating, at which point not covering it is excusable).

f5.5 أوْ كانَ في سترِهِ خرقٌ فسَتَرَهُ بيدِهِ جازَ (أي يستر الخرق بيده إذا لم يسجد وعند إرادة السجود يغتفر له عدم ستره عند عدم السترة لذلك الخرق).

f5.6 It is recommended for a woman to wear a covering over her head (khimar), a full length shift, and a heavy slip under it that doesn't cling to the body. (O: She should not wrap it so tightly about herself that it hinders standing, sitting, and other postures connected with the actions of prayer. She is recommended to pray in three garments even though the headcover and shift alone are sufficient as a covering.)

f5.6 ويُنْدَبُ لامرأةٍ خِمارٌ وقميصٌ وملْحفةٌ غليظةٌ وَتجافيها (لا تجعلها ضيقة ملتصقة بها بحيث يعسر عليها حينئذ القيام والجلوس وغيرهما مما يتعلق بأفعال الصلاة، وتصلي المرأة في ثلاثة أثواب على سبيل الندب وإن كان الخمار مع القميص كافياً في الستر).

f5.7 It is recommended for a man to pray in his best clothes, and to wear an ankle-length shirt and a turban (O: and a shawl over head and shoulders, a mantle, and a wraparound or loose drawers (N: under the ankle-length shirt)). If he does not wear all of these, it is desirable to wear two, namely the ankle-length shirt with either the mantle, the wraparound, or the loose drawers.

f5.7 ولرجلٍ أحسنُ ثيابِهِ ويَتَقَمَّصُ ويَتَعَمَّمُ (وأن يتطيلس وأن يرتدي وأن يتزر أو يتسرول). فإنِ اقْتَصَرَ فثوبانِ: قميصٌ معَهُ رداءٌ أو إزارٌ أو سراويلُ.

f5.8 If only wearing enough to clothe one's nakedness, one's prayer is valid, though it is recommended to place something on one's shoulders, even if only a piece of rope.

If one does not have clothes but is able to conceal part of one's nakedness, one must cover the front and rear private parts. If only one of these two can be covered, it must be the front. If one has no clothes at all, then one performs the prayer without clothes and need not make it up later.

f5.8 فإنِ اقْتَصَرَ على سترِ العورةِ جازَ لكنْ يُنْدَبُ لهُ وَضْعُ شيءٍ على عاتقِهِ ولوْ حبلاً.

فإنْ فَقَدَ ثوباً وأمْكَنَ سترُ بعضِ العورةِ وجبَ ويَسْتُرُ السوأتينِ حتماً. فإنْ أمْكَنَ أحدُهُما فقطْ تَعَيَّنَ القبلُ. فإنْ فَقَدَهَا بالكليةِ صَلَّى عرياناً بلاَ إعادةٍ.

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f5.9 [فإنْ وَجَدَ السترةَ في الصلاةِ وهيَ بقربِهِ سَتَرَ وبَنَى، إنْ لمْ يَعْدِلْ عنِ القبلةِ (ح: بصدره). أو بعيدةً سَتَرَ واسْتأنَفَ. وتُنْدَبُ الجماعةُ للعراةِ. ويَقِفُ إمامُهُمْ وسطَهُمْ. وإن أُعيرَ ثوباً لزِمَهُ القبولُ. فإنْ لمْ يَقْبَلْ وصَلَّى عرياناً لمْ تصِحْ. وإنْ وَهَبَهُ لمْ يَلْزَمْهُ القبولُ. وسَبَقَ في التيممِ (e12.6) مسائلُ فيَعُودُ مثلُها ههُنا].

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f6.0 FACING THE DIRECTION OF PRAYER (QIBLA)

f6.0 استقبال القبلة

f6.1 Facing the *direction of prayer* (qibla) is a necessary condition for the prayer's validity, with the sole exceptions of praying in extreme peril (dis: f16.5) and nonobligatory prayers performed while travelling.

f6.1 هوَ شرطٌ لصحةِ الصلاةِ، إلاَّ في شدةِ الخوفِ ونفلِ السفرِ.

f6.2 (N: The rulings below deal with nonobligatory prayers, not the five prescribed ones, which must be performed while facing the proper direction for prayer (qibla) whether one is riding in a vehicle or not (dis: w24).)

A traveller may perform nonobligatory prayers riding or walking, even on short trips.

When riding and able to face the direction of prayer, prostrate, and bow, as when on a ship, one is obligated to. If not able, then one is only required to face the direction of prayer during the first Allahu Akbar of the prayer, provided this is not difficult, as when one's mount is stationary or when one can turn oneself or one's mount the proper direction. If it *is* difficult, as when one's mount is not properly saddle broken, or if the reins are not in one's hands, as when riding in a pack train with each animal tied to the one ahead of it, then it is not obligatory to face the direction of prayer at any point of the prayer's performance, and one merely nods in the direction of travel instead of bowing and prostrating. One's nod for prostration must be deeper than the nod for bowing. One does not have to bow to the limit of one's capacity, nor bow the forehead until it touches the mount's back, though this is permissible if one troubles oneself to do so.

When praying while walking, one must stop to bow and prostrate on the ground (O: if easy,

f6.2 فللمسافرِ التنفُّلُ راكباً وماشياً وإنْ قَصُرَ سفرُهُ.

فإنْ كانَ راكباً وأمْكَنَ استقبالُهُ وإتمامُ الركوعِ والسجودِ في [محملٍ و] سفينةٍ لزِمَهُ وإنْ لمْ يُمْكِنْهُ لزِمَهُ الاستقبالُ عندَ التحرُّمِ فقطْ إنْ سَهُلَ بأنْ كانتْ واقفةً وأمْكَنَ انحرافُهُ أوْ تحريفُهُ [أو سائرةً سهلةً زمامُها بيدِه]. وإن شَقَّ بأنْ كانتْ عَسِرةً أوْ مقطورةً فَلا (يلزمه حينئذ الاستقبال لا في التحرم ولا في غيره) ويُومِئُ إلى مقصدِه بركوعِه وسجودِه. ويَجِبُ كونُهُ أخفضَ، ولا يَجِبُ غايةَ وسعِه ولا وضعُ الجبهةِ على الدابةِ فلوْ تكلَّفَ جازَ.

والماشي يَرْكَعُ ويَسْجُدُ على الأرضِ

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though if walking in mud, water, or snow, one may simply nod), and may walk during the rest of the prayer, though it is obligatory to face the direction of prayer during the first Allahu Akbar, and at each bowing and prostration.

Such prayers (O: whether riding or walking) are only valid on condition:

(a) that one's journey continue for the prayer's duration;

(b) and that one not turn from the direction of travel towards anything but the direction of prayer.

If one reaches home while thus praying, or the destination, or a town where one intends to stay, then one must face the direction of prayer, and bow and prostrate on the ground or on one's mount if stopped.

(أي إن سهل عليه ذلك فلو كان يمشي في وحل أو ماء أو ثلج فالأوجه أنه يكفيه الإيماء) ويَمْشي في الباقي. ويُشْتَرطُ الاستقبالُ في الإحرام والركوع والسجود فقطْ.

ويُشْتَرطُ دوامُ سفرِه (سواء كان راكباً أو ماشياً) ولزومُ جهة مقصدِه إلّا إلى القبلة.

فإنْ بَلغَ في أثنائِها منزلَهُ أوْ مقصدَهُ أوْ بلداً ونَوَى الإقامةَ به وَجَبَ إتمامُها بركوعٍ وسجودٍ واستقبالٍ على الأرضِ أوْ دابةٍ واقفةٍ.

f6.3 When at the Kaaba, one must pray directly towards the Kaaba itself. One's prayer is invalid if one merely faces the semicircular wall (N: Hijr Isma'il) that is to one side of it, or directs any part of the body outside the outline of the Kaaba, unless one is standing at the end of a long row of people praying at the periphery of al-Masjid al-Haram (n: the mosque of the Kaaba), a row which, if the people in it were to advance, some of them would be facing outside the Kaaba's outline. To pray in such a row is valid for everyone in it.

f6.3 ومَنْ حَضَرَ الكعبةَ لزِمَهُ اسْتِقْبالُ عينِها فلو اسْتَقْبَلَ الحِجْرَ (ح: أي حجر إسماعيل) أوْ خَرَجَ بَعْضُ بدنِهِ عنْها لمْ تَصِحَّ، إلّا أنْ يَمْتَدَّ صفٌّ بعيدٌ في آخرِ المسجدِ الحرامِ ولوْ قَرُبُوا لخَرَجَ بعضُهُمْ فإنَّهُ يَصِحُّ للكلِّ.

f6.4 [ومَنْ صَلّى داخلَ الكعبةِ واسْتَقْبَلَ جدارَهَا أوْ بابَها المردودَ أو المفتوحَ وعتبتُهُ ثلثا ذراعٍ تقريباً صَحَّ. وإلّا فلا. وإنْ كانَ بمكةَ وبينَهُ وبينَ الكعبةِ حائلٌ خلقيٌ أوْ طاريءٌ فلهُ الاجتهادُ. وإنْ وَضَعَ محرابَهُ على العيانِ صَلّى إليهِ أبداً، ومَنْ غابَ عنها فأخْبَرَهُ بها مقبولُ الروايةِ عنْ مشاهدةٍ وَجَبَ قبولُهُ].

f6.5 For knowledge of the proper direction it is obligatory to rely on the *prayer niche* (mihrab) of a mosque in a city or village through which many people pass.

At every place the Prophet (Allah bless him and give him peace) faced to pray and established where he stood, it is obligatory to pray facing as he did, without reconsidering the direction of prayer,

f6.5 وكذا يَجِبُ اعتمادُ محرابِ بلدٍ أوْ قريةٍ يَكْثُرُ طارقُها.

وكلُّ مكانٍ صَلّى إليْهِ النبيُّ ﷺ وضَبَطَ موقفَهُ متعيِّنٌ لا يَجْتَهِدُ فيهِ لا يتيامَنُ ولا

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or turning right or left, though in other places one may use personal reasoning as to whether to turn right or left.

بتياسُر. ويَجْتَهِدُ فيهمَا في غيرِه مِنَ المحاريبِ.

f6.6 If one does not find an informant to tell one of the proper direction of prayer by having seen the Kaaba in that direction, then one employs personal reasoning, using other evidence.

f6.6 وإنْ لمْ يَجِدْ مَنْ يُخْبِرُهُ عنْ مشاهدةٍ اجْتَهَدَ بالدلائلِ.

(n: To establish the direction of prayer in cities far from Mecca one may use a world globe and a piece of string, since in North America, Australia, and other regions, using a flat world map will yield the wrong direction because of the curvature of the earth, and the error factor is often considerable. One puts the end of the string on the position of Mecca on the globe, the other end on one's own city, and pulls the string taut, observing the bearing of the string and drawing a line in the same direction on a local map, which can be oriented with a compass and used to indicate the proper direction to pray.)

If one does not know how to use other evidence, (O: and it is a communal obligation (def: c3.2) for someone to know,) or one is blind, then one follows another (O: reliable sighted person acquainted with the evidence).

فإنْ لمْ يعْرِفْها (والأدلة فرض كفاية) أوْ كانَ أعمَى قلَّدَ (بصيراً ثقة عارفاً بأدلتها).

f6.7 If, after praying, one becomes certain one was mistaken, then the prayer must be repeated.

(n: In the Hanafi, Maliki, and Hanbali schools, the criterion for *facing the direction of prayer* is merely that some portion of the person's face be directed towards the Kaaba (*al-Fiqh 'ala al-madhahib al-arba'a* (y66), 1.195). (A: This takes in 180 degrees, from far left to far right, such that when the Kaaba is anywhere between, one is considered to be facing the direction of prayer.))

f6.7 وإنْ تَيَقَّنَ الخطأَ بعدَ الصلاةِ بالاجتهادِ أعادَ. (ت: وقالَ الحنفيةُ والمالكيةُ والحنابلةُ إن ضابطَ استقبالِ جهةِ الكعبةِ هو أن يكونَ جزءٌ من سطحِ الوجهِ مقابلاً لها [الفقه على المذاهب الأربعة: ١/ ١٩٥] (ع: وذلك يشملُ نصفَ دائرةٍ، من أقصى يساره إلى أقصى يمينه. فإن كانت الكعبة بجهة ضمنها فهو مستقبل القبلة).

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f7.0 PLACING A BARRIER IN FRONT OF ONE'S PRAYER PLACE

f7.0 السترة

f7.1 It is recommended to put a barrier at least 32 cm. high in front of oneself when performing the prayer, or to spread out a mat, or if one cannot, to draw a line (N: on the ground, straight out, perpendicular to one's chest) about a meter and a

f7.1 يُنْدَبُ للمصلِّي أنْ يَكُونَ بينَ يدَيْه سترةٌ ثلثَا ذراعٍ أوْ يَبْسُطَ مصلًى فإنْ عَجَزَ خَطَّ خطاً على [(ح: بُعد)] ثلاثة

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half (O: or less) in front of one. It is then unlawful for anyone to pass (O: between the person praying and such a barrier, even when there is no other way to pass (dis: p75.27)).

If someone tries to pass between oneself and the barrier, it is recommended to gently push him back. If he persists, one may push him back as hard as necessary, as one would an attacker (def: o7.3). Were he to die as a result, one would not be subject to retaliation (o3) or have to pay an indemnity (o4) to his kin.

أذرع (فأقل) فيحرُمُ المرورُ حينئذٍ (بين المصلي وبين السترة المذكورة وإن لم يجد المار سبيلاً).

ويُندَبُ دفعُ المارِّ بالأسهل ويزيدُ قدرَ الحاجةِ كالصائل. فإنْ مات فهدَرٌ.

f7.2 If there is no barrier, or if the person praying is farther than a meter and a half from it, then passing in front of him is merely offensive, and the person praying is not entitled to push him.

f7.2 فإنْ لمْ يكنْ سترةٌ أوْ تباعدَ عنْها كُرِهَ المرورُ وليْسَ لهُ الدفعُ.

f7.3 (A: *Passing in front* of a person without a barrier, in a mosque for example, is limited to the length of his prostration, and it is not unlawful or offensive to pass in front of him when farther than that.)

f7.4 When one notices a gap in a row of people performing a group prayer, one is entitled to pass in front of others to fill it.

f7.4 ولوْ وجدَ في صفٍّ فرجةً فلهُ المرورُ ليسُدَّها.

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f8.0 DESCRIPTION OF THE PRAYER

f8.0 صفة الصلاة

f8.1 (n: Special vocabulary:

Allahu Akbar: Allah is greatest.

Ameen: a one-word supplication meaning "Answer our prayer."

as-Salamu 'alaykum: Peace be upon you.

Fatiha: the opening sura of the Koran.

Follower: someone praying in group behind an imam.

Integral (rukn): one of the legally essential elements found within an action that compose it.

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Imam: someone leading a group prayer.

Rak'a: one complete cycle of the words and actions of the prayer.

Sura: a chapter of the Koran.

Ta'awwudh: to say in Arabic, "I take refuge in Allah from the accursed Devil.")

MEASURES RECOMMENDED BEFORE PRAYER

سنن ما قبل الصلاة

f8.2 It is recommended:

(1) to stand for the prayer after the end of the call to commence (iqama);

(2) to be in the first row;

(3) to make the rows straight, especially if one is the imam (O: when one should order the group to do so);

(4) and to fill up the first row first, then the second, and so on (O: meaning there should not be a second row when the first one is not full (A: as to pray in such a second row is the same as not praying with a group, and is rewarded as if one had prayed alone), nor gaps within one row, nor a distance in excess of a meter and a half between rows).

It is superior to stand on the imam's right (A: though the sunna is for the imam to be in the middle) (N: and if one arrives at a group prayer in which the row extends to the right, one's reward is greater for standing on the left, since one is performing the sunna).

f8.2 يُنْدَبُ أنْ يَقُومَ لها بعدَ فراغِ الإقامةِ ويُنْدَبُ الصفُّ الأولُ وتسويةُ الصفوفِ وللإمامِ آكَدُ (بأن يأمرَ المأمومين بتسويةِ الصفوفِ) وإتمامُ الصفِّ الأولِ فالأولِ (أي لا ينبغي جعل صف ثان إلا بعد إكمال الصف وكذلك تقطيع الصفوف بأن يجعلوا فرجاً بين الصف الواحد وكذلك تباعُد الصفوف بعضها عن بعض بأن يزيد ما بين كل صف على ثلاثة أذرع). وجهةُ يمينِ الإمامِ أفضلُ.

THE INTENTION

النية

f8.3 Then one makes the intention with one's heart.

If it is for an obligatory prayer, one must intend performing the prayer, and that it is obligatory, and know which one it is, such as the

f8.3 ثمَّ ينْوي بقلبِهِ.

فإنْ كانَ فريضةً وَجَبَ نيةُ فعلِ الصلاةِ وكونِها فرضاً وتعيينِها ظهراً أوْ

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noon, midafternoon, or Friday prayer. The intention must coincide with one's first Allahu Akbar, obligatorily existing in the mind and recommended to be uttered with the tongue (N: before the first Allahu Akbar) as well. One intends it from the first of the phrase "Allahu akbar" to the last of it. It is not obligatory to specify the number of rak'as, or that it is for Allah Most High, or whether it is a current performance or a makeup prayer, though specifying these is recommended.

(A: some scholars hold that the mere determination to perform a particular prayer existing in the mind beforehand is sufficient. Such an intention could be expressed, for example, by walking to the mosque after hearing the call to the noon prayer (dis: w25).)

If the intention is for a nonobligatory prayer that has a particular time, one must intend which one it is, such as for 'Eid, the eclipse prayer, assuming the state of pilgrim sanctity (ihram), the sunna prayers before and after the noon prayer, and so forth.

If it is for a nonobligatory prayer that is wholly supererogatory, unconnected with a particular time, one may simply intend to perform *prayer*.

عصراً أو جمعةً ويَجِبُ قرنُ ذلكَ بالتكبيرِ فيُحْضِرُهُ في ذهنِهِ حتماً ويتلَفَّظُ بهِ تدباً ويَقْصِدُهُ مقارناً لأولِ التكبيرِ ويَسْتَصْحِبُهُ حتى يُفْرِغَهُ. ولا يَجِبُ التعرضُ لعددِ الركعاتِ ولا الإضافةُ إلى اللهِ تعالى ولا الأداءِ أوِ القضاءِ بلْ يُنْدَبُ ذلكَ.

وإنْ كانَتْ نافلةً مؤقتةً وَجَبَ التعيينُ كعيدٍ وكسوفٍ وإحرامٍ وسنةِ الظهرِ وغيرِ ذلكَ.

وإنْ كانَتْ نافلةً مطلقةً أجزأَهُ نيةُ الصلاةِ.

f8.4 [ولوْ شكَّ بعدَ التكبيرِ في النيةِ أوْ في شرطِها فيُمْسِكُ فإنْ ذكَرَها قبْلَ ركنٍ وقصُرَ الفصلُ (أي لم يمض مقدار فعل ركن) لمْ تبْطُلْ. وإنْ طالَ أوْ بعْدَ ركنٍ قوليٍّ أوْ فعليٍّ بَطَلَتْ].

f8.5 It immediately invalidates one's prayer:

(1) to cease to intend praying;

(2) to decide that one will cease to:

(3) not to know whether one has ceased to or not (O: meaning one hesitates in one's heart, saying, "Shall I stop intending or continue?" The mere thought of how it would be if one were to hesitate during the prayer is of no consequence, but rather the occurrence of doubt that negates one's resolve and certainty);

(4) to intend during the first rak'a to stop when one reaches the second;

f8.5 ولوْ قطَعَ النيةَ أوْ عزَمَ على قطعِها أوْ شكَّ هلْ قطَعَها (بأن تردد في قلبه وقال هل أقطعها أو استمر فيها والمراد أن يطرأ له الشك المناقض للجزم واليقين ولا عبرة بما يجري في الفكر أنه لوْ تردد في الصلاة كيف يكون) أوْ نوى في الركعةِ الأولى قطْعَها في الثانيةِ أوْ علَّقَ

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(5) or to decide to interrupt one's prayer if such and such a thing happens, regardless whether the event will definitely occur during the prayer or whether it merely *may* happen, such as, "I'll stop if Zayd comes in."

الخروج بما يُوجَدُ في الصلاة يقيناً أو توهماً كدخول زيدٍ بطلت في الحال.

f8.6 If one knowingly begins the noon prayer (N: for example) before its time has come, one's prayer is not legally considered to have begun. If one does so unknowingly, it is validly begun, but counts as a nonobligatory prayer.

f8.6 ولو أحرم بالظهر قبل الزوال عالماً لم تنعقد. أو جاهلاً انعقدت نفلاً.

THE OPENING ALLAHU AKBAR

تكبير الإحرام

f8.7 The Allahu Akbar (n: an integral) that begins the prayer can only be in Arabic and must be pronounced "Allāhu akbar" or "Allāhul-akbar."

One's prayer is not legally considered to have begun if one omits any of its letters, pauses between the two words, adds the letter waw (و) between them, or says "Allahu akbār" with a long *a* between the final *b* and *r*.

If unable to pronounce it because of being a mute or similar, one must move the tongue and lips according to one's capacity.

f8.7 ولفظُ التكبير متعينٌ بالعربية وهو اللهُ أكبرُ أو اللهُ الأكبرُ.
ولو أسقط حرفاً منه أو سكت بين كلمتيه، أو زاد بينهما واواً، أو بين الباء والراء ألفاً، لم تنعقد.
فإن عجز لخرس ونحوه وجب تحريكُ لسانه وشفتيه طاقتهُ.

f8.8 [فإن لم يعرف العربية كبّر بأيّ لغةٍ شاء وعليه أن يتعلّم إن أمكنه. فإن أهمل مع القدرة وضاق الوقتُ ترجم وأعاد الصلاة].

f8.9 The minimal valid audibility for saying "Allahu akbar," reciting the Koran, and all invocations (dhikr), is that one can hear them oneself, given normal hearing and lack of extraneous noise.

The imam speaks aloud (def: below) every time he says "Allahu akbar" in the prayer.

f8.9 وأقلُّ التكبير والقراءة وسائر الأذكار أن يُسمِعَ نفسَهُ إذا كان صحيحَ السمع بلا عارضٍ.
ويجهرُ الإمامُ بالتكبيرات كلّها.

f8.10 (A: Throughout the rulings, *aloud* (jahran) means that someone beside or behind the speaker could distinguish his words, while *to oneself* (sirran) means that the speaker can distinguish his own words, but such a person could not.)

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f8.11 It is obligatory that one be standing when one opens an obligatory prayer with "Allahu akbar." If a single letter of it occurs while not standing, the prayer is not considered to have validly begun as an obligatory prayer, but is considered to have begun as a supererogatory prayer, provided one is ignorant that it is unlawful, though not if one knows. (N: The latecomer to a group prayer should take careful note of this, and not bow or make other prayer movements until he has completed the opening Allahu Akbar while standing.)

f8.11 ويُشترطُ أنْ يُكبِّرَ قائماً في الفرضِ. فإنْ وَقَعَ منهُ حرفٌ في غيرِ القيامِ لم تَنْعَقِدْ فرضاً وتَنْعَقِدُ نفلاً لجاهلِ التحريمِ دونَ عالِمِهِ. (ح: وينبغي أن يلاحظ هذا المسبوق فلا يهوي للركوع أو غيره ما لم يتم التكبيرة قائماً).

f8.12 It is recommended to lift the hands to shoulder level when one says "Allahu akbar" (O: meaning that one's fingertips are even with the tops of the ears, thumbs with the earlobes, and palms with one's shoulders), fingers slightly outspread. If one intentionally or absentmindedly does not lift the hands at the first of saying "Allahu akbar," one may do so during it, though not afterwards. The palms face the direction of prayer (qibla) and the hands are uncovered.

After the opening Allahu Akbar, one places the hands between the chest and navel, grasping the left wrist with the right hand, and fixing one's gaze on the place where one's forehead will prostrate. (O: One does this when not reciting the Testification of Faith (Tashahhud, def: f8.45), where one only looks at the place of prostration until one says "except Allah," and then looks at the index finger.)

(A: It is offensive to close one's eyes while praying unless it is more conducive to awe and humility towards Allah.)

f8.12 ويُندبُ رَفْعُ يدَيْهِ حذوَ منكبَيْهِ (بأن تحاذي أطراف أصابعه أعلى أذنَيْهِ وإبهاماه شحمتي أذنيه وراحتاه منكبيه) مفرَّقةَ الأصابعِ مَعَ التكبيرِ. فإنْ تَرَكَهُ عمداً أوْ سهواً أتى بِهِ في أثناءِ التكبيرِ لا بعدَهُ. وتَكُونُ كفَّاهُ إلى القبلةِ مكشوفتَيْنِ.

ويَحُطُّهُما بعدَ التكبيرِ إلى تحتِ صدرِهِ وفوقَ سُرتِهِ ويَقْبِضُ كوعَهُ الأيسرَ بكفِّهِ الأيمنِ، ويَنْظُرُ إلى موضعِ سجودِهِ. (وهذا في غيرِ التشهدِ وأما فيه فينظرُ إلى محلِّ سجودِه أيضاً إلى أن يقولَ: إلا اللهَ» فينظرُ حينئذٍ إلى السبابةِ). (ع: ويكره إغماض عينيه إلا إذا كان أخشع).

THE OPENING SUPPLICATION (ISTIFTAH)

دعاء الاستفتاح

f8.13 Then one recites (N: to oneself) the Opening Supplication (Istiftah), which means: "I turn my face to Him who created the heavens and earth, a pure monotheist, in submission, and am not of those who associate others with Him. My prayer, worship, life, and death are for Allah, Lord of the Worlds, who has no partner. Thus I have been commanded, and I am of those who

f8.13 ثمَّ يقرأُ دعاءَ الاستفتاحِ وهُوَ «وَجَّهْتُ وَجْهِي لِلَّذِي فَطَرَ السَّمَاوَاتِ والأرضَ حَنِيفاً مُسْلِماً وَمَا أَنَا مِنَ المُشْرِكِينَ إنَّ صَلاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ العَالَمِينَ لا شَرِيكَ لَهُ وبِذَلِكَ أُمِرْتُ وأَنَا مِنَ المُسْلِمِينَ».

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submit."

This is recommended for anyone performing an obligatory or supererogatory prayer, even if seated; no matter whether a child, woman, or traveller (O: alone or in a group, imam or follower), though not for a funeral prayer.

ويُنْدَبُ ذلكَ لكلِّ مصلٍّ مفترضٍ ومتنفلٍ وقاعدٍ وصبيٍ وامرأةٍ ومسافرٍ (وسواء كان منفرداً أو في جماعة، إماماً أو مأموماً) لا في جنازةٍ.

f8.14 If one intentionally or absentmindedly omits the Opening Supplication (Istiftah) and begins saying "I take refuge, etc." (Ta'awwudh), one may not return to the Opening Supplication.

f8.14 ولوْ تركَهُ عمداً أوْ سهواً وشَرَعَ في التعوذِ لمْ يَعُدْ إليهِ.

f8.15 When (N: joining a group that has already begun, and) the imam says "Ameen" just after one's opening Allahu Akbar, one says "Ameen" with him and then recites the Opening Supplication (Istiftah).

If one says the opening Allahu Akbar and the imam finishes the prayer with Salams before one has sat down with the group, then one recites the Opening Supplication (Istiftah). But if one has already sat down when the imam finishes with Salams and one rises (N: to finish one's prayer), then one does not recite it (O: the Opening Supplication).

If one joins the group while the imam is standing, and one knows it is possible (O: to recite the Opening Supplication) together with saying "I take refuge," and so on (Ta'awwudh) and the Fatiha (N: all before the imam will finish his recital and bow), then one may recite the Opening Supplication, though if one has doubts (N: that there is enough time), one omits both the Opening Supplication and Ta'awwudh, and begins reciting the Fatiha. If the imam bows before one finishes (O: the Fatiha), one bows with him, provided one has omitted the Opening Supplication and Ta'awwudh, though if one did not omit them, then one must recite as much (A: as many letters) of the Fatiha as one recited of them, since if one bows before having recited that much, it invalidates one's prayer.

If one recites what we have just said is enough of the Fatiha to permit one to bow with the imam (n: when one is a latecomer, for otherwise it is obligatory to recite it all, as at f12.17(O:)), but one holds back from bowing with him without

f8.15 ولوْ أحْرَمَ فأمَّنَ الإمامُ عَقِبَهُ أمَّنَ معَهُ ثمَّ اسْتَفْتَحَ.

ولوْ أحْرَمَ فسلَّمَ الإمامُ قبلَ قعودِهِ اسْتَفْتَحَ.

وإنْ قَعَدَ [(المأموم المذكور في هذه الحالة معه)] فسلَّمَ [(الإمام)] فقامَ [(المأموم المذكور)] فلا (يستفتح).

ولوْ أدْرَكَ الإمامَ قائماً وعلِمَ إمكانَهُ (أي يمكنه الإتيان بدعاء الافتتاح) مَعَ التعوذِ والفاتحةِ أتى به. فإنْ شكَّ لمْ يَسْتَفْتِحْ ولمْ يَتَعَوَّذْ، بلْ يشرعُ في الفاتحةِ. فإنْ ركَعَ الإمامُ قبلَ أنْ يُتِمَّهَا (أي الفاتحة) ركَعَ معَهُ إن لم يكُنِ اسْتَفْتَحَ ولا تَعَوَّذَ. وإلاّ قرأ بقدرِ ما اشتغلَ به. فإنْ ركَعَ ولمْ يقرأْ بقدرِهِ بطلَتْ صلاتُهُ. وإنْ قرأ حيثُ قلنا

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excuse, then if the imam straightens up from bowing before one has oneself bowed, one has missed that rak'a (N: and must rise after the group has finished to perform it).

يَرْكَعُ فَتَخَلَّفَ بِلا عذرٍ فإنْ رَفَعَ الإمامُ قبلَ ركوعِهِ فاتَتْهُ الركعةُ.

SAYING "I TAKE REFUGE, ETC." (TA'AWWUDH)

التعوذ

f8.16 After the Opening Supplication, it is recommended to recite the *Ta'awwudh*, saying, "I take refuge in Allah from the accursed Devil."

It is said in every rak'a and especially recommended in the first, whether one is imam, follower, or praying by oneself, and whether the prayer is obligatory, supererogatory, or even a funeral prayer. It is said to oneself in both the prayers recited to oneself and those recited aloud.

f8.16 ويُنْدَبُ بعدَهُ: «أعوذُ باللهِ مِنَ الشَّيطانِ الرَّجيمِ».

ويَتَعَوَّذُ في كلِّ ركعةٍ وفي الأولى آكدُ سواءٌ الإمامُ والمأمومُ والمنفردُ والمفترضُ والمتنفلُ حتى الجنازةِ. ويُسِرُّ به في السريةِ والجهريةِ.

THE FATIHA

الفاتحة

f8.17 Then one recites the Fatiha (def: w1.16) in every rak'a (n: an integral), whether one is imam, follower, or praying alone.

The *Basmala* (n: the words "In the name of Allah, Most Merciful and Compassionate") is one of its verses. (n: In the other three schools, it is recited to oneself even when the rest is recited aloud (*Sharh al-sunna* (y22), 3.54).)

It is obligatory to recite the Fatiha's verses in order and without interruption. It is considered to be interrupted and must be begun again if one deliberately pauses at length during it, or pauses briefly but thereby intends to cease reciting, or mixes with it some words of invocation (dhikr) or Koran that are not in the interests of the prayer.

One's recital of the Fatiha is not considered to be interrupted if one speaks words during it that are in the interests of the prayer, such as saying "Ameen" in response to the imam's Ameen, or reminding him of the right words when he errors, or prostrating with him as a sunna for his Koran recital (def: f11.14). Nor is it interrupted if one forgetfully falls silent during it or absentmindedly adds some words of invocation (dhikr).

f8.17 ثمَّ يَقْرَأُ الفاتحةَ في كلِّ ركعةٍ سواءٌ الإمامُ والمأمومُ والمنفردُ.

والبسملةُ آيةٌ منها [ومن كلِّ سورةٍ غير براءةَ].

ويَجِبُ ترتيبُها وتواليها. فإنْ سَكَتَ فيها عمداً وطالَ، أوْ قَصُرَ وقَصَدَ قطعَ القراءةِ، أوْ خَلَّلَها بذكرٍ أوْ قراءةٍ مِنْ غيرِها مِمَّا لَيْسَ مِنْ مصلحةِ الصلاةِ، انْقَطَعَتْ قراءَتُهُ ويَسْتَأْنِفُها.

وإنْ كانَ مِنْ مصلحةِ الصلاةِ كتأمينِهِ لتأمينِ إمامِهِ، أوْ فتحِهِ عليهِ إذا غَلِطَ أوْ سجودِهِ لتلاوتِهِ ونحوِهِ، أوْ سَكَتَ أوْ ذَكَرَ ناسياً، لمْ يَنْقَطِعْ.

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f8.18 If one omits one of the Fatiha's letters (Ar. *harf*, a consonant or long vowel (A: mistakes in a short vowel (haraka) do not harm as long as they do not alter the meaning)), fails to double a letter that should be doubled, or substitutes a wrong letter for the right one, it invalidates (O: one's recital of that particular word, and one must recite the word again (dis: s3.3). But it does not invalidate one's prayer unless it changes the meaning and was done deliberately).

f8.18 ولـوْ تَرَكَ منهـا حرفاً أوْ تشديدةً أوْ أبْـدَل حرفـاً بحـرفٍ لمْ تَصِـحَّ (قراءته لهـذه الكلمة [لتغييره النظم] فيجب عليه حينئـذ إعـادة القـراءة لهـذه الكلمة . ولا تبطل صلاته إلا إنْ غير المعنى وتعمد) .

SAYING "AMEEN"

التأمين

f8.19 After reciting (n: the last words of the Fatiha) "nor of the lost," one says "Ameen" to oneself in prayers spoken to oneself and aloud in those recited aloud.

When following an imam, one says "Ameen" when he does, and then a second time (N: to oneself) when finished with one's own recital of the Fatiha.

f8.19 وإذا قالَ: ﴿وَلَا الضَّـالِّينَ﴾ قالَ: «آمينَ» سراً في السرية وجهراً في الجهرية .

ويُـؤَمِّنُ المأمـومُ جهـراً مقـارنـاً لتأمينِ إمامه في الجهرية ويُؤَمِّنُ ثانياً لفراغِ فاتحته .

RECITING A SURA

قراءة السورة

f8.20 If one is the imam or praying by oneself, it is recommended in the first and second rak'as only to recite one complete sura (O: even if short) after the Fatiha.

It is recommended to recite:

(1) the suras from al-Hujurat (Koran 49) to al-Naba' (Koran 78) for the dawn (subh) and noon (zuhr) prayers;

(2) the suras from al-Naba' (Koran 78) to al-Duha (Koran 93) for the midafternoon ('asr) and nightfall ('isha) prayers;

(provided that there are a restricted number of followers (O: meaning no others are praying behind the imam) who do not mind the length of these ((1) and (2) above) recitations, though if otherwise, the imam should be brief)

f8.20 ثمَّ يُنْـدَبُ لإمـامٍ ومنفـردٍ في الـركعـةِ الأولى والثـانية فقطْ بعدَ الفاتحةِ قراءةُ سورةٍ كاملةٍ (ولو كانت قصيرة) .

ويُنْـدَبُ لصبحٍ وظهرٍ طوالُ المفصَّلِ (والطوال من الحجرات إلى عم) ، وعصرٍ وعشـاءٍ أوسـاطُـهُ (والأوساط من عم إلى الضحى) ومغـربٍ قصـارُهُ (والقصـار من

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(3) the suras from al-Duha (Koran 93) to the end (Koran 114) for the sunset prayer (maghrib);

(4) al-Sajda (Koran 32) for the dawn prayer on Friday (n: in the first rak'a, when the group may prostrate during the recital, as at f11.14), and al-Insan (Koran 76) (n: in the second rak'a);

(5) and al-Kafirun (Koran 109) (n: in the first rak'a) and al-Ikhlas (Koran 112) (n: in the second) for the sunna prayers that accompany the sunset and dawn prayers (def: f10.2), for the two rak'as after circumambulating the Kaaba (j5), and for the *guidance prayer* (istikhara, f10.12).

الضحى إلى الآخر) إنْ رَضِيَ بطوالِه وأوساطِه مأمومونَ محصورونَ (أي لا يصلي وراءه الإمام غيرهم). وإلاَّ خَفَّفَ. ولصبحِ الجمعةِ ألم تنزيل وهلْ أتى، ولسنةِ المغربِ ولسنةِ الصبحِ، وركعتي الطوافِ والاستخارةِ قلْ يا أيُّها الكافرونَ والإخلاصُ.

f8.21 It is recommended to recite the Koran in a distinct, pleasant way (tartil) (O: i.e. to recite it as revealed by Allah, observing the proper rules of Koranic recitation) and to reflect upon its lessons and meanings (dis: w26).

f8.21 ويُنْدَبُ الترتيلُ (وهو أن يقرأ على الوجه الذي نزل من عند الله بأن يُدْغِمَ ويُغِنَّ ويُمِدَّ في محل كل منها) والتدبُّرُ.

f8.22 It is offensive for a follower to recite a sura when praying behind an imam whose recital is audible to him, though it is recommended for the follower to recite the sura during prayers that are not recited aloud, or those recited aloud if he cannot hear the imam's recital due to the distance or poor hearing, or can hear it, but uncomprehendingly.

f8.22 وتُكْرَهُ السورةُ لمأمومٍ يَسْمَعُ قراءةَ الإمامِ. فإنْ كانتْ سريةً، أوْ جهريةً ولمْ يَسْمَعْ لبُعدٍ أوْ صممٍ نُدِبَتْ لهُ أيضاً وكذا لوْ كانَ يَسْمَعُ قراءةَ الإمامِ ولمْ يَفْهَمْ [على الأصحِّ].

f8.23 One recites a longer sura in the first rak'a than in the second.

f8.23 ويُطَوِّلُ الأولى على الثانيةِ.

f8.24 If a latecomer to a group prayer misses the first two rak'as with the group and then performs them alone after the imam has finished the group prayer with Salams, he is recommended to recite the suras to himself during them.

f8.24 ولوْ فاتَ المسبوقَ ركعتانِ فتَدارَكَهُما بعدَ السلامِ نُدِبَتِ السورةُ فيهما سرّاً.

f8.25 The imam (or person praying by himself) recites the Fatiha and suras aloud for the dawn prayer (subh), Friday prayer (jumu'a), prayer on the two 'Eids (def: f19), drought prayer (f21), lunar eclipse prayer (f20), the group prayer that is

f8.25 ويَجْهَرُ الإمامُ والمنفردُ في الصبحِ والجمعةِ والعيدَيْنِ والاستسقاءِ وخسوفِ القمرِ والتراويحِ والأوْلَيَيْنِ مِنَ

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sunna on the nights of Ramadan (tarawih, f10.5), and for the first two rak'as of the sunset (maghrib) and nightfall ('isha) prayers.

In other prayers, the Fatiha and suras are recited to oneself.

When making up at night (*layl*, from sunset to true dawn) a prayer that one missed during the day or night, one recites aloud. When making up in the daytime (*nahar*, from dawn to sunset) a prayer that one missed during the day or night, one recites to oneself. At dawn, however (N: from true dawn to sunrise), all makeup prayers are recited aloud. (N: The upshot is that one recites aloud in all prayers that are made up at times when one normally recites aloud, and recites to oneself at the times one normally recites to oneself.)

المغرب والعشاء.

ويُسرُّ في الباقي. فإن قضى فائتة الليل أو النهار ليلاً جهر. أو فائتة النهار أو الليل نهاراً أسرّ. إلا الصبح فإنه يجهرُ بقضائها مطلقاً [(أي بالقضاء في وقتها. وعبارة المصنف كعبارة الروضة توهم أن الصبح يجهر في قضائها مطلقاً ولو نهاراً)]. (ح: والحاصل أنه يجهر في وقت الجهرية ويسر في وقت السرية سواء كانت الفائتة جهرية أم سرية).

f8.26 [ومَنْ لا يُحْسِنُ الفاتحةَ لَزِمَهُ تعلُّمُها. وإلاّ فقراءتُها من مصحف (وترجمة القرآن ليست قرآناً بإجماع المسلمين). فإنْ عَجَزَ لعدم ذلك أو لم يَجِدْ معلماً أو ضاق الوقتُ حَرُمَتْ بالعجمية. فإنْ أحْسَنَ غيرَها لَزِمَهُ سبعُ آياتٍ لا تَنْقُصُ حروفُها عنْ حروفِ الفاتحةِ (وحروف الفاتحة بالبسملة مائة وستة وخمسون حرفاً) فإنْ لَمْ يُحْسِنْ قُرآناً لَزِمَهُ سبعةُ أذكارٍ بعددِ حروفِها. فإنْ أحْسَنَ بعضَ الفاتحةِ قرأهُ وأتى بَدَلَهُ من قرآنٍ أو ذكرٍ. فإنْ حَفِظَ الأولَ قرأهُ ثمَّ أتى بالبدلِ. أو الآخرَ أتى بالبدلِ ثمَّ قرأهُ. فإنْ لَمْ يُحْسِنْ شيئاً وَقَفَ بقدرِ الفاتحةِ ولا إعادةَ عليهِ].

STANDING

القيام

f8.27 Standing is an integral in all obligatory prayers (O: for anyone who can stand, whether by himself or assisted by another, though it is not an integral in nonobligatory prayers).

Standing requires that the spine be upright. One is not standing if one inclines forward so that the backbone is no longer straight, or bends so that one is closer to *bowing* (def: f8.29) than to standing. If a person's back is bowed with age or the like so that his normal posture resembles someone bowing, then he stands as he is, but must bend a little further for bowing if able to.

It is offensive in prayer to stand on one foot, for both feet to be held together (A: though this is sunna for women), or for one foot to be ahead of the other.

To stand at length (A: reciting the Koran in prayer) is better than to prostrate or bow at length (A: therein).

f8.27 والقيامُ ركنٌ في المفروضةِ (لا في النافلة، للقادر عليه إما بنفسه أو غيره).

وشرطُهُ أنْ يَنْصِبَ فقارَ ظهرِهِ. فإنْ مَالَ بحيثُ خَرَجَ عنِ القيامِ (أي عن ضابطه المذكور) أو انْحَنَى وصارَ إلى الركوعِ أقربَ لَمْ يُجْزِ. ولوْ تَقَوَّسَ ظهرُهُ لكبرٍ أوْ غيرِهِ حتى صارَ كراكعٍ وَقَفَ كذلكَ ثمَّ زادَ انحناءً للركوعِ إنْ قَدَرَ.

ويُكْرَهُ أنْ يَقومَ على رِجْلٍ واحدةٍ وأن يُلْصِقَ قدميْهِ وأن يُقَدِّمَ إحداهُما على الأخرى.

وتطويلُ القيامِ أفضلُ مِنْ تطويلِ السجودِ والركوعِ.

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f8.28 It is permissible to pray nonobligatory prayers seated (O: any way one wishes, though the *iftirash* (def: f8.37) style of sitting is best) or lying down, even when able to stand (A: but the merit is less than to do so standing).

f8.28 ويُباحُ النفلُ قاعداً (على أي هيئة من هيئات القعود لكن الافتراش أفضل من غيره) ومضطجعاً مع القدرة على القيام.

BOWING

الركوع

f8.29 Then one bows from the waist (n: an integral).

The minimum is to bow as far as an average size person needs to when he wants to put his hands on his knees. It is obligatory that one *repose* therein, minimally meaning to remain motionless for a moment after having moved. It is also obligatory that one intend nothing by the motion but bowing.

f8.29 ثمّ يَرْكَعُ.

وأقلُّهُ أنْ يَنْحَنِيَ بحيثُ لوْ أرادَ وضعَ راحتَيْهِ على ركبتَيْهِ مَعَ اعتدالِ الخلقةِ لقدرَ. ويَجِبُ الطمأنينةُ وأقلُّها سكونٌ بعدَ حركةٍ. وأن لا يَقصِدَ بهويِّهِ غيرَ الركوعِ.

f8.30 The optimal way is to raise one's hands and say "Allahu akbar" so that one begins raising the hands as one starts saying it, and when the hands are at shoulder level, one bows.

Whenever one says "Allahu akbar" during a movement from one prayer posture to another, it is recommended to prolong the words until one reaches the next posture (A: so that one's prayer is not devoid of invocation (dhikr) at any point).

Then one puts the hands on the knees, fingers apart, with back and neck extended, legs straight, and elbows out, though women keep them close.

One then says, "My Lord Most Great is exalted above all limitation," three times, the least that is optimal. If praying alone, or the imam of a limited number of followers who do not mind the extra length, one may increase the number of times one says this to five, seven, nine, or eleven.

When finished, (O: however many times one has said it,) it is recommended to say, "O Allah, to You I bow, in You I believe, to You I submit. My hearing, sight, mind, bones, nerves, and all that my feet bear up are humbled before You."

f8.30 وأكملُ الركوعِ أنْ يُكَبِّرَ رافعاً يديْهِ فيَبْتَدِئُ الرفعَ مَعَ التكبيرِ فإذا حاذَى كفاهُ منكبيْهِ انْحَنَى.

ويَمُدُّ تكبيراتِ الانتقالاتِ.

ويضعُ يديْهِ على ركبتَيْهِ مفرقةَ الأصابعِ ويَمُدُّ ظهرَهُ وعنقَهُ ويَنْصِبُ ساقَيْهِ ويُجافي مرفقَيْهِ عنْ جنبَيْهِ وتَضُمُّ المرأةُ. ويقولُ «سُبْحانَ ربِّيَ العظيمِ» ثلاثاً وهو أدْنَى الكمالِ. ويَزيدُ المنفردُ وكذا الإمامُ إنْ رَضِيَ المأمومونَ وهُمْ محصورونَ خامسةً وسابعةً وتاسعةً وحادِيَ عَشَرَ.

ثمّ (بعد التسبيح المذكور قليلاً كان أو كثيراً) يقولُ «اللهُمَّ لَكَ رَكَعْتُ وبِكَ آمَنْتُ ولَكَ أسْلَمْتُ خَشَعَ لكَ سَمْعِي وبَصَرِي ومُخِّي وعَظْمِي وعَصَبِي وما اسْتَقَلَّتْ بِهِ قَدَمِي».

STRAIGHTENING UP

الاعتدال

f8.31 Then one lifts one's head, the minimum of which is to return to standing as one was before

f8.31 ثمّ يَرْفَعُ رأسَهُ، وأقلُّهُ، أنْ يَعُودَ إلى ما كانَ عليهِ قبلَ الركوعِ،

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bowing, and then remain motionless for a moment. (n: Each is an integral.) It is obligatory to intend nothing by one's movement except straightening up.

ويطمئن ويجب أن لا يقصد غير الاعتدال. [فلو رفع فزعاً من حية ونحوها لم يجزئه].

f8.32 The optimal way is to raise the hands (A: lifting them from the knees as one starts straightening up, raising them to shoulder level) and the head together, saying, "Allah hears whoever praises Him." This is said whether one is imam, follower, or praying alone. When one is standing upright, one says, "Our Lord, all praise is Yours, heavensful, earthful, and whatever-else-You-will-full."

(O: If following an imam or praying alone, one says this to oneself. If imam, one says "Allah hears whoever praises Him" aloud, but the rest to oneself.)

Those we have previously mentioned who wish to add to the words of bowing may add here, "O You who deserve praise and glory, the truest thing a slave can say (and all of us are Your slaves) is, 'None can withhold what You bestow, none can bestow what You withhold, and the fortune of the fortunate avails nothing against You.' "

f8.32 وأكملُهُ أنْ يرفعَ يديهِ حالَ ارتفاعِهِ [(أي يكون رفع اليدين مقارناً لرفع رأسه)] قائلاً «سَمِعَ اللهُ لِمَنْ حَمِدَهُ» سواءٌ الإمامُ والمأمومُ والمنفردُ. فإذا انتصبَ قائماً قالَ: «رَبَّنا لكَ الحَمْدُ مِلْءَ السموات ومِلْءَ الأرضِ ومِلْءَ ما شِئْتَ مِنْ شيءٍ بَعْدُ».

(ويكون القول سراً من المأموم والمنفرد، والإمامُ يجهر بسمع الله لمن حمده ويسر بما بعده).

ويزيدُ مَنْ قُلْنا يزيدُ في الركوعِ «أهْلَ الثَّناءِ والمَجْدِ أحَقُّ ما قالَ العَبْدُ وكُلُّنا لَكَ عَبْدٌ لا مانِعَ لِما أعْطَيْتَ ولا مُعْطِيَ لِما مَنَعْتَ ولا يَنْفَعُ ذا الجَدِّ مِنْكَ الجَدُّ».

PROSTRATION

السجود

f8.33 Then one prostrates (n: an integral). The conditions for its validity are:

(a) that an uncovered portion of the forehead touch a part of the place of prayer (N: it is not obligatory that any of the other limbs of prostration be uncovered);

(b) that one remain motionless for a moment while prostrating;

(c) that the place of prostration bear the weight of the head;

(d) that one's rear be higher than one's head;

(e) that one not prostrate on something joined to one's person that moves with one's motions, such as a sleeve or turban;

f8.33 ثمَّ يَسْجُدُ.

وشروطُ إجزائِهِ أنْ يُباشِرَ مُصَلاَّهُ بجبهتِهِ أوْ بعضِها مكشوفاً (ح: ولا يجب كشف غيرها من أعضاء السجود) ويطْمَئِنَّ، وأنْ يَنالَ مُصَلاَّهُ ثِقَلَ رأسِهِ وأنْ تَكُونَ عجيزتُهُ أعلى مِنْ رأسِهِ وأنْ لا يَسْجُدَ على مُتَّصِلٍ بِهِ يَتَحَرَّكُ بحركتِهِ ككُمٍّ وعمامةٍ، وأنْ لا يَقْصِدَ بهويِّهِ غيرَ

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(f) that nothing but prostration be intended by one's motion;

(g) and that part of each knee, the bottom of the toes of each foot, and the fingers of each hand be placed on the ground.

(O: In our school, it is not obligatory that the nose touch the ground in prostration, though it is desirable.)

السجود، وأنْ يَضَعَ جزءاً مِنْ ركبتَيْهِ وبطُونِ أصابعِ رجلَيْهِ وكفَّيْه على الأرضِ. (ومذهبنا أنه لا يجب السجود على الأنف وإنما يستحب).

f8.34 If one cannot fully prostrate so that one's forehead touches the ground (N: a pregnant woman, for example), then it is not necessary to stack up pillows on the place of prostration to touch the forehead on them. One merely bows as low as one can.

If one has put a bandage on the forehead because of an injury that affects all of it, and there is hardship in removing it (O: severe enough to permit dry ablution (tayammum) (def: e12.9)), then one may prostrate upon it and need not make up the prayer.

f8.34 ولوْ تَعذَّرَ التكيسُ لمْ يَجِبْ وضعُ وسادةٍ ليَضَعَ الجبهةَ عليْها بلْ يَخْفِضُ القدرَ الممكنَ.

ولوْ عَصَبَ جبهتَهُ لجراحةٍ عمَّتْها وشَقَّ إزالتُها (مشقة شديدة تبيح التيمم) سَجَدَ عليْها بلا إعادةٍ.

f8.35 The optimal way to prostrate is to say "Allahu akbar" and:

(1) to put the knees down first, then the hands, and then the forehead and nose (O: the order is called for, and any other order is offensive);

(2) to prostrate with the hands directly under one's shoulders, fingers together, extended towards the direction of prayer (qibla), hands uncovered;

(3) for men to keep 1 span (n: about 23 cm.) between the two knees and two feet (O: though a woman's are kept together);

(4) for men to keep the stomach apart from the thighs, and forearms from sides, though women keep them together;

(5) and to say three times, "My Lord Most High is exalted above all limitation."

f8.35 وأكملُهُ أنْ يُكبِّرَ ويَضَعَ ركبتَيْهِ ثمَّ يدَيْهِ ثمَّ جبهتَهُ وأنفَهُ دفعةً (والترتيب بين المذكورات مطلوب وخلافه مكروه) ويَضَعَ يدَيْهِ حذوَ منكبَيْهِ منشورةَ الأصابعِ نحوَ القبلةِ مضمومةً مكشوفةً ويُفرِّقَ ركبتَيْهِ وقدمَيْهِ قدرَ شبرٍ (هذا إن كانَ المصلي رجلاً وإلا ضمَّ ركبتيه) ويرْفَعَ الرجلُ بطنَهُ عنْ فخذَيْهِ وذراعَيهِ عنْ جنبَيْهِ وتضُمُّ المرأةُ ويقولَ: «سُبْحانَ ربِّيَ الأعلى» ثلاثاً.

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Those we have previously mentioned who wish to add to the words of bowing may increase the number of times this is said as previously described (O: namely, in odd numbers up to eleven) and add: "O Allah, I prostrate myself to You, believe in You, and surrender to You. My face prostrates to Him who created it and gave it form, who opened its hearing and vision by His power and strength. Allah is exalted in perfection, the Best of Creators."

It is commendable to supplicate Allah while prostrating.

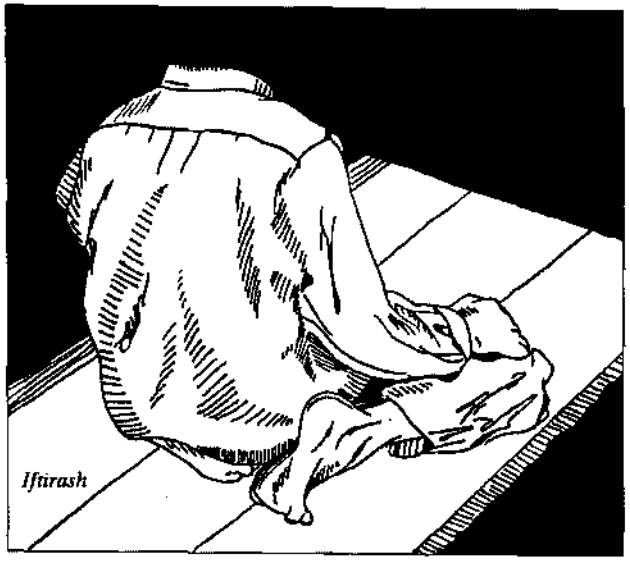
وَيَزِيدُ مَنْ قُلْنَا يَزِيدُ فِي الرُّكُوعِ تَسْبِيحًا كَمَا سَبَقَ (أَيْ فِي أَكْمَلِهِ وَهُوَ إِحْدَى عَشْرَةَ تَسْبِيحَةً) فِي الرُّكُوعِ ثُمَّ «اللَّهُمَّ لَكَ سَجَدْتُ وَبِكَ آمَنْتُ وَلَكَ أَسْلَمْتُ سَجَدَ وَجْهِي لِلَّذِي خَلَقَهُ وَصَوَّرَهُ وَشَقَّ سَمْعَهُ وَبَصَرَهُ بِحَوْلِهِ وَقُوَّتِهِ تَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ». وَإِنْ دَعَا فَحَسَنٌ.

SITTING BETWEEN PROSTRATIONS

الجلوس بين السجدتين

f8.36 Then one raises the head (N: and sits back before prostrating a second time. Sitting at this point is an integral). It is obligatory to sit motionlessly for at least a moment and to intend nothing but sitting by one's movement.

f8.36 ثُمَّ يَرْفَعُ رَأْسَهُ، وَيَجِبُ الْجُلُوسُ مُطْمَئِنًّا وَأَنْ لَا يَقْصِدَ بِرَفْعِهِ غَيْرَهُ.



f8.37 The optimal way is:

(1) to say "Allahu akbar" (N: as one raises the head);

(2) to sit in *iftirash*, which is to place the left foot on its side and sit upon it while keeping the

f8.37 وَأَكْمَلُهُ أَنْ يُكَبِّرَ وَيَجْلِسَ مُفْتَرِشًا يَفْرِشُ يُسْرَاهُ وَيَجْلِسُ عَلَيْهَا

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right foot resting on the bottom of its toes, heel up;

(3) to place one's two hands on the thighs near the knees, fingers extended and held together;

(4) and to say, "O Allah, forgive me, have mercy on me, pardon me, set me right, guide me, and sustain me."

وينصب يمناه ويضع يديه على فخذيه بقرب ركبتيه منشورة مضمومة الأصابع ويقول: «اللهم اغفر لي، وارحمني، وعافني، واجبرني، واهدني، وارزقني».

f8.38 There are two other ways of sitting back (iq'a') (O: between the two prostrations, or at the first and second Testifications of Faith (Tashahhud, def: f8.45)).

One way is to sit back on the heels with the bottom of the toes and knees upon the ground. This is recommended between the two prostrations, though *iftirash* (def: f8.37) is better.

The other way is to simply sit on the ground, palms down, and knees drawn up. This is offensive in any prayer.

f8.38 والإقعاء ضربان (بين السجدتين أو في التشهد الأول أو الأخير).

أحدهما أن يضع أليتيه على عقبيه، وركبتيه وأطراف أصابعه بالأرض وهو مندوب بين السجدتين ولكن الافتراش أفضل.

والثاني أن يضع أليتيه ويديه بالأرض وينصب ساقيه وهذا مكروه في كل صلاة.

f8.39 Then one prostrates again just as before. (O: The first rak'a is only completed when one has performed the second prostration, because each prostration is a separate integral, as is the moment of motionlessness in each.)

f8.39 ثم يسجد سجدة أخرى مثل الأولى. (وقد تمت الركعة الأولى من ركعات الصلاة بالسجدتين لأن كل سجدة ركن مستقل من أركان الصلاة مع طمأنينة كل منهما).

f8.40 After this one raises the head, saying "Allahu akbar" (O: as one first raises it, drawing out the words until one is standing upright).

It is sunna, here and in each rak'a that is not followed by the Testification of Faith (Tashahhud), to briefly rest in the *iftirash* style of sitting (f8.37) before rising. Then one (O: quickly) rises, helping oneself up with both hands (O: palms down), and prolonging the Allahu Akbar until standing. If the imam omits this brief sitting, the follower performs it anyway. It is not done after a Koran recital prostration (def: f11.13).

f8.40 ثم يرفع رأسه مكبراً (مع ابتداء الرفع المذكور بمده إلى أن ينتصب قائماً).

ويسن أن يجلس مفترشاً جلسة لطيفة للاستراحة عقيب كل ركعة لا بعقبها تشهد ثم ينهض (أي يسرع إلى القيام) معتمداً على يديه (أي على بطن كفيه منهما) ويمد التكبير إلى أن يقوم وإن تركها الإمام جلسها المأموم ولا تشرع لرفع من سجود التلاوة.

f8.41 Then one performs the second rak'a of the prayer just like the first, except for the initial intention, the opening Allahu Akbar, and Opening Supplication (Istiftah).

f8.41 ثم يصلي الركعة الثانية كالأولى إلا في النية والإحرام والاستفتاح.

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f8.42 If one's prayer exceeds two rak'as, one sits in *iftirash* (def: f8.37) after the first two rak'as and recites the Testification of Faith (Tashahhud, f8.45) and the Blessings on the Prophet (Allah bless him and give him peace), though not upon his family (N: which is done only in the final Testification of Faith at the end of the prayer).

Then one rises, saying "Allahu akbar" and leaning on one's hands (n: as before). When standing, one lifts the hands to shoulder level (A: which one does here, but not after rising from the first or third rak'a), and then goes on to perform the remainder of the prayer as one did the second rak'a, except that one recites the Fatiha to oneself and does not recite a sura after it.

f8.42 فإنْ زادتْ صلاتُهُ على ركعتَيْنِ جَلَسَ بعدَهُما مفترشاً وتَشَهَّدَ وصَلَّى على النبيِّ صَلَّى اللهُ عَلَيْهِ وسَلَّمَ وحدَهُ دونَ آلِهِ.

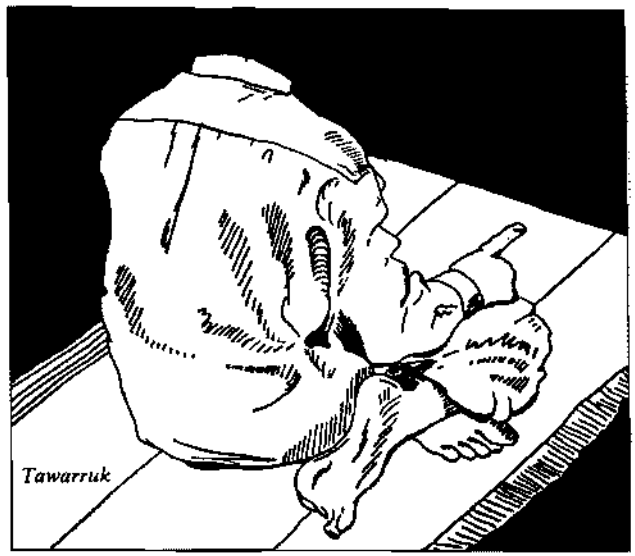
ثمَّ يَقُومُ مُكَبِّراً معتمداً على يديْهِ فإذا قامَ رفعَهُما حذوَ منكبيْهِ ويُصَلِّي ما بقِيَ كالثانيةِ إلاَّ في الجَهْرِ والسورةِ.

TESTIFICATION OF FAITH (TASHAHHUD)

التشهد

f8.43 One sits back (n: an integral) at the last of one's prayer for the Testification of Faith in the *tawarruk* style of sitting, with one's (O: left) posterior on the ground and left foot on its side, emerging from under the right, which is vertical.

f8.43 ويَجْلِسُ في آخِرِ صلاتِهِ للتشهدِ متوركاً يَفْرِشُ يسراهُ وينْصِبُ يمناهُ ويُخْرِجُها بيْنَ تحتِهِ ويُفْضي بوركِهِ إلى الأرضِ (أي يلصق وركه الأيسر



(O: The wisdom in the difference between the ways of sitting during the two Testifications of Faith, namely, *iftirash* (f8.37) in the first and

بالأرض. والحكمة في المخالفة بين التشهدين في الجلوس فيهما وهو الافتراش في الأول والتورك في الأخير

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tawarruk in the second, is that a latecomer to group prayer may know by observing the former that the prayer has not finished, and by the latter that it nearly has.

Imam Malik holds the sunna in both testifications to be the *tawarruk* style of sitting; while Abu Hanifa holds that the *iftirash* style is sunna for both. May Allah have mercy on them all for explaining the Deity's command without the slightest loss.)

However one sits here (O: in the final Testification of Faith (Tashahhud)) and in the foregoing (O: Testification of Faith, and between the two prostrations, and before rising) is permissible, though *iftirash* and *tawarruk* are sunna.

A latecomer to a group prayer sits in *iftirash* at the end of his imam's prayer and sits in *tawarruk* at the end of his own.

Similarly, the person who must perform a forgetfulness prostration (def: f11) sits in *iftirash* for his last Testification of Faith, prostrates for forgetfulness, and then sits in *tawarruk* for his Salams.

ليعلم المسبوق أن الصلاة لم تفرغ في حال الافتراش، وقد فرغت في التورك.

ويسن التورك عند الإمام مالك مطلقاً، ويسن الافتراش عند أبي حنيفة مطلقاً. رحم الله الجميع حيث بينوا حكم الإله بلا تضييع).

وكيفَ قعدَ هنا (أي الجلوس الأخير) وفيما تَقَدَّمَ (أي في الجلوس للتشهد وفي الجلوس بين السجدتين وللاستراحة) جازَ وهيئةُ الافتراشِ والتورك سنةٌ.

ويَفْتَرِشُ المسبوقُ في آخرِ صلاةِ الإمامِ ويَتَوَرَّكُ آخرَ صلاةِ نفسِه.

وكذا يَفْتَرِشُ هنا مَنْ عليه سجودُ سهوٍ وإذا سَجَدَ تَوَرَّكَ وسَلَّمَ.

f8.44 In the two Testifications of Faith, one's left hand rests on the left thigh near the knee, its fingers extended and held together. The right hand is similarly placed, but is held closed with its thumb touching the side of the index finger, which alone is left extended. One lifts the index finger and points with it when one says the words "except Allah." One does not move it while it is thus raised (O: following the sunna from a hadith related by Abu Dawud. It is offensive to move it here, though some hold that it is recommended, the evidence for which is also from the sunna, in a hadith related by Bayhaqi, who states that both hadiths are rigorously authenticated (sahih). Precedence is given to the former hadith, which negates moving the finger, over the latter hadith, which affirms it, because scholars hold that what is sought in prayer is lack of motion, and moving it diminishes one's humility. The Prophet's moving it (Allah bless him and give him peace) was merely to teach people that it was permissible (A: as it was the Prophet's duty (Allah bless him and give him peace) to distinguish for his Community the acts that were offensive from those that were

f8.44 ويَضَعُ في التشهدَيْنِ يسراهُ على فخذِه عندَ طرفِ ركبتِيه مبسوطةً مضمومةً ويَقْبِضُ يمناهُ ويُرسِلُ المسبِّحةَ ويَضَعُ إبهامَهُ على حرفِها ويَرْفَعُ المسبحةَ مشيراً بها عندَ قولِه: «إلاّ اللهُ». ولا يُحرِّكُها عندَ رفعِها (للاتباع رواه أبو داود. فلو حركها كره. وقيل إن تحريكها مندوب، ودليل الندب الاتباع أيضاً رواه البيهقي وقال الحديثان صحيحان. وتقديم الأول النافي على الثاني المثبت لما قام عندهم في ذلك وهو أن المطلوب في الصلاة عدم الحركة أو لأن التحريك يذهب الخشوع وتحريكه ﷺ لبيان

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unlawful, and he was given the reward of the obligatory for doing such offensive acts). Moreover, Bayhaqi says that the meaning of *moving it* in the latter hadith is simply *raising* it, so there is no actual contradiction).

الجواز. بل قال البيهقي إن المراد بالتحريك الرفع فلا معارضة).

f8.45 The minimal Testification of Faith (Tashahhud) is to say: "Greetings to Allah. Peace be upon you, O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon Allah's righteous slaves. I testify there is no god except Allah, and that Muhammad is the Messenger of Allah."

The optimal way is to say: "Greetings, blessings, and the best of prayers to Allah. Peace be upon you O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon Allah's righteous slaves. I testify that there is no god except Allah, and that Muhammad is the Messenger of Allah."

Its words (N: minimal or optimal) are obligatory (O: i.e. when one can recite the Arabic, one may not use other words) and their order is a condition. If one cannot say it, one must learn. If one cannot learn (O: because there is no teacher, or there is, but one is unable), then one may translate it (O: to any language one wishes).

One then says the Blessings on the Prophet (Allah bless him and give him peace) (n: an integral after the final Testification of Faith, but merely sunna after the first one, as at f9.15 below).

The minimum is to say, "O Allah, bless Muhammad." (n: One confines oneself to this minimum at the first Testification of Faith, as mentioned above at f8.42.)

The optimal way is to say: "O Allah, bless Muhammad and the folk of Muhammad as You blessed Ibrahim and the folk of Ibrahim. And show grace to Muhammad and the folk of Muhammad as You did to Ibrahim and the folk of Ibrahim in the worlds, for You are truly the Most Praiseworthy and Noble."

(A: It is desirable to add before each mention of the names *Muhammad* and *Ibrahim* the word *sayyidina* ("our liegelord"). The hadith "Do not liegelord me in the prayer" is a forgery containing corrupt Arabic.)

f8.45 وأقلُّ التشهد «التَّحِيَّاتُ لِلّهِ سلامٌ عليكَ أيُّها النَّبيُّ ورَحْمَةُ اللّهِ وبَرَكاتُهُ سلامٌ علينا وعلى عبادِ اللّهِ الصَّالحينَ أشْهَدُ أنْ لا إلهَ إلاّ اللّهُ وأنَّ مُحَمَّداً رَسُولُ اللّهِ».

وأكملُهُ «التَّحِيَّاتُ المُبارَكاتُ الصَّلَوَاتُ الطَّيِّباتُ لِلّهِ السَّلامُ عَلَيْكَ أيُّها النَّبيُّ ورَحْمَةُ اللّهِ وبَرَكاتُهُ السَّلامُ عَلَيْنا وعلى عِبادِ اللّهِ الصَّالحينَ أشْهَدُ أنْ لا إلهَ إلاّ اللّهُ وأشْهَدُ أنَّ مُحَمَّداً رَسُولُ اللّهِ».

وألفاظُهُ متعينةٌ (فلا يصح العدول عنها إلى غيرها إذا كان قادراً على العربية) ويُشْتَرطُ ترتيبُها. فإنْ لمْ يُحْسِنْهُ وَجَبَ التعلُّمُ. فإنْ عَجَزَ (لعدم معلّم أو وجد وتعذر تعلمه) تَرْجَمَ (عنه بأي لغة شاء).

ثمّ يُصَلّي على النبيِّ ﷺ.

وأقلُّهُ «اللّهُمَّ صَلِّ على مُحَمَّدٍ».

وأكملُهُ «اللّهُمَّ صلِّ على مُحَمَّدٍ وعلى آلِ مُحَمَّدٍ كَمَا صَلَّيْتَ على إبْراهِيمَ وعلى آلِ إبْراهِيمَ وبَارِكْ على مُحَمَّدٍ وعلى آلِ مُحَمَّدٍ كَمَا بَارَكْتَ على إبراهِيمَ وعلى آلِ إبراهِيمَ في العَالَمينَ إنَّكَ حَميدٌ مَجيدٌ».

(ع: ويستحب أن يزيد فيه السيادة. وحديث «لا تسيّدوني في الصلاة» موضوع ملحون).

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f8.46 It is recommended afterwards (O: after the second Testification of Faith (Tashahhud) of the prayer, though not after the first) to supplicate Allah for any permissible thing one wishes concerning one's religion or this world. One of the best supplications is: "O Allah, forgive me what I have done and what I may do, what I have hidden and what I have made known, my excesses and what You know better than I. Only You put one ahead or behind. There is no god but You."

It is recommended (O: if one is imam) that such supplications be briefer than the Testification of Faith with its Blessings on the Prophet (Allah bless him and give him peace) (O: though if one is alone, one may supplicate as long as one wishes, if not afraid of forgetting (N: that one is still in the prayer)).

f8.46 ويُنْدَبُ بعدَهُ (أي بعد الفراغ من التشهد الأخير أما التشهد الأول فلا يُسَنُّ بعده الدعاء) الدعاءُ بما يجوزُ من أمر الدين والدنيا ومِنْ أفضلِهِ «اللَّهُمَّ اغْفِرْ لي مَا قَدَّمْتُ وَمَا أَخَّرْتُ وما أَسْرَرْتُ وما أَعْلَنْتُ وما أَسْرَفْتُ وَمَا أَنْتَ أَعْلَمُ بِهِ مِنِّي أَنْتَ المقدِّمُ وأَنْتَ المُؤَخِّرُ لا إله إلاَّ أَنْتَ».

ويُنْدَبُ كونُهُ أقلَّ مِنَ التشهدِ والصلاةِ على النبيِّ ﷺ. (هذا بالنسبة للإمام وأما المنفرد فيطيل ما أراد ما لم يخف من التطويل الوقوع في سهوٍ).

CLOSING THE PRAYER WITH SALAMS

السلام

f8.47 Then one says the final *Salams* (n: an integral). The minimum is to say "as-Salamu 'alaykum" (peace be upon you), and it must occur while one is sitting. (O: It is inadequate to say "Salam 'alaykum" without the first word being definite (n: i.e. *as*-Salamu), since this has not reached us through any hadith texts, and invalidates the prayer if done intentionally.)

The optimal way is to say, "Peace be upon you, and the mercy of Allah" (O: though to add the words "and His grace" (wa barakatuhu) is not sunna) and to turn the head to the right enough to show the right cheek (N: to those behind). One thereby intends to finish the prayer and intends greetings of peace to the angels and Muslims (whether human or jinn (def: w22)) on the right. One then turns one's head to the left and repeats the Salam, intending to greet those on the left. A follower intends one of the two Salams as a response to the imam's, depending on which side the imam is on, or if the follower is directly behind him, he may intend either Salam as a response to him.

f8.47 ثمَّ يُسَلِّمُ وأقلُّهُ «السلامُ عليكُمْ» ويُشترطُ وقوعُهُ في حالِ القعودِ. (ولا يجزىء «سلامٌ عليكم» بتنكيرِ المبتدأ لعدمِ وروده. بل هو مبطل إن تعمد).

وأكملُهُ السَّلامُ عليكُمْ وَرَحْمَةُ اللهِ (ولا يسنُّ هنا زيادة «وبركاته») ملتفتاً عنْ يمينِهِ حتَّى يُرى خدُّهُ الأيمنُ. وينْوي بِهِ الخروجَ مِنَ الصلاةِ والسلامَ على مَنْ عنْ يمينِهِ مِنَ الملائكةِ ومسلِمي إنسٍ وجنٍّ. ثمَّ أُخْرى عنْ يسارِهِ كذلك حتَّى يُرى خدُّهُ الأيسرُ ينْوي بها السلامَ على مَنْ عن يسارِهِ منْهُمْ. والمأمومُ ينْوي الردَّ على الإمامِ بالأولى إنْ كانَ عنْ يسارِهِ وبالثانيةِ إنْ كانَ عنْ يمينِهِ ويتخيَّرُ إنْ كانَ خلفَهُ.

f8.48 When one is a latecomer to a group prayer, it is recommended not to stand up to finish

f8.48 ويُنْدَبُ أنْ لا يقومَ المسبوقُ

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one's missed rak'as until the imam has said both Salams. It is permissible to stand after he has said just one, but if one stands before he has said the first Salam it invalidates one's prayer, unless one purposely intended to cease participation in the group prayer before doing so.

A latecomer, if making his first Testification of Faith while the group is making their last one, may sit at length (O: for *dhikr* or supplications) after the imam's Salams before he stands up to finish his own rak'as, though it is offensive. If he does this when not at the point of his first Testification of Faith, it invalidates his prayer if intentional.

إلاّ بعدَ تسليمتَيْ إمامه. فإنْ قام المسبوقُ بعدَ التسليمةِ الأولى جازَ أوْ قبلَها بطلَتْ صلاتُهُ إنْ لمْ ينوِ المفارقة.

ولـوْ مَكَثَ المسبوقُ بعدَ سلامِ إمامِهِ (مشتغلاً بذكرٍ ودعاء) وأطالَ جازَ إنْ كانَ موضعَ تشهدِه لكنْ يُكْرَهُ وإلاّ بطلَتْ إنْ تعمَّدَ.

f8.49 Someone who is not a latecomer to a group prayer may sit as long as he wishes after the imam's Salams to supplicate, finishing with his own Salams whenever he wants (O: because the imam's leadership ends with the imam's first Salam, so there is no harm in the follower taking his time, as he is now praying alone, and someone praying alone may do so as long as he likes).

f8.49 ولغيرِ المسبوقِ بعدَ سلامِ الإمامِ إطالةُ الجلوسِ للدعاءِ ثمَّ يُسَلِّمُ متى شاءَ (لأن القدوة قد انقطعت بالتسليمة الأولى فلا يضر تخلفه لذلك لأنه صار منفرداً والمنفرد يطيل ما شاء). [ولو اقتصرَ الإمامُ على تسليمةٍ سلَّمَ المأمومُ ثنتَيْن].

f8.50 It is recommended to invoke Allah Most High (dhikr) to oneself and to supplicate after the prayer.

(O: Shafi'i says in *al-Umm,* "I prefer that the imam and follower invoke Allah (dhikr) after the Salams, and do so silently, unless the imam wants to be learned from, in which case he says the invocations aloud until he believes that he has been learned from, after which he says them to himself.")

(n: The following invocations are listed in the commentary and have been written in full and vowelled by the translator in the facing column of Arabic. Their order is sunna, as the commentator notes below.

(1) Ayat al-Kursi (Koran 2:255) (said once);

(2) al-Ikhlas (Koran 112) (once);

(3) al-Falaq (Koran 113) (once);

(4) al-Nas (Koran 114) (once);

f8.50 ويُنْدَبُ ذكرُ اللهِ تعالى والدعاءُ سراً عَقِيبَ الصلاةِ (وقال الشافعي في الأم: «أختار للإمام والمأموم أن يذكرا الله بعد السلام من الصلاة ويخفيا الذكر إلا أن يكون إماماً يريد أن يتعلم منه فيجهر حتى يرى أنه قد تعلم منه، ثم يسره»)

(١) ﴿اللَّهُ لا إِلَـهَ هُوَ الحَيُّ القَيُّومُ لا تَأْخُذُهُ سِنَةٌ ولاَ نَوْمٌ لَهُ مَا فِي السَّمٰوٰاتِ ومَا فِي الأرضِ مَنْ ذَا الَّذِي يَشْفَعُ عِنْدَهُ إلاَّ بإذْنِهِ يَعْلَمُ ما بَيْنَ أَيْدِيهِمْ ومَا خَلْفَهُمْ وَلاَ يُحِيطُونَ بِشَيْءٍ مِنْ عِلْمِهِ إلاَّ بِمَا شَاءَ وَسِعَ كُرْسِيُّهُ السَّمٰوٰاتِ والأرْضَ وَلاَ يَؤُودُهُ حِفْظُهُمَا وهُوَ العَلِيُّ العَظِيمُ﴾.

(٢) ﴿بِسْمِ اللَّهِ الرَّحْمٰنِ الرَّحِيمِ قُلْ هُوَ اللَّهُ أَحَدٌ اللَّهُ الصَّمَدُ لَمْ يَلِدْ ولَمْ يُولَدْ ولَمْ يَكُنْ لَهُ كُفُواً أَحَدٌ﴾.

(٣) ﴿بِسْمِ اللَّهِ الرَّحْمٰنِ الرَّحِيمِ قُلْ أَعُوذُ بِرَبِّ الفَلَقِ مِنْ شَرِّ ما خَلَقَ ومِنْ شَرِّ غَاسِقٍ إذَا وَقَبَ ومِنْ شَرِّ النَّفَّاثَاتِ فِي

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(5) "I ask Allah's forgiveness" (three times);

(6) "O Allah, You are peace, from You is peace, You are exalted through Yourself above all else, O You of Majesty and Beneficence";

(7) "O Allah, none can withhold what You bestow, none can bestow what You withhold, and the fortune of the fortunate avails nothing against You";

(8) "Allah is exalted above any limitation or imperfection" (thirty-three times);

(9) "Praise be to Allah" (thirty-three times);

(10) "Allah is greatest" (thirty-three (A: or thirty-four) times);

(N: (8), (9), and (10) above are also recommended before going to sleep at night, in which case "Allah is greatest" is said thirty-four times)

(11) and "There is no god but Allah, alone, without partner. His is the dominion, His the praise, and He has power over all things.")

(O: It is recommended to begin the supplications with the Koran when called for, like Ayat al-Kursi and so forth, then (5) through (10) above.) One should invoke the Blessings on the Prophet (Allah bless him and give him peace) at the beginning (O: and middle) and end of one's supplications.

f8.51 The imam turns for (N: postprayer) invocation and supplications so that his right side is towards the group and his left side towards the direction of prayer (qibla). He leaves his place as soon as he finishes, if there are no women (N: in which case he waits for them to leave first). It is recommended that the followers remain seated until the imam stands.

(A: In the Shafi'i school, the invocations are recommended to precede the postprayer sunna rak'as.)

f8.52 It is recommended for those who perform nonobligatory prayers after the prescribed prayer

الْعُقَدِ وَمِنْ شَرِّ حَاسِدٍ إِذَا حَسَدَ﴾.

(٤) ﴿بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ قُلْ أَعُوذُ بِرَبِّ النَّاسِ مَلِكِ النَّاسِ إِلَهِ النَّاسِ مِنْ شَرِّ الْوَسْوَاسِ الْخَنَّاسِ الَّذِي يُوَسْوِسُ فِي صُدُورِ النَّاسِ مِنَ الْجِنَّةِ وَالنَّاسِ﴾.

(٥) أَسْتَغْفِرُ اللَّهَ.

(٦) اللَّهُمَّ أَنْتَ السَّلَامُ وَمِنْكَ السَّلَامُ تَبَارَكْتَ يَاذَا الْجَلَالِ وَالْإِكْرَامِ.

(٧) اللَّهُمَّ لَا مَانِعَ لِمَا أَعْطَيْتَ وَلَا مُعْطِيَ لِمَا مَنَعْتَ وَلَا يَنْفَعُ ذَا الْجَدِّ مِنْكَ الْجَدُّ.

(٨) سُبْحَانَ اللَّهِ (٣٣).

(٩) الْحَمْدُ لِلَّهِ (٣٣).

(١٠) اللَّهُ أَكْبَرُ (٣٣).

(١١) لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، لَهُ الْمُلْكُ وَلَهُ الْحَمْدُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ.

(ويندب أن يقدم في الدعاء القرآن إن طلب كآية الكرسي ثم الاستغفار ثلاثاً ثم اللهم أنت السلام الخ، ثم اللهم لا مانع الخ، ثم التسبيح وما معه).

وَيُصَلِّي عَلَى النَّبِيِّ ﷺ أَوَّلَهُ (ووسطه) وَآخِرَهُ.

f8.51 وَيَلْتَفِتُ الإِمامُ للذكرِ والدعاءِ فَيَجْعَلُ يمينَهُ إليهِمْ ويسارَهُ إلى القِبلةِ.

وَيُفَارِقُ الإِمامُ مصلاهُ عقيبَ فراغِهِ إنْ لم يَكُنْ ثَمَّ نساءٌ. وَيَمْكُثُ المأمومُ (ندباً) حتى يقومَ الإِمامُ.

f8.52 وَمَنْ أَرادَ نفلاً بعدَ فرضِهِ نُدِبَ

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to first wait till after some conversation; it being better to pray them elsewhere, and best to perform them in one's home. (O: However, it is better to perform certain nonobligatory prayers in the mosque, such as those before the Friday prayer, those after circumambulating the Kaaba, and those before entering the state of pilgrim sanctity (ihram) if there is a mosque at the site. (A: Others that are better in the mosque include:

(1) the midmorning nonobligatory prayer (duha, def: f10.6);

(2) the guidance prayer (istikhara, f10.12);

(3) the two rak'as that are sunna before departing on a journey and when arriving from one;

(4) prayers performed during a period of spiritual retreat in a mosque (i'tikaf, i3);

(5) confirmed sunna prayers (sunna mu'akkada, f10.2) that one is afraid of missing if one does not pray them in the mosque;

(6) and the sunna rak'as before the sunset prayer.))

الفصلُ بكلامٍ أو انتقالٍ وهو أفضلُ، وفي بيته أفضلُ (ويستثنى نفل يوم الجمعة قبلها وركعتا الطواف وركعتا الإحرام حيث كان في الميقات مسجد [والمراد بنفل يوم الجمعة القبلية بخلاف البعدية]). (ع: ويستثنى أيضاً صلاة الضحى والاستخارة والركعتان قبل السفر وبعده، ونفل الاعتكاف، وعند خوف فوات الرواتب، والركعتان قبل صلاة المغرب).

f8.53 While performing the dawn prayer (subh) it is sunna to lift one's hands and supplicate after straightening up from bowing in the second rak'a.

One says: "O Allah, guide me among those You guide, grant me health and pardon among those You grant health and pardon, look after me among those You look after, grant me grace in what You have given me, and protect me from the evil [A: here, one turns the palms down for a moment] of what You have ordained; for You decree and none decrees against You, and none is abased whom You befriend. O our Lord, who are above all things sacred and exalted, all praise is Yours for what You decree. I ask Your forgiveness and turn to You in repentance."

It is commendable to add "and none is exalted whom You are at enmity with" (A: after the above words "and none is abased whom You befriend").

f8.53 فإنْ كانَ في الصبحِ فالسنةُ أنْ يَقْنُتَ في اعتدالِ الركعةِ الثانيةِ فيَقُولَ «اللَّهُمَّ اهْدِنِي فِيمَنْ هَدَيْتَ وعَافِنِي فِيمَنْ عَافَيْتَ وتَوَلَّنِي فِيمَنْ تَوَلَّيْتَ وبَارِكْ لِي فِيمَا أَعْطَيْتَ وقِنِي شرَّ ما قَضَيْتَ، فإنَّكَ تَقْضِي ولا يُقْضَى عليْكَ وإنَّهُ لا يَذِلُّ مَن والَيْتَ تَبَارَكْتَ رَبَّنَا وتَعَالَيْتَ فلَكَ الحمدُ على ما قَضَيْتَ، أَسْتَغْفِرُكَ وأَتُوبُ إليْكَ».

ولَوْ زَادَ «ولا يَعِزُّ مَنْ عَادَيْتَ» فحسنٌ.

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If one is imam, one pluralizes the singular pronominal suffix so that, for example, *ihdini* ("guide me") becomes *ihdina* ("guide us") and so forth (dis: w1.27).

The words of this supplication are not set and may be accomplished by pronouncing any supplication (O: and praise) or Koranic verse containing a supplication, such as the last verses of al-Baqara (Koran 2:285-86), though the above words are better.

After this, one invokes the Blessings on the Prophet (Allah bless him and give him peace).

It is recommended to raise one's hands throughout the supplication (O: palms up when asking the good, palms down when asking Allah to avert affliction). One does not stroke the face or chest with one's hands after the supplication (O: as opposed to other supplications, for which it is recommended to wipe the face with the hands, as is mentioned in hadith).

The imam says the supplications aloud. The follower says "Ameen" after each supplication that is audible to him and participates in the praises and so forth by responding with similar expressions. If the imam is inaudible, the follower himself says the supplication. When praying alone one says it to oneself.

When disasters (O: such as drought or an epidemic) befall the Muslims, they similarly supplicate in every prescribed prayer (O: after straightening up from bowing in the last rak'a).

فإنْ كانَ إمـامـاً أتى بلفـظِ الجمـعِ «اللهمَّ اهدنا» إلى آخرهِ.

ولا تتعيَّنُ هذهِ الكلماتُ فيَحْصُلُ بكلِّ (لفظ اشتمل على) دعاءٍ (وثناء) وبآيةٍ فيها دعاءٌ كآخرِ البقرةِ لكنْ هذهِ الكلماتُ أفضلُ.

ثُمَّ يُصَلِّي على النبيِّ ﷺ.

ويُنْدَبُ رفعُ يديهِ (أي يرفع بطونهما عند إرادة نزول الخير وظهورهما عند إرادة دفـع البـلاء) دونَ مسـحٍ وجهِهِ أوْ صدرِهِ (بخلاف دعاء غير القنوت فإنه يندب بعد الفراغ من الدعاء مسح وجهه بهما وذلك لوروده).

ويَجْهَرُ به الإمـامُ فيُؤَمِّنُ مأمومٌ يَسْمَعُهُ للدعاءِ ويُشارِكُهُ في الثناءِ. وإنْ لمْ يَسْمَعْهُ قَنَتَ. والمنفردُ يُسِرُّ بهِ.

وإنْ نَزَلَ بالمسلمينَ نازلةٌ (كقحط أوْ وباء) قَنَتُوا (في اعتدال الركعة الأخيرة) في جميعِ الصلواتِ.

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f9.0 WHAT INVALIDATES, IS OFFENSIVE, OR OBLIGATORY IN PRAYER

f9.0 مفسـدات الصـلاة ومكروهاتها وواجباتها

EXTRANEOUS SPEECH

الكلام

f9.1 The prayer is invalidated (if one has no excuse (def: below)) by uttering two or more letters, or when two or more letters worth of sounds such as laughter, crying, groaning, clearing the throat, blowing, sighing, or similar are audible.

f9.1 متى نَطَقَ بلا عذرٍ بحرفينِ [أو بحرفٍ مفهمٍ مثلُ «قِ» مِنَ الوِقايةِ، و«لِ» مِنَ الـولايـةِ] بَطَلَتْ صلاتُـهُ. والضحـكُ والبكـاءُ والأنينُ والتنحنـحُ

والنفخُ والتأوّهُ ونحوُهما يُبْطِلُ الصلاةَ إنْ بَانَ حرفانِ.

فإنْ كَانَ عذرٌ بأنْ سَبَقَ لسانُهُ أو غَلَبَهُ ضحكٌ أوْ سعالٌ، أو تكلّمَ ناسياً أوْ جاهلاً تحريمَهُ لقربِ عهدِهِ بالإسلامِ وكثُرَ عرفاً (بأن زاد على ست كلمات) أبْطَلَ. وإنْ قلَّ فلا.

ولوْ عَلِمَ التحريمَ وجهلَ كونَهُ مبطلاً، أو قال مِنْ خوفِ النارِ «آه» بطلتْ.

ولوْ تعذّرتْ الفاتحةُ (ح: سراً) إلاّ بالتنحنحِ تنحْنحَ لها وإنْ بَانَ حرفانِ، وإنْ تعذّرَ الجهرُ بها إلاّ بِهِ (أي بالتنحنح) تركَهُ (أي بالجهرِ بالقراءة) وأسَرَّ بِهَا ولا يتنحْنحُ لَهُ.

It is also invalidated by much (O: i.e. more than six words worth of) sound, even when there *is* a valid excuse such as blurting out words unthinkingly, laughter or coughing overcoming one, absentmindedly speaking, or when one speaks because as a new Muslim one does not know it is unlawful during the prayer; though with such an excuse a slight amount of speech does not invalidate the prayer.

One's prayer is invalid if one speaks knowing that it is unlawful but ignorant of the fact that it invalidates the prayer, and is also invalid if one says "Aah" during it out of fear of hell.

When it is impossible to recite the Fatiha (N: to oneself) (A: or the final Testification of Faith (Tashahhud) or Salams) except by clearing one's throat, one may do so even when it approximates two letters, though if it is merely impossible to recite *aloud*, then one may not clear one's throat, but must instead recite to oneself.

(A: Some things which are not commonly known to invalidate the prayer, such as clearing the throat, do not invalidate the prayer of ordinary people, whose ignorance of them is excusable, though a scholar has no such excuse.)

f9.2 ولوْ رأى أعْمَى يَقَعُ في بئرٍ ونحوِهِ وَجَبَ إنذارُهُ بالنطقِ إنْ لَمْ يُمْكِنْ بغيرِهِ (أي بغير النطق).

f9.2 If one notices (N: during the prayer) a blind person about to fall into a well, or the like, then one must speak up to alert him if there is not a nonverbal means of warning him of it.

f9.3 ولا تَبْطُلُ بالذكرِ، وتَبْطُلُ بالدعاءِ خِطَاباً كَرَحِمَكَ اللهُ، وعليكَ السلامُ، لا غَيْبَةً كرحِمَ اللهُ زيداً (ولا تبطل بخطاب الله ورسوله).

f9.3 No form of invocation of Allah (dhikr) invalidates the prayer unless it is a direct address such as "Allah have mercy on you" or "And upon you be peace"; though it does not invalidate the prayer if it refers to someone not present, such as "Allah have mercy on Zayd" (O: nor is it invalidated by addressing Allah or the Prophet (Allah bless him and give him peace)).

f9.4 ولوْ نابَهُ شيءٌ في الصلاةِ (كإذْنِهِ في دخولِ الدارِ لمن يستأذنه أو كتنبيهِ إمامٍ إذا سها) سَبَّحَ الرجلُ (فيقول سبحان الله بقصد الذكر فقط وأما إذا

f9.4 When something happens to one during the prayer (O: such as someone asking permission to enter, or having to remind the imam that he has forgotten something), then if one is male, one says "Subhan Allah" (O: intending only invocation (dhikr) thereby, as one may not merely intend to

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inform, nor lack any particular intention thereby, for these invalidate the prayer), or if female, one claps the right palm on the back of the left hand, not palm to palm.

If one recites a Koranic expression such as "O Yahya, take the book" (Koran 19:12), intending only to inform (O: without intending invocation) or not intending anything in particular, this invalidates the prayer, though not if the intention is Koran recital, or recital and informing together.

قصد الإعلام فقط أوْ أطلق فتبطل الصلاة) وصَفَّقَتْ المرأةُ ببطنِ كف على ظهر أخرى لا بطناً لبطنٍ.

ولوْ تَكَلَّمَ بنظم القرآنِ كيا يَحْيَى خُذْ الكتابَ وقَصَدَ إعلامَهُ فقطْ (أي من غير قصد الذكر) أوْ أطْلَقَ بَطَلَتْ. أو تلاوة فقطْ أو تلاوةٌ وإعلاماً فلا.

A SUBSTANCE REACHING THE BODY CAVITY

وصول عين إلى الجوف

f9.5 The prayer is invalidated when any (even if a little) substance (A: other than saliva) reaches the body cavity intentionally. It also invalidates the prayer if it occurs absentmindedly or in ignorance of its prohibition, provided the amount of the substance is commonly acknowledged to be much (def: f4.5), though not if it is little.

f9.5 وتَبْطُلُ بوصولِ عينٍ وإنْ قَلَّتْ إلى جوفِهِ عمداً وكذا سهواً أوْ جهلاً بالتحريم إنْ كَثُرَ عُرْفاً لا إنْ قَلَّتْ.

EXTRANEOUS MOTION

الحركة

f9.6 Adding a surplus action that is an integral, such as bowing, invalidates the prayer if done intentionally, but does not invalidate it if done because one has forgotten (O: that one has already performed it).

The prayer is not invalidated by intentionally or absentmindedly adding a surplus *spoken* integral such as repeating one's recital of the Fatiha or the Testification of Faith (Tashahhud) or reciting them in the wrong place.

f9.6 وتَبْطُلُ بزيادةِ ركنٍ فِعْليٍّ كركوعٍ عمداً لا سهواً (أي ساهياً في إتيانه به).

ولا بقوليٍّ عمداً كتكرارِ الفاتحةِ أوْ التشهدِ أوْ قراءتِهما في غير محلِّهما.

f9.7 The prayer is invalidated by adding, even if absentmindedly, a motion that is not one of the actions of prayer, provided it is both (O: considered by common acknowledgement (def: f4.5) to be) much and uninterruptedly consecutive, such as three steps (O: or successively moving three separate body parts like the head and two hands, though an up-and-down motion is considered just one) or three or more consecutive motions.

f9.7 وتَبْطُلُ بزيادةِ فعلٍ ولوْ سهواً مِنْ غيرِ جنسِ الصلاةِ إنْ كَثُرَ (عرفاً) متوالياً كثلاثِ خطواتٍ (وكتحريك ثلاثة أعضاء على التوالي كرأسه ويديه و[المعتمد أن] النقل لجهة العلو ثم لجهة السفل خطوة واحدة) أوْ ضرباتٍ متواليات.

The prayer is not invalidated by action that is not much, such as two steps, or is much but is separated so that the subsequent motion is considered to be unconnected with the preceding one. But if a (O: slight) action is grossly improper, such as jumping, it invalidates the prayer.

لا إنْ قلَّ كخطوتَيْن، أوْ كثُرَ وتفرَّقَ بحيثُ يُعَدُّ الثاني منقطعاً عن الأول، فإنْ فُحِشَ (أي الفعل القليل) كوثبةٍ بطلَتْ.

f9.8 Slight actions such as scratching oneself, or turning a rosary (subha, dis: w27) do not affect the validity of the prayer, nor does remaining silent at length.

f9.8 ولا تَضُرُّهُ حركاتٌ خفيفةٌ كحكٍّ بأصابعِهِ وإدارةِ سُبحةٍ، ولا سكوتٌ طويلٌ، [وإشارةٌ مفهمةٌ من أخرسَ].

THINGS OFFENSIVE IN PRAYER

مكروهات الصلاة

f9.9 It is offensive to perform the prayer while one is holding back from urinating or defecating. (O: If enough time remains to perform the prayer, the sunna is to relieve oneself first, even when one fears missing praying with a group, since it diminishes one's awe and humility in prayer.)

f9.9 وتُكْرَهُ (ح: الصلاة) وهو يُدافِعُ الأخبثين (وهما البول والغائط. فالسنة تفريغ نفسه من ذلك لأنه يخل بالخشوع وإن خاف فوت الجماعة حيث كان الوقت متسعاً).

f9.10 It is offensive to pray in the presence of food or drink one would like to have, unless one fears that the prayer's time will end.

It is offensive during the prayer:

(1) to interlace the fingers;

(2) to turn (N: the head when there is no need. As for turning the chest from the direction of prayer (qibla), it invalidates the prayer except when there is an excuse such as in extreme peril, or when performing a nonobligatory prayer during a journey);

(3) to look to the sky;

(4) to look at something distracting;

(5) to gather one's clothes or hair with the hand, tuck one's hair under a turban, or wipe the dust from one's forehead;

(6) to yawn, though if it overcomes one, one should cover the mouth with the hand;

f9.10 وبحضرةِ طعامٍ أوْ شرابٍ يَتُوقُ إليْهِ إلاّ أنْ خَشِيَ خروجَ الوقتِ.

ويُكْرَهُ تشبيكُ أصابعِهِ والالتفاتُ (ح: بوجهه، أما تحول الصدر عن القبلة فمبطل للصلاة إلا لعذر كشدة الخوف وصلاة النافلة في السفر) لغيرِ حاجةٍ ورفعُ بصرِهِ إلى السماءِ، والنظرُ إلى ما يُلْهِيهِ، وكفُّ ثوبِهِ وشعرِهِ ووضعُهُ تحتَ عمامتِهِ ومسحُ الغبارِ عنْ جبهتِهِ والتثاؤبُ فإنْ غلبَهُ وضَعَ يدَهُ على فمِهِ، والمبالغةُ

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(7) to exaggerate in lowering one's head while bowing;

(8) or to put one's hands on the hips.

f9.11 It is offensive during the prayer to spit to the front of one or to the right. Rather, one should expectorate to the left, in the hem of one's garment, or under the foot (N: when one is praying in a desert or similar). (O: It is unlawful to spit in a mosque except into the left hem of one's garment (N: or a handkerchief. The slight motions necessary to take out one's handkerchief and return it do not harm, as they are inconsiderable).)

THINGS OBLIGATORY IN PRAYER

f9.12 The prayer has conditions (def: f9.13), integrals (f9.14), main sunnas (f9.15), and ordinary sunnas.

THE CONDITIONS OF PRAYER

f9.13 The prayer's *conditions* are eight:

(a) purification from minor and major ritual impurity (badath and janaba) (A: through ablution (wudu, def: e5) and the purificatory bath (ghusl, e11) respectively, as well as from menstruation and postnatal bleeding by bathing after them);

(b) that one be free of filth (najasa, e14) (A: in body, clothes, and place of prayer (f4));

(c) that one's nakedness be clothed (f5);

(d) that one be facing the direction of prayer (qibla, f6);

(e) that one avoid the actions prohibited in prayer, i.e. extraneous speech, eating, and excessive motion (f9.1-7);

في خفض الرأس في الركوع ووضعُ يديه على خاصرته.

f9.11 والبصاقُ قِبَل وجهه ويمينه بل عنْ يساره في ثوبه أوْتحت قدمه (ح: إن كان في صحراء ونحوها) (وأما إذا كان المصلي في المسجد فلا يبصق فيه فإنه حرام بل يبصق في طرف ثوبه من جانبه الأيسر) (ح: أو في منديل ولا تضر الحركة اللطيفة اللازمة لاستخراج المنديل ورده لأنها ليست كثيرة).

واجبات الصلاة

f9.12 وللصلاةِ شروطٌ وأركانٌ وأبعاضٌ وسُنَنٌ.

شروط الصلاة

f9.13 فشروطُها ثمانيةٌ: طهارةُ الحدثِ والنجسِ، وستْرُ العورةِ، واستقبالُ القبلةِ، واجتنابُ المناهي المذكورةِ وهيَ الكلامُ والأكلُ والفعلُ

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(f) knowing or believing that the prayer's time has come (f2);

(g) knowing that the prayer is obligatory;

(h) and knowing how it is performed.

Whenever one violates any of these conditions, one's prayer is invalidated, such as:

(1) (non-(a) above) when a state of ritual impurity occurs during the prayer, even if absentmindedly;

(2) (non-(b)) when some filth containing moisture affects a garment during the prayer, but one does not immediately shed the garment; or when some dry filth affects it, but one throws it off with the hand or sleeve (O: since in that case one is supporting it and in contact with it (dis: f4.2(N:)));

(3) (non-(c)) when the wind discloses a part of one' nakedness and its cover gets beyond reach;

(4) or (non-(g)) when one believes that some elements of the prayer are obligatory and some are merely recommended, but does not know which are obligatory.

One's prayer is not invalidated if one thinks that all the prayer's parts are obligatory, or ((2) above) if one immediately sheds the garment affected by moist filth, brushes off dry filth, or ((3) above) immediately re-covers one's nakedness.

الكثيرُ، ومعرفةُ دخولِ الوقتِ ولوْ ظنّاً، والعلمُ بفرضيةِ الصلاةِ وبكيفيتِها.

فمتى أخلَّ بشرطٍ منها بطلتْ الصلاةُ، مثلُ أنْ يَسبقَهُ الحدثُ فيها ولو سهواً أوْ تُصيبَهُ نجاسةٌ رطبةٌ ولمْ يُلْقِ الثوبَ أوْ يابسةٌ فيُلْقِيَها بيدِهِ أوكُمِّهِ (لأنه في هذه الحالةِ حاملٌ للنجاسةِ ومتصلٌ بها) أوْ تكشفُ الريحُ عورتَهُ وتَبْعُدَ السترةُ أوْ يَعْتقِدَ بعْضَ أفعالِها فرضاً وبعضَها سنّةً ولمْ يُمَيِّزْهُما.

فلو اعْتقدَ أنَّ جميعَها فرضٌ أوْ بادرَ بإلقاءِ الثوبِ النجسِ وبنفضِ اليابسةِ وسترِ العورةِ لمْ تَبْطُلْ.

THE INTEGRALS OF PRAYER

أركان الصلاة

f9.14 The prayer's *intègrals* (rukn, pl. arkan) are seventeen:

(a) the intention (def: f8.3);

(b) the opening Allahu Akbar (f8.7);

(c) standing (f8.27);

f9.14 وأركانُها سَبْعةَ عَشَرَ: النيةُ، وتكبيرةُ الإحرامِ، والقيامُ، والفاتحةُ،

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(d) the Fatiha (f8.17);

(e) bowing (f8.29);

(f) remaining motionless a moment therein;

(g) straightening back up after bowing (f8.31);

(h) remaining motionless a moment therein;

(i) prostration (f8.33);

(j) remaining motionless a moment therein;

(k) sitting back (f8.36) between the two prostrations;

(l) remaining motionless a moment therein;

(m) the prayer's final Testification of Faith (Tashahhud) (f8.45);

(n) sitting therein (f8.43);

(o) the Blessings on the Prophet (Allah bless him and give him peace) after the prayer's final Testification of Faith (f8.45);

(p) saying "as-Salamu 'alaykum" the first of the two times it is said at the end of the prayer (f8.47);

(q) and the proper sequence of the above integrals.

والـركـوعُ، والطمأنينةُ، والاعتدالُ، والطمأنينةُ، والسجـودُ، والطمأنينـةُ، والجلوسُ بينَ السجـدتَيْنِ، والطمأنينـةُ، والتشهدُ الأخيرُ، وجلوسُهُ، والصلاةُ على النبيِّ ﷺ فيه، والتسليمةُ الأولى، وترتيبُها هكذا.

THE MAIN SUNNAS OF PRAYER

أبعاض الصلاة

f9.15 The prayer's *main sunnas* (A: meaning those which if omitted call for a *forgetfulness prostration* (def: f11)) are six:

(a) the prayer's first Testification of Faith (Tashahhud) (N: in prayers that have two);

(b) sitting during it;

f9.15 وأبعـاضُهـا ستةٌ التشهدُ الأولُ وجلوسُـهُ وصـلاةٌ على النبيِّ ﷺ فيـه،

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(c) the Blessings on the Prophet (Allah bless him and give him peace) after it (f8.45);

(d) the blessings on his family in the prayer's final Testification of Faith (Tashahhud);

(e) the supplication (f8.53) after bowing in the final rak'a of the dawn prayer (subh);

(f) and standing therein.

و(ح: الصلاة على) آله في (ح: التشهد) الأخير، والقنوت، وقيامه.

OTHER SUNNAS

سنن أخرى

f9.16 All other parts of the prayer are ordinary sunnas (O: and missing one is not compensated by a forgetfulness prostration).

f9.16 وما عدا ذلك سننٌ (فلا يجبر تركها بسجود السهو).

*

f10.0 SUPERERGATORY PRAYER

f10.0 صلاة التطوع

f10.1 The prayer is the best of the body's spiritual works (O: *prayer* referring to the prescribed prayer, and *body* excluding worship connected with the heart, such as faith in Allah, which is better than the works of the body), and supererogatory prayers are the best of voluntary spiritual works (O: though scholarly work in Islamic religious knowledge, meaning beyond what is obligatory to ensure the validity of one's worship, is superior to nonobligatory prayer because it fulfills a communal obligation (fard al-kifaya, def: c3.2)).

Supererogatory prayers that the Sacred Law stipulates be prayed in groups, such as the prayer on the two 'Eids (f19), the prayer at solar and lunar eclipses, and the drought prayer, are better than those it does not stipulate be prayed in groups, namely, all others besides these. But the sunna rak'as before and after the prescribed prayers (O: whether confirmed sunna (sunna mu'akkada, def: below) or otherwise) are superior to the group prayer that is sunna on the nights of Ramadan (tarawih).

f10.1 أفضلُ عباداتِ البدنِ الصلاةُ (والمراد منها المكتوبة فخرج بالبدن العبادة المتعلقة بالقلب فهي أفضل منها كالإيمان بالله)، ونفلُها أفضلُ النفلِ. (والاشتغال بالعلم أفضل من صلاة النافلة والمراد منه مازاد على ما تتوقف عليه صحة العبادة لأنه حينئذ يكون فرض كفاية).

وما شُرِعَ له الجماعةُ وهوَ العيدانِ، والكسوفانِ، والاستسقاءُ أفضلُ ممَّا لا يُشرَعُ له الجماعةُ وهوَ ما سِوَى ذلكَ لكنِ الرواتبُ (مطلقاً مؤكداً وغيره) مَعَ الفرائضِ أفضلُ مِنَ التراويحِ.

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THE SUNNA PRAYERS BEFORE AND AFTER THE PRESCRIBED PRAYERS

f10.2 It is sunna to diligently perform the nonobligatory prayers that are offered before and after the prescribed ones.

The optimal number of these is two rak'as before the dawn prayer (subh), four before and after the noon prayer (zuhr), four before the midafternoon prayer ('asr), two after the sunset prayer (maghrib), and two after the nightfall prayer ('isha).

The confirmed sunnas (dis: e4.1) of these (O: *confirmed* (mu'akkada) meaning those which the Prophet (Allah bless him and give him peace) did not omit whether travelling or at home) consist of ten rak'as:

(1) two before the dawn prayer (subh);

(2) two before and after the noon prayer (zuhr);

(3) two after the sunset prayer (maghrib);

(4) and two after the nightfall prayer ('isha).

It is recommended to pray two rak'as before the sunset prayer.

The sunnas of the Friday prayer (jumu'a) are the same as those of the noon prayer (zuhr) (dis: w28.1).

The time for the nonobligatory rak'as that come before prescribed prayers is that of the prescribed prayers. It is proper (adab) to pray such a sunna before the prescribed prayer, though if prayed after it, it is still a current performance (A: not a makeup, and one must intend it, for example, as the sunna before noon prayer (zuhr)). The time for nonobligatory rak'as that come after the prescribed prayer begins when one has performed the prescribed prayer and ends with the end of the prayer's time.

الرواتب

f10.2 والسنةُ أنْ يُواظِبَ على رواتبِ الفرائضِ.

وأكملُها: ركعتانِ قبلَ الصبحِ وأربعٌ قبلَ الظهرِ وأربعٌ بعدَها وأربعٌ قبلَ العصرِ وركعتانِ بعدَ المغربِ وركعتانِ بعدَ العشاءِ.

والمؤكَّدُ (والمؤكد هو الذي لم يتركه ﷺ لا سفراً ولا حضراً) منْ ذلكَ عشْرُ ركعاتٍ: ركعتانِ قبلَ الصبحِ والظهرِ وبعدَها وبعدَ المغربِ والعشاءِ.

ويُنْدَبُ ركعتانِ قبلَ المغربِ.

والجمعةُ كالظهرِ. وما قبلَ الفريضةِ وَقْتُهُ وقتُ الفريضةِ وتقديمُهُ عليْها أدبٌ وهوَ بعدَها أداءٌ، وما بعدَها يَدْخُلُ وَقْتُهُ بفعلِها ويَخْرُجُ بخروجِ وقتِها.

WITR (THE FINAL PRAYER AT NIGHT)

f10.3 The minimal performance for *witr* (lit. "odd number") is one rak'a (O: even if one omits

صلاة الوتر

f10.3 وأقلُّ الوترِ ركعةٌ (وإن لم

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the sunnas after the nightfall prayer ('isha)). (A: A *witr* of at least three rak'as is obligatory (wajib) in the Hanafi school, and one should never omit it.)

The optimal way is to perform eleven rak'as, and (O: if one performs more than three) one should finish with Salams (def: f8.47) after every pair. The least considered optimal is three rak'as, (O: and one separates them by) finishing two times with Salams (N: i.e. by finishing two rak'as with Salams and then performing the final rak'a). One recites al-A'la (Koran 87) in the first rak'a, al-Kafirun (Koran 109) in the second, and al-Ikhlas, al-Falaq, and al-Nas (Koran 112, 113, and 114) in the third.

It is permissible to (n: serially) join all the rak'as of any *witr* prayer that has from three to eleven rak'as by finishing them once with Salams (O: in the final rak'a. In that case and also when one's *witr* is only a single rak'a, one merely intends *witr*, whereas in other *witr*s prayed in pairs (n: until one reaches the last one), one intends each pair as *two rak'as of witr*).

When joining the rak'as of *witr* one may limit oneself to a single Testification of Faith (Tashahhud) (A: in the final rak'a), or may recite two Testifications, one in the last rak'a and one in the next to the last, and to thus recite two Testifications is superior (A: if one separates the final two rak'as from one another by finishing the next to the last rak'a with Salams (N: before praying the final rak'a by itself), for otherwise it is better to recite a single Testification, as making *witr* resemble the sunset prayer (maghrib) is offensive). More than two Testifications (A: in a joined *witr*) invalidates the whole prayer.

يتقدمه سنة العشاء).

وأكملُهُ إحـدى عشـرةَ و(إذا زاد على ثلاث ف) يُسَلِّمُ مِنْ كلِّ ركعتَين، وأدنى الكمـالِ ثلاثٌ (ويفصـل بين الثلاث) بسلامين (وهو أفضل من الوصل) يَقْرَأُ في الأولى: ﴿سَبِّحِ اسمَ ربِّكَ الأعلى﴾، وفي الثانيةِ: ﴿قُلْ يا أيُّها الكافرونَ﴾، وفي الثالثةِ: ﴿قُلْ هُوَ اللهُ أحدٌ﴾، والمعوذتَين.

ولَهُ وصلُ الثلاثِ والإحدى عشرةَ (ركعة وما بينهما) بتسليمةٍ (واحدة آخرها وينوي الوتر في ذلك وفيما اقتصر فيه على ركعة، وإن أوتر بأكثر وسلم من كل ركعتين نوى بكلِ ركعتين من الوتر).

ويَجُوزُ بتشهدٍ (واحد) و(وصله) بتشهدين في الأخيرةِ والتي قبلها، وبتشهدين أفضلُ (ع: إن فصل بينهما بسلام. وإلا فالوصل بتشهد واحد أفضل لأن تشبيه الوتر بالمغرب مكروه). فإنْ زادَ على تشهدين بَطلَتْ صلاتُهُ.

f10.4 The best time for *witr* is just after the sunna rak'as that follow the nightfall prayer ('isha), unless one intends to offer the *night vigil prayer* (tahajjud; to rise at night after having slept, to pray some nonobligatory rak'as), in which case it is best to pray *witr* after the night vigil prayer (A: provided that one usually manages to get up when one has made such an intention. If not, then it is better to perform *witr* after the sunnas of the nightfall prayer ('isha)).

When one has already performed *witr*, but

f10.4 والأفضلُ تقديمُهُ عقيبَ سنةِ العشاءِ، إلاَّ أنْ يَكُونَ لهُ تَهَجُّدٌ فالأفضلُ تأخيرُهُ ليُوتِرَ بعدَهُ.

ولـوْ أوْتـرَ ثمَّ أرادَ تهجُّداً صَلَّى مَثْنَى

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decides to pray the night vigil prayer (tahajjud), one performs the latter's rak'as two by two, and there is no need to repeat the *witr,* or "make it an even number" by performing one rak'a before the night vigil prayer. However, it is recommended not to intend performing prayers between *witr* and dawn.

مَثْنَى ولا يُعيدُهُ ولا يحتاجُ إلى نقضِهِ بركعةٍ قبلَ التهجدِ ويُنْدَبُ أنْ لا يَتَعَمَّدَ بعدَهُ صلاةً.

TARAWIH

صلاة التراويح

f10.5 It is recommended to perform *tarawih,* which is twenty rak'as of group prayer on each night of Ramadan. (O: As well as being sunna to pray *tarawih* alone, it is also sunna to pray it in a group.) One finishes each pair of rak'as with Salams.

It is recommended to pray *witr* in a group after *tarawih,* unless one intends the night vigil prayer (tahajjud), in which case one should postpone *witr* until after it. During the second half or Ramadan, in the last rak'a (N: of *witr*), it is recommended to supplicate as one does in the dawn prayer (def: f8.53), and then one adds: "O Allah, we ask Your help, Your forgiveness, and Your guidance. In You we believe, on You we rely, You we praise with every good, we are grateful to You and not ungrateful, and disown and abandon him who commits outrages against You. O Allah, You alone do we worship, to You we pray and prostrate, You we strive for and hasten to obey, hoping for Your mercy and fearing Your punishment. Truly, Your earnest punishment shall overtake the unbelievers."

The time for *witr* and *tarawih* is between the nightfall prayer ('isha) and dawn.

f10.5 ويُنْدَبُ التراويحُ وهي كلَّ ليلةٍ مِنْ رمضانَ عشرونَ ركعةً في الجماعةِ (والتراويح كما تسن فرادى تسن أن تكون واقعة في الجماعة) ويُسَلِّمُ مِنْ كلِّ ركعتينِ.

ويُوتِرُ بعدَها جماعةً إلاَّ لمنْ يَتَهَجَّدُ فَيُؤَخِّرُهُ. ويَقْنُتُ في الأخيرةِ (ح: من الوتر) في النصفِ الأخيرِ (ح: من رمضان) بقنوتِ الصبحِ ثمَّ يَزيدُ «اللهُمَّ إنَّا نَسْتَعينُكَ ونَسْتَغْفِرُكَ ونَسْتَهْديكَ ونُؤْمِنُ بكَ ونَتَوكَّلُ عَلَيكَ ونُثْني عليكَ الخيرَ كلَّهُ نَشْكُرُكَ ولا نَكْفُرُكَ ونَخْلَعُ ونَتْرُكُ مَنْ يَفْجُرُكَ. اللَّهُمَّ إيَّاكَ نَعْبُدُ ولَكَ نُصَلِّي ونَسْجُدُ وإليكَ نَسْعَى ونَحْفِدُ، نَرْجُو رَحْمَتَكَ ونَخْشَى عَذابَكَ إنَّ عَذابَكَ الجِدَّ بالكُفَّارِ مُلْحِقٌ».

ووقتُ الوترِ والتراويحِ ما بَيْنَ صلاةِ العشاءِ والفجرِ.

THE MIDMORNING PRAYER (DUHA)

صلاة الضحى

f10.6 It is recommended to pray the midmorning prayer (duha), which minimally consists of two rak'as, is optimally eight rak'as, and maximally twelve. One finishes each pair of rak'as with Salams.

Its time is after the sun is well up until just before the noon prayer (zuhr). (O: The preferable

f10.6 ويُصَلِّي الضحى وأقلُّها ركعتانِ وأكملُها ثمانٍ وأكثرُها اثنتا عشرةَ ويُسَلِّمُ من كلِّ ركعتَيْنِ.

ووقتُها من ارتفاعِ الشمسِ إلى الزوالِ (ووقتها المختار إذا مضى ربع

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time for its performance is after a quarter of the day has passed.)

النهار).

f10.7 When one misses (O: even intentionally) any supererogatory prayer that has a specified time, such as the two 'Eids, *duha*, *witr*, or the sunnas before and after the prescribed prayers, it is recommended to make it up at any time afterwards.

If one misses a supererogatory prayer that is contingent upon some passing event, such as the eclipse prayer, drought prayer, greeting the mosque, or the prayer for guidance (istikhara, def: f10.12), one does not make it up.

f10.7 وكلُّ نفلٍ مؤقتٍ كالعيد والضحى والوتر ورواتب الفرائض إذا فاتَ (ولو تركه عمداً) نُدِبَ قضاؤُهُ أبداً.

وإنْ فُعِلَ لعارضٍ كالكسوف والاستسقاء والتحية والاستخارة لمْ يُقْضَ.

THE NIGHT VIGIL PRAYER (TAHAJJUD)

التهجد

f10.8 Supererogatory prayer at night is a confirmed sunna (def: f10.2(O:)), even if one can only do a little. *Wholly supererogatory* prayers (O: meaning those unconnected with a particular time or reason) at night are better than during the day.

If one divides the night into six parts, the fourth and fifth part are the best for prayer. If divided in half, the second half is best. If divided into thirds, the middle part is best. Praying the entire night, every night, is offensive.

It is recommended to begin one's night vigil prayers (tahajjud) with two brief rak'as, to have intended the night vigil prayer before going to sleep, and not to make a practice of more prayer than one can regularly perform without harm to oneself.

(A: It is sunna to recite the suras of the night vigil prayer sometimes aloud, sometimes to oneself.)

f10.8 والنفلُ في الليلِ متأكّدٌ وإنْ قلَّ. والنفلُ المطلقُ (وهو مالا يتقيد بوقتٍ ولا سببٍ) في الليلِ أفضلُ من المطلقِ في النهارِ.

وأفضلُهُ السدسُ الرابعُ والخامسُ إنْ قسمَهُ أسداساً فإنْ قسمَهُ نصفَيْنِ فأفضلُهُ الأخيرُ، أوْ أثلاثاً فالأوسطُ. ويُكرهُ قيامُ كلِّ الليلِ دائماً.

ويُسْتَحَبُّ افتتاحُ التهجدِ بركعتَيْنِ خفيفتَيْنِ ويَنْوي التهجدَ عندَ نومِهِ ولا يَعْتادُ منهُ إلاَّ ما يُمْكِنُهُ الدوامُ عليهِ بلا ضررٍ.

f10.9 One (O: who is performing wholly supererogatory prayers, whether in the night or day) finishes every two rak'as with Salams, though one may also:

(1) join three or more rak'as by finishing but once with Salams;

f10.9 ويُسَلِّمُ (المصلي للصلاة النافلة المطلقة في الليل أو في النهار) من كلِّ ركعتَيْنِ فإنْ جَمَعَ ركعاتٍ بتسليمةٍ أوْ

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(2) pray a single supererogatory rak'a by itself;

(3) recite the Testification of Faith (Tashahhud) every two rak'as (O: without finishing them with Salams), or every three, or every four, even if the Testifications of Faith grow very numerous (A: before finishing the series of rak'as with Salams). (N: This is if not praying *witr* (dis: f10.3, end));

(4) or confine oneself to just one Testification of Faith (Tashahhud) in the final rak'a (O: in which case one recites a sura in each of the rak'as and finishes with Salams after the above-mentioned final Testification of Faith), though it is not permissible to recite the Testification of Faith in every rak'a (O: without finishing with Salams).

When one's intention (N: in a wholly supererogatory prayer) is to perform a specific number of rak'as (O: four or more), then one may change one's mind as to the number and pray fewer rak'as, or more, provided one changes the intention before (O: having added or subtracted any). Thus, it is permissible to intend four but finish after two, if one intends to subtract two, though it invalidates the prayer to purposely finish it after two without having made the intention to curtail the planned four rak'as. If one absentmindedly finishes with Salams, one goes on to complete the four and performs the forgetfulness prostration (def: f11) at the end.

تَطَوُّعٍ بِرَكعَةٍ جَازَ ولَهُ التشهدُ في كلِّ ركعتَيْنِ (أي من غير سلام) أوْ ثلاثٍ أوْ أربعٍ وإنْ كَثُرَتْ التشهداتُ (ح: وهذا في غير الوتر) ولَهُ أنْ يَقْتَصِرَ على تشهدٍ واحدٍ في الأخيرة (وعليه يقرأ السورة في جميع الركعات ويسلم عقب التشهد المذكور) ولاَ يَجُوزُ في كلِّ ركعةٍ (من غير سلام).

وإذَا نَوَى (ح: في النفل المطلق) عدداً (أربعة فأكثر) فلَهُ الزيادةُ والنقصُ بشرطِ أنْ يُغَيِّرَ النيةَ قبلَهُمَا (أي قبل فعل الزيادة وقبل النقص). فَوَنَوَى أربعاً فَسَلَّمَ مِنْ ركعتَيْنِ بنيةِ النقصِ جَازَ. أوْبلا نيةٍ عمداً بَطَلَتْ. أوْ سهواً أتَمَّ أربعاً وسَجَدَ للسهوِ.

GREETING THE MOSQUE

تحية المسجد

f10.10 It is recommended for whoever enters a mosque to *greet the mosque* by praying two rak'as each time he enters, even if many times within an hour. One is no longer entitled to pray it after sitting. It is accomplished anytime one enters a mosque and prays two rak'as, whether one intends merely performing two supererogatory rak'as, fulfilling a vow, the sunna rak'as before or after a prescribed prayer, the prescribed prayer alone, or the prescribed prayer together with the

f10.10 ويُنْدَبُ لمنْ دَخَلَ المسجدَ أنْ يُصَلِّيَ ركعتَيْنِ تحيَّةً كلَّمَا دَخَلَ وإنْ كَثُرَ دخولُهُ في ساعةٍ. وتَفُوتُ بالقعود. ولوْ نَوَى ركعتَيْنِ مطلقاً أوْ منذورةً أوْ راتبةً أوْ فريضةً فقطْ أوِ الفرضَ والتحيةَ حَصَلا.

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intention of greeting the mosque.

(O: If one enters the mosque when one does not have ablution (wudu), it is sunna to say four times, "Allah is far exalted above any limitation, praise be to Allah, there is no god but Allah, Allah is greatest.")

(فإذا دخل بغير الوضوء يسن له أن يقول: «سبحان الله، والحمد لله، ولا إله إلا الله، والله أكبر»، أربع مرات).

f10.11 It is offensive to begin any nonobligatory prayer, whether greeting the mosque, the sunna rak'as before a prescribed prayer, or other, when the imam has begun the prescribed prayer or the muezzin has begun the call to commence (iqama).

f10.11 وإذا دَخَلَ الإمامُ في المكتوبة أوْ شَرَعَ المؤذنُ في الإقامةِ كُرِهَ افتتاحُ كلِّ نفلٍ التحيةُ والرواتبُ وغيرُهما.

THE GUIDANCE PRAYER (ISTIKHARA)

صلاة الاستخارة

f10.12 (n: the translator has added the following text from Imam Nawawi's *Riyad al-salihin:*)

Jabir (Allah be well pleased with him) relates that "the Prophet (Allah bless him and give him peace) used to teach us the *guidance prayer* (istikhara) for all matters, as he would a sura of the Koran, saying:

" 'When a matter concerns one of you, pray two nonobligatory rak'as [dis: f8.20(5)] and say: "O Allah, I ask You to show me what is best through Your knowledge, and bring it to pass through Your power, and I ask You of Your immense favor; for You are all-powerful and I am not, You know and I do not, and You are the Knower of the Unseen. O Allah, if You know this matter to be better for me in my religion, livelihood, and *final outcome* [or perhaps he said, "the short and long term of my case"], then bring it about and facilitate it for me, and bless me with abundance therein. And if You know this matter to be worse for me in my religion, livelihood, and *final outcome* [or perhaps he said, "the short and long term of my case"], then keep it from me, and keep me from it, and bring about the good for me whatever it may be, and make me pleased with it," and then one should mention the matter at hand.' "

(*Riyad al-salihin* (y107), 325–26)

f10.12 (ت: قد أضاف المترجم حديث صلاة الاستخارة إلى المتن هنا من كتاب رياض الصالحين للإمام النووي:)

«عن جابر رضي الله عنه قال: كانَ رسولُ اللهِ ﷺ يُعَلِّمُنا الاسْتِخارةَ في الأمورِ كُلِّها كالسورةِ مِنَ القرآنِ، يقولُ: «إذا هَمَّ أحدُكُمْ بالأمرِ فَلْيَرْكَعْ ركعتَيْنِ مِنْ غيرِ الفريضةِ، ثُمَّ لِيَقُلْ: اللَّهُمَّ إنِّي أَسْتَخِيرُكَ بِعِلْمِكَ وَأَسْتَقْدِرُكَ بِقُدْرَتِكَ، وَأَسْأَلُكَ مِنْ فَضْلِكَ العَظِيمِ، فإنَّكَ تَقْدِرُ ولاَ أَقْدِرُ، وتَعْلَمُ ولاَ أَعْلَمُ، وأَنْتَ عَلاَّمُ الغُيُوبِ. اللَّهُمَّ إنْ كُنْتَ تَعْلَمُ أنَّ هذا الأَمْرَ خيرٌ لي في دِيني ومَعَاشِي وعَاقِبَةِ أَمْري» أوْ قال: «عاجِلِ أمري وآجِلِهِ، فَاقْدُرْهُ لي ويَسِّرْهُ لي، ثُمَّ بارِكْ لي فِيهِ، وإنْ كُنْتَ تَعْلَمُ أنَّ هذا الأَمْرَ شرٌّ لي في دِيني ومَعَاشِي وعَاقِبَةِ أَمْري» أوْ قال: «عاجِلِ أَمْري وآجِلِهِ، فَاصْرِفْهُ عَنِّي وَاصْرِفْنِي عَنْهُ، وَاقْدُرْ لي الخيرَ حَيْثُ كانَ، ثُمَّ رَضِّنِي بِهِ» قال: ويسمِّي حاجته [رواه البخاري] (نُقل من رياض الصالحين: ٣٢٥ - ٣٢٦).

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f10.13 A nonobligatory prayer at home is superior to one performed at the mosque (dis: f8.52).

f10.13 والنفلُ في بيتِهِ أفضل مِنَ المسجدِ.

f10.14 It is offensive for one to single out the night before Friday (lit. "night of Friday," i.e. Thursday night, since in Arabic the night of a given date comes before its day) as a special night for prayer.

f10.14 ويُكْرَهُ تخصيصُ ليلةِ الجمعةِ بصلاةٍ.

f10.15 It is an offensive, blameworthy innovation (bid'a, def: w29) to perform any of the following spurious prayers:

(1) twelve rak'as between the sunset prayer (maghrib) and nightfall prayer ('isha) on the first Thursday night of the month of Rajab;

(2) one hundred rak'as in the middle of the month of Sha'ban;

(3) (O: two rak'as after each of three times of reciting Ya Sin (Koran 36) on the night of mid-Sha'ban;

(4) or the so-called prayer of 'Ashura' on 10 Muharram.)

f10.15 وصلاةُ الرغائب (وهي ثنتا عشرة ركعة تفعل ليلة أول جمعة بين المغرب والعشاء) في رَجَبٍ وصلاةُ نصفِ شعبانَ بِدْعَتانِ مكروهتانِ (والصلاة في نصف شعبان هي مائة ركعة تفعل، وكذلك ما يفعل ليلة نصف شعبان من صلاة ركعتين عقب قراءة سورة يس ثلاث مرات وكذلك الصلاة الواقعة في يوم عاشوراء: كل ذلك بدعة قبيحة).

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f11.0 PROSTRATIONS OF FORGETFULNESS, KORAN RECITAL, OR THANKS

f11.0 السجود للسهو وللتلاوة وللشكر

THE FORGETFULNESS PROSTRATION

سجود السهو

f11.1 The two reasons for the forgetfulness prostration are nonperformance of something called for (O: such as a main sunna (f9.15)), or performance of something uncalled-for (O: such as absentmindedly adding a rak'a to one's prayer).

f11.1 لهُ سببانِ: تركُ مأمورٍ بِهِ (كتركِ بعضٍ من أبعاضها المأمور بها) وارتكابُ مَنْهيٍّ عَنْهُ (كزيادة ركعة ناسياً).

f11.2 (n: As for nonperformance,) if one misses an integral of the prayer (def: f9.14) and does not

f11.2 فإنْ تركَ ركناً واشْتَغَلَ بِما بعدَهُ

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remember it until doing what comes after it, then one must (A: if still in the same rak'a) go back to it, perform it and what comes after it, and (A: it is sunna to) prostrate for it at the end of one's prayer (O: provided one is not a follower. As for a follower who misses an integral, he continues following the imam until the imam finishes with Salams, and then the follower rises alone and performs a makeup rak'a.

One is only obliged to reperform a missed integral (A: in the same rak'a, i.e. when praying by oneself) if one's forgetfulness of it doesn't continue (A: until the next rak'a). If one's forgetfulness continues and one goes on to perform the integral (A: during the course of the subsequent rak'a) then the same integral (A: of the following rak'a) takes the missed integral's place (A: in which case the rak'a containing the omission does not count and one does not return to it, but performs the rest of the prayer and then adds a makeup rak'a at the end, after which one performs the forgetfulness prostration before one finishes with Salams)).

ثمّ ذكر تداركه (أي فعل ذلك المتروك وجوباً إن لم يكن مأموماً. وأما هو فيتدارك بعد سلام إمامه بركعة. ومحل كونه يتداركه إن لم يستمر على سهوه فإن استمر وفعل المتروك قام المفعول مقامه) وأتى بما بعده ((أي بما بعد المتروك وهو باقي صلاته)) وسجد للسهو.

f11.3 (O: If there is a surplus action, such as when one absentmindedly goes from standing to prostration without having bowed, but then remembers, in such a case one stands up and bows, and performs the forgetfulness prostration (N: at the end of the prayer). This (N: having stood twice before bowing) is a surplus action.

One does not prostrate for forgetfulness when there is no surplus action, as when one omits the final prostration of the prayer, but remembers it before one finishes with Salams and performs it, in which case one does not prostrate for it because there has not been an addition.)

f11.3 (إن كان هناك زيادة كأن سجد قبل ركوعه سهواً ثم تذكر فإنه يقوم ويركع ويسجد للسهو. فهذه زيادة.

وإن لم يكن هناك زيادة لم يسجد للسهو كأن ترك السجدة الأخيرة ثم تذكر قبل سلامه فإنه يأتي بها ولا يسجد للسهو لعدم الزيادة).

f11.4 If one misses a main sunna (def: f9.15), even purposely, one performs a forgetfulness prostration.

If one misses anything besides an integral or main sunna, then one does not prostrate for it.

f11.4 ولو ترك بعضاً ولو عمداً سجد.

ولو ترك غيرهما لم يسجد.

f11.5 One does not prostrate for (A: either intentionally or absentmindedly) doing an uncalled-

f11.5 وإن ارتكب منهياً فإن لم يبطل

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for action of the type which when done intentionally does not invalidate the prayer (O: such as turning the head, or taking one or two steps), though reciting a part or all of the Fatiha or Testification of Faith (Tashahhud) at the wrong place in the prayer are exceptions to this, in that, although intentionally reciting them at the wrong place does not invalidate the prayer, it does call for a forgetfulness prostration.

عمدُهُ الصلاةَ (وذلك كالالتفات (ح: بالوجه) والخطوة والخطوتين) لمْ يَسْجُدْ. ويُسْتَثْنَى [ممَّا لا يُبْطِلُ عمدُهُ] مَا إذَا قَرَأَ الفاتحةَ أو التشهدَ أوْ بعضَهُما في غيرِ موضِعِهِ فإنَّهُ يَسْجُدُ لسهوِهِ ولاَ يُبْطِلُ عمدُهُ.

f11.6 One performs a forgetfulness prostration for unintentionally doing an uncalled-for action of the type which when done intentionally invalidates the prayer (O: such as a small amount of extraneous speech), provided it is not the type of action whose *unintentional* performance also invalidates the prayer (O: such as much extraneous speech or action (def: f9)) (N: since doing it would in any case invalidate the prayer and obviate the need for a forgetfulness prostration).

Straightening back up after bowing (f8.31), and sitting between prostrations (f8.36) are two brief integrals. To intentionally make them lengthy invalidates one's prayer, though to do so absentmindedly merely calls for a forgetfulness prostration.

(A: An exception to this is standing at length after bowing in the final rak'a of any prayer, as this does not invalidate the prayer even when done intentionally, and even if one does not supplicate therein.)

f11.6 وإنْ أبْطَلَ (أي عمده وذلك كقليل كلام) سَجَدَ لسهوِهِ إنْ لمْ يُبْطِلْ سهوُهُ أيضاً (أي كما يبطل عمده كالكلام والعمل الكثيرين).

والاعتدالُ مِنَ الركوعِ والجلوسُ بَيْنَ السجدتَيْنِ ركنانِ قصيرانِ تَبْطُلُ الصلاةُ بإطالتِهِمَا عمداً، فإنْ طوَّلَهُما سهواً سَجَدَ.

f11.7 If one forgets the first Testification of Faith (Tashahhud) and stands up, it is unlawful to return to it. If one intentionally returns to it, this invalidates one's prayer (O: because one has interrupted an obligatory act (A: the *integral* of standing) for the sake of something nonobligatory (A: the *main sunna* of the first Testification of Faith (Tashahhud))).

But if one returns to it absentmindedly or out of ignorance, one merely prostrates for it, though one must (O: interrupt the Testification of Faith that one has returned to, and) stand up as soon as one remembers.

If one (A: has omitted the first Testification of Faith and started to rise, but) checks oneself

f11.7 ولوْ نَسِيَ التشهدَ الأولَ فذَكَرَهُ بعدَ انتصابِهِ حَرُمَ العودُ إلَيْهِ. فإنْ عَادَ عمداً بَطَلَتْ (لقطعه فرضاً لنفل).

أوْ سهواً أوْ جاهلاً سَجَدَ ويَلْزَمُهُ القيامُ (عن التشهد في هذه الحالة) إذَا ذَكَرَهُ.

وإنْ عَادَ قبلَهُ (أي قبل الانتصاب) لمْ

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before standing and sits down again, this does not call for a forgetfulness prostration (O: as it is not a full surplus action (def: f11.3)). But if one intentionally rises and then returns to sitting after having been closer to standing, one's prayer is invalid. If not (O: i.e. if one had not yet been that close, or had, but returned absentmindedly or in ignorance of its prohibition), it is not (O: invalid).

The same applies to omitting the supplication of the dawn prayer (f8.53), where placing the forehead on the ground is as *standing up* is in the above rulings (N: that is, one may return to the omitted supplication as long as one has not yet completed one's (A: first) prostration).

يَسْجُدُ (لعدم الزيادة). ولَوْ نَهَضَ عامداً ثمَّ عادَ بعدَ ما صَارَ إلى القيامِ أقربَ بطَلَتْ. وإلاَّ (أي إن لم يصل إلى المحل المتقدم، أو وصل وعاد ناسياً أو جاهلاً بالتحريم) فَلاَ (تبطل صلاته).

والقنوتُ كالتشهدِ ووضعُ الجبهةِ بالأرضِ كالانتصابِ (ح: أي فيعود إليه ما لم يتم سجوده).

f11.8 When praying behind an imam who misses the first Testification of Faith (Tashahhud) by standing, the follower may not remain seated to recite it by himself (O: as this is a gross contravention of his leadership and invalidates the prayer when done purposely and in awareness of its prohibition) unless he has made the intention to cease his participation in the group prayer and finish alone.

But if the imam omits the first Testification of Faith (Tashahhud) and the follower stands up with him, and then the imam sits down, it is unlawful for the follower to follow him therein. Rather, the follower should either cease his participation in the group prayer, or else remain standing and wait for the imam to rise before they continue the prayer together. If the follower intentionally sits back down when the imam does (O: knowing it is unlawful) then his prayer is invalid.

If the imam is sitting for the Testification of Faith and the follower absentmindedly stands up, then he must sit again, in deference to his imam's leadership (O: because following him in what is correct takes priority over starting an obligatory integral, which is also why the latecomer to group prayer may omit both standing and reciting the Fatiha (n: to bow when the imam bows, as above at f8.15)).

f11.8 ولَوْ نَهَضَ الإمامُ لمْ يَجُزْ للمأمومِ القعودُ لهُ (لفحش المخالفة فتبطل صلاته حينئذ إن تخلف عامداً عالماً) إلاَّ أنْ يَنْوِيَ مفارقتَهُ.

فلو انتصبَ مَعَ الإمامِ فعادَ الإمامُ إليهِ حَرُمَتْ موافقتُهُ. بلْ يُفارِقُهُ أوْ يَنْتَظِرُهُ قائماً فإنْ وافقَهُ عمداً (أي متعمداً عالماً بالتحريم) بَطَلَتْ.

ولَوْ قَعَدَ الإمامُ وقامَ المأمومُ سهواً لَزِمَهُ العودُ لموافقةِ إمامِهِ (لأن المتابعة آكد من التلبس بالفرض ولذلك سقط القيام عن المسبوق وكذلك الفاتحة).

f11.9 One does not perform the forgetfulness prostration when one is uncertain (A: i.e. does not know or believe) that one did something that calls

f11.9 ولَوْ شَكَّ هَلْ سَهَا [(أي هل حصل منه ما يقتضي سجود السهو)]، أوْ

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for a forgetfulness prostration, or that one added a surplus integral, or did something uncalled-for. But if uncertain whether one omitted a main sunna (def: f9.15), or performed the forgetfulness prostration, or whether one prayed three rak'as or four (A: and this includes being uncertain (N: i.e. not knowing or believing it probable) that one performed one or more of a rak'a's integrals, since without all seventeen integrals (def: f9.14), the rak'a remains unperformed), then one proceeds on the assumption that one did not yet do it (O: returning to the original basis, which was that one had not done it) and one finishes with a forgetfulness prostration.

When one's doubt (A: that one has performed an extra rak'a) is resolved before finishing the prayer with Salams, one also prostrates for forgetfulness because of the rak'a one prayed while uncertain, which was presumed to have possibly been extra (A: i.e. the final rak'a, which one performed thinking it might be extra). But if performing it would have been obligatory in any case, as when one is uncertain during the third rak'a (A: of a four-rak'a prayer) as to whether it is the third or fourth rak'a (A: both of which would be obligatory for the prayer in any case), but one remembers during it that it is the third, then one does not prostrate for one's forgetfulness, though if one did not remember which it was until rising for the fourth rak'a (A: which one presumed might be the fifth), one prostrates for forgetfulness. (A: The same applies to prayers of less than four rak'as.)

هَلْ زَادَ ركناً أَوْ هَلِ ارْتَكَبَ منهياً لَمْ يَسْجُدْ.

أَوْ هَلْ تَرَكَ بعضاً معيَّناً أَوْ هَلْ سَجَدَ للسهوِ أَوْ هَلْ صَلَّى ثلاثاً أَوْ أربعاً بَنَى على أَنَّهُ لَمْ يَفْعَلْهُ (فيرجع في ذلك إلى الأصل وهو عدم الفعل) ويَسْجُدُ.

لكنْ إنْ زَالَ شكُّهُ قبلَ السلامِ يَسْجُدُ أيضاً لِمَا صَلَّاه متردِّداً واحْتُمِلَ أنهُ زائدٌ، وإنْ وَجَبَ فِعْلُهُ على كلِّ حالٍ لَمْ يَسْجُدْ، مثالُهُ شَكٌّ في الثالثةِ أهي ثالثةٌ أَمْ رابعةٌ فَتَذَكَّرَ فيها لَمْ يَسْجُدْ، أَوْ بعدَ قيامِهِ للرابعةِ سَجَدَ.

f11.10 The forgetfulness prostration, even if there are numerous reasons for it in one prayer, is only two prostrations.

f11.10 وسجودُ السهوِ وإنْ تَعَدَّدَتْ أسبابُهُ سَجْدَتَانِ.

f11.11 If one comes late to a group prayer and the imam performs a forgetfulness prostration at the end of the group's prayer, one performs it with the group, and once again at the end of one's own prayer.

A follower does not prostrate for forgetfulness when he makes an individual mistake (A: the imam did not make) while following (n: unless he omits an integral, as discussed above at

f11.11 ولَوْ سَجَدَ المسبوقُ مَعَ إمامِهِ أعادَهُ في آخرِ صلاتِهِ.

وإنْ سَهَا خَلْفَ الإمامِ لَمْ يَسْجُدْ. فإنْ

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f11.2(O:)), though he does prostrate if his mistake occurred before joining the group or after the imam finished with Salams.

If the imam makes a mistake, even if it was before one joined the group prayer, then one must prostrate for it with the group out of deference to the imam's leadership. If one does not, it invalidates one's prayer. If the imam neglects to perform a forgetfulness prostration, the follower does so anyway.

If one comes late to group prayer, absentmindedly finishes with Salams with the imam, and then remembers (O: the rest of the prayer that one has to complete), one performs the remainder and prostrates for forgetfulness.

سها قبل الاقتداء به أو بعد سلام الإمام سجد.

ولو سها الإمام ولو قبل الاقتداء به وجب متابعته في السجود. فإن لم يتابع بطلت صلاته. فإن ترك الإمام سجد المأموم.

ولو نسي المسبوق فسلم مع الإمام ثم ذكر (أي تذكر ما عليه من بقية صلاته) تداركه وسجد للسهو.

f11.12 The forgetfulness prostration is a sunna. It is performed before one's final Salams, whether the reason is a surplus action or an omitted one.

One is no longer entitled to perform it if one deliberately finishes with Salams before it, or absentmindedly finishes with Salams and there is a lengthy interval before one recalls that one was supposed to have performed it; though if this interval is brief and one wishes, then one may prostrate, and one has thereby returned to the prayer and must again finish it with Salams.

f11.12 وسجود السهو سنة. ومحله قبل السلام سواء سها بزيادة أو نقص. فإن سلم قبله عمداً مطلقاً أو سهواً وطال الفصل فات وإن قصر وأراد السجود سجد وكان عائداً إلى الصلاة فيعيد السلام.

THE KORAN RECITAL PROSTRATION

سجود التلاوة

f11.13 To prostrate for recital of appropriate verses of the Koran is sunna for the person reciting, listening, or merely hearing.

f11.13 سجود التلاوة سنة للقارىء والمستمع والسامع.

f11.14 One prostrates for one's own recital if praying by oneself or if one is imam (O: but it invalidates one's prayer to intentionally and with knowledge of its prohibition recite a verse for the purpose of prostrating during the prayer (N: if one prostrates therein), except for al-Sajda (Koran 32) recited in the dawn prayer (subh) on Friday. (A: Though if such a verse merely occurs in the course of one's prayer, as when one is reciting a particular sura containing it, one may prostrate)). But if either of them prostrates upon hearing someone

f11.14 ويسجد المصلي المنفرد والإمام لقراءة نفسه (وإذا قرأ آية السجدة بقصد السجود في غير «آلم تنزيل» في صبح يوم الجمعة بطلت (ح: صلاته إن سجد) إن كان عامداً عالماً بالتحريم). فإن سجدا لقراءة غيرهما بطلت

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else's recital, it invalidates their prayer.

A follower prostrates with his imam. The follower's prayer is invalid if he prostrates for his own recital, the recital of someone besides the imam, or prostrates without the imam, or does not prostrate when the imam does.

صلاتُهما.

ويَسْجُدُ المأمومُ لقراءةِ إمامِهِ مَعَهُ. فلوْ سَجَدَ لقراءةِ نفسِهِ أوْ غيرِ إمامِهِ أوْ سَجَدَ دونَهُ أوْ تَخَلَّفَ عنهُ بَطَلَتْ.

f11.15 There are fourteen prostration verses, two of them in al-Hajj (Koran 22). They do not include the prostration at Sad (Koran 38:24), which is a prostration of thanks, not of Koran recital, and is only performed outside of prayer. To purposely prostrate for it during the prayer invalidates the prayer.

f11.15 وهوَ أربعَ عشرةَ سجدةً منها ثنتان في الحجِّ. وليْسَ منْها سجدةُ صٓ بلْ هيَ سجدةُ شكرٍ تُفْعَلُ خارجَ الصلاةِ. ويُبْطِلُ تعمُّدُها الصلاةَ.

f11.16 When one prostrates for reciting while in the prayer, it is recommended to say "Allahu akbar" before prostrating and again when rising. It is obligatory to stand again after it (O: or to sit up again if performing a nonobligatory prayer seated) and recommended to then recite more of the Koran before one bows.

When one prostrates for reciting while outside of the prayer, it is obligatory to say an opening Allahu Akbar (O: and to finish with Salams. The four integrals of both the prostration of Koran recital (A: outside of prayer) and of the prostration of thanks are:

(a) the intention;

(b) the opening Allahu Akbar;

(c) the prostration;

(d) and the final Salams (A: which can only be performed in a sitting position).

Whether in or out of the prayer, the things that invalidate a normal prayer invalidate the prostrations of recital or thanks, and the conditions of the prayer, i.e. ablution (wudu), clothing nakedness, the entry of the proper time—which is when the last letter of a prostration verse has been recited—facing the direction of prayer (qibla), and so forth, are also conditions of these prostrations).

f11.16 وإذا سَجَدَ في الصلاةِ كَبَّرَ للسجودِ والرفعِ ندباً ويَجِبُ أنْ يَنْتَصِبَ قائماً (وأن يقعد عقبه إن صلى من قعود) ويُنْدَبُ أنْ يَقْرَأَ شيئاً ثمَّ يَرْكَعَ.

وفي غيرِ الصلاةِ تَجِبُ تكبيرةُ الإحرامِ (والسلامِ والحاصلُ أن لسجودِ التلاوةِ والشكرِ أركاناً أربعةً: النيةَ والتكبيرةَ للإحرامِ والسجودَ والسلامَ.

ويبطلُ هاتينِ السجدتينِ ما يبطلُ غيرهما من مبطلاتِ الصلاةِ، وشرطهما شرطُ غيرهما من الصلاةِ وذلك كالطهارةِ وسترِ العورةِ ودخولِ الوقتِ وهو فراغه من القراءةِ لآيتها ولو بقي حرفٌ واحدٌ لم يسجدْ حتى يتمها واستقبالِ القبلةِ وغيرِ ذلك من شروطِ الصلاةِ).

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It is recommended to say "Allahu akbar" when one prostrates and rises, though not to recite the Testification of Faith (Tashahhud) therein.

وتُنْدَبُ تكبيرةُ السجودِ والرفعِ لا التشهدُ.

f11.17 If one delays the recital prostration past its time and the interval is brief (O: meaning less than the time of two brief, medium-length rak'as) then one is still entitled to prostrate. If longer than that, one does not make it up.

When one repeats a prostration verse within one sitting or within one rak'a and one has missed the prostration at its first mention, then it is accomplished by a single prostration (O: though if one prostrates for the first, one still prostrates for the subsequent times, as the reason to do so has been renewed).

f11.17 وإنْ أخَّرَ السجودَ وقَصُرَ الفصلُ (وضبط قصر ذلك في العرف بأن لا يزيد على قدر ركعتين بأخف ممكن من الوسط المعتدل) سَجَدَ وإلاّ لمْ يَقْضِ.

ولوْ كرَّرَ آيةً في مجلسٍ أوْ ركعةٍ ولمْ يَسْجُدْ للأولى كَفَتْهُ سجدةٌ (فلو سجد للأولى سجد لما بعدها لتجدد السبب).

f11.18 When reciting the Koran, whether during the prayer or not, it is recommended to ask Allah for mercy at the verses mentioning mercy, and to seek refuge in Him (Ta'awwudh) at verses mentioning punishment.

f11.18 ويُنْدَبُ لِمَنْ قرأ في الصلاةِ وغيرِها آيةَ رحمةٍ أنْ يَسْأَلَ اللهَ الرحمةَ، أوْ آيةَ عذابٍ أنْ يَتَعَوَّذَ منهُ.

THE PROSTRATION OF THANKS

سجود الشكر

f11.19 Whenever a manifest blessing appears in one's life (O: such as a child, wealth, or prestige), it is recommended to prostrate out of thanks to Allah, and likewise when an affliction is averted (O: such as being saved from drowning, regaining health, or the reappearance of someone lost (A: or the death of a tyrant)), or when one sees someone Allah has afflicted with disobedience or illness, though in the latter case one should prostrate in private (O: so as not to sadden the person).

The prostration of thanks is the same as the Koran recital prostration outside of the prayer (O: regarding its integrals and conditions (def: f11.16)). It invalidates one's prayer if performed during it.

f11.19 و(يندب) لِمَنْ تجدُدُ لهُ نعمةٌ ظاهرةٌ (كحدوث ولد ومال وجاه مثلاً) أوِ انْدَفَعَتْ عنهُ نقمةٌ ظاهرةٌ (كنجاة من غرق وشفاء مريض وقدوم غائب) ومنْهُ رؤيةُ مُبْتَلىً بمعصيةٍ أوْ مرضٍ أنْ يَسْجُدَ شكراً لله تعالى ويُخْفِيَهَا (لئلا ينكسر خاطره) [إلاّ لفاسقٍ فَيُظْهِرُهَا لِيَرْتَدِعَ إنْ لمْ يَخَفْ ضرراً].

وهي كسجودِ التلاوةِ (في الأركان والشروط) خارجَ الصلاةِ. وتُبْطِلُ بفعلِها الصلاةَ.

f11.20 It is unlawful to prostrate without occasion merely to humble oneself to Allah to draw

f11.20 ولَوْ خَضَعَ فَتَقَرَّبَ للّهِ بسجدةٍ

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near to Him (O: because it is a reprehensible innovation (bid'a, def: w29.3)).

منفردةٍ بلا سببٍ حرُمَ (فإنه بدعة).

f11.21 The recital prostration's requirements of facing the direction of prayer (qibla), purity, and clothing nakedness are the same as those of nonobligatory prayers.

f11.21 وحكمُ سجودِ التلاوةِ حكمُ صلاةِ النفلِ في القبلةِ والطهارةِ والستارةِ.

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f12.0 GROUP PRAYER AND THE IMAM

f12.0 صلاة الجماعة وصفة الإمام

GROUP PRAYER

صلاة الجماعة

f12.1 Group prayer is a communal obligation (def: c3.2) upon all male nontravellers for the five current prescribed prayers, such that the rite of the prayer be public. (O: In a small town, it is enough to merely gather somewhere and pray. In a city, the prayer must be held in public places such that the manifestations of obedience to Allah's command are evident. If held in houses where the rite of prayer is not public, the obligation remains unfulfilled (A: though a house with a sign on it is sufficient).)

f12.1 هيَ فرضُ كفايةٍ في حقِّ الرجالِ المقيمينَ في المكتوباتِ الخمسِ المؤديات بحيثُ يَظْهَرُ الشعارُ (في البلد أو في محل إقامتها. ففي القرية الصغيرة يكفي إقامتها في محل وفي الكبيرة والبلد تقام في محال يظهر بها الشعار فلو أطبقوا على إقامتها في البيوت ولم يظهر بها الشعار لم يسقط الفرض).

f12.2 Group prayer is sunna for women, travellers, and for makeup prayers in which the imam and followers are performing the same type of prayer; though it is not sunna for a follower's makeup prayer to be performed behind an imam's current prescribed prayer, or for a makeup prayer to be performed behind a different type of makeup (O: such as a follower making up the noon prayer (zuhr) behind an imam who is making up the midafternoon prayer ('asr)).

f12.2 وتُسَنُّ للنساءِ والمسافرينَ ولمقضيةٍ خلفَ مثلها لا خلفَ مؤداةٍ ومقضيةٍ غيرها (كظهر خلف عصر).

f12.3 It is personally obligatory to perform the Friday prayer (jumu'a) in a group (A: for every male Muslim who is not travelling).

f12.3 وهيَ في الجمعة فرضُ عينٍ.

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f12.4 The group prayer for which the demand is the strongest is the dawn prayer (subh), then the nightfall prayer ('isha), and then the midafternoon prayer ('asr).

The minimal number of people for a group prayer is an imam and a follower.

It is best for men to perform group prayer at the mosque (O: as the act of going to the mosque makes the group prayer evident). The best mosque in which to pray is the one with the most people. If there is a nearby mosque attended by few people, then it is better to go to a distant one attended by more, unless the imam there commits reprehensible innovations (bid'a, def: w29.3), is immoral, does not consider one of the integrals of the prayer to be an integral (n: though this does not matter if it is the result of the imam's following a different school of jurisprudence, as below at f12.29(N:)), or if one's going to the farther mosque will make group prayer impossible at the one nearby (A: as when one is one of the only two people who are likely to come), in all of which cases it is better to pray at the nearby mosque.

It is better for women to pray at home than at the mosque (A: whether they are young or old). It is offensive for an attractive or young woman to come to the mosque to pray (O: or for her husband to permit her), though not offensive for women who are not young or attractive when this is unlikely to cause temptation. (N: The author's words here must be interpreted in the light of the following details: If a woman's going to group prayer or elsewhere will definitely lead to temptation between the sexes, it is unlawful for her to go. If such temptation can be definitely prevented, her going to attend group prayer remains sunna, as is attested to by the hadiths that have reached us on the subject. If temptation is feared but not certain to occur, her going becomes offensive. Whether such temptation is likely to occur is something that differs with different times, places, and people. An old woman is not like a young one, nor a righteous society like one in which temptation between the sexes is the rule; nor is a special prayer place set aside for women at a mosque like a prayer place which they share with men. This is why 'A'isha (Allah be well pleased with her) said,

"Had the Prophet (Allah bless him and give

f12.4 وآكدُ الجماعات الصبحُ ثمَّ العشاءُ ثمَّ العصرُ. وأقلُّها إمامٌ ومأمومٌ.

وهي للرجال في المساجدِ أفضلُ (وفي الذهاب إلى المسجد إظهار شعار الجماعة) وأكثرُها جماعةً أفضلُ. فإنْ كان بجواره مسجدٌ قليلُ الجمع فالبعيدُ الكثيرُ الجمع أولى إلاّ أنْ يكونَ إمامُهُ مبتدعاً أوْ فاسقاً أوْ لا يَعْتقدُ بعضَ الأركانِ أوْ يتعطّلَ بذهابه إلى البعيد جماعةُ مسجدِ الجوار فمسجدُ الجوار أولى.

وللنساء في بيوتهنَّ أفضلُ ويُكْرَهُ حضورُ المسجد لمشتهاةٍ أوْ شابةٍ (ويكره لزوجها تمكينها منه) لا غيرهما عند أمن الفتنة.

(ح: كلام المصنف هنا يجب أن يحمل على التفصيل التالي: إذا ترتبت على خروج المرأة لصلاة الجماعة وغيرها فتنة مؤكدة صار خروجها محرماً. وإذا انتفت الفتنة بصورة مؤكدة ظل خروجها للجماعة مسنوناً بمقتضى الأحاديث الواردة في الموضوع. وإذا خشيت الفتنة فلم تنتف ولم تتأكد صار خروجها مكروهاً. وهذا يختلف باختلاف الأزمنة والأمكنة والأشخاص فليس العجوز كالشابة، ولا المجتمع الصالح كالمجتمع الذي تغلب فيه الفتنة، ولا المصلى الخاص بالنساء في المسجد كالمصلى المشترك مع الرجال. ولهذا قالت عائشة رضي الله عنها:

«لو أن رسول الله ﷺ رأى ما أحدث

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him peace) seen what women do now, he would have forbidden them the mosque as the women of Bani Isra'il were forbidden,"

a hadith reported by Bukhari and Muslim.

The temptation between the sexes whose occurrence is to be feared when they intermingle is of various degrees, the least of which is a person's appreciating and admiring the other, then being attracted to and enamored with the other, and finally, those indecencies which are not hidden from anyone. Islam is eager to eliminate evil at its inception and extirpate temptation from its outset, and the word of Allah Most High,

"Tell believers to lower their eyes and to guard their private parts" (Koran 24:30),

explains both the starting point and final outcome of the temptation of men through women and the temptation of women through men.)

النساء لمنعهن المسجد كما منعت نساء بني إسرائيل» متفق عليه.

إن الفتنة التي يخشى من حصولها في الاختلاط لها درجات، أدناها الاستحسان والإعجاب ثم ميل النفس والعشق إلى آخر تلك المفاسد التي لا تخفى. والإسلام يحرص على منع الشر من أصله وقطع دابر الفتنة من بدايتها، وقول الله تعالى:

﴿قُلْ للمؤمنينَ يَغُضُّوا مِنْ أبْصارِهِمْ ويَحْفَظُوا فُرُوجَهُمْ﴾ [النور: ٣٠].

يبين البداية والنهاية في افتتان الرجال بالنساء وافتتان النساء بالرجال).

f12.5 There is no demand to go to group prayer (O: whether communally obligatory (dis: f12.1), personally obligatory (f12.3), or sunna (f12.2)), when there is a valid excuse not to, such as:

(1) hardship due to rain or snow that soaks clothing;

(2) hardship due to heavy mud (O: from getting soiled or slipping when walking through it);

(3) (O: severe) winds at night (O: or dawn);

(4) severe heat or cold (O: because of the hardship of moving in them, and likewise intense darkness at night, which is an excuse not to attend);

(5) being in the presence of food or drink that one wants to have (O: as they obviate the awe and humility befitting the prayer. One should eat enough to take the edge off one's hunger (A: and then go to join the group));

(6) holding back from going to the toilet or breaking wind (O: as one should relieve oneself first, even if one fears missing the group prayer);

f12.5 وتَسْقُطُ الجماعةُ (أي يسقط الطلب لها على سبيل فرض الكفاية أو على سبيل فرض العين أو على سبيل السنية) بالعذرِ كمطرٍ أوْ ثلجٍ يَبُلُّ الثوبَ أوْ وحلٍ (للتلويث بالمشي فيه والزلق) أوْ (كشدة) ريحٍ بالليلِ [(قال في المهمات المتجه إلحاق الصبح بالليل في ذلك)] أوْ حرٍّ أوْ بردٍ شديدَيْنِ (لعظم مشقة الحركة فيهما وشدة الظلمة في الليل عذر مسقط أيضاً) أوْ حضورِ طعامٍ أوْ شرابٍ يَتُوقُ إليْهِ (لأنهما حينئذ يذهبان الخشوع، [وليس المراد أنه يستوفي الشبع بل] يأكل لقماً يكسر حدة الجوع) أوْ مدافعةِ حدثٍ (فيبدأ بتفريغ نفسه من ذلك، وإن خاف فوت الجماعة لو فرغ نفسه) أوْ خوفِ

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(7) hazard to one's person;

(8) hazard to one's property (O: from theft or seizure, whether it belongs to oneself or to another whose property one is obliged to protect. It also includes bread one has put in the oven that would burn if one were to leave and attend the prayer);

(9) hardship from an ailment (O: even when one is able to attend, if it entails a hardship comparable to that of walking in the rain. If one is suffering from a slight indisposition such as a toothache or the like, it is not an excuse);

(10) taking care of a sick person (O: who would suffer harm if one left to pray, whether a relative, friend, or total stranger) or taking care of someone ill who is strongly attached to one's staying with him;

(11) the death of a relative, friend, (O: or spouse);

(12) fear of missing the impending departure of the party one intends to travel with;

(13) having eaten something with a bad odor (O: such as raw onions or garlic, though not if cooked, as this eliminates the smell);

(14) or fear of meeting someone who will try to collect a debt one owes him and one is unable to pay.

(O: The demand for group prayer is not eliminated by other than the above excuses.)

f12.6 It is a condition of a valid group prayer that the follower intend to follow the imam (O: whether at the opening Allahu Akbar or thereafter). If the follower neglects to do so, his prayer is as if he had performed it alone. It invalidates one's prayer to purposely omit the intention to follow the imam while at the same time praying behind him and following his motions by awaiting them at length, though awaiting them shortly or performing one's own prayer simultaneously with his does

على نفسٍ أوْ مالٍ (من سرقته ونهبه سواء كان له أو لمن يلزمه الذب عنه [من ظالم أو غيره] ويدخل في المال الخبز إذا وضعه في الفرن فإذا تركه وحضر لصلاة الجماعة فيحترق فيكون ذلك عذر في ترك الجماعة) أوْ مرضٍ (وإن كان الحضور ممكنا لكن بمشقة بأن تلحقه مشقة كمشقة مشيه في المطر. فإن كان مرضه يسيراً كوجع ضرس فليس بعذر) أوْ تمريضِ مَنْ يَخافُ ضياعَهُ (بحيث لو تركه من يريد حضور الجماعة لتضرر بغيبته عنه سواء كان المتمرض قريباً أو صديقاً أو غريباً لا معرفة له به) أوْ كانَ يَأنَسُ بِهِ، أوْ حضورِ موتِ قريبٍ أوْ صديقٍ (أو زوجته) أوْ فوت رفقةٍ تَرْحَلُ أوْ أكلِ ذِي رائحةٍ كريهةٍ (كبصل وثوم نيء كل منهما بخلاف المطبوخ لزوال ريحه) أوْ ملازمةِ غريمِهِ وهوَ معسرٌ. (ولا تسقط الجماعة بلا عذر من هذه الأعذار).

f12.6 وشروطُ الجماعةِ أنْ يَنْوِيَ المأمومُ الاقتداءَ (أي مع التحرم أو بعده). فإنْ أهْمَلَهُ انْفَرَدَتْ فُرادى. فإنْ تابعَ بلا نيةٍ بَطَلَتْ صلاتُهُ إنِ انْتَظَرَ أفعالَهُ انتظاراً طويلاً. فإنْ قلَّ أو اتفق فلا.

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not invalidate it.

It invalidates one's prayer to take a follower as one's imam when the follower is concurrently praying behind an imam (O: though if his imam finishes with Salams and the follower is still praying, he may then be taken as one's imam).

ولو اقْتَدَى بمأموم خالَ اقتدائِهِ بَطَلَتْ صلاتُهُ. (وأما بعد انقطاع القدوة فيصح الاقتداء به).

f12.7 The imam intends leading the prayer as imam. If he neglects this intention then his own prayer counts as if he had prayed alone (N: though his followers' prayer counts as a group prayer), the imam having lost the reward for praying in a group.

In the Friday prayer (jumu'a), it is a necessary condition for the prayer's validity that the imam intend leading as imam.

f12.7 وَلْيَنْوِ الإمامُ الإمامةَ فإنْ أهملَهُ انْعَقَدَتْ فرادَى وصحَّ الاقتداءُ بِهِ (ح: وكانت للمقتدين جماعة) وفاتَ الإمامَ ثوابُ الجماعةِ.

ويُشْتَرَطُ نيةُ الإمامةِ في الجمعةِ.

f12.8 When going to a group prayer, it is recommended to walk with tranquillity. (O: It is sunna not to gambol about, speak of disapproved things, or engage in acts which are offensive in the prayer itself, such as looking right or left.)

It is recommended to diligently seek the spiritual merit of being at the group prayer's opening Allahu Akbar, meaning that one says it just after the imam does.

f12.8 ويُنْدَبُ لقاصدِ الجماعةِ المشيُ بسكينةٍ. (السنة أن لا يعبث في مشيه إلى الصلاة ولا يتكلم بمستهجن ولا يتعاطى ما يكره في الصلاة كالالتفات).

ويُحافِظُ على إدراكِ فضيلةِ تكبيرةِ الإحرامِ وتَحْصُلُ بأنْ يَشْتَغِلَ بالتحرُّمِ عقبَ تحرُّمِ الإمامِ.

f12.9 If one has begun a nonobligatory prayer when the call to commence (iqama) is given, one should finish it before joining the group, as long as one does not fear the group will finish before one can join them. If afraid they will, then one interrupts the nonobligatory prayer to join them.

If one has begun praying a prescribed prayer alone and the call to commence (iqama) is given for a group prayer, it is recommended to turn one's prayer into a supererogatory prayer of two rak'as, and pray the prescribed prayer with the group. Were one to merely change one's intention to that of following their imam, it would count as a valid group prayer for one, but it is offensive. In such a case if one reaches the end of one's prayer before the group, one may either wait for them to finish with one while sitting in the final Testification of Faith (Tashahhud), or else finish with Salams as soon as one reaches the end of one's

f12.9 ولو دَخَلَ في نفلٍ فأُقيمَتِ الجماعةُ أتَمَّهُ إنْ لَمْ يَخشَ فواتَ الجماعةِ. وإلاَّ قَطَعَهُ.

ولو دَخَلَ في الفرضِ منفرداً فأُقيمَتِ الجماعةُ نُدِبَ قَلْبُهُ نفلاً ركعتَيْنِ ثمَّ يقتدي. فإنْ لَمْ يفعَلْ ونَوَى الاقتداءَ في أثناءِ الصلاةِ صحَّ وكُرِهَ [ولَزِمَهُ المتابعةُ]. فإنْ تَمَّتْ صلاةُ المقتدي أولاً انْتَظَرَ في التشهدِ أوْ سَلَّمَ (ولم يجز أن يتابع الإمام

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prayer. (O: One may not follow the imam in what is in excess of one's own prayer.)

فيما زاد على صلاته).

f12.10 It is permissible to start praying with a group, and then cease one's participation in praying with them (A: by a silent intention) and finish one's prayer alone, though this is offensive when there is no excuse. (O: It is not offensive to do so when there is an excuse, such as being ill, or unable to endure the imam's lengthy Koran recital because of weakness or having business to attend to (N: or a pressing emergency).)

f12.10 ولَوْ أَحْرَمَ مَعَ الإمامِ ثُمَّ أَخْرَجَ نَفْسَهُ مِنَ الجماعةِ وأَتَمَّ منفرداً جَازَ لكِنْ يُكْرَهُ بلا عذرٍ. (وأما قطعها لعذر كمرض وتطويل إمام القراءة لمن لم يصبر لضعف أو شغل (ح: أو أمر طارىء مهم) فلا كراهة في المفارقة حينئذ).

f12.11 When one arrives late to a group prayer in which the imam is already bowing, it is obligatory for one to say the opening Allahu Akbar while standing upright, after which one says a second Allahu Akbar before one bows to join the group (O: though if one only says it once, intending the opening Allahu Akbar thereby, then omitting the second Allahu Akbar of bowing does no harm, as it is sunna). If any part of one's opening Allahu Akbar occurs when one is not standing upright (def: f8.27), one's prayer is invalid.

A latecomer is considered to have performed the rak'a if he manages to say "Allahu akbar," bow, and remain motionless a moment therein before the imam straightens up beyond the definitional limit of *bowing* (f8.29). If one is uncertain as to whether the imam straightened up past the limits of bowing before one reached that position, or whether it was after, then one has not performed the rak'a (O: as one assumes, when uncertain, that one had not yet reached it). Nor does the rak'a count for such a follower when it does not count for the imam, such as when the imam nullifies his ablution (wudu), or has overlooked something impure on his person, or has mistakenly added a fifth rak'a to his prayer.

If one does not join the group until the imam has straightened up from bowing, or thereafter, then one follows his motions, saying "Allah akbar" with him and repeating "Subhan Allah" and the Testification of Faith (Tashahhud) when he does, even when this does not correspond to the rak'a in which one's own Testification of Faith would be if one were praying alone.

f12.11 ولَوْ وَجَدَ الإمامَ راكعاً أَحْرَمَ منتصباً ثُمَّ كَبَّرَ للركوعِ (فلو كبر واحدة ونوى بها التحرم فقط انعقدت صلاته ولا يضر ترك تكبيرة الركوع لأنها سنة). فإنْ وَقَعَ بعضُ تكبيرةِ الإحرامِ في غيرِ القيامِ لَمْ تَنْعَقِدْ.

فإنْ وَصَلَ إلى حدِّ الركوعِ المجزىءِ واطْمَأَنَّ قبلَ رَفْعِ الإمامِ عَنْ حدِّ الركوعِ المجزىءِ حَصَلَتْ لَهُ الركعةُ فإنْ شَكَّ هلْ رَفَعَ الإمامُ عَنِ الحدِّ المجزىءِ قبلَ وصولِهِ إلى الحدِّ المجزىءِ أو بعدَهُ (ح: لم يدرك) لأن الأصلَ في الشكِّ عدمُ الإدراكِ) أَوْ كَانَ الركوعُ غيرَ محسوبٍ للإمامِ كمحدثٍ وكذا من بِهِ نجاسةٌ خفيةٌ أَوْ ركوعٍ خامسةٍ لَمْ يُدْرِكْ.

ومَتَى أَدْرَكَ الاعتدالَ فَمَا بعدَهُ انْتَقَلَ معَهُ مكبراً ويُسَبِّحُ ويَتَشَهَّدُ معَهُ في غيرِ موضعِهِ.

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If one joins the group just as the imam is prostrating or sitting in the final Testification of Faith, then one prostrates or sits with him (N: after having recited one's opening Allahu Akbar while standing) without (A: a second) Allahu Akbar (O: though one does say "Subhan Allah" in prostration and recite the Testification of Faith with the imam, in deference to his leadership).

If the final Testification of Faith of the imam coincides with one's own first Testification, then when the imam finishes with Salams, one stands up with an Allahu Akbar to finish one's prayer; though if the imam's final Testification does not coincide with one's first Testification, one rises to finish without an Allahu Akbar.

ولوْ أدْركَهُ ساجداً أو متشهداً سَجَدَ أوْ جَلَسَ (ح: بعد تكبيرة الإحرام قائماً) بلا تكبير (لكنه يأتي بالتسبيح في الأول وبالتشهد في الثاني للمتابعة).

ولوْ سَلَّمَ الإمامُ وهو موضعُ جلوسِ المسبوقِ [(ح: بأن كان المقتدي في التشهد الأول من صلاته والإمام في التشهد الأخير)] قامَ (ح: المقتدي) مكبراً فإنْ لمْ يكُنْ موضِعَهُ فلا تكبير.

f12.12 Whenever one joins the group before the imam finishes with Salams, one has attained the merit of the group prayer. (N: But it is less than the merit of praying with the group from the beginning or joining them in the middle, though joining them at the end is better than praying alone.)

f12.12 وإنْ أدْرَكَ الإمامَ قبلَ أنْ يُسَلِّمَ أدْرَكَ فضيلةَ الجماعة (ح: لكنه ليس كفضيلة من أدرك الصلاة من أولها أو وسطها بل هذا أفضل من صلاة المنفرد).

f12.13 The rak'as one performs before the imam finishes with Salams are the first rak'as of one's prayer, and those performed after the imam finishes are the last. Hence, if the imam performs the dawn prayer's supplication (def: f8.53) in the rak'a in which one joins the group, one repeats it in one's own second rak'a.

f12.13 وما أدْرَكَهُ فهوَ أولُ صلاتِهِ وما يأتي بهِ بعدَ سلامِ الإمامِ فهوَ آخِرُ صلاتِهِ فيُعِيدُ فيهِ القنوتَ.

f12.14 It is obligatory for one to follow the imam's leadership in prayer actions, such that each of one's movements begins after the imam begins it and before he finishes (N: the following integral). (O: It is highly desirable that) one follows the imam's spoken integrals in the same way, with the sole exception of saying "Ameen" (def: f8.19), which should be simultaneous with his.

It invalidates one's prayer to say one's opening Allahu Akbar simultaneously with the imam, or to be uncertain as to whether one did so or not. It is offensive to perform some other part of the prayer simultaneously with the imam, and one thereby loses the merit of group prayer.

f12.14 ويَجِبُ متابعةُ الإمامِ في الأفعالِ ولْيَكُنِ ابتداءُ فعلِهِ متأخراً عنِ ابتدائِهِ ومتقدماً على فراغِهِ (ح: من الركن الذي انتقل إليه) ويُتابِعُهُ في الأقوالِ أيضاً (أي كما يجب عليه أن يتابعه في الأفعال يستحب أن يتابعه في الأقوال) إلّا التأمينَ فيُقارِنُهُ فيهِ.

ولوْ قارَنَهُ في تكبيرةِ الإحرامِ أوْ شكَّ هلْ قارَنَهُ لمْ تَنْعقِدْ أوْ في غيرِه كُرِهَ وفاتَتْهُ فضيلةُ الجماعةِ.

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GETTING AHEAD OF THE IMAM

من سبق الإمام

f12.15 It is offensive to proceed to an integral ahead of the imam, as when one bows before he does, and one is recommended to return to following him.

(N: An "integral" in rulings concerning the person who gets ahead of the imam or lags behind him refers to integrals that are physical *actions*, such as standing, bowing, straightening up, prostrating, or sitting up between prostrations. It does not refer to spoken integrals such as reciting the Fatiha, or to remaining motionless for a moment in the various positions.)

It is unlawful, though it does not invalidate the prayer, to completely finish an integral before the imam comes to it, as when one bows, straightens up, and then waits for him to straighten up.

It invalidates one's prayer to completely finish two integrals before the imam does, if one does so intentionally (O: and knowing it is unlawful). If one does so absentmindedly (O: or in ignorance of its prohibition), it does not invalidate the prayer, but the rak'a does not count (O: and one must add an additional rak'a after the imam finishes with Salams).

f12.15 وإنْ سَبَقَهُ إلى ركنٍ بأن رَكَعَ قَبْلَهُ كُرِهَ ونُدِبَ العودُ إلى متابعتِهِ.

(ح: والمراد بركن في أحكام من سبق الإمام أو تخلف عنه هو الركن الفعلي، كالقيام والركوع والاعتدال والسجود والجلوس بين السجدتين، وليس المراد به الركن القولي كقراءة الفاتحة، ولا الطمأنينة).

وإنْ سَبَقَهُ بركنٍ بأنْ رَكَعَ ورَفَعَ ثمّ مَكَثَ حتّى رفعَ الإمامُ حَرُمَ ولمْ يَبْطُلْ.

أوْ بركنَيْنِ (أي فعليين ولو غير طويلين سبقاً) عمداً (وحال كونه عالماً بالتحريم) بَطَلَتْ أوْ سهواً (أو سبقه بهما لكنه جاهل بالتحريم) فَلا، ولاَ يُعْتَدُّ بهذِهِ الركعةِ (فيأتي بعد سلام إمامه بركعة).

LAGGING BEHIND THE IMAM

التخلف عن الإمام

f12.16 If there is no excuse (def: below), it is offensive to lag behind the imam until he completely finishes an *integral* (def: f12.15(N:)) ahead of one, and it invalidates one's prayer to lag behind the imam until he finishes two integrals.

If the imam bows and straightens up while (N: without excuse) one has not yet bowed, it does not invalidate one's prayer until the imam actually begins going down towards prostration and one still has not bowed (O: since *lagging* means that the imam has finished two integrals before the follower has reached the first of them). This invalidates one's prayer even before the imam reaches prostration, as he has completed two integrals.

f12.16 وإنْ تَخلَّفَ بركنٍ بلا عذرٍ كُرِهَ. أوْ بركنينِ بَطَلَتْ فإنْ رَكَعَ واعْتَدَلَ والمأمومُ بعدُ قائمٌ لمْ تَبْطُلْ، فإنْ هَوى لِيَسْجُدَ وهو بعدُ قائمٌ بَطَلَتْ (لأن المراد بالتخلف بهما فراغ الإمام منهما قبل لحوق المأموم)، وإنْ لمْ يَبْلُغِ السجودَ لأنهُ كَمَّلَ الركنينِ.

f12.17 When one lags behind the imam for a valid reason, such as one's slow recital (O: the imam

f12.17 وإنْ تَخلَّفَ بعذرٍ كبطءِ قراءتِهِ (أي والإمام سريع في قراءته) لعجزٍ لاَ

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being fast in his recital) due to one's inability (A: whether natural inability or being a non-Arabic-speaker), not merely to unfounded misgivings (waswasa, def: s3.3), and the imam bows, then it is obligatory for one to finish the Fatiha (O: one is not entitled in such a case to simply omit the rest of the Fatiha and bow with the imam, as a latecomer is entitled to do (dis: f8.15, third par.)), after which one rapidly performs the elements of the prayer to catch up with the imam, provided the imam is not more than three (O: long) integrals ahead of one. (O: *Long* excludes the integrals of straightening up after bowing and sitting between prostrations, which are short. Rather, the imam's being *three integrals ahead* of one means he has bowed, prostrated once, and begun the second prostration, while the follower still has not bowed.)

If one is further behind than that (O: as when he has started to stand up while one is still standing for recital), then one follows from where one is (N: the number of rak'as one has done) and performs the ones missed after the imam finishes with Salams.

لوسوسة حتى ركع الإمام لزمه إتمام الفاتحة ويسعى خلفه [أي يجري المأموم بعد إتمام فاتحته على نظم صلاته ويلحق الإمام] ولا يقاس هذا على المسبوق حيث يسقط عنه باقيها) ما لم يسبقه بأكثر من ثلاثة أركان. (طويلة فلا يعد منها الاعتدال ولا الجلوس بين السجدتين لأنهما ركنان قصيران فيحصل السبق بالركوع والسجود الأول وتلبسه بالسجود الثاني).

فإن زاد (بأن رفع الإمام رأسه وشرع في القيام إلى الثانية مثلاً والمأموم قائم للقراءة) وافقه فيما هو فيه ثم يتدارك ما فاته بعد سلامه.

f12.18 When the imam is bowing or in the final Testification of Faith (Tashahhud), and becomes aware of someone coming to join the group prayer, it is recommended that he wait for the latecomer (N: so the *rak'a* counts for him if they are bowing, or so the *group prayer* counts for him if they are in the final Testification of Faith), provided:

(a) that the person has entered the mosque or place of prayer;

(b) that the wait is not excessively long;

(c) and that the imam's intention is obedience to Allah, not to give distinction or honor to the latecomer, such as by waiting for the noble but not the lowly.

Waiting for a latecomer is offensive in other than bowing and the final Testification of Faith.

f12.18 وإذا أحس الإمام بداخل وهو راكع أو في التشهد الأخير ندب انتظاره (ح: ليدرك الركعة في الحالة الأولى ويدرك الجماعة في الحالة الثانية) بشرط أن يكون قد دخل المسجد وأن لا يفحش الطول وأن يقصد الطاعة لا تمييزه وإكرامه بأن ينتظر الشريف دون الحقير.

ويكره في غير الركوع والتشهد.

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f12.19 When a mosque has an imam assigned to it (O: by the person in charge of the mosque, or as a condition of an endowment (waqf, def: k30)), and the mosque is not in a busy location, it is offensive for another to commence the group prayer without the imam's permission (O: because the imamate is his, no one else's, and because of the alienation and hurt feelings it involves). It is not offensive for another to do so in a mosque at a busy location or one to which no imam has been assigned.

f12.19 ولـوْ كـان لمسجـدٍ إمامٌ راتبٌ (وهو من ولاه الناظر أو كان بشرط الوقف) ولمْ يَكُنْ مطروقاً كُرِهَ لغيره إقامةُ الجماعة فيـه بغير إذنه (لأن الإمامة له لا لغيره ولما في ذلـك من الإيحاش وإيذاء القلوب). وإنْ كانَ مطروقاً أوْ لا إمامَ لَهُ لمْ يُكْرَهْ.

f12.20 When one has already performed one's prescribed prayer alone or in a group, and finds another group prayer being performed, it is recommended to repeat one's prayer with them, intending the obligatory prayer. (A: The first fulfills one's obligation of the prescribed prayer, but one intends repeating, e.g., the noon prayer (zuhr).) Its reward is that of a supererogatory prayer.

f12.20 ومـنْ صَلَّى منـفـرداً أوْ في جمـاعـةٍ ثمَّ وَجَدَ جماعةً تُصَلِّي نُدِبَ أنْ يُعِيدَ مَعَهُمْ بنيَّةِ الفريضة. وتَقَعُ نفلاً.

f12.21 The imam is recommended to keep his recital of the sura brief (O: not necessarily the absolute minimum, but not the maximum desirable for someone praying alone).

When leading a group composed solely of those who do not mind lengthy prayers, he is recommended to lengthen the recital.

(O: The imam should not prolong the recital when he does not know how everyone feels, and of those present some generally prefer lengthy rak'as and some do not, or when praying in a mosque at a busy location where people often join the prayer after the imam has begun.)

f12.21 ويُنْدَبُ للإمام التخفيفُ (ولا يقتصـر على الأقـل ولا يستـوفي الأكمـل المستحب للمنفرد).

فإنْ عَلِمَ رِضـا محصـورينَ بالتطويل نُدِبَ حينئذٍ.

(فـإن جهل حالهم وكان فيهم من يؤثر التطويل وفيهم من لا يؤثره لم يطول. ولو كانـوا يؤثـرون التطـويـل ولكن المسجد مطـروق بحيث يدخـل في الصـلاة من حضره بعد دخول الإمام فيها لم يطول).

f12.22 When the imam stops reciting the Koran because of uncertainty, it is recommended for the follower to remind him of what comes next. (N: When he does not stop but merely hesitates, the follower does not remind him, so as not to fluster him.) If the imam forgets an invocation (dhikr), the follower says it so the imam can hear. If he forgets an *action*, the follower should remind him of it by saying "Subhan Allah" (n: with the intention of invocation, as at f9.4(O:)). If the imam

f12.22 ويُنْدَبُ تلقينُ إمامِهِ إنْ وَقَفَتْ قراءتُـهُ. (ح: وأمـا إذا لم يقف بل كان يتـردد فلا يلقنه حتى لا يشـوش عليـه). وإنْ نَسِيَ ذكـراً جَهَـرَ به المأمومُ ليَسْمَعَهُ. أوْ فعلاً سَبَّحَ.

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remembers having missed the action, he performs it. But if he does not remember having missed it, it is not permissible for him to perform it just because the followers or others are reminding him, even if they are numerous. (A: The more reliable opinion is that if their number reaches four or more, he must act upon it.)

فإنْ تَذَكَّرَهُ الإمامُ عَمِلَ بِهِ. وإنْ لَمْ يَتَذَكَّرْهُ لَمْ يَجُزْ العملُ بقولِ المأمومين ولا غيرِهِمْ وإنْ كَثُرُوا.

f12.23 If the imam omits an obligatory element of the prayer (O: and does not return to it and perform it), then it is obligatory for the follower to cease his participation (def: f12.10) in the group prayer.

If the imam omits a sunna that the follower cannot add without considerably lagging behind, such as the first Testification of Faith (Tashahhud), then it is unlawful for the follower to perform the missing sunna (O: rather, he must follow the imam). If he performs it anyway (O: intentionally and knowing it is unlawful), it invalidates his prayer, though he is entitled to cease his participation in the group prayer to perform the sunna in the course of finishing his own prayer alone. If the sunna omitted by the imam can be done without much of a lag, such is sitting briefly before rising for a new rak'a (def: f8.40), then the follower may add it without ceasing his participation in the group. (O: This also applies to when the imam omits the dawn prayer's supplication (f8.53), which the follower may perform it he can catch up with the imam before the imam lifts his head from the second prostration, though if the imam lifts his head before the follower has prostrated even once and the follower has not intended to cease his participation in the group prayer, then the follower's prayer is invalid.)

f12.23 وإنْ تَرَكَ فرضاً (ولم يرجع إلى الصواب) وَجَبَ فراقُهُ.

أوْ سنةً لا تُفْعَلُ إلاَّ بتخلُّفٍ فاحشٍ كتشهدٍ حَرُمَ فعلُها (بل يتابع المأموم الإمام). فإنْ فَعَلَها (عامداً عالماً بالتحريم) بَطَلَتْ صلاتُهُ ولَهُ فراقُهُ ليَفْعَلَها. فإنْ أمْكَنَتْ قريباً كجلسةِ الاستراحةِ فَعَلَها. (والقنوت كجلسة الاستراحة إذا تركه الإمام، وللمأموم أن يفعله إذا لحقه في السجدة الأولى أو في السجدة الثانية مادام متلبساً بها قبل أن يرفع رأسه منها فإذا رفع رأسه من السجود الثاني ولم ينو المأموم المفارقة بطلت).

f12.24 Whenever the imam ceases his prayer because of his ablution (wudu) being nullified, or another reason, he may choose a successor to finish leading the prayer, provided the successor is eligible (def: f12.27) to lead the group. If the group performs a whole integral (f12.15(N:)) after the imam has stopped leading, then he may no longer choose a successor.

Any follower may be picked as the successor (O: even if he came late to the group prayer). If a

f12.24 ومتى قطعَ الإمامُ صلاتَهُ بحدثٍ أوْ غيرِهِ فلَهُ استخلافُ منْ يُتِمُّها بشرطِ صلاحيتِهِ لإمامةِ هذهِ الصلاةِ. فإنْ فَعَلُوا ركناً قبلَ الاستخلافِ امْتَنَعَ الاستخلافُ.

فإنْ كانَ الخليفةُ مأموماً جازَ استخلافُهُ مطلقاً (سواء كان موافقاً أو مسبوقاً).

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latecomer, he leads the group beginning at the same point in the prayer where the imam left off. When he finishes leading them in their prayer, he stands (O: to finish his own), and indicates to them to cease following his leadership, or better yet, indicates for them to remain waiting for him (A: in their final Testification of Faith (Tashahhud)) until he comes to it after finishing his own rak'as. If he does not know which rak'a the imam was in, then he should observe (O: by looking left or right to see if the followers are sitting or) whether they are ready to rise. If they are, he rises, and if not, then he sits in a Testification of Faith.

It is permissible for the successor to be someone who has not been praying with the group, provided he is picked in the first or third rak'a (if the prayer has four rak'as), though he may not be picked in the second or fourth rak'a (A: because the order of the person's prayer will not correspond to theirs, for such a person is not committed to the imam's order).

The followers need not intend to follow the successor. They may each simply break off and finish alone. If the imam chooses someone but they put forward someone else, their choice takes precedence.

ويراعي المسبوق نظم الإمام فإذا فرغ منه قام (يتمم صلاته) وأشار ليفارقوه أو ينتظروه وهو أفضل. وإن جهل نظم الإمام راقبهم (أي نظر جهة يمينه وجهة شماله). فإن همّوا بالقيام قام وإلا قعد.

وإن كان الخليفة غير مأموم جاز في الأولى وفي الثالثة من الرباعية لا في الثانية والرابعة.

ولا تجب نية الاقتداء بالخليفة، بل لهم أن يتموا فرادى. ولو قدّم الإمام واحداً والقوم آخر فمقدّمهم أولى.

THE IMAMATE

الإمامة

f12.25 The one with the best right to be imam (N: in order of preference, when there is a disagreement) is:

(1) the most learned in Sacred Law (A: i.e. the rulings concerned with prayer) (O: even if he has not memorized any of the Koran except the Fatiha, since the need in prayer for knowledge of its rules is practically unlimited, while the only Koran recital required is the Fatiha);

(2) he who has memorized the most Koran;

(3) the most godfearing (O: because leading the prayer is an embassage between the servant and Allah Most High, and best befits him most honored by Allah);

f12.25 أولى الناس بالإمامة الأفقهُ (وإن لم يحفظ من القرآن إلا الفاتحة لأن افتقار الصلاة للفقه لا ينحصر بخلاف القرآن المتعلق بالصلاة فهو محصور ومخصوص بالفاتحة) ثمّ الأقرأ ثمّ الأورعُ (لأن الإمامة سفارة بين العبد وبين الله تعالى والأولى بها الأكرم عنده) [ثمّ الأقدمُ

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(4) he who has been a Muslim longest;

(5) the noblest in lineage;

(6) he with the best life history or reputation;

(7) the cleanest in person and clothes;

(8) he with the best voice;

(9) and the most handsome.

When only one of the above is present, he is chosen. If all people present or some of them possess one or more of these characteristics, then someone from the first of the list takes priority over those listed after him. If two are equal and each insists on being the imam, they draw lots.

(N: It is permissible for a less qualified person to lead, even when a better qualified one is present.)

The imam assigned to a mosque or a person living in the house where the prayer takes place, even if only renting, takes precedence over everyone on the list, from the most learned on down, though he may select anyone else he wishes to lead the prayer. The sultan and those under him, of Islamic judges, regional governors, and so on, take precedence over even the imam of the mosque, the householder, and others.

The following take precedence even when the latter is more learned in Sacred Law:

(1) a nontraveller over a traveller;

(2) an upright person (def: o24.4) over a corrupt one;

(3) and an adult over a child.

A sighted and a blind person are equally eligible to lead the prayer.

f12.26 It is offensive for someone to lead a group at prayer when most of the group dislike him for a reason recognized by Sacred Law (O: such as wrongdoing, not taking precautions against filth (najasa), having a blameworthy income, keeping

هجرةً وولدُهُ] ثمَّ الأسنُ في الإسلامِ ثمَّ النسيبُ، ثمَّ الأحسنُ سيرةً ثمَّ الأحسنُ ذِكراً [(والظاهر هو أن المراد به هو المراد بما قبله)] ثمَّ الأنظفُ بدناً وثوباً ثمَّ الأحسنُ صوتاً ثمَّ الأحسنُ صورةً.

فمتى وُجِدَ واحدٌ مِنْ هؤلاءِ قُدِّمَ. وإنِ اجْتَمَعُوا أوْ بعضُهُمْ رُتِّبُوا هكذا. فإن استَوَيَا وتَشاحَّا أقْرِعَ.

(ح: ويجوز إمامة المفضول مع وجود الفاضل).

وإمامُ المسجدِ وساكنُ البيتِ ولوْ بإجارةٍ مقدمانِ على الأفقهِ وما بعدَهُ. ولهما تقديمُ مَنْ أرادَا. والسلطانُ والأعلى فالأعلى مِنَ القُضاةِ والولاةِ يُقدَّمُونَ على الساكنِ وإمامِ المسجدِ وغيرِهما.

ويُقدَّمُ حاضرٌ [وحرٌّ] وعدلٌ وبالغٌ على مسافرٍ [وعبدٍ] وفاسقٍ وصبيٍ، وإنْ كانوا أفقهَ.

والبصيرُ والأعمى سواءٌ.

f12.26 ويُكْرَهُ أنْ يَؤُمَّ قوماً مَنْ يَكْرَهُهُ أكثرُهُمْ بسببٍ شرعيٍ (كظلمٍ أوعدمِ توقي نجاسةٍ أوتعاطي معيشةٍ مذمومةٍ أو

the company of oppressors or the immoral, and so forth. If a minority dislike him, it is not offensive, for nobody lacks someone who dislikes him).

معاشرة الظلمة والفسقة. أما إذا كرهه أقلهم فلا كراهة إذ لا يخلو أحد عمن يكرهه).

f12.27 It is not permissible (O: or valid) to follow an imam who is non-Muslim, insane, in a state of ritual impurity (def: e7, e10), or who has filth (najasa) on his clothing or person, or is a woman leading men, or someone who omits or mispronounces (def: f8.18) a letter of the Fatiha leading someone who knows it, or a mute, or someone who slurs the words so the letters are indistinct from one another, or someone with a lisp.

If after the prayer one finds out that the imam was one of the above, then one must make up the prayer, unless the imam had filth upon him that was concealed, or he was in a state of ritual impurity (N: in which cases one need not make it up).

f12.27 ولا يَجُوزُ (ولا يصح) الاقتداءُ بكافرٍ ولا مجنونٍ ولا محدثٍ ولا ذي نجاسةٍ ولا رجُلٍ [وخنثى] بامرأةٍ ولا مَنْ يَحْفَظُ الفاتحة بمَنْ يُخِلُّ بحرفٍ مِنْهَا أوْ بأخْرَسَ أوْ أرَتَّ أوْ ألثغَ.

فإنْ ظَهَرَ بعدَ الصلاةِ أنَّ إمامَهُ واحدٌ منْ هؤلاءِ لَزِمَهُ الإعادةُ إلاَّ إذَا كانَ عليْهِ نجاسةٌ خفيةٌ أوْ كانَ محدثاً [في غيرِ الجمعةِ أوْ فيهَا وهوَ زائدٌ على الأربعينَ فإنْ كَمَلَتْ به الأربعونَ وَجَبَتْ الإعادةُ].

f12.28 The group prayer is valid:

(1) when the imam is performing a supererogatory prayer and the follower is performing a prescribed prayer, or vice versa;

(2) when the imam is performing the noon prayer (zuhr) and the follower is praying the dawn prayer (subh) (A: i.e. when the type of prayer differs), or vice versa;

(3) when the imam is praying while sitting and the follower is praying standing, or vice versa;

(4) and when the imam is performing a makeup prayer and the follower is performing a current one, or vice versa.

(n: But a person shortening his prayer because of travelling may not pray behind an imam who is performing the full number, as at f15.8(f).)

f12.28 ويَصِحُّ فرضٌ خلفَ نفلٍ وصبحٌ خلفَ ظهرٍ وقائمٌ خلفَ قاعدٍ وأداءٌ خلفَ قضاءٍ وبالعكسِ [(أي عكس ما تقدم من ابتداء قوله ويصح فرض الخ)].

f12.29 It is valid for a Shafi'i to follow the leadership of an imam who follows a different school of jurisprudence whenever the follower is not certain that the imam has omitted an obligatory element

f12.29 ولو اقْتَدَى بغيرِ شافعيٍّ صَحَّ إنْ لم يَتَيَقَّنْ أنَّهُ أخَلَّ بواجبٍ. وإلاَّ فَلا.

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of the prayer, though if certain the imam has omitted one, it is not valid to follow him. The validity is based solely on the belief of the follower as to whether or not something obligatory has been omitted.

(N: One should mention the position of the Malikis and Hanbalis here, which is that the criterion for the validity of following the imam is the *imam's* school of jurisprudence, such that if his prayer is valid in his own school, it is permissible to follow him as imam. How close this is to the spirit of the Law, which strives for Muslim unity.)

والاعتبارُ باعتقاد المأموم .

(ح : ومن الجدير بالإشارة هنا مذهب المالكية والحنابلة إذ يرون أن العبرة بمذهب الإمام، فإذا كانت صلاته صحيحة في مذهبه جاز الاقتداء به . وما أقرب هذا إلى روح الشريعة الحريصة على جمع الكلمة) .

f12.30 It is offensive to take an immoral person (def: o24.3(A:)) as imam (O: because he might not be concerned about the things that are obligatory in the prayer), or someone who stutters over the letter *f* or the letter *t*, or who makes inconsequential mistakes in the Arabic vowelling (O: that do not change the meaning).

f12.30 وتُكْرَهُ وراءَ فاسقٍ (لأنه يخاف منه أن لا يحافظ على الواجبات) وفأفاءٍ وتمتامٍ ولاحنٍ (لما لا يغير المعنى) .

RULES AND CONDITIONS OF FOLLOWING

شروط القدوة وآدابها

f12.31 When there are two or more male followers, it is sunna for them to stand behind the imam. A single male follower stands on the imam's right, and if a second follower arrives, the newcomer stands to the imam's left and says his opening Allahu Akbar, after which the two followers move back (O: little by little). If they cannot move back (O: for lack of room) then the imam moves forward.

f12.31 السنةُ أنْ يقفَ الذكران فصاعداً خلفَ الإمام . والذكرُ الواحدُ عنْ يمينه ، فإنْ جاءَ آخرُ أحْرَمَ عنْ يساره ثمَّ يتأخَّران (شيئاً فشيئاً) إنْ أمْكَن . وإلاَّ (أي وإن لم يمكن التأخر لضيق المكان) تقدَّمَ الإمامُ .

f12.32 When there are men, boys, and women present, the men form the front row or rows, then the boys, and then the women. (A: This is also the rule for husband and wife: the wife prays in a separate row behind the husband.)

(O: If the men's back row is incomplete, it should be completed with boys (A: and a latecomer may not remove the boys to make a place for himself unless they are directly behind the imam). Those who form a new row behind a row that is incomplete do not attain the merit of group prayer.)

f12.32 وإنْ حضرَ رجالٌ وصبيانٌ ونساءٌ تقدَّمَ الرجالُ ثمَّ الصبيانُ ثمَّ النساء . (وهذا كله إن استوعب الرجال الصف وإلا فيكمل صفهم بالصبيان كلهم أو ببعضهم . وتفوت فضيلة الجماعة إذا وقف صف قبل تمام ما أمامه) .

A woman leading women in prayer stands in the middle of their first row.

ونقفُ إمامةُ النساءِ وسطَهُنَّ.

f12.33 It is offensive for the imam's place to be higher or lower than the followers' unless the imam wishes to teach the followers the actions of prayer. If the imam and follower are not in a mosque, it is obligatory that part of the imam's body be level with part of the follower's when both are of average height.

f12.33 ويُكْرَهُ أنْ يَرْتفعَ موقفُ الإمامِ على المأمومِ وعكسُهُ إلاَّ أن يُريدَ الإمامُ تعليمَهُمْ أفعالَ الصلاةِ [أوْ يكونَ المأمومُ مبلغاً عن الإمامِ فيُنْدَبُ]. لكنْ إنْ كانَا في غيرِ مسجدٍ وَجَبَ أنْ يُحاذِيَ الأسفلُ الأعلى ببعضِ بَدَنِهِ بِشَرْطِ اعْتِدالِ الخلقةِ.

f12.34 A latecomer to a group prayer who does not find a place in the last row should stand behind it, begin his prayer with the opening Allahu Akbar, and then indicate to someone in the row to stand with him, by drawing him back; and it is recommended that the person selected cooperate by stepping back (A: this is only if the latecomer does not expect anyone else to come).

f12.34 ومنْ لمْ يجدْ في الصفِّ فُرْجَةً أحْرَمَ ثمَّ يَجْذِبُ لنفسِهِ واحداً منَ الصفِّ ليقفَ معَهُ ويُنْدَبُ لذلكَ مساعدتُهُ.

f12.35 The follower's prayer is invalid if his heel is farther forward than the imam's. (O: He should be farther back than the imam's heel, even if only a little, but not more than 1.44 meters, for otherwise the merit of group prayer is lost (A: i.e. unrewarded, though not legally invalid).)

f12.35 ولوْ تَقَدَّمَ عَقِبُ المأمومِ على عقبِ الإمامِ لمْ تَصِحَّ صلاتُهُ (فينبغي أن يتأخرَ عن عقبِهِ ولو قليلاً بحيثُ لا يبعدُ عنه أكثرَ من ثلاثةِ أذرعٍ وإلا فاتتِ الفضيلةُ).

f12.36 Whenever an imam leads a follower in a mosque, the group prayer is valid no matter if they are at a distance from each other, and no matter whether they are in the same chamber or not, as when one of them is on the roof (even if the door is closed) and the other is in the mosque's well, provided that (O: both places open onto the mosque, and that) the follower can know when the imam is performing the motions of the prayer, whether by seeing the imam, or hearing his *backup man* (muballigh, the person who repeats the imam's Allahu Akbars and Salams in a loud voice so people can hear).

Multiple interconnected mosques opening onto each other are considered as one mosque (O: and so are the mosque's outer courtyards, even when there is a walkway between the courtyard and mosque).

f12.36 ومتى اجْتَمَعَ المأمومُ والإمامُ في مسجدٍ صَحَّ الاقتداءُ مطلقاً وإنْ تباعدَا أو اخْتَلَفَ البناءُ مثلُ أنْ يَقِفَ أحدُهُمَا في السطحِ والآخرُ في بئرٍ في المسجدِ وإنْ أُغْلِقَ بابُ السطحِ (بشرطِ أنْ يكونَ كلٌّ من البئرِ والسطحِ نافذاً إليه) لكنْ يُشْتَرَطُ العلمُ بانتقالاتِ الإمامِ إمَّا بمشاهدةٍ أوْ سماعِ مبلغٍ.

والمساجدُ المتلاصقةُ المتنافذةُ كمسجدٍ واحدٍ (ورحبةُ المسجدِ لها حكمُهُ سواءٌ كانَ بينها وبينَ المسجدِ طريقٌ أم لا).

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MAXIMAL DISTANCES BETWEEN THE IMAM AND FOLLOWERS

المسافة بين الإمام والمأموم

f12.37 When the imam and follower are not in a mosque, but are in an open expanse such as a desert or large house, their group prayer is valid as long as the distance between them does not exceed approximately 144 meters. If farther apart than this, their group prayer is not valid. If there are rows of people behind the imam, this distance is the maximum that is valid between each row and the one in front of it, even if there are miles between the imam and the last row, or a fire, river that would have to be swum to reach him, or busy street between them.

If the imam is in one building and the follower in another, such as two houses, or if there is a house, inn, or school where the imam is in a courtyard and the follower is under a covered porch, or vice versa, then the maximum allowable distance is the same as for outdoors (def: above), provided that there is nothing between the imam and follower that obstructs passage to the imam, such as a latticework window (O: and provided that there is nothing that prevents the follower from seeing him, such as a closed door).

The group prayer is valid when the imam is in a mosque and the follower is in an adjoining space, provided that there is 144 meters or less between the follower and the edge of the mosque, and that between the follower and the mosque there is not a barrier lacking a breach in it, *breach* meaning, for example, when the follower is standing before a wall's open gate. If such a person's group prayer with the imam is thus valid, then the prayer of those behind him or in the row with him is also valid, even when (O: these others are numerous. and) the group extends beyond the area fronting the gate. Such a person's group prayer is not valid if he turns from the gate, or if the wall of the mosque, a window, or a closed door (locked or not) lies between him and the imam.

f12.37 ولَوْ كانَا في غيرِ مسجدٍ في فضاءٍ كصحراءَ أوْ بيتٍ واسعٍ صَحَّ اقتداءُ المأمومِ بالإمامِ إنْ لَمْ يَزِدْ مَا بينَهُمَا على ثلثمائةِ ذراعٍ تقريباً. وإلاَّ فلا. ولَوْ صَلَّى خلفَهُ صفوفٌ اعتُبِرَتْ الأذرعُ بينَ كلِّ صفٍ والصفُ الذي قدامَهُ وإنْ بَلَغَ مَا بَيْنَ الأخيرِ والإمامِ أميالاً سواءٌ حَالَ بينَهُما نارٌ أوْ بحرٌ يُحْوِجُ إلى سباحةٍ أوْ شارعٌ مطروقٌ أم لا.

ولَوْ وَقَفَ كلٌّ منهُمَا في بناءٍ كبيتَيْنِ أوْ أحدُهُمَا في صحنٍ والآخرُ في صُفَّةٍ منْ دارٍ أوْ خانٍ أوْ مدرسةٍ فَحُكْمُهُ حكمُ الفضاءِ بشرطِ أنْ لا يحُولَ ما يَمْنَعُ الاستطراقَ كشباكٍ (أو الرؤيةَ كبابٍ مردودٍ) [وقيلَ إنْ كانَ بناءُ المأمومِ عنْ يمينِهِ أوْ شمالِهِ وَجَبَ الاتصالُ بحيثُ لا يَبْقَى ما يَسَعُ واقفاً. وإنْ كَانَ خلفَهُ وَجَبَ أنْ لا يَزيدَ على ثلاثةِ أذرعٍ].

ولَوْ وَقَفَ الإمامُ في المسجدِ والمأمومُ في فضاءٍ متصلٍ بِهِ صَحَّ إنْ لَمْ يَزِدْ مَا بينَهُ وبينَ آخرِ المسجدِ على ثلثمائةِ ذراعٍ ولَمْ يَحُلْ حائلٌ مثلُ أنْ يَقِفَ قبالةَ البابِ وهو مفتوحٌ فإذَا صَحَّتْ لهذا صَحَّتْ لمن خلفَهُ أوِ اتَّصلَ بِهِ وإنْ (كثروا و) خَرَجُوا عنْ قبالةِ البابِ فإنْ عَدَلَ عنْ قبالةِ البابِ أوْ حَالَ جدارُ المسجدِ أوْ شباكُهُ أوْ بابُهُ المردودُ وإنْ لَمْ يُقْفَلْ لَمْ تَصِحْ.

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f13.0 TIMES WHEN THE PRAYER IS FORBIDDEN

f13.1 (O: The rules below apply to prayers that are wholly supererogatory, i.e. which are not performed for any particular occasion or reason, and apply to prayers performed for a reason that will occur after the prayer, such as the two sunna rak'as before entering the state of pilgrim sanctity (ihram).)

f13.2 The prayer is unlawful and invalid:

(1) from sunrise until the sun is *a spear's length* above the horizon (N: meaning when a distance equal to the sun's diameter appears between the sun and the horizon);

(2) from the time the sun is at its highest point in the sky until it moves on;

(3) from when the sun yellows before sunset until after it has set;

(4) after praying the current dawn prayer (subh);

(5) and after praying the current midafternoon prayer ('asr).

f13.3 It is permissible at the above times to offer nonobligatory prayers that are performed for a particular reason, such as the funeral prayer, greeting the mosque (def: f10.10), or the two rak'as that are sunna after ablution (wudu): and is also permissible to make up missed prayers; though one may not perform the two rak'as that are sunna before entering the state of pilgrim sanctity (ihram).

f13.4 It is not offensive to pray within the Meccan Sacred Precinct (Haram) at any time.

Nor is it offensive to pray when the sun is at its zenith on Fridays (N: whether in the Sacred Precinct or elsewhere).

f13.0 الأوقات التي نهي عن الصلاة فيها

f13.1 (أي النافلة المطلقة التي لا سبب لها أصلاً أو لها سبب لكنه متأخر عن الصلاة وذلك كسنة الإحرام).

f13.2 تَحْرُمُ الصلاةُ ولا تَنْعَقِدُ عندَ طلوعِ الشمسِ حتَّى تَرْتَفِعَ قدرَ رمحٍ وعندَ الاستواءِ حتَّى تَزُولَ، وعندَ الاصفرارِ حتَّى تَغْرُبَ، وبعدَ صلاةِ الصبحِ وبعدَ صلاةِ العصرِ.

f13.3 ولا يَحْرُمُ فيها ما لهُ سببٌ كجنازةٍ وتحيةِ مسجدٍ وسنةِ وضوءٍ وفائتةٍ. لا ركعتَيْ الإحرامِ.

f13.4 ولا تُكْرَهُ الصلاةُ في حرمِ مكةَ مطلقاً.

ولا عندَ الاستواءِ يومَ الجمعةِ.

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f14.0 THE PRAYER OF A SICK PERSON

f14.0 صلاة المريض

f14.1 Someone unable to stand may pray the prescribed prayer seated (O: and need not make it up), *unable* meaning that standing involves manifest hardship, will cause illness or the worsening of a present illness, or cause vertigo, as when one is on a ship.

Such a person may sit for the prayer any way he likes, though the *iftirash* style of sitting (def: f8.37) is recommended. It is offensive in prayer to simply sit on the ground, palms down and knees drawn up, or to sit with legs outstretched (A: when there is no excuse).

f14.1 للعاجز صلاةُ الفرض قاعداً (ولا إعادة عليه) والمرادُ من العجز أنْ يشُقَّ عليْه القيامُ مشقةً ظاهرةً أوْ يخافَ منهُ مرضاً أوْ زيادتَهُ أوْ دورانَ الرأس في سفينةٍ.

ويقْعُدُ كيفَ شاءَ ويُنْدَبُ الافتراشُ ويُكْرَهُ الإقعاءُ ومدُّ رجليه.

f14.2 When seated for the prayer, the minimal *bowing* is to incline until the forehead is farther forward than the knees. The optimal way is to incline until the forehead is as far forward as the place where the head rests in prostration.

When unable to bow or prostrate, one comes as close to the ground with the forehead as one can. When unable to do this, one performs them by nodding.

f14.2 وأقلُّ ركوعِه محاذاةُ جبهتِه قدَامَ ركبتَيْه وأكملُهُ محاذاتُها موضعَ سجوده.

فإنْ عجَزَ عنْ ركوعٍ وسجودٍ فعلَ نهايةَ الممكنِ منْ تقريبِ الجبهةِ منَ الأرضِ فإنْ عجزَ أوْمأَ بهما.

f14.3 If an abscess or the like prevents one from sitting, then one "sits" standing (A: meaning ordinary standing, with the intention of sitting (N: so that one stands between prostrations and for the Testification of Faith (Tashahhud))).

f14.3 ولوْ عجزَ عنِ القعودِ فقطْ لدملٍ ونحوه أتى بالقعودِ قائماً.

f14.4 If one is capable of standing but suffers from a painful swelling of the eyes or something similar (O: such as a wound that can be treated by having the patient remain lying down) and a reliable physician (O: in terms of knowledge and expertise in medicine, who can be believed) tells one that praying while on one's back will enable one to be treated, then it is permissible to pray while lying down (O: without having to make up the prayer).

f14.4 ولوْ أمْكَنَهُ القيامُ وبهِ رمدٌ أوْ غيرُهُ (أي كجراحةٍ يمكنُ علاجها مع إدامةِ الاستلقاء) فقالَ لهُ طبيبٌ معتمدٌ (بسببِ معرفتِه وحذقِه في صنعةِ الطبِّ أهلٌ للروايةِ) «إنْ صلَّيْتَ مستلقياً أمْكَنَ مداواتُكَ» جازَ الاستلقاءُ (ولا إعادةَ عليه).

f14.5 If unable to stand and unable to sit, one lies on one's right side (O: the right is recom-

f14.5 ولوْ عجزَ عنْ قيامٍ وقعودٍ اضْطجعَ على جنبِه الأيمنِ (ندباً) مستقبلاً

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mended) facing the direction of prayer (qibla) with the face and front of one's body, though one must bow and prostrate if possible (O: meaning one stands up enough to bow, then bows, then prostrates; or else sits up and bows).

If this is not possible, one bows and prostrates by merely nodding one's head (O: bringing one's forehead as near to the ground as possible), deeper for prostration than for bowing.

If unable to even nod, one merely glances down with the eyes for bowing and prostration. If one cannot, one goes through the integrals of the prayer in one's mind. If unable to speak (O: to recite the Fatiha) one recites it in one's heart.

The obligation of prayer exists as long as one is able to reason (dis: f1.1, second par.).

بوجهه ومقدم بدنه ويركع ويسجد (أي يقوم إلى حد الركوع ويركع ثم يهوي للسجود أو يقعد ويركع ثم يهوي للسجود أو يقعد ويركع) إنْ أمكن.

وإلاّ أومأ برأسه (ويقرب جبهته من الأرض بحسب الإمكان) والسجودُ أخفضُ.

فإنْ عجز فبطرفه. فإنْ عجز فبقلبه (أي بإجراء الأركان عليه) فإنْ خرس (ولم يقدر على قراءة الفاتحة بلسانه) قرأ بقلبه.

ولا تسقط الصلاة مادام يعقل.

f14.6 If one is standing during the prayer and becomes unable to remain standing, one sits to finish the prayer. If this occurs during the Fatiha, one may not interrupt reciting it, but must continue to do so as one proceeds to sit.

If one's condition improves enough (O: i.e. if seated during a prescribed prayer because of illness and a recovery of strength enables one to now stand), then one must stand to complete the prayer.

f14.6 فإنْ عجز في أثنائها قعد. ويجب الاستمرار في الفاتحة إنْ عجز في أثنائها.

وإنْ خفّ (أي مما به من المرض في أثناء صلاته قاعداً بحيث صار قادراً على القيام) قام.

f14.7 [فإنْ كان في أثناء الفاتحة وجب الإمساك ليقرأ قائماً. فإنْ قرأ في نهوضه لم يعتدّ به. وإنْ خفّ بعد الفاتحة قام ليركع منه. أو في الركوع قبل الطمأنينة ارتفع راكعاً، فإن انتصب بطلت، أو بعدها اعتدل قائماً ثم يسجد. أو في اعتداله قبل الطمأنينة قام ليعتدل. أو بعدها سجد ولا يقوم].

*

f15.0 SHORTENING OR JOINING PRAYERS FOR TRAVEL OR RAIN

(A: The two travel dispensations of shortening and joining prayers have no effect on each other: one may take both together, either, or none. It is superior in our school not to take dispensations that are permissible.)

f15.0 القصر والجمع للسفر أو المطر

(ع: القصر والجمع للمسافر رخصتان منفصلتان؛ فيجوز الأخذ بإحداهما فقط، أو بهما معاً، أو تركهما. والأفضل ترك الرخص الجائزة).

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SHORTENING PRAYERS WHILE TRAVELLING

شروط القصر

f15.1 It is permissible to shorten the current prescribed prayers of noon (zuhr), midafternoon ('asr), and nightfall ('isha) to two rak'as each, when one:

(a) is travelling for a reason that is not disobedience to Allah (O: as there is no dispensation to shorten prayers on such a trip);

(b) on a journey of at least 48 Hashemite miles (n: approximately 81 km./50 mi.) one way.

One may also shorten the above prayers when one both misses them and makes them up on the trip, though one must pray the full number if one misses them while not travelling and makes them up on the trip, or misses them on the trip and makes them up while not travelling.

f15.1 إذا سافر في غير معصية (فلا يباح القصر معها) سفراً تبلغ مسيرته ذهاباً ثمانية وأربعين ميلاً بالهاشمي [وهو يومان بلا لياليهما بسير الأثقال]، فله أن يصلي الظهر والعصر والعشاء ركعتين إذا كانت مؤديات، أو فائتة في السفر فقضاها في السفر. فإن فاتته في الحضر فقضاها في السفر أو عكسه أتم.

f15.2 This distance (n: 81 km./50 mi. one way) holds for travel by water as well as by land. If such a distance is traversed in an instant (O: preternaturally, because of a miracle (karama, def: w30)), one may still shorten the prayer. (O: The brevity of the time taken to travel the distance is of no consequence.)

f15.2 وفي البحر تعتبر هذه المسافة كما في البر فلو قطعها في لحظة (على خلاف العادة للكرامة) قصر (فلا يؤثر قطعها في زمن يسير).

f15.3 When there are two routes to a destination and one of them is less than the distance that permits shortening prayers but one chooses the longer way for a legitimate purpose such as safety, convenience, or recreation (O: provided that recreation is merely the reason for taking that route, not the reason for the trip itself, which must have some other legitimate purpose such as trade, for an *outing* is not a legitimate purpose) then one may shorten prayers. But if the only reason for choosing the longer way is to take the dispensation, then doing so is not valid and one must pray the full number.

(A: Purely recreational trips whose purpose is not disobedience are permissible, but there are no travel dispensations in them, though if undertaken in order to gain religious knowledge, to visit

f15.3 ولو قصد بلداً له طريقان أحدهما دون مسافة القصر فسلك الأبعد لغرض كأمن وسهولة ونزهة قصر (والحال أن التنزه هو الحامل على سلوك ذلك الطريق وليس حاملاً على أصل السفر بل الحامل عليه غيره كالتجارة مثلاً ولا بد أن يكون الحامل على السفر غرضاً صحيحاً وليس التنزه منه) وإن قصد مجرد

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a fellow Muslim, or visit the grave of a righteous or learned Muslim (dis: g5.8), these and similar purposes are legitimate and permit the dispensations.)

القصر أتمّ.

f15.4 The journey's destination must be known. If a wife travelling with her husband or a soldier with his leader does not know the destination, they may not shorten their prayers (N: as long as they have not yet travelled the distance that permits shortening. When they have travelled it, then they may). If they know the destination and the journey meets the conditions (def: f15.1), then they may shorten their prayers (N: from the beginning of the journey).

f15.4 ولا بدّ من مقصدٍ معلومٍ فلو [طلّب آبقاً لا يَعْرِفُ موضعَهُ أو] سافرَ [عبدٌ و] امرأةٌ وجنديٌّ مع [سيدٍ و] زوجٍ وأميرٍ ولمْ يَعْرِفوا المقصدَ لمْ يَقْصُروا (ح: ما لم يقطعوا مسافة القصر فإذا قطعوها قصروا). وإنْ عَرَفُوا قَصَرُوا (ح: من أول السفر) بشرطه.

f15.5 Someone whose journey constitutes an act of disobedience, such as a woman travelling against her husband's wishes, may not shorten their prayer but must pray the full number. (O: The same applies to someone who undertakes a legitimate trip and then changes the purpose of it to disobedience.) (N: Though shortening prayers is permissible for someone who commits an act of disobedience while *on* a legitimate trip, as when someone travels for trade, but then sins by drinking wine, for example.)

f15.5 والعاصي بسفره كـ[آبقٍ و] ناشزةٍ يُتِمُّ (وكذا لو أنشأه مباحاً ثم قلبه معصية) (ح: أما لو عصى في السفر فله القصر كما لو سافر لتجارة فعصى بشرب الخمر مثلاً).

THE BEGINNING OF THE JOURNEY

ابتداء السفر

f15.6 If one's city has walls, one may begin shortening prayers as soon as one has passed them, whether or not there are other buildings outside them. If there are no walls, one may shorten one's prayers after passing beyond the last buildings, excluding farms, orchards, and cemeteries. (N: When the buildings of a city extend to the next city, one's journey begins at the former's city limits, or at what people commonly acknowledge (def: f4.5) to be the edge of town.) A desert dweller may begin shortening prayers when he passes beyond his people's tents. (O: A person living in a valley begins shortening prayers when he has traversed the distance of the valley's width. Someone living on a hill begins when he comes down

f15.6 ثمّ إنْ كان للبلدِ سورٌ قَصَرَ بمجرد مجاوزتِه سواءٌ كانَ خارجَهُ عمارةٌ أمْ لا. وإنْ لمْ يَكُنْ لهُ سورٌ فبمجاوزةِ العمرانِ كلِهِ ولا يُشْتَرَطُ مجاوزةُ المزارعِ والبساتينِ والمقابرِ. والمقيمُ في الصحراءِ يَقْصُرُ بمفارقةِ خيامِ قومِهِ. (وإن سكن واديا وسافر منه اشترط مجاوزة عرضه، وإن كان نازلاً في ربوة

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from it. A person living in a gorge begins when he climbs up out of it.)

اشترط أن يهبط منها أو في وهدة اشترط أن يقصد إلى أعلاها).

THE END OF THE JOURNEY

انتهاء السفر

f15.7 When the trip ends one must pray the full number of rak'as for each prayer.

A trip *ends* when one reaches one's hometown. It also ends:

(1) by the mere intention to stay in a place at least 4 full days, not counting the day one arrives or the day one departs;

(2) or by staying that long without the intention, so that after one has stayed 4 full days, not counting the days of arrival and departure, one prays the full number of rak'as, unless one is staying in a place in order to fulfill a purpose that one expects to accomplish and intends to leave as soon as one does. As long as this is the case, one may shorten one's prayers for up to 18 days. If longer than this, one prays the full number. This holds for both jihad (def: o9) and other purposes.

When one reaches one's destination and intends to stay there for a significant amount of time (O: 4 days), one must pray the full number of rak'as, but if not (O: as when not intending to stay at all, or intending 3 days or less), then one may continue shortening prayers for either 4 days (O: if one learns that one cannot accomplish one's purpose during them), or 18, if one can expect one's purpose to be accomplished at any moment.

f15.7 ثمّ إذا انتهى السفرُ أتمّ.

وينتهي بوصولِه إلى وطنِه أو بنيةِ إقامةِ أربعةِ أيامٍ غيرِ يومَي الدخولِ والخروجِ أو بنفسِ الإقامةِ وإنْ لمْ ينوِها، فمتى أقامَ أربعةَ أيامٍ غيرَ يومَي الدخولِ والخروجِ أتمّ. [اللهم،] إلّا أنْ يُقيمَ لحاجةٍ يتوقّعُ نجازَها ويَنْوي الارتحالَ إذا انقضتْ فإنّه يَقْصُرُ إلى ثمانيةَ عشرَ يوماً فإنْ تأخّرتْ عنْها أتمّ وسواءٌ الجهادُ وغيرُه.

ولوْ وَصَلَ مقصدَهُ فإنْ نَوى الإقامةَ المؤثرةَ (وهي أربعةُ أيامٍ) أتمّ وإلّا (أي وإن لم ينو الإقامة أصلاً أو نوى إقامة ثلاثة أيام فأقل) قَصَرَ إلى أربعةِ أيامٍ (إن علم أن حاجته لم تنقض فيها) أوْ لثمانيةَ عشرَ إنْ تَوَقّعَ حاجتَهُ كلَّ وقتٍ.

THE CONDITIONS FOR SHORTENING THE PRAYER

شروط القصر

f15.8 The conditions for shortening the prayer while travelling are:

(a) (O: that the trip be legitimate (def: f15.5);

(b) that it be at least 81 km./50 mi. one way;

f15.8 وشروطُ القصرِ (الأول عبر عنه بقوله إذا سافر في غير معصية والثاني عبر عنه بقوله تبلغ مسيرته ثمانية وأربعين ميلاً والثالث عبر عنه بقوله ولا بد من

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(c) that the destination be known (f15.4));

مقصد معلوم و) وقوعُ الصلاةِ كلّها في السفرِ ونيةُ القصرِ في الإحرامِ (أي مع تكبيرة التحرم فلو نوى بعدها لم ينفعه) وأن لا يَقْتَدِيَ بمُتِمٍّ في جزءٍ من الصلاةِ (وعلمه بجوازِ القصرِ وتحرزه عما ينافي نيته).

(d) that the prayer take place from start to finish while on the trip (A: if one's vehicle arrives before the prayer is finished, one prays the full number);

(e) that the intention to shorten the prayer coincide with the opening Allahu Akbar (O: it not being valid if made after this);

فلوْ نَوَى الإقامةَ في الصلاةِ أوْ شكَّ هلْ نَوَى القصرَ أمْ لا ثمَّ ذَكَرَ قريباً أنَّهُ نَواهُ أوْ تَرَدَّدَ هلْ يُتِمُّ أمْ لا أوْ هل إمامُهُ مقيمٌ أمْ لا أتَمَّ. ولوْ جهلَ نيةَ إمامِهِ فنَوَى إنْ قَصَرَ قَصَرْتُ وإنْ أتَمَّ أتْمَمْتُ صحَّ، فإنْ قَصَرَ قَصَرَ وإنْ أتَمَّ أتَمَّ.

(f) that no portion of the prayer be performed while following an imam who is praying the full number of rak'as;

(g) (O: that one be aware of the permissibility of shortening prayers for travel;

(h) and that the intention be free of things which nullify it (A: such as vacillation or doubts (dis: below))).

One must pray the full number of rak'as if:

(1) (non-(d) above) the intention to stay at the place for 4 days occurs during the prayer;

(2) (non-(h)) one is uncertain whether one's intention was to shorten, but one soon recalls that one did intend it;

(3) (non-(h)) one vacillates in the intention between shortening the prayer or not doing so;

(4) or (non-(f)) one does not know whether one's imam is shortening or not, though if one does not know the imam's intention, it is valid to intend that if the imam shortens the prayer, one will shorten, and if he prays the full number, one will pray the full number, and then to do this.

JOINING TWO PRAYERS DURING A JOURNEY

الجمع في السفر

f15.9 It is permissible to join the noon prayer (zuhr) and midafternoon prayer ('asr) during the time of either of them (N: or the Friday prayer (jumu'a) and midafternoon prayer in the time of

f15.9 يَجُوزُ الجمعُ بينَ الظهرِ والعصرِ في وقتِ أحدِهِمَا وبينَ المغربِ

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the Friday prayer), and permissible to similarly join the sunset prayer (maghrib) and nightfall prayer ('isha) during the time of either, provided one joins them during a journey in which prayer may be shortened (def: f15.8(a,b,c,d)).

If one stops travelling (A: to rest, for example) during the time of the first of the two prayers, then this is the best time to join them, but if one is travelling steadily during the first's time, the time of the second is better.

والعشاء كذلك في كلّ سفرٍ تُقصرُ الصلاةُ فيه.

فإنْ كانَ نازلاً في وقتِ الأولى فالتقديمُ أفضلُ وإنْ كانَ سائراً فالتأخيرُ أفضلُ.

f15.10 The conditions for joining two prescribed prayers on a trip in the time of the first of them are:

(a) that the trip continue (A: until one finishes both prayers);

(b) that the first of the two be prayed first;

(c) that the intention to join the two prayers occur before finishing the first, either coinciding with the opening Allahu Akbar, or occurring during the prayer;

(d) and that one not separate the two prayers by waiting between them, though a short interval (A: meaning one that could contain two rak'as of the briefest possible) is of no consequence, nor is a brief search for water (dis: e12.3) by someone who has performed dry ablution (tayammum).

If one prays the second of the two prayers before the first (non-(b) above), then that prayer is invalid (O: and must be repeated after the first, if one still wants to join them).

One must wait to perform the second of the two prayers until its own time if:

(1) (non-(a) above) one finishes one's journey before performing the second prayer;

(2) (non-(c)) one neglects to intend joining them during the first prayer;

(3) or (non-(d)) one waits at length between them.

f15.10 وإذا جَمعَ تقديماً فشرطُهُ دوامُ السفرِ وتقديمُ الأولى ونيةُ الجمعِ قبلَ فراغِ الأولى إمّا في الإحرامِ أوْ في أثنائِها وأنْ لا يُفرِّقَ بينَهُما فإنْ فرَّقَ يسيراً (ع: وضابطها أن يسع ما بينهما ركعتين بأقل ما يمكن) لمْ يضُرّ فيُغتفرُ للمتيممِ طلبٌ خفيفٌ.

فإنْ قدَّمَ الثانيةَ فباطلةٌ (فيحتاج إلى إعادتها إن أراد الجمع).

وإنْ أقامَ قبلَ شروعِهِ في الثانيةِ أوْ لمْ ينوِ الجمعَ في الأولى أوْ فرَّقَ كثيراً وجَبَ تأخيرُ الثانيةِ إلى وقتِها.

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f15.11 If one has performed both prayers and the journey subsequently ends (A: whether in the time of the first prayer or the time of the second), they are and remain valid.

f15.11 وإنْ أقامَ بعدَ فراغِهِما مَضَتا على الصحة.

f15.12 The necessary condition for joining two prayers in the time of the second of them (A: in addition to f15.8(a,b,c,d)) is that one make the intention to do so before the end of the first prayer's time (O: by an interval which could contain at least one rak'a). If one neglects this intention, one has sinned, and praying the first prayer during the second prayer's time is considered making it up.

f15.12 وإذا جَمَعَ تأخيراً لمْ يَلْزَمْهُ إلّا أنْ يَنْوِيَ قبلَ خروجِ وقتِ الأولى بقدرِ ما يَسَعُ فِعْلَها (أي ذلك الزمن الذي بقي من وقت الأولى أداءها، والأداء هو أن تقع ركعة منها في الوقت) أنهُ يُؤَخِّرُ لِيَجْمَع. فلَوْ لمْ يَنْوِهِ أثِمَ وكانَتْ قضاءً.

f15.13 When joining two prayers in the time of the second, it is recommended (A: not obligatory):

(1) to pray the first one before the second;

(2) to not pause at length between them;

(3) and that the intention to join them be present during the prayer one performs first.

f15.13 ويُنْدَبُ الترتيبُ والموالاةُ ونيةُ الجمعِ في الأولى [(أي التي بدأ بها)].

JOINING PRAYERS BECAUSE OF RAIN

الجمع للمطر

f15.14 It is permissible for a nontraveller to pray the noon prayer (zuhr) and the midafternoon prayer ('asr) at the time of the noon prayer (N: or the Friday prayer (jumu'a) and midafternoon prayer at the time of the Friday prayer), and to similarly pray the sunset prayer (maghrib) and nightfall prayer ('isha) at the time of the sunset prayer if:

(a) it is raining hard enough to wet one's clothing (O: and like rain in this is melted snow or hail);

(b) one is praying with a group in a mosque (O: or other place of prayer);

(c) the mosque is far (O: from one's door, i.e. *far* by common acknowledgement (def: f4.5));

f15.14 ويَجُوزُ للمقيمِ الجمعُ تقديماً لمطرٍ يَبُلُّ الثوبَ (ومثله الثلج والبرد إذا ذابا) بشرط أنْ يَقْصِدَ جماعةً في مسجدٍ (والمراد منه مكان صلاة الجماعة سواء كان مسجداً أو غيره) بعيدٍ (أي عن باب

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(d) it is raining when the first prayer begins, when it ends, and when the second prayer begins;

(e) and conditions f15.10(b,c,d) exist.

داره عرفاً) وأنْ يُوْجَدَ المطرُ عند افتتاح الأولى والفراغ منها وافتتاح الثانية ويُشْتَرَطُ مَعَ ذلك مَا تَقَدَّمَ في جمع السفر تقديماً.

f15.15 (A: If one arrives during the second of two prayers joined because of rain and does not finish one's own first prayer before the group finishes their second, then one is no longer entitled to join one's prayers for rain. It is a necessary condition that one pray at least part of the second prayer with them, though one may hurry through one's own first prayer alone to catch up with and join them during their second.)

f15.16 If the rain stops after one finishes the two prayers or during the second one, both prayers are and remain valid.

f15.16 فإن انقطع بعدهما أو في أثناء الثانية مضتا على الصحة.

f15.17 It is not permissible to join two prayers in the time of the second of them because of rain.

f15.17 ولا يجوز الجمع بالمطر تأخيراً

f15.18 (n: In the Shafi'i school, there are no valid reasons other than travel or rain for joining prayers, though others exist in the Hanbali school, as discussed in what follows.)

('Abd al-Rahman Jaziri:) The Hanbalis hold that the above-mentioned joining between the noon prayer (zuhr) and midafternoon prayer ('asr), or between the sunset prayer (maghrib) and nightfall prayer ('isha) is permissible, whether in the time of the first prayer of each of these two pairs, or in the time of the second prayer of each of them, though it is superior not to join them.

It is a necessary condition for the permissibility of joining them that the person praying be:

(1) a traveller on a trip in which shortening prayers is permissible;

(2) a sick person for whom not to join prayers would pose a hardship;

(3) a woman who is nursing an infant, or who has chronic vaginal discharge (dis: e13.6), since she is permitted to join prayers to obviate the hardship of purification for every single prayer;

f15.18 (ت: في المذهب الشافعي لا يترخص في الجمع لغير السفر والمطر، ويترخص فيه لغيرهما عند الحنابلة كما سيأتي).

(عبد الرحمن الجزيري:) الحنابلة قالوا: الجمع المذكور بين الظهر والعصر، أو المغرب والعشاء، تقديماً أو تأخيراً مباحٌ وتركه أفضل [...] ويشترط في إباحة الجمع أن يكون المصلي مسافراً سفراً تقصر فيه الصلاة، أو يكون مريضاً تلحقه مشقة بترك الجمع، أو تكون امرأة مرضعة أو مستحاضة، فإنه يرخص لها الجمع دفعاً لمشقة الطهارة عند كل صلاة، ومثل المستحاضة المعذور

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(4) someone with an excuse similar to the woman with chronic discharge, such as a person unable to prevent intermittent drops of urine coming from him (e13.7);

(5) or someone who fears for himself, his property, or his reputation, or who fears harm in earning his living if he does not join prayers; the latter giving leeway to workers for whom it is impossible to leave their work.

(*al-Fiqh 'ala al-madhahib al-arba'a* (y66), 1.487)

كمن به سلس البول [. . .] وكذا يباح الجمع لمن خاف على نفسه أو ماله أو عرضه، ولمن يخاف ضرراً يلحقه بتركه في معيشته، وفي ذلك سعة للعمال الذين يستحيل عليهم ترك أعمالهم. [محرّر من الفقه على المذاهب الأربعة: ١/٤٨٧].

PRAYING THE SUNNA RAK'AS WHEN ONE JOINS PRAYERS

كيفية أداء الرواتب عند الجمع

f15.19 (O: When one wants to join the midafternoon prayer ('asr) and noon prayer (zuhr) in the time of the noon prayer, one first prays the sunnas that come before the noon prayer, followed by the noon prayer, the midafternoon prayer, the sunnas that come after the noon prayer, and then the sunnas that come before the midafternoon prayer.

Similarly, when one joins the nightfall prayer ('isha) with the sunset prayer (maghrib), one prays the sunnas that come before the sunset prayer, and postpones those that follow the sunset prayer until after one has prayed the nightfall prayer, after which one prays the sunnas that come before and after the nightfall prayer, and then *witr*. Their order is sunna.)

f15.19 (وإذا أراد أن يجمع العصر مع الظهر تقديماً فيصلي أولاً سنة الظهر القبلية [المؤكدة وغيرها] ثم يصلي سنة الظهر البعدية [المؤكدة وغيرها] بعد العصر ثم يصلي سنة العصر القبلية.

وهكذا العشاء مع المغرب أي فيصلي سنته القبلية ويؤخر سنته البعدية بعد العشاء ثم يصلي سنة العشاء القبلية والبعدية ثم الوتر. ويسن ترتيب السنن هنا).

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f16.0 THE PRAYER OF PERIL

f16.0 صلاة الخوف

f16.1 The prayer of peril may be performed when the Muslims are engaged in permissible fighting (O: whether obligatory, as when fighting non-Muslims or highwaymen whom the caliph (def: o25) is fighting, or permissible, as when fighting someone who is trying to take one's property or that of others).

f16.1 إذا كان القتال مباحاً (سواء كان واجباً كقتال الكفار وقطاع الطريق إذا قاتلهم الإمام أو مباحاً مستوي الطرفين كقتال من قصد مال الإنسان أو مال غيره).

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f16.2 When the enemy is not in the direction of prayer (qibla), the imam divides the Muslim force into two groups. One group faces the enemy while the other prays a rak'a behind the imam. When the imam rises for the second rak'a, the group makes the intention to cease following his leadership in the prayer and then finishes their second rak'a alone as individuals while the imam remains standing at the beginning of his second rak'a, reciting the Koran and awaiting the second group.

Then this first group goes to relieve the others in facing the enemy, and the others come and begin their group prayer behind the imam, who is still standing and who remains so long enough for the second group to recite the Fatiha and a short sura. At the end of this rak'a when the imam sits in the Testification of Faith (Tashahhud), the group rises and performs their second rak'a without him (while he remains sitting at the end of his second rak'a waiting for them to reach the same point in their own prayer). When they catch up with him, he closes the prayer with Salams.

If this prayer is the sunset prayer (maghrib), the first group prays two rak'as following the imam's lead, and the second group follows him in the third rak'a. If it is a prayer with four rak'as, then each group follows the imam for two rak'as. The imam may also divide the Muslim force into four groups and have each group pray one rak'a behind him.

f16.2 والعدوُّ في غير جهةِ القبلةِ فَرَّقَ الإمامُ الناسَ فرقتَيْن فرقةٌ في وجهِ العدوِّ ويُصَلِّي بفرقةٍ ركعةً فإذا قامَ إلى الثانيةِ نَوَوْا مفارقتَهُ وأتَمُّوا منفردين وذَهَبُوا إلى وجهِ العدوِّ وجاءَ أولئكَ إلى الإمامِ وهو قائمٌ في الصلاةِ يَقرأُ فيُحْرِمُونَ ويَمْكُثُ لَهُمْ بقدرِ الفاتحةِ وسورةٍ قصيرةٍ فإذا جَلَسَ للتشهدِ قامُوا وأتَمُّوا لأنفسِهِمْ ويُطيلُ هوَ التشهدَ ثمَّ يُسَلِّمُ بِهِمْ.

فإنْ كانت مغرباً صَلَّى بالأولى ركعتَيْن وبالثانيةِ ركعةً. أوْ رباعيةً صَلَّى بكلِّ فرقةٍ ركعتين. فإنْ فَرَّقَهم أربعَ فرقٍ وصَلَّى بكلِّ فرقةٍ ركعةً صَحَّ.

f16.3 When the enemy is visible in the direction of prayer (qibla) and the Muslims are numerous, the imam arranges them in two or more rows, opens the group prayer with "Allahu akbar," and (O: after reciting the Fatiha with all of them) he bows and straightens up with everyone following his lead. Then he prostrates together with the row nearest him, while the other row remains standing. When the imam and his row stand after their second prostration, the other row performs its own prostrations and rises to catch up with the imam and his row, who have remained standing waiting for them.

In the second rak'a all bow and straighten up together, but when the imam prostrates, the second row, who remained standing on guard before, prostrate with him while the row nearest him

f16.3 وإنْ كانَ العدوُّ في القبلةِ يُشاهِدُونَ في الصلاةِ وفي المسلمين كثرةٌ صَفَّهُمْ صفَّيْن فأكثرَ وأحْرَمَ وركَعَ (بعدَ الفراغِ من الفاتحةِ بهم جميعاً) ورفَعَ بالكلِّ فإذا سَجَدَ سَجَدَ معهُ الصفُّ الذي يليهِ واسْتَمَرَّ الصفُّ الآخرُ قائماً فإذا رَفَعُوا رؤوسَهُمْ سَجَدَ الصفُّ الآخرُ.

ثمَّ يركَعُ ويرْفَعُ بالكلِّ فإذا سَجَدَ سَجَدَ معهُ الصفُّ الذي حرَسَ أولاً وحَرَسَ

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remain standing on guard. When those who have prostrated with the imam sit back (O: after their prostration, for the Testification of Faith (Tashahhud)) then the row nearest him (O: who have been standing on guard) prostrate (O: and catch up with the others in the Testification of Faith (Tashahhud)).

الصفُّ الآخرُ. فإذا رفعُوا (أي من سجد مع الإمام رؤوسهم من السجود واستقروا جالسين للتشهد) سَجَدَ الصفُّ الآخرُ (الذي كان واقفاً ولحقوه في التشهد).

f16.4 It is recommended to remain armed during the prayer of peril.

f16.4 ويُنْدَبُ حملُ السلاحِ في صلاةِ الخوفِ.

f16.5 When the peril is great, in actual combat, Muslims may pray walking or riding, facing the direction of prayer (qibla) or not, in a group or singly, and nodding in place of bowing and prostration when they are unable to perform them, nodding more deeply for prostration than for bowing. If forced to strike blow after blow during the prayer, this is permissible. Shouting is not.

f16.5 وإذا اشْتَدَّ الخوفُ والْتَحَمَ القتالُ صَلَّوا رجالاً وركباناً إلى القبلةِ وغيرِها جماعةً وفرادى ويُوْمِئُونَ بالركوعِ والسجودِ إنْ عَجَزُوا والسجودُ أخفضُ وإنِ اضْطَرُّوا إلى الضربِ المتتابعِ ضَرَبُوا ولا إعادةَ عليْهِمْ. ولا يَجُوزُ الصياحُ.

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f17.0 UNLAWFUL CLOTHING AND JEWELRY

f17.0 ما يحرم لبسه

f17.1 (A: It is offensive for men to wear tight clothing that discloses the size of the parts of their body which are nakedness (def: f5.3), and this is unlawful for women.)

f17.2 It is unlawful for men to wear silk or use it in any way, even to line clothing, though it is permissible to use it as padding in a cloak, pillow, or mattress.

f17.2 يَحْرُمُ على الرجلِ لبسُ الحريرِ وسائرُ وجوهِ استعمالِهِ ولوْ بطانةً، ويَجُوزُ حشوُ جبةٍ ومخدةٍ وفرشٍ به.

f17.3 Women may wear and use silk, and it is permissible for a guardian to dress a child in it before puberty.

f17.3 ويَجُوزُ للنساءِ استعمالُهُ [وقيلَ يَحْرُمُ عليْهِنَّ افتراشُهُ] ويجُوزُ للوليِّ إلباسُهُ للصبيِّ ما لمْ يَبْلُغْ.

f17.4 It is permissible for men to use fabric composed partly of silk as long as the weight of the silk is half or less of the weight of the fabric; to

f17.4 والمركَّبُ منْ حريرٍ وغيرِه إنْ زادَ وزنُ الحريرِ حَرُمَ وإنِ اسْتَوَيَا جَازَ.

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embroider with silk thread where (O: the width of) the design does not exceed four fingers (O: though the length does not matter); to have a silk fringe on a garment; or a silk collar; or to cover a silk mattress with a handkerchief or the like and sit on it.

It is also permissible for men to use silk when there is need to in severe heat or cold, to clothe their nakedness with it for the prayer when there is nothing else, or to use it when suffering from itching or for protection from lice. (O: The upshot is that when there is real need for it, one may use it. Otherwise, it is an enormity (def: c2.5(2)). Imam Ghazali attributes its prohibition to its effeminacy and softness, which are unbecoming of men.)

ويَجُوزُ مطرَّزٌ بِهِ لا يُجاوِزُ أرْبَعَ أصابِعَ (عرضاً وإنْ زادَ طولاً) ومطرَّفٌ ومجيَّبٌ معتادٌ [(والمجيب هو المطوق)] ولَهُ أنْ يَبْسُطَ على فرشِ الحريرِ منديلاً ونحوَهُ ويَجْلِسَ فوقَهُ.

ويَجُوزُ لبسُهُ لِحَرٍّ وبَرْدٍ مهلكينِ [(وليس بقيد بل عند الحاجة أيضاً)] وسترِ عورةٍ [ومفاجأةِ حربٍ] إذا فُقِدَ غيرُهُ ولحكةٍ ودفعِ قملٍ. (فالحاصل متى دعت حاجة إلى لبسه جاز [ولو من غير ضرورة . . .]) وهذه الحرمة من الكبائر، وقد علل الإمام الغزالي الحرمة بأن في الحرير خنوثة أي نعومة وليونة لا تليق بشهامة الرجال) [ويَجُوزُ ديباجٍ ثخينٌ لا يَقُومُ غيرُهُ مقامَهُ في الحربِ].

f17.5 It is permissible to wear a garment affected by something impure (najasa, def: e14.1) when not in prayer (O: or other activites requiring purity, provided one is not in a mosque. As for wearing such a garment in a mosque, one may not, since it is not permissible to carry something impure into the mosque when there is not some need, such as having to take one's shoes inside).

It is unlawful to wear leather taken from the carcass of an unslaughtered animal (n: before tanning, as at e14.6) except when there is pressing need, such as in the event of a sudden outbreak of war (A: when there is nothing else) and the like.

f17.5 ويَجُوزُ لبسُ ثوبٍ نجسٍ في غيرِ الصلاةِ (ونحوها مما يتوقف على طهارة ويشترط أن يكون واقعاً في غير المسجد أما لبسه فيه فلا يجوز لأنه لا يجوز إدخال النجاسة فيه لغير حاجة كما في النعل).

ويَحْرُمُ جلدُ ميتةٍ إلا لضرورةٍ كمفاجأةِ حربٍ ونحوه [ويَجُوزُ أنْ يُلْبَسَ دابَّتَهُ الجلدَ النجسَ سِوَى جلدِ الكلبِ والخنزيرِ].

f17.6 It is unlawful for men to wear gold jewelry, even the teeth of a ring's setting that holds its stone. (O: Unlike silk, there is no difference for the prohibition of gold between small and large amounts.) Nor may men wear objects painted or plated with gold, though if these tarnish so that the gold is no longer apparent, then they are permissible.

f17.6 ويَحْرُمُ على الرجالِ حُليُّ الذهبِ حتى سِنُّ الخاتمِ (ولا فرق في الذهب بين قليله وكثيره بخلاف الحرير) والمطليُّ بِهِ فلَوْ صَدِئَ بحيثُ لا يَبِينُ جازَ.

f17.7 It is permissible to repair teeth with gold.

f17.7 ويُباحُ شَدُّ سِنٍّ [وأنملة] بذهبٍ [واتخاذُ أنفٍ وأنملةٍ منهُ ويَجُوزُ درعٌ نُسِجَتْ بذهبٍ وخُوذةٍ طُلِيَتْ بِهِ لمفاجأةِ حربٍ ولَمْ يجدْ غيرَهما].

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f17.8 It is lawful (A: for both sexes) to wear a silver ring (A: the sunna for men being to do so on the little finger, of either hand), and (A: for men) to decorate battle weapons with silver, but not riding gear such as saddles and the like, nor an inkwell, writing utensil case, work knife, penknife, or lamp fixture—even if in a mosque—nor to have silver jewelry other than rings, such as a necklace, armband, bracelet (O: because these resemble the habits of women and it is unlawful for men to imitate women), or a crown.

It is not permissible to use silver (A: or gold) to embellish the ceiling or walls of a house or mosque (O: even those of the Kaaba, because it is wasteful, and no one has reported that the early Muslims did so), though if the amount is so slight that none could be melted off by applying fire, then it may remain. If more than that, then not (O: i.e. it must be removed).

f17.8 ويَجُوزُ خاتمُ الفضةِ وتحليةُ آلةِ الحربِ بها [كسيفٍ ورمحٍ وطبرٍ وسهمٍ ودرعٍ وجوشنٍ وخوذةٍ وخفٍ] لا سرجٍ [ولجامٍ وركابٍ وقلادةٍ وطرفِ سيورٍ] ودواةٍ ومقلمةٍ وسكينِ مهنةٍ ودواةٍ وتعليقِ قنديلٍ ولوْ بمسجدٍ وغيرِ الخاتمِ من الحليِّ كطوقٍ ودملجٍ وسوارٍ (لما فيه من التشبه بالنساء والتشبه بهن حرام) وتاجٍ.

وفي سقفِ البيتِ والمسجدِ وجدارِيهِما (حتى سقف الكعبة وجدرانها لما فيه من السرف مع كونه لم ينقل عن أحد من السلف) فلو استُهْلِكَ بحيثُ لا يَجْتَمِعُ منهُ (أي من ذلك الذهب) شيءٌ بالسبكِ جازَتْ الاستدامةُ وإلا فَلَا (بل تجب إزالته).

f17.9 (O: It is offensive to use cloth for interior decoration in houses (A: meaning that if curtains and the like are used merely for decoration, it is offensive, though there is nothing wrong with using them to screen a room from view), even for shrines at the tombs of the righteous and learned. It is unlawful to decorate walls with pictures (n: of animate life, as at p44).)

f17.9 (ويكره تزيين البيوت [للرجال وغيرهم] حتى مشاهد الصلحاء والعلماء بالثياب. ويحرم تزيينها بالصور).

f17.10 It is permissible for both men and women to decorate copies of the Koran and to embellish writing with silver (O: out of reverence for it). It is permissible for women to have copies of the Koran decorated with gold, but this is unlawful for men.

f17.10 ويَجُوزُ تحليةُ المصحفِ والكتبِ [(والنساء في الكتب ساكنة فهو مصدر بمعنى الكتابة وليس جمعاً لكتاب)] بالفضة للمرأة والرجلِ (تعظيماً له) ويَجُوزُ تحليةُ المصحفِ بالذهبِ للمرأةِ ويَحْرُمُ على الرجلِ.

f17.11 All gold jewelry is permissible for women, even on shoes and woven into fabric, provided it is not wasteful. But if a woman is wasteful, such as when she has a 720-gram anklet of gold (O: meaning that it (N: i.e. the *weight* of a piece, though there is no limit to the *number* of average-weight pieces) exceeds the customary), then it is unlawful (O: since gold is only permitted to women for the sake of beauty, and when gold exceeds what is

f17.11 ويَجُوزُ للمرأةِ حليُّ الذهبِ كلُّهُ حتى النعلُ والمنسوجُ بهِ بشرطِ عدمِ الإسرافِ فإنْ أسْرَفَتْ (في الحلي وجاوزت العادة) كخلخالٍ مائتا دينارٍ حَرُمَ (لأن جواز الحلي لها إنما هو لأجل الزينة وإذا جاوزت العادة صار في غاية

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normal it is repulsive and devoid of beauty (A: and zakat must be paid on such wasteful jewelry (n: as opposed to jewelry that is not wasteful, on which no zakat is due (dis: h4.4)))).

القباحة ولا زينة فيه). [وَيَحْرُمُ عَلَيْهِنَّ تحلية آلة الحرب ولَوْ بالفضة].

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f18.0 THE FRIDAY PRAYER (JUMU'A)

f18.0 صلاة الجمعة

f18.1 (O: Attending the Friday prayer is personally obligatory. It is the finest of prayers, and its day, Friday, is the best day of the week. Its integrals and conditions are the same as other prayers (def: f9.13–14).)

f18.1 (وهي [بشروطها] فرض عين وهي أفضل الصلوات ويومها أفضل أيام الأسبوع وأما من حيث الأركان والشروط فهي كغيرها من باقي الصلوات).

f18.2 Anyone obliged to pray the noon prayer (zuhr) is obliged to pray the Friday prayer (jumu'a), except for women and for travellers on a trip that is not disobedience (def: f15.5), even if the trip is less that 81 km./50 mi. one way (n: though one's departure for the journey must have taken place before dawn on Friday, as at f18.6).

Valid excuses for not attending group prayer (def: f12.5), such as illness or taking care of a sick person, excuse one from attending the Friday prayer (jumu'a).

f18.2 مَنْ لَزِمَهُ الظهرُ لَزِمَتْهُ إلاّ [العبدَ و] المرأةَ والمسافرَ في غيرِ معصيةٍ ولوْ سفراً قصيراً.

وكلُّ مَا أَسْقَطَ الجماعةَ أَسْقَطَهَا كالمرضِ والتمريضِ وغيرِ ذلكَ.

f18.3 Eligible Muslims living in a village where there are not forty men (n: the minimum required for a valid Friday prayer, as at f18.7(e)) must go to a larger town for the Friday prayer when the two places are close enough that the call to prayer (adhan) from the larger town is audible to them under normal circumstances, given a calm wind and no interference. *Audible* means that the call of a man with a loud voice standing in the larger town on the side facing the village could be heard by a man with normal hearing standing on the side of the village facing the town. If such a call would be inaudible, then the villagers are not obliged to go to pray the Friday prayer (A: but merely pray the noon prayer (zuhr)).

f18.3 والمقيمُ بقريةٍ ليسَ فيهَا أربعونَ كاملونَ فإنْ كانَ بحيثُ لوْ نَادَى رجلٌ عالي الصوتِ بطرفِ بلدِ الجمعةِ الذي في جهةِ القريةِ والأصواتُ والرياحُ ساكنةٌ لَسَمِعَهُ مصغٍ صحيحُ السمعِ واقفٌ بطرفِ القريةِ الذي مِنْ جهةِ بلدِ الجمعةِ لَزِمَتِ الجمعةُ كلَّ أهلِ القريةِ. وإنْ لمْ يَسْمَعْ فَلاَ تَلْزَمُهُمْ.

f18.4 A Muslim present at the mosque who is not obliged to pray the Friday prayer may leave

f18.4 ومَنْ لاَ تَلْزَمُهُ إذا حَضَرَ الجامعَ لَهُ الانصرافُ إلاّ المريضَ الذي لاَ يَشُقُّ

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(A: instead of participating in it, such as a traveller merely wanting to pray the noon prayer (zuhr) and go), except for the following, who must pray the Friday prayer:

(1) someone with an illness for whom waiting for the Friday prayer poses no hardship, provided that he has arrived after its time has begun (O: namely noon, for if he arrives before this, or if waiting is a hardship, then he may leave);

(2) someone who is blind;

(3) or someone whose excuse is muddy terrain (dis: f12.5(2)).

Those present at the mosque who are not obliged to pray the Friday prayer (A: other than the above-mentioned) may choose between performing the Friday prayer and the noon prayer (zuhr) (O: even when the fact that they are present eliminates their excuse). If they want to perform the noon prayer (zuhr) in a group (O: as is sunna) and their excuse from the Friday prayer is not obvious to onlookers, then they should conceal their group prayer rather than display it (O: which would be offensive under the circumstances).

If a person is not obliged to perform the Friday prayer, but believes the reason for his excuse may disappear, such as sick person (A: hoping to recover before the prayer ends), then he should postpone his noon prayer (zuhr) until he can no longer hope to attend the Friday prayer. But if one's excuse from the obligation of attending the Friday prayer is not expected to cease, such as being a woman, then it is recommended to pray the noon prayer (zuhr) at the first of its time.

عليه الانتظارُ وجاءَ بعدَ دخولِ الوقتِ (وهو زوال الشمس أما إذا حضر قبل الوقت فله الانصراف وأما إن شق عليه الانتظار لم يلزمه بل له الانصراف) والأعمى ومَنْ في طريقِهِ وحلٌ فتَلْزَمُهُمُ الجمعةُ.

ومَنْ لا تَلْزَمُهُ (أي الجمعة مطلقاً سواء زال عذره بالحضور أم لا) مخيَّرٌ بينها وبينَ الظهرِ ويُخفُونَ الجماعةَ في الظهرِ إنْ خَفِيَ عُذْرُهُمْ (وأرادوا صلاتها جماعة وهي مسنونة ويكره لهم إظهارها).

ويُسْتَحَبُّ لمَنْ يَرْجُو زوالَ عذرِهِ كمريضٍ [وعبدٍ] تأخيرُ الظهرِ إلى اليأسِ منَ الجمعةِ. وإنْ لم يَرْجُ زوالَهُ كالمرأةِ فيُنْدَبُ تعجيلُهُ (أي الظهر).

f18.5 The noon prayer (zuhr) of someone obliged to perform the Friday prayer is not valid until he has missed the Friday prayer (A: by its having finished without his having attended).

f18.5 ومَنْ لَزِمَتْهُ الجمعةُ لم يَصِحَّ ظهرُهُ قبلَ فواتِ الجمعةِ.

f18.6 It is unlawful for someone (O: obliged to pray the Friday prayer) to travel after dawn (A: on Friday before having prayed it) unless:

f18.6 ويَحْرُمُ عليه (أي على من لزمته الجمعة) السفرُ منْ طلوعِ الفجرِ إلاّ

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(1) there is a place on his route where the Friday prayer will take place;

(2) or he is going to travel with a group (O: of people not obliged to pray the Friday prayer) who are departing, such that his staying behind would entail harm for him.

أنْ يَكُونَ في طريقِهِ موضِعُ جمعةٍ أوْ تَرْحَلَ رفقتُهُ (وهو معهم وكانوا ممن لا تلزمهم الجمعة) ويَتَضَرَّرَ بالتخلُّفِ.

f18.7 In addition to the usual conditions for the prayer (def: f9.13), a valid Friday prayer (jumu'a) also requires:

(a) that it be a group prayer;

(b) that it take place during the time of noon prayer (zuhr);

(c) that it follow two sermons (khutba, def: f18.9);

(d) that its site be located among the dwellings of the community;

(e) that there be a minimum of forty participants who are male, have reached puberty, are sane, and are local residents, meaning they live there and do not leave except when they need to (n: though the minimum according to Abu Hanifa is three participants besides the imam (*al-Lubab fi sharh al-Kitab* (y88), 1.111));

(f) and that, in places where it is no hardship for everyone to pray at one location, there be no other Friday prayer prior to or simultaneous with it (O: i.e. in the opening Allahu Akbar of the prayer (dis: below)).

The imam is counted as one of the forty ((e) above).

A group performing the Friday prayer must finish it as a noon prayer (zuhr) if:

(1) (non-(e) above) the number of participants diminishes during it to less than forty;

(2) or (non-(b)) if its time ends during the prayer (O: with the coming of the midafternoon

f18.7 وشروطُ صحةِ الجمعةِ بعدَ شروطِ الصلاةِ ستةٌ أنْ تُقامَ جماعةً في وقتِ الظهرِ بعدَ خطبتَيْنِ في خُطَّةٍ أبنيةٍ مجتمعةٍ بأربعينَ رجلاً [أحراراً] بالغينَ عقلاءَ مستوطِنينَ حيثُ تُقامُ الجمعةُ لا يَظْعَنُونَ عنهُ إلاَّ لحاجةٍ وأنْ لا تَسْبِقَها (بتحرم) ولا تُقارِنَها جمعةٌ أُخرَى حيثُ لا يَشُقُّ الاجتماعُ في موضعٍ واحدٍ.

والإمامُ واحدٌ منْ أربعينَ.

فلوْ نَقَصُوا في الصلاةِ عنِ الأربعينَ أوْ خَرَجَ الوقتُ (بأن دخل وقت العصر) في

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prayer's time). If the group has doubts before starting the Friday prayer that they will be able to finish it within its time, then they must begin it as a noon prayer (zuhr).

أثنائها أتمُّوها ظهراً، ولو شكُّوا قبل افتتاحها في بقاء الوقت صلُّوا ظهراً.

f18.8 In places where having everyone assemble in one location is a hardship, as in Cairo or Baghdad, it is valid to hold as many Friday prayers as are needed. In places where it poses no hardship, such as Mecca or Medina, if two Friday prayers are held, the first of them (A: to open with "Allahu akbar") is the Friday prayer, and the second is invalid (A: and must be reprayed as a noon prayer). If two are held in such a place and it is not clear which was first, they should start over together as one Friday prayer.

f18.8 وإنْ شَقَّ الاجتماعُ بموضعٍ كمصرَ وبغدادَ جازَتْ زيادةُ الجُمَعِ بحسبِ الحاجةِ. وإنْ لمْ يَشُقَّ كمكةَ والمدينةِ فأُقيمَتْ جمعتانِ فالجمعةُ هيَ الأولى والثانيةُ باطلةٌ. وإنْ وَقَعَتا معاً أوْ جُهِلَ السبقُ اسْتُؤْنِفَتْ جمعةً.

THE SERMON (KHUTBA)

الخطبة

f18.9 The integrals of the sermon (khutba) are five (O: and their order is sunna) (n: (a), (b), and (c) below are required in each of the two sermons, while (d) may be in either, and (e) must occur in the second, as mentioned below):

(a) saying "al-Hamdu lillah" (praise be to Allah), this particular utterance being prescribed;

(b) the Blessings on the Prophet (Allah bless him and give him peace), which is also a prescribed utterance;

(c) enjoining godfearingness (taqwa), for which a particular expression is not prescribed, it being sufficient to say "Obey Allah";

(the above (O: integrals (a), (b), and (c)) are obligatory in each of the two sermons)

(d) reciting one verse of the Koran (O: that conveys an intended meaning, such as a promise, threat, exhortation, or similar) in at least one of the two sermons;

(e) and to supplicate for believers (O: male and female) in the second of the two sermons (O:

f18.9 وأركانُ الخطبةِ خمسةٌ (وسن ترتيبُ أركانِ الخطبتينِ) الحمدُ للهِ والصلاةُ على رسولِ اللهِ ﷺ، والوصيةُ بتقوى اللهِ، ويَجِبُ ذلك (أي ما ذكر من الأركانِ) في كلٍ مِنَ الخطبتَيْنِ ويتَعَيَّنُ لفظُ الحمدُ للهِ والصلاةُ ولا يَتَعَيَّنُ لفظُ الوصيةِ فيكفي «أطيعُوا اللهَ» والرابعُ قراءةُ آيةٍ (مفهمةٍ معنى مقصوداً كالوعد والوعيد والوعظ ونحو ذلك) في إحداهُمَا والخامسُ الدعاءُ للمؤمنينَ (وللمؤمنات) في (الخطبةِ) الثانيةِ (ويتعين كونه

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which must be for their *hereafter*, as supplications for this world alone do not fulfill the integral).

(n: The following sermon, added here by the translator from the commentary at m2, has been related by two chains of transmission, one ascribing it to Ibn Mas'ud, and the other through him to the Prophet (Allah bless him and give him peace):

"Praise is truly Allah's. We praise Him, seek His help, and ask His forgiveness. We seek refuge in Allah from the evils of our selves and our bad actions. Whomever Allah guides none can lead astray, and whomever He leads astray has no one to guide him. I testify that there is no god but Allah alone, without any partner, and that Muhammad is His slave and messenger. Allah bless him and give him peace, with his folk and Companions. O you who believe: fear Allah as He should be feared, and do not die other than as Muslims.

" 'O people, fear your Lord who created you from one soul and created its mate from it, and spread forth from them many men and women. And be mindful of your duty to Allah, by whom you ask of one another, and to the wombs [that bore you], for verily, Allah is vigilant over you' " (Koran 4:1).

(n: This sermon fulfills conditions (a), (b), (c), and (d) above (A: and the rest of the sermon may be in any language), and after sitting briefly, one rises and says, "al-Hamdu lillah," the Blessings on the Prophet (Allah bless him and give him peace), enjoins the people to fear Allah, and must add a supplication for the Muslims ((e) above), such as saying, "O Allah, forgive the believers" (Ar. Allahumma-ghfir lil-mu'minin wal-mu'minat).)

f18.10 The conditions of the two sermons are:

(a) that the speaker be in a state of purity (O: from minor (def: e7) and major (e10) ritual impurity and from filth (najasa, e14.1));

(b) that his nakedness be clothed;

بأخروي فلا يكفي الدنيوي).

(ت: هذه الخطبة نقلها المترجم من شرح كتاب النكاح من هذا المجلد، وهي ما روي عن ابن مسعود موقوفاً ومرفوعاً:)

«إنَّ الحمدَ لِلّهِ، نَحْمَدُهُ ونَسْتَعِينُهُ ونَسْتَغْفِرُهُ، ونَعُوذُ بِاللّهِ مِنْ شُرُورِ أَنْفُسِنَا ومِنْ سَيِّئَاتِ أَعْمَالِنَا مَنْ يَهْدِهِ اللّهُ فَلا مُضِلَّ لَهُ ومَنْ يُضْلِلْ فَلا هَادِيَ لَهُ وأَشْهَدُ أَنْ لا إِلَهَ إِلاَّ اللّهُ وَحْدَهُ لا شَرِيكَ لَهُ وأَشْهَدُ أَنَّ مُحَمَّداً عَبْدُهُ وَرَسُولُهُ ﷺ وَعَلَى آلِهِ وأَصْحَابِهِ، ﴿يا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللّهَ حَقَّ تُقَاتِهِ ولا تَمُوتُنَّ إِلاَّ وأَنْتُمْ مُسْلِمُونَ﴾ ﴿يا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالاً كَثِيراً ونِسَاءً وَاتَّقُوا اللّهَ الَّذِي تَسَاءَلُونَ بِهِ والأَرْحَامَ إِنَّ اللّهَ كَانَ عَلَيْكُمْ رَقِيباً﴾ [سورة النساء: ١].

f18.10 وشرطُهُمَا الطهارةُ (عن حدث أصغر وأكبر وعن نجس) والستارةُ

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(c) that the two sermons occur during the noon prayer's time (zuhr) before performing the two rak'as of the Friday prayer;

(d) that the speaker be standing during them (O: if able);

(e) that he sit down between the two;

(f) and that his voice be loud enough for the forty required participants (def: f18.7(e)) to hear (O: the sermons' integrals).

ووقوعُهُمَا في وقتِ الظهرِ قبلَ الصلاةِ والقيامُ فِيهِمَا (للقادر عليه) والقعودُ بَيْنَهُما ورَفْعُ الصوتِ بحيثُ يَسْمَعُهُ أربعونَ تَنْعَقِدُ بِهِمْ الجمعةُ (والمراد سماعهم الأركان).

f18.11 The sunnas of the sermon include:

(1) that the speaker stand on a pulpit (minbar) or high place (O: and that it be to the right of the prayer niche (mihrab) and that the speaker stand on the right side of the pulpit);

(2) that he say "as-Salamu 'alaykum" to those present when he enters the mosque and (O: again) when he ascends the pulpit (O: and reaches his seat there);

(3) that he sit until the muezzin has finished (A: the second (dis: w28.2) call to prayer (adhan));

(4) that when speaking, he lean on a sword, bow, or stick (O: which is in his left hand. It is desirable for him to put his other hand on the pulpit. If he does not have a sword or the like, he keeps his hands still by placing the right upon the left, or dropping them to his sides. He does not move them or fidget with one, as the aim is stillness and humility);

(5) and that he face the group during both sermons (O: and not turn to the right or left during them, for it is a reprehensible innovation. It is desirable for the listeners to face the speaker).

f18.11 وسُنَنُهُمَا مِنْبَرٌ أوْ موضعٌ عالٍ (ويسن كون ذلك عن يمين المحراب ويسن أن يقف الخطيب على يمينه) وأنْ يُسَلِّمَ إذَا دَخَلَ (المسجد) و(يسلم أيضاً) إذَا صَعِدَ (المنبر أي انتهى إليه [ووصل إلى الدرجة المسماة بالمستراح]) و(سن أن) يَجْلِسَ حتّى يُؤَذِّنَ (المؤذن ويفرغ من أذانه) ويَعْتَمِدَ على سيفٍ أوْ قوسٍ أوْ عصًا (أي يشغل يساره بذلك ويستحب أن يشغل يده الأخرى بأن يضعها على المنبر فإن لم يجد سيفاً ونحوه سكن يديه بأن يضع اليمنى على اليسرى أو يرسلهما ولا يحركهما ولا يعبث بواحدة منهما والمقصود الخشوع) ويُقْبِلَ عليْهِمْ في جميعهما (ولا يلتفت في شيء منهما يميناً ولا شمالاً لأنه بدعة. ويستحب للقوم الإقبال بوجوههم على الخطيب).

DESCRIPTION OF THE FRIDAY PRAYER

صفة صلاة الجمعة

f18.12 The Friday prayer (jumu'a) consists of two rak'as. It is sunna for the imam to recite al-Jumu'a

f18.12 والجمعةُ ركعتانِ يَقْرَأُ في

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(Koran 62) in the first rak'a (A: meaning the entire sura, the sunna being to make the sermon brief and the rak'as long, though wisdom must be used in deciding how much those present will accept) and al-Munafiqun (Koran 63) in the second rak'a (O: following the sunna from a hadith reported by Muslim, who also reported that the Prophet (Allah bless him and give him peace) sometimes recited al-A'la (Koran 87) in the first rak'a of the Friday prayer and al-Ghashiya (Koran 88) in the second).

الأولى الجمعة وفي الثانية المنافقون (للإتباع رواه مسلم وروى أيضاً أنه ﷺ كان يقرأ في الجمعة ﴿سَبِّحِ اسْمَ رَبِّكَ الأَعْلَى﴾ و﴿هَلْ أَتَاكَ حَدِيثُ الغَاشِيَةِ﴾).

f18.13 A latecomer who joins the group prayer in time to bow and remain motionless a moment therein while the imam is still bowing in the second rak'a is legally considered to have attended the Friday prayer (A: though such a person must rise after the imam has finished with Salams to pray the rak'a he missed). If the latecomer joins the group after this point, he has missed the Friday prayer, but (O: obligatorily) intends performing the Friday prayer anyway and follows the imam (O: in case the imam has omitted an integral and has to repeat a rak'a, in which event the latecomer will have attended the Friday prayer). (N: But if this does not happen, then) when the imam finishes with Salams, the latecomer rises and completes his prayer as a noon prayer (zuhr).

f18.13 ومَنْ أَدْرَكَ مع الإمام ركوعَ الثانيةِ واطْمَأَنَّ فَقَدْ أَدْرَكَ الجمعةَ. وإنْ أَدْرَكَهُ بعدَهُ وفاتَتْهُ الجمعةُ فيَنْوِي الجمعةَ (وجوباً) خلفَهُ (باحتمال كون الإمام قد سها بترك ركن فيتذكر ويأتي به قبل أن يسلم وحينئذ أدرك المأموم الجمعة). فإذا سَلَّمَ أَتَمَّ الظهرَ.

RECOMMENDED MEASURES FOR THOSE ATTENDING THE FRIDAY PRAYER

سنن وآداب الجمعة

f18.14 It is recommended to perform a purificatory bath (ghusl) (O: and offensive not to) before going to the Friday prayer, though it may be performed anytime after dawn. If one is unable to bathe, one may perform the dry ablution (tayammum).

It is also recommended to clean the teeth with a toothstick (siwak, def: e3), trim the nails, remove (O: bodily) hair, eliminate offensive odors, wear perfume and one's finest clothes (white being the best), and for the imam to dress better than anyone else. (A: Because of the time taken by these measures, it is offensive to visit others on Friday mornings.)

f18.14 ويُنْدَبُ لمريدِها أنْ يَغْتَسِلَ عندَ الذهابِ (ويكره تركه) ويَجُوزُ مِنَ الفجرِ. فإنْ عَجَزَ تَيَمَّمَ.

وأنْ يَتَنَظَّفَ بسواكٍ وأخذِ ظفرٍ (أي قصة وإزالته) وشعرٍ (أي إزالته والظاهر أن المراد به غير شعر الرأس) وقطعِ رائحةٍ كريهةٍ ويَتَطَيَّبَ ويَلْبَسَ أحسنَ ثيابِهِ، وأفضلُها البيضُ، والإمامُ يَزِيدُ عليْهِم في الزينةِ.

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It is offensive for women who attend the Friday prayer to wear perfume or fine clothes.

It is recommended:

(1) to arrive early (O: which is recommended for everyone besides the imam, so as to take a seat and wait for the prayer), the best time being from dawn on;

(2) to come on foot in tranquility and dignity, and not to ride to the mosque unless there is an excuse (O: such as old age, weakness, or being so far from the mosque that the fatigue of walking would obviate one's humility and presence of mind in the prayer);

(3) to sit near to the imam;

(4) and to invoke Allah (dhikr) (O: both on the way and at the mosque before the sermon), and to recite the Koran and invoke Blessings (O: on the Prophet (Allah bless him and give him peace)).

ويُكْرَهُ للمرأة إذا حضرتْ الطيبُ وفاخرُ الثياب.

و(يندب أن) يُبَكِّر (وسنية البكور تكون لغير الإمام ليأخذوا مجالسهم وينتظروا الصلاة) وأفضلُهُ منَ الفجر، ويَمْشِيَ بسكينةٍ ووقارٍ ولا يركَبُ إلاَّ لعذرٍ (قام به من أجل هرم أو ضعف أو بعد الدار بحيث يمنعه ما يناله من التعب من الخشوع والحضور في الصلاة)، ويَدْنُوَ منَ الإمام، ويَشْتَغِلَ بالذكر (في طريقه وفي حضوره قبل الخطبة) والتلاوة والصلاة (على النبي ﷺ).

f18.15 It is offensive (O: for anyone but the imam, when there is no need) to step over people to reach a place among them, unless one sees a vacant spot that cannot be reached otherwise.

It is unlawful to make someone sitting in the mosque rise and then sit in his place, though if someone voluntarily rises it is permissible (O: for another to sit there).

f18.15 ولاَ يَتَخَطَّى رقابَ الناس (فإن تخطى لغير حاجة وكان غير إمام كره) فإذا وَجَدَ فرجةً لاَ يَصِلُ إليها إلاَّ بالتَخطِّي لَمْ يُكْرَهْ.

ويَحْرُمُ أنْ يُقيمَ رجلاً ويَجْلِسَ مكانَهُ. فإنْ قَامَ باختيارِهِ جَازَ (لغيره الجلوس).

f18.16 It is offensive to give another person one's place in the front row, in closeness to the imam, or to put others ahead of oneself in performing any act of worship (O: as is proved by the rigorously authenticated (sahih) hadith,

"People keep staying behind until Allah keeps them behind."

As for Allah's saying,

"... preferring others to themselves, though poverty be their lot" (Koran 59:9),

f18.16 ويُكْرَهُ أنْ يُؤْثِرَ غيرَهُ بالصفِّ الأول أوْ بالقربِ منَ الإمام، وبكلِّ قربةٍ ([أي الطاعات غير ما ذكر] وقد استدل له بالحديث الصحيح «لا يزال قوم يتأخرون حتى يؤخرهم الله». وأما قوله تعالى: ﴿ويُؤْثِرُونَ على أنْفُسِهِمْ ولَوْ كانَ بِهِمْ خَصَاصَةٌ﴾ فالمراد به في خصوص

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it refers to things that relate to the physical self, such as feeding a hungry person when one needs the food, in which case preferring another to oneself is desirable, without a doubt).

It is permissible to send someone to the mosque to save a place for oneself there by spreading something out (O: such as a rug, for no one else may pray on it), though it is permissible for another to move it aside and sit down in its place.

التفوس كإطعام شخص جائع مع احتياجه هو إلى الطعام فإن إيثار نفس الغير على نفسه مستحب بلا شك).

ويجوزُ أنْ يَبْعَثَ مَنْ يأخذُ لهُ موضعاً يَبْسُطُ شيئاً فيه (كسجادة ونحوها، ولا يجوز لشخص آخر أن يصلي على ذلك الشيء المبسوط) ولكنْ لغيره إزالتُهُ والجلوسُ مكانَهُ.

f18.17 It is offensive, though not unlawful, for someone sitting in the mosque to speak or to rise and perform the prayer while the imam is giving the sermon (khutba). (O: The more reliable position is that prayer is unlawful during the sermon (N: for the person already sitting in the mosque, as opposed to someone who has just arrived, as next discussed).)

A latecomer who arrives (O: when the imam is speaking or seated on the pulpit) should pray two brief rak'as to greet the mosque (O: if the prayer is being held in a mosque. If held elsewhere, one should intend them as the two rak'as that are sunna before the Friday prayer, though if one has already prayed these at home, one should simply sit down without praying.

It is offensive for a latecomer to simply omit the two rak'as of greeting the mosque, though if one enters the mosque at the end of the imam's sermon and believes that praying them will prevent one's participating in the opening Allahu Akbar with the group, then one should remain standing until they rise and incorporate one's greeting the mosque into the obligatory prayer (dis: f10.10)).

f18.17 ويُكْرَهُ الكلامُ والصلاةُ حالَ الخطبةِ (للجالس في المسجد من المأمومين) ولا يَحْرُمَانِ (والمعتمد أن إنشاء الصلاة في حال الخطبة يحرم).

فإنْ دَخَلَ (الشخص والإمام يخطب أو وهو جالس على المنبر) صَلَّى التحيةَ فقطْ ([نوى بصلاته عند دخوله تحية المسجد] إن كان هناك مسجد. وإلا نوى بها سنة الجمعة القبلية إن لم يصلها في بيته وإلا جلس بلا صلاة) ويُخَفِّفُهَا (ويكره ترك هاتين الركعتين لكن إذا دخل والإمام في آخر الخطبة وغلب على ظنه أنه لو صلاهما فاته تكبيرة الإحرام مع الإمام لم يصلهما بل يقف حتى تقام الصلاة وتندرج هذه التحية في صلاة الفرض).

f18.18 It is recommended to recite al-Kahf (Koran 18) and invoke Blessings on the Prophet (Allah bless him and give him peace) on the night before Friday and during its day.

f18.18 ويُنْدَبُ «الكهفُ» والصلاةُ على النبيِّ ﷺ ليلةَ الجمعةِ ويومَهَا.

f18.19 It is recommended to supplicate Allah much on Fridays, seeking the moment when prayers are answered (O: in view of the hadith related by Bukhari and Muslm,

f18.19 ويُكْثِرُ في يومِهَا الدعاءَ رجاءَ ساعةِ الإجابةِ (لما رواه الشيخان من قوله

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"There is a moment on Friday when the slave shall not ask Allah for anything save that He will give it to him"),

which lies between the time the imam first sits on the pulpit and when the prayer finishes. (A: Others hold that the moment occurs after the midafternoon prayer ('asr).)

ﷺ: «إن يوم الجمعة فيه ساعة لا يوافقها عبد يسأل الله شيئاً إلا أعطاه» وهي ما بين جلوس الإمام على المنبر إلى فراغ الصلاة (ع: وقيل بعد صلاة العصر).

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f19.0 THE PRAYER ON THE TWO 'EIDS

(N: Meaning *'Eid al-Fitr* at the end of Ramadan, and *'Eid al-Adha* on 10 Dhul Hijja.)

f19.0 صلاة العيدين

(ح: يعني عيد الفطر بعد نهاية رمضان وعيد الأضحى في العاشر من ذي الحجة).

f19.1 The prayer on the two 'Eids is a confirmed sunna (def: c4.1) and is recommended to be prayed in a group.

Its time begins at sunrise, and it is recommended to take place after the sun is a spear's length (def: f13.2(1)) above the horizon (O: the time for its current performance continuing) until noon.

f19.1 هي سنةٌ مؤكدةٌ ويُنْدَبُ لها الجماعةُ.

ووقتُها منْ طلوعِ الشمسِ ويُنْدَبُ منْ ارتفاعِها قدرَ رمحٍ (ويستمر وقت أدائها) إلى الزوالِ.

f19.2 It is best to perform it in the mosque if there is room, though if there is not, then it is better to hold it outdoors.

f19.2 وفعلُها في المسجدِ أفضلُ إنِ اتَّسعَ. فإنْ ضاقَ فالصحراءُ أفضلُ.

RECOMMENDED MEASURES FOR THE 'EID PRAYER

سنن وآداب صلاة العيد

f19.3 It is recommended not to eat anything on 'Eid al-Adha until one performs the prayer, though one should eat an odd number of dates before the prayer on 'Eid al-Fitr.

f19.3 ويُنْدَبُ أنْ لا يأكلَ في الأضحى حتى يُصَلِّيَ ويأكلَ في الفطرِ قبلَ الصلاةِ تمراتٍ وتراً.

f19.4 It is recommended to perform the purificatory bath (ghusl) after dawn, even if one does not attend the prayer, though it may be performed from midnight on. It is recommended to wear perfume, dress one's best, for young boys to

f19.4 ويَغْتَسِلَ بعدَ الفجرِ وإنْ لمْ يُصَلِّ ويَجُوزُ مِنْ نصفِ الليلِ ويَتَطَيَّبَ ويَلْبَسَ أحْسَنَ ثيابِهِ ويُنْدَبُ حضورُ

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come in their good clothes, and for women who do not attract men's attention to attend, though without wearing perfume or fine clothes. It is offensive for an attractive woman to attend (dis: f12.4(N:)).

It is sunna:

(1) to come early after the dawn prayer (subh) on foot;

(2) to return home by a different route (N: than one came);

(3) for the imam to delay his arrival until the time of the prayer;

(4) and to call the people to prayer with the words "The prayer is gathering," as one also does for the eclipse prayer (def: f20) and the drought prayer (f21).

الصبيانُ بزينتِهِمْ ومَنْ لا تُشْتَهَى مِنَ النساءِ بغيرِ طيبٍ ولا زينةٍ. ويُكْرَهُ لمشتهاةٍ.

ويُبَكِّرُ بعدَ الفجرِ ماشياً ويَرْجِعُ في غيرِ طريقِهِ (ح: التي ذهب فيها) ويَتَأَخَّرُ الإمامُ إلى وقتِ الصلاةِ ويُنَادَى لها وللكسوفِ والاستسقاءِ «الصلاةُ جامعةٌ».

DESCRIPTION OF THE 'EID PRAYER

صفة صلاة العيد

f19.5 The 'Eid prayer consists of two rak'as.

(A: In addition to the opening Allahu Akbar,) one says "Allahu akbar" seven times in the first rak'a after the Opening Supplication (Istiftah, def: f8.13) and before saying "I take refuge, etc." (Ta'awwudh, f8.16); and five times in the second rak'a, not counting the Allahu Akbar for rising from prostration, before saying the Ta'awwudh.

One raises one's hands (f8.12) each time one says "Allahu akbar."

One invokes Allah Most High (N: to oneself) between each Allahu Akbar (O: saying "Glory be to Allah, praise be to Allah, there is no god but Allah, Allah is greatest"), placing the right hand upon the left (A: each time one says this invocation).

Missing or adding repetitions of "Allahu akbar" does not necessitate a forgetfulness prostration at the end of one's prayer. If one forgets them and proceeds directly to the Ta'awwudh, one does not return to them.

f19.5 وهي ركعتانِ.

ويُكَبِّرُ في الأولى بعدَ الاستفتاحِ وقبلَ التعوذِ سبعَ تكبيراتٍ وفي الثانيةِ قبلَ التعوذِ خمساً غيرَ تكبيرةِ القيامِ يَرْفَعُ فيها اليدينِ ويَذْكُرُ اللهَ تعالى بينَهُنَّ (بأن يقول سبحانَ اللهِ، والحمدُ للهِ، ولا إلهَ إلاَّ اللهُ، واللهُ أكبرُ) ويَضَعُ اليمنى على اليسرى. ولَوْ تَرَكَ التكبيرَ أَوْ زادَ فيهِ لَمْ يَسْجُدْ للسهوِ، ولَوْ نَسِيَهُ وشَرَعَ في التعوذِ فاتَ.

f19.6 It is recommended to recite Qaf (Koran 50) in the first rak'a and al-Qamar (Koran 54) in

f19.6 ويَقْرَأُ في الأولى ﴿قٓ﴾ وفي الثانيةِ ﴿اقْتَرَبَتْ﴾؛ وإنْ شاءَ قَرَأَ ﴿سَبِّحِ

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the second. Or if one wishes, one may recite al-A'la (Koran 87) in the first rak'a and al-Ghashiya (Koran 88) in the second. (A: Or one may recite al-Kafirun (Koran 109) in the first rak'a and al-Ikhlas (Koran 112) in the second.)

اسْمَ رَبِّكَ الأَعْلَى﴾ و﴿الغَاشِيَةِ﴾.

f19.7 After the two rak'as, the imam gives two sermons (khutba) like those of the Friday prayer (O: in integrals (def: f18.9), not conditions (n: which here exclude f18.10(c,d,e))).

It is recommended to open the first sermon by saying "Allahu akbar" nine times and to open the second by saying it seven times.

It is permissible for the imam to sit during the sermons.

f19.7 ثُمَّ يَخْطُبُ بعدَهُما خطبتينِ كالجمعة (في الأركان لا في الشروط).
ويَفْتَتِحُ الأولى ندباً بتسعِ تكبيراتٍ والثانيةَ بسبعٍ.
ولَوْ خَطَبَ قاعداً جازَ.

f19.8 There are two types of Allahu Akbars (A: said for the 'Eids), unrestricted and restricted.

The *unrestricted,* meaning those not confined to a particular circumstance but rather recited in mosques, homes, and the street, are sunna to recite from sunset on the night before each 'Eid until the imam commences the 'Eid prayer with the opening Allahu Akbar.

The *restricted,* meaning those recited after prayers (O: whether the five prescribed prayers or the nonobligatory), are sunna for 'Eid al-Adha only, from the noon prayer (zuhr) on 'Eid day until the dawn prayer (subh) on the last of the three days that follow it, which is the fourth day of the 'Eid. (N: The more reliable position is that the time for them begins from dawn of the Day of 'Arafa (n: 9 Dhul Hijja) and ends at the midafternoon prayer ('asr) on the last of the three days that follow 'Eid al-Adha.) They are recited (O: by men, by women (who say them to themselves), by both nontravellers and travellers, and whether one is praying by oneself or in a group) after the current prescribed prayers or making up prescribed prayers missed during the 'Eid or before, and after prayers performed to fulfill a vow, funeral prayers (janaza), and supererogatory prayers. If one misses a prayer during the 'Eid but does not make it up until after the 'Eid, then one does not recite "Allahu akbar" after it.

One says, "Allahu akbar, Allahu akbar, Allahu akbar" (N: and then, "there is no god but

f19.8 والتكبيرُ مرسلٌ ومقيدٌ.
فالمرسلُ وهوَ مَا لا يَتَقَيَّدُ بحالٍ بلْ في المساجدِ والمنازلِ والطرقِ يُسَنُّ في العيدينِ منْ غروبِ الشمسِ ليلتَي العيدِ إلى أنْ يُحْرِمَ الإمامُ بصلاةِ العيدِ.
والمقيَّدُ وهوَ مَا يُؤْتَى بهِ عَقِيبَ الصلواتِ (الخمس وغيرِها من صلاةِ النافلة) يُسَنُّ في النحرِ فقطْ من صلاةِ ظهرِ النحرِ إلى صلاةِ صبحِ آخرِ التشريقِ وهو رابعُ العيدِ. (ح: والمعتمد أنه من صبح عرفة إلى العصر من آخر أيام التشريق).
يُكَبِّرُ (رجلاً كَانَ أو امرأةً وهي تسر بقدر سماع نفسها، مقيماً كان أو مسافراً وسواء كان منفرداً أو في جماعة) خلفَ الفرائضِ المؤداةِ والمقضيةِ منَ المدةِ وقبلَها والمنذورةِ والجنازةِ والنوافلِ، ولوْ قَضَى فوائتَ المدةِ بعدَها لمْ يُكَبِّرْ.
وصيغَتُهُ: اللهُ أكبرُ اللهُ أكبر اللهُ أكبرُ (ح: لا إلهَ إلاَّ اللهُ واللهُ أكبرُ اللهُ أكبرُ وللهِ

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Allah. Allahu akbar, Allahu akbar, praise be to Allah"). It is commendable to add, as people are accustomed to, "Allah is ever greatest, etc." (O: namely: "Much praise be to Allah. Glory to Him morning and evening. There is no god but Allah. Him alone we worship, making our religion sincerely His though the unbelievers be averse. There is no god but Allah alone. He fulfilled His promise, gave victory to His slave, strengthened His army, and vanquished the Confederates alone. There is no god but Allah. Allah is ever greatest").	الحمدُ) فإنْ زادَ ما اعتادَهُ الناسُ فحسنٌ وهوَ اللهُ أكبرُ كبيراً إلى آخرِه (أي «والحمدُ للهِ كثيراً وسبحانَ اللهِ بُكْرَةً وأصيلاً لا إلهَ إلاّ اللهُ ولا نَعْبُدُ إلاّ إيّاهُ مخلصينَ لهُ الدينَ ولوْ كرهَ الكافرُونَ لا إلهَ إلاّ اللهُ وحدَهُ صدَقَ وعْدَهُ ونصرَ عبْدَهُ وأعزَّ جُنْدَهُ وهزَمَ الأحزابَ وحْدَهُ لا إلهَ إلاّ اللهُ واللهُ أكبرُ».
f19.9 It is recommended to say "Allahu akbar" on the first ten days of Dhul Hijja whenever one sees a head of livestock (O: out of reverence for its Creator).	f19.9 ولوْ رأى في عَشْرِ ذِي الحجةِ شيئاً منَ الأنعامِ فلْيُكَبِّرْ (حينئذٍ تعظيماً لخالقها).
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f20.0 THE ECLIPSE PRAYER (O: *Eclipse* refers to both that of the moon and sun.)	f20.0 صلاة الكسوف (والكسوف يقال للقمر كما يقال للشمس)
f20.1 The eclipse prayer is a confirmed sunna (def: c4.1) (O: and missing it is not permissible, but rather is offensive).	f20.1 هيَ سنةٌ مؤكدةٌ (وتركها لا يباح بل هو مكروه).
f20.2 (O: Like the drought prayer, it has no call to prayer (adhan) (n: besides that mentioned at f19.4(4)).)	f20.2 (ولا أذانَ لها كصلاةِ الاستسقاء).
f20.3 It is recommended to be performed in a group at the mosque. It is recommended for women without attractive figures to attend (O: in their household clothes, that is, women advanced in years and the like. As for women who have attractive figures, it is desirable for them to perform it in their homes (dis: f12.4(N:))).	f20.3 ويُنْدَبُ لَها الجماعةُ في الجامعِ. ويَحْضُرُها منْ لا هيئةَ لَها منَ النساءِ (يحضرن بثياب بذلة كالعجوز ونحوها. وذوات الهيئات يستحب لهن فعلها في بيوتهن).

DESCRIPTION OF THE ECLIPSE PRAYER

صفة صلاة الكسوف

f20.4 The eclipse prayer consists of two rak'as. The minimum is:

(a) to open with "Allahu akbar";

(b) to recite the Fatiha;

(c) to bow;

(d) to straighten up;

(e) to recite the Fatiha again;

(f) to bow again;

(g) to (O: straighten up and) remain motionless a moment;

(h) and to prostrate, then sit up, and then prostrate again.

This is one rak'a, comprising standing twice, reciting (O: the Fatiha) twice, and bowing twice.

One then prays the second rak'a like the first.

It is not permissible to lengthen the amount of time one stands or bows merely because the eclipse has not yet passed, or to shorten the rak'as to less (O: than the above way after having intended it) because the eclipse has passed.

f20.4 وأقلُّهـا أنْ يُحرِمَ فَيَقْرَأَ الفاتحةَ ثمَّ يركَعَ ثمَّ يرْفَعَ فَيَقْـرَأَ الفاتحة ثمَّ يركَعَ (ثم يرفـع رأسـه من هذا الـركوع الثاني) فَيَطْمَئِنُّ ثمَّ يَسْجُـدَ سجـدتينِ فهـذِه ركعةٌ فيهـا قيـامـانِ وقـراءتـانِ (للفـاتحـة) وركوعانِ. ثمَّ يُصلِّي الثانيةَ كذلكَ.

ولا يَجُـوزُ زيادةُ قيامٍ وركوعٍ لتمادي الـكسـوفِ ولا يَجُـوزُ النقصُ (عن هذه الكيفية بعد نيتها) لتجليهِ.

f20.5 The optimal way is that after reciting the Opening Supplication (Istiftah, def: f8.13), the Ta'awwudh (f8.16), and the Fatiha, one:

(a) recite al-Baqara (Koran 2) for the first Koran recital;

(b) recite Al 'Imran (Koran 3) after the second time one recites the Fatiha (A: in the first rak'a);

(A: then, in the second rak'a:)

(c) recite al-Nisa (Koran 4) for the third recital;

f20.5 وأكملُهـا أنْ يَقْرَأَ بعدَ الافتتاحِ والتعـوذِ والفاتحةِ البقرةَ في القيامِ الأولِ وآلَ عمـرانَ في الثاني والنساءَ في الثالثِ

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(d) and recite al-Ma'ida (Koran 5) for the fourth recital.

Or one may recite comparable amounts of the Koran in place of the above suras.

One bows and says "Subhana Rabbiya al-'Adhim" ("How far above any limitation is my Lord Most Great") after the first of the four Koran recitals for a period equal to reciting one hundred verses of al-Baqara (N: about 20 minutes); after the second recital for the length of eighty of its verses; after the third for the length of seventy verses; and after the fourth for the length of fifty verses.

The other parts of the eclipse prayer are the same as other prayers.

والمائدةَ في الرابعِ أوْ نحوَ ذلك.
ويُسَبِّحُ في الركوعِ الأولِ بقدرِ مائةِ آيةٍ منَ البقرةِ وفي الثاني بقدرِ ثمانينَ وفي الثالثِ بقدرِ سبعينَ وفي الرابعِ بقدرِ خمسينَ.
وباقِيهَا كغيرِهَا منَ الصلواتِ.

f20.6 After praying, it is recommended that the imam give two sermons like those of the Friday prayer (O: in integrals (def: f18.9) and conditions (f18.10), except that here the sermons follow the prayer, as opposed to those of the Friday prayer, which precede it).

f20.6 ثمَّ يَخْطُبُ خطبتينِ (ندباً) كالجمعةِ (في الأركانِ والشروطِ إلا كونهما بعدَ الصلاةِ بخلافِ خطبتي الجمعةِ فإنهما قبلَ الصلاةِ).

f20.7 One may no longer perform the eclipse prayer if one has not yet begun it when the eclipse passes, when the sun sets while still eclipsed, or when the sun rises while the moon is still eclipsed. But if one has begun the prayer and the eclipse passes or the sun sets while still in eclipse, one nevertheless completes the prayer.

f20.7 فإنْ لمْ يُصَلِّ حتَّى تَجَلَّى الجميعُ أوْ غَابَتْ (الشمسُ حالَ كونِها) كاسفةً أوْ طَلَعَتِ الشمسُ والقمرُ خاسفٌ لمْ يُصَلِّ. ولوْ أحْرَمَ فتَجَلَّتْ أوْ غَابَتْ كاسفةً أتَمَّهَا.

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f21.0 THE DROUGHT PRAYER

f21.0 صلاة الاستسقاء

f21.1 The drought prayer is a confirmed sunna (def: c4.1) (O: even for someone travelling, or praying alone), and is recommended to be prayed in a group.

f21.1 هيَ سنةٌ مؤكدةٌ (ولو لمسافرٍ ومنفردٍ) ويُنْدَبُ لهَا الجماعةُ.

f21.2 When the land is parched or the water supply is cut off or diminished, the imam (A: i.e. the

f21.2 فإذَا أجْدَبَتِ الأرضُ أوِ انْقَطَعَتِ المياهُ أوْ قَلَّتْ وَعَظَ الإمامُ الناسَ

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caliph (def: o25) or his representative) warns people against wrongdoing and orders them to repent for their sins, give charity (O: because this influences the acceptance of prayers), settle their differences with enemies (O: if the enmity is not for Allah's sake. Otherwise, it is not objectionable, for severing ties with the corrupt is something that one should do), and fast for three days (O: which must be consecutive, for this is obligatory if the caliph orders it). Then, on the fourth day while still fasting, they come out to an empty expanse (lit. "desert") in their work clothes, accompanied by those of the women who do not have attractive figures (dis: f12.4(N:)), livestock, men and women advanced in years, infants and small children, the pious, and those related to the Messenger of Allah (Allah bless him and give him peace); and they ask Allah to give them rain because of those present (O: i.e. by virtue of their spiritual grace (baraka), interceding through them). Each mentions to himself the good works he has done and intercedes through them.

Non-Muslim subjects of the Islamic state who attend are not hindered from doing so, but may not mix with us.

وأَمَرَهُمْ بالتوبةِ والصدقةِ (لأن لذلك أثراً في إجابة الدعاء) ومصالحةِ الأعداءِ (أي في عداوة لغير الله تعالى وأما هي فلا بأس بها لأن هجر الفاسق مطلوب) وصومِ ثلاثةِ أيامٍ (ويجب تتابع الصوم لأنه صار فرضاً عليهم بأمر الإمام لهم) ثمّ يَخْرُجُونَ في الرابعِ إلى الصحراءِ صياماً في ثيابِ بذلةٍ [(أي ما يلبس من ثياب المهنة وقت العمل)] ويَخْرُجُ غيرُ ذواتِ الهيئةِ منَ النساءِ والبهائمُ والشيوخُ والعجائزُ والأطفالُ (الرضع) والصغارُ والصلحاءُ وأقاربُ رسولِ اللهِ ﷺ، ويَسْتَسْقُونَ بِهِمْ (أي [يطلبون السقيا من الله] ببركتهم ويستشفعون بهم) ويَذْكُرُ كلٌّ في نفسِهِ صالحَ عملِهِ ويَسْتَشْفِعُ بِهِ.

وإنْ خَرَجَ أهلُ الذمةِ لمْ يُمْنَعُوا لكنْ لا يَخْتَلِطُونَ بِنا.

DESCRIPTION OF THE DROUGHT PRAYER

صفة صلاة الاستسقاء

f21.3 The drought prayer consists of two rak'as like those of the 'Eid (def: f19.5).

The imam then gives two sermons like those of the 'Eid, except that in place of each Allahu Akbar (f19.7), the imam says, "I ask forgiveness of Allah Most Great, whom there is no god but He, the Living, the Ever Subsistent, and I turn to Him in repentance."

During the sermons, the imam frequently asks Allah's forgiveness (istighfar), blesses the Prophet (Allah bless him and give him peace), supplicates Allah, and recites the verses,

"Ask forgiveness of your Lord—verily He is oft-forgiving—and He will loose the sky upon you in torrents, aid you with wealth and sons, and make gardens and rivers yours" (Koran 71:10–12).

f21.3 وهيَ ركعتانِ كالعيدِ.

ثمّ يَخْطُبُ خطبتينِ كالعيدِ إلاّ أنّهُ يَفْتَتِحُهُمَا (أي خطبتي الاستسقاء) بالاستغفارِ بدلَ التكبيرِ (وصيغته في ابتداء الخطبة هي قوله «أَسْتَغْفِرُ اللهَ العظيمَ الذي لا إله إلاّ هوَ الحيُّ القيّومُ وأتوبُ إليْهِ» يقول ذلك بدل كل تكبيرة).

ويُكْثِرُ فيهما منَ الاستغفارِ والصلاةِ على النبيِّ ﷺ والدعاءِ ومنَ ﴿اسْتَغْفِرُوا رَبَّكُمْ إنَّهُ كانَ غَفّاراً﴾ (الآيات وتمامها ﴿يُرْسِلِ السَّمَاءَ عَلَيْكُمْ مِدْرَاراً وَيُمْدِدْكُمْ بِأَمْوَالٍ وَبَنِينَ وَيَجْعَلْ لَكُمْ جَنَّاتٍ وَيَجْعَلْ لَكُمْ أَنْهَاراً﴾).

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In the second sermon (O: about a third of the way through it) the imam turns toward the direction of prayer (qibla) and switches his cloak around (O: by putting the right side of it on his left and vice versa. It is also sunna to turn it upside down. Both sunnas can be effected by putting the lower left corner on the right shoulder and lower right corner on the left shoulder. The wisdom therein is the favorable portent of a change of state). The people do likewise.

He should supplicate to his utmost, both to himself and aloud. (O: Those present raise their hands with the backs of the hands up. The sunna supplication is: "O Allah, send us rain, raining wholesomely, healthily, torrentially, widespread, pouringly, in sheets, drenchingly, continuously till Judgement Day. O Allah, give us rain and make us not of those who despair. O Allah, servants and cities are in distress, hunger, and want, from which we can ask none but You for relief. O Allah, make the crops grow and the milk of the livestock flow, and send down the sky's blessings upon us and bring forth for us the blessings of the earth. Raise from us the affliction that none but You can lift.")

If they pray but are not given any rain, they repeat the prayer (O: until given rain). If they prepare (O: and gather), but are given rain before the prayer, they pray in thanks and ask for more.

ويَسْتَقْبِلُ القِبلةَ في أثناءِ الخطبةِ الثانيةِ (أي من نحو ثلثها) ويُحَوِّلُ رداءَهُ (بأن يجعل يمين ردائه يساره وعكسه ويسن التنكيس بأن يجعل أعلاه أسفله، ويحصلان معاً بجعل الطرف الأسفل الذي على شقه الأيسر على عاتقه الأيمن والطرف الأسفل الذي على شقه الأيمن على عاتقه الأيسر. والحكمة فيها التفاؤل بتغير الحال) ويَفْعَلُ الناسُ كذلك.

ويُبالِغُ في الدعاءِ سراً وجهراً (ويرفع الحاضرون أيديهم في الدعاء مشيرين بظهور أكفهم إلى السماء والدعاء الوارد «اللَّهُمَّ اسْقِنا غَيْثاً مُغِيثاً هَنِيئاً مَرِيئاً سَحّاً عامّاً غَدَقاً طَبَقاً مُجَلِّلاً دائماً إلى يَوْمِ الدِّينِ اللَّهُمَّ اسْقِنَا الغَيْثَ ولاَ تَجْعَلْنَا مِنَ القَانِطِينَ. اللَّهُمَّ إنَّ بالعِبَادِ والبِلاَدِ مِنَ الجَهْدِ والجُوعِ والضَّنْكِ مَا لاَ نَشْكُو إلاَّ إلَيْكَ اللَّهُمَّ أَنْبِتْ لَنَا الزَّرْعَ وأَدِرَّ لَنَا الضَّرْعَ وأَنْزِلْ عَلَيْنَا مِنْ بَرَكَاتِ السَّماءِ وأَنْبِتْ لَنَا مِنْ بَرَكَاتِ الأَرْضِ واكْشِفْ عَنَّا مِنَ البَلاَءِ مَا لاَ يَكْشِفُهُ غَيْرُكَ»).

فإنْ صَلَّوْا ولَمْ يُسْقَوْا أَعَادُوها (أي الصلاة وتكرر حتى يسقوا). وإنْ تأهَّبُوا ([أي تهيؤوا] واجتمعوا) فَسُقُوا قبلَ الصلاةِ صَلَّوْا شكراً وسألُوا الزيادةَ.

f21.4 It is recommended for those whose land is flourishing to supplicate after prayers for those whose land is parched. (O: This being the middle course. The minimum is to make a supplication, while the optimum is to take the above measures of performing two rak'as with the two sermons, the supplications, and asking for forgiveness.)

f21.4 ويُنْدَبُ لأهلِ الخصبِ أنْ يَدْعُوا لأهلِ الجدبِ خلفَ الصلواتِ (وهذا هو الوسط فيها وأدناه الدعاء وأعلى منهما يحصل بما تقدم من صلاة الركعتين مع الخطبتين والدعاء والاستغفار).

f21.5 At the first rainfall of the year, it is recommended to uncover part of the body for the rain to strike.

f21.5 ويُنْدَبُ أنْ يَكْشِفَ بعضَ بدنِهِ لِيُصِيبَهُ أولُ مطرٍ يقعُ في السنةِ.

f21.6 It is recommended to glorify Allah when thunder is heard (O: saying, "Glory to Him the thunder and the angels glorify, in awe of Him,") and when lightning is seen (O: saying, "Glory to

f21.6 ويُسَبِّحُ للرعدِ (ويقول «سُبْحانَ الَّذي يُسَبِّحُ الرَّعْدُ بحَمْدِهِ والملائكةُ مِنْ خِيفَتِهِ») والبرقِ (ويقال

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Him who shows you the lightning that you may have fear and hope").

عنده «سُبْحَانَ مَنْ يُرِيكُمُ البَرْقَ خَوْفاً وطَمَعاً».

f21.7 If it rains so much that harm is feared, it is recommended to supplicate as has come in the sunna: "O Allah, around us, not upon us. O Allah, upon the hills and bluffs, the valley floors and copses of trees."

f21.7 وإذا كَثُرَ المَطَرُ وخُشِيَ ضَرَرُهُ دَعَا برفعه بمَا وَرَدَ في السنة «اللهُمَّ حَوَالَيْنَا وَلاَ عَلَيْنَا» إلى آخره (أي إلى آخر الدعاء الوارد وهو «اللَّهُمَّ عَلَى الظِّرَابِ والآكَامِ وبُطُونِ الأَوْدِيَةِ وَمَنَابِتِ الشَّجَرِ»).

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BOOK G

THE FUNERAL PRAYER (JANAZA)

كتاب الجنائز

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g1.0 VISITING THE SICK AND DYING

g1.1 It is recommended for everyone to frequently remember death, particularly if one is ill, and to prepare for it by repenting (def: p77) (O: because of the hadith,

"Remember often the Ender of Pleasures,"

meaning death, a hadith related by Tirmidhi, Ibn Hibban, and Hakim, the latter two classifying it as rigorously authenticated (sahih). Nasa'i's version has the addition,

"for truly, it is not remembered in a plentitude save it diminishes it, and not remembered in a dearth save it increases it,"

"plentitude" meaning of wives and this-worldly goods, and "dearth" meaning of spiritual works).

g1.0 عيادة المريض وتلقين المحتضر

g1.1 يُنْدَبُ لكلِّ أحدٍ أنْ يُكْثِرَ ذكرَ الموتِ والمريضُ آكدُ ويَسْتَعِدَّ (كل أحد) لهُ بالتوبةِ (لخبر «أكثروا من ذكر هاذم اللذات» يعني الموت رواه الترمذي وابن حبان والحاكم وصححاه وزاد النسائي: «فإنه ما ذكر في كثير إلا قلله ولا قليل إلا كثره» أي كثير من الأهل والدنيا وقليل من العمل).

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g1.2 It is recommended to visit the ill, even if the malady is only sore eyes, whether the person is a friend or enemy.

If the sick person is a non-Muslim subject of the Islamic state (dhimmi, def: o11) then if he is a relative or neighbor, visiting him is recommended. If not, visiting him is merely permissible.

g1.2 ويُعُودُ المريضَ ولَوْ مِنْ رَمَدٍ ويُعُمُّ بِهَا العدوُّ والصديقَ.
فإنْ كَانَ ذمِيّاً فإنِ اقْتَرَنَ بِهِ قرابةٌ أوْ جوارٌ نُدِبَتْ عيادتُهُ وإلاَّ أُبِيحَتْ.

g1.3 It is offensive to sit lengthily with a sick person. It is recommended not to continuously visit (O: but only from time to time) unless one is a relative or similar person (O: of his friends) whom the sick person is fond of, or someone (O: of the righteous) from whose presence others derive spiritual blessing (baraka), for any of whom visiting the sick person is recommended at any time as long as there is no objection (O: by the sick person to long visits).

g1.3 ويُكْرَهُ إطالةُ القعودِ عندَهُ وتُنْدَبُ غِبّاً (أي وقتاً وقتاً لا على الدوام) إلاَّ لأقاربِهِ ونَحْوِهِمْ ممن يَأْنَسُ (هو بهم من الأصدقاء) أوْ (كان الزائر ممن) يَتَبَرَّكُ بِهِ (من أهلِ الصلاحِ) فـ[(حينئذ تندب الزيارة)] كلَّ وقتٍ مَا لَمْ يَنْهَ (المريض عن الإطالة).

g1.4 If the visitor has hopes that the patient will survive, he supplicates for him (O: saying, "O Allah, Lord of Men, remove the harm and heal—for You are the Healer besides whom there is no other—with a cure that will not leave behind pain or sickness,") and then leaves. But if the visitor sees little hope of a recovery, he should encourage the sick person to repent and to make his bequests (def: L1–3) (O: by telling him, e.g. "You should repent of all your sins so that Allah Most High heals you, for repentance is reason for cures. And you should make some provision for bequests, as it prolongs one's life. A person should make bequests while alive and only die after having done so, for there is no one who does not pass on").

g1.4 فإنْ طَمِعَ في حياتِهِ دَعَا (الزائر) لهُ وانْصَرَفَ (فيقول في دعائه «اللهُمَّ رَبَّ النَّاسِ أَذْهِبِ البَأْسَ اشْفِ وأَنْتَ الشَّافِي لَا شَافِيَ إلاَّ أَنْتَ شِفَاءً لَا يُغَادِرُ أَلَماً ولاَ سَقَماً) وإلاَّ رَغَّبَهُ في التوبةِ والوصيةِ (بأن يقول له عليك بالتوبة من جميع الذنوب حتى يعافيك الله تعالى والتوبة سبب للشفاء. وعليك بالوصية فإن الوصية تطيل العمر وينبغي للحي أن يوصي وأن يموت على وصية لأنه ما من أحد إلا ويموت).

INSTRUCTING THE DYING PERSON

تلقين المحتضر

g1.5 If the visitor sees the person is dying, he should make him desirous of Allah's mercy (O: since hope should predominate over fear in this state) and should turn him to face the direction of prayer (qibla) by laying him on his right side, or if impossible, on his left. If this too is impossible, he is laid on his back (O: with his face and feet

g1.5 وإنْ رَآهُ منزولاً بِهِ أَطْمَعَهُ في رحمةِ اللهِ (لأنه ينبغي له تقديم الرجاء على الخوف في هذه الحالة) وَوَجَّهَهُ إلى القبلةِ على جنبِهِ الأيمنِ فإنْ تَعَذَّرَ فالأيسرِ فإن تَعَذَّرَ فقفاهُ (ووجهه وأخمصاه للقبلة

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towards the direction of prayer (qibla) by propping up his head a little, *feet* meaning the bottoms of them).

The visitor should then instruct the dying person to say "There is no god but Allah," letting him hear it (N: so he can repeat it) but without irritating insistence, and without telling him "Say ...." When he says it, then he is let be until he himself speaks of something else.

It is recommended that the person instructing him to say it be neither his heir nor enemy.

بأن يرفع رأسه قليلا والأخمصان هنا أسفل الرجلين).

ولَقِّنْهُ قولَ لا إلهَ إلاّ اللهُ ليَسْمَعَها فيَقُولَها بلا إلحاحٍ ولا يَقُلْ قُلْ فإذا قالها تُرِكَ حتّى يتكلّمَ بغيرِها.

و(يندب) أنْ يَكُونَ الملقِّنُ غيرَ مُتَّهمٍ بإرثٍ وعداوةٍ.

IMMEDIATE MEASURES AFTER DEATH

ما يندب إذا مات

g1.6 When he dies, it is recommended that the kindliest to him of his unmarriageable kin (mahram) close his eyes. It is recommended:

(1) to close his jaws (O: with a wide bandage tied above his head so his mouth is not left open);

(2) to make his joints flexible (O: by bending the forearm to the upper arm, calf to thigh, thigh to stomach, and then straightening them, and to similarly flex the fingers in order to facilitate washing and shrouding him. If the joints are flexed at this point, they remain flexible, but if not, it becomes impossible afterwards);

(3) to (O: gently) remove his clothes, and to cover him with a light cloth (O: tucking the edge under his head and feet so they do not become uncovered);

(4) and to place something heavy on his stomach (O: to prevent bloating).

g1.6 فإذا ماتَ نُدبَ لأرفقِ محارمِهِ تغميضُهُ (أي تغميض عينيه) و(ندب) شَدُّ (أي ربط) لَحْيَيْهِ (بعصابة عريضة تربط فوق رأسه لئلا يبقى فمه منفتحا) وتليينُ مفاصلِه (فيرد ساعده إلى عضده وساقه إلى فخذه وفخذه إلى بطنه ثم تمد وتلين أصابعه تسهيلاً لغسله وتكفينه فإذ لينت المفاصل حينئذ لانت وإلا فلا يمكن تليينها بعد) ونَزْعُ ثيابِه (ويتلطف في نزعها) ثمّ يُسْتَرُ بثوبٍ خفيفٍ (ويجعل طرفاه تحت رأسه ورجليه لئلا ينكشف) ويُجْعَلُ على بطنِهِ شيءٌ ثقيلٌ (لئلا ينتفخ).

g1.7 It is recommended to hasten in paying off the debts of the deceased (dis: L4.2–3) or having them waived (n: by creditors). It is recommended to hurry in implementing his bequests, and in readying him for burial (O: haste being recommended (N: in readying him and burying him) when it is unlikely that the body will rapidly change, but obligatory when this is likely).

g1.7 ويُبادرُ (ندباً) إلى قضاءِ دَيْنِهِ أوْ إبرائِهِ منهُ و(يندب أن يبادر إلى) تنفيذ وصيتِهِ وتجهيزِهِ (هذا إن لم يخف تغيره وإلا فيجب أن يبادر إلى ذلك (ح: أي إلى تجهيزه ودفنه)).

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g1.8 When someone dies suddenly (O: or is believed to have died), the body is left until it is certain he is dead (O: by a change in odor or the like).

g1.8 فإذا مات (أو ظن موته) فجأة ترك ليتيقن موته (بتغير الرائحة ونحوها).

g1.9 Washing the dead person, shrouding him, praying over him, carrying him, and burying him are communal obligations (def: c3.2).

g1.9 وغسله وتكفينه والصلاة عليه وحمله ودفنه فروض كفاية.

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g2.0 WASHING THE BODY

g2.0 غسل الميت

g2.1 Then the body is washed (O: obligatorily).

g2.1 ثم يغسل (وجوباً).

WHO SHOULD WASH THE BODY

الأولى بغسله

g2.2 When the deceased is male, the best suited to wash the body (A: anyone may wash it, but it is not permissible (N: being offensive) for a non-Muslim to wash the body of a Muslim, and non-Muslim relatives are as though nonexistent in the following priority list) is:

g2.2 فإذا كان رجلاً فالأولى بغسله الأب ثم الجد (أبو الأب) ثم الابن (ثم ابن الابن) ثم الأخ ثم العم ثم ابنه (أي ابن العم) على ترتيب العصبات ثم

(1) the father of the deceased;

(2) the father's father;

(3) the son;

(4) the son's son;

(5) the brother;

(6) the father's brother;

(7) the son of the father's brother;

(8) those named in the sequence given at L10.6(12–14);

(9) men related to the deceased;

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(10) men not related to him;

(11) his wife;

(12) and his unmarriageable female relatives (mahram, def: m6.1).

الرجالُ الأقاربُ ثمَّ الأجانبُ ثمَّ الزوجةُ ثمَّ النساءُ المحارمُ.

g2.3 If the deceased is female, the best suited to wash the body is:

(1) one of her female relatives (O: meaning the women of her immediate family, such as her daughter or mother);

(2) other women;

(3) her husband;

(4) and then a member of her unmarriageable male relatives (mahram, def: m6.2) (O: in the above (g2.2) order).

g2.3 وإنْ كانَ امرأةً غَسَّلَها النساءُ الأقاربُ (وهن محارمها كالبنت والأم) ثمَّ الأجانبُ ثمَّ الزوجُ ثمَّ الرجالُ المحارمُ (على الترتيب).

g2.4 If the deceased is a non-Muslim, then his non-Muslim relatives are better suited to wash him.

g2.4 وإنْ كانَ كافراً فأقاربُهُ الكفارُ أحقُّ.

g2.5 It is recommended that the washer be trustworthy (O: so that he can be relied on to wash the deceased completely and so forth. If he notices something good, it is sunna to mention it, but if he notices something bad, it is unlawful to mention it, as this is slander (ghiba, def: r2.2)).

g2.5 ويُنْدَبُ كونُ الغاسلِ أميناً (ليوثق به في تكميل غسله وغيره فإن رأى خيراً سن ذكره أو رأى ضده حرم ذكره لأنه غيبة).

HOW TO WASH THE BODY

كيفية غسل الميت

g2.6 It is obligatory for the washer to keep the nakedness (def: f5.3) of the deceased clothed (f5.4) while washing him.

It is sunna that no one be present except the washer and his assistant. (O: It is preferable that the body be washed while clothed in an ankle-length shirt into which the washer inserts his hand from the sleeve if ample enough, while pouring water over the garment and washing the body

g2.6 ويُسْتَرُ الميتُ في الغسلِ [(أي وجب على الغاسل أن يستر عورة الميت)].

و(سن أن) لا يَحْضُرَ سِوَى الغاسلِ ومعينِهِ (ويستحب أن يغسل في قميص ويدخل الغاسل يده في كمه إن كان واسعاً ويصب الماء من فوق القميص ويغسل من تحته فإن لم يكن كم القميص

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under it. If the sleeve is not wide enough for this, he tears open the seam from the side under the arm. It is obligatory that the body be covered from navel to knees.) Incense should be burned from the start of washing to the finish (O: as is sunna).

It is best to wash the body under a roof, and best that cold water be used, except when necessary (O: to heat it, such as to clean away filth that could not otherwise be removed, or when the weather is cold, since the deceased suffers from it just as a living person would).

واسعاً فتق رؤوس الدخاريص ويجب تغطية ما بين سرته وركبتيه) وَ(من أن) يُبَخَّرَ مِنْ أولِ غسلِهِ إلى آخرِهِ.

والأَوْلَى تحتَ سقفٍ وبماءٍ باردٍ إلاَّ لحاجةٍ (إلى الماء المسخن كإزالة وسخ لا يزول إلا بالمسخن وبرد شديد لأن الميت يتأذى مثل ما يتأذى به الحي).

g2.7 It is unlawful to look at the nakedness of the deceased (def: f5.3) or touch it, except with a cloth (O: or similar, since direct contact without there being something in between is not permissible). It is recommended not to look at or directly touch the other parts of the body save with a cloth.

g2.7 ويَحْرُمُ نظرُ عورتِهِ ومسُّها إلاَّ بخرقةٍ (ونحوها فلا يجوز المس بغير حائل).

ويُنْدَبُ أنْ لاَ يَنْظُرَ إلى غيرِها ولاَ يَمَسَّهُ إلاَّ بخرقةٍ.

g2.8 It is recommended:

(1) to force out waste from the stomach;

(2) to clean the private parts of filth (O: which is recommended when one is not certain anything has exited from those parts, though if it has, cleaning is obligatory);

(3) to give the body ablution (wudu) (O: like the ablution of a living person, turning the head when rinsing the mouth and nostrils so that no water reaches the stomach);

(4) to make the intention of performing the purificatory bath (ghusl), and then to wash the head, beard, and body each three times with water infused (with *sidr* (n: i.e. lote tree (*Rhamus spina christi*) leaves), taking care each time to press the hand on the stomach (N: in a downward stroke) (O: leaning on it to force its contents out, but gently so as not to hurt the deceased. If the hair of the head or beard is matted, it should be gently combed with a wide-toothed comb so as not to pull any out. If hair comes out as a result, the washer should return it and place it in the shroud to be buried with the deceased).

g2.8 ويُخْرِجُ (ندباً) مَا فِي بطنِهِ مِنَ الفضلاتِ ويَسْتَنْجِيهِ (إن لم يتحقق خروج شيء من دبره وإلا وجب) ويُوَضِّئُهُ (كوضوء الحي ويميل رأسه عند المضمضة والاستنشاق لئلا يصل الماء إلى جوفه) ويَنْوِي غسلَهُ ويَغْسِلُ رَأْسَهُ ولحيتَهُ وجسدَهُ بماءٍ وسدرٍ ثلاثاً يَتَعَهَّدُ كلَّ مرةٍ إمرارَ اليدِ على البطنِ (أي يجعل يده تمر في كل مرة على بطنه ويتكىء عليه حتى يخرج ما فيه لكن بالرفق بحيث لا يتأذى وإذا كان هناك شعر متلبد من رأسه أوْ لحيته سرحه بمشط واسع الأسنان ويرفق في ذلك حتى لا ينتتف منه شيء. فإذا خرج بسبب ذلك شعر رده الغاسل وجعله في كفنه ليدفن معه).

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g2.9 (O: It is sunna:

(1) that the place of washing be on an incline so the head is highest and the water flows down away from it;

(2) that there be an incense burner present with incense in it;

(3) to put one's right hand on the shoulder of the deceased with the thumb on the nape of his neck so that the head does not loll, and brace his back up against one's right knee;

(4) to have the helper pour abundant water during the process to obviate offensive odors from waste leaving the body;

(5) to stroke the stomach firmly and effectively with one's left hand;

(6) and when finished, to lay the deceased down again on his back with his feet towards the direction of prayer (qibla).)

g2.9 (السنة أن يكون الموضع منحدراً بحيث يكون رأسه أعلى لينحدر عنه الماء ويكون عنده مجمرة فيها بخور ويضع يده اليمنى على كتفه وإبهامه في نقرة قفاه لئلا يميل رأسه ويسند ظهره إلى ركبته اليمنى ويصب عليه المعين ماء كثيراً لئلا يظهر رائحة ما يخرج منه ويمر يده اليسرى على بطنه إمراراً بليغاً ثم يرده هيئة الاستلقاء ويلقيه على ظهره ورجلاه إلى القبلة).

g2.10 If the body is not clean after three times, one washes it again, reaching an odd number of washings. (O: If clean after an even number of washings, it is sunna to add another. If clean after an odd number, one does not add any.)

It is sunna to add a little camphor to the water, especially for the last washing.

The obligatory minimum for this purificatory bath (ghusl) is that water reach all external parts of the body (O: and it is obligatory to remove any filth (najasa, def: e14.1), if present).

The body should be dried with a cloth afterwards.

If anything leaves the body after washing, only the affected area need be washed. (O: It is not necessary to repeat the ablution (wudu) or bath (ghusl), even if the excretion is from the front or rear private parts.)

g2.10 فإنْ لمْ يَنْظُفْ زادَ وتراً. (ولو حصلت النظافة بالشفع من الوتر، ولو حصل الإنقاء بالوتر فلا يزاد بعده).

ويُجْعَلُ في الماءِ قليلُ كافورٍ وفي الأخيرةِ آكَدُ.

وواجِبُهُ تعميمُ البدنِ بالماءِ (وإن كانت النجاسة عينية فلا بد من زوال عينها).

ثمَّ يُنَشَّفُ بثوبٍ.

فإنْ خَرَجَ منهُ شيءٌ بعدَ الغسلِ كَفاهُ غسلُ المحلِّ. (ولا يجب وضوء ولا غسل وإن خرج من أحد السبيلين).

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g3.0 SHROUDING THE BODY

g3.1 Then the body is shrouded (O: obligatorily).

g3.2 If the deceased is male it is recommended that he be wrapped in three washed (O: not new) white shrouds, without an ankle-length shirt or turban, each shroud covering the whole body (O: unless the deceased was in a state of pilgrim sanctity (ihram), in which case the head of the male or face of the female must be left uncovered). It is permissible to add (O: beneath the shrouds) an ankle-length shirt and a turban. It is unlawful to use silk (N: to shroud a man).

If the deceased is a woman it is recommended that she be dressed in a wraparound, headcover, and a shift, and that she be wrapped in two shrouds (O: like those used for men in being white and washed), each of which covers her (O: entire body). It is offensive for a woman's shroud to be made of silk, or fabric dyed with saffron or safflower.

The obligatory minimum for shrouding a man or woman is to completely cover their nakedness. (O: For a man it is obligatory to cover the navel, the knees, and what lies between them, and for a woman, her entire body.)

g3.3 It is recommended:

(1) to scent the shrouds with incense (O: from aloes and the like);

(2) to sprinkle them with *hunut* (O: an aromatic compound of camphor, reed perfume, and red and white sandalwood) and camphor;

(3) to place cotton and *hunut* on the apertures of the body (O: such as the eyes, mouth, nostrils, and ears) and on places that touch the ground in prostration (O: the forehead, nose, palms, bottoms of the feet, and the knees);

(4) and it is commendable to perfume the entire body.

g3.0 كفن الميت

g3.1 ثمَّ يُكَفَّنُ (وجوباً).

g3.2 فإنْ كانَ رجلاً نُدِبَ لهُ ثلاثُ لفائفَ بيضٍ مغسولةٍ (لا جديدة) كلُّ واحدةٍ تَسْتُرُ كلَّ البدنِ (أي تعمه غير رأس المحرم ووجه المحرمة) لا قميصَ فيها ولا عمامةَ فإنْ زادَ عليها قميصاً وعمامةً جاز (وتكون هذه الزيادة تحت اللفائف). ويَحْرُمُ الحريرُ.

و(يندب) للمرأةِ إزارٌ وخمارٌ وقميصٌ ولفافتانِ (موصوفتان بما وصف به كفن الرجل من البياض والغسل) سابغتانِ (أي يعمانِ جميع بدنها). ويُكْرَهُ لها حريرٌ ومزعفرٌ ومعصفرٌ (وهو الثوب المصبوغ بالعصفر).

والواجبُ في الرجلِ والمرأةِ ما يَسْتُرُ العورةَ. (وهي بالنسبة للرجل ما بين السرة والركبة فالواجب في حقه ما يسترهما وما بينهما وبالنسبة للمرأة جميع بدنها).

g3.3 ويُبَخَّرُ الكفنُ (بالعود ونحوه [بأن تنصب مجمرة ويوضع عليها الكفن ليصيبها دخان العود]) ويُذَرُّ عليهِ الحنوطُ (وهو نوع من الطيب مركب من الكافور وذريرة القصب والصندل الأحمر والأبيض) والكافورُ ويُجْعَلُ قطناً بحنوطٍ على منافذِهِ (كعينيه وفمه ومنخريه وأذنيه) ومواضعِ السجودِ (وهي الجبهة والأنف وباطن الكفين وباطن القدمين وعلى الركبتين) ولوْ طَيَّبَ جميعَ بدنِهِ فحسنٌ.

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g3.4 If a person dies while in a state of pilgrim sanctity (ihram, def: j3), it is unlawful to scent the body, to dress it in a garment with any sewing in it (A: if male), and to cover the head of a male's body or the face of a female's.

g3.4 فإنْ ماتَ مُحرِماً حُرِّمَ الطيبُ والمخيطُ وتغطيةُ رأسِ الرجلِ ووجهِ المرأة.

g3.5 It is not recommended to prepare a shroud for oneself, unless to ensure that it comes from a lawful source or from the effects of a virtuous person (O: meaning those who worship much, or religious scholars who apply their knowledge in their lives. In such a case, one may procure it for the blessing therein (tabarruk, dis: w31)).

g3.5 ولا يُنْدَبُ أنْ يُعِدَّ لنفسِهِ كفناً إلاّ أنْ يَقْطَعَ بحِلِّه أوْ منْ أثرِ أهلِ الخيرِ (وأهلِ الخيرِ هم العبادُ والعلماءُ العاملونَ فحينئذٍ يعدُّه ويهيئه لأجلِ التبرك به).

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g4.0 THE PRAYER OVER THE DEAD

g4.0 الصلاة على الميت

g4.1 Then the deceased is prayed over (O: obligatorily).

The obligation is fulfilled if a single Muslim male (O: who has reached the age of discrimination) prays over the deceased. It is not fulfilled by a prayer of women alone when there is a male available, though if there is no one besides women, they are obliged to pray and their prayer fulfills the obligation.

g4.1 ثمَّ يُصلّى عليْهِ (وجوباً).

ويسْقُطُ الفرضُ بذكرٍ واحدٍ (وهذا بشرطِ التمييزِ) دونَ النساءِ إنْ حضرَهُنَّ رجلٌ [(وصلين فلا تسقط صلاة الجنازة بهن مع وجود الذكر)] فإنْ لمْ يُوْجَدْ غيرُهُنَّ لَزِمَهُنَّ ويَسْقُطُ الفرضُ بهِنَّ.

g4.2 It is recommended to perform the funeral prayer in a group. It is offensive to pray it at a cemetery (O: though not in a mosque, which is preferable).

g4.2 وتُنْدَبُ فيها الجماعةُ وتُكْرَهُ في المقبرةِ (ولا تكره في المسجد بل تستحب فيه).

WHO SHOULD LEAD THE FUNERAL PRAYER

أوْلى الناس بالصلاة

g4.3 The person best suited to lead the funeral prayer as imam is the one who is best suited to wash the deceased (dis: g2.2) except for women, who have no right to lead (dis: f12.27). The family member responsible for the deceased is given preference in leading the prayer even over the sultan (O: or imam of the mosque).

g4.3 وأوْلى الناسِ بالصلاةِ أولاهُمْ بالغسلِ منْ أقاربِهِ إلاّ النساءَ فلا حقَّ لهُنَّ [(لعدم أهليتهن لإمامتها)] ويُقَدَّمُ الوليُّ على السلطانِ (ويلزم منه تقديمه على إمام المسجد أيضاً) والأسنُّ (في الإسلام

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The older of two persons (O: meaning more years in Islam, provided he is upright (def: o24.4)) takes precedence over the more learned in Sacred Law (O: when they are at the same level (n: of the g2.2 precedence order), such as two sons or two brothers, since the purpose is to pray for the deceased, and the supplication of an older person is more likely to be answered) and (n: the older) is given precedence over any others (A: at that level), though if they are of the same age, then one is chosen according to the order used for the imamate of other prayers (def: f12.25).

The responsible family member is given precedence in leading the funeral prayer even when the deceased has stipulated some other nonfamily member to be the imam.

العدل) على الأفقه (منه وهذا عند استوائهما في درجة واحدة كابنين أو أخوين لأن الغرض هنا الدعاء ودعاء الأسن أقرب إلى الإجابة) وغيره فإن استَوَوا في السنّ رُتِّبوا كباقي الصلاة.

ولوْ أوصَى أنْ يُصَلِّيَ عليه أجنبيٌّ قُدِّمَ الوَلِيُّ عليه.

PLACING THE BODY FOR THE FUNERAL PRAYER

وضع الجنائز للصلاة

g4.4 It is recommended (N: in the funeral prayer itself, where the deceased, enshrouded, is on a bier in front of the imam and lying on his right side facing the direction of prayer (qibla)) that the imam stand by the head of the deceased, if male, and by the posterior, if female (O: because this better screens her from view).

g4.4 ويَقِفُ الإمامُ (ندباً) عند رأسِ الرجلِ وعجيزةِ المرأة (لأنه أستر لها).

g4.5 If there are several bodies, it is best to perform a separate funeral prayer for each individual, though it is permissible to pray for all of them in a single prayer by putting the biers directly in front of the imam (O: one after another (N: parallel with the rows of worshippers), each body facing the direction of prayer (qibla)). The closest body to the imam (O: if the dead differ in gender) should be an adult male, then a boy, then a woman (O: though if all are male, all female, or all boys), then the best Muslim, then the next best (O: in piety, abstinence from this world, godfearingness, and all praiseworthy traits), and so forth.

If bodies are brought successively, the first one brought is placed closest to the imam, even if a prior arrival is less virtuous or is a boy, though not if a female, whose body should be placed further from the imam than that of a male brought subsequently.

g4.5 فإنِ اجْتَمَعَ جنائزُ فالأفضلُ إفرادُ كلِّ واحدٍ بصلاةٍ، ويَجُوزُ أنْ يُصَلِّيَ عليهمْ دفعةً واحدةً ويَضَعُهُمْ بَيْنَ يَدَيْهِ بعضَهُمْ خلفَ بعضٍ هكذا (أي مصطفين واحداً خلف واحد وموجهين إلى القبلة) ويليهِ (أي المصلي على الجنائز) الرجلُ ثمَّ (يقدم) الصبيُّ (على غيره من الجنائز المختلفة الجنس) ثمَّ المرأةُ ثمَّ (إذا كانوا كلهم ذكوراً أو إناثاً أو صبياناً قدم إليه) الأفضلُ فالأفضلُ (بالورع والزهد والتقوى وسائر الخصال الحميدة [ولا اعتبار بالرق والحرية].

ولوْ جاء واحدٌ بعد واحدٍ قُدِّمَ إلى الإمام (أي إلى ما يليه) الأسبقُ ولوْ (كان السابق) مفضولاً وصبياً إلاّ المرأةَ فتُؤَخَّرُ للذكرِ المتأخرِ مجيئُهُ.

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DESCRIPTION OF THE FUNERAL PRAYER	صفة الصلاة على الميت
g4.6 Then one intends to perform the prayer. One must keep in mind its obligatory character, though need not explicitly intend it as a communal obligation (def: c3.2). (O: One may confine oneself to merely intending to pray four Allahu Akbars over the particular deceased person as an obligatory act, without intending its being in fulfillment of a communal obligation. The intention must coincide with one's opening Allahu Akbar.) It is valid for someone to perform a funeral prayer for a dead person who is absent (dis: g4.18) while following an imam who is praying over a dead person who is present.	g4.6 ثمَّ يَنْـوِي ويَـجِبُ التعـرضُ للفـرضيـة دونَ فرضِ الكفـايةِ (بل له أن يقتصـر على قولـه أصـلي على هذا الميت أربـع تكبيـرات فرضـاً من غيـر التعـرض لذكر الكفاية ويجب كون النية مقرونة مع التكبير). ولـوْ صَلَّى على غائـبٍ خَلفَ مَنْ (أي إمام) يُصَلِّي على حاضـرٍ صَحَّ.
g4.7 One says "Allahu akbar" four times in the funeral prayer, raising one's hands (O: to shoulder level) at each one, and it is recommended between each one to fold the right hand over the left. The funeral prayer is not invalidated by adding a fifth Allahu Akbar, even intentionally, though if the imam adds one the follower does not do likewise, but simply waits to finish with him when he says his Salams.	g4.7 ويُكَبِّـرُ أربعاً رافعاً يديْهِ (حذو منكبيه) ويَضَـعُ يمنـاه على يسـراهُ (ندباً) بينَ كلِّ تكبيـرتَيْنِ. فإنْ كَبَّـرَ خمسـاً ولَـوْ عمداً لَمْ تَبْطُلْ لكنْ (لو كبر الإمام خمساً) لا يُتَـابِعُـهُ المأمـومُ في الخامسةِ بلْ يَنْتظِرُهُ لِيُسَلِّمَ مَعَهُ.
g4.8 After the first Allahu Akbar it is obligatory to recite the Fatiha. It is recommended to say "I take refuge, etc." (Ta'awwudh, def: f8.16) before it and "Ameen" after it, though not to recite the Opening Supplication (Istiftah, f8.13) or a sura therein. (A: It is obligatory that the Fatiha be recited in the funeral prayer and that the other spoken elements be uttered, but as for each occurring after its respective Allahu Akbar, the only one which must obligatorily be in its place is the Blessings on the Prophet (Allah bless him and give him peace), which must come after the second Allahu Akbar.)	g4.8 ويَقْـرَأُ الفـاتحـةَ (وجوباً) بعدَ الأولـى ويُنْـدَبُ الـتعـوذُ والتأمينُ دونَ الاستفتاحِ والـسورةِ. (ع: يجب قراءة الفـاتحـة وغيرها من الأركـان القـولية في الصلاة على الميت. أما وقوع كل منها بعد تكبيرته فإنما يجب ذلـك في حق الـصـلاة على الـنبي ﷺ فيجب أن تكون بعد التكبيرة الثانية).
g4.9 After the second Allahu Akbar (N: and one remains standing throughout the funeral prayer), it is obligatory to say the Blessings on the Prophet (Allah bless him and give him peace),	g4.9 ويُصَلِّي (وجـوبـاً) على النبيِّ ﷺ بعـدَ الثـانيـةِ ثُمَّ يَدْعُـو (المصلي بعد

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after which it is sunna to supplicate for the believers. (O: It is also sunna to bless the folk of the Prophet after the blessings upon him (Allah bless him and give him peace) and to say "al-Hamdu lillah" before it.)

الصلاة على النبي ﷺ) للمؤمنين (وهذا الدعاء على سبيل السنة لا على طريق الوجوب وكذلك تسن الصلاة على الآل عقبها والحمد قبل الصلاة على النبي ﷺ).

g4.10 After the third Allahu Akbar one supplicates for the deceased. The recommended supplication is: "O Allah, this is Your slave, and son of Your slave. He has left the zephyr of this world and its spaciousness, in which were the things and people he loved, for the darkness of the grave and that which he will meet. He testified that there is no god but You alone without a partner, and that Muhammad is Your slave and messenger. You know him better than we. O Allah, he has gone to remain with You, and You are the best to remain with. He is now in need of Your mercy, and You have no need to torment him. We come to You in desire for You, interceding for him. O Allah, if he did well, treat him the better, and if he did wrong, disregard it and through Your mercy show him Your good pleasure and protect him from the trial and torment of the grave. Make his grave spacious for him and distance the earth from his sides, and through Your mercy protect him from Your torment until You raise him and send him safely to Your paradise, O Most Merciful of the Merciful." (n: This is the optimal supplication. The minimum is mentioned below at g4.13(f).)

g4.10 ثمّ يَدْعُو للميتِ بعدَ الثالثةِ فيَقولُ اللّهُمَّ هذا عَبْدُكَ وَٱبْنُ عَبْدِكَ خَرَجَ مِنْ رَوحِ الدُّنْيا وسَعَتِها (أي نسيم ريحها واتساعها) ومَحْبُوبُهُ وأحِبَّاؤُهُ فِيها إلى ظُلْمَةِ القبرِ وما هُوَ لاقِيهِ. كانَ يَشْهَدُ أنْ لا إلهَ إلاّ أنْتَ وَحدَكَ لا شَريكَ لَكَ وأنَّ مُحمّداً عَبْدُكَ ورَسُولُكَ وأنْتَ أعْلَمُ بِهِ مِنّا. اللّهُمَّ إنَّهُ نَزَلَ بِكَ [(أي صار ضيفاً عندك)] وأنْتَ خيرُ مَنْزُولٍ بِهِ وأصْبَحَ فقيراً إلى رَحْمَتِكَ وأنْتَ غَنِيٌّ عَنْ عذابِهِ وقَدْ جِئْناكَ راغِبينَ إلَيْكَ شُفَعاءَ لَهُ اللّهُمَّ إنْ كانَ مُحْسِناً فَزِدْ في إحْسانِهِ وإنْ كانَ مُسيئاً فَتَجاوَزْ عَنْهُ ولَقِّهِ بِرَحْمَتِكَ رِضاكَ وَقِهِ فِتْنَةَ القَبْرِ وعَذابَهُ وَافْسَحْ لَهُ في قَبْرِهِ وجَافِ الأرْضَ عَنْ جَنْبَيْهِ ولَقِّهِ بِرَحْمَتِكَ الأمْنَ مِنْ عَذابِكَ حَتّى تَبْعَثَهُ آمِناً إلى جَنَّتِكَ يا أرْحَمَ الراحِمينَ.

g4.11 It is commendable to say before the above: "O Allah, forgive those of us who are alive and those who are dead, those present and those absent, those who are young and those who are old, those who are male and those who are female. O Allah, let those of us You give life live by Islam, and let those of us You take back die in a state of faith."

If it is the funeral of a child, one may add to this: "O Allah, send him ahead to smoothe the way for his parents, and make him a reason for reward, a treasure, admonition, reflection, and intercessor. Make the scales of their good deeds heavy through him, and fill their hearts with patience."

g4.11 وحَسُنَ أنْ يُقَدِّمَ عليهِ «اللّهُمَّ اغْفِرْ لِحَيِّنا ومَيِّتِنا وشاهِدِنا (أي حاضرنا) وغائِبِنا وصَغيرِنا وكَبيرِنا وذَكَرِنا وأُنْثانا. اللّهُمَّ مَنْ أحْيَيْتَهُ مِنّا فَأحْيِهِ على الإسلامِ ومَنْ تَوَفَّيْتَهُ مِنّا فَتَوَفَّهُ على الإيمانِ» ويَقولُ في الصلاةِ على الطفلِ [(ومثله المميز الذي لم يبلغ)] مَعَ هذا الثاني «اللّهُمَّ اجْعَلْهُ فَرَطاً لأبَوَيْهِ [(أي سابقاً مهيئاً لمصالحهما في الآخرة)] وسَلَفاً وذُخْراً وعِظَةً واعْتِباراً وشَفيعاً وثَقِّلْ بِهِ مَوازينَهُما وأفْرِغِ الصَّبْرَ على قُلوبِهِما».

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g4.12 After the fourth Allahu Akbar, it is sunna to say, "O Allah, do not withhold from us his recompense, nor try us after him, but forgive us and him."

Then one says "as-Salamu 'alaykum" twice (O: the first one being obligatory and the second sunna).

g4.12 ويقول بعد الرابعة (على سبيل السنية) «اللَّهُمَّ لا تحرمنا أجره ولا تفتنا بعده واغفر لنا وله».

ثمَّ يُسلِّم تسليمتين (وهذا هو الركن السادس و) هو التسليمة الأولى والثانية سنة).

g4.13 The integrals of the funeral prayer are seven:

(a) the intention;

(b) standing;

(c) saying "Allahu akbar" four times;

(d) the Fatiha;

(e) the Blessings on the Prophet (Allah bless him and give him peace);

(f) the supplication for the deceased, the minimum being "O Allah, forgive this deceased";

(g) and the first of the two times one says "as-Salamu 'alaykum" to finish the prayer.

g4.13 وواجباتها سبعة النية والقيام وأربع تكبيرات والفاتحة والصلاة على النبيِّ ﷺ وأدنى الدعاء وهو «اللَّهُمَّ اغفر لهذا الميت» والتسليمة الأولى.

g4.14 The conditions of the funeral prayer are the same as other prayers (def: f9.13), but in addition require:

(a) that the deceased's body has been washed before the prayer;

(b) and that the imam and those praying do not stand ahead of the body during the prayer (N: i.e. closer to the direction of prayer (qibla)).

It is offensive to perform the funeral prayer over a body before it has been shrouded.

If someone dies under a pile of rubble, and it is impossible to take out the body and wash it (non-(a) above), then he is not prayed over.

g4.14 وشرطها كغيرها ويزيد تقديم الغسل وأنْ لا يتقدَّم (المصلي) على الجنازة.

وتُكرهُ (الصلاة على الميت) قبلَ الكفنِ.

فإنْ ماتَ (في بئر أو) تحت هدمٍ وتعذَّر إخراجُهُ وغسلُهُ لمْ يُصلَّ عليه.

g4.15 A latecomer to the funeral prayer whom the imam has preceded by having already said

g4.15 ومنْ سبقهُ الإمامُ ببعضِ

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"Allahu akbar" a number of times recites (O: the Fatiha) after his own opening Allahu Akbar, and then says "Allahu akbar" each time the imam does, though he performs the integrals in order from the point at which he began (O: reciting the Fatiha after his first Allahu Akbar, the Blessings on the Prophet (Allah bless him and give him peace) after the second, and the supplication for the deceased after his third), and when the imam finishes with Salams, the latecomer goes on to complete his remaining number of times of saying "Allahu akbar" and the other spoken elements, and then finishes with his own Salams.

It is recommended that the body not be lifted until the latecomer finishes his prayer.

If the latecomer joins the group with his opening Allahu Akbar, and the imam immediately says the (O: second) Allahu Akbar (N: before the latecomer has had a chance to recite the Fatiha), then the latecomer (N: omits the Fatiha and) says "Allahu akbar" with the imam. Here, the latecomer has performed the first two Allahu Akbars (O: both the second one which he performed with them, and the first one which lacked the Fatiha), and he is no longer obliged to recite the Fatiha. If the imam's Allahu Akbar occurs while such a latecomer is reciting the Fatiha, he discontinues it and says "Allahu akbar" with the imam.

If the imam says "Allahu akbar" and the follower does not say it until the imam has said it a second time, it invalidates the follower's prayer.

التكبيرات أحْرَمَ وقَرأ (الفاتحة) وراعى في الذكر ترتيبَ نفسِه (فيقرأ الفاتحة في التكبيرة الأولى ويصلي على النبي ﷺ في تكبيرته الثانية والدعاء للميت في الثالثة) فإذا سَلَّمَ الإمامُ كَبَّرَ ما بقي ويأتي بذكره (أي بذكر ما بقي) ثمَّ يُسلِّمُ.

ويُنْدَبُ أنْ لا تُرْفَعَ الجنازةُ حتى يُتِمَّ المسبوقُ صلاتَهُ.

فلوْ كَبَّرَ الإمامُ (التكبيرة الثانية) عَقِيبَ تكبيرتِهِ (أي تكبيرة المسبوق) الأولى كَبَّرَ (المسبوق) مَعَهُ (أي مع الإمام) وحَصَلَتَا (أي التكبيرتان للمسبوق: الثانية التي وافقه فيها والأولى الخالية عن القراءة) وسَقَطَ عنْهُ القراءةُ. ولوْ كَبَّرَ وهو في الفاتحة قَطَعَهَا وتابَعَ.

ولوْ كَبَّرَ الإمامُ تكبيرةً فلمْ يُكَبِّرْهَا المأمومُ حتَّى كَبَّرَ الإمامُ بعدَها بَطَلَتْ صلاتُهُ.

REPEATING THE FUNERAL PRAYER

إعادة صلاة الجنازة

g4.16 When one has performed a funeral prayer over someone, it is recommended that one not repeat it.

g4.16 ومَنْ صَلَّى (على الجنازة) يُنْدَبُ لَهُ أنْ لا يُعِيدَ.

g4.17 Someone who has missed praying (O: a funeral prayer until after the deceased has been buried) may pray it at the grave (O: and such a prayer is legally valid whether the deceased was buried before the funeral prayer had been performed over him, or whether after, though it is unlawful to bury a Muslim before his funeral

g4.17 ومَنْ فَاتَتْهُ (صلاة الجنازة وقد دفن الميت) صَلَّى عَلَى القبر (فتصح الصلاة على القبر سواء دفن قبل الصلاة عليه أم بعدها، ودفنه قبل الصلاة عليه

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prayer, and anyone who knows of it is guilty of a sin), but only on condition that the person praying at the grave had reached puberty and was sane on the day the deceased died (O: as he was thus one of those responsible for the communal obligation of praying over the deceased). Otherwise, he may not pray there.

حرام ويأثم كل من علم به) إنْ كانَ يومَ موته بالغاً عاقلاً (فالمصلي حينئذ من أهل الفرض) وإلاَّ فلا.

PRAYING OVER THE DEAD WHO ARE NOT PRESENT

الصلاة على الغائب

g4.18 It is permissible to perform the funeral prayer for an absent person whose body is out of town, even if not far (O: and even if the body is not in the direction of prayer (qibla) which the person praying faces (non-(g4.14(b))). But such a prayer does not lift the communal obligation from the people of the town where the deceased died).

It is not permissible to perform the funeral prayer over someone who is absent (O: from the place of prayer) when the body is in the same town (A: though this is permissible if it is at the edge of a large city and is a problem to reach).

g4.18 ويَجُوزُ على الغائب عن البلدِ وإنْ قَرُبَتْ مسافَتُهُ (ولو في غير جهة القبلة والمصلي مستقبلها لكنها لا تسقط لفرض أي عن أهل البلد).

ولا يَجُوزُ على غائبٍ (عن محل الصلاة وهو) في البلدِ.

g4.19 If part of the body of a person whose death has been verified is found, then it is obligatory to wash, shroud, and pray over it (O: even if the part is a fingernail or hair, as there is no difference between a little and a lot (A: provided that the part was separated from him after death (N: and provided the rest of him has not been prayed over, for if it has, then it is not obligatory to pray over the part))).

g4.19 ولوْ وُجِدَ بعضُ مَنْ تُيُقِّنَ موتُهُ غُسِّلَ وكُفِّنَ وصُلِّيَ عليْهِ (وجوباً وإن كان ذلك الجزء ظفراً أو شعراً فلا فرق فيه بين القليل والكثير) (ح: هذا إذا لم يصل على الأصل وإلا فلا يجب).

BURYING MARTYRS

دفن الشهيد

g4.20 It is unlawful to wash the body of a martyr (O: even if in a state of major ritual impurity (janaba) or the like) or perform the funeral prayer over him. A *martyr* (shahid) means someone who died in battle with non-Muslims (O: from fighting them, as opposed to someone who died otherwise, such as a person killed out of oppression when not in battle, or who died from fighting non-

g4.20 ويَحْرُمُ غسلُ الشهيدِ (ولو جنباً ونحوه) و(تحرم) الصلاةُ عليه، وهوَ مَنْ مَاتَ في معركةِ الكفارِ بسببِ قتالهم (كأن قتله كافر [أو كان موته بسبب الحرب] بخلاف من مات بغير ذلك كالمقتول في غير القتال ظلماً أو مات بسبب القتال لكنه

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polytheists, such as (N: Muslim) transgressors).

It is recommended that war gear be removed from the body (O: such as a breastplate and the like), and it is best to bury the martyr in the rest of his bloodstained clothes (O: since it is the effect of worship), though the responsible family member may nevertheless remove the garments and shroud the body before burial.

غير قتال المشركين كقتال أهل البغي (ح: من المسلمين)).

فتُنْزَعُ عنْهُ ثيابُ الحرب (كدرع ونحوه [ونزع ذلك على سبيل الندب]) ثمَّ الأفضلُ أنْ يُدْفَنَ ببقيةِ ثيابِهِ الملطَّخةِ بالدمِ (لأنه أثر عبادة) وللوليِّ نزعُها وتكفينُهُ.

BURYING THE STILLBORN

دفن السقط

g4.21 A premature baby (A: meaning one born before six full months) that dies is treated as an adult if it gave a cry (O: sneeze, or cough when it left the mother) or showed movement (O: *treated as an adult* meaning it is obligatory to wash, shroud, pray over, and bury the baby, since its life and death have been verified). If it did not, then:

(1) if it had reached four months in the womb (O: which is the time at which the spirit is breathed into it) then it is washed before burial but not prayed over;

(2) but if it had not, it is only obligatory to bury it.

g4.21 والسقطُ إنْ بَكَى (أي إن ظهر منه صياح حال نزوله أو عطاس أو سعال) أو اخْتَلَجَ فحكمُهُ حكمُ الكبيرِ (في جميع ما تقدم من وجوب غسله وتكفينه والصلاة عليه ووجوب دفنه لتيقن حياته وموته) وإلَّا فإنْ بَلَغَ أربعةَ أشهرٍ (وهي زمن نفخ الروح فيه) غُسِلَ ولمْ يُصَلَّ عليْهِ وإلَّا وَجَبَ دفنُهُ فقطْ.

CARRYING THE DECEASED TO THE GRAVE

حمل الميت

g4.22 The burial should take place immediately after the funeral prayer and not be delayed to wait for anyone besides the responsible family member, provided he is (O: reasonably) nearby, if it is not to be feared that the condition of the body will change (O: though if this is feared, then the family member is not awaited).

g4.22 وَلْيُبادَرْ بالدفنِ بعدَ الصلاةِ ولاَ يُنتظَرُ (أي لا يؤخر لأحد) إلَّا الوليُّ إنْ قَرُبَ (عرفاً) ولمْ يُخْشَ تغيُّرُ الميتِ (فإن خشي ذلك لم ينتظر).

f4.23 It is best that the bier be carried by its poles, sometimes by four (O: men) (N: one pole on the shoulder of each, the poles being parallel with the bier and supporting it, two ends forward and two ends aft) and sometimes by five, the fifth man between the two forward poles. It is recommended that the bearers walk faster than usual, though they should not trot.

g4.23 والأفضلُ أنْ يَحْمِلَ الجنازةَ تارةً أربعةٌ (من الرجال) منْ قوائمِها وتارةً خمسةٌ والخامسُ يَكُونُ بينَ العمودَيْنِ المقدمَيْنِ. ويُنْدَبُ الإسراعُ فوقَ العادةِ دونَ الخبَبِ [إنْ لمْ يَضُرَّ الميتَ وإنْ خيفَ انفجارُهُ زِيدَ على الإسراعِ].

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g4.24 It is recommended for men to follow the bier to the place of burial close enough behind to be considered part of the funeral procession. It is offensive to follow it with fire or incense burners, which are likewise offensive at the burial.

g4.24 ويُنْدَبُ للرجالِ اتّباعُها إلى الدفنِ بقربِها بحيثُ يُنْسَبُ إليْها. ويُكْرَهُ اتباعُها بنارٍ والبخورِ في المجمرةِ وكذا عندَ الدفنِ.

*

g5.0 BURIAL

g5.0 الدفن

g5.1 Then the deceased is buried (O: obligatorily). It is best to bury him in the cemetery.

It is unlawful to bury someone where another person has been buried unless the previous body is completed disintegrated (O: such that nothing of it remains, neither flesh nor bone).

It is also unlawful to bury two people in the same grave unless absolutely necessary, as when there has been much killing or death, in which case a wall of earth is made between the two bodies as a barrier. If the bodies differ in gender, this is even more imperative, especially when two people (O: of the same gender or not) are not related.

If someone dies on a ship and it is impossible to bury him on land, the body is placed (O: tightly lashed) between two planks (O: to obviate bloating) and thrown into the sea (O: so that it reaches shore, even if the inhabitants are non-Muslims, since a Muslim might find the body and bury it facing the direction of prayer (qibla)).

g5.1 ثمَّ يُدْفَنُ (وجوباً) وفي المقبرةِ أفضلُ.

ولا يُدْفَنُ ميتٌ على ميتٍ إلاّ أنْ يَبْلَى الأولُ كلُّهُ (أي بحيث لا يبقى منه شيء لا اللحم ولا العظم، فيحرم قبل ذلك).

ولا ميتانِ في قبرٍ واحدٍ إلاّ لضرورةٍ ككثرةِ القتلِ والفناءِ ويُجْعَلُ بينَهُما حائلٌ منْ ترابٍ وبينَ المرأةِ والرجلِ آكدُ (أي أشد طلباً) سيّمَا الأجنبيّين (مطلقاً اتحد الجنس أو اختلف).

ولوْ ماتَ في سفينةٍ ولمْ يُمْكِنْ دفنُهُ في البرِّ جُعِلَ بينَ لوحيْنِ (وشدّ عليه برباط شديد لئلا يتنفخ) وأُلْقِيَ في البحرِ (أي ليصل إلى الساحل ولو كان أهله كفاراً فقد يجده مسلم فيدفنه إلى القبلة).

DIGGING THE GRAVE

حفر القبر

g5.2 The obligatory minimum for a grave is that it conceal the odor of the body and that it protect it from (O: being dug up and eaten by) animals.

It is recommended to dig the grave wider than the obligatory minimum and that its depth equal the height of an average man with his arm fully extended upward.

g5.2 وأقلُّ القبرِ ما يَكْتُمُ الرائحةَ ويَمْنَعُ السباعَ (أي حفرة تمنع نبش السباع لها فتأكل الميت).

ويُنْدَبُ توسيعُهُ وتعميقُهُ قامةً وبسطةً [(أي الزيادة في حفره لجهة الأسفل قدر قامة رجل معتدل وقدر بسطة يده إلى الأعلى)].

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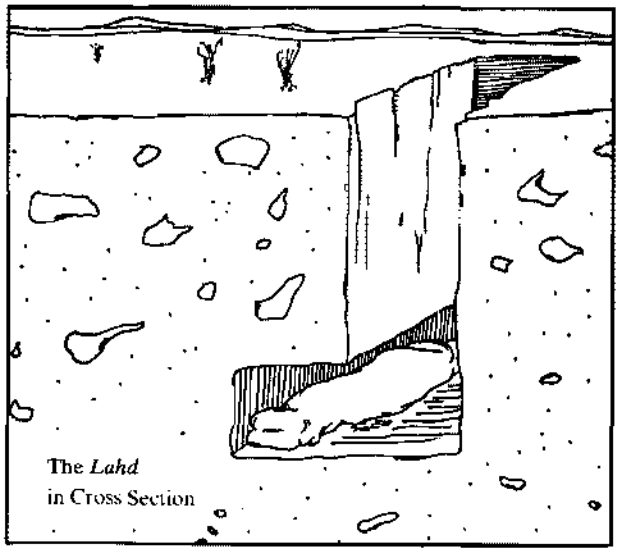
A *lahd* (O: i.e. a grave with a lateral hollow large enough for the body dug into the side of the bottom of the grave that is towards the direction of

واللحدُ أفضلُ مِنَ الشقِّ (واللحد بفتح اللام وضمها أن يحفر في أسفل جانب



prayer (qibla)) is superior to a *shaqq* (O: meaning a simple trench dug down into the middle of the floor of the grave with low block walls raised along the trench's sides, in which the deceased is placed before the walls are ceilinged with blocks (N: and the earth is shovelled back into the grave on top of them)), unless the earth is soft, in which case the *shaqq* is preferable (O: so as not to cave in on the deceased).

It is offensive to bury the deceased in a coffin (O: or to put in a pillow for him, because all of this wastes money without being of any benefit) unless the earth is soft (O: quick to fall) or moist (O: in which cases it is not offensive. If otherwise, then even if a coffin was stipulated by the deceased in his will, it is not provided).

القبر القبلي قدر ما يسع الميت، والشق هو أن يحفر في وسط أرض القبر كالنهر تبنى حافتاه باللبن [أو غيره] ويوضع بينهما ويسقف عليه باللبن [أو غيره]) إلا أنْ تكُونَ الأرضُ رخوةً فَيُنْدَبُ الشقُّ (حينئذ لئلا ينخسف القبر على الميت).

ويُكْرهُ في تابوتٍ (وهو الصندوق، وكره أن يجعل له مخدة فراش لأن في ذلك كله إضاعة مال بلا فائدة) إلا أنْ تكُونَ الأرضُ رخوةً (سريعة السقوط) أوْ نديةً (أي رطبة فلا يكره ما ذكر ولا تنفذ وصيته إلا حينئذ).

BURYING THE BODY

دفن الميت

g5.3 Men should bury the dead, even if the deceased is female, in which case the best suited is the husband, if able, and then (n: for either sex) those listed in the funeral prayer preference order

g5.3 ويَتَولاهُ (أي دفن الميت) الرجالُ ولوْ لامرأةٍ وأولاهُمُ الزوجُ إنْ صَلَحَ للدفنِ ثمَّ أولاهُمْ بالصلاةِ لكنِ

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(g4.3), except that (A: when two are on the same level, such as two sons or brothers) the most learned in Sacred Law is preferred to the oldest, unlike the order for the prayer (O: the purpose thereof being knowledge of the rules of burial, which a learned person is likely to know better than others).

It is recommended that the number of men (O: burying the deceased) be an odd number.

الأفقهُ مقدَّمٌ على الأسنِّ عكسُ الصلاةِ (فالغرض منه المعرفة بأحكام الدفن والأفقه أعرف من غيره في ذلك). ويُندبُ أنْ يكونوا (أي من يدفنونه) وتراً.

g5.4 It is preferable to conceal it (O: the grave) with a cloth while placing the body in it (N: a blanket is stretched over the grave about half a meter above the level of the ground, helpers holding each corner, while another person stands down in the grave at the foot end, ready to take the body from the bier). (O: This is especially necessary when burying a female, and is done because something might be disclosed of the deceased that is desirable to conceal.)

The head of the deceased is placed near the foot of the grave (O: *foot* meaning the end which will accomodate the feet when the body is in place), and the body is slid from the bier head-first.

It is recommended for the person burying the deceased (N: who is standing in the grave taking the body, and there may be more than one):

(1) to say (O: to the deceased), "In the name of Allah and according the religion of the Messenger of Allah (Allah bless him and give him peace)";

(2) to supplicate Allah for (O: the forgiveness of) the deceased;

(3) to place a block as a pillow for him, and to pull back the shroud enough to lay his cheek directly on the surface of the block (O: as it is more expressive of lowliness);

(4) and to place the deceased upon his right side.

It is obligatory that the body be placed facing the direction of prayer (qibla) (O: and this is absolutely necessary. If buried facing the other way, or

g5.4 ويُغطَّى (أي القبر استحباباً) بثوبٍ عندَ الدفنِ (وهو للأنثى) آكد لأنه ربما يتكشف من الميت ما يستحب إخفاؤه).

ويُوضَعُ رأسُهُ عندَ رِجْلِ القبرِ (والمراد برجل القبر المؤخر الذي سيصير عند أسفله رجل الميت) ويُسَلُّ (أي يخرج الميت من النعش) منْ جهةِ رأسِهِ.

ويقولُ الدافنُ (للميت) «بسمِ اللهِ وعلى ملّةِ رسولِ اللهِ ﷺ» ويَدْعُو لهُ (أي للميت بالمغفرة) ويُوسِّدُهُ لبنةً ويُفْضِي بخدِّهِ إلى الأرضِ (بعد كشف الكفن عنه لأنه أبلغ في إظهار الذل) ويُوضَعُ على جنبِهِ الأيمنِ ندباً مستقبلَ القبلةِ حتماً (وكونه مستقبل القبلة لازم محتم لا بد منه فلو دفن مستدبراً لها أو مستلقياً على ظهره

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lying on his back, he is disinterred and reburied facing the direction of prayer).

نبش ووضع للقبلة).

g5.5 The lateral hollow dug into the side of the grave (N: in the *lahd* (def: g5.2)) for the body is walled up with blocks (A: after the body has been placed in it, before filling in the grave. It is sunna to use nine blocks).

g5.5 ويُنْصَبُ عليْهِ [(أي على باب القبر المفتوح)] اللبِنُ.

g5.6 The person at the graveside sprinkles three scoops of earth (O: using two hands) into the grave. (O: it is sunna to say with the first, "Of it We created you all," with the second, "To it We shall make you all return," and with the third, "And from it We shall bring you forth again" (Koran 20:55).)

Then the grave is filled in, using shovels, after which one stays for a moment:

(1) to instruct the deceased (dis: w32) (N: the answers he will need to know when Munkar and Nakir (u3.3) question him in the grave as to his Lord, religion, and prophet);

(2) to supplicate for him (O: such as to say: "O Allah, make him steadfast. O Allah, teach him his plea");

(3) and to ask forgiveness for him.

g5.6 ويَحْثُو مَنْ دَنَا ثلاثَ حثياتٍ (من التراب بيديه ويسن أن يقول مع الأولى ﴿مِنْهَا خلقْنَاكُمْ﴾ ومع الثانية ﴿وفيهَا نُعيدُكُمْ﴾ ومع الثالثة ﴿وَمِنْهَا نُخرجُكُمْ تارَةً أُخرَى﴾) ثمّ يُهالُ بالمساحي ويَمْكُثُ ساعةً بعدَ الدفنِ يُلقِّنُهُ ويَدْعُو لَهُ (كأن يقول: «اللّهمّ ثَبِّتْهُ اللّهُمّ لَقِّنْهُ حُجّتَهُ») ويَسْتَغْفِرُ لَهُ.

THE FINISHED GRAVE

القبر

g5.7 One should raise the grave's surface (O: up to) 1 span (n: about 23 cm.) above the ground (O: so that it can be known, visited, and respected), except in countries at war with the Muslims (O: where it is not raised but rather concealed, so as not to be meddled with), and to make its top flat is better (O: than mounding it). No earth should be added (O: when levelling it) to what was excavated from it. It is recommended to sprinkle water over the grave and to put pebbles on it.

It is offensive:

g5.7 ويُرْفَعُ القبرُ (وغايته في الارتفاع أن يصير) شبراً (لأجل أن يعرف فيزار ويحترم) إلاّ في بلادِ الحربِ (فلا يرفع بل يخفى لئلا يتعرضوا له) وتسطيحُهُ أفضلُ (من تسنيمه) ولاَ يُزادُ فيهِ (أي في التسطيح) على ترابِهِ (فقط وهو ما خرج منه) ويُرَشُّ عليْهِ الماءُ (على طريق الندب) ويُوْضَعُ عليْهِ حصىً.

ويُكْرَهُ تجصيصُ [(أي تبييضه

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(1) to whiten the grave with plaster;

(2) to build (O: a cupola or house) over it;

(3) to put *khaluq* (O: a perfume) on the grave (O: as it is of no benefit and wastes money) or rose water;

(4) to place an inscription on it (O: whether it is the name of the deceased or something other, on a board at the head of the grave or on something else; unless the deceased is a friend of Allah (wali, def: w33) or religious scholar, in which case his name is written so that he may be visited and honored, it then not being offensive);

(5) or to put a pillow or mattress under the deceased.

بالجص وهو الجبس)] وبناءً (على القبر كقبة أو بيت) وَ(كره وضع) خَلُوقٍ (على القبر وهو نوع من الطيب لأنه لا فائدة فيه بل فيه إضاعة مال) وماءُ وردٍ وكتابةٌ (على القبر سواء كتب عليه اسم صاحبه أم غيره في لوح عند رأسه أم في غيره إلا إذا كان ولياً أو عالماً وكتب اسمه ليزار ويحترم فلا كراهة حينئذ) ومخدةٌ ومضربةٌ تحتَهُ.

VISITING GRAVES

زيارة القبور

g5.8 It is recommended for men to visit graves (dis: w34) (O: of Muslims, especially on Fridays. As for visiting graves of non-Muslims, it is merely permissible. The spirit of the dead person has a connection with his grave that is never severed, but is stronger from the midafternoon prayer ('asr) on Thursday until sunrise on Saturday, which is why people often visit graves on Friday and on Thursday afternoon).

There is no harm in wearing one's shoes when visiting (O: to walk between graves). The visitor walks up to the grave as close as he would if the deceased were alive, and says, "Peace be unto you, abode of a believing folk; Allah willing, we will be joining you."

It is sunna to recite (O: as much of the Koran as is easy) and to supplicate Allah (O: to forgive the deceased, while facing the direction of prayer, as supplications benefit the dead and are more likely to be answered if made after reciting the Koran). (n: w35 discusses whether the spiritual reward for reciting the Koran may be donated to the deceased.)

g5.8 ويُنْدَبُ للرجالِ زيارةُ القبورِ (أي قبور المسلمين أما زيارة قبور الكفار فمباحة، ويتأكد ذلك يوم الجمعة [(فائدة)] روح الميت لها ارتباط في قبره ولا تفارقه أبداً لكنها أشد ارتباطاً به من عصر يوم الخميس إلى شمس السبت ولذلك اعتاد الناس الزيارة يوم الجمعة وفي عصر الخميس).

ولاَ بأسَ بمشيهِ في النعلِ (بين القبور). ويَدْنُو مِنْهُ (أي لا كراهة في قرب الزائر من المزور) كحياتِهِ ويَقُولُ إذَا زَارَ «سلامٌ عليْكُمْ دارَ قومٍ مؤمنينَ وإنَّا إنْ شَاءَ اللهُ بِكُمْ لاَحِقُونَ». و(سن أن) يَقْرَأَ (بما تيسر من القرآن) ويَدْعُو لَهُمْ (بالمغفرة بعد توجهه للقبلة لأن الدعاء ينفع الميت وهو عقب القراءة أقرب إلى الإجابة).

g5.9 It is offensive for women to visit graves (O: because of their lack of fortitude and exces-

g5.9 وتُكْرَهُ للنساءِ (لفقد صبر الأنثى وكثرة جزعها، وهذا في غير زيارة

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sive grief, though this does not apply to visiting the Prophet's tomb (Allah bless him and give him peace) which they should do. And like the Prophet (Allah bless him and give him peace) in this is their visiting the graves of the prophets, righteous, and learned).

قبره ﷺ وأما هي فمطلوبة لهن ومثل النبي ﷺ قبور الأنبياء والصلحاء والعلماء).

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g6.0 CONSOLING NEXT OF KIN

g6.0 التعزية

g6.1 It is recommended to console all the relatives of the deceased, except young women who are not (O: the consoler's) unmarriageable kin (O: since only her unmarriageable relatives (mahram, def: m6.2) may console her, *console* meaning to enjoin steadfastness and encourage it by mentioning the reward in the hereafter, to warn against overburdening oneself with grief, and to pray for forgiveness for the deceased and the lightening of the burden of those bearing the misfortune) when there has been a death in the family, for approximately three days after the burial.

It is offensive to sit for it (O: that is, for the extended family of the deceased to be seated and gather in one place for people to come and console them, because it is an innovation (muhdath, syn. bid'a, def. w29.3) that the Prophet (Allah bless him and give him peace) did not do, nor those after him. It is offensive for either men or women).

If one is absent (O: whether one is the consoler or person to be consoled) and then arrives after a period (O: of three days), one should console (N: the deceased's relatives) or be consoled (N: if one of them).

g6.1 ويُنْدَبُ تعزيةُ كلِّ أقاربِ الميتِ إلاَّ الشابَّةَ الأجنبيَّةَ (من المعزي فلا يعزيها إلا محارمها وهي الأمر بالصبر والحمل عليه بوعد الآخرة والتحذير من الوزر بالجزع والدعاء للميت بالمغفرة وللمصاب بجبر المصيبة) من الموتِ إلى ثلاثةِ أيامٍ تقريباً بعدَ الدفنِ.

ويُكرهُ الجلوسُ لَهَا (أي جلوس أهل الميت واجتماعهم في مكان واحد ليأتيهم الناس للتعزية لأنه محدث ما فعله النبي ﷺ ولا من بعده. وسواء في ذلك الرجال والنساء).

فلَوْ كانَ (المعزي أو المعزى) غائباً فَقَدِمَ (أي من كان غائباً منهما) بعدَ مدةٍ (وهي ثلاثة أيام) عزَّاهُ [(أي عزى الحاضر القادم أو عزى القادم الحاضر)].

g6.2 It is recommended to say:

(1) to a Muslim who has lost a Muslim relative, "May Allah greaten your reward, perfect your consolation, and forgive your deceased";

(2) to a Muslim who has lost a non-Muslim

g6.2 ويَقُولُ في تعزيةِ المسلمِ بالمسلمِ (أي بالميت المسلم) «أَعْظَمَ اللهُ أَجْرَكَ وأَحْسَنَ عَزاءَكَ وغَفَرَ لِمَيِّتِكَ وفي (تعزية) المسلم بالكافرِ (يعني أن

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relative, "May Allah greaten your reward and perfect your consolation";

(3) and to a non-Muslim who has lost a Muslim relative, "May Allah perfect your consolation and forgive your deceased."

الميت كافر) أعْظَمَ اللهُ أجْرَكَ وأحْسَنَ عزاءَكَ وفي الكافِرِ بالمسلمِ أحْسَنَ اللهُ عزاءَكَ وغفَرَ لِمَيِّتِكَ [وفي الكافر بالكافر أخْلَفَ اللهُ عليكَ ولا نَقَصَ عَدَدَكَ ويَنْوي بِهِ تكثيرَ الجزيةِ (وهذا مشكل لأنه دعاء له ببقاء الكفر واستمراره فالمختار تركه)].

g6.3 It is permissible to weep before someone dies, but better not to afterwards (O: since the Prophet (Allah bless him and give him peace) wept for his son Ibrahim before his death. It is only considered better not to weep afterwards because it is sorrow for something that has already passed).

g6.3 والبكاءُ قبلَ الموتِ جائزٌ وبعدهُ خلافُ الأوْلَى (لأنه ﷺ بكى على ولده إبراهيم قبل موته وإنما كان بعده خلاف الأوْلَى لأنه حينئذ يكون أسفاً على ما فات).

g6.4 It is unlawful to eulogize the dead, lament in a raised voice, slap one's cheeks (n: as a display of grief), rend one's garments, or dishevel one's hair.

g6.4 ويَحْرُمُ الندبُ [(على الميت وهو عد محاسنه)] والنياحةُ واللطمُ وشقُّ الثوبِ ونشرُ الشعرِ.

g6.5 It is recommended for distant relatives and neighbors to prepare enough food for the deceased's close family relatives to suffice them for a day and night, and to urge them to eat.

g6.5 ويُنْدَبُ لأقاربِ الميتِ البعداءِ وجيرانِه أنْ يُصْلِحُوا طعاماً لأهلِ الميتِ الأقربينَ يَكْفيهِم يومَهُمْ وليلَتَهُمْ ويُلِحُّ عليهِمْ لِيأكُلوا.

g6.6 For the deceased's family to prepare food and gather people over it is an unpraiseworthy innovation (bid'a, def: w29.3).

g6.6 وما يَفْعَلُهُ أهلُ الميتِ منْ إصلاحِ طعامٍ وجمعِ الناسِ عليْهِ بدعةٌ غيرُ حسنةٍ.

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BOOK H

ZAKAT

كتاب الزكاة

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h1.0 WHO MUST PAY ZAKAT

((Muhammad Shirbini Khatib:) Lexically, *zakat* means growth, blessings, an increase in good, purification, or praise. In Sacred Law it is the name for a particular amount of property that must be payed to certain kinds of recipients under the conditions mentioned below. It is called zakat because one's wealth grows through the blessings of giving it and the prayers of those who receive it, and because it purifies its giver of sin and extolls him by testifying to the genuineness of his faith (*al-Iqna' fi hall alfaz Abi Shuja'* (y7), 1.183).)

h1.0 المخاطب بوجوب الزكاة

(محمد الشربيني الخطيب: وهي لغة النمو والبركة وزيادة الخير [. . .] وتطلق على التطهير [. . .] وتطلق أيضاً على المدح. وشرعاً اسم لقدر مخصوص من مال مخصوص يجب صرفه إلى أصناف مخصوصة بشرائط تأتي. وسميت بذلك لأن المال ينمو ببركة إخراجها ودعاء الآخذ لها ولأنها تطهر مخرجها من الإثم وتمدحه حتى تشهد له بصحة الإيمان [محرر من كتاب الإقناع في حل ألفاظ أبي شجاع: ١/ ١٨٣]).

h1.1 Zakat is obligatory:

(a) for every free Muslim (O: male, female, adult, or child);

(b) who has possessed a *zakat-payable amount* (Ar. nisab, the minimum that necessitates zakat, def: for livestock h2.4–5; for grain and dried foodstuffs h3.4; for gold, silver, and other money h4.2; and for trade goods h5.1);

(c) for one lunar year.

h1.1 تَجِبُ الزكاةُ على كلِّ حرٍّ (سواء كان ذكراً أو أنثى كبيراً أو صغيراً) تَمَّ ملكُهُ على نصابٍ حَوْلاً.

h1.2 Non-Muslims are not obliged to pay zakat, nor apostates from Islam (murtadd, def: o8) unless they return to Islam, in which case they must pay for the time they spent out of Islam, though if they die as non-Muslims their property is not subject to zakat (N: because their property is considered to belong to the *Muslim common fund* (bayt al-mal) from the moment such people leave Islam).

h1.2 فلا تَلْزَمُ [المكاتبَ ولا] الكافرَ وأمّا المرتدُّ فإنْ رَجَعَ إلى الإسلامِ لَزِمَهُ لِمَا مَضَى وإنْ مَاتَ مرتداً فلا (ح: لأن ماله يعتبر فيئاً لبيت مال المسلمين من حين الردة).

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h1.3 The guardian of a child or insane person is obliged to pay zakat from their property (N: if they owe any). It is a sin for the guardian not to pay the zakat due on their property, and when the child or insane person becomes legally responsible (O: upon reaching puberty or becoming sane), he is obliged to pay the amount that his guardian neglected to pay (O: of zakat in the past).

h1.3 ويَلْزَمُ الوليَّ إخراجُها منْ مالِ الصبيِّ والمجنـونِ فإنْ لمْ يُخْرِجْ عَصَى ويَلْزَمُ الصبيَّ والمجنونَ إذَا صَارا مكلفَيْنِ (بـالبلوغِ والإفـاقـة) إخراجُ مَا (أي القدر الذي) أهْمَلَهُ الوليُّ (من الزكاة في المدة الماضية).

h1.4 Zakat is due from the owner of property that has been:

(1) wrongfully seized from him;

(2) stolen;

(3) lost;

(4) fallen into the sea;

(5) or loaned to someone who is tardy in repayment;

—only if the owner regains possession of it, whereupon he must pay zakat on it for the whole time it was out of his hands (O: for the year or years that no zakat was paid on the absent property, since his having regained it establishes that it belonged to him the whole time, and his ownership of it is not vitiated by the mere fact of its not having been in his possession during these years, provided that it has remained a zakat-payable amount (nisab) during them. If it has diminished through expenditure to less than the zakat-payable amount, then no zakat need be paid on it). If the owner cannot regain the property, there is no zakat on it.

h1.4 ولـوْ غُصِبَ مالُـهُ أوْ سُرِقَ أوْ ضَاعَ أوْ وقَعَ في البحرِ أوْ كانَ لهُ دَيْنٌ على مماطلٍ فإنْ قَدَرَ عَلَيهِ بعدَ ذلكَ لَزِمَهُ زكاةُ مَا مَضَى (من حول وأحـوال من غيـر زكاة لذلـك المـال الـذاهب لأنه تبين برجوعه إليـه أنـه باق على ملكـه له ولا يضـر عدم كونـه تحت يده في هذه الأحوال الماضية بشـرط بقـاء النصـاب في هذه الأحـوال، وإن نقص عن النصاب بسبب الإنفاق منه فلا يزكـى) وإلاّ [(أي وإن لم يقـدر على رده ودخوله تحت يده)] فَلا (زكاة عليه).

h1.5 If a landlord rents someone a house for two years for 40 dinars, which he accepts in advance and retains possession of until the end of the two years, then at the end of the first of the two years he only pays zakat on 20 dinars, but at the end of the second year he pays one year's zakat on the 20 which he paid zakat on at the end of the first year (N: as the 20 has now been in his possession a second year) and pays two years' zakat on the 20

h1.5 ولـوْ آجَرَ داراً سَنَتَيْنِ بأربعينَ ديناراً وقَبَضَهـا وَبَقِيَتْ في ملكِـه إلى آخرِ سَنَتَيْنِ فإذَا حَالَ الحـولُ الأولُ زَكَّى عشرينَ فقطْ وإذَا حَالَ الحولُ الثاني زَكَّى العشرينَ التي زَكَّاها لسنةٍ وزَكَّى العشرينَ

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for which he did not previously pay zakat (N: as it has remained in his possession for two full years).

التي لم يُزكِّها لسنتين.

h1.6 Someone with only the zakat-payable amount (O: of gold or silver) must pay zakat on this amount even when he is in debt for an amount equal to it, for debts do not remove the obligation of zakat.

h1.6 ولوْ مَلَكَ نصاباً (ذهباً أو فضة) فقطْ وعليْهِ مِنَ الدَّيْنِ مثلُهُ لَزِمَهُ زكاةُ مَا بيدِهِ (من النصاب) والدينُ لا يَمْنَعُ الوجوبَ.

h1.7 Zakat is not due on anything besides:

(1) livestock (def: h2.1);

(2) (n: some) food crops (h3.2);

(3) gold and silver (A: or their monetary equivalents);

(4) trade goods;

(5) mined wealth (n: meaning gold or silver exclusively, as at h6.1);

(6) and wealth from treasure troves (A: buried in pre-Islamic times).

h1.7 ولا تجبُ الزكاةُ إلاّ في المواشي والنباتِ والذهبِ والفضةِ وعروضِ التجارةِ وما يُوْجَدُ مِنَ المعدنِ والرِّكازِ.

h1.8 Zakat is paid from the property itself, though it is permissible to take it from another lot of property (N: on condition that the amount paid is from the same type of property (n: of the five types mentioned above) that the zakat is due on, such that one may not, for example, pay *money* for zakat due on *wheat* (n: but must pay wheat. An exception to this is trade goods, which are appraised, and zakat may be paid on them with money, as at h5.1(O:) below)).

h1.8 وتَجِبُ الزكاةُ في عينِ المالِ لكنْ لوْ أخْرَجَ مِن غيرِهِ جَازَ (ح: لكن يشترطُ أنْ يكونَ المخرجُ من نوعِ الواجبِ فلا يخرجُ نقوداً عن القمحِ مثلاً).

THE ZAKAT YEAR

الحول

h1.9 By the mere fact that a full lunar year transpires (O: i.e. begins and ends while zakat-payable property is in the owner's possession), the poor now own the portion of it that the owner is obliged to pay as zakat. Thus, if someone has had

h1.9 فبمجرَّدِ حَوَلانِ الحولِ (أي دخولِه وتمامِه والمالُ المزكى باقٍ تحت يده) يَمْلِكُ الفقراءُ مِنَ المالِ قَدْرَ الفرضِ حتّى لوْ مَلَكَ مائتَيْ درهمٍ فقطْ

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200 dirhams (n: the minimal zakat-payable amount of silver) in his possession for years without paying zakat, he is only obliged to pay zakat on it for the first year (O: because after that year, the amount owned by the poor (n: 5 dirhams) has diminished the money he possesses to less than the zakat-payable amount).

ولَمْ يُزكِّها أحوالاً لَزِمَهُ الزكاةُ للسنة الأولى فقط (وإنما وجبت الزكاة في السنة الأولى دون غيرها لأنه بمجرد حولان الحول اشترك الفقراء في المائتين فنقص النصاب عن تمامه).

h1.10 If all one's property were destroyed after having been in one's possession a full year but before it was possible to pay zakat (O: to deserving recipients), then there is no obligation to pay zakat on it (O: because it was destroyed through no fault of the owner); but if only part of the property has been destroyed, such that this diminishes the rest to less than the zakat-payable amount, then one must take the percentage due on the original amount (n: 2.5 percent, for example) from the remaining property, and no zakat is paid on the amount destroyed.

If all or part of one's property is destroyed after having been in one's possession a full year and after it was possible to have paid zakat on it (O: by there being both property and recipients), then one must pay the zakat due on both the remainder and the property destroyed.

h1.10 ولوْ تَلِفَ مالُهُ كلُّهُ بعدَ الحولِ وقبلَ التمكنِ منَ الإخراجِ (من مال الزكاة لمستحقيه) سَقطَتِ الزكاةُ (لوجود التلف من غير تقصير من المالك). وإنْ تَلِفَ بعضُهُ بحيثُ نَقصَ عنِ النصابِ لَزِمَهُ بقسطِ الباقي وسَقطَ بقسطِ التالفِ.

وإنْ تَلِفَ مالُهُ كلُّهُ أوْ بعضُهُ بعدَ الحولِ والتمكُّنِ (من أدائها بأن وجد المال ووجد الفقراء) لَزِمَهُ زكاةُ الباقي والتالفِ

h1.11 Zakat is not obligatory if a person's ownership of the property ceases during the year, even if only for a moment, and it then returns to his possession; or if it does not return; or if the person dies during the year.

h1.11 ولوْ زالَ ملكُهُ في الحولِ ولوْ لحظةً ثمَّ عادَ إلى ملكِهِ في الحولِ أوْ لمْ يَعُدْ أوْ مَاتَ في أثناءِ الحولِ سَقطَتْ الزكاةُ.

h1.12 The zakat year begins on property purchased or inherited when the buyer or inheritor takes possession of it, though if a person relinquishes his ownership of property during the zakat year merely to avoid paying zakat on it, this is offensive (O: as the learned differ about its unlawfulness). The more reliable opinion is that it is unlawful, though the transaction would be legally valid (dis: c5.2). But if such a person sells the property after possessing it a full year and before paying zakat on it (O: as when he sells it all, or sells part and the rest is not enough to require zakat), then the sale of the proportion of the prop-

h1.12 ويَبْتَدِيءُ المشتري والوارثُ الحولَ منْ حينِ ملكِ المالِ، لكنْ لوْ أزالَ ملكَهُ في الحولِ فراراً منَ الزكاةِ فإنَّهُ يكرهُ (لما فيه من خلاف العلماء) والأصحُّ أنهُ حرامٌ ويصحُّ البيعُ. ولَوْ باعَ بعدَ الحولِ وقبلَ الإخراجِ (أي ولم يبق شيئاً بأن باع الجميع أو البعض والباقي لا يفي بقدر

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erty that was owed as zakat is invalid (O: because it belonged to someone else (n: i.e. the recipients, as at h1.9), and it is not valid to sell another's property without his consent), although the sale of the proportion of the property that was not owed as zakat is valid.

الـزكـاة) بَطَلَ (البيـع) في قدر الـزكـاة (الواجبة لأنه حق الغير ولا يصح بيع ملك الغير بغير إذنه) وصحَّ في الباقي.

*

h2.0 ZAKAT ON LIVESTOCK

h2.0 زكاة المواشي

h2.1 Zakat on livestock is restricted to camels, cattle, sheep, and goats.

h2.1 لا تجبُ الـزكـاةُ إلاَّ في الإبل والبقر والغنم.

h2.2 Zakat is obligatory when one has owned:

(a) a zakat-payable number of livestock;

(b) for one year;

(c) and has been grazing them (n: on unowned open range, as discussed below) for the entire year.

There is no zakat on work animals, for example, those trained to plow or bear loads (O: since the purpose in having them is utility, like clothes or household furnishings, and is not production).

Grazing means they have been grazed on open range pasturage (O: *open range* excluding pasturage growing on land that a person owns (A: as it would then be considered fodder)). If the livestock have been given fodder for a period long enough that they would have been unable to survive had they not eaten during it, then there is no zakat on them, though if fed with it for less than such a period, then this does not affect the necessity of paying zakat on them. (A: There is no zakat on cattle that have been solely fed fodder or grain, even if they could have otherwise been grazed.)

(n: It is religiously more precautionary (def: c6.5) and of greater benefit to the poor to follow Imam Malik on this question. Malik holds that zakat is obligatory whenever one has possessed a

h2.2 فمتى مَلَكَ منها نصاباً حولاً كاملاً وأسَامَهُ كلَّ الحول لزمَتْهُ الزكاةُ إلاَّ أنْ تكُونَ ماشيَتُهُ عاملةً مثلَ أنْ تكُونَ معدةً للحراثةِ أو الحمل فلا زكاةَ فيها (لأن القصد منها حينئذ الاستعمال لا النماء كثياب البدن وأمتعة الدار). والمرادُ بالإسامةِ أنْ ترْعى من الكلإ المباح (خرج به الكلأ المملوك كأن نبت في أرض مملوكة لشخص) فلوْ عَلَفَها زماناً لا تعيشُ دونَهُ لوْ تُرِكَتِ الأكلَ سقطَتْ الزكاةُ وإنْ كانَ أقلَّ فلا يُؤثِّرُ (ذلك العلف في وجوب الزكاة).

(ت: اتِّباع الإمام مالك في هذه المسألة أحوط في الدين وأنفع للفقراء، فقد ذهب الإمام إلى وجوب الزكاة في الماشية إذا بلغت النصاب وحال عليها

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zakat-payable number of livestock for a year, whether or not they are work animals, and whether they have been grazed on open pasturage or fed with fodder for the entire year (*al-Sharh al-saghir 'ala Aqrab al-masalik ila madhhab al-Imam Malik* (y35), 1.592).)

الحول سواء العاملة وغيرها، وسواء أكانت سائمة أم معلوفة في السنة كلها [الشرح الصغير على أقرب المسالك إلى مذهب الإمام مالك: ١/ ٥٩٢]).

ZAKAT ON CAMELS

زكاة الإبل

h2.3 [وأولُ نصاب الإبل خمسٌ فتجبُ فيها شاةٌ من غنم البلدِ وهي جذعةٌ من الضأنِ وهي ما لها سنةٌ أوْ ثنيةٌ من المعزِ وهي ما لها سنتانِ ويُجزىءُ الذكرُ ولوْ كانتْ الإبلُ أناثاً وفي عشرٍ شاتانِ وفي خمسةَ عشرَ ثلاثُ شياهٍ وفي عشرينَ أربعُ شياهٍ فإنْ أخرجَ عنِ العشرينَ فما دونَها بعيراً يُجزىءُ عن خمسٍ وعشرينَ قُبِلَ منْهُ وفي خمسٍ وعشرينَ بنتُ مخاضٍ وهي التي لها سنةٌ ودَخلَتْ في الثانيةِ فإنْ لمْ يَكُنْ في إبلِهِ بنتُ مخاضٍ أو كانتْ وهي معيبةٌ قُبِلَ منهُ ابنُ لبونٍ ذكراً أوْ أنثى وهوَ ما لهُ سنتانِ ودَخلَ في الثالثةِ ولوْ مَلَكَ بنتَ مخاضٍ كريمةً لمْ يُكلَّفْ إخراجَها لكنْ ليسَ لهُ العدولُ إلى ابنِ لبونٍ فيَلْزَمُهُ تحصيلُ بنتِ مخاضٍ أوْ يَسْمَحُ بالكريمةِ إنْ شاءَ وفي ستٍّ وثلاثينَ بنتُ لبونٍ وفي ستٍ وأربعينَ حقةٌ وهي التي لها ثلاثُ سنينَ ودَخلَتْ في الرابعةِ وفي إحدَى وستينَ جذعةٌ وهي التي لها أربعُ سنينَ ودَخلَتْ في الخامسةِ وفي ستٍ وسبعينَ بنتا لبونٍ وفي إحدَى وتسعينَ حقتانِ وفي مائةٍ وإحدَى وعشرينَ ثلاثُ بناتِ لبونٍ فإنْ زادَتْ إبلُهُ على ذلكَ وَجَبَ في كلِّ أربعينَ بنتُ لبونٍ وفي كلِّ خمسينَ حقةٌ ففي مائةٍ وثلاثينَ حقةٌ وبنتا لبونٍ وفي مائةٍ وأربعينَ بنتُ لبونٍ وحقتانِ وفي مائةٍ وخمسينَ ثلاثُ حقاقٍ وفي مائتينِ أربعُ حقاقٍ خمسيناتٍ وخمسُ بناتِ لبونٍ أربعيناتٍ فإنْ كانَ في ملكِهِ خمسُ بناتِ لبونٍ وأربعُ حقاقٍ لزِمَهُ الأغبطُ للفقراءِ فإنْ فقدَهُما حصَّلَ ما شاءَ منهما وإنْ كانَ في ملكِهِ أحدُ الصنفينِ دونَ الآخرِ دفعَهُ ومنْ لزِمَهُ سنٌّ وليسَ عندَهُ صعدَ درَجةً واحدةً وأخذَ شاتينِ تُجزيانِ في عشرٍ منَ الإبلِ أو عشرينَ درهماً أو نزَلَ درجةً ودفَعَ شاتينِ أو عشرينَ درهماً ولوْ أرادَ أنْ يَنْزِلَ أو يَصْعَدَ درجتينِ فجبرانينِ فإنَّ فقدَ أيضاً الدرجةَ القربَى جازَ وإنْ وَجدَها فلا والاختيارُ في الصعودِ والنزولِ للمزكّي وفي الغنمِ والدراهمِ لمنْ أعْطاهُ ولا يدْخُلُ الجبرانُ في الغنمِ والبقرِ]

ZAKAT ON CATTLE

زكاة البقر

h2.4 For cattle, the minimum on which zakat is payable is 30 head, for which it is obligatory to pay a yearling, meaning a male calf in its second year (A: though a female may take its place, being worth more).

The zakat due on 40 head is a two-year-old female that has entered its third year (A: a male will not suffice).

The zakat on 60 head is 2 yearling males. Zakat on additional numbers is figured in the same way: on 30 head, a yearling male, and on 40 head, a two-year-old female (N: according to which of the two alternatives accommodates the last 10 head (dis: h2.6)).

h2.4 وأولُ نصابِ البقرِ ثلاثونَ فيَجبُ فيها تبيعٌ وهوَ ما لهُ سنةٌ ودخلَ في الثانيةِ، وفي أربعينَ مسنةٌ وهيَ ما لها سنتانِ ودَخلَتْ في الثالثةِ، وفي ستينَ تبيعانِ وعلى هذا أبداً: في كلِّ ثلاثينَ تبيعٌ وفي كلِّ أربعينَ مسنةٌ.

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ZAKAT ON SHEEP AND GOATS

زكاة الغنم

h2.5 For sheep or goats (n: the Arabic *ghanam* meaning both), the minimum on which zakat is payable is 40, on which it is obligatory to pay a *shah*, meaning either a one-year-old sheep (O: in its second year) or a two-year-old goat (O: in its third year). The zakat on 121 sheep or goats is 2 *shahs*, on 201 sheep or goats is 3, on 400 sheep or goats is 4, and for every additional 100 the zakat is 1 *shah*.

h2.5 وأولُ نصابِ الغنمِ أربعونَ تَجِبُ فيها شاةٌ جَذَعَةُ ضأنٍ (لها سنة مضت من عمرها) أوْ ثنيةُ معزٍ (مضى لها من عمرها سنتان وشرعت في الثالثة) وفي مائةٍ وإحدى وعشرينَ شاتانِ وفي مائتينِ وواحدةٍ ثلاثُ شياهٍ وفي أربعمائةٍ أربعُ شياهٍ ثمَّ هكذا أبداً في كلِّ مائةٍ شاةٌ.

CALCULATING THE NUMBER OF ANIMALS

تقدير الأنصاب

h2.6 Numbers (O: of camels, cattle, or sheep) which are between zakat quantities (N: i.e. which number more than the last relevant zakat quantity but do not amount to the next highest one) are not counted, and no zakat is due on them.

h2.6 وهذهِ الأوقاصُ ([وهو ما بين الفرضين] من الإبل والبقر والغنم) التي بينَ النُّصُبِ عفوٌ لا شيء فيها.

h2.7 New offspring of a zakat-payable quantity of livestock that are born during the year are counted for the zakat of the year their mothers are currently in, no matter whether their mothers survive or die. Thus, if one owned 40 sheep or goats which gave birth to 40 young a month before the year's end, but then the 40 mothers died, one's zakat on the offspring would be 1 *shah*.

h2.7 وما يُنْتَجُ منَ النصابِ في أثناءِ الحولِ يُزَكَّى لحولِ أصلِهِ وإنْ لمْ يَمْضِ عليهِ حولٌ، سواءٌ بَقِيَتِ الأمهاتُ أوْ ماتَتْ كلُّها. فلوْ مَلَكَ أربعينَ شاةً فوَلَدَتْ قبلَ تمامِ الحولِ بشهرٍ أربعينَ وماتَتِ الأمهاتُ لزِمَهُ شاةٌ للنتاجِ.

h2.8 [فإنْ كانَتْ ماشيتُهُ مراضاً أخذَ منها مريضةً متوسطةً. أوْ صحاحاً أخذَ منها صحيحةً. أوْ بعضها صحاحاً وبعضها مراضاً أخذَ صحيحةً بالقسطِ. فإذا مَلَكَ أربعينَ نصفُها صحاحٌ قُلْنا لوْ كانَتْ كلها صحاحاً كمْ تُساوي واحدةٌ منها، فإذا قيلَ أربعةُ دراهمَ مثلاً قُلْنا لوْ كانَتْ كلها مراضاً كمْ تُساوي واحدةٌ منها، فإذا قيلَ درهمين مثلاً قُلْنا لهُ حَصَلَ لنا شاةٌ صحيحةٌ بثلاثةِ دراهمَ. ولوْ كانَتِ الصحاحُ ثلاثينَ لزِمَهُ شاةٌ تُساوي ثلاثةَ دراهمَ ونصفاً. ومتى قوَّمَ (من في ملكه صحاح ومراض) الجملةَ وأخْرَجَ صحيحةً تُساوي ربعَ عشرٍ كَفَى. نَعَمْ لوْ كانَ الصحيحُ فيها دونَ الواجبِ (أي لو كانت الشاة الصحيحة دون الشاة الواجبة وهي المريضة في القيمة) أجْزَأَهُ صحيحةٌ ومريضةٌ (فجاز إخراجها أي الصحيحة لصحتها، وجاز إخراج المريضة لأنها أعلى من الصحيحة في القيمة)].

h2.9 If a group of livestock are all female, or are both male and female, then only a female animal may be paid as zakat, except as mentioned

h2.9 وإنْ كانَتْ إناثاً أوْ ذكوراً وإناثاً لمْ يُؤْخَذْ في فرضِها إلاَّ أنثى إلاَّ ما تقدَّمَ [في خمسٍ وعشرينَ عندَ فقدِ بنتِ

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above (h2.4) for 30 cattle, where a yearling male is acceptable.

h2.10 If a group of livestock are all male, then a male animal may be paid as zakat.

h2.11 If all the livestock are below the minimum age that may be given as zakat (def: h2.4–5), then one of them is given anyway. But if the herd is mixed, with only some of them underage, then only an animal of the acceptable age may be paid.

h2.12 If the animals of the herd are defective, an animal is taken which is of the average defectiveness (O: of the group, *defective* meaning with defects that permit return for refund when sold as merchandise (def: k5.3)).

h2.13 If the herd is composite, such as sheep and goats, then either kind may be paid as zakat, though the value of the animal given must correspond to the average value of the members of the herd.

h2.14 The following are not taken as zakat unless the owner wishes to give them:

(1) a pregnant female (O: because of its superiority);

(2) one that has given birth (O: because of the high yield of milk);

(3) a stud (O: as it is for insemination, and the owner would suffer its loss);

مخاض و] في ثلاثين بقرة [وفي خمس من الإبل] فإنّهُ يُجزىءُ [ابنُ لبونٍ و] تبيعٌ [وجذعُ ضأنٍ أو ثنيُّ معزٍ (في الاستثناء الثالث وهو قوله وفي خمس من الإبل)].

h2.10 وإنْ تمحّضتْ ذكوراً أجزأهُ الذكرُ مطلقاً. [لكنْ يُؤخذُ في ستٍ وثلاثين ابنُ لبونٍ أكثرُ قيمةً من ابنِ لبونٍ يُؤخذُ في خمسٍ وعشرينَ بالتقويم والنسبة].

h2.11 وإنْ كانتْ كلُّها صغاراً دونَ سنِّ الفرضِ (أي لم تبلغ سنه الذي تجزىء فيه) أخذَ منها صغيرة [ويجتهدُ بحيثُ لا يُسوّي بينَ القليلِ والكثيرِ ففصيلُ ستٍ وثلاثينَ يكونُ خيراً من فصيلِ خمسٍ وعشرينَ] وإنْ كانتْ كباراً وصغاراً لزمتهُ كبيرةٌ وهوَ سنُّ الفرضِ المتقدمِ.

h2.12 وإنْ كانتْ معيبةً أخذَ الأوسطَ في العيبِ ([باعتبارِ عيبِ البقيةِ] والمراد بالعيبِ ما يثبت به الرد في المبيع).

h2.13 وإنْ كانتْ أنواعاً كضأنٍ ومعزٍ أخذَ منْ أيِّ نوعٍ شاءَ بالقسطِ (أي باعتبار القيمة) [فيُقالُ لوْ كانتْ كلُّها ضأناً كمْ تُساوي واحدةٌ منها إلى آخرِ ما تقدّمَ].

h2.14 ولا يُؤخذُ الحاملُ (في الزكاة لأنها من الخيار) ولا التي وَلدتْ (لكثرة لبنها) ولا الفحلُ (لأنه للضراب فيتضرر

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(4) a superior quality animal;

(5) or one fattened for eating.

المالك بأخذه) ولاَ الخيارُ ولاَ المسمنةُ للأكلِ إلاَّ أنْ يَرْضَى المالكُ.

ZAKAT ON JOINTLY OWNED PROPERTY OR VENTURES WITH SHARED FACILITIES

زكاة النصاب المشترك

h2.15 Two people pay zakat jointly as a single person if:

(1) they jointly own a zakat-payable amount of livestock or something else (O: such as fruit, grain, money, or trade goods), as when two people inherit it;

(2) or when the property is not jointly owned, as when each owner has, for example, 20 head of sheep(N: of a herd amounting to the zakat minimum of 40), but they share the same place to bed them down, to gather them before grazing, to pasture, water, or milk them, or share the same stud, employ the same shepherd, or similar, such as having the same watchman (O: for orchards and fields), the same drying or threshing floor (O: for fruit or grain), the same store, or the same warehouse.

h2.15 ولوْ كانَ بينَ نفسينِ منْ أهلِ الزكاة نصابٌ مشتركٌ منَ الماشيةِ أوْ غيرِها (من الثمر والزرع والنقد وعرض التجارة) مِثْلَ أنْ يَرِثاهُ أوْ غيرَ مشتركٍ بلْ لكلٍّ منهما عشرونَ شاةً مثلاً مميَّزةً إلاَّ أنَّهما اشْتَرَكا في المراحِ والمَسْرَحِ والمرعى والمشربِ وموضعِ الحلبِ والفحلِ والراعي وفي غيرِها منَ التناطورِ (أي حافظ الشجر والزرع) والجرينِ (أي موضعِ تجفيف الثمر وتخليص الحب) والدكّانِ (أي الموضع الذي توضع الأقمشة والأمتعة فيه) ومكانِ الحفظِ زكّيا زكاةَ الرجلِ الواحدِ.

*

h3.0 ZAKAT ON CROPS

h3.0 زكاة النبات

h3.1 (N: The rulings of this section apply to the farmers who raise the crops. As for those who buy agricultural produce with the intention to sell it, their produce is no longer considered as crops are, but is rather a type of trade goods, and the zakat on it must be paid accordingly (def: h5).)

h3.2 There is no zakat on grains or legumes except the staple types that people cultivate, dry, and store, such as wheat, barley, millet, rice, lentils, chickpeas, broad beans, grass peas, and Sana'i wheat.

There is no zakat on fruit except for raw dates and grapes (O: the zakat on grapes being taken in

h3.2 لاَ تَجِبُ الزكاةُ في الزرعِ إلاَّ فيما يُقْتاتُ من جنسِ ما يَسْتَنْبِتُهُ الآدميونَ وَيَيْبَسُ ويُدَّخَرُ كحنطةٍ وشعيرٍ وذرةٍ وأرزٍ وعدسٍ وحمصٍ وباقلاءٍ وجلبانٍ وعلسٍ.

ولاَ تجبُ في الثمارِ إلاَّ في الرطبِ

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raisins, and on dates, in cured dates). There is no zakat on vegetables. Nor is there zakat on seasonings such as cumin or coriander (O: since the aim in using them is preparation of food, not nourishment).

والعنب (وتؤخذ زكاته زبيباً كما تؤخذ زكاة النخل تمراً). ولا تجب في الخضروات ولا الأبازير مثل الكمون (لأن القصد منها إصلاح الطعام لا القوت) والكزبرة.

h3.3 One is obliged to pay zakat as soon as one possesses the zakat-payable amount (def: below) of grain, or when the ripeness and wholeness of a zakat-payable amount of dates or grapes is apparent. Otherwise, one is not obliged.

h3.3 فمن انعقد في ملكه نصاب حب أو بدا صلاح نصاب رطب أو عنب لزمته الزكاة وإلا فلا.

THE ZAKAT-PAYABLE AMOUNT OF CROPS

نصاب النبات

h3.4 The minimal quantity on which zakat is payable for crops is 609.84 kilograms of net dried weight, free of husks or chaff, though for rice and Sana'i wheat, which are stored in the kernal, the zakat minimum, including husks, is 1219.68 kilograms of dried weight.

Zakat is not taken from grain until it has been winnowed (O: made free of straw), nor from fruits until they are dried (n: made into raisins and dates).

The produce for the entire year (N: i.e. the agricultural year) is added together in calculating the zakat minimum (N: when, for example, the season's first crop alone is less than the zakat minimum). When one crop is harvested after another—due to varietal differences or the location of the two fields—in the same year, and of the same kind of crop (n: such as spring wheat and winter wheat), zakat is payed from them as if they were a single quantity. Different varieties of grain are also calculated additively when harvested at the same time, though the fruit or grain of one year is not added to the fruit or grain of a different year.

Grapes are not calculated cumulatively with dates, nor wheat with barley (O: as they are different from one another).

h3.4 والنصاب أن يبلغ جافاً خالصاً من القشر والتبن خمسة أوسق وهو ألف وستمائة رطل بغدادية، إلا الأرز والعلس وهو صنف من الحنطة يدخر مع قشره فنصابهما عشرة أوسق بقشرهما.

ولا تخرج الزكاة في الحب إلا بعد التصفية (من التبن) ولا في الثمرة إلا بعد الجفاف.

وتضم ثمرة العام الواحد بعضها إلى بعض في تكميل النصاب حتى لو أطلع البعض بعد جذاذ البعض لاختلاف نوعه أو بلده والعام واحد والجنس واحد ضمه إليه في تكميل النصاب ويضم أنواع الزرع بعضه إلى بعض في النصاب إن اتفق حصادهما في عام واحد ولا تضم ثمرة عام أو زرعه إلى ثمرة عام آخر أو زرعه.

ولا عنب لرطب ولا بر لشعير (لاختلاف الجنس).

h3.5 The zakat for crops that have been watered without effort, as by rain and the like, is 10 percent of the crop (N: i.e. of the net dried stor-

h3.5 ثم الواجب العشر إن سقي بلا مؤنة كالمطر ونحوه ونصف العشر إن

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age weight of the grain, raisins, or dates). The zakat for crops that have been watered with effort, such as on land irrigated by ditches (O: or a water-wheel) is 5 percent of the crop.

If a crop has been raised without irrigation for part of the year and irrigated for part of it, then the zakat is adjusted (O: according to the period, meaning how much of the time the fruit or crops were growing). (N: It is more reliable to consult agricultural experts as to how much of the crop's water came from rain and how much came from irrigation. If 50 percent of the water came from each, for example, one would pay 7.5 percent of the crop as zakat, as this is the mean between the above two percentages.)

سُقِيَ بمؤنةٍ كساقيةٍ ونحوِها (وكناعورة) والقسطُ إنْ سُقِيَ بهمَا (باعتبار المدة أي مدة عيش الثمر والزرع ونمائهما).

(ح: الأولى أن يستشار خبراء الزراعة في نسبة الماء الذي من المطر، والنسبة التي من السري. فإن كان مثلاً ٥٠٪ من كل منهما فالواجب ٧,٥٪ لأنه المعدل بين العشر وبين نصف العشر).

h3.6 After one has paid zakat once on a crop (N: if one is the farmer), there is nothing further due on it (O: as there is no repetition of zakat on one's crops when they are in storage, unlike the repetition of it on money), even if it remains in one's possession for years.

h3.6 ثمَّ (بعد إخراج زكاته) لا شيءَ فيه (لأن زكاة النبات لا تتكرر كل عام كتكرر زكاة النقد) وإنْ دامَ في ملكِهِ سنينَ.

h3.7 It is unlawful for the grower to consume dates or grapes or otherwise dispose of them or sell them before they have been assessed (O: i.e. estimated as to how much there is, and the owner made responsible for the portion to be paid as zakat), and if he does, he is responsible for the loss (O: since part of it belongs to the poor (dis: h1.9)).

h3.7 ويَحْرُمُ على المالكِ أنْ يأكُلَ شيئاً منَ الثمرةِ أوْ يتصرَّفَ فيهَا ببيعٍ وغيرِه قبلَ الخرصِ (أي الحزر والتقدير وقبل التضمين للمالك في ذمته) فإنْ فعلَ ضَمِنَهُ (لأن فيه حق الفقراء).

h3.8 [ويُنْدَبُ للإمامِ أنْ يَبْعثَ خارصاً (له معرفة بكمية ما يخرج من الثمر ظناً) عدلاً (وأما اتصاف المبعوث بهذين الوصفين فهو شرط فلا يصح بعث جاهل به ولا غير عدل) يَخْرُصُ الثمارَ ومعناهُ أنهُ يَدُورُ حول النخلةِ فيَقُولُ: فيها من الرطبِ كذَا ويَأْتي منهُ من التمرِ كذَا.

ويَضْمَنُ المالكُ نصيبَ الفقراءِ (لينتقل الحق من العين إلى الذمة تمراً أو زبيباً ليخرجه بعد جفافه. والخرص خاص بالرطب والزبيب فلا خرص للزرع لأنه لا يؤكل غالباً رطباً بخلاف التمر) بحسابه (أي بقدر ما قدره الخارص) في ذمتِهِ ويَقْبَلُ المالكُ ذلكَ فيَنْتقِلُ حينئذٍ حقُّ الفقراءِ منهُ إلى ذمتِهِ ولهُ بعدَ ذلكَ التصرفُ].

h3.9 If an act of God destroys the fruit after assessment, there is no zakat on it.

h3.9 فإنْ تَلِفَ بآفةٍ سماويةٍ بعدَ ذلكَ سَقَطَتِ الزكاةُ.

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h4.0 ZAKAT ON GOLD, SILVER, AND OTHER MONEY

h4.0 زكاة الذهب والفضة

h4.1 Zakat is obligatory for anyone who has possessed the zakat-payable amount of gold or silver for one year.

h4.1 مَنْ مَلَكَ مِنَ الذهبِ والفضةِ نصاباً حولاً لزِمَتْهُ الزكاةُ.

THE ZAKAT-PAYABLE AMOUNTS OF GOLD, SILVER, AND OTHER MONEY

نصاب الذهب والفضة

h4.2 The zakat-payable minimum for gold is 84.7 grams, on which 2.1175 grams (2.5 percent) is due. The zakat-payable minimum for silver is 592.9 grams, on which 14.8225 grams (2.5 percent) is due. There is no zakat on less that this.

(N: One must pay zakat (n: 2.5 percent) on all money that has been saved for a year if it equals at least the market value of 592.9 grams of silver (n: that is current during the year). While there is a considerable difference between the value of the gold zakat minimum and the silver zakat minimum, the minimum for monetary currency should correspond to that of silver, since it is better for the poor.)

h4.2 ونصابُ الذهبِ عشرونَ مثقالاً وزكاتُهُ نصفُ مثقالٍ، ونصابُ الفضةِ مائتا درهمٍ خالصةٍ وزكاتُهُ خمسةُ دراهمَ خالصةٌ، ولا زكاةَ فيما دونَ ذلكَ.

(ح: تجب الزكاة على من ملك عملة ما حولاً كاملاً إذا ساوت قيمتها نصاب الفضة. وإنما قدرنا بالفضة دون الذهب مع الفارق في قيمة نصابيهما لأن ذلك أنفع للفقراء).

h4.3 Zakat is exacted proportionately (2.5 percent) on any amount over these minimums, whether the gold or silver is in coins, ingots, jewelry prepared for uses that are unlawful or offensive (dis: f17.6,8,11), or articles which are permanent acquisitions.

h4.3 وتَجبُ فيمَا زادَ على النصابِ بحسابِهِ سواءٌ في ذلكَ المضروبُ والسبائكُ والحليُّ المعَدُّ (أي المهيأ) لاستعمالٍ مُحرَّمٍ أوْ مكروهٍ أوْ للقنيةِ.

h4.4 There is no zakat on (n: gold or silver) jewelry that is for permissible use.

h4.4 فإنْ كانَ الحليُّ معدّاً لاستعمالٍ مباحٍ فلا زكاةَ فيهِ.

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h5.0 ZAKAT ON TRADE GOODS

h5.0 زكاة العروض

h5.1 A zakat of 2.5 percent (O: like that of gold and silver, as merchandise is assessed according to its value in them) is obligatory for anyone who:

h5.1 إذا مَلَكَ عرضاً حولاً وكانَ

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(a) has possessed trade goods for a year (n: whether the merchandise itself remains, or whether there is sale and replacement, as below at h5.4–5);

(b) whose value (n: at the zakat year's end, as at h5.3) equals or exceeds the zakat minimum (N: 592.9 grams of silver if bought with monetary currency or silver, and 84.7 grams of gold if bought with gold, these being reckoned according to the values of silver and gold existing during the year);

provided:

(c) that the trade goods have been acquired through a transaction (O: such as a purchase, or acquired by a woman as her marriage payment (mahr, def: m8), or received as a gift given in return for something else (dis: k31.4), or such as articles rented from someone in order to rent them out to others at a profit, or land rented from someone in order to rent it out to others at a profit);

(d) and that at the time of acquisition, the owner intended to use the goods for trade.

There is no zakat on trade goods if (non-(c) above) the owner acquired them by estate division (irth, def: L1) or received them as a gift, or if (non-(d)) he acquired them by purchase but at the time did not intend using them for trade.

قيمتُهُ في آخرِ الحولِ نصاباً لزمتْهُ زكاتُهُ وهي ربعُ العُشْرِ (كما في الذهبِ والفضة لأن العرضَ المذكورَ يقوَّمُ بهما) بشرطين: أنْ يَتَمَلَّكَهُ بمعاوضةٍ (كشراء وإصداق وهبة بثواب واكتراء كأن يستأجر الأعيان ويؤجرها بقصد التجارة أو يستأجر أرضاً ثم يؤجرها بقصد التجارة) وأنْ ينوي حالَ التمليكِ التجارة.

فلوْ مَلَكَهُ بإرثٍ أوْ هبةٍ أوْ بيعٍ ولمْ ينْوِ التجارةَ فلا زكاة.

THE BEGINNING OF THE ZAKAT YEAR FOR TRADE GOODS

ابتداء الحول

h5.2 When the owner buys trade goods that cost (N: at least) the gold or silver zakat minimum, the year of the merchandise's possession is considered to have begun at the beginning of the gold or silver's zakat year (N: so that a merchant's zakat is figured yearly on his total business capital and goods).

But the year of the merchandise's possession is considered to have begun at the moment of purchase if:

h5.2 فإنْ اشْتَراهُ بنصابٍ كاملٍ منَ النقدَيْن بنَى حولَهُ على حولِ النقدِ.

وإنِ اشْتَراهُ بغيرِ ذلكَ إمَّا بدونِ نصابٍ

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(1) the owner has bought the merchandise for less than the zakat minimum (O: provided the price of the new merchandise plus his remaining money do not amount to the zakat minimum);

(2) or he has bought it (N: in exchange) for nonmonetary goods (N: provided these are not also trade goods, as at h5.4, for if they are, the zakat year continues from the zakat year of the previous goods).

(أي ولم يكن عنده باقيه من النقد) أوْ بغير نقدٍ فحولُهُ منَ الشراء.

ESTIMATING WHETHER THE VALUE OF ONE'S TRADE GOODS AMOUNTS TO THE ZAKAT MINIMUM OR NOT

تقدير نصاب العروض

h5.3 Merchandise is appraised (A: at its current market value) at the end of the zakat year:

(1) in terms of the same type of money that it was purchased with, if bought with money (N: i.e. if purchased with silver or monetary currency, we see if the merchandise's market value at the year's end has reached the silver zakat minimum (def: h5.1(b)); or if with gold, we see if its market value has reached the gold minimum) even if it had been purchased for less than the zakat minimum (N: at the beginning of the year) (O: so that if it has now reached the value of the zakat minimum, one pays zakat on it, and if not, then there is no zakat);

(2) or in terms of its value in local monetary currency, if the merchandise was acquired by other than paying money for it (O: such as in exchange for goods, or acquired by a woman as her marriage payment (mahr), or by a husband in exchange for releasing his wife from marriage (def: n5)). If its value equals the zakat minimum (h5.1(b)), then zakat is paid. But if not, then there is no zakat on it until the end of the next year, when it is reappraised and zakat is paid if its value amounts to the zakat minimum, and so on (N: in the following years).

It is not a condition that the value of the trade goods amount to the zakat minimum except at the *end* of the year (O: not at the beginning, middle, or during the whole of the year).

h5.3 ويُقَوَّمُ مال التجارة آخرَ الحولِ بمَا اشْتَرَاهُ بِهِ إنِ اشتراهُ بنقدٍ ولَوْ بدونِ النصابِ (فإن بلغ نصاب الزكاة زكاه وإن لم يبلغ به نصاباً فلا زكاة).

فإن اشتراهُ بغيرِ نقدٍ (كعرضٍ ونكاحٍ وخلع) قَوَّمَهُ بنقدِ البلدِ. فإذا بلَغَ نصاباً زَكَّاهُ وإلاَّ فلا زكاةَ حتَّى يَحُولَ عليْهِ حولٌ آخرُ فيُقَوَّمُ ثانياً وهكذا ولا يُشْتَرَطُ كونُهُ نصاباً إلاَّ في آخرِ الحولِ فقطْ (لا في أوله ولا وسطه ولا في جميع الحول).

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h5.4 If trade goods are exchanged for other trade goods during the course of the year, this does not interrupt their possession (O: because zakat on merchandise is based on the value, and the value of the previous merchandise and the new merchandise is the same, so the year of its possession is not interrupted by merely transferrring it from one set of goods to another). though the zakat year of the funds which a professional money changer exchanges for other funds is interrupted by each exchange (N: and he pays no zakat as long as he keeps changing his business capital).

h5.4 ولـوْ باعَ عرضَ التجـارةِ في الحولِ بعرضِ تجارةٍ لمْ يَنْقطعِ الحولُ (لأنَ زكـاة التجـارة تتعلق بالقيمـة وقيمـة الثـاني والأول واحـدة فلا ينقطـع الحول لانتقالها من سلعة إلى سـلعة).

ولوْ باعَ الصيرفيُّ النقودَ بعضَها ببعضٍ في الحولِ للتجارةِ انْقطَعَ.

h5.5 If merchandise is sold during the zakat year at a profit and its price is kept until the end of the year, then zakat on the merchandise's original value is paid at the end of that zakat year, but the zakat on the profit is not paid until the profit has been possessed for a full year.

(n: A second position in the Shafi'i school is that the zakat on the profit is simply paid in the current zakat year of the merchandise, just as one pays zakat on the offspring of livestock (dis: h2.7) in the current year of their mothers (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 1.399).)

h5.5 ولـوْ باعَ في الحـولِ بنقـدٍ وربـحٍ وأمْسَكَـهُ [(أي المذكور من النقد والـربـح)] إلى آخـرِ الحولِ زكّى الأصلَ بحولِهِ والربحَ بحولِهِ [وأولُ حولِ الربحِ منْ حينِ نضوضِهِ لا منْ حينِ ظهورِهِ].

(ت: وفي قول آخـر عنـد الشـافعيـة يزكّى الأصـل والـربـح بحول الأصل كما يزكّى نتـاج نصـاب المـاشية لحول أصله [مغني المحتـاج إلى معـرفـة معاني ألفاظ المنهاج: ١/ ٣٩٩]).

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h6.0 ZAKAT ON MINES AND TREASURE TROVES

h6.0 زكاة المعدن والركاز

h6.1 A zakat of 2.5 percent is immediately due on:

(a) the zakat minimum or more of gold or silver (def: h4.2) (O: *gold or silver* excluding anything else, such as iron, lead, crystal, turquoise, cornellian, emerald, antimony, or other, on which there is no zakat);

(b) extracted from a mine (O: i.e. a site at which Allah has created gold or silver) located on land permissible for the miner to work or owned by him;

h6.1 إذا اسْتُخْـرِجَ مِنْ معـدنٍ (أي مكـان خلق الله فيـه الذهب والفضة) في أرضٍ مباحةٍ أوْ مملوكةٍ لهُ نصابَ ذهبٍ أوْ فضـةٍ (فخـرج بالذهب أو الفضة غيره من الحـديـد والـرصـاص والبلور والفيـروز والعقيق والزمرد والكحل وغيرها فلا زكاة

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(c) and that this amount of ore has been gathered by working the site one time, or several times uninterrupted by abandoning or neglecting the project.

The zakat is only paid after the ore is refined into metal.

If the person stops working the site for a justifiable reason, such as to travel (O: not for recreation, but for something such as an illness) or to fix equipment, then he adds (O: the ore collected after the interruption to that collected before, in calculating the zakat minimum).

Ore found on someone else's land belongs to the owner of the land.

فيها) في دفعةٍ أوْ دفعاتٍ لمْ يَنْقطعْ فيها عنِ العملِ بتركٍ أوْ إهمالٍ ففيه في الحالِ ربعُ العُشرِ ولا تُخْرَجُ إلاَّ بعدَ التصفيةِ. فإنْ تركَ العملَ بعذرٍ كسفرٍ (لغيرِ تنزهٍ وكمرضٍ) وإصلاحِ آلةٍ ضَمَّ (أي ذلك النيل الثاني للأول في إكمال النصاب).

وإنْ وَجَدَ في أرضِ الغيرِ فهوَ لصاحبِها.

ZAKAT ON TREASURE TROVES

زكاة الركاز

h6.2 An immediate zakat of 20 percent is due when one finds a treasure trove that was buried in pre-Islamic times (N: or by non-Muslims, ancient or modern) if it amounts to the zakat minimum (def: h4.2) and the land is not owned. If such a treasure is found on owned land, it belongs to the owner of the land. If found in a mosque or street, or if it was buried in Islamic times, it is considered as a lost and found article (def: k27).

h6.2 وإنْ وَجَدَ ركازاً منْ دفينِ الجاهليةِ وهوَ نصابُ ذهبٍ أوْ فضةٍ في أرضٍ مواتٍ ففيه الخمسُ في الحالِ.

وإنْ وَجَدَهُ في مِلْكٍ فهوَ لصاحبِ الملكِ.

أوْ في مسجدٍ أوْ في شارعٍ أوْ كانَ منْ دفنِ الإسلامِ فهوَ لُقَطَةٌ.

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h7.0 THE ZAKAT OF 'EID AL-FITR

h7.0 زكاة الفطر

WHO MUST PAY IT

المخاطب بوجوبها

h7.1 The zakat of 'Eid al-Fitr is obligatory for every free Muslim, provided:

(a) that one has the necessary amount (O: 2.03 liters of food);

(b) and that on the night before the 'Eid and on the 'Eid itself, this is in excess of what one needs to feed oneself and those whom one is

h7.1 تجبُ على كلِّ حرٍّ مسلمٍ إذا وجدَ ما يُؤَدِّيه (وهو الصاعُ) في (زكاة) الفطرِ فاضلاً عنْ قوتِه وقوتِ مَنْ تَلْزَمُهُ

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obliged to support (def: m12.1), what one needs to clothe them, and in excess of one's debts and housing expenses.

If one's excess amounts to only part of the required zakat, one must pay as much of it as one has.

نفقتُهُ وكسوتهمْ ليلةَ العيدِ ويومَهُ [(كل منهما متعلق بقوله فاضلاً)] وعنْ دينٍ ومسكنٍ [وعبدٍ يَحْتاجُهُ].

فلوْ فَضَلَ بعضُ مَا يُؤدِيه لَزِمَهُ إخراجُهُ.

PAYING THE ZAKAT OF 'EID AL-FITR FOR ONE'S DEPENDENTS

إخراج الفطرة عمن يعول

h7.2 Someone obligated to pay the zakat of 'Eid al-Fitr must also pay it for every person he is obliged to support, such as his wife and family (O: e.g. his young son, grandson, father, or mother), if they are Muslim and if he has enough food (O: 2.03 liters per person above his own expenses and theirs), though he is not obliged to pay it for his father's wife when supporting his father because of the father's financial difficulties, even though he is obliged to support her (dis: m12.5).

h7.2 ومَنْ لَزِمَتْهُ فطرتُهُ لَزِمَتْهُ فطرةُ كلِّ مَنْ تَلْزَمُهُ نفقتُهُ من زوجةٍ وقريبٍ (كابنٍ صغيرٍ أو ابنِ ابنٍ كذلك أو أبٍ أو أمٍ) [ومملوكٍ] إنْ كانُوا مسلمينَ ووَجَدَ مَا يُؤدِّي عَنْهُمْ (وهو الصاع عن كل شخص فاضلاً عن نفقته ونفقتهم) لكنْ لا تَلْزَمُهُ فطرةُ زوجةِ الأبِ المعسرِ [ومستولدتِهِ] وإنْ لَزِمَتْهُ نفقتُهَا.

h7.3 If one is obligated to pay the zakat of 'Eid al-Fitr but only has enough to pay part of it, then one begins by paying one's own, then that of one's wife, young child, father, mother, and then one's adult son (O: without an income, as when he is chronically ill or insane, for otherwise one is not obligated to support him).

h7.3 ومَنْ لَزِمَهُ فِطرةٌ ووَجَدَ بعضَهَا بَدَأَ بنفسِهِ ثمَّ زوجتِهِ ثمَّ ابنِهِ الصغيرِ ثمَّ أبيهِ ثمَّ أمِّهِ ثمَّ ابنِهِ الكبيرِ (الذي لا كسب له وهو زمن أو مجنون فإن لم يكن كذلك لم تجب نفقته).

h7.4 A wealthy woman married to a man too poor to pay her 'Eid al-Fitr zakat is not obliged to pay her own (A: though it is sunna for her to pay this and all forms of zakat to her husband, even if he spends it on her).

h7.4 ولوْ تَزَوَّجَ معسرٌ بموسرةٍ [أوْ بأمةٍ لَزِمَتْ سيدَ الأمةِ فطرةُ لأمتِهِ و] لا تَلْزَمُ الحرةُ فطرةُ نفسِهَا [وقيلَ تَلْزَمُهَا].

h7.5 The zakat of 'Eid al-Fitr becomes obligatory when the sun sets on the night before the 'Eid (n: meaning on the evening of the last day of Ramadan).

h7.5 وسببُ الوجوبِ إدراكُ غروبِ الشمسِ ليلةَ الفطرِ [فلوْ وُلِدَ لَه ولدٌ أو تَزَوَّجَ أوِ اشْتَرَى قَبْلَ الغروبِ ومَاتَ عَقِبَ الغروبِ لَزِمَتْهُ فطرتُهُم وإنْ وُجِدُوا بعدَ الغروبِ لَمْ تَجِبْ فطرتُهُم].

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WHAT TYPE OF FOOD MUST BE GIVEN

النوع الواجب من الطعام

h7.6 The zakat of 'Eid al-Fitr consists of 2.03 liters of the main staple of the area in which it is given, of the kinds of crops on which zakat is payable (def: h3.2). (A: If the main staple is bread, as in many countries, only *wheat* may be given, and is what is meant by the expression *giving food* here and in all texts below dealing with expiations (e.g. j3.22(2)).) (N: The Hanafi school permits paying the poor the wheat's value in *money*, both here and for expiations.) It is permissible to give the best quality of the staple food of the area, but not to give less than the usual quality (O: such as by giving barley where wheat is the main staple).

h7.6 ثمّ الواجبُ صاعٌ عنْ كلِّ شخصٍ [وهو خمسةُ أرطالٍ وثلثٌ بغداديةٍ وبالمصريِّ أربعةٌ ونصفٌ ورُبْعٌ وسُبْعُ أوقيةٍ] من الأقواتِ التي تَجبُ فيها الزكاةُ منْ غالبِ قوتِ البلدِ [ويُجْزِىءُ الأقطُ واللبنُ لمنْ قوتُهم ذلكَ] فإنْ أخْرَجَ منْ أعلى قوتِ بلدِهِ أجْزأهُ. أوْ دونَهُ (بأن كانوا يقتاتون البر وأخرج من الشعير) فلا.

h7.7 It is permissible to give the zakat of 'Eid al-Fitr (N: to deserving recipients (dis: h8.26)) anytime during Ramadan, though the best time is on the day of 'Eid al-Fitr before the prayer (def: f19.1). It is not permissible to delay giving it until after the day of the 'Eid (O: that is, one may give it until sunset), and is a sin to delay until after this, and one must make it up (N: by paying it late).

h7.7 ويَجُوزُ الإخراجُ في جميعِ رمضانَ والأفضلُ يومَ العيدِ قبلَ الصلاةِ ولا يَجُوزُ تأخيرُها عنْ يومِ الفطرِ (وهو يوم العيد أي فتكون أداء إلى الغروب) فإنْ أخَّرَ عنهُ أثِمَ ولَزِمَهُ القضاءُ.

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h8.0 GIVING ZAKAT TO DESERVING RECIPIENTS

h8.0 قسم الصدقات

h8.1 It is unlawful to delay paying what is due from a zakat-payable amount of property when:

(a) it has been possessed for one year;

(b) one can find the (O: eight) categories (O: of eligible recipients, or some of them) so as to be able to pay it;

(c) and the property is present (O: within 81 km./50 mi.);

—unless one is awaiting a poor person more deserving than those present, such as a relative

h8.1 مَتَى حَالَ الحولُ وقَدَرَ على الإخراجِ (أي إخراج الزكاة) بأنْ وَجَدَ الأصنافَ (الثمانية المستحقين للزكاة أو وجد بعضهم) ومالُهُ حاضرٌ (عنده غير غائب مسافة القصر) حَرُمَ عليْهِ التأخيرُ إلاّ أنْ يَنْتظِرَ فقيراً أحقَّ مِنَ الموجودينَ

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(O: of the person paying zakat whom he is not obliged to support), a neighbor, or a more righteous or needy person (O: than those present. Under these circumstances it is not unlawful to delay giving it because there is an excuse, unless withholding it involves considerable harm for those present).

كقريبٍ (للمزكي لم تجب نفقته عليه) وجارٍ (له فقير) وأصلحَ وأحوجَ (من الحاضر فلا يحرم التأخير حينئذ للعذر إلا إذا اشتد ضرر الحاضرين).

PAYING ZAKAT IN ADVANCE

تقديم الزكاة على الحول

h8.2 Zakat, on all types of property that a year's possession of the zakat minimum makes giving obligatory, may be payed for the current year (A: alone) before the year's end whenever the property owner possesses the zakat minimum.

This zakat in advance is considered valid only when the year ends and:

(a) the recipient it still among the types eligible for zakat (O: meaning, for example, that his state has not changed from poverty to wealth);

(b) the zakat giver is still obliged to pay it;

(c) and the property is still as it was (O: i.e. the zakat minimum still exists and has not been destroyed or sold).

The zakat in advance is not valid if (N: before the end of the year):

(1) (non-(a) above) the poor person who accepted it dies, or becomes financially independent for some other reason than having accepted the zakat;

(2) (non-(b)) the giver dies;

(3) or (non-(c)) the property diminishes to less than the zakat minimum by more than the amount given in advance (O: such as when the giver takes out 5 dirhams as zakat in advance from 200 dirhams, but his holdings are subsequently reduced by 10 (N: to 190 dirhams, which is less than the zakat minimum)), even when this reduction is because of sale.

h8.2 وكلُّ مالٍ وَجَبَتْ زكاتُهُ بحولٍ ونصابٍ جَازَ تقديمُ الزكاةِ على الحولِ بعدَ ملكِ النصابِ لحولٍ واحدٍ وإذَا حَالَ الحولُ والقابضُ بصفةِ الاستحقاقِ (أي لم يتغير حاله من الفقر إلى الغنى مثلاً) والدافعُ بصفةِ الوجوبِ والمالُ بحالِهِ (أي يشترط بقاء النصاب بحاله بأن لم يحصل له تلف أو بيع) وَقَعَ المعجَّلُ عنِ الزكاةِ.

وإنْ كانَ مَاتَ الفقيرُ أو اسْتَغْنَى بغيرِ (أخذ) الزكاة، أوْ مَاتَ الدافعُ أوْ نَقَصَ مالُهُ عنِ النصابِ بأكثرَ منَ المعجَّلِ (متعلق بنقص كأن عجل خمسة من مائتي درهم وقد نقص ماله عشرة) ولَوْ ببيعٍ لمْ يَقَعِ المعجَّلُ عنِ الزكاةِ، ويَسْتَرِدُّهُ إنْ بَيَّنَ

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When the zakat in advance is not valid, the giver may take it back if he has explained that the money has been given in advance (O: by merely having said, "This is my zakat in advance," or if the recipient knows it). If what was given as zakat still exists, the recipient gives it back together with any increment organically connected with it, such as additional weight gained by a head of livestock while in the recipient's possession. But the property owner is not entitled to take back an increment that is not organically connected to the zakat, such as its offspring (O: born from the animal while in the recipient's possession).

If the zakat given in advance no longer exists, then the giver is entitled to take back a substitute (O: whether it be the substitute for a commodity that is fungible (mithli, def: k20.3(1)), such as silver dirhams, or whether for a nonfungible (mutaqawwim) commodity such as sheep or goats, in which case its price is the market value at the time the zakat in advance was *accepted,* not the time it ceased to exist).

After the return of the zakat in advance, the zakat giver pays the zakat from his wealth again if he is still obliged to.

The zakat in advance that is paid from the zakat-payable amount (nisab) is considered as if still part of the giver's property (O: only in respect to calculating whether the giver's total property equals the zakat-payable amount. It is not actually considered as still belonging to the zakat giver, since the recipient is entitled to dispose of it by sale or otherwise while it is in his possession). Thus, if the zakat giver paid a sheep in advance as zakat on 120 head, and one of the sheep then gave birth to a new lamb, the giver would now be obliged to pay another sheep (O: it being as if he owns the (N: next highest) zakat-payable amount of 121 head (dis: h2.5)).

(أي الدافع له) أنَّهُ معجَّلٌ (كأن قال هذه زكاتي المعجلة فقط أو علم القابض أنها معجلة). فإنْ كانَ (ذلك المعجل) باقياً ردَّهُ بزيادتِهِ المتصلةِ كالسمنِ. لا (يسترده بزيادته) المنفصلةِ كالولدِ (الحاصلِ عند المستحق). وإنْ تَلِفَ أخذَ بدلَهُ (المثلي كالدراهم والمتقوم كالغنم والعبرة بقيمة وقت القبض لا وقت التلف). ثمَّ يُخْرِجُ ثانياً إنْ كانَ بصفةِ الوجوبِ. ثمَّ المخرَجُ (أي أن المخرج من يد المالك للمستحقين هو) كالباقي على ملكِهِ (أي في تكميل النصاب به وليس المراد أنه باق حقيقة فإن للقابض أن يتصرف فيه بالبيع وغيره). ولوْ عَجَّلَ شاةً عنْ مائةٍ وعشرينَ ثمَّ وُلِدَ لهُ سخلةٌ لزمَهُ شاةٌ أخرى (فكأنه ملك نصاباً قدره مائة وإحدى وعشرون).

AUTHORIZING ANOTHER TO DISTRIBUTE ONE'S ZAKAT

جواز الوكالة في تفريق زكاته

h8.3 It is permissible for the zakat giver to personally distribute his zakat to eligible recipients or to authorize an agent (wakil, def: k17) to do so.

It is permissible for the zakat giver to pay his

h8.3 ويَجُوزُ أنْ يُفَرِّقَ زكاتَهُ بنفسِهِ أوْ بوكيلِهِ.

ويَجُوزُ أنْ يَدْفَعَها إلى الإمامِ وهوَ

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zakat to the imam (A: i.e. the caliph (o25) or his representative), and this is superior unless the imam is unjust, in which case it is better to distribute it oneself.

أفضلُ إلاّ أنْ يكُونَ جائراً (غير عادل) فتفريقُهُ بنفسِهِ أفضلُ.

THE PRAYER OF THE RECIPIENT FOR THE ZAKAT GIVER

دعاء الآخذ للمعطي

h8.4 It is recommended for the poor person (O: receiving zakat when the owner is distributing it) or the agent assigned to deliver the zakat to recipients (N: if the imam has gathered it by means of agents to distribute to the poor) to supplicate for the giver, saying, "May Allah reward you for what you have given, bless you in what you have retained, and purify it for you."

h8.4 ويُنْدَبُ للفقيرِ (الآخذ للزكاة إن فرق المالك) والساعي (ح: إن جمعها الإمام بواسطة السعاة ليفرقها على الفقراء) أنْ يَدْعُو للمعطي فَيَقُولُ: «آجَرَكَ اللهُ فيمَا أعْطَيْتَ وبَارَكَ لَكَ فِيمَا أبْقَيْتَ وَجَعَلَهُ لَكَ طَهُوراً».

THE INTENTION OF ZAKAT

نية الزكاة

h8.5 Making the intention of zakat is a necessary condition for the validity of giving it. The intention is made when zakat is paid to the poor person or the one being authorized to distribute it, and one must intend giving it as the zakat of one's property. (O: It is permissible to make the intention before paying the money.) When the owner has made this intention, it is not necessary that the agent distributing it also make an intention before giving it (O: because the owner's intention is sufficient, whether the agent is an ordinary individual or is the ruler. It is also permissible for the owner to authorize an agent to both make the intention and distribute the zakat).

h8.5 ومِنْ شرطِ الإجزاءِ النيةُ. فَيَنْوِي عندَ الدفعِ إلى الفقيرِ أو إلى الوكيلِ أنَّ هذِهِ زكاةُ مالِي (ويجوز تقديم النية على دفع المال) فإذا نَوَى المالكُ لمْ تَجِبْ نيةُ الوكيلِ عندَ الدفعِ ([للفقراء] اكتفاء بنية المالك سواء كان الوكيل من آحاد الناس أو كان هو السلطان وإن وكله بالنية وبالدفع جاز).

h8.6 It is recommended that the imam dispatch a zakat worker, (O: to collect zakat funds from those obliged to pay, to make this easier for them. Such an agent must be) an upright Muslim (def: o24.4) who knows the rulings of zakat, and who is not of the Hashimi or Muttalibi clans of Quraysh.

h8.6 ويُنْدَبُ للإمامِ أنْ يَبْعَثَ عاملاً (على الزكواتِ بأن يأخذها من أربابها أي ممن وجبت عليه تسهيلاً عليهم، ولا بد أن يكون العامل) مسلماً [حراً] عدلاً فقيهاً في الزكاةِ غيرَ هاشمي، ومطلبي.

THE EIGHT CATEGORIES OF RECIPIENTS

أصناف المستحقين الثمانية

h8.7 It is obligatory to distribute one's zakat among eight categories of recipients (O: meaning

h8.7 ويجبُ صرفُ الزكاةِ إلى ثمانيةِ أصنافٍ (والمراد أن الزكاة لا

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that zakat goes to none besides them), one-eighth of the zakat to each category.

(n: In the Hanafi school, it is valid for the giver to distribute his zakat to all of the categories, some of them, or to confine himself to just one of them (*al-Lubab fi sharh al-Kitab* (y88), 1.155).)

تخـرج عنـهم [فهي مقصـورة عليهم لا تتجاوزهم]) لكلّ صنفٍ ثمنُ الزكاةِ.

THE POOR

الفقراء

h8.8 The first category is the *poor*, meaning someone who:

(a) does not have enough to suffice himself (O: such as not having any wealth at all, or having some, but (N: he is unable to earn any, and) what he has is insufficient to sustain him to the end of his probable life expectancy if it were distributed over the probable amount of remaining time; *insufficient* meaning it is less than half of what he needs. If he requires ten dirhams a day, for example, but the amount he has when divided by the time left in his probable life expectancy is four dirhams a day or less, not paying for his food, clothing, housing, and whatever he cannot do without, to a degree suitable (dis: f4.5) to someone of his standing without extravagance or penury, then he is *poor*—all of which applies as well to the needs of those he must support (def: m12.1).) (N: A mechanic's tools or scholar's books are not sold or considered part of his money, since he needs them to earn a living);

(b) and is either:

(1) unable to earn his living by work suitable to him (O: such as a noble profession befitting him (N: given his health and social position), as opposed to work unbefitting him, which is considered the same as not having any. If such an individual were an important personage unaccustomed to earning a living by physical labor, he would be considered "poor." This also includes being able to do work suitable to one, but not finding someone to employ one);

(2) or is able to earn his living, but to do so would keep him too busy to engage in attaining

h8.8 أحدُها الفقراءُ: والفقيرُ:

ـ مَنْ لا يَقْـدِرُ على ما يَقَـعُ موقعـاً مِنْ كفايتِهِ (بأن لم يكن له مال أصلاً أو له مال لا يقع موقعاً من كفايته العمر الغالب عند توزيعه عليه أي أنه لا يسد مسداً بحيث لا يبلغ النصف كأن يحتـاج إلى عشـرة، ولو وزع المال الذي عنده على العمر الغالب لخص كل يوم أربعة أو أقل وهي لا تكفيه من المطعم والملبس والمسكن وسـائر ما لا بد منـه على ما يليق بحـالـه من غير إسـراف ولا تقتير وكـل ذلك لنفسه ولمن تلزمه نفقته).

ـ وعجَـزَ عنْ كسبٍ يَلِيقُ بِهِ (كصنعـة شريفة تليق به بخـلاف صنعـة لا تليق به فهي كالعدم حتى لو كان من الناس الكبار الـذين لا يعتـادون التكسـب بالبـدن فهـو فقيـر. ومن جملة العجـز أنه إذا قدر على صنعـة تليق به لكن لا يجـد من يستعمله في تلك الصنعة فيعد فقيراً).

أوْ شَغَلَهُ الكسبُ عنِ الاشتغـال بعلمٍ

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knowledge of Sacred Law. (n: Nawawi notes, "If able to earn a living at work befitting him except that he is engaged in attaining knowledge of some subject in Sacred Law such that turning to earning a living would prevent the acquisition of this knowledge (dis: w36), then it is permissible for him to take zakat because the attainment of knowledge is a communal obligation, though zakat is not lawful for someone able to earn a living who cannot acquire knowledge, even if he lives at a school. What we have just mentioned is the most correct and well known position. Darami mentions three positions concerning someone engaged in attaining religious knowledge:

—that he deserves charity even when able to earn a living;

—that he does not deserve it;

—and that if he is an outstanding student who can be expected to develop a good comprehension of the Sacred Law and benefit the Muslims thereby, then he deserves charity, but if not, then he does not.

"Darami mentioned this in the chapter of 'Voluntary Charity' " (*al-Majmu'* (y108), 6.190-91).)

But if one's religious devotions are what keeps one too busy to earn a living, one is not considered poor.

شرعي. (ت: قال النووي: ولو قدر على كسب يليق بحاله إلا أنه مشتغل بتحصيل بعض العلوم الشرعية بحيث لو أقبل على الكسب لانقطع عن التحصيل حلت له الزكاة لأن تحصيل العلم فرض كفاية، وأما من لا يتأتى منه التحصيل فلا تحل له الزكاة إذا قدر على الكسب وإن كان مقيماً بالمدرسة. هذا الذي ذكرناه هو الصحيح المشهور وذكر الدارمي في المشتغل بتحصيل العلم ثلاثة أوجه: [أحدها] يستحق وإن قدر على الكسب [الثاني] لا [والثالث] إن كان نجيباً يرجى تفقهه ونفع المسلمين به استحق وإلا فلا. ذكرها الدارمي في باب صدقة التطوع». [نقل من كتاب المجموع].

فإنْ شَغَلَهُ التعبُّدُ فليس بفقير.

h8.9 Someone separated from his money by at least 81 km./50 mi. is eligible for zakat. (N: This was in the past. In our day it is fitter to say that he must be *far* from his money in terms of common acknowledgement (def: f4.5).) (O: Such a person's absent property is as if nonexistent, and his "poverty" continues until the money is present. Likewise, someone owed money on a debt not yet due who does not have any other money is given zakat when it is distributed (N: to suffice him) until the debt becomes due.)

h8.9 ولوْ كانَ لهُ مالٌ غائبٌ بمسافةِ القصرِ أُعطيَ (ح: هذا في زمانهم والأولى أن يقال له مال بعيد عرفاً) (وماله الغائب كالعدم فيستمر فقره إلى حضور ماله. ومثله من له دين مؤجل وليس عنده غيره فيعطى وقت تفرقة الزكاة حتى يحل الأجل).

h8.10 People whose needs are met by the expenditures of those who are obliged to support them

h8.10 وإنْ كانَ مستغنياً بنفقةِ منْ تلْزَمُهُ نَفَقَتُهُ مِنْ زوجٍ وقريبٍ فلا.

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such as their husbands or families are not given zakat (N: for poverty) (O: though it is permissible for a third party to give zakat to such a dependent by virtue of the dependent's belonging to some category other than the poor or those short of money (def: below), as when the person belongs to a category such as travellers needing money (h8.18) or those whose hearts are to be reconciled (h8.14)).

(ويجوز أن يدفع الأجنبي إلى المكفى بنفقة غيره باسم غير الفقراء والمساكين إذا كان بتلك الصفة كصفة ابن السبيل أو المؤلفة قلوبهم).

THOSE SHORT OF MONEY

المساكين

h8.11 The second category is people *short of money,* meaning someone who has something to spend for his needs but it is not enough, as when he needs five dirhams, but he only has three or four. The considerations applicable to the poor person also apply to someone short of money (O: namely, that he is given zakat if he cannot earn a living by work befitting him (def: h8.8(b)), or if he can earn a living but attainment of knowledge of Sacred Law prevents his doing so; though if he is able to earn a living but extra devotions prevent him from doing so, then he may not take zakat).

h8.11 الثاني المساكينُ ؛ والمسكينُ مَنْ وجد مَا يقعُ موقعاً مِنْ كفايتِه ولاَ يكفيه مثلُ أنْ يُريد خمسةً فيجدُ ثلاثةً أوْ أربعةً. ويأتي فيه مَا قيل في الفقير (وهو أنه إن عجز عن كسب يليق به أولم يعجز لكنه يشغله عن علم شرعي فإنه يعطى حينئذ فإن شغله الكسب عن التعبد دون العلم فلا يعطى).

HOW MUCH THE POOR ARE GIVEN

ما يعطى الفقراء

h8.12 A person who is poor or short of money is given as much as needed of tools and materials (O: if he has a trade, such as the tools of a carpenter) with which he can earn a living, or property with which he can engage in trade (O: if a merchant), each according to the demands of his profession. This amount varies, depending on whether, for example, he is a jeweller, clothier, grocer, or other.

If the recipient has no trade (O: i.e. is unable to do any work, whether for wages, by trading, or other), then he is given enough zakat to fulfill his needs from the present till the end of his probable life expectancy (O: based on (N: the average life-span for someone like him in) that locality). Another position is that such a person is given enough for just one year.

These measures are obligatory when abun-

h8.12 ويُعْطَى الفقيرُ والمسكينُ مَا يزيلُ حاجتَهُمَا مِنْ عدةٍ يَكْتَسِبُ بها (كل منهما إن كان من أصحاب الصنائع كآلة النجارة مثلاً) أوْ مالٍ يَتَجرُ بِهِ (كل منهما إن كانا من أهل التجارة) على حسب مَا يَليقُ به فيَتفاوَتُ بينَ الجوهريِّ والبزازِ والبقالِ وغيرِهِمْ.

فإنْ لمْ يَحْتَرِفْ (أي بأن لم يحسن صنعة من الصنائع لا بكسب ولا تجارة ولا غيرهما) أُعْطِيَ كفايةَ العمرِ الغالبِ (في بلده) لمثلِهِ وقيلَ كفايةَ سنةٍ فقطْ.

وهذا مفروضٌ مَعَ كثرةِ الزكاةِ إما بأنْ

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dant zakat funds are available, whether the imam distributes them or a property owner. But if there is not much zakat available (O: meaning if the owner or imam distributes funds that are too little to last the poor person for his probable life expectancy or for even one year), it is distributed as is, an eighth to each category.

فرَّق الإمامُ الزكاةَ أوْ ربُّ المالِ وكانَ المالُ كثيراً. وإلاَّ (أي وإن فرقها رب المال أو الإمام وكان المال قليلاً جداً لا يكفي لغاية العمر الغالب أو كفاية سنة) فكلُّ صنفٍ الثمنُ كيفَ كانَ.

ZAKAT WORKERS

العاملون

h8.13 The third category consists of *zakat workers,* the above-mentioned agents (h8.6) dispatched by the imam. These include the person collecting it, the clerk (O: recording what the owners give), the person who matches the payees to recipients, and the one who distributes it to recipients.

The zakat workers receive an eighth of the zakat funds. If this amount is more than it would cost to hire someone to do their job, then they return the excess for distribution to the other categories of recipients. But if less (N: than the cost of hiring someone), then enough is taken from the zakat funds to make up the difference. All of this applies only if the imam (A: caliph) is distributing the zakat (O: and has not allotted a fee to the zakat workers from the Muslim common fund (bayt al-mal)). If the property owner is distributing the zakat (O: or if the imam has allotted the workers a fee from the common fund) then the zakat funds are divided solely among the other categories of recipients.

h8.13 الثالثُ العاملونَ وهمْ الذينَ يبْعَثُهمْ الإمامُ كَمَا تَقَدَّمَ فمِنْهُمْ الساعِي (وهو الذي يجمعها) والكاتبُ (وهو الذي يكتب ما أعطاه أرباب الأموال) والحاشرُ (وهو الذي يجمعهم أو يجمع ذوي السهمان) والقاسمُ [(وهو الذي يقسمها على أربابها المستحقين)]. فَيُجْعَلُ للعاملِ الثمنُ فإنْ كانَ الثمنُ أكثرَ منْ أجرتِهِ (لو استؤجر) ردَّ الفاضلَ على الباقينَ وإنْ كانَ أقلَّ كَمُلَهُ منَ الزكاةِ هذا إذا فرَّقَ الإمامُ (ولم يجعل للعامل جعلاً من بيت المال) فإن فرَّقَ المالكُ (أو جعل الإمام للعامل جعلاً من بيت المال) قُسِّمَ على سبعةٍ وسَقَطَ العاملُ.

THOSE WHOSE HEARTS ARE TO BE RECONCILED

المؤلفة قلوبهم

h8.14 The fourth category is *those whose hearts are to be reconciled.* If they are non-Muslims, they are not given zakat, but if Muslims, then they may be given it (O: so that their certainty may increase, or if they are recent converts to Islam and are alienated from their kin).

Those to be reconciled include:

(1) the chief personages of a people (O: with weak Islamic intentions) whose Islam may be

h8.14 الرابعُ المؤلفةُ قلوبُهُم. فإنْ كانُوا كفاراً لمْ يُعْطَوا وإنْ كانوا مسلمينَ أُعطُوا (ليتقوى يقينهم أو كانوا قريبي العهد بالإسلام بأن كان عندهم وحشة في أهلهم) والمؤلفةُ قومٌ أشرافٌ (نيتهم ضعيفة في الإسلام) يُرْجَى حسنُ

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expected to improve, or whose peers may be expected to enter Islam;

(2) or the heads of a people who collect zakat for us from Muslims living near them who refuse to pay it, or who fight an enemy for us at considerable expense and trouble to themselves.

إسلامهم أو إسلامُ نظرائهم أوْ يَجْبُونَ (لنا) الزكاةَ مِنْ مانعيها بقربِهم أوْ يُقاتِلُونَ عنّا عدواً يُحْتَاجُ في دفعه إلى (صرف) مؤنةٍ ثقيلةٍ.

THOSE PURCHASING THEIR FREEDOM

الرقاب

h8.15 The fifth category is slaves who are purchasing their freedom from their owners. They are given enough to do so if they do not have the means.

h8.15 الخامسُ الرقابُ وهُمُ المكاتبونَ فيُعْطَوْنَ ما يُؤَدُّونَ إنْ لمْ يَكُنْ مَعَهُمْ ما يُؤَدُّونَ.

THOSE IN DEBT

الغارمون

h8.16 The sixth category is those who have debts (O: and they are of three types):

(1) A person who incurs debts in order to settle trouble (O: between two people, parties, or tribes) involving bloodshed (O: as when there has been a killing but it is not known who the killer is, and trouble has arisen between the two sides) or to settle trouble concerning property (O: such as bearing the expense when trouble occurs over it) is given zakat even if he is affluent.

(2) A person who incurs debts to support himself or his dependents is given zakat if he is poor, but not if affluent. If he incurs a debt (O: for something lawful) but spends it on something unlawful, and then repents (O: and is felt to be sincere in this, and the original reason is known to have been something lawful), then he is given zakat.

(3) (O: And a third type, not mentioned by the author, which (n: given persons P, Q, and R) is when R incurs a debt by guaranteeing (daman, def: k15) to P that Q will pay P (n: what Q owes him). If R finds that neither he nor Q can pay, then R is given zakat (n: because he has gone into debt in order to guarantee Q's debt), even if the

h8.16 السادسُ الغارمونَ (وهم ثلاثة أقسام) فإنْ غرِمَ لإصلاحٍ (بين شخصين أو طائفتين أو قبيلتين) بأنْ استدانَ ديناً لتسكينِ فتنةِ دمٍ (أي قتيل ولم يظهر قاتله وقد وقع التنازع بين من ذكر) أوْ مالٍ (كتحمل قيمة وقد وقع التنازع أيضاً في هذه القيمة لأجل تسكين تلك الفتنة) دُفِعَ إليْهِ مَعَ الغِنَى.

وإنِ استدانَ لنفقتِهِ ونفقةِ عيالِهِ دُفِعَ إليْهِ مَعَ الفقرِ دونَ الغِنَى.

وإنِ استدانَ (في مباحٍ) وصَرَفَهُ في معصيةٍ وتابَ (وظن صدقه في توبته وقد عرف قصد الإباحة) دُفِعَ إليْهِ [في الأصحّ]. (ولم يذكر المصنف القسم الثالث وهو من استدان لضمان فيعطى من الزكاة إن أعسر مع الأصيل وإن لم يكن

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reason R agreed to guarantee Q was not charity (N: but was rather that Q would pay him back).)

متبرعاً).

THOSE FIGHTING FOR ALLAH

في سبيل الله

h8.17 The seventh category is *those fighting for Allah*, meaning people engaged in Islamic military operations for whom no salary has been allotted in the army roster (O: but who are volunteers for jihad without remuneration). They are given enough to suffice them for the operation, even if affluent; of weapons, mounts, clothing, and expenses (O: for the duration of the journey, round trip, and the time they spend there, even if prolonged. Though nothing has been mentioned here of the expense involved in supporting such people's families during this period, it seems clear that they should also be given it).

h8.17 السابعُ في سبيلِ اللهِ. وهمُ الغزاةُ الذينَ لا حَقَّ لَهُمْ في الديوانِ ([أي في دفتر العسكر بل] هم متطوعون بالجهاد بلا مقابلة شيء) فَيُعْطَوْنَ مَعَ الغِنَى مَا يكفيهِمْ لغزوهم منْ سلاحٍ وفرسٍ وكسوةٍ ونفقةٍ (مدة الذهاب والإياب ومدة الإقامة وإن طالت، وسكتوا عن نفقة عياله والظاهر أنه يعطاها).

TRAVELLERS NEEDING MONEY

ابن السبيل

h8.18 The eighth category is *the traveller in need of money*, meaning one who is passing among us (O: i.e. through a town in Muslim lands where zakat is collected), or whose journey was not undertaken for the purpose of disobeying Allah. If such a person is in need, he is given enough to cover his personal expenses and transportation, even if he possesses money back home.

h8.18 الثامنُ ابنُ السبيلِ. وهو المسافرُ المجتازُ بِنَا (أي في بلد الزكاة من بلاد المسلمين) أو المنشِئُ للسفرِ في غيرِ معصيةٍ فَيُعْطَى نفقةً ومركوباً مَعَ الحاجةِ وإنْ كانَ لهُ في بلدِهِ مالٌ.

PAYING ZAKAT TO RECIPIENTS

الدفع للمستحقين

h8.19 A person who qualifies as a member of two or more of the above categories is only given zakat for one of them.

h8.19 ومَنْ فيهِ سببانِ لمْ يُعْطَ إلاَّ بأحدِهِمَا.

h8.20 When the (N: eight) categories of recipients exist in the town where zakat is collected, it is unlawful and invalid to give it to recipients elsewhere (O: as it must be paid to those present if the property owner is distributing his own zakat. The other schools of jurisprudence permit giving it

h8.20 فمَتَى وُجِدَت هذهِ الأصنافُ في بلدِ المالِ فنقلُ الزكاةِ إلى غيرِهَا حرامٌ ولمْ يُجْزِ (فيتعين صرفها لهم وهذا كله إن فرق المالك. بخلاف بقية المذاهب

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elsewhere). But if the imam (A: caliph) is distributing the zakat, he may give it to recipients in a different place.

If the zakat giver's property is in the desert, or none of the eight categories of eligible zakat recipients exist in his own town, then the zakat should be distributed in the nearest town.

فيجوز نقلها عندهم) إلاّ أنْ يُفَرِّقَ الإمامُ فلَهُ النقلُ.

وإنْ كانَ مالُهُ ببادِيةٍ أوْ فُقِدَتِ الأصنافُ كلُّها ببلدِهِ نَقَلَ إلى أقربِ بلدٍ إليْهِ.

h8.21 Each category of recipients must receive an equal share, one-eighth of the total (dis: h8.7(n:)) (A: though one may give various individuals within a particular category more or less), except for zakat workers, who receive only their due wage (def: h8.13).

If one of the categories does not exist in one's town, their eighth is distributed over the other categories such that each of them gets one-seventh. If two categories of recipients do not exist in the town, then each of the remaining categories receive a sixth of the zakat, and so on (O: such that if there were only one category in town, all the zakat would be paid to it).

It is obligatory to give zakat to every individual member of a category if the owner is distributing zakat and the individuals are of a limited, known number, or if the imam is distributing zakat and it is possible to give it out person by person and include them all because of the abundance of funds.

If the owner is distributing zakat and the recipients in each category are not of a limited, known number, then the fewest permissible for him to give to in one category is three people, except for the category of zakat workers, in which a single person is enough.

h8.21 ويَجِبُ التسويةُ بينَ الأصنافِ لكلِّ صنفٍ الثمنُ إلاّ العاملَ فقدرُ أجرتِهِ. فإنْ فُقِدَ صنفٌ في بلدِهِ فرَّقَ نصيبَهُ على الباقينَ فيُعْطِي لكلِّ صنفٍ السبعَ. أوْ صنفانِ فلكلِّ صنفٍ السدسُ وهكذا (حتى لو لم يوجد إلا صنف واحد دفع إليه جميعها).

فإنْ قَسَمَ المالكُ وآحادُ الصنفِ محصورونَ (بالعدد) أوْ قَسَمَ الإمامُ مطلقاً وأمْكَنَ الاستيعابُ لكثرةِ المالِ وَجَبَ [(أي يجب على كل منهما استيعاب الأفراد إن أمكن للإمام ذلك وانحصرت في صورة قسمة المالك)].

وإنْ قَسَمَ المالكُ وهمْ (أي أفراد كل صنف) غيرُ محصورينَ فأقلُّ ما يَجُوزُ أنْ يَدْفَعَ إلى ثلاثةٍ مِنْ كلِّ صنفٍ إلاّ العاملَ فيَجُوزُ واحدٌ.

h8.22 It is recommended to give one's zakat to relatives other than those one is obliged to support (def: m12.1).

h8.22 ويُنْدَبُ الصرفُ (أي صرف الزكاة) لأقاربِهِ الذينَ لا تلزمُهُ نفقتُهُمْ.

h8.23 It is recommended to distribute zakat to recipients in proportion to their needs, giving someone who needs 100 dirhams, for example, half of what one gives to someone who needs 200.

h8.23 وأنْ يُفَرِّقَ على قدرِ الحاجةِ فيُعْطِي مَنْ يَحْتاجُ إلى مائةٍ مثلاً قدرَ نصفِ مَنْ يَحْتاجُ مائتينِ.

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h8.24 It is not permissible to give zakat to a non-Muslim, or to someone whom one is obliged to support (def: m12.1), such as a wife or family member.

h8.24 ولا يجوزُ أنْ يَدْفَعَ لكافرٍ [ولا لبني هاشمٍ وبني المطّلبِ] ولا لمَنْ تلزمُهُ نفقتُهُ كزوجةٍ وقريبٍ.

h8.25 It is not valid for one to give zakat to a poor person on condition that he return it to one to pay off a debt he owes, or to tell the recipient, "I hereby make the money you owe me zakat, so keep it for yourself." But it is permissible:

(1) for the giver to pay his zakat (O: to a poor person who owes him money) when the giver's intention is that the recipient should pay him back with it;

(2) for the zakat giver to tell the poor person, "Pay me the money you owe me so that I can give it to you as zakat";

(3) or for the poor person to tell his creditor, "Give me (O: zakat) so that I can pay it back to you (O: for the debt I owe you)";

though it is not obligatory to fulfill these promises (O: meaning the outcomes alluded to in (2) and (3) above).

h8.25 ولو دَفَعَ لفقيرٍ وشَرَطَ أنْ يَرُدَّهُ عليْهِ مِنْ دَيْنٍ لهُ عليْهِ أوْ قالَ جَعَلْتُ مالي (الذي هو) في ذمتِكَ زكاةً فَخُذْهُ (عنها لنفسِكَ زكاةً) لمْ يُجْزِ.

وإنْ دَفَعَ إليْهِ (أي إلى الفقيرِ الذي عليه الدين شيئاً) بنيةِ أنهُ (أي الفقير) يَقْضِيه منهُ (أي يقضي صاحب الدين أي يؤديه له) أوْ قالَ اقضِ مالي لأُعْطِيَكَهُ زكاةً أوْ قالَ المديونُ أَعْطِني (من الزكاة) لأَقْضِيَكَهُ (عن دينك الذي هو علي) جَازَ. ولا يَلْزَمُ الوفاءُ بِهِ (أي بالشرط الموعود به في الصورتين الأخيرتين).

h8.26 All of the above rulings concerning zakat (h8.2–25) apply to the zakat of 'Eid al-Fitr (def: h7) (O: in details, in giving it to deserving recipients (N: the eight categories described in this section), and in giving it in advance). It is permissible for a group of people to pool their zakat of 'Eid al-Fitr, mix it, and collectively distribute it, or for one of them to distribute it with the others' permission. (O: The author mentions this to inform people that anyone can distribute their zakat of 'Eid al-Fitr to all categories of recipients, no matter how little it is.)

h8.26 وزكاةُ الفطرِ في جميعِ ما ذكرْناهُ (من التفصيل ومن إعطائها لمن يستحقها ومن تعجيلها) كزكاةِ المالِ مِنْ غيرِ فرقٍ، فلَوْ جَمَعَ جماعةٌ فطرتَهُمْ وخلطُوها وفرَّقُوها أوْ فرَّقَها أحدُهُمْ بإذنِ الباقينَ جَازَ. (وخص هذا الفرع بالذكر لما فيه من التنبيه على أنه لا يتعذر على الإنسان تفرقة زكاة فطره وإن كانت قليلة على الأصناف كلهم).

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h9.0 VOLUNTARY CHARITY

h9.1 Giving voluntary charity is recommended at all times; especially during Ramadan, before praying for something one needs, (O: when there is an eclipse, illness, or journey,) and at all noble times and places (O: e.g. times such as the first ten days of Dhul Hijja or the days of 'Eid, and places such as Mecca or Medina).

h9.2 It is superior to give charity to righteous people (O: meaning those who give Allah and His slaves their due), to one's relatives (A: which is better than giving to the righteous), even those of them who are one's enemies (A: and this is better than giving to one's friends among them), and to give from the best of one's wealth (O: meaning that which is lawful, which is better than giving what is from a doubtful source, or giving what is of poor quality, either of which are offensive to give as charity. It is unlawful to give property that has been unlawfully obtained (N: if one knows its rightful owner. If not, one *must* give it as charity (A: or taxes (def: p32)) to remove it from one's possession)).

h9.3 It is unlawful to give as charity money needed to support one's dependents or needed to pay a debt that is currently due (O: because supporting one's dependents or paying a current debt are obligatory, and obligatory acts take precedence over recommended ones).

h9.4 It is recommended to give away in charity everything one owns that is in excess (O: of personal expenses and the expenses of those one is obliged to support), provided one can be patient with the resultant poverty. (O: But if one cannot be patient, it is offensive to give away what is in excess of one's needs.)

h9.5 It is offensive to ask for anything besides paradise with the words "For the sake [lit. "By the countenance (O: i.e. entity)"] of Allah," though if someone does, it is offensive not to give to him.

h9.0 صدقة التطوع

h9.1 تُنْدَبُ صدقةُ التطوعِ كلَّ وقتٍ وفي رمضانَ وأمامَ الحاجاتِ ([أي في ابتداء طلبها] وعند الكسوف والمرض والسفر) وكلِّ وقتٍ شريفٍ (كعشر ذي الحجة وأيام العيد) ومكانٍ شريفٍ (كمكة والمدينة) آكَدُ.

h9.2 وللصلحاءِ ([جمع صالح] وهو القائم بحقوق الله وحقوق العباد) وأقاربِهِ وعدوِّهِ منهم، وبأطيبِ مالِهِ (أي الحلال منه) أفضلُ (من التصدق بالمشبوه ومثله الرديء، فالتصدق به مكروه وبالمال الحرام حرام (ح: إن عرف صاحبه. وإلا فيجب التصدق به ليخرجه من ملكه)).

h9.3 ويَحْرُمُ التصدقُ بمَا يُنْفِقُهُ على عيالِهِ أو يَقْضِي بِهِ دَيْنَهُ الحالَّ (لأن النفقة على عياله وقضاء الدين الحالّ كل منهما من الواجب وهو مقدم على المندوب).

h9.4 ويُنْدَبُ بكلِّ مَا فَضَلَ (وزاد على نفقته ونفقة من تلزمه نفقته) إنْ صَبَرَ على الإضاقة ([أي على الشدة بعد التصدق] وأما إذا لم يصبر على ذلك فتكره بما فضل عن حاجته).

h9.5 ويُكْرَهُ أنْ يَسْأَلَ بوجهِ اللهِ (أي بذاته) غيرَ الجنةِ وإذَا سَأَلَ سائلٌ بوجهِ الله شيئاً كُرِهَ ردُّهُ.

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h9.6 It is unlawful to remind a recipient of charity that one has given him (mann, dis: p36), and it eliminates the reward.

h9.6 والمنُّ بالصدقة حرامٌ ويُبْطِلُ ثوابَها.

h9.7 (O: It is permissible to give charity to a person not in need, or to a relative of the Prophet (Allah bless him and give him peace). It is offensive for a person not in need to accept charity, and preferable that he avoid it. It is unlawful for such a person to accept it if he pretends to be needy, and is unlawful for him to ask for charity.

It is permissible to give charity to a non-Muslim (n: but not zakat, as above at h8.24).)

h9.7 (وتحل الصدقة لغني ولذي قربى للنبي ﷺ ويكره للغني التعرض لأخذها ويستحب له التنزه عنها بل يحرم أخذها إن أظهر الفاقة بل يحرم سؤاله أيضاً. وتحل لكافر).

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BOOK I

FASTING

كتاب الصيام

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i1.0 FASTING RAMADAN

(O: The month of the fast is the best of months, and it is one of the distinctive features of this Community (Umma); that is, as now practiced, a fact not contradicted by the word of Allah Most High,

"Fasting is prescribed for you, as it was prescribed for those before you" (Koran 2:183),

the resemblance interpreted as referring to *fasting* without other qualification, not to its amount and time. Fasting Ramadan is one of the pillars of Islam (def: u2) by scholarly consensus (ijma'). Bukhari and Muslim relate that the Prophet (Allah bless him and give him peace) said,

"Islam is built upon five: testifying there is no god but Allah and that Muhammad is the messenger of Allah, performing the prayer, giving zakat, making the pilgrimage to the House [Kaaba], and fasting Ramadan.")

i1.0 صوم رمضان

(وشهره أفضل الشهور وهو من خصائص هذه الأمة أي بهذه الكيفية الموجودة الآن فلا ينافي قوله تعالى: ﴿كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ﴾ [البقرة: ١٨٣]، فإن التشبيه محمول على مطلق الصوم دون قدره وزمنه. وصوم رمضان أحد أركان الإسلام بالإجماع وروى الشيخان أنه ﷺ قال: «بُنِيَ الإسلامُ على خَمسٍ شَهادةِ أن لا إلهَ إلاّ الله وأنّ محمداً رَسولُ الله، وإقامِ الصلاة، وإيتاءِ الزكاة، وحَجِّ البيت، وصومِ رمضان».

WHO MUST FAST RAMADAN

i1.1 Fasting Ramadan is obligatory for:

(a) every Muslim (O: male or female) who:

(b) has reached puberty;

المخاطب بوجوب الصوم

i1.1 يَجِبُ صومُ رمضانَ على كلِّ مسلمٍ (سواء كان ذكراً أو أنثى) بالغٍ

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(c) is sane;

(d) is capable of bearing the fast;

(e) and if female, is not in the period of menstruation or postnatal bleeding (nifas).

عاقـلٍ قادرٍ على الصـومِ مَعَ الخلوِّعنْ حيضٍ ونفاسٍ.

THOSE NOT OBLIGED TO FAST RAMADAN

من لا يجب عليه الصوم

i1.2 The following are not required to fast:

(1) (non-(a) above) a non-Muslim (O: meaning that we do not ask him to, nor would it be valid if he did (N: though he is punished in the next life for not doing so));

(2) (non-(b)) a child;

(3) (non-(c)) someone insane;

(4) or (non-(d)) someone whom fasting exhausts because of advanced years or having an illness from which he is unlikely to recover.

None of the above-mentioned is obliged to fast or to make up missed fast-days, though someone who misses a fast because of (4) above must give 0.51 liters of food (def: h7.6(A:)) for each fast-day he misses.

i1.2 فلاَ يُخـاطَبُ بهِ كافـرٌ (بمعنى أننا لا نطالبه بأدائه أي ولا يصح منه أيضاً (ح: لكنـه يعذب على تركه في الآخرة)) وصـبيٌّ ومجنـونٌ وَلا يخـاطب به) مَنْ أَجْهَـدَهُ الصـومُ [(أي أتعبـه)] لكبـرٍ أوْ مرضٍ لاَ يُرْجَى بُرْؤُهُ (لا) بأداءٍ ولاَ بقضاءٍ لكنْ يَلْزَمُ مَنْ أَجْهَدَهُ الصومُ لكلِّ يومٍ مدُّ طعامٍ.

i1.3 The following are not required to fast, though they are obliged to make up fast-days missed (A: *making up*, according to our school, meaning that one fasts a single day for each obligatory fast-day missed):

(1) those who are ill (N: the *illness* that permits not fasting being that which fasting would worsen, delay recovery from, or cause one considerable harm with; the same dispensation applying to someone who needs to take medicine during the day that breaks the fast and that he can not delay taking until night);

(2) those who are travelling (def: i1.7);

(3) a person who has left Islam (murtadd, def: o8);

i1.3 ويُخـاطَبُ المـريضُ (ح: والمـرض المبيـح للإفطـار هو الذي يزيد بالصيـام أو يتأخر شفاؤه أو يتضرر صاحبه بالصيـام ضرراً شديـداً. وكـذا إذا كان يحتاج إلى تناول دواء مفطر في النهار ولا يمكن تأخيـره إلى الليـل)، والمسـافرُ والمـرتدُّ والحائضُ والنفسـاءُ بالقضـاءِ دونَ

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(4) or a woman who is in her menses or period of postnatal bleeding.

If the ill person or traveller take it upon themselves to fast, it is valid, though a fast by someone who has left Islam, or a woman in menstruation or period of postnatal bleeding is not valid.

When not fasting on a day of Ramadan, if a non-Muslim becomes a Muslim, an insane person regains his sanity, or a child reaches puberty, it is recommended but not obligatory that they fast the rest of that day and make up the fast later. A child who reaches puberty while fasting on a day of Ramadan is obliged to fast the rest of the day, and is recommended to make it up.

A woman whose period ends during a day of Ramadan is recommended to fast the rest of the day and is obliged to make up the fast (O: and the fast-days prior to it missed during her period or postnatal bleeding).

الأداء. فإنْ تكلّفَ المريضُ والمسافرُ وصَامَا صحَّ دونَ المرتدِّ والحائضِ والنفساءِ.

فإنْ أَسْلَمَ أوْ أفاقَ أوْ بَلَغَ مفطراً في أثناءِ النهارِ نُدِبَ الإمساكُ والقضاءُ ولا يَجِبانِ. وإنْ بَلَغَ صائماً لزِمَهُ الإمساكُ ونُدِبَ القضاءُ.

ولَوْ طَهُرَتْ الحائضُ (في أثناء النهار) أمْسَكَتْ ندباً وقَضَتْ حتماً (مع ما قبله من أيام الحيض والنفاس).

i1.4 If the testimony of a witness (O: that the new moon has been seen during the previous night) is made during a day (N: that was initially) uncertain as to whether it was the the first of Ramadan, then it is obligatory (O: for people) to fast the rest of the day and to make it up later.

i1.4 ولَوْ قَامَتِ البَيِّنَةُ برؤيةِ يومِ الشكِّ (والمعنى لو شهدت البينة يوم الشك برؤية الهلال ليلته) وَجَبَ (على الناس) إمساكُ بَقِيَّتِهِ وقضاؤُهُ.

i1.5 A child of seven is ordered to fast, and at ten is beaten for not fasting (N: with the reservations mentioned at f1.2).

i1.5 ويُؤْمَرُ الصبيُّ به لسبعٍ. ويُضْرَبُ لعشرٍ.

i1.6 Excessive hunger or thirst, meaning likely to cause death or illness, are legitimate excuses not to fast, even when they occur on a day one has already begun to fast, as soon as the fast becomes a hardship.

i1.6 ويُبِيحُ الفطرَ غلبةُ الجوعِ والعطشِ بحيثُ يُخْشَى الهلاكُ أوِ المرضُ ولوْ طرأَ في أثناءِ اليومِ إذَا شَقَّ الصومُ.

i1.7 It is permissible not to fast when travelling, even when the intention to fast has been made the night before, provided that the journey is at least 81 km./50 mi. one way, and that one leaves town (def: f15.6) before dawn. If one leaves after dawn, one is not entitled to omit the fast. It is preferable for travellers not to fast if fasting

i1.7 وسفرُ القصرِ إنْ فارَقَ العمرانَ قبلَ الفجرِ وإنْ نَوَاهُ مِنَ الليلِ. فإنْ سَافَرَ بعدَهُ فلا. والفطرُ للمسافرِ أفضلُ إنْ ضَرَّهُ

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would harm them, though if not, then fasting is better.

الصومُ وإلاَّ فالصومُ أفضلُ.

i1.8 A woman who is breast-feeding a baby or is pregnant and apprehends harm to herself or her child may omit the fast and make it up later, though if she omits it because of fear (A: of harm) for the child alone (O: not for herself) then she must give 0.51 liters of food (def: h7.6(A:)) in charity for each day missed, as an expiation (A: in addition to making up each day).

i1.8 ولـوْ خَافَتْ مرضِعٌ أوْ حامِلٌ على أنفسِهِمَا أوْ ولَدَيْهِمَا أفْطَرَتَا وقَضَتَا، لكنْ تَفْدِيَانِ عندَ الخوفِ على الولدِ (فقط أي من غيرِ الخوف على أنفسهما) لكلِّ يومٍ مداً.

SIGHTING THE NEW MOON

رؤية الهلال

i1.9 Fasting Ramadan is only obligatory when the new moon of Ramadan is sighted (O: i.e. in respect to the person who sees it, though for those who do not see it, it only becomes obligatory when the sighting is established by the testimony of an upright witness (def: o24.4)). If it is too overcast to be seen, then (n: the preceding lunar month of) Sha'ban is presumed to last for thirty days, after which people begin fasting Ramadan. If the new moon is sighted during the day (O: before noon on the last of the thirty days), it is considered as belonging to the following night (O: and the ruling for that day does not change).

If the moon is seen in one city but not another, then if the two are close (O: i.e. in the same region), the ruling (n: that the new month has come) holds for both. But if the two are not close, then not (O: i.e. the people far from the place where it was seen are not obligated to fast), *not close* meaning in different regions, such as the Hijaz, Iraq, and Egypt.

i1.9 ولاَ يَجِبُ صومُ رمضانَ إلاَّ برؤيةِ الهلالِ (أي في حق من رآه أو بثبوتها في حق من لم يره بشهادة عدل) فإنْ غُمَّ وَجَبَ استكمالُ شعبانَ ثلاثينَ ثمَّ يَصُومُونَ. فإنْ رُؤِيَ نهاراً (أي رؤي قبل الزوال في اليوم المتمم للثلاثين) فهوَ لليلةِ المستقبلةِ (فلا يتغير حكم ذلك النهار).

وإنْ رُؤِيَ في بلدٍ دون بلدٍ فإنْ تقارباً (باتحاد المطلع) عَمَّ الحكمُ. وإلاَّ فَلاَ (أي فلا يلزم أهل البلد البعيد عن محل الرؤية الصوم) والبعدُ باختلافِ المطالعِ كالحجازِ والعراقِ ومصرَ [وقيل بمسافة القصر].

i1.10 The testimony of a single witness (N: that the new moon has been seen) is sufficient to establish that the month of Ramadan has come, provided the witness is upright (def: o24.4), male, and responsible for the duties of Islam (O: which excludes boys who have reached the age of discernment but not puberty).

i1.10 ويُقْبَلُ في رمضانَ بالنسبةِ إلى الصومِ عدلٌ واحدٌ ذكرٌ [حرٌ] مكلَّفٌ (والتكليف مخرج للصبي المميز) [ولاَ يُقْبَلُ في سائرِ الشهورِ إلاَّ عدلانِ].

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i1.11 If a person knows by calculations of lunar movements or the positions of the stars that the next day is Ramadan, fasting is nevertheless not obligatory (O: for him or the public), though it is permissible for him alone.

i1.11 ولَـوْ عَرَفَ رجـلٌ بالحسـاب والنجـوم أن غداً منْ رمضـانَ لمْ يَجِب الصـومُ (عليـه ولا على عامة الناس) لكنْ يَجُوزُ للحاسبِ والمنجمِ فَقَطْ.

i1.12 If it is difficult to learn which month it is, for someone imprisoned or the like (O: such as someone being held in a dark place who cannot tell night from day, or someone who does not know when Ramadan has come because of being in a land without habitations or people who know when it is), then such a person is obliged to reckon Ramadan as best he can and to fast it. Such a fast is valid if it remains unknown as to whether the month fasted actually coincided with Ramadan, or if it *did* coincide with it, or if the month fasted occurred after it, though if the month fasted was before Ramadan, it is not valid.

i1.12 وإنِ اشْـتَبَهَت الشهـورُ على أسيرٍ ونحوِه (كالمحبوس في محل مظلم لا يعـرف الليل من النهار ومثل المحبوس من في أرضٍ خاليـة عن العمـرانَ وعمن يعـرف رمضانَ فلم يدر رمضان من غيره) اجْتَهَـدَ وجـوباً وصَامَ فإنِ اسْتَمَرَّ الإشكالُ أوْ وافَـقَ رمضـانَ أوْ ما بعـده صَحَّ. وإنْ وَافَقَ ما قبلَهُ لم يَصِحَّ.

THE CONDITIONS OF A VALID FAST

شروط الصوم

i1.13 The conditions of a valid fast are:

(a) the intention;

(b) and refraining from things which break the fast.

i1.13 وشـرطُ الصومِ النيةُ والإمساكُ عن المفطِّرات.

THE INTENTION

النية

i1.14 One must make the intention to fast for each day one fasts. If the intended fast is obligatory, then the intention must:

(a) be specific (O: as to the fast being for Ramadan, a vow, an expiation, or whatever);

(b) and be made in the night prior to dawn. (n: For Hanafis, the intention for a day of Ramadan (but not a makeup) is valid if made before midway between true dawn and sunset of the day itself (*al-Hadiyya al-'Ala'iyya* (y4), 171).)

i1.14 فَيَنْـوِي لكـلِّ يومٍ. فإنْ كَانَ فرضـاً وَجَبَ تعيينُـهُ (أي صوم الفرض من كونـه عن رمضـان أو عن نذر أو عن كفارة أو غير ذلك) وتبييتُهُ من الليلِ.

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The optimal way is to intend (O: in one's heart) to fast the following day as a current performance of the obligation of Ramadan in the present year for Allah Most High (O: *fast* and *of Ramadan* being unanimously considered as integral to the intention, though scholars differ concerning the obligatoriness of intending it as a current performance, an obligation, or for Allah Most High).

وأكملُهُ أنْ يَنْوِيَ (بقلبه) صومَ غدٍ عنْ أداءِ فرضِ رمضانَ هذهِ السنةَ للهِ تعالى (فأما الصوم وكونه عن رمضان فلا بد منه بلا خلاف. وأما الأداء والفرضية والإضافة إلى الله تعالى ففيها خلاف).

i1.15 One's intention is valid if on the night before a day of uncertainty (N: as to whether it will be the first day of Ramadan), someone one trusts but who does not have all the qualifications of an acceptable witness (def: i1.10) informs one of having seen the new moon, and relying on this information one intends to fast the next day to fulfill the obligation of Ramadan, and the next day turns out to be Ramadan. But one's fast is not valid if one makes the intention without anyone having informed one of sighting the new moon, no matter whether if one's intention is firm or whether undecided, as when one intends that if the following day is Ramadan, one will fast, but if not, one will not.

i1.15 ولوْ أخْبَرَهُ بالرؤيةِ ليلةَ الشكِّ منْ يَثِقُ بهِ ممَّنْ لا يَقْبَلُهُ الحاكمُ [منْ نسوةٍ وعبيدٍ وصبيانٍ] فنَوى بناءً على ذلكَ فكانَ منهُ صَحَّ. وإنْ نَوَاهُ منْ غيرِ إخبارِ أحدٍ فكانَ منهُ لمْ يَصِحَّ سواءٌ جَزَمَ النيةَ أوْ تَرَدَّدَ فقالَ: «إنْ كانَ غداً منْ رمضانَ فأنا صائمٌ وإلاَّ فمفطرٌ».

i1.16 One's fast is valid if on the night before 30 Ramadan, one intends that if the following day is of Ramadan, one will fast, but if not, one will not, and then the next day is of Ramadan (O: since it already is Ramadan, and the initial presumption is that it will remain so (dis: e7.6(A:))).

i1.16 ولوْ قالَ ليلةَ الثلاثينَ منْ رمضانَ: «إنْ كانَ غداً منْ رمضانَ فأنا صائمٌ وإلاَّ فمفطرٌ» فكانَ منْ رمضانَ صَحَّ (لأن الأصل بقاء رمضان وقد كان من رمضان).

i1.17 Nonobligatory fasts are valid by merely making the intention to fast before noon (O: without needing to specify the type of fast).

i1.17 ويَصِحُّ النفلُ بنيةٍ مطلقةٍ (عن التعيين) قبلَ الزوالِ.

THINGS WHICH INVALIDATE THE FAST

مفسدات الصوم

i1.18 Each of the following things invalidates the day's fast when one knows they are unlawful (A: during an obligatory fast) and remembers one is fasting (A: but does them deliberately anyway):

i1.18 وإنْ أكَلَ أو شَرِبَ (ح: أو شرب الدخان) أوِ اسْتَعَطَ (أي أدخل

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and they obligate one to both make up the fast-day later and fast the remainder of that day:

(1) eating;

(2) drinking (N: and smoking (A: though not if there is some smoke in the air that one unintentionally inhales));

(3) taking snuff (O: up the nose that reaches the sinuses, a ruling likewise applicable to oil or water preparations);

(4) suppositories (O: vaginal or anal);

(5) pouring (O: water, oil, or other) into the ears until it reaches the eardrum;

(6) inserting a finger or something else into the anus or vagina further than the area disclosed when one squats (O: to relieve oneself);

(7) anything that enters the body cavity, whether stabbed into it (O: such as a knife or spear thrust which penetrates it) or whether medicine (N: though intramuscular or intravenous injections of medicine do not break one's fast);

(8) vomiting (N: if it is deliberate and one is able to prevent it, though if nausea overcomes one, vomiting does not break one's fast);

(9) sexual intercourse (O: if deliberate, even if there is no orgasm), or orgasm from stroking a nongenital region or from masturbation (O: no matter whether such orgasm is produced by unlawful means, like one's own hand (dis: w37), or whether by lawful means, such as the hand of one's wife);

(10) using so much water to rinse out the nose and mouth (O: in ablution (wudu) or the purificatory bath (ghusl)) that some reaches the stomach (O: i.e. if any reaches the body cavity because of using an abundance of water, it breaks the fast, though if some water slips down when an abundance has not been used, it does not break it);

السعوط الذي هو النشوق في أنفه مع جذبه بواسطة النفس إلى الخيشوم ومثل السعوط دهن أو ماء في هذا الحكم) أو احتقن (والحقنة دواء يحقن به المريض في قبل أو دبر) أوْ صَبَّ (ماء أو دهناً أو نحوه) في أذنه فوصل دماغهُ أوْ أدْخَلَ إصبعاً أوْ غيرهُ في دبره أوْ قبلها وراءَ مَا يَبْدُوا عند القعدة (أي القعود لقضاء الحاجة) أوْ وصل إلى جوفه شيءٌ منْ طعنةٍ (أي ضربة بسكين أو رمح وقد وصلت إلى الجوف) أوْ دواءٍ (ح: ولا يفطر الصائم إذا حقن بدواء بواسطة الإبرة الطبية في العضل أو الوريد) أوْ تَقَيَّأَ (ح: ويشترط فيه العمد والقدرة على منعه، فلو غلب القيء الصائم لم يفطر) أوْ جَامَعَ (الصائم ولو لم ينزل) أو بَاشَرَ فيمَا دونَ الفرج فَأَنْزَلَ أو اسْتَمْنَى فَأَنْزَلَ (محرماً كان الإنزال كإخراجه بيده أو غير محرم كإخراجه بيد زوجته)، أو بَالَغَ في المضمضة (في الوضوء أو الغسل) والاستنشاق فنزل جوفه (فإذا نزل إلى الجوف شيء من أجلها ضر بخلاف ما إذا سبق ماء المضمضة من غير مبالغة فلا يضر. [قال ابن عبد الحق: لا يضر بلع ريقه إثر ماء المضمضة وإن أمكنه مجه]) أوْ أَخْرَجَ ريقَهُ منْ فمهُ (ثم

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(11) swallowing saliva that has left the mouth, such as when threading a needle and one moistens the end of the thread, and then remoistens it, swallowing some of the saliva that the thread had been previously wetted with;

(12) swallowing saliva that has been qualitatively altered, such as when threading a needle and one wets the end, and some dye from the thread remains in the mouth and is swallowed (A: so people who use toothpaste should take care to eliminate it from the mouth before dawn on fast-days);

(13) swallowing saliva that has been made impure by contact with filth (najasa), such as when one's mouth is bloodied and one spits out the saliva until it is clear and colorless, but neglects to wash one's mouth out (O: before swallowing the saliva, which breaks the fast because the mouth is still affected by impurity (n: and water is necessary to purify it, as at e14.10));

(14) allowing phlegm or mucus at the back of the mouth to be swallowed when one could have spit them out (n: though in the Hanafi school this does not break the fast, even if intentional (*al-Hadiyya al-'Ala'iyya* (y4), 180));

(15) or to continue making love, even for a moment, after dawn has arrived.

ابتلعه ثانياً) كَمَا إذَا جَرُّ الخيط في فمِهِ عندَ فتلِه فَانْفَصَلَ عليْهِ (أي على الخيط) ريقٌ ثمَّ ردَّهُ وبلَع ريقَهُ أوْ بلَع ريقَهُ متغيِّراً كَمَا إذَا فَتَلَ خيطاً فتغيَّرَ بصبغِهِ أوْ كانَ (ذلك الريق) نجساً كَمَا إذَا دَمِيَ فمُهُ فبَصَقَ حتَّى صَفَا ريقُهُ (عن التغير أي صار خالصاً من لون الحمرة) ولمْ يغْسِلْهُ (فيضر حينئذ ابتلاعه لأن الفم متنجس في هذه الحالة) أو ابْتَلَعَ نخامةً منْ أقصى الفم إنْ قدرَ على قطعِها ومجِّها فتركَها حتَّى نزلَتْ أوْ طَلَعَ الفجرُ وهو مجامعٌ فاسْتَدَامَ ولوْ لحظةً وهو في جميعِ ذلك ذاكرٌ للصوم عالمٌ بالتحريم ، بَطَلَ صومُهُ وعليه قضاءٌ وإمساكُ بقيةِ النهارِ.

THE CRITERION FOR THINGS WHICH INVALIDATE THE FAST

ضابط المفطر

i1.19 The criterion as to whether something invalidates the fast is (N: whether it comes under any one of three headings):

(1) a substance, even if not much, that reaches the body cavity through an open passageway (O: *substance* excluding odors, and *open* excluding anything else, such as absorption through pores). (N: The deliberate introduction of anything besides air or saliva into the body cavity breaks the fast, though if the person fasting does so absentmindedly or under compulsion, it does not break it);

i1.19 وضابطُ المفطرِ وصولُ عينٍ وإنْ قلَّتْ منْ منفذٍ مفتوحٍ إلى جوفٍ (وخرج بالعين وصول الريح وخرج بالمنفتح غيره كالتشرب من المسام) (ح : ويفطر وصول الشيء إلى الجوف عمداً إلا الهواء والريق ، فلو فعل الصائم ذلك ناسياً أو مكرهاً لم يبطل صومه به)

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(2) sexual intercourse (O: meaning inserting the head of the penis into the vagina);

(3) or orgasm, whether as the result of touching (O: such as kissing, contact, lying between the other's thighs, or something else), or because of masturbation;

—provided that one is aware that these acts are unlawful and that one remembers one is fasting (N: and provided they are done deliberately and voluntarily).

والجماعُ (أي وضابط المفطر إدخال الحشفة في فرج [قبلاً كان أو دبراً])، والإنزالُ عن مباشرةٍ (كتقبيل ولمس ومفاخذة وغير ذلك) أو استمناء، عالماً بالتحريم ذاكراً للصوم (ح: ويشترط فيها أيضاً العمد والاختيار).

THE EXPIATION FOR VITIATING A FAST-DAY BY SEXUAL INTERCOURSE

كفارة الإفساد بالجماع

i1.20 In addition to making up the fast, an expiation is obligatory for fast-days of Ramadan that are (A: deliberately) vitiated by sexual intercourse. (O: The legal occasion of the offense is the particular day of fasting, so that if it were committed on two separate days, two separate expiations would be necessary, though if it were committed twice in one day there would be only one expiation.)

The expiation consists of freeing a sound Muslim slave (dis: k32), or if not possible, then to fast the days of two consecutive months. (A: In our school the expiation is only for sexual intercourse, though the Hanafis hold it is obligatory for vitiating the fast for other reasons as well.) If this is not possible, then the expiation is to feed sixty unfortunates (N: 0.51 liters of food (def: h7.6(A:)) to each unfortunate). If one is unable to do this, the expiation remains as an unperformed obligation upon the person concerned.

The woman who is made love to is not obliged to expiate it.

i1.20 ويَلْزَمُهُ لإفسادِ الصومِ في رمضانَ بالجماعِ مَعَ القضاءِ الكفارةُ (والإثم بسبب الصوم، حتى لو جامع في يومين أو أيام وجب لكل يوم كفارة وإن جامع في يوم مرتين لم تلزمه للثاني كفارة) وهي عتقُ رقبةٍ مؤمنةٍ سليمةٍ من العيوب المضرة. فإنْ لمْ يَجِدْ فصيامُ شهرَيْنِ متتابعَيْنِ. فإنْ لمْ يَسْتَطِعْ فإطعامُ ستينَ مسكيناً (ح: لكل مسكين مد طعام) فإنْ عَجزَ ثَبَتَت في ذمته.

ولا يَجِبُ على الموطوءةِ كفارةٌ.

THINGS THAT DO NOT BREAK THE FAST

ما لا يفسد الصوم

i1.21 The fast remains valid if any of the things which break it are done absentmindedly (O: not remembering the fast), out of ignorance (O: that doing the things which break the fast are unlawful,

i1.21 فإنْ فَعَلَ جميعَ ذلكَ ناسياً (للصوم) أوْ جاهلاً بالتحريمِ (أي تحريم تناول المفطرات بأن كان قريب العهد

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whether this is due to being a new Muslim, or to being born and raised far from Islamic scholars), or under compulsion. Nor is it broken by:

(1) involuntary vomiting;

(2) having a wet dream, or orgasm as a result of thinking or looking at something (A: unless the latter two usually cause orgasm, in which case one has broken one's fast by not avoiding them);

(3) some water reaching the body cavity as a result of rinsing out the mouth or nose, (dis: i1.18(10)), provided not much water was used;

(4) saliva carrying down some food particles from between one's teeth, provided this is after having cleaned between them (O: after eating, by using a toothpick or the like between them), if one is unable to spit them out;

(5) gathering saliva in the mouth and swallowing it, bringing saliva as far forward as the tongue (O: but not to the lips) and then swallowing it, or coughing up phlegm from the throat and spitting it out;

(6) the arrival of dawn when there is food in one's mouth which one spits out;

(7) the arrival of dawn when one is lovemaking and one immediately disengages;

(8) or when sleeps all day or has lost consciousness, provided one regains consciousness for at least a moment of the day.

بالإسلام أو نشأ بعيداً عن العلماء) أوْ مكرهاً أوْ غَلَبَهُ القيءُ أوْ أُنْزِلَ باحتلامٍ أوْ عنْ فكرٍ أوْ نظرٍ أوْ نَزَلَ جوفَهُ بمضمضةٍ أوِ استنشاقٍ بلا مبالغةٍ أوْ جَرَى الريقُ بما يبقى منَ الطعامِ في خلالِ أسنانِهِ بعدَ تخليلِهِ (أي أثرِ الطعامِ بأنْ خلله بعودٍ ونحوِه) وعَجَزَ عنْ مجِّهِ أوْ جَمَعَ ريقَهُ في فيهِ وابْتَلَعَهُ صرفاً أوْ أخْرَجَهُ على لسانِهِ ثمَّ ردَّهُ وبلعهُ (ولم يخرجِ ذلكَ الريقُ إلى الشفتينِ) أو اقْتَلَعَ نخامةً منْ باطنِهِ ولفَظَها أوْ طَلَعَ الفجرُ وفي فيهِ طعامٌ فَلَفَظَهُ أوْ كانَ مجامعاً فَنَزَعَ في الحالِ أوْ نامَ جميعَ النهارِ أوْ أُغْمِيَ عليْهِ فيهِ وأفاقَ لحظةً منْهُ لمْ يَضُرَّهُ في جميعِ ذلكَ ويَصِحُّ صومُهُ.

EATING OR DRINKING WHEN UNCERTAIN OF THE TIME OF DAWN OR SUNSET

حكم تعاطي المفطرات عند الشك في طلوع الفجر أو غروب الشمس

i1.22 Making up the fast-day is obligatory if one eats, thinking it is night, but then finds that it is day; or eats, presuming (N: but uncertain) that the sun has set, and the question (O: as to whether one ate before sunset or after) continues and remains unresolved (dis: e7.6(A:)).

i1.22 وإذا أكلَ معتقداً أنهُ ليلٌ وبانَ أنهُ نهارٌ أوْ أكلَ ظانّاً للغروبِ واسْتَمَرَّ الإشكالُ (وهو أنه أكل وقت الغروب أو قبله) وَجَبَ القضاءُ.

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It is not obligatory to make up a fast-day on which one ate on the presumption that dawn had not yet come, and the question (O: as to what the case was) remains unresolved (A: since the initial certainty was that it was night).	وإنْ ظنّ أنّ الفجر لمْ يطْلُعْ فأكل واسْتمرّ الإشكالُ (أي عدم ظهور الحال) فلا قضاء.
INVOLUNTARY ACTS WHICH INVALIDATE THE FAST	مفسدات الصوم غير الاختيارية
i1.23 A fast-day is invalidated by: (1) insanity, even for a moment; (2) being unconscious the entire day; (3) or the appearance of menstrual or post-natal flow. (N: The insane person is not obliged to make up such a day's fast, while the others are.)	i1.23 وإنْ طرأ في أثناء اليوم جنونٌ ولو في لحظة منه أو استغرق نهارَهُ بالإغماء أو طرأ حيضٌ أو نفاسٌ بطل الصومُ (ح: لكن لا يجب القضاء على من جنّ لذلك اليوم ويجب على غيره ممن ذكر).
RECOMMENDED MEASURES WHILE FASTING	ما يندب للصائم
i1.24 A predawn meal is recommended, even if it is slight or consists of water alone (O: and the time for it begins from the middle of the night onwards). It is best to delay it to just before dawn, as long as one does not apprehend dawn's arrival while still eating (O: though when one does not know when dawn is, it is not the sunna to thus delay it).	i1.24 ويُندبُ السحورُ وإنْ قلّ ولو بماء (ووقته من نصف الليل) والأفضلُ تأخيرُهُ ما لمْ يخفِ الصبح (فإذا خفي عليه الصبح فلا يسن تأخيره).
i1.25 It is best to hasten breaking the fast when one is certain that the sun has set. One should break it with an odd number of dates, though if one has none, water is best. It is recommended to say after doing so, "O Allah, for You I fasted, and upon Your bounty I have broken the fast."	i1.25 والأفضلُ تعجيلُ الفطر إذا تحقق الغروب ويُفطِرُ على تمرات وترا. فإنْ لمْ يجدْ فالماءُ أفضلُ ويقولُ: «اللهُمّ لكَ صُمْتُ وعلى رزْقكَ أفطرْتُ».
i1.26 It is recommended in Ramadan: (1) to be especially generous (O: in giving charity);	i1.26 ويُندبُ كثرةُ الجود (أي فعل الخير من الصدقة) وصلةُ الرحم وكثرةُ

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(2) to improve one's relations with family and relatives;

(3) to recite the Koran much;

(4) to spend periods of spiritual retreat (i'tikaf, def: i3) in the mosque, especially during the last ten days of Ramadan;

(5) to break the fast of others after sunset, even if only with water (O: because of the hadith related by Tirmidhi that the Prophet (Allah bless him and give him peace) said,

"He who breaks another's fast earns the same reward as the one who fasted without diminishing the latter's reward in the slightest");

(6) and if in a state of major ritual impurity (janaba), to perform the purificatory bath (ghusl) before dawn.

تلاوة القرآن والاعتكاف سيما العشر الأواخر وأنْ يُفَطِّر الصوّام (فقد روي الترمذي وقال حسن صحيح أن النبي ﷺ قال: «من فطّر صائماً فله مثل أجره ولا ينقص من أجر الصائم شيء») ولوّ بماء وتقديم غسل الجنابة على الفجر.

i1.27 It is recommended to avoid:

(1) slander (def: r2.2), lying, and foul language (N: which are always unlawful, but even worse when fasting);

(2) the pleasures of the senses (O: i.e. those that do not break the fast, such as smelling fragrant plants or looking at them, because of the gratification therein which is incompatible with the wisdom of the fast, even though they are permissible when not fasting) (A: and while it is recommended not to use perfume during a fast-day, it does not hurt to use it on the night before);

(3) and medicinal bloodletting (N: or blood donating) or cupping (O: as these, like the fast, weaken a person and could have a synergistic debilitating effect).

If someone abuses one while fasting, one should say to him, "I am fasting."

i1.27 وترك الغيبة والكذب والفحش (ح: وهي محرمة دائماً لكن يتأكد تحريمها في حق الصائم) والشهوات (التي لا تبطل الصوم كشم الرياحين والنظر إليها لما فيها من الترفه الذي لا يناسب حكمة الصوم وإن كانت مباحة في غير الصوم) والفصد والحجامة (لأن ذلك يضعف والصوم مضعف فيجتمع على الصائم مضعفان) فإنْ شُوتم فَلْيَقُلْ: «إنّي صائمٌ».

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THINGS THAT ARE UNLAWFUL OR OFFENSIVE WHILE FASTING	محرمات الصوم ومكروهاته
i1.28 It is unlawful to kiss (O: or embrace, or pet with the hand) on fast-days for those it sexually arouses.	i1.28 وتَحْرُمُ القُبلةُ لمَن حرَّكَتْ شهوتَهُ (وفي معنى القبلة في هذا الحكم المعانقة والمباشرة باليد).
i1.29 It is unlawful not to eat or drink anything (wisal) between fast-days, though it is not unlawful if one has some water, even a mouthful, before dawn.	i1.29 والوصالُ بأنْ لا يَتناوَلَ في الليل شيئاً فلوْ شَرِبَ ماءً ولوْ جرعةً عند السحور فلا تحريم.
i1.30 It is offensive during the fast to taste food, or to use a toothstick (def: e3) after noon.	i1.30 ويُكْرَهُ ذوقُ الطعامِ [وعلكٌ] وسواكٌ بعد الزوال.
i1.31 It is not offensive during the fast to line the eyes with *kohl* (def: e4.1(4)) or to bathe.	i1.31 لا كحلٌ واستحمامٌ.
i1.32 It is offensive (dis: w38) for anyone (O: whether fasting or not) to keep silent all day until night (O: when there is no need to) (A: *need* including the necessity of restraining the tongue from useless talking (dis: r1.1)).	i1.32 ويُكْرَهُ لكلِّ أحدٍ صمتُ يومٍ إلى الليلِ (من غيرِ حاجةٍ سواء كان صائماً أم لا).
MAKING UP MISSED FAST-DAYS	قضاء الصوم
i1.33 Someone obliged to make up some fast-days of Ramadan is recommended to do so consecutively and immediately. It is not permissible for a person with some unperformed fast-days of Ramadan to delay making them up until the next Ramadan unless there is an excuse (N: for delaying). If one delays until the next Ramadan, one must pay 0.51 liters of food (def: h7.6(A:)) (N: to the poor) for each fast-day missed, in addition to making it up. If making up a fast-day is delayed until a second Ramadan comes, then one must pay double this amount for each day. And so forth: every year that passes upon an unfulfilled fast-day adds 0.51 liters to be paid for that day. (O: But if one's excuse for not performing them persists, such as travel or illness,	i1.33 ومَنْ لَزِمَهُ قضاءُ شيءٍ من رمضان يُنْدَبُ له أنْ يَقْضيَه متتابعاً على الفور. ولا يَجُوزُ أنْ يُؤَخِّرَ القضاءَ إلى رمضانٍ آخرَ بغيرِ عذرٍ. فإنْ أخَّرَ لزِمَهُ مع القضاءِ عنْ كلِّ يومٍ مدُّ طعامٍ فإنْ أخَّرَ رمضانَيْنِ فمدانِ وهكذا يتكرَّرُ بتكرُّرِ السنينَ (وأما إذا دام العذر كالسفر والمرض جاز له

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then it is permissible for one to delay making them up as long as the excuse is present, even if it lasts for years. One is not obliged to pay the penalty fee for this delay even if several Ramadans go by, but is merely obliged to make up the missed fast-days).

If someone dies with unperformed fast-days which he could have fasted but did not, then each fast-day is paid for (N: by the responsible family member) with 0.51 liters of food (N: or he can fast for him (A: in place of paying for each day)). (O: As for someone who dies after two Ramadans elapse upon his missed fast-days, each fast is paid for with 1.02 liters (n: double the above) of food (N: or the family member can both fast a day and pay 0.51 liters for each day (A: i.e. the family member may fast in the deceased's stead for the initial nonperformance of the fast-day, though he cannot fast in place of paying the 0.51 liters of food for each year that making up a fast-day was delayed before the deceased's death, because this is the legal expiation for the delay). As for someone who died before his excuse (n: for not fasting) ceased to exist, nothing at all is obligatory for him).)

التأخير مادام عذره ولو بقي سنين ولا تلزمه الفدية لهذا التأخير وإن تكرر عليه رمضان وإنما عليه القضاء فقط).

ومَنْ مَاتَ وعليْه صومٌ تَمَكَّنَ مِنْ فعلِهِ أطْعَمَ عَنْهُ (ح: وليُّهُ) عنْ كلِّ يومٍ مدَّ طعامٍ (ح: وله أن يصوم عنه) (ومن مات بعد مضي رمضان الثاني أطعم عنه لكل يوم مدّين (ح: أو يصوم يوماً ويطعم مداً عن كل يوم، أما لو مات قبل انقضاء العذر الذي أفطر بسببه فلا يجب شيء)).

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i2.0 VOLUNTARY FASTING

i2.0 صوم التطوع

DAYS ON WHICH FASTING IS RECOMMENDED

أيام يندب الصوم فيها

i2.1 It is recommended to fast:

(1) on six days of the month of Shawwal, and that they be the six consecutive days immediately following 'Eid al-Fitr (O: their being consecutive and their immediately following the 'Eid are two separate sunnas), though it is permissible to fast them nonconsecutively;

(2) on 9 and 10 Muharram;

(3) on the full moon (lit. "white") days of every lunar month, which are the thirteenth and the two days that follow it;

i2.1 يُنْدَبُ صومُ ستةٍ منْ شوالٍ وتُنْدَبُ متتابعةً تَلِي العيدَ (فهاتان سنتان وهما التتابع والعقبية) فإنْ فَرَّقَهَا جَازَ وتاسوعاءَ وعاشوراءَ وأيامِ البيضِ في كلِّ شهرٍ: الثالثَ عَشَرَ وتَالِيَيْهِ والاثنين

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(4) on Mondays and Thursdays;

(5) on the first nine days of Dhul Hijja;

(6) during the inviolable months, which are four: Dhul Qa'da, Dhul Hijja, Muharram, and Rajab;

(7) (n: and on every other day, a fast described by the Prophet (Allah bless him and give him peace) as "the most beloved fast to Allah" (*Riyad al-salihin* (y107), 466)).

The best fast-days, after Ramadan, are those of Muharram, then Rajab, then Sha'ban. (O: In general, the best month for fasting, after Ramadan and the inviolable months, is Sha'ban (A: there being no objection to fasting an entire month or just part of one).)

It is recommended to fast on the Day of 'Arafa (O: 9 Dhul Hijja), unless one is a pilgrim present at 'Arafa (def: j8), when it is better not to fast. It is not offensive for such a person to fast, though it is better for him not to.

والخميس وعشر ذي الحجة [(ح: يريد به تسع ذي الحجة)] والأشهر الحرم وهي أربعة ذو القعدة وذو الحجة والمحرم ورجب.

وأفضل الصوم بعد رمضان المحرم ثم رجب ثم شعبان. (وبالجملة فأفضل الأشهر للصوم بعد رمضان وبعد الأشهر الحرم شهر شعبان).

وصوم يوم عرفة (وهو تاسع ذي الحجة) إلا للحاج بعرفة ففطره أفضل فإن صام لم يكره لكنه ترك الأولى.

FASTS THAT ARE OFFENSIVE OR UNLAWFUL

ما يكره أو يحرم من الصيام

i2.2 It is offensive to fast every day of the year (O: besides the two 'Eids and the three days following 'Eid al-Adha (n: these being unlawful to fast (dis: below) rather than offensive)) if this harms one (O: in body or mind) or causes one not to do something one should do (O: for oneself or others, even if merely recommended). If not, then it is not offensive.

i2.2 ويكره صوم الدهر (غير عيدي الفطر والأضحى وأيام التشريق) إن ضره (الصوم في بدن أو عقل) أو فوت حقاً (له أو لغيره ولو مندوباً) وإلا لم يكره.

i2.3 It is unlawful and not valid to fast (O: whether voluntarily, as a vow, or as a makeup) on the two 'Eids or the three days following 'Eid al-Adha.

i2.3 ويحرم ولا يصح أصلاً (لا تطوعاً ولا عن نذر ولا عن قضاء) صوم العيدين وأيام التشريق وهي ثلاثة بعد الأضحى.

i2.4 It is also unlawful and invalid to fast on a day of uncertainty (N: as to whether it is the first day of Ramadan), meaning that on 30 Sha'ban, someone who does not have the necessary qualifi-

i2.4 ويوم الشك وهو أن يتحدث بالرؤية يوم الثلاثين من شعبان من لا

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cations of a witness (def: i1.10) mentions having seen the new moon of Ramadan. Otherwise (O: when no one has mentioned seeing it, or when an acceptable witness has), then it is not considered a day of uncertainty.

Fasting on a day of uncertainty is not valid as a day of Ramadan, though it can validly fulfill a vow or a makeup fast. Voluntary fasting on such a day is only valid when one would have fasted anyway because it falls on a day one habitually fasts, or when one has been fasting each day since before mid-Sha'ban. If neither of these is the case, then it is unlawful and invalid to fast on it.

It is unlawful to fast during the days after mid-Sha'ban unless one would have fasted anyway because they fall on days one habitually fasts, or unless one has been fasting each day since before mid-Sha'ban.

يثبت (هلال رمضان) بقوله [من عبيد وفسقة ونسوة] وإلا (أي وإن لم يتحدث أحد برؤيته أصلا أو تحدث برؤيته من يقبل قوله) فليس بيوم شك، فلا يصح صومه عن رمضان بل (يصح صومه) عن نذر وقضاء وأما التطوع به فإن وافق عادة له أو وصله بما قبل نصف شعبان صح وإلا حرم ولم يصح.

ويحرم صوم ما بعد نصف شعبان إن لم يوافق عادة ولم يصله بما قبله.

i2.5 (Nawawi: (n: with commentary by Muhammad Shirbini Khatib)) It is offensive to single out Fridays or Saturdays ((Shirbini:) or Sundays for fasting, i.e. to single out one of the above-mentioned days when they do not coincide with days one normally fasts. The fast of someone who usually fasts every other day and whose fast coincides with one of these days or with a day of uncertainty is *not* offensive, because of the hadith related by Muslim,

"Do not single out Friday for fasting unless it happens to coincide with a fast one of you performs,"

similar days being analogous to Fridays in this respect) (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 1.447)).

i2.5 (الإمام النووي (ت: بشرح الشربيني الخطيب):) ويكره إفراد (يوم) الجمعة (بالصوم)، وإفراد السبت (أو الأحد بالصوم [...] ومحل كراهة إفراد ما ذكر إذا لم يوافق عادة له، فإن [كان له عادة كأن] اعتاد صوم يوم وفطر يوم فوافق صومه يوماً منها لم يكره كما في صوم يوم الشك، لخبر مسلم ولا تخصوا يوم الجمعة بصيام من بين الأيام إلا أن يكون في صوم يصومه أحدكم، وقيس بالجمعة الباقي) [محرر من كتاب مغني المحتاج إلى معرفة معاني ألفاظ المنهاج: ١/٤٤٧].

i2.6 Once begun, it is unlawful to interrupt either an obligatory fast-day or an obligatory prayer, whether it is current, a makeup, or vowed; though if it is nonobligatory (O: whether wholly supererogatory or linked with a particular event or time), then one may interrupt it (O: but it is offensive to do so if there is no excuse).

i2.6 ومن دخل في صوم وصلاة فرضا أداء كان أو قضاء أو نذراً حرم قطعهما. فإذا كان نفلا (مطلقا أو ذا سبب أو ذا وقت) جاز قطعهما (لكن الجواز المذكور مقيد بالكراهة من غير عذر).

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i3.0 SPIRITUAL RETREAT (I'TIKAF)

i3.1 It is sunna, at any time, to make spiritual retreat (i'tikaf) in the mosque.

LAYLAT AL-QADR

i3.2 Spiritual retreat (i'tikaf) is especially recommended in Ramadan, particularly in the last ten days of it, seeking *Laylat al-Qadr* (lit. "the Night of the Divine Decree") (O: which is, as Allah Most High says,

"better than a thousand months" (Koran 97:3),

meaning that spiritual works therein are better than works of a thousand months lacking Laylat al-Qadr. Indicating its excellence, the Prophet (Allah bless him and give him peace) said,

"He who prays on Laylat al-Qadr in faith and expectation of its reward will be forgiven his previous sins").

Laylat al-Qadr could be on any night of Ramadan (n: or any other month of the year, according to some (dis: w39)). It probably occurs within the last ten nights, more likely on the odd-numbered ones (N: remembering that the night of an Islamic date comes before the day of that date), the twenty-first and twenty-third of which are the likeliest (n: though most scholars hold it to be the twenty-seventh (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 1.450)). On Laylat al-Qadr it is recommended to frequently repeat, "O Allah, You are oft-relenting and love to forgive, so forgive me."

HOW TO PERFORM SPIRITUAL RETREAT

i3.3 At minimum, spiritual retreat (i'tikaf) consists of:

(a) staying, with the intention of spiritual

i3.0 الاعتكاف

i3.1 الاعتكاف سنةٌ في كلِّ وقتٍ.

ليلة القدر

i3.2 ورمضانُ آكَدُ والعشرةُ الأخيرةُ آكَدُ لطلبِ ليلةِ القدرِ (التي هي كما قال تعالى: ﴿خَيْرٌ مِنْ أَلْفِ شَهْرٍ﴾ أي العمل فيها خيرٌ من العملِ في ألفِ شهرٍ ليس فيها ليلة القدر وقال ﷺ استدلالاً على فضلها «من قامَ ليلةَ القدرِ إيماناً واحتساباً غُفِرَ له ما تَقَدَّمَ من ذنبه» [رواه البخاري ومسلم].

ويُمْكِنُ أنْ تكونَ في جميعِ رمضانَ وفي العشرةِ الأخيرةِ أَرْجَى وفي أوتارِهِ أَرْجَى وفي الحادي والثالثِ والعشرينَ أَرْجَى. ويُكْثِرُ في ليلةِ القدرِ: «اللَّهُمَّ إِنَّكَ عفوٌّ تُحِبُّ العَفْوَ فَاعْفُ عَنِّي».

كيفية الاعتكاف

i3.3 وأقلُّ الاعتكافِ لبثٌ وإنْ قَلَّ بشرطِ النيةِ وزيادتِهِ على أقلِّ الطمأنينةِ

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retreat, for more than the least amount of time that can be considered *repose* (A: i.e. a moment);

(b) while being Muslim, sane, conscious, and free of major ritual impurity (O: i.e. of menstruation, postnatal bleeding, and major impurity (janaba));

(c) in a mosque, even when this stay is no more than entering the periphery and then leaving by the same entrance (taraddud), though to merely pass through is insufficient.

Optimally, the spiritual retreat (i'tikaf) should be accompanied by fasting, take place in the Friday congregational mosque (O: because of the size of the group prayer therein, and so as not to have to leave to attend the Friday prayer), and be no less than a day.

وكونه (أي المعتكف) مسلماً عاقلاً صاحيا خالياً من الحدث الأكبر (وهو الحيض والنفاس والجنابة) وفي المسجد ولو متردداً في جوانبه ولا يكفي مجرد المرور.

والأفضل كونه بصوم وفي الجامع (لكثرة الجماعة فيه ولئلا يحتاج إلى الخروج للجمعة) وأن لا ينقص عن يوم.

VOWING SPIRITUAL RETREAT IN PARTICULAR MOSQUES

نذر الاعتكاف في مساجد معينة

i3.4 If one vows (def: j18) to make spiritual retreat (i'tikaf) in:

(1) al-Masjid al-Haram (n: in Mecca);

(2) al-Masjid al-Aqsa (n: in Jerusalem);

(3) or Masjid al-Medina;

then the vow cannot be fulfilled elsewhere. Spiritual retreat (i'tikaf) in al-Masjid al-Haram fulfills a vow to make spiritual retreat in either of the other two (n: al-Aqsa or Medina), but not vice versa (N: they do not fulfill a vow to make a spiritual retreat in al-Masjid al-Haram). Spiritual retreat in Masjid al-Medina fulfills a vow to do so in al-Masjid al-Aqsa, but not vice versa. If one vows to make a spiritual retreat in any mosque besides these three, the vow can be fulfilled in any mosque whatever (O: since none besides these three is superior to any other).

i3.4 ولو نذر الاعتكاف في المسجد الحرام أو الأقصى أو مسجد المدينة تعين لكن يجزىء المسجد الحرام عنهما بخلاف العكس ويجزىء مسجد المدينة عن الأقصى بخلاف العكس ولو عين مسجداً غير ذلك لم يتعين (إذ لا مزية لبعضها على غيره).

i3.5 Spiritual retreat (i'tikaf) is invalidated by lovemaking and by orgasm as a result of touching.

i3.5 ويفسد الاعتكاف بالجماع والإنزال عن مباشرة.

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VOWS TO SPEND A CERTAIN CONSECUTIVE PERIOD IN SPIRITUAL RETREAT

الاعتكاف المنذور لمدة متتابعة

i3.6 If one vows to make spiritual retreat for a consecutive period, then one is obligated to do so. The consecutiveness of such a period is not nullified by leaving the mosque for something necessary such as eating (even when it is possible to do so in the mosque), drinking (provided it is not possible to do so in the mosque), using the lavatory, attending to an illness, the onset of a menstrual period, or similar things; though one's spiritual retreat is interrupted by leaving the mosque to visit a sick person, perform a funeral prayer (janaza), or attend the Friday prayer (jumu'a).

i3.6 وإن نَذَرَ مدةً متتابعةً لَزِمَهُ. فإنْ خَرَجَ لما لا بُدَّ منهُ كأكلٍ وإنْ أمكنَ في المسجد وشربٍ إنْ لمْ يُمكِنْ فيهِ وقضاءِ حاجةِ الإنسانِ (من بول وغائط) والمرضِ والحيضِ ونحوِ ذلكَ لمْ يَبْطُلْ (أي التتابع) وإنْ خَرَجَ من المسجدِ لزيارةِ مريضٍ أو صلاةِ جنازةٍ أوْ صلاةِ جمعةٍ بَطَلَ اعتكافُهُ.

i3.7 [وإنْ خَرَجَ لمنارةِ المسجدِ وهي خارجةٌ عنهُ ليُؤَذِّنَ جازَ إنْ كانَ هوَ المؤذنَ الراتبَ وإلاَّ فلا. وإنْ خَرَجَ لِمَا لا بُدَّ منهُ فسَأَلَ عنِ المريضِ وهوَ مارٌّ ولمْ يُعَرِّجْ جازَ (إن لمْ يطل وقوفه عنده) وإنْ عَرَّجَ لأجلِهِ (أو طال وقوفه) بَطَلَ].

i3.8 Touching another with sexual desire is unlawful for someone in spiritual retreat (i'tikaf).

i3.8 وتَحْرُمُ المباشرةُ بشهوةٍ.

i3.9 It is not permissible for a wife to make spiritual retreat without her husband's permission.

i3.9 وتَحْرُمُ على [العبدِ وَ] الزوجةِ دونَ إذنِ [سيدٍ وَ] زوجٍ.

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BOOK J

THE PILGRIMAGE

كتاب الحج

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j1.0 WHO MUST PERFORM HAJJ AND 'UMRA

(O: Hajj and 'umra are obligatory because of the word of Allah Most High:

j1.0 المخاطب بوجوب الحج والعمرة

(وهما فرضان لقوله تعالى: ﴿وَلِلَّهِ

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"People owe Allah to make pilgrimage to the House, whoever is able to find a way" (Koran 3:97),

and,

"Complete the hajj and 'umra for Allah" (Koran 2:196),

meaning, "Perform both of them completely.")

عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا﴾ [آل عمران: ٩٧]، وقوله تعالى: ﴿وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ﴾ [البقرة: ١٩٦]، أي ائتوا بهما تامين).

j1.1 (n: This section uses the following special vocabulary, in addition to some of the terms previously mentioned at f8.1:

'Arafa: (syn. 'Arafat) the name of a plain about thirteen miles to the east-southeast of Mecca.

Hajj: the pilgrimage to Mecca.

Ihram: the state of consecration that pilgrims enter for hajj and 'umra.

Labbayk: a litany meaning, "Ever at Your service, O Allah, ever at Your service."

al-Masjid al-Haram: the Holy Mosque in Mecca that encompasses the Kaaba.

Safa and Marwa: two hillocks connected by a course adjoining al-Masjid al-Haram.

'Umra: the lesser pilgrimage or *visit* to Mecca that may be performed at any time of the year.)

j1.2 Both hajj and 'umra are obligatory, though neither is obligatory more than once in a person's lifetime unless one vows (def: j18) more than that.

j1.2 الحجُّ والعمرةُ فرضانِ ولا يَجِبانِ في العمر إلاَّ مرةً واحدةً إلاَّ أنْ يُنْذَرا.

j1.3 They are only obligatory for someone who:

(a) is Muslim;

(b) has reached puberty;

(c) is sane;

(d) and is able (def: j1.6–10) to make them.

j1.3 وإنَّما يَلْزَمانِ مسلماً بالغاً عاقلاً [حراً] مستطيعاً.

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j1.4 The hajj or 'umra of someone considered unable (non-(d) above) is valid (O: i.e. if he undertakes the hardship, travels, and stands at 'Arafa (def: j8), it fulfills the obligation), though not that of a non-Muslim, or a child below the age of discrimination (f1.2) who is unaccompanied by a guardian.

It is valid for a child of the age of discrimination to enter the state of ihram with his guardian's permission (O: *guardian* meaning the person with lawful disposal over the child's property).

It is also valid for the guardian to enter ihram on behalf of an insane person or a child below the age of discrimination, in which case the guardian has his charge do as much as he is able, by having him (O: telling him to) perform the purificatory bath (ghusl), remove clothing that has seams, and put on hajj garments; and forbidding him the things prohibited while in the state of ihram, such as perfumes and the like (def: j3.5), after which he takes him to the various places of the hajj rites (O: it being insufficient for the guardian to go alone), and performs the acts that the charge cannot do himself, such as entering into ihram (n: which the charge, lacking discrimination, is unable to make a legally valid intention for), the two rak'as after circumambulating the Kaaba, and stoning at Mina. (N: But the hajj of someone who has not reached puberty does not fulfill the obligation Islam imposes, since even though it is valid, it is supererogatory.)

j1.4 وَيَصِحُّ حجُّ [العبدِ و] غيرِ المستطيعِ (إذا تكلف وارتكب المشقة وسافر وأدرك الوقوف وقع له عن فرض الإسلام) ولا يَصِحُّ مِنَ الكافرِ وغيرِ المميزِ استقلالاً.

فإنْ أحْرَمَ الصبيُّ المميزُ بإذنِ الوليِّ (وهو المتصرف في ماله) أوْ أحْرَمَ الوليُّ عنِ المجنونِ أوِ الطفلِ الذي لا يُمَيِّزُ جازَ. ويُكَلِّفُهُ الوليُّ ما يَقْدِرُ عليهِ فيغْسِلُهُ (أي الولي أي يأمره عند إرادة الإحرام بالغسل) ويُجَرِّدُهُ عنِ المخيطِ ويُلْبِسُهُ ثيابَ الإحرامِ (من إزار ورداء ونعلين) ويُجَنِّبُهُ المحظورَ كالطيبِ ونحوِهِ ويُحْضِرُهُ المشاهدَ (ولا يكفي حضور الولي لها) ويفْعَلُ عنهُ ما لا يُمْكِنُ منهُ كالإحْرامِ وركعتَيِ الطوافِ والرمي (ح: وحج غير البالغ لا يسقط عنه حجة الإسلام وإن صح، فهو نافلة).

WHO IS CONSIDERED ABLE TO PERFORM THE HAJJ

معنى الاستطاعة

j1.5 Those able to perform the hajj are of two types: those able to perform the hajj in person, and those able to fulfill the hajj by sending someone in their stead.

j1.5 والمستطيعُ اثنانِ مستطيعٌ بنفسِهِ ومستطيعٌ بغيرِهِ.

THOSE ABLE TO PERFORM THE HAJJ IN PERSON

المستطيع بنفسه

j1.6 The conditions for being considered able to perform the hajj in person are:

j1.6 أمّا الأول فهوَ أنْ يكُونَ

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(a) to be healthy (O: enough to ride there without serious harm);

(b) to be able to obtain provisions for the trip;

(c) to have enough money to afford water at the going price at the places people travel through because of the water there;

(d) to have transportation suitable to someone like oneself (O: though if one cannot find any, or if it is more than the usual price (A: *usual* meaning that the fare to the hajj is no more than the fare to another destination of comparable distance), then one is not obliged to perform the hajj);

(all of the above (O: (b), (c), and (d)) apply equally to the journey there and back)

(e) to be able to pay for (b), (c), and (d), round trip, with money one has that is in excess of the amount one requires to support the members of one's family and clothe them while one is travelling there and back, and obtain lodgings for oneself; and that is in excess of any money one owes for debts, even those not yet due (O: scholars concur that a debtor is not obliged to perform the hajj even when his creditor does not mind postponing the debt until after the hajj, and that a person is not obliged to perform the hajj when someone is willing to loan him the money to do so (N: though such a person's hajj would be valid, as previously discussed (j1.4)));

(f) and that a route exist that is safe for one's person and property from predators and enemies, whether the latter be non-Muslims or whether highwaymen wanting money, even when the amount is inconsiderable (A: including so-called hajj fees, which are not countenanced by Sacred Law). If there is no route except by sea, then one must take it if it is usually safe, but if not, then it is not obligatory.

(N: These are the conditions for the obligatoriness of the hajj or 'umra, meaning that if one of them is lacking, the hajj and 'umra are not obligatory for that year, though if one performs them

صحيحاً (أي بأن يثبت على مركوب بلا ضرر شديد) واجداً للزاد والماء بثمن مثله في المواضع التي جرت العادة بكونه فيها وراحلة تصلح لمثله (فإن لم يجدها أصلاً أو وجدها بأكثر من أجرة المثل لم يجب عليه) [إنْ كانَ منْ مكةَ على مسافة القصر وإنْ أطاقَ المشيَ وكذا دونها إنْ لمْ يُطقْهُ ومحملاً إنْ شقَّ عليهِ ركوبُ القتب وشريكاً يُعادلُهُ] يُشترَطُ ذلكَ كلُّهُ ذاهباً وراجعاً (أي يشترط وجود الزاد وما بعده) وأنْ يكونَ ذلكَ فاضلاً عنْ نفقةِ عيالِهِ وكسوتِهمْ ذهاباً وإياباً وعنْ مسكنٍ [يُناسبُهُ وخادمٍ يليقُ بهِ (ويحتاج إليه) لمنصبٍ أوْ عجزٍ] وعنْ دينٍ ولوْ مؤجلاً (ولو رضي صاحبه بتأخيره إلى ما بعد الحج لم يلزمه الحج بلا خلاف ولو وجد من يقرضه ما يحج به لم يجب الحج بلا خلاف (ح: لكن يصح حجه كما سبق)) وأنْ يجدَ طريقاً آمناً يأمنُ فيها على نفسِهِ ومالِهِ من سَبُعٍ وعدوٍّ ولوْ كافراً أوْ صيدياً يُريدُ مالاً وإنْ قلَّ (ذلك المال) وإنْ لمْ يجدْ طريقاً إلاّ في البحرِ لزمَهُ إنْ غلبَتِ السلامةُ وإلاّ فلا.

(ح: هذه شروط لوجوب الحج أو العمرة بمعنى لو فُقد واحد منها لا يجب الحج أو العمرة في تلك السنة، لكن إن

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anyway, one's performance validly fulfills the rites which Islam imposes, as mentioned above at j1.4.)

أداها أسقط عنه فرض الإسلام كما سبق).

j1.7 The above conditions apply equally to a woman, who in addition requires someone to accompany her to protect her, such as a husband, an unmarriageable male relative (mahram, def: m6.2), or some (O: two or more) reliable women, even if they are not accompanied by any of their unmarriageable male relatives.

j1.7 والمرأةُ في كلِّ ذلكَ كالرجلِ وتزيدُ بأنْ يكونَ معها مَنْ تأمَنُ معهُ على نفسِها مِنْ زوجٍ أوْ محرمٍ أوْ نسوةٍ ثقاتٍ (ثنتين فأكثر) وإنْ لمْ يكُنْ مَعَ إحداهنَّ محرمٌ.

j1.8 If the above conditions are met, but there is no longer time to reach Mecca, then the hajj is not obligatory. But if time remains, it is obligatory.

j1.8 فمتى وُجِدَتْ هذهِ الشروطُ ولمْ يُدرِكْ زمناً يُمكِنُ فيهِ الحجُّ على العادةِ لمْ يَلْزمْهُ. وإنْ أدْرَكَ ذلكَ لَزِمَهُ.

j1.9 It is recommended to perform hajj as soon as possible (N: i.e. to perform it the first year that one is able to, and likewise for 'umra). One is entitled to delay it, but if one dies without performing it after having been able to, one dies in disobedience, and it is obligatory to take out the cost for it from the deceased's estate (n: just as debts are, as at L4.3(1)) to pay for someone to make it up (A: in the deceased's place (dis: below)).

j1.9 ويُنْدَبُ المبادرةُ بِهِ (ح: أي بالنسك من حج وعمرة بأنْ يأتي بالحج في عام الاستطاعة وبالعمرة عند الاستطاعة) ولهُ التأخيرُ لكن لوْ مَاتَ بعدَ التمكنِ قبلَ فعلِهِ مَاتَ عاصياً ووَجَبَ قضاؤُهُ مِنْ تركتِهِ.

THOSE ABLE TO PERFORM THE HAJJ BY SENDING SOMEONE IN THEIR STEAD

المستطيع بغيره

j1.10 The second type of being able to perform hajj is when one may fulfill it by sending another in one's place, the necessary conditions for which are:

(a) that one is unable to ride there (O: at all, or is able, but with great difficulty) because of chronic illness or old age;

(b) and that one either has the money (n: to hire someone to go in one's place) or (N: if lacking the money) has someone to obey one (O: by agreeing to perform the rites of hajj for one (N: at their own expense, as a charitable donation)),

j1.10 وأمَّا المستطيعُ بغيرِهِ فهوَ مَنْ لا يقْدِرُ على الثبوتِ (أصلاً أو يقدر بمشقة شديدة) لزمنٍ أوْ كِبَرٍ ولهُ مالٌ، أو (ح: ليس له مال ولكن له) مَنْ يُطيعُهُ (بالإتيان بالنسك (ح: على نفقته أي المتبرع)) ولوْ أجنبياً. فَيَلْزَمُهُ أنْ يَسْتأجِرَ

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even if not a family member—in which case one is obliged to either hire someone (N: in the former instance) or give permission to someone (N: in the latter instance) to perform hajj in one's place.

One may also have someone perform a nonobligatory hajj for one under such conditions.

بمالِهِ (ح: في الحال الأول) أوْ يَأْذَنَ للمطيعِ في الحجِّ عنهُ (ح: في الحال الثاني). ويَجُوزُ أنْ يُحَجَّ عنهُ تطوعاً (أي حج التطوع) أيضاً.

THE PRIORITY OF THE OBLIGATORY HAJJ OVER ANY OTHER

أولوية حجة الإسلام على غيرها

j1.11 It is not permissible for someone who has not yet performed his own obligatory hajj:

(1) to perform the hajj for someone else;

(2) to perform a nonobligatory hajj;

(3) or to perform hajj in fulfillment of a vow, or as a makeup.

(N: If he does any of these, it counts instead as his own obligatory hajj).

j1.11 ولاَ يَجُوزُ لمَنْ علَيْهِ فرضُ الإسلامِ أنْ يَحُجَّ عنْ غيرِهِ ولاَ أنْ يَتَنَفَّلَ ولاَ أنْ يَحُجَّ نذراً ولا قضاءً (ح: فإن فعل وقع حجه عن حجة الإسلام في كل هذه الصور).

j1.12 The order of performing hajj (O: or 'umra) must be:

(1) the obligatory hajj first;

(2) then a makeup hajj (def: j3.14:(c)) if any is due;

(3) then a hajj in fullfillment of a vow, if any has been made;

(4) and then a supererogatory hajj, or one in another person's place.

If one tries to change this order, for example, by commencing a hajj with the intention for a supererogatory performance or a vow when one has not yet made the obligatory hajj, the intention is invalid, and the hajj counts instead as fulfilling the obligatory one. The same is true for the other types (A: i.e. if one intends any of the types in the order just mentioned when a prior type exists

j1.12 فَيَحُجُّ أولاً الفرضَ (ومثله العمرة) وبعدَهُ القضاءَ إنْ كَانَ عليهِ وبعدَهُ النفلَ أو النيابةُ.

فإنْ غَيَّرَ هذا الترتيبَ فنَوَى التطوعَ أو النذرَ مثلاً وعليهِ فرضُ الإسلامِ لَغَتْ نيتُهُ ووَقَعَ عنْ حجةِ الإسلامِ وقِسْ علَيْهِ.

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unperformed, then one's hajj counts as fulfilling the prior one, regardless of the intention).

WAYS OF PERFORMING THE HAJJ

كيفية الدخول في النسك

j1.13 It is permissible to enter ihram with the intention for any of four ways of performing the hajj, which are, in order of superiority:

(1) hajj before 'umra (ifrad);

(2) 'umra first (tamattu');

(3) hajj and 'umra simultaneously (qiran);

(4) and the unconditional intention to perform hajj and 'umra (itlaq).

j1.13 يَجُوزُ الإحرامُ بالحجِّ إفراداً وتمتعاً وقراناً وإطلاقاً وأفضلُ ذلك الإفرادُ ثمَّ التمتعُ ثمَّ القرانُ ثمَّ الإطلاقُ.

HAJJ BEFORE 'UMRA (IFRAD)

الإفراد

j1.14 *Hajj before 'umra* (ifrad) means to perform hajj (O: i.e. enter ihram for hajj) first (O: before subsequently entering ihram for 'umra) at the ihram site for people from one's country (def: j2), then (O: after having completed one's hajj) to go outside the Sacred Precinct (Haram) and enter ihram for 'umra. (O: There is no special place for the second ihram: if one went to the closest place outside of the Sacred Precinct, it would suffice for this ihram of 'umra.) (N: People generally go to the Mosques of 'A'isha (Allah be well pleased with her) at al-Tan'im because it is close.)

j1.14 فالإفرادُ أنْ يَحُجَّ (أي أن يحرم بالحج) أولاً (أي قبل الإحرام بالعمرة) مِنْ ميقاتِ بلدِهِ ثمَّ (بعد فراغه منه) يَخْرُجَ (من الحرم) إلى الحلِّ فَيُحْرِمَ بالعمرة (ولا يتعين عليه مكان في الإحرام منه بل إذا خرج إلى أدنى مكان منه من أرض الحرم كان كافياً في الإحرام بالعمرة (ح: وقد اعتاد الناس الخروج إلى مسجد عائشة رضي الله عنها في التنعيم لقرب المسافة)).

'UMRA FIRST (TAMATTU')

التمتع

j1.15 *'Umra first* (tamattu') (N: perhaps the easiest and most practical way to perform hajj in our times, since one does not have to remain in a state of ihram throughout the week or more that one is generally there between the initial 'umra and subsequent hajj) means to perform the 'umra first (O: before the hajj) by:

j1.15 والتمتعُ أنْ يَعْتَمِرَ أولاً (أي قبل الإتيان بعمل الحج) مِنْ ميقاتِ بلدِهِ في

(a) entering ihram for it from the ihram site for people of one's own country;

(b) during the hajj months (def: j1.19);

(c) and then (O: after finishing the 'umra) performing hajj within the same year from Mecca (O: meaning to intend hajj from Mecca (n: by entering ihram there), if one wants to have to slaughter (n: in expiation, as at j12.6(I)), which relieves one of the necessity to return to the ihram site of people of one's country, though if one returns to that site to enter ihram for hajj, then one is no longer obliged to slaughter and one's ihram is valid).

It is recommended to enter ihram for hajj on 8 Dhul Hijja if one is performing 'umra first (tamattu') and has an animal to slaughter. But if one does not have an animal, (O: one enters ihram) on 6 Dhul Hijja (O: so that one's (N: three-day expiatory) fast (N: in place of slaughtering (def: j12.6(I))) takes place before standing at 'Arafa (A: since in the Shafi'i school, being in ihram for hajj is obligatory during these three days of fasting, though for the Hanafi school, these days may be fasted before entering ihram for hajj, after one's 'umra), thus fasting on the sixth, seventh, and eighth, and not on the Day of 'Arafa (N: the ninth) if one was able to fast on the sixth, though if not, then fasting the Day of 'Arafa is mandatory because of the previous inability. If one does not fast it, it is a sin and the delayed fast-day is a makeup, as its obligatory time is before the Day of 'Arafa). One enters ihram for hajj in Mecca from the door of one's lodgings. Then one proceeds in a state of ihram to al-Masjid al-Haram as a Meccan would (O: to perform a farewell circumambulation (tawaf al-wada', def: j11.2) of the Kaaba, which is desirable (mustahabb) for non-Meccans who are leaving Mecca to go to 'Arafa. For Meccans, the farewell circumambulation is obligatory when leaving Mecca, even for a short distance).

أشهر الحجّ ثمّ يَحُجّ مِنْ عامِهِ مِنْ مكة (أي ينوي حجه منها إنْ أراد لزوم الدم ولا يجب عليه العود إلى ميقات بلده فإن رجع إليه سقط الدم عنه وصح إحرامه). ويُنْدَبُ أنْ يُحْرِمَ المتمتعُ إنْ كانَ واجداً للهَدي بالحجّ ثامنَ ذي الحجة وإلاّ (أي وإن لم يكن واجداً له) فـ (يحرم) سادسَهُ (أي سادس ذي الحجة لأجل أن يقع الصوم قبل الوقوف فيصومه وما بعده وهو السابع والثامن ويكون يوم عرفة مفطراً ما لم يتضيق عليه الصوم بأن لم يصم يوم السادس فيتعين عليه حينئذ صوم يوم عرفة للتضيق المذكور وإلا كان آثماً بتأخير صوم يوم من هذه الثلاثة عن وقت الوقوف ويصير المؤخر قضاء لأن وقت صومها قبل الوقوف وجوباً) [ت: فيحرم المتمتع بحجه] في مكة مِنْ باب دارِهِ فيأتي المسجدَ (أي مسجد الحرام) محرماً (لطواف الوداع لأنه يستحب للخارج إلى عرفة وهي ليست وطناً له ولو كانت وطناً له لوجب بمفارقة مكة طواف الوداع ولو كانت المسافة قصيرة) كالمكيّ.

HAJJ AND 'UMRA SIMULTANEOUSLY (QIRAN)

القران

j1.16 *Hajj and 'umra simultaneously* (qiran) means to enter ihram intending both (O: hajj and

j1.16 والقِرانُ أنْ يُحْرِمَ بهما معاً (أي بالحج والعمرة) مِنْ ميقات بلدِهِ ويَقْتَصِرَ

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'umra) at the ihram site for people of one's country, and then perform only the rites of hajj. (O: Such that one does not perform an additional circumambulation or a second going between Safa and Marwa (def: j6), but rather once is sufficient to fulfill the obligation of both hajj and 'umra, because the actions of the 'umra have been incorporated into the actions of the hajj. The author mentions a second way of performing hajj and 'umra simultaneously (qiran) by saying:)

Or the person may enter ihram first for 'umra, and then before beginning his circumambulation (O: even if only by a single step), incorporate into his intention for 'umra the intention to perform hajj, this taking place in the months of hajj.

على أفعال الحجّ فقط (فلا يزيد لأجل العمرة طوافاً آخر ولا سعياً ثانياً بل الطواف الواحد كاف عنهما وكذلك السعي فقد اندرجت أفعال العمرة في أفعال الحج وقد أشار المصنف إلى الصورة الثانية للقران بقوله) أوْ يُحْرِمُ بالعمرة أولاً ثمّ قبلَ أنْ يَشْرَعَ في طوافها (ولو بخطوة) يُدْخِلَ عليها الحجَّ في أشهره.

THE OBLIGATION TO SLAUGHTER OR FAST FOR THOSE PERFORMING THE 'UMRA FIRST (TAMATTU') OR HAJJ AND 'UMRA SIMULTANEOUSLY (QIRAN)

فدية التمتع والقران

j1.17 A Person performing 'umra first (tamattu') or performing hajj and 'umra simultaneously (qiran) is obliged to slaughter (N: a *shah* (def: h2.5) or to fast, as mentioned below), though if the person performing hajj and 'umra simultaneously (qiran) lives within the Sacred Precinct (Haram) or within 81 km./50 mi. of it, or if the person performing 'umra first (tamattu') returns to the ihram site for people of his country (N: after his 'umra) to enter ihram for hajj, or lives within 81 km./50 mi. of the Sacred Precinct—in any of these cases he is not obliged to slaughter.

If one (O: performing 'umra first (tamattu') or hajj and 'umra simultaneously (qiran)) is obliged to slaughter but:

(1) lacks an animal there (O: i.e. in the Sacred Precinct (Haram), which is the place of the obligation to slaughter, *lacks* meaning absolutely, as when there is not an animal available that meets slaughter specifications (def: j14.2));

(2) or (O: there is an animal, but one lacks) its price (O: or has the price but needs the money for expenses and the like);

j1.17 ويلْزَمُ المتمتعَ والقارنَ دمٌ، ولا يجبُ على القارنِ إلاّ أنْ لا يكونَ مِنْ حاضري المسجدِ الحرامِ وهمْ أهلُ الحرم ومَنْ كانَ منهُ على دونِ مسافةِ القصرِ، ولا على المتمتعِ إلاّ أنْ لا يَعُودَ لإحرامِ الحجِّ إلى الميقاتِ وأنْ لا يكونَ مِنْ حاضري المسجدِ الحرامِ.

فإنْ فَقَدَ (كلٌ من القارنِ والمتمتعِ) الدمَ هناكَ (أي في أرضِ الحرم لأنها محل وجوب الذبح أي فقده أصلاً بأن لم يوجد ما يجزىء في الذبح) أوْ (وجده لكن فقد) ثمنهُ (أو وجده وكان محتاجاً إليه لنفقة أو

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(3) or finds that it is being sold for more than the normal price for that locality and time;

—then one must fast three days of the hajj. (O: For our school it is insufficient to fast them before the hajj, as opposed to the school of Abu Hanifa, in which it is permissible to fast them before the hajj (A: i.e. when performing the 'umra first (tamattu'), fasting them after having finished the initial 'umra and before entering ihram for hajj).) It is recommended that these days be before the Day of 'Arafa (O: time permitting, as when one fasts from 1 Dhul Hijja after having entered ihram for hajj. It is unlawful to delay these fast-days till after the Day of 'Arafa), and one must fast seven additional days after returning home (n: making a total of ten fast-days).

The time for current performance of the three fast-days ends after the Day of 'Arafa (O: and it is not permissible to fast any of them on 'Eid al-Adha or on the three days following the 'Eid), and if one thus delays them, it is obligatory to make them up before the other seven fast-days, by an interval between the three and seven fast-days equal to the interval that would have separated them had they been a current performance, namely, the time taken by the trip (O: from Mecca to home) plus four days (O: equal to the 'Eid and the three days that follow it).

غيرها) أوْ وَجَدَهُ يُبَاعُ بأكثرَ مِنْ ثمنِ مثلِهِ صامَ ثلاثةَ أيامٍ في الحجِّ (ولا يكفي صومها قبله عندنا بخلاف مذهب أبي حنيفة فإنه يجوز صومها قبل التلبس بالحج) ويُنْدَبُ كونُها قبلَ يومِ عرفةَ (من حيث اتساع الوقت كأن يصوم من أول ذي الحجة بعد التلبس بالإحرام به ويحرم تأخيرها عن يوم عرفة) وسبعةً إذا رَجَعَ إلى أهلِهِ (أي إلى وطنه).

وتَفُوتُ الثلاثةُ بتأخيرها عن يومِ عرفةَ (ولا يجوز صوم شيء منها في النحر ولا في أيام التشريق) ويَجِبُ قضاؤُها قبلَ السبعةِ ويُفَرِّقُ بينَها وبينَ السبعة بما كانَ يُفَرِّقُ في الأداءِ وهو مدةُ السيرِ (من مكة إلى وطنه) وزيادةُ أربعةِ أيامٍ (هي يوم العيد وأيام التشريق).

THE UNCONDITIONAL INTENTION TO PERFORM HAJJ AND 'UMRA (ITLAQ)

الإطلاق

j1.18 The *unconditional intention to perform hajj and 'umra* (itlaq) means to merely intend entering into the performance of rites, without specifying at the time of ihram that it is for hajj, 'umra, or hajj and 'umra simultaneously (qiran). After this, one may use it (O: the ihram, made unconditional by the intention) as one wishes (O: meaning to perform hajj only, 'umra only, or hajj and 'umra simultaneously (qiran) (A: though one may not use the unconditional intention as a way to perform 'umra first (tamattu') without having to either return to the ihram site to enter ihram for hajj, or to slaughter or fast (def: j1.17))).

j1.18 والإطلاقُ أنْ يَنْوِيَ الدخولَ في النسكِ مِنْ غيرِ أنْ يُعَيِّنَ حالةَ الإحرامِ أنهُ حجٌّ أوْ عمرةٌ أوْ قرانٌ ثمَّ لهُ بعدَ ذلكَ صرفُهُ (أي الإحرام المطلق بالنية) لِمَا شاءَ (أي الحج فقط أو العمرة فقط أو هما معاً).

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THE TIME OF YEAR TO ENTER IHRAM FOR HAJJ OR 'UMRA

الميقات الزماني للحج والعمرة

j1.19 It is not permissible to enter ihram for hajj other than during its months, namely, Shawwal, Dhul Qa'da, and the first ten nights of Dhul Hijja (A: with their days). If one enters ihram for hajj during non-hajj months, one's ihram counts for 'umra.

Entering ihram for 'umra is valid at any time of the year except for a person on hajj encamped at Mina for stoning (def: j10).

j1.19 ولاَ يَجُوزُ الإحرامُ بالحجِّ إلاّ في أشهرِه وهيَ شوالٌ وذو القعدةِ وعشرُ ليالٍ منْ ذي الحجةِ. فإنْ أحْرَمَ بهِ في غيرِها انْعَقَدَ عمرةً.

ويَنْعَقِدُ الإحرامُ بالعمرةِ كلَّ الوقتِ إلاّ للحاجِّ المقيمِ للرمي بمنىً.

*

j2.0 SITES FOR ENTERING IHRAM

j2.0 الميقات

j2.1 The sites for entering ihram for hajj or 'umra are as follows:

(1) (N: people going to hajj from the West by plane must enter ihram before boarding it, or during the flight before it passes the airspace that is even (def: j2.3) with the city of Rabigh, on the western coast of the Arabian Peninsula, this generally being announced on the plane);

(2) Medina residents (N: or those travelling through Medina to Mecca) enter ihram at Dhul Hulayfa;

(3) residents of the Syria-Palestine region, Egypt, and North Africa enter ihram at al-Juhfa;

(4) residents of al-Tihama in Yemen enter ihram at Yalamlam;

(5) residents of the Najd of Yemen and the Najd of the Hijaz enter ihram at Qarn;

(6) and residents of Iraq and Khurasan enter ihram at Dhat 'Irq, preferably at al-'Aqiq.

j2.1 ميقاتُ الحجِّ والعمرةِ: ذُو الحليفةِ لأهلِ المدينةِ والجحفةُ للشامِ ومصرَ والمغربِ ويلملمُ لتهامةَ اليمنِ وقرنٌ لنجدِ اليمنِ ونجدِ الحجازِ وذاتُ عرقٍ للعراقِ وخراسانَ والأفضلُ لهُ العقيقُ.

j2.2 Someone at Mecca, even if merely passing through, enters ihram for hajj in Mecca, and for

j2.2 ومَنْ في مكةَ ولَوْ مارّاً ميقاتُ حجِّهِ مكةُ وميقاتُ عمرتِهِ أدنى الحلِّ

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'umra must go (N: at least) to the nearest place outside of the Sacred Precinct (Haram), of which the best is al-Ji'rana, then al-Tan'im, and then al-Hudaybiya.

Someone residing closer to Mecca than the ihram site is to Mecca should enter ihram (O: for hajj or 'umra) at his residence.

والأفضلُ مِنَ الجعرانةِ ثمَّ التنعيم ثمَّ الحديبية.

ومَنْ مسكنُهُ أقربُ مِنَ الميقاتِ إلى مكةَ فميقاتُهُ (للحج أو العمرة) موضعُهُ (أي موضع إقامته).

j2.3 When coming by a route lacking an ihram site, one enters ihram when even with (O: on the left or right) the ihram site that is nearest.

j2.3 ومَنْ سَلَكَ طريقاً لا ميقات فيه أحْرَمَ إذا حاذى (من جهة اليمين أو اليسار) أقربَ المواقيتِ إليه.

j2.4 For someone residing farther from Mecca than the ihram site is, to enter ihram at the ihram site is superior (A: than for him to enter ihram at his own residence).

j2.4 ومَنْ دارُهُ أبعدُ مِنَ الميقاتِ إلى مكةَ فالأفضلُ أنْ لا يُحْرِمَ إلاَّ مِنَ الميقاتِ [وقيلَ مِنْ دارِهِ].

THE EXPIATION FOR NEGLECTING TO ENTER IHRAM AT THE PROPER SITE

فدية تجاوز الميقات من غير إحرام

j2.5 Someone intending hajj, 'umra, or both, who passes the ihram site (O: intentionally, absentmindedly, or in ignorance of it) and enters ihram somewhere closer to Mecca, is obliged to slaughter (def: j12.6(I)), though if he returns to the proper site and enters ihram there before having performed a single rite, he is no longer obliged to slaughter.

j2.5 ومَنْ جاوَزَ الميقاتَ وهوَ يُريدُ النسكَ (سواء كان حجاً أو عمرة أو هما معاً وسواء جاوز عامداً أو ناسياً أو جاهلاً) وأحْرَمَ دونَهُ لَزِمَهُ دمٌ فإنْ عادَ إليه محرماً قبلَ التلبسِ بنسكٍ سَقَطَ الدمُ.

*

j3.0 IHRAM (THE STATE OF PILGRIM SANCTITY)

j3.0 الإحرام

MEASURES RECOMMENDED PRIOR TO IHRAM

ما يندب قبل الإحرام

j3.1 When one wishes to enter ihram, it is recommended (even for a woman in menstruation) to perform the purificatory bath (ghusl), intending bathing for ihram. If there is not much water, one merely performs ablution (wudu).

j3.1 إذا أرادَ أنْ يُحْرِمَ اغْتَسَلَ (ندباً) ولوْ حائضاً بنيةِ غسلِ الإحرامِ. فإنْ قَلَّ ماؤُهُ تَوَضَّأَ فقطْ [وإنْ فَقَدَهُ بالكليةِ

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It is also recommended to shave pubic hair, pluck the underarms, clip the mustache, (O: trim the nails,) clean oneself of dirt, and wash the head.

تَيَمَّمَ]. ويَتَنَظَّفُ بحلقِ العانةِ ونتفِ الإبطِ وقصِّ الشـارب (وقلم الأظفار) وإزالـة الوسخِ بأنْ يَغْسِلَ رأسَهُ [بسدرٍ ونحوه].

OBLIGATORY MEASURES BEFORE IHRAM

ما يجب قبل الإحرام

j3.2 Then (O: if male) one:

(a) sheds any garments that have sewing in them (O: taking them off being obligatory for ihram, which is incomplete if one does not remove them before entering it);

(b) puts on a clean white *mantle* (Ar. rida', the rectangular piece of cloth worn over the shoulders that covers the upper body of a man in ihram) and *wraparound* (izar, the cloth worn around the lower body), and sandals (O: that do not enclose the foot, but rather reveal the toes and heels, as opposed to sandals that cover the toes, for wearing such sandals obliges one to slaughter (def: j12.6(II)));

(c) and it is recommended to perfume the body, though not one's clothes.

The above measures (j3.1) apply equally to women, although women do not divest themselves of sewn garments (O: a woman being obliged to cover all of her body except the face and hands, which, in ihram as well as in prayer, are not considered nakedness). It is recommended that she dye her hands and face with henna (O: a measure that is desirable, and whose nonperformance is without consequence). (A: But women do not use perfume.)

All of the foregoing are done before entering ihram.

j3.2 ثمَّ يَتَجَـرَّدُ (الـرجـل) عن المخيطِ (والتجرد في الإحرام واجب لا يتم إلا بالتجـرد قبله) ويَلْبَـسُ إزاراً ورداءً أبـيـضَـيْـنِ نظيفَيْنِ ونعلَيْنِ غيـرَ محيطَيْنِ (بـالـرجـل بأن تظهر أصـابـع الـرجلين والعقب منهما لا ما يغطي الأصابع، وإلا لزمته الفـديـة) ويُطَيِّبُ بدنَـهُ (نـدباً) ولاَ يُطَيِّبُ ثيابَهُ [(يراد من النفي عدم الندب)].

والمرأةُ في ذلكَ كالرجلِ إلا في نزعِ المخيطِ فإنَّهَا لا تَنْزِعُهُ (ويجب عليها ستر سائر بدنها إلا الوجه والكفين فإنهما ليسا بعـورة في الإحـرام كمـا في الصـلاة) وتَخْضِبُ كَفَّيْهَـا كلَيْهِمَـا بالحنـاء (وهـذا الخضب على سبيـل الاستحباب والندب لا يترتب على تركه شيء) وتُلَطِّخُ بهَا وجهَهَا.

هذا كلُّهُ قبلَ الإحرامِ.

ENTERING IHRAM

الشروع في الإحرام

j3.3 One then prays two rak'as, provided it is not a time when the prayer is forbidden (def: f13), intending the sunna of ihram. (O: It is sunna to

j3.3 ثمَّ يُصَلِّي ركعتَيْنِ في غيرِ وقتِ الكـراهةِ يَنْوِي بهمَا سنةَ الإحرامِ (ويسن

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recite al-Kafirun (Koran 109) in the first rak'a, and al-Ikhlas (Koran 112) in the second.)

Then one rises to start travelling to Mecca. As soon as one begins travelling to Mecca, one has entered ihram.

Ihram (O: which is an integral of hajj and 'umra) is the intention to enter into the performance of the rites (O: of hajj, 'umra, or both (qiran)). One intends in one's heart to perform the hajj for Allah Most High, if one wants to perform hajj; or to perform 'umra if one wants to; or both together if one wants to perform them simultaneously (qiran). It is recommended that one also pronounce this intention with the tongue.

أن يقرأ في الركعة الأولى قُلْ يا أيُّها الكافِرُونَ وفي الثانية سورة الإخلاص).

ثمَّ ينْهضُ في السيرِ (إلى جهة مكة) فإذا شَرَعَ فيه أحْرَمَ حينئذٍ.

والإحرامُ (الذي هو ركن من أركان الحج والعمرة) هوَ نيةُ الدخولِ في النسكِ (من حج أو عمرة أو هما المسمى بالقران) فيَنْوي بقلبِهِ الدخولَ في الحجِّ للهِ تعالى إنْ كانَ يُريدُ حجاً أو العمرةَ إنْ كانَ يُريدُها أو الحجَّ والعمرةَ إنْ كانَ يُريدُ القرانَ. ويُندَبُ أنْ يَتلفَّظَ بذلك أيضاً بلسانِهِ.

CHANTING "LABBAYK"

التلبية

j3.4 Then one chants "Labbayk" (n: as described below), raising the voice (O: enough to (N: at least) hear oneself, the *raising* being relative. For the duration of the time one is in ihram one raises it enough for those nearby to hear), though a woman should lower her voice when saying it (O: as raising the voice is offensive for a woman) saying: "Ever at Your service, O Allah, ever at Your service. Ever at Your service, You have no partner, ever at Your service. Verily, all praise, blessings, and dominion are Yours. You have no partner" (O: saying this three times).

Then (O: after chanting the above) one recites the Blessings on the Prophet (Allah bless him and give him peace) in a softer voice, asking Allah Most High for paradise (O: saying, "O Allah, I ask You for paradise and its blessings," and asking for His good pleasure and acceptance (ridwan)) and seeking refuge in Him from hell (O: saying, "I take refuge in You from Your wrath, and hell," and asking Him for whatever one wishes of the good of this world and the next).

It is desirable to chant "Labbayk" for the duration of one's ihram, whether standing, sitting, riding, walking, lying down, and even in a state of major ritual impurity (janaba), or for a woman in menstruation. It is particularly desirable when:

(1) changing from one state, time, or place to another, such as when going uphill or down, or getting on or off a vehicle;

j3.4 ثمَّ يُلبِّي رافعاً صوتَهُ (فيكون رفع صوته بقدر ما يسمع نفسه (ح): على الأقل) فالرفع نسبي وأما في دوام إحرامه فيرفع بحيث يسمع من يقربه) والمرأةُ تَخْفضُهُ (فيكره لها الرفع) فيَقُولُ: «لَبَّيْكَ اللهمَّ لَبَّيْكَ، لَبَّيْكَ لا شريكَ لكَ لَبَّيْكَ، إنَّ الحمدَ والنعمَةَ لَكَ والملكَ لا شريكَ لكَ» (ثلاثاً). ثمَّ (بعد فراغه من التلبية) يُصَلِّي على النبيِّ ﷺ بصوتٍ أخفضَ مِنْ ذلك ويَسْأَلُ اللهَ تعالى الجنةَ (بأن يقول: «اللهمَّ إنِّي أسْأَلُكَ الجنةَ ونعيمَها» ويسأله رضوانه) ويَسْتعيذُ بِهِ مِنَ النارِ (بأن يقول: «وأعُوذُ بكَ مِنْ سَخطِكَ والنارِ» ويدعو بما شاء وأحب من خيري الدنيا والآخرة).

ويُكْثِرُ التلبيةَ في دوامِ إحرامِهِ (استحباباً) قائماً وقاعداً وراكباً وماشياً ومضطجعاً وجنباً وحائضاً ويتأكَّدُ استحبابُها عند تغيُّرِ الأحوالِ والأزمانِ والأماكنِ كصعودٍ وهبوطٍ وركوبٍ ونزولٍ واجتماعِ رفاقٍ

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(2) meeting groups of people;

(3) at the approach of dawn, night, or daytime;

(4) after prayer;

(5) and in all mosques.

One does not chant "Labbayk" while circumambulating the Kaaba or going between Safa and Marwa (O: as these have their own particular invocations). It is undesirable to stop chanting it in order to speak, though if someone greets one with "as-Salamu 'alaykum," it is recommended (O: but not obligatory) to return his greeting.

When one sees something pleasing (O: or displeasing) during ihram, it is recommended to say, "Ever at Your service, truly, the real life is the life of the hereafter" (O: and if one sees the like while not in ihram, one says, "O Allah, truly, the real life is the life of the hereafter," without saying "Labbayk."

وعند السَّحَر وإقبال الليل والنهار وأدبار الصلاة وفي سائر المساجد ولا يُلَبِّي في طوافه وسعيه (لأن لهما أذكاراً خاصة) ولا يَقْطَعُ التلبية بكلام (استحباباً) فإنْ سَلَّمَ عليه إنسانٌ رَدَّ عليه (ندباً لا وجوباً) فإذا رأى شيئاً فأعْجَبَهُ (أو كرهه) قال: (على سبيل الندب) «لبَّيْكَ إنَّ العيشَ عَيْشُ الآخرة» ([هذا إذا كان الرائي محرماً] وإلا قال: «اللهمَّ إنَّ العيشَ عيشُ الآخرة» من غير ذكر لبيك).

THINGS UNLAWFUL WHILE IN IHRAM

محرمات الإحرام

j3.5 Five things are unlawful (dis: j12.6) when one has entered ihram. (n: Namely:

(1) sewn garments on men (dis: j3.6);

(2) using perfume (j3.7);

(3) removing hair or nails (j3.8);

(4) sexual intercourse or foreplay (j3.13);

(5) and hunting (j3.21).)

j3.5 وإذا أحْرَمَ حَرُمَ عليه خمسةُ أشياء

SEWN GARMENTS ON MEN

لبس المخيط

j3.6 The first thing unlawful in ihram is wearing sewn clothing such as shirts, trousers, moccasins (khuff, def: e6), anything else sewn (N: *sewn* meaning that which is for wearing, not just any

j3.6 أحدُها لبسُ المخيط كالقميص والسراويل والخفّ [والعَباء] وكلُّ مخيطٍ (ح: فالمراد بالمخيط ما

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sewing, as a patched mantle or wraparound are permissible), and anything that encircles the body as sewn garments do, such as (N: those seamed) by being woven or felted together and the like.

It is unlawful to cover the head with anything, sewn or unsewn, that is generally considered a headcover (O: such as a hat, cloth, bandage (N: or blanket while sleeping)).

It is permissible while in ihram to carry a (N: sewn) bag or the like, or to tote a basket (O: on one's head, though it is unlawful if one intends it as a headcover). (A: It is permissible to carry an umbrella held in the hand for protection against the sun.)

It is not permissible to fasten one's mantle by tucking part of it through a hole, tying it together, passing a string through one end and then the other, or by tying a string to each of the two ends (N: though it is permissible to fasten it together with safety pins).

It is permissible to tie one's wraparound (O: one end to the other) or tie a string over it (O: so that it holds it fast, like a drawstring, and one may likewise use a waistband) (N: the reason for the permissibility (n: of tying the *wraparound* but not the mantle) being that if the wraparound were to fall it would reveal one's nakedness, unlike the mantle). (n: Safety pins are permissible to fasten the wraparound, and are useful to make pleats at the waistline by safety pinning two or three tucks of cloth there to gather the wraparound at the waist and leave more freedom of movement for the legs below.) (A: A belt may also be used to hold one's wraparound at the waist.)

صنع بشكل خاص للبس، لا كل ما خيط، إذ لا يضر إزار أو رداء مرقع) وما استدارته كاستدارة المخيط بنسج وتلبيد ونحو ذلك.

ويحرم عليه أيضاً ستر رأسه بمخيط وغيره مما يعد في العادة ساتراً (كقلنسوة، وخرقة وعصابة).

فلا يضره [الاستظلال بالمحمل و] حمل عِدْل وزنبيل (على رأسه، وإن قصد بحمل القفة ونحوه الستر حرم) ونحو ذلك.

وليس له أن يزر رداءه (بأن يدخل رداءه في العرى) ولا أن يعقده ولا أن يخلله بخلال (بأن يدخل مخيطاً في طرفه وينفذه في الطرف الآخر) ولا أن يربط خيطاً في طرفه ثم يربطه بالطرف الآخر.

وله عقد الإزار (بأن يعقد طرفه بطرفه الآخر) وشد خيط عليه (أي على الإزار من فوقه حتى يستمسك وأن يجعله مثل الحجزة، ويدخل فيها التكة بكسر التاء) (ح: لأن سقوط الإزار يؤدي إلى انكشاف العورة وليس الرداء كذلك).

PERFUME

الطيب

j3.7 The second thing that is unlawful after entering ihram is using perfume, such as musk, camphor, or saffron on one's clothing, body, or bedding. It is also unlawful to smell roses, violets, lilies, or anything fragrant; to sprinkle rose water or flower water about; or to use scented oils (N: or scented bar soap), whether to smell them or to apply them to any part of the body.

It is also unlawful:

j3.7 الثاني: يحرم بعد الإحرام الطيب في الثوب والبدن والفراش كالمسك والكافور والزعفران وشم الورد والبنفسج والنيلوفر وكل مشموم طيب.

ويحرم رش ماء الورد وماء الزهر، وكذلك الدهن المطيب يحرم شمه ودهن جميع بدنه به [كدهن الورد والبنفسج وما أشبه ذلك].

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(1) to apply unscented oils like olive, sesame, and so on to the beard or scalp, unless one is bald (A: in which case it can be used on the skin of the head), though it is permissible to smell them or apply them to any of the body (O: except the hair of the head and face);

(2) to eat food in which the use of a cosmetic is manifest, whether in taste, color, or scent, such as the scent of rose water, the color of saffron or its taste, or the taste of ambergris in cooked grain and the like;

(3) or to use scented perspiration deodorant or eyeliner.

وإنْ كانَ غيرَ مطيبٍ كزيتٍ وشيرجٍ ونحوِه حَرُمَ أنْ يَدْهُنَ بِهِ لحيتَهُ ورأسَهُ إلاّ أنْ يكُونَ أصلعَ، ولاَ يَحْرُمُ شَمُّهُ ودهنُ جميعِ بدنِهِ (ما عدا شعر الرأس واللحية وشعور الوجه).

ويَحْرُمُ عليْه أكلُ طعامٍ فيهِ طِيبٌ ظاهرٌ طعمُهُ أوْ لونُهُ أوْ ريحُهُ كرائحةِ ماءِ الوردِ ولونِ الزعفرانِ وطعمِهِ وطعمِ العنبرِ في الجوارشِ ونحوِه.

ويَحْرُمُ دواءُ العَرَقِ (أي ما يزيل رائحته الكريهة منه) والكحلِ المطيَّبَيْنِ.

REMOVING HAIR OR NAILS

إزالة الشعر أو قلم الأظفار

j3.8 The third thing that is unlawful while in ihram (O: for both men and women, but only if one does so deliberately, knowing that it is unlawful, voluntarily, and remembering that one is in ihram) is:

(1) cutting or plucking hair (O: i.e. removing it by any means whatever), even if only part of a single hair (by shortening it), and whether from the head, underarms, pubes, mustache, or any other part of the body (A: the obligatory expiation for one hair is to give 0.51 liters of food to the poor in Mecca, and for two hairs, twice that amount. For three or more, a full expiation (def: j12.6(II)) is obligatory);

(2) or clipping fingernails or toenails, even if only part of one (A: my above remark on expiations also applies to nails).

j3.8 الثالثُ: يَحْرُمُ (على المحرم ذكراً كان أو أنثى بشرط كونه عامداً عالماً بالتحريم مختاراً ذاكراً للإحرام) حلقُ شعرِه ونتفُهُ (والمراد إزالته بأي نوع كان) ولوْ بعضَ شعرةٍ تقصيراً مِنْ رأسِهِ أوْ إبطِهِ أوْ عانتِهِ أوْ شاربِهِ وسائرِ جسدِهِ، وتقليمُ أظافرِهِ ولوْ بعضَ ظفرٍ.

THE EXPIATION FOR VIOLATING THE CONDITIONS OF IHRAM

فدية محظورات الإحرام

j3.9 It is necessary to slaughter a *shah* (def: h2.5) (n: or perform one of the other alternatives mentioned below at j12.6(II)) when one is in ihram and one:

j3.9 فإذا تَطَيَّبَ أوْ لَبِسَ أوْ حَلَقَ

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(1) uses perfume;

(2) wears a prohibited garment (def: j3.6);

(3) removes three or more hairs, fingernails, or toenails (def: j12.6(II(1 2)));

(4) touches another person with desire in a nongenital area;

(5) or applies unscented oil to one's hair (dis: j3.7).

ثلاث شعراتٍ أوْ قلَّمَ ثلاث أظفارٍ أوْ باشَرَ فيمَا دونَ الفرجِ بشهوةٍ أوْ دَهَنَ لزِمَهُ شاةٌ.

j3.10 A person obliged to perform such an expiation may fulfill it (A: any time thereafter) in any of the following ways:

(1) by slaughtering a *shah* (def: h2.5) (O: and distributing its meat to the poor and those short of money in the Sacred Precinct);

(2) by distributing 6.09 liters of food (def: h7.6) to the poor in charity, giving 1.015 liters to each person;

(3) or by fasting three days (O: even if unconsecutive).

j3.10 وهوَ مُخَيَّرٌ بينَ ذَبْحِهَا (أي الشاة وتفرقة لحمها على فقراء الحرم ومساكينه) وبينَ أنْ يُطْعِمَ ثلاثةَ آصُعٍ لكلِّ مسكينٍ نصفُ صاعٍ وبينَ صومِ ثلاثةِ أيامٍ (ولو مفرقة).

ACCIDENTALLY REMOVING A HAIR

فدية إزالة الشعر والظفر

j3.11 It is unlawful during ihram to comb one's beard (N: or hair) or run one's fingers through it if one knows that hair will be pulled out.

When one runs the fingers through one's beard or washes the face and then notices hair in one's hand, then if one knows one pulled it out while doing this, an expiation (def: j12.6(II)) must be paid, though if one knows that it came out by itself, or does not know whether it did or not, then one is not obliged to expiate.

j3.11 فإنْ عَلِمَ أنهُ إنْ سَرَّحَ لحيتَهُ أوْ خَلَّلَها انْتَتَفَ شعرٌ حَرُمَ ذلكَ. فلوْ خَلَّلَ أو غَسَلَ وجهَهُ فرَأَى في كفِّهِ شعراً وعَلِمَ أنهُ هوَ الذي نَتَفَهُ حينَ غَسَلَ وجهَهُ أوْ خَلَّلَ لزِمَهُ الفديةُ. وإنْ عَلِمَ أنهُ كانَ قدِ انْتَتَفَ بنفسِهِ أوْ لمْ يَعْلَمْ هذا ولا ذاكَ فلا شيءَ عليْهِ.

j3.12 The following things necessitate the expiation (def: j12.6(II)), but when done out of need, are not unlawful:

j3.12 وإنِ احْتَاجَ إلى حلقِ الشعرِ

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(1) having to cut one's hair because of illness, heat, or lice;

(2) having to wear something sewn because of intense heat or cold;

(3) or having to cover one's head.

لمرضٍ أوْ حَرٍّ وكثرةِ قملٍ أو احْتَاجَ إلى لبسِ المخيطِ للحرِّ أو البردِ أوْ إلى تغطيةِ الرأسِ فلَهُ ذلكَ ويَفْدِي [(شاة مجزئة في الأضحية وهي للتخيير كما مر)].

SEXUAL INTERCOURSE OR FOREPLAY

الجماع في الفرج والمباشرة فيما دونه

j3.13 The fourth thing unlawful while in ihram is sexual intercourse or touching a nongenital area with sexual desire, such as kissing, hugging, or touching lustfully.

j3.13 الرابعُ: يَحْرُمُ الجماعُ في الفرجِ والمباشرةُ فيمَا دونَ الفرجِ بشهوةٍ كالقُبلةِ والمعانقةِ واللمسِ بشهوةٍ.

j3.14 If one intentionally has sexual intercourse before finishing one's 'umra, or while on hajj before partial release from ihram (def: j9.13), then:

(a) this nullifies the hajj or 'umra;

(b) it is nonetheless obligatory to complete the hajj or 'umra from the point at which it was spoiled to the end;

(c) it is obligatory to make it up as soon as possible, even if the spoiled hajj or 'umra was merely supererogatory;

(d) and it is obligatory to pay the expiation (def: below) (O: for the male, not the female, who need not do anything, though it is a sin if she participated willingly) (A: the more reliable position is that if the woman was unwilling, none of the above ((a), (b), (c), or (d)) apply to her, though if willing, (a), (b), and (c) apply to her but not (d)).

j3.14 فإنْ جَامَعَ عمداً في العمرةِ قبلَ فراغِهَا أوْ في الحجِّ قبلَ التحلُّلِ الأولِ فَسَدَ نسكُهُ ويَجِبُ عليْهِ إتمامُهُ كمَا كَانَ يُتِمُّهُ لوْ لمْ يُفْسِدْهُ، والقضاءُ على الفورِ، وإنْ كَانَ الفاسدُ تطوعاً، و(يجب على الواطىء وخرج بقولنا على الواطىء الموطوءة فلا شيء عليها غير الإثم إن كانت مطاوعة له) الكفارةُ.

j3.15 The expiation for the above (j3.14) is to slaughter (A: and distribute to the poor of the Sacred Precinct, immediately):

(1) a camel (O: i.e. a male or female that meets slaughter specifications (def: j14.2)), but if this is not possible (N: within the days of that hajj), then one must slaughter:

j3.15 وهي بدنةٌ (أي واحد من الإبل ذكراً كان أو أنثى بصفة الأضحية) فإنْ لمْ

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(2) a cow, but if not possible, then:

(3) seven *shah*s (def: h2.5), but if not possible, then:

(4) one estimates the cost of a camel and how much food (def: h7.6) this would buy, and then gives that much food (N: to the poor in Mecca), but if not possible, then:

(5) one fasts one day for every 0.51 liters of food that would have been given had (4) been done. (N: One may fast anywhere, but it is not permissible to delay it without an excuse.)

يَجِدْ فبقرةً فإنْ لمْ يَجِدْ فسبعُ شياهٍ فإنْ لمْ يَجِدْ قَوَّمَ البدنةَ دراهمَ والدراهمَ طعاماً ويَتَصَدَّقُ بِهِ فإنْ لمْ يَجِدْ صَامَ عنْ كلِّ مدٍّ يوماً.

j3.16 A person making up a hajj or 'umra nullified by sexual intercourse must enter ihram for the makeup hajj or 'umra at the same ihram site as the original (n: nullified) hajj or 'umra, though if one entered ihram for it at a location closer to Mecca (N: than the ihram site (dis: j2.5)), one must enter ihram for the makeup at the (O: prescribed) site (N: for those of one's country).

j3.16 ويَجِبُ أنْ يُحْرِمَ بالقضاءِ مِنْ حيثُ أحْرَمَ بالأداءِ (أي قبلَ الفسادِ) فإنْ كَانَ أحْرَمَ بِهِ منْ دونِ الميقاتِ (ح: أي من مكانٍ أقربَ منه إلى الحرمِ) أحْرَمَ بالقضاءِ منَ الميقاتِ (الشرعي).

j3.17 When someone (O: in ihram who intends to make up a nullified hajj) is accompanied on the makeup hajj by the wife he made love to, he is recommended to separate himself from her while they are at the place where they had intercourse.

(N: Such a makeup counts as the original hajj or 'umra would have counted: if it was obligatory, it counts as the obligatory one; if supererogatory, as supererogatory; and if vowed, as vowed.)

j3.17 ويُنْدَبُ (للمحرمِ الذي أرادَ أن يقضي الحجَّ الفاسدَ) أنْ يُفَارِقَ الموطوءةَ في المكانِ الذي وَطِئَهَا فيهِ إنْ قَضَى وهيَ مَعَهُ. (ح: ويقعُ القضاءُ عنِ النسكِ الفاسدِ فإن كان فرضاً وقع فرضاً وإن كان نفلاً وقع نفلاً وكذا المنذور).

j3.18 If a man has sexual intercourse after partial release from ihram (def: j9.13), it does not nullify his hajj (n: i.e. does not entail j3.14(a,b,c,d)), though he must pay an expiation (O: of the type discussed at j12.6(II)).

j3.18 وإنْ جَامَعَ بعدَ التحللِ الأولِ لمْ يَفْسُدْ وعليْهِ شاةٌ (ودمُ الشاةِ المذكورةِ على التخييرِ والتقديرِ [كما مرّ]).

j3.19 If one has sexual intercourse absentmindedly (O: forgetting one is in ihram or out of ignorance of its prohibition or because of being forced), then one is not obliged to do anything (A: i.e. none of j3.14(a,b,c,d)).

j3.19 وإنْ جَامَعَ ناسياً (للإحرامِ أو جاهلاً بالتحريمِ أو مكرهاً) فَلا شيءَ عليْهِ.

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THE PROHIBITION OF MARRYING WHILE IN IHRAM

تحريم عقد النكاح في الإحرام

j3.20 It is unlawful while in ihram to marry, or to marry someone to another (zawwaja, def: m3.2(a)) (O: whether one does so oneself or through an agent). If one does so, the marriage contract is invalid.

It is offensive while in ihram to get engaged to marry, or to serve as a witness for a marriage contract.

j3.20 ويَحْـرُمُ عليْـهِ أنْ يَتَـزَوَّجَ أوْ يُزَوِّجَ (إمـا بنفسـه أو بوكـالـة) فإنْ فَعَـلَ فالعقدُ باطلٌ.

ويُكْـرَهُ لهُ أنْ يَخْطُبَ امـرأةً وأنْ يَشْهَدَ على نكاحٍ.

HUNTING

الصيد

j3.21 The fifth thing that is unlawful while in ihram is:

(1) to kill any wild game that may be eaten by Muslims;

(2) or to kill the offspring of matings between game animals that may be eaten by Muslims and game animals that may not be eaten by Muslims.

Someone in ihram is obliged to pay the expiation (def: below) whenever such an animal dies at his hands, is destroyed by an act of his, or is injured, in which case one must expiate in proportion to the part damaged.

j3.21 الخـامسُ يَحْرُمُ أنْ يَصْطَادَ كلَّ صيدٍ برّيٍّ مأكـولٍ أوْ مَا تَوَلَّدَ منْ مأكولٍ وغيرِ مأكولٍ.

فإنْ مَاتَ في يدِهِ أوْ أتْلَفَهُ أوْ أتْلَفَ جزاءَهُ لزِمَهُ الجزاءُ.

THE EXPIATION FOR HUNTING

فدية الصيد

j3.22 If the animal killed has a domestic counterpart, one may fulfill the expiation in any of the following ways:

(1) to slaughter a head of domestic livestock that is like the wild animal which was killed (O: *like* meaning an approximation, not actual resemblance. The criterion is the condition of the animal, not its value. One expiates a game animal that was, for example, large, small, healthy, diseased, fat, thin, or defective, with a head of

j3.22 فإنْ كانَ لهُ (أي للصـيـد المقتـول) مثـلٌ منَ النعم (والمراد بالمثل التقـريب لا حقيقـة المماثلة وتراعى في الصـورة لا في القيمـة فيفـدى الكبيـر والصغيـر والصحيـح والمريض والسـمين والهـزيـل والمعيب بمثله رعـاية للمماثلة

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livestock of the same description, heeding the correspondences. It is a necessary condition that the wild animal and the head of livestock share, if the animal was defective, the same type of defect, such as blindness (N: though it is permissible, indeed superior, to pay a healthy one for a defective one or a whole one for one that is lacking some part));

بشرط اتحاد جنس العيب كالعور) (ح: ويجوز إخراج الصحيح عن معيب والكامل عن الناقص بل هو أفضل) وَجَبَ مثلُهُ من النعم يُخَيَّرُ بينَهُ وبينَ طعامٍ بقيمتِهِ (أي قيمة المثل وبينَ صومٍ لكلِّ مدٍّ يومٌ.

(2) to estimate the value of the like head of livestock, and distribute an equal value of food (def: h7.6) to the poor;

(3) or to fast one day for every 0.51 liters of food (N: that would have been bought had (2) been done).

j3.23 If the animal killed does not have a domestic counterpart, then one may fulfill the expiation in any of the following ways:

j3.23 وإنْ لمْ يكنْ لهُ مثلٌ وَجَبَتْ القيمةُ إلَّا الحمامَ [وما غبَّ وهَدَرَ] فشاةٌ (تجب في قتل حمامة واحدة) ثمَّ إنْ شاءَ يُخْرِجُ بالقيمةِ طعاماً أوْ يَصُومُ لكلِّ مدٍّ يوماً.

(1) to distribute funds to the poor which equal the value of the game animal, although if the animal was a pigeon, one is obliged to slaughter a *shah* (def: h2.5) (O: which is obligatory for killing even a single pigeon);

(2) to buy food equal to the animal's value and distribute it as charity;

(3) or to fast one day for each 0.51 liters of food (N: that would have been bought had (2) been done).

j3.24 The prohibition of all things unlawful while in ihram applies to both men and women, except for not wearing sewn clothing (def: j3.6) and not covering the head, which are restricted to men.

A woman, however, may not veil her face in ihram (dis: (j12.6(II(3)))). If she wants to conceal it from people, she may drape something in front provided it does not touch her face (N: such as a veil worn over a cap's visor), though if it touches it without her intention, it is of no consequence.

j3.24 ويَحْرُمُ ذلك كلُّهُ على الرجلِ والمرأةِ إلَّا فعلَ التجرد من المخيط وكشفَ الرأسِ فيَخْتَصُّ وجوبُهُ بالرجلِ. لكنْ يَلْزَمُ المرأةَ كشفُ وجهِها فإنْ أرادتْ الستر عن النَّاسِ سَدَلَتْ عليْهِ شيئاً بشرطِ أنْ لا يَمَسَّ وجهَها. فإنْ مَسَّهُ مِنْ غيرِ اختيارِها لمْ يَضُرَّ.

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j3.25 It is permissible when in ihram to scratch one's head or body with one's fingernails as long as this does not remove any hair.

It is also permissible in ihram to kill lice (N: or other insects harmful to humans), though if one kills a louse, it is recommended to expiate its death by giving charity, even if only a single bite of food.

j3.25 وللمُحْرِم حكُّ رأسه وجسده بأظفاره بحيث لا يقطعُ شعراً.

ولهُ قتلُ القمل [لكنْ يُكْرَهُ أنْ يفلي المحرمُ رأسَهُ] فإنْ قتلَ منها قملةً نُدِبَ أنْ يتصدَّقَ ولوْ بلقمةٍ.

*

j4.0 ENTERING MECCA

j4.0 سنن دخول مكة

j4.1 It is recommended when one wants to enter Mecca:

(1) to perform the purificatory bath (ghusl) outside of the city with the intention of entering Mecca;

(2) to enter in the daytime, and from the Mu'alla gate of Thaniyyat Kada' (N: a pass from the direction of Jedda);

(3) to walk barefoot, provided one does not apprehend something unclean (najasa);

(4) not to annoy anyone by jostling;

(5) and after entering, to proceed to al-Masjid al-Haram.

j4.1 إذا أرادَ دخولَ مكةَ اغْتَسَلَ (نَدْباً) خارجَ مكةَ بنيةِ دخولِ مكةَ ويَدْخُلُ بالنهارِ مِنْ بابِ المُعلَّى مِنْ ثنيةِ كداءَ ماشياً حافياً إنْ لمْ يَخفْ نجاسةً ولاَ يُؤذي أحداً بمزاحمةٍ ولْيَمْضِ نحوَ المسجدِ الحرامِ.

WHEN ONE FIRST SEES THE KAABA

الدعاء عند رؤية البيت

j4.2 When one first sees the Kaaba, it is recommended to lift the hands and say: "O Allah, increase this house in nobility, honor, reverence, and dignity. Increase those going on hajj or 'umra who honor and reverence it in honor, reverence, and piety. O Allah, You are Peace, the Source of Peace: O Lord, raise us after death in peace." And then one asks Allah for whatever one wishes of religious matters or those of this world.

j4.2 فإذا وَقَعَ بصرُهُ على البيتِ رَفَعَ يديْهِ حينئذٍ [وهوَ يَرَاهُ مِنْ خارجِ المسجدِ مِنْ موضعٍ يقالُ لهُ رأسُ الردمِ فهناكَ يقفُ ويَرْفَعُ يديْهِ] ويَقولُ: «اللهُمَّ زِدْ هذا البيتَ تشريفاً وتكريماً وتعظيماً ومهابةً وزِدْ مَنْ شرَّفَهُ وعظَّمَهُ مِمَّنْ حجَّهُ واعْتَمَرَهُ تشريفاً وتكريماً وتعظيماً وبِراً اللهُمَّ أنتَ السلامُ ومنكَ السلامُ فحَيِّنا ربَّنا بالسلامِ» ويَدْعُو بِمَا أحَبَّ مِنْ أمْرِ الدينِ والدنيا.

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j5.0 CIRCUMAMBULATING THE KAABA (TAWAF)

j5.0 الطواف

j5.1 Then one enters al-Masjid al-Haram from the Bani Shayba door (O: even if it is out of one's way, as it is sunna) prior to getting one's luggage down or finding a place to stay and so forth (O: such as deciding to rest or to eat; all this should be put off until after circumambulating the Kaaba). Rather (n: by turns), some of one's party should stay with the luggage while others go to the mosque (O: to circumambulate), and after they finish, they return to watch the luggage so the rest can go.

(O: The arrival circumambulation (tawaf al-qudum) is desirable for anyone who enters al-Masjid al-Haram, whether in ihram or not.)

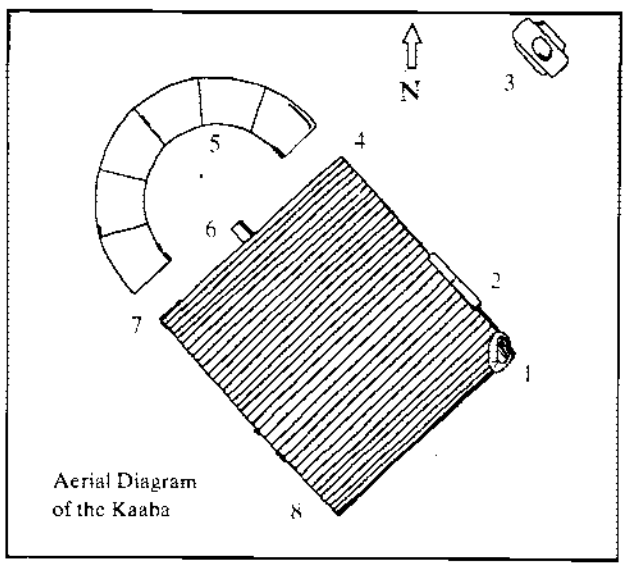
j5.1 ثُمَّ يَدْخُلُ المسجدَ منْ بابِ بني شيبة (وإنْ لمْ يكنْ في طريقه للاتباع) قبلَ أنْ يَشْتَغِلَ بحطِّ رحلِه وكراءِ منزلٍ وغيرِ ذلكَ (كتعويل على استراحة أو أكل فإنه يؤخر كل ذلك عن الطواف) بلْ يَقِفُ بعضُ الرفقةِ عند المتاعِ وبعضُهُمْ يَأتي المسجدَ (للطواف) بالنوبةِ (وطوافُ القدومِ مستحب لكل داخلٍ محرماً كان أو غير محرم).

HOW TO CIRCUMAMBULATE THE KAABA

كيفية الطواف

j5.2 Prior to circumambulating the Kaaba one proceeds to the Black Stone (diagram: 1) (O: next

j5.2 ويَقْصِدُ (عند ابتداء الطواف) الحجرَ الأسودَ (وهو في الركن الذي يلي



Aerial Diagram of the Kaaba

to the Kaaba's door, on the east corner), drawing near to it, if one can do so without hurting others

باب الكعبة من جانب المشرق) ويَدْنُو منهُ بشرط أنْ لا يُؤْذِي أحداً بمزاحمةٍ

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by jostling. One faces the Black Stone, places the hand on it, and without a word, kisses the stone thrice and touches the forehead upon it thrice. (O: Touching, kissing, and placing the forehead on the stone are only sunna for women when the circumambulation area is vacant, whether in the night or day.)

فَيَسْتَقْبِلُهُ (بصدره ويستلمه بيده) ثمّ يُقَبِّلُهُ بلا صوتٍ ويَسْجُدُ عليه ويُكرِّرُ التقبيلَ والسجودَ عليه ثلاثاً [(والمراد بالسجود عليه وضع الجبهة عليه للاتباع] وإنما يسن الاستلام والتقبيل والسجود للمرأة إذا خلا المطاف ليلاً أو نهاراً).

j5.3 One ceases to chant "Labbayk" at this point, not to resume until after having finished both circumambulating the Kaaba and going between Safa and Marwa (def: j6). One puts the center (N: of the top edge) of one's mantle under the right arm and its two ends over the left shoulder so that the right shoulder is left bare (dis: j5.13, second par.).

One begins circumambulating by first standing facing the Kaaba with the Black Stone on one's right and the Yamani corner (diagram: 8) on one's left, standing back from the stone a little towards the Yamani corner (n: i.e. behind the black stripe in the marble pavement, extending out from the stone, that marks the beginning of one's circumambulation). One should intend performing the circumambulation for Allah Most High (O: though this intention is only necessary for a supererogatory or a departure circumambulation, not for an obligatory or an arrival circumambulation, since the intention to perform the rites of hajj or 'umra (def: j3.3) includes the intention for the latter two types of circumambulation).

Then one:

(1) places the hand on the Black Stone, and then kisses it and places the forehead on it thrice, as mentioned above (A: i.e. it is done again here to begin the circumambulation, just as it was done before circumambulation (j5.2));

(2) says "Allahu akbar" three times;

(3) and adds, "O Allah, out of faith in You and to affirm Your book, fulfill Your covenant, and follow the sunna of Your prophet Muhammad (Allah bless him and give him peace)."

j5.3 ومِنْ هنا يَقْطَعُ التلبيةَ ولا يُلَبِّي في طوافٍ ولا سعيٍ حتّى يَفْرُغَ منهُمَا.

ثمّ يَضْطَبِعُ فَيَجْعَلُ وسطَ ردائه تحت عاتقِه الأيمنِ ويطرَحُ طرفَيْه على عاتقِه الأيسرِ ويَتْرُكُ منكبَهُ الأيمنَ مكشوفاً.

ثمّ يَشْرَعُ في الطوافِ فَيَقِفُ مستقبلَ البيتِ ويَكُونُ الحجرُ الأسودُ منْ جهةِ يمينِهِ والركنُ اليمانيُّ منْ جهةِ شمالِهِ ويَتَأَخَّرُ عنِ الحجرِ قليلاً إلى جهةِ الركنِ اليمانيِّ.

فَيَنْوِي الطوافَ للهِ تعالى (وهذه النية إنما تكون في طواف النفل أو طواف الوداع لا في طواف الفرض ولا في طواف القدوم لشمول نية النسك لهذه الأنواع) ثمّ يَسْتَلِمُ الحجرَ بيدِه ثمّ يُقَبِّلُهُ ويَسْجُدُ عليْهِ ثلاثاً كما تقدّمَ ويُكَبِّرُ ثلاثاً ويَقُولُ: «اللهمَّ إيماناً بكَ وتصديقاً بكتابكَ ووفاءً بعهدكَ واتِّباعاً لسنةِ نبيِّكَ ﷺ» [(وإيماناً وما بعده مفعول لأجله]).

j5.4 Then one moves sideways (A: as is recommended) to the right, passing in front of all of the

j5.4 ثمّ يَمْشي إلى جهةِ يمينِهِ ماراً على جميعِ الحجرِ الأسودِ بجميعِ بدنِهِ

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Black Stone with all of the body, while facing it. When past the stone, one turns (O: from facing it) so that the Kaaba is on one's left and then proceeds to circumambulate it. (O: If one did this (N: kept the Kaaba on one's left while passing the stone) from the beginning and neglected to face the stone, it would likewise be permissible.)

وهو مستقبلهُ فإذا جاوزهُ انْفَتَلَ (عن الاستقبال) وجعلَ البيت عنْ يساره ويطُوفُ (ولو فعل هذا من أول الأمر وترك الاستقبال جاز).

j5.5 At the Kaaba's door (diagram: 2) one says, "O Allah, verily this house is Your house, the sanctuary Your sanctuary, the safety Your safety, and this is the station of him who took refuge in You from fire" (N: i.e. the Station of Ibrahim (diagram: 3), though some hold the words mean "him who *takes* refuge," alluding to oneself).

j5.5 ويقُولُ عند الباب: «اللهُمَّ إنَّ هذا البيتَ بيتُكَ والحرمَ حرمُكَ والأمنَ أمنُكَ وهذا مقامُ العائذِ بكَ منَ النار».

j5.6 When one reaches the corner (diagram: 4) by the opening of the Hijr (n: a semicircular wall that stands apart from the Kaaba (diagram: 5)), one says, "O Allah, I take refuge in You from doubt, from ascribing partners to You, from discord, hypocrisy, evil traits, and from bad turns of fortune in money, spouse, and children."

j5.6 فإذا وصلَ إلى الركنِ الذي عند فتحة الحجْر قالَ: «اللهُمَّ إنّي أعُوذُ بكَ منَ الشكِّ والشركِ والشقاقِ والنفاقِ وسوءِ الأخلاقِ وسوءِ المُنْقَلَبِ في المالِ والأهلِ والولد».

j5.7 When even with the rainspout (N: called the Spout of Mercy (Mizab al-Rahma), at the top of the Kaaba (diagram: 6)), one says: "O Allah, shade me in Your shade on a day when there is no shade but Yours. Give me to drink from the cup of Your prophet Muhammad (Allah bless him and give him peace), a wholesome drink after which I will never thirst."

j5.7 ويقُولُ قبالةَ الميزاب: «اللهُمَّ أظلَّني في ظِلِّكَ يومَ لا ظِلَّ إلاَّ ظِلُّكَ واسْقِني بكأسِ نَبِيِّكَ محمدٍ ﷺ شرباً هنيئاً لا أظمأُ بعدهُ أبداً».

j5.8 Between the third corner (diagram: 7) and the Yamani corner (diagram: 8), one should say, "O Allah, make this a pious hajj, a rewarded effort, an accepted work, and a transaction that will never perish, O All-powerful and Oft-forgiving one."

j5.8 ويقُولُ بينَ الركنِ الثالثِ واليمانيِّ: «اللهمَّ اجْعَلْهُ حجّاً مبروراً وسَعْياً مشكوراً وعملاً مقبولاً وتجارةً لنْ تَبُورَ يا عزيزُ يا غفورُ».

j5.9 When one reaches the Yamani corner, one does not kiss it, but touches it and then kisses one's hand.

j5.9 فإذا بلغَ الركنَ اليمانيَّ لمْ يقبِّلْهُ بلْ يَسْتَلِمُهُ ويُقَبِّلُ يَدَهُ بعدَ ذلكَ.

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j5.10 One does not kiss any of the Kaaba (O: meaning that it is not required, though if one kisses any of its parts, it is not offensive, but rather is good) except the Black Stone. Nor does one touch any of it except the Yamani corner, which is the one before the Black Stone.

j5.10 ولا يُقَبِّلُ شيئاً من البيتِ (أي لا يطلب تقبيله فلو قبل شيئاً من أجزائه لم يكره بل هو حسن) إلاّ الحجرَ الأسودَ ولاَ يَستلِمُ شيئاً إلاّ اليمانيَّ وهوَ الذي قبلَ الحجرِ الأسودِ.

j5.11 When one reaches the Black Stone, one has completed a single round (O: provided its conditions (def: j5.16) have been met).

j5.11 ثمّ إذا وَصَلَ إلى الحجرِ الأسودِ فَقَدْ كَمَلَتْ لهُ طوفةٌ (واحدة مع الإتيان بشروطها).

j5.12 One goes around the Kaaba seven times (O: the seventh ending where one began, at the Black Stone. One's circumambulation is incomplete as long as even a span remains between oneself and the place even with the stone).

j5.12 يَفْعَلُ ذلك سبعاً (من المرات والسابعة تنتهي بما ابتدأ به وهو الحجر فلا يتم طوافه ما بقي عليه مقدار شبر من الطواف قبل الوصول إليه).

TROTTING FOR THE FIRST THREE ROUNDS

الرمل

j5.13 It is sunna in the first three rounds of circumambulation to hasten one's gait (N: if one can do so without harming others) (O: taking close steps, without running) which is termed *trotting* (ramal) (O: and which is desirable for men only, not women).

Both trotting and baring the right shoulder (def: j5.3) are only called for in circumambulations that are followed by going between Safa and Marwa (def: j6). If one wishes to go between Safa and Marwa after one's arrival circumambulation, then one does the two sunnas (O: both trotting and baring the shoulder at this point, but when one later performs one's going-forth circumambulation (tawaf al-ifada, def: j9.10), one does not do these two sunnas because that circumambulation is not followed by going between Safa and Marwa (N: if one has already gone between them before)).

But if one wishes to go between Safa and Marwa after the going-forth circumambulation (O: which is superior), one postpones the two (O: sunnas of trotting and baring the shoulder) until then.

While trotting, one says, "O Allah, make this a pious hajj, a rewarded effort, and forgive my

j5.13 ويُسَنُّ في الثلاثةِ الأوَلِ منها الإسراعُ (ح: بشرط عدم إيذاء الآخرين) (بأن تكون الخطا متقاربة من غير عدو) ويُسَمَّى الرملَ (وهو مستحب للذكر لا للمرأة) وإنما يُشْرَعُ هوَ والاضطباعُ في طوافٍ يَعْقُبُهُ سعيٌ فإنْ رَامَ السعيَ عَقِبَ طوافِ القدومِ فعلهُمَا (أي الرملَ والاضطباعَ ولا يفعلهما بعد طواف الإفاضة لأنه طواف لا يعقبه سعي) وإنْ رَامَ عقبَ طوافِ الإفاضةِ (وهو الأفضل) أخَّرَهُمَا (أي الرمل والاضطباع) إليهِ.

ويقولُ في رملِهِ: «اللهمّ اجْعَلْهُ حَجّاً مبروراً وسَعْياً مشكوراً وذنباً مغفوراً».

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sins."

In the last four rounds of one's circumambulation, it is sunna to proceed at one's normal pace, while saying: "My Lord, forgive me, show me mercy, and pardon that which You know. Verily You are the All-powerful and the Most Generous. Our Lord, give us what is good in this world and the next, and keep us from the torment of hell." This supplication is particularly recommended in the odd-numbered rounds of the circumambulation (O: as they are superior. Reciting the Koran while circumambulating is better than making supplications that have not reached us through prophetic hadith, though supplications from hadith are superior to reciting the Koran during it).

وأنْ يَمْشِيَ على مهلِهِ في الأربعةِ الأخيرةِ ويَقُولَ فيها: «ربِّ اغفرْ وارْحَمْ واعْفُ عمّا تَعْلَمُ إنّكَ أنتَ الأعزُّ الأكرمُ ﴿رَبَّنا آتِنا في الدُّنيا حسنةً [الآية (التي هي] وفي الآخرةِ حسنةً وقِنا عذابَ النّارِ﴾» وهو في الأوتارِ آكدُ (لأنها أفضل وقراءةُ القرآنِ في الطوافِ أفضلُ من الدعاءِ غيرِ المأثورِ وأما المأثورُ فهو أفضلُ منها).

j5.14 It is recommended to kiss the Black Stone in each round (O: and to place the forehead on it, each three times) and to touch the Yamani corner, particularly in the odd-numbered rounds.

If it is not possible to kiss the Black Stone because of crowds or because one fears to hurt people (O: or be hurt) by jostling, one may touch it with one's hand and then kiss the hand. If this is not possible, one may touch it with a stick (O: or the like, such as a scarf) and kiss the stick. If this too is impossible, then one points to it (O: or the Yamani corner) with the hand (O: and it is sunna to kiss one's hand).

j5.14 ويُقبِّلُ الحجرَ الأسودَ في كلِّ طوفةٍ (ويندبُ أيضاً وضعُ الجبهةِ عليه كذلكَ ثلاثاً ثلاثاً) وكذا يَسْتَلِمُ اليمانيَّ، وفي الأوتارِ آكدُ.

فإنْ عَجَزَ عنْ تقبيلِهِ (أي الحجرِ الأسودِ) لزحمةٍ أوْ خافَ أنْ يُؤذِيَ الناسَ (أو يتأذى هو منهم) اسْتلَمَهُ بيدِهِ وقبَّلَها فإنْ عَجِزَ اسْتَلَمَهُ بعصاً (ونحوه كمنديل) وقبَّلَها فإنْ عَجزَ أشارَ إليْهِ (وكذا أشار إلى الركن اليماني) بيدِهِ (ويسن تقبيل يده إذا أشار إليه بها).

j5.15 A noteworthy detail here is that there is a *buttress* at the base of the Kaaba that resembles a ledge and slide. It is part of the Kaaba, and when one kisses the stone, one's head is in the space above the buttress. So one is obliged to keep one's feet motionless until one finishes kissing the stone and straightens up, after which one continues circumambulating. (N: One may not move one's feet as part of the circumambulation while one's head is within the space above the buttress, as it nullifies that particular round because of the condition (dis: j5.16(i)) that circumambulation be done *around* the Kaaba, and not within its confines.) If, when leaning over to kiss the stone, one's feet move even a finger's width towards the Kaaba's

j5.15 وهنا دقيقةٌ وهوَ أنَّ بجدارِ البيتِ شاذروانَ كالصفّةِ والزلاقةِ وهوَ منَ البيتِ فعندَ تقبيلِ الحجرِ يكونُ الرأسُ في هواءِ الشاذروانِ فيَجِبُ أنْ يُثَبِّتَ قدميْهِ إلى فراغِهِ منَ التقبيلِ ويعْتدِلَ قائماً ثمَّ بعدَ ذلكَ يَمُرُّ.

فإنِ انْتَقَلَتْ قدماهُ إلى جهةِ البابِ وهوَ متطامنٌ في التقبيلِ ولوْ قدرَ إصبعٍ ومضى

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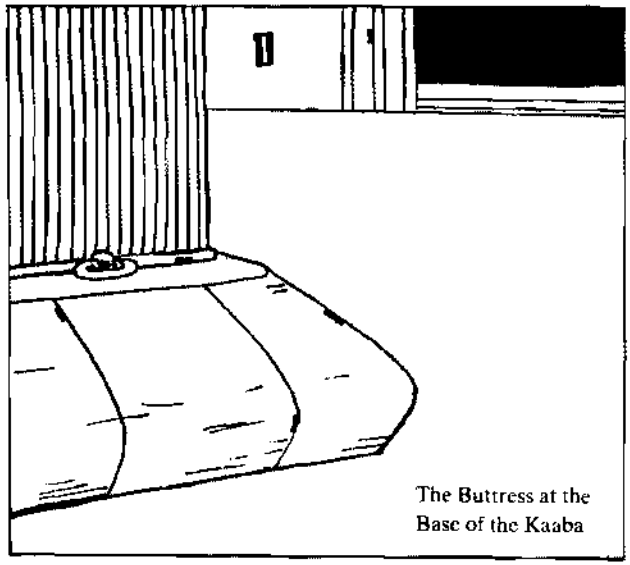
door, and after this, one continues circumambulating, then that particular round does not

كَما هو لَمْ تَصِحَّ تلكَ الطوفةُ (أي وما



The Buttress at the Base of the Kaaba

count (O: nor do the others that come after it, if one limits oneself to just those seven, considering the spoiled one as a valid round. But if one adds an extra round (N: to make up for the invalid one), then one's circumambulation is valid).

It is more precautionary when one has straightened up from kissing the stone, to step back to the left towards the Yamani corner (j5.2 diagram: 8) enough to ensure that one is where one was before kissing the stone. (N: The same is true of touching the Yamani corner with one's hand.)

بعدها إنْ اقتصر على هذه السبعة مع جعل الفاسدة طوفة. وأما إذا زاد على الفاسدة طوفة أخرى صح الطواف) فالاحتياط إذا اعْتَدَلَ منَ التقبيل أنْ يرْجِعَ إلى جهةِ يسارِه وهيَ جهةُ الركنِ اليمانيِّ قدراً يَتحقَّقُ بِهِ أنهُ كَمَا كَانَ قبلَ التقبيلِ.

THE CONDITIONS OF A VALID CIRCUMAMBULATION

شروط الطواف

j5.16 The conditions of a valid circumambulation (O: of any kind, obligatory or nonobligatory) are:

(a) that one's nakedness (def: f5.3) be clothed, because the round is invalid whenever any of one's nakedness shows, even a single hair of a woman's head (O: meaning that the particular

j5.16 وواجباتُ الطوافِ (بأنواعه من فرض ونفل [وأراد بالواجبات الشروط لأن هذه المذكورات كلها شروط]) سترُ العورةِ فمَتَى ظَهرَ شيءٌ منها ولوْ شعرةً منْ شعرِ رأسِ المرأةِ لمْ تَصِحَّ (هذه الطوفة

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round in which it showed is invalid, provided it was done intentionally. If it happened inadvertently and the woman immediately covered it (A: *immediately* meaning after no more than the time required to say "Subhan Allah"), then it does not invalidate that round, though if she does not cover it until after it is showing, the subsequent round takes the place of the above-mentioned invalid one);

(b) ritual purity (O: from minor (hadath) and major (janaba) impurity) (n: though for Hanafis, touching a marriageable member of the opposite sex (N: despite being unlawful) does not nullify one's ablution (*Maraqi al-falah sharh Nur al-idah* (y126), 17), and considering the difficulty of avoiding it at a contemporary hajj, taking the dispensation seems a virtual necessity);

(c) to be free from impure substances (najasa) on one's person, clothing, and the place of walking while circumambulating;

(d) that it take place within al-Masjid al-Haram;

(e) that one's circumambulation comprise seven full rounds;

(f) that it begin from the Black Stone, as described above, and that one pass by all of the stone with all of one's body, for if one begins from another part of the Kaaba, then the round does not count until one reaches the stone, from whence it begins;

(g) that one keep the Kaaba on one's left and move towards the door (j5.2 diagram: 1–2);

(h) that each round be outside of the Hijr (diagram: 5) such that one does not enter the opening between the Hijr and the Kaaba and then exit through the other opening;

(i) and that all of the body of the person circumambulating be exterior to all parts of the Kaaba, such that while walking around it, one does not put one's hand in the space above the buttress previously mentioned (j5.15), which viol-

التي ظهرت فيها؛ هذا مع العمد، فإذا ظهر منها ذلك مع نسيان وسترتها حالاً فلا تبطل تلك الطوفة وأما إذا سترتها بعد ظهورها فيقال ما بعد هذه الطوفة يقوم مقامها وتلغى هي أي الطوفة المذكورة) وطهارةُ الحدث (سواء كان الحدث أصغر أو أكبر) والنجس في البدن والثوب وموضع الطواف، وأنْ يَطُوف داخل المسجد الحرام، وأنْ تَسْتَكْمل سبعَ طوفاتٍ، وأنْ يَبْتَدِئَ طوافَهُ من الحجرِ الأسود كما تَقَدَّم وأنْ يَمُرَّ عليه بكلِّ بدنه فإنْ بَدأ مِنْ غيره لمْ يَعْتَدَّ بذلك إلى أنْ يَصِلَ إليه فمنهُ ابتداءُ طوافه، وأنْ يجْعَلَ البيتَ على يساره ويَمُرَّ إلى جهة الباب وأنْ يَطُوف خارجَ الحجر ولا يَدْخُلَ مِنْ إحدى فتحتيه ويَخْرُجَ مِنَ الأخرى، وأنْ يَكُونَ كلُّهُ خارجاً عنْ كلِّ البيتِ فإذا طَافَ لا يَجْعَلُ يَدَهُ في هواءِ الشاذروان فيَكُونُ

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ates the condition of being wholly outside all of the Kaaba while making one's rounds.

ما خرج بكلّه عنْ كلّ البيت.

j5.17 Everything besides the above conditions is sunna (N: not obligatory), such as trotting in the first three rounds, the various supplications, and the other things previously mentioned.

j5.17 وما سوى ذلك سُنّ كالرمل والدعاء وغيرهما ممّا تقدّم.

TWO RAK'AS AFTER CIRCUMAMBULATION

ركعتا الطواف

j5.18 When one has finished circumambulating, and after putting one's mantle over both shoulders, it is recommended to pray two rak'as for the sunna of circumambulation (O: and it is best to perform them) behind the Station of Ibrahim (j5.2 diagram: 3). In the first rak'a, one recites al-Kafirun (Koran 109), and in the second, al-Ikhlas (Koran 112).

After this, one supplicates Allah from behind the station (O: if one prays there. Otherwise, one may perform the two rak'as (N: in order of superiority) in the Hijr (diagram: 5), al-Masjid al-Haram, the Sacred Precinct, or whenever and wherever one wishes to pray them, and they remain a current performance until the day one dies. It is sunna to recite the suras aloud in these two rak'as if performed at night, and to recite them to oneself if performed during the day. It is desirable to make the supplication related by Jabir, who said that the Prophet (Allah bless him and give him peace) prayed two rak'as behind the station (N: of Ibrahim) and then said;

"O Allah, this is Your city, and al-Masjid al-Haram, and Your inviolable house, and I am Your slave, the son of Your slave and bondwoman. I have come to You with many sins, mistakes, and wicked acts, and this is the station of him who took refuge in You from the fire; so forgive me, verily You are the All-forgiving and Compassionate. O Allah, You have called Your servants to Your inviolable house, and I have come, asking for Your mercy and seeking what pleases You, and You are the Rewarder, so forgive me and have mercy on me, verily You have power over everything").

j5.18 ثمّ إذا فرغ من الطواف صلّى ركعتين سنة الطواف خلف المقام (أفضل) ويُزيل هيئة الاضطباع فيهما ويقرأ في الأولى بعد الفاتحة ﴿قُلْ يَا أَيُّهَا الْكَافِرُونَ﴾ وفي الثانية ﴿قُلْ هُوَ اللَّهُ أَحَدٌ﴾.

ثمّ يَدْعُو خلف المقام (إن صلاهما فيه فإن لم يفعلهما خلف المقام ففي الحجر ففي المسجد ففي الحرم فحيث شاء متى شاء ولا يفوتان إلا بموته. ويسن أن يجهر بهما ليلاً ويسر فيما عدا ذلك ويستحب أن يدعو بما روي عن جابر أن النبي ﷺ صلّى خلف المقام ثم قال: «اللهمّ هذا بلدك والمسجد الحرام وبيتك الحرام وأنا عبدك ابنُ عبدك وابنُ أمتك أتيتك بذنوب كثيرة وخطايا جمّة وأعمال سيئة وهذا مقامُ العائذ بك من النار فاغفر لي إنّك أنت الغفورُ الرحيمُ. اللهمّ إنّك دعوت عبادك إلى بيتك الحرام وقد جئت طالباً رحمتك مُتّبعاً مرضاتك وأنت مُثيبٌ فاغفر لي وارحمني إنّك على كلّ شيء قديرٌ).

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Then one returns to the Black Stone and touches it (O: kisses it, and bows one's head upon it).

ثمَّ يَرْجِعُ فَيَسْتَلِمُ الحجرَ الأسودَ (ويقبِّله ويسجد عليه).

*

j6.0 GOING BETWEEN SAFA AND MARWA (SA'Y)

j6.0 السعي بين الصفا والمروة

j6.1 Then it is recommended to exit through the Safa door of al-Masjid al-Haram if one wishes to go between Safa and Marwa immediately. (O: It is necessary for the validity of going between Safa and Marwa (N: for hajj) prior to the Day of 'Arafa that one do so after one's arrival circumambulation (tawaf al-qudum) (N: though one may not do so on an 'umra first (tamattu') hajj, for which the initial circumambulation and going between Safa and Marwa are part of one's 'umra (dis: j12.2(c))), nor do so after a supererogatory or farewell circumambulation.) One may postpone it until after the going-forth circumambulation (tawaf al-ifada, def: j9.10) (O: which is superior).

j6.1 ثمَّ يَخْرُجُ مِنْ بابِ الصفا (ندباً) إنْ أرادَ أنْ يَسْعى الآنَ (فالشرط في صحة تقديم السعي أن يكون بعد طواف قدوم لا بعد نفل أو وداع). ولهُ تأخيرُهُ إلى بعدَ طوافِ الإفاضةِ (وهو أفضل [من تقديمه لوقوعه بعد الوقوف وبعد طواف مفروض]).

HOW TO GO BETWEEN SAFA AND MARWA

كيفية السعي

j6.2 One begins from Safa. It is recommended:

(1) for men (O: not women) to climb upon Safa the height of a person, so that one can see the Kaaba through the mosque's door, and to face the Kaaba;

(2) to say: "La ilaha illa Llah, Allahu akbar," and "There is no god but Allah alone, without partner. His is the dominion, His the praise. He gives life and causes to die, all good is in His hand, and He has power over everything. There is no god but Allah alone, without partner. He kept His promise, give His slave the victory, and routed the Confederates alone. There is no god but Allah. We worship none but Him, making our religion sincerely for Him, though unbelievers be averse";

j6.2 فيَبدأُ بالصفا. فيَرْقى عليها الرجلُ (لا المرأة) قدرَ قامةٍ حتى يَرى البيتَ مِنْ بابِ المسجدِ فيَسْتقبِلُ القبلةَ ويُهلِّلُ ويُكبِّرُ ويقولُ: «لا إلهَ إلاَّ اللهُ وحدَهُ لا شريكَ لهُ لهُ الملكُ ولهُ الحمدُ يُحيي ويُميتُ بيدِهِ الخيرُ وهوَ على كلِّ شيءٍ قديرٌ. لا إله إلاَّ اللهُ وحدَهُ لا شريكَ لهُ أنْجزَ وعدَهُ ونصرَ عبدَهُ وهزَمَ الأحزابَ وحدَهُ لا إلهَ إلاَّ اللهُ ولا نَعْبُدُ إلاَّ إيَّاهُ مخلصينَ لهُ الدينَ ولوْ كرِهَ الكافرونَ» ثمَّ

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(3) to supplicate for whatever one wishes (O: which is called for here because it is one of the places where prayers are answered. 'Umar (Allah be well pleased with him) used to supplicate lengthily here);

(4) and to repeat (2) and (3) a second and third time.

يدْعُو بمَا أَحَبَّ (وإنما طلب الدعاء هنا لأنه من جملة الأمكنة المستجاب فيها الدعاء وكان عمر يطيل الدعاء هنالك). ثمَّ يُعِيدُ هذا الذكر كلَّهُ والدعاء ثانياً وثالثاً.

j6.3 Then one descends from Safa and walks (O: towards Marwa) at one's normal pace until within three meters of the first green marker suspended from the left wall. Here one runs (N: women walk) until midway to the second green marker, at which midpoint one resumes one's usual pace until one reaches Marwa. One climbs Marwa and says the same invocation as was said at Safa. This is *once*.

Then one descends from Marwa and returns, walking and running at the proper places, until one reaches Safa. This is twice.

At Safa one says the same invocation and supplication, and then goes back to Marwa, which is three times.

One repeats the process until one has completed seven times, finishing at Marwa.

j6.3 ثمَّ يَنْزِلُ منَ الصفَا فيَمْشِي (متوجهاً إلى المروة) على هيئتِهِ حتَّى يَبْقَى بينَهُ وبينَ الميلِ الأخضرِ المعلقِ بركنِ المسجدِ على يسارِهِ قدرُ ستةِ أذرعٍ فحينئذٍ يَسْعَى سعياً شديداً حتَّى يَتَوَسَّطَ بينَ الميلينِ الأخضرينِ [اللذَيْنِ أحدُهُما في ركنِ المسجدِ والآخرُ متصلٌ بدارِ العباسِ] فحينئذٍ يَتْرُكُ السعيَ الشديدَ ويَمْشِي على هيئتِهِ حتَّى يأتيَ المروةَ فيَصْعَدَ عليها ويأتي بالذكرِ الذي قيلَ على الصفَا والدعاءِ فهذِهِ مرةٌ.

ثمَّ يَنْزِلُ فيَمْشِي في موضعِ مشيِهِ ويَسْعَى في موضعِ سعيِهِ إلى الصفَا فهذِهِ مرتانِ.

فيُعِيدُ الذكرَ والدعاءَ ثمَّ يَذْهَبُ إلى المروةِ فهذِهِ ثلاثةٌ يَفْعَلُ ذلكَ حتَّى تَكْمُلَ سبعاً يَخْتِمُ بالمروةِ.

THE OBLIGATORY ELEMENTS OF GOING BETWEEN SAFA AND MARWA

واجبات السعي

j6.4 The obligatory elements (O: i.e. conditions for the validity) of going between Safa and Marwa are four:

(a) to begin at Safa. If one begins at Marwa and walks to Safa, this does not count and one's going between them is not considered to have begun until one reaches Safa;

(b) to traverse the entire distance. It would be invalid if one neglected even a single span or less of the distance. One must begin by putting one's heel against the wall at Safa, and finish at

j6.4 وواجباتُ السعي (أي شروط صحته) أربعةٌ أحدُها أنْ يَبْدَأَ بالصفَا فلوْ بَدَأَ بالمروةِ إلى الصفَا لمْ تُحْسَبْ هذِهِ المرةُ وحينئذٍ (حين إذ بلغ الصفَا) ابْتَدَأَ السعيُ، الثاني: قطعُ جميعِ المسافةِ فلوْ تَرَكَ شبراً أوْ أقلَّ منْهُ لمْ يَصِحَّ فيَجِبُ أنْ يُلصِقَ عقبَهُ بحائطِ الصفَا، فإذَا انْتَهَى إلى

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Marwa by putting the toes against the wall there (N: the course has now been enlarged and paved so that one's going between them is complete without having to reach the walls that are currently there. Rather, between the two sides of the paved track (n: the lanes for going and coming) there is a smaller track for wheelchair patients, and the ends of this smaller track currently represent the minimal distance);

(c) to complete seven times: from Safa to Marwa equals one, from Marwa to Safa is another one, and so on, as mentioned above. If doubts arise while going between them as to how many times it has been—or while circumambulating the Kaaba, how many rounds have been done—then one assumes one has done the least number one is sure of and completes the rest (O: though if the doubts arise after finishing, one need not do anything);

(d) and that going between Safa and Marwa take place after the going-forth circumambulation (tawaf al-ifada, def: j9.10) or else after one's arrival circumambulation, provided that standing at 'Arafa does not intervene between the arrival circumambulation and going between Safa and Marwa (dis: j6.1).

المروة ألصق رؤوس الأصابع بحائط المروة [ثمّ إذا ابتدأ الثانية ألصق عقبه بحائط المروة ورؤوس أصابعه بحائط الصفا وهكذا أبداً يلصق عقبه بما يذهب منه ورؤوس أصابعه بما يذهب إليه]، الثالث: استكمال سبع مرات بحسب ذهابه من الصفا إلى المروة مرة ومن المروة إلى الصفا مرة وهكذا كما تقدّم فلو شك فيه أو في أعداد الطوفات أخذ بالأقل وكمّل (ولو شك بعد الفراغ منها فلا شيء عليه)، الرابع: أن يسعى بعد طواف الإفاضة أو القدوم بشرط أن لا يفصل بينهما (أي بين طواف القدوم والسعي) الوقوف بعرفة.

THE SUNNAS OF GOING BETWEEN SAFA AND MARWA

سنن السعي

j6.5 The sunnas of going between Safa and Marwa are those previously mentioned (j6.2–3), to have ablution (wudu), that one's nakedness (def: f5.3) be clothed, and to say while between Safa and Marwa: "My Lord, forgive, show mercy, and overlook that which You know. Verily You are the Most Powerful and Generous. O Allah, our Lord, give us what is good in this world and the next, and protect us from the torment of hell."

If one recites the Koran (A: while going between them) it is better (O: than anything besides the invocations that have reached us in hadith (A: i.e. the above), which are better here than reciting the Koran).

j6.5 وسننه ما تقدّم وأن يكون على طهارة وستارة ويقول بينهما: «ربّ اغفر وارحم وتجاوز عمّا تعلم إنك أنت الأعزّ الأكرم اللهمّ ربّنا آتنا في الدنيا حسنة وفي الآخرة حسنة وقنا عذاب النار».

ولو قرأ القرآن فهو أفضل (من غير الذكر الوارد وأما الذكر الوارد فهو أفضل من قراءة القرآن).

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j6.6 It is not recommended to repeat going between Safa and Marwa.

j6.6 ولا يُنْدَبُ تكرارُ السعي.

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j7.0 THE WAY TO 'ARAFA

j7.0 الخروج إلى عرفة

j7.1 On 7 Dhul Hijja it is recommended for the imam (A: i.e. the caliph or his representative) to give a sermon after the noon prayer (zuhr) in Mecca (O: at the Kaaba), instructing the pilgrims about the rites they will soon perform, and ordering them to go forth on the following day (O: the morning of the eighth) to Mina.

j7.1 فإذا كانَ سابعُ ذي الحجةِ نُدِبَ للإمامِ أنْ يَخْطُبَ خطبةً واحدةً بعدَ صلاةِ الظهرِ بمكةَ (عند الكعبة) يُعَلِّمُهُم فيها مَا بينَ أيديهم من المناسكِ ويأمرُهُمْ بالخروجِ إلى منىً منَ الغدِ (أي في أولِ النهارِ يومَ الثامنِ).

j7.2 The imam goes forth with them after the dawn prayer (subh) on 8 Dhul Hijja.

He prays the noon, midafternoon, sunset, and nightfall prayers with them at Mina, and they spend the night and pray the following dawn prayer there. When the sun rises over the mountain at Mina that is called Thabir, they proceed to 'Arafa.

Spending the night and staying at Mina during this time are a sunna (O: and not part of the hajj rites. If one does not spend the night at Mina at all, or go there, it does not entail any consequences) that many people no longer do, but come to 'Arafa at the end of the night with lighted candles. This lighting of candles is a disgraceful innovation (O: as is their coming there a day or two before 9 Dhul Hijja, a mistake that contravenes the sunna, and through which they miss many other sunnas).

j7.2 ثمَّ يَخْرُجُ يومَ الثامنِ بعدَ صلاةِ الصبحِ إلى منىً فَيُصَلِّي (الإمامُ بهم) الظهرَ والعصرَ والمغربَ والعشاءَ بمنىً ويَبيتُ [(أي الإمامُ ومن معه)] بها ويُصَلِّي الصبحَ. فإذا طَلَعَتِ الشمسُ على جبلٍ بمنىً يُسَمَّى ثبيراً سارَ إلى الموقفِ وهذا المبيتُ بمنىً والإقامةُ بها إلى هذا الوقتِ سنةٌ (ليس من المناسكِ في شيءٍ فلو لم يبيتوا بها أصلاً ولم يدخلوها فلا شيءَ عليهم) قَدْ تركَها كثيرٌ من الناسِ فإنَّهُمْ يأتُونَ الموقفَ سَحَراً (آخرَ الليلِ) بالشمعِ الموقَدِ وهذا الإيقادُ بدعةٌ قبيحةٌ (ومن البدعةِ دخولهم قبلَ يومِ التاسعِ بيومٍ أو يومين فهو خطأٌ مخالفٌ للسنةِ وتفوتهم بسببِ ذلك سننٌ كثيرةٌ).

j7.3 It is sunna on the way to 'Arafa to say: "O Allah, to You I betake myself, seeking Your noble countenance. Forgive me my sins, make my hajj a pious one, show me mercy, and do not disappoint me"; and to do much of chanting "Labbayk," invocation (dhikr), supplication, and Blessings on the Prophet (Allah bless him and give him peace).

j7.3 ويقولُ في مسيرِهِ: «اللهُمَّ إليكَ تَوَجَّهْتُ ولوجْهِكَ الكريمِ [(والوجهِ الذاتِ)] أَرَدْتُ فاجْعَلْ ذَنْبي مغفوراً وحَجِّي مبروراً وارْحَمْني ولا تُخَيِّبْني». ويُكْثِرُ التلبيةَ والذكرَ والدعاءَ والصلاةَ على النبيِّ ﷺ.

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j7.4 When the pilgrims reach a place called Namira (N: the site of a large mosque) just before 'Arafa, they stop, and do not immediately enter 'Arafa. When the time for the noon prayer comes, it is sunna for the imam to give two sermons before the prayer, and then they pray, joining the noon and midafternoon prayers together. This too is a sunna that few follow.

j7.4 فإذا وصلوا إلى موضع يُسمّى نمرة قبل دخول عرفة نزلوا هناك ولا يدخلون حينئذٍ عرفة. فإذا زالت الشمس فالسنة أن يخطب الإمام خطبتين ثم يصلي الظهر والعصر جمعاً. وهي سنة قلّ من يفعلها أيضاً.

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j8.0 STANDING AT 'ARAFA

j8.0 الوقوف بعرفة

j8.1 Then they enter 'Arafa after the sunna bath (ghusl) for standing at 'Arafa, chanting "Labbayk" in lowliness and humility.

j8.1 ثمّ يدخلون عرفة بعد أن يغتسلوا للوقوف مُلبّين خاضعين.

THE SUNNAS OF STANDING AT 'ARAFA

سنن الوقوف

j8.2 It is recommended to stand exposed to the sun (O: and not take shade beneath a tent, umbrella, or other, unless there is an excuse such as harm from exposure) facing the direction of prayer (qibla) with one's heart fully attentive and not occupied with this-worldly matters, and to do much of chanting "Labbayk," reciting the Blessings on the Prophet (Allah bless him and give him peace), asking Allah's forgiveness, supplicating, and weeping, for here tears are shed and mistakes annulled.

The greater part of one's words should be: "There is no god but Allah alone, without partner. His is the dominion, His the praise, and He has power over everything." And one should pray for one's family, friends, and all Muslims.

j8.2 ويُستحبّ أن يقف بارزاً للشمس (ولا يستظل تحت خيمة أو تحت شمسية أو تحت غيرهما إلا لعذر بأن يتضرر إن برز) مستقبلَ القبلة حاضرَ القلب فارغاً من الدنيا ويُكثرَ التلبيةَ والصلاةَ على النبيّ والاستغفارَ والدعاءَ والبكاءَ فثمّ تُسكَبُ العبراتُ وتُقالُ العثراتُ.

وليكنْ أكثرُ قولِه: «لا إلهَ إلاّ اللهُ وحدَهُ لا شريكَ لهُ لهُ الملكُ ولهُ الحمدُ وهوَ على كلِّ شيءٍ قديرٌ» وليدعُ لأهلِه وأصحابِه ولسائرِ المسلمينَ.

j8.3 It is recommended to stand (O: if possible without hurting anyone) by the large round boulders that lie at base of the hill called Jabal al-Rahma (lit. "Mount of Mercy"). As for climbing Jabal al-Rahma, which lies in the middle of 'Arafa, there is no merit in doing so (O: above the merit of standing in other parts of 'Arafa). Stand-

j8.3 ويُستحبّ أن يقف عند الصخراتِ الكبارِ المفروشةِ أسفلَ جبلِ الرحمةِ (على حسبِ الإمكان بحيث لا يؤذي أحداً) وأما الصعودُ إلى جبلِ الرحمةِ الذي في وسطِ عرفةَ فليسَ في طلوعِهِ فضيلةٌ زائدةٌ (على الوقوف بغيره

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ing is valid anywhere in the whole expansive plain, and this bluff is merely a part of it, the same as any other, though standing by the boulders below is better (A: as the Prophet (Allah bless him and give him peace) did so).

It is better to be mounted, and not fasting.

It is best for women to sit at the edge of the crowd (O: not in the middle of it, because men should not randomly mix with women).

من بقية أجزاء عرفة) فالوقوفُ صحيحٌ في جميعِ تلكَ الأرضِ المتسعةِ وذلكَ الجبلُ جزءٌ منها هو وغيرُهُ سواءٌ والوقوفُ عندَ الصخراتِ أفضلُ.

والأفضلُ أنْ يَكُونَ راكباً مفطراً.

والأفضلُ للمرأةِ الجلوسُ في حاشيةِ النّاسِ (لا في وسطِهم لأنه لا يليقُ اختلاطُ الرجالِ بالنساء).

THE OBLIGATORY ELEMENTS OF STANDING AT 'ARAFA

واجبات الوقوف بعرفة

j8.4 The obligatory elements of standing at 'Arafa are:

(a) to be present (O: while in ihram) in some portion of 'Arafa;

(b) while sane and in full possession of one's faculties;

(c) at some point between the noon prayer (zuhr) on 9 Dhul Hijja and dawn of the following day. (O: It is sunna to remain at 'Arafa until sunset so as to include both night and day.) Anyone who is present and sane during any of this time, even if merely passing through for a moment, has accomplished the hajj (O: as the Prophet (Allah bless him and give him peace) said,

"The pilgrimage is 'Arafa,"

meaning that most of it is 'Arafa).

Someone who misses standing at 'Arafa or who spends it unconscious has missed the hajj, and he releases himself from ihram by performing the rites of 'umra; that is, by circumambulating, going between Safa and Marwa, and cutting his hair, and he is thus released from his ihram.

Such a person is obliged to make up the hajj and to slaughter as do those who perform an 'umra first (tamattu') hajj (def: j12.6(I)).

j8.4 وواجباتُ الوقوفِ [(بعرفة ثلاثة الأول)] حضورُ جزءٍ منْ عرفاتٍ (أي حضورِ المحرم) عاقلاً [(وهذا هو الواجب الثاني)] ووقتُهُ منَ الزوالِ إلى طلوعِ الفجرِ الثاني منْ يومِ النحرِ (ويسن المكث في عرفة إلى الغروب لأجلِ الجمعِ بين الليلِ والنهار) فمَنْ حَضَرَ بعرفةَ في شيءٍ منْ هذا الوقتِ وهوَ عاقلٌ ولَوْ ماراً في لحظةٍ فقدْ أدْرَكَ الحج (كما قال ﷺ «الحج عرفة» أي معظمه عرفة).

ومنْ فاتَهُ ذلكَ أوْ وَقَفَ مغمىً عليْهِ فَقَدْ فاتَهُ الحجُّ فَيَتَحَلَّلُ بفعلِ عمرةٍ فَيَطُوفُ وَيَسْعَى وَيَحْلِقُ وَقَدْ حَلَّ من إحرامِهِ. ويَجِبُ عليْهِ القضاءُ ودمُ الفواتِ مثلُ دمِ التمتعِ.

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j9.0 MUZDELIFA, MINA, AND THE GOING-FORTH CIRCUMAMBULATION

MUZDELIFA

j9.1 When the sun sets on 9 Dhul Hijja, those on hajj go forth to Muzdelifa, occupied with invocation (dhikr), chanting "Labbayk," proceeding with tranquility and dignity, not jostling or injuring others (though if the way is clear it is desirable to hurry), and they join the sunset and nightfall prayers in the time of the nightfall prayer (`isha) at Muzdelifa. (O: It is necessary to have made the intention to join the prayers while in the time of the sunset prayer.)

When they reach Muzdelifa, they stop, pray, and spend the night there (O: which is best, and optimal. If one cannot spend the night, then the obligation to be present at Muzdelifa can be met by coming there, even for a brief moment, during the second half of the night, for *spending the night* merely means to be present there during the second half of the night, not actually staying overnight, as opposed to spending the night at Mina (dis: j10.4), which must be for the greater part of the night. If someone misses spending the night at Muzdelifa in the above-mentioned sense, does not return there before dawn, and has no excuse (N: of those given below), then he is obliged to slaughter as one does for an `umra first (tamattu`) hajj (def: j12.6(I)). But if he misses spending the night there for one of the same reasons which justify not spending the night at Mina (def: j10.10), then he is not obliged to slaughter. Other valid excuses for not spending the night at Muzdelifa include:

(1) being occupied with standing at `Arafa because of not having arrived there until after sunset, since it is more important than Muzdelifa;

(2) or going forth from `Arafa after the middle of the night to Mecca in order to perform the (A: obligatory) going-forth circumambulation (tawaf al-ifada), missing Muzdelifa because of being occupied with it, since it too is more important than Muzdelifa.

j9.0 المزدلفة ومنى وطواف الإفاضة

المزدلفة

j9.1 فإذا غَرَبَتِ الشمسُ أفاضُوا إلى مزدلفةَ ذاكرينَ مُلَبِّيْنَ بسكينةٍ ووقارٍ بغيرِ مزاحمةٍ وإيذاءٍ [وضربِ دوابٍّ] فمَنْ وَجَدَ فرجةً أسْرَعَ ويُؤخِّرُونَ المغربَ ويُجْمَعُونَها بمزدلفةَ مَعَ العشاءِ. (ولا بد من نية جمع التأخير في وقت الأولى).

فإذا وَصَلُوا نَزَلُوا وَصَلُّوا وبَاتُوا بِهَا (وهو الأفضل والأكمل وإلا فالواجب يحصل بالحضور ولو لحظة صغيرة في نصف الليل الثاني فالمراد من المبيت بها الحضور فيها في نصف الليل الثاني لا حقيقة المبيت بخلاف المبيت الواجب بمنى فهو هناك معظم الليل ومن ترك هذا المبيت المذكور ولم يعد إليها قبل الفجر وكان ذلك لغير عذر من الأعذار المسقطة للمبيت فعليه دم كدم التمتع ولا دم على من تركه لعذر من الأعذار [الآتية] في ترك المبيت بمنى ومن العذر هنا الاشتغال بالوقوف بأن انتهى إلى عرفة ليلة النحر، لاشتغاله بالأهم. ولو أفاض من عرفة إلى مكة لطواف الركن بعد نصف الليل وفات المبيت لأجل ذلك لم يلزمه شيء لاشتغاله بالطواف كاشتغاله بالوقوف).

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In either of these two cases, one does not have to slaughter (A: for having missed Muzdelifa)).

In the morning, the pilgrims pray the dawn prayer at the first of its time.

They also pick up seven pebbles, not one stone broken into seven (O: which is offensive), to throw at the stoning site (Ar. jamra, the enclosed round space with a pillar in the middle of it) at Mina, and it is best that these be the size of a broadbean (N: i.e. about the size of a thumbprint).

وصَلَّوا الصبحَ أولَ الوقتِ ويأخُذُونَ منها حَصَى الجمارِ سبعَ حصياتٍ لقطاً لا تكسيراً (أي يكره تكسير الأحجار) والأفضلُ بقدرِ الباقلاءِ.

STOPPING AT AL-MASH'AR AL-HARAM

الوقوف على المشعر الحرام

j9.2 After the dawn prayer, it is sunna to stop by a hill at the last of Muzdelifa (O: in the direction of Mina) called al-Mash'ar al-Haram (lit. "the Sanctuary Landmark"), which it is recommended to climb if possible. (A: Others hold that *al-Mash'ar al-Haram* refers to all of Muzdelifa.) It is desirable to face the direction of prayer (qibla), to do much of chanting "Labbayk," supplication, and invocation (dhikr), and to say, "O Allah, as You have brought us to stand in it and shown us to it, so too, give us success in Your remembrance, as You have guided us. Forgive us, and show us the mercy You have promised us by saying (and Your word is the truth):

" 'And when you move on from 'Arafa, remember Allah at al-Mash'ar al-Haram. Remember Him, for He has guided you though you were astray. And then go forth from where the people go forth, and seek Allah's forgiveness. Truly Allah is Oft-relenting and Most Compassionate' (Koran 2:198–99).

"Our Lord, give us what is good in this world and the next, and keep us from the torment of hell."

j9.2 ويَقِفُونَ بعدَ الصلاةِ على المشعرِ الحرامِ وهو جبلٌ صغيرٌ في آخرِ المزدلفةِ (منْ جهةِ منى) ويُنْدَبُ صعودُهُ إنْ أمْكَنَ [وهناكَ بناءٌ محدثٌ يَقُولُ العوامُ إنهُ المشعرُ الحرامُ وليْسَ كذلكَ]. ويُكْثِرُونَ التلبيةَ والدعاءَ والذكرَ مستقبلينَ القبلةَ (وكلُّ هذا على سبيلِ الاستحبابِ) ويقُولُونَ: «اللهُمَّ كَمَا أوقفتَنا فيهِ وأرَيْتَنا إيَّاه فَوَفِّقْنا لذِكْرِكَ كَمَا هَدَيْتَنا واغْفِرْ لَنا وارْحَمْنا كَمَا وَعَدْتَنا بقولِكَ وقولُكَ الحقُّ ﴿فإذا أفَضْتُمْ من عرفاتٍ [إلى قولِهِ غفورٌ رحيمٌ (أي] ﴿فاذْكُرُوا اللهَ عندَ المشعرِ الحرامِ واذْكُرُوه كَمَا هَدَاكُمْ وإنْ كُنْتُمْ منْ قبلِهِ لمِنَ الضالينَ ثُمَّ أفيضُوا مِنْ حيْثُ أفاضَ الناسُ واسْتَغْفِرُوا اللهَ إنَّ اللهَ غفورٌ رحيمٌ﴾) ﴿ربَّنا آتِنا في الدنيا حسنةً وفي الآخرةِ حسنةً وقِنا عذابَ النارِ﴾).

j9.3 When the day lightens considerably, the pilgrims proceed to Mina with gravity and tranquility before the sun rises.

j9.3 فإذا أسْفَرَ جِدّاً سارُوا إلى منًى بوقارٍ وسكينةٍ قبلَ طلوعِ الشمسِ.

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RELEASE FROM IHRAM:
THE INITIAL STONING AT MINA

التحلل : الرمي بمنى

j9.4 When the pilgrims reach the valley of Muhassir near Mina, it is sunna to quicken their step for a distance of a stone's throw. Then they take the middle way which leads to (N: one of the three stoning sites called) Jamrat al-'Aqaba. They stone it as they are when they arrive (O: i.e. if mounted, they stone it mounted, and if on foot, they stone it on foot) with the seven stones picked up from Muzdelifa. These may be picked up from anywhere, not necessarily Muzdelifa, though it is offensive to take them from the stoning sites themselves, latrines (O: or other unclean places), or around mosques (O: which is not merely offensive but rather unlawful if they are taken from grounds included in the endowment (waqf, def: k30) for the mosque).

j9.4 فإذا وَصلوا إلى وادي محسِّر وهو بقرب منىً أسْرعُوا قدرَ رميةِ حجرٍ. ثمّ يَسْلُكُونَ الطريقَ الوسطَى التي تَرْمِيهمْ على جَمْرةِ العقبةِ فكما يأتونَها وهُمْ ركبانٌ يَرْمُونَ جمرةَ العقبة (فإن كانوا ركباناً أتوها ركباناً فيرمونها حال كونهم كذلك وإن أتوها مشاة فيرمونها كذلك) بتلكَ الحصياتِ السبعِ الملتقطةِ مِنْ المزدلفةِ، ومِنْ أيِّ مكانٍ الْتقطَ الحصى جازَ مِنَ المزدلفةِ وغيرِها لكنْ يُكْرَهُ أخذُهَا مِنَ المَرْمَى والحشِّ (وهو بيتُ الخلاء ومثله كل مكانٍ نجس) والمسجدِ (وكراهةُ الرمي بحصى المسجد إن لم يكن داخلاً في الوقفية، وإلا فيحرم الرمي به).

j9.5 When one begins to stone Jamrat al-'Aqaba, one ceases chanting "Labbayk," and does not resume it thereafter (O: as its time is over, which was the period of ihram, and stoning Jamrat al-'Aqaba is the first step to release from ihram).

The (O: optimal) way to stone Jamrat al-'Aqaba is to stand in the middle of the valley after the sun is up so that 'Arafa lies to the right, Mecca to the left, and the stoning-site before one, and to throw the pebbles one by one (O: as throwing them two at a time or all at once counts as having thrown one pebble) with the right hand, saying "Allahu akbar" with each pebble, lifting the arms high enough when throwing (O: if male, though not if female) that the underarm shows, and to actually *throw* the pebbles (O: meaning hard enough to be considered throwing), not merely flick them off the thumb with the forefinger. (n: The minimal conditions for the validity of stoning are given at j10.8.)

j9.5 وكَمَا [(فالكاف بمعنى عند)] يَشْرَعُ في الرمي يَقْطَعُ التلبيةَ ولا يُلَبِّي بعدَ ذلكَ (لأنه فات وقتها وهو دوام الإحرام والرمي أول أسباب التحلل).

وصورةُ الرمي (الفاضلة) أنْ يَقِفَ ببطنِ الوادي بعد ارتفاعِ الشمسِ بحيثُ تكونُ عرفةُ عن يمينِهِ ومكةُ عن يسارِهِ ويَسْتَقْبِلَ الجمرةَ ويرْمِي حصاةً حصاةً (فإذا رمى ثنتين أو أكثر دفعةً واحدة حسبت واحدة) بيمينِهِ ويُكَبِّرُ مَعَ كلِّ حصاةٍ ويَرْفَعُ يديهِ حتّى يُرى بياضُ إبطِهِ (ولا ترفع المرأة) ويَرْمِيَ رمياً (أي شديداً أي بحيث يعد رمياً) ولا يَنْقُدَ نقداً.

j9.6 When finished stoning (N: Jamrat al-'Aqaba), one slaughters a voluntary sacrifice animal (hady) driven to hajj or one due by reason of

j9.6 فإذا فَرَغَ مِنَ الرمي ذَبَحَ هَدياً

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hajj (dis: j12.6); or other sacrifice animal (udhiya, def: j14).

إنْ كانَ مَعَهُ أو ضَحّى.

RELEASE FROM IHRAM: CUTTING THE HAIR

التحلل: الحلق

j9.7 Then men have their entire head shaved, which is optimal, though one may confine oneself to (O: removing (A: by any means)) three hairs thereof (O: i.e. from the head, not something else such as the beard or mustache), or may merely shorten it, for which the optimal is to clip a little less than two centimeters from all the hair.

As for women, it is optimal for them to shorten their hair in the latter way (O: it being offensive for a woman to shave her head).

j9.7 ثمَّ يَحْلِقُ الرجلُ جميعَ رأسِه هذا هو الأفضلُ ولَهُ أنْ يَقْتَصِرَ على (إزالة) ثلاثِ شعراتٍ منهُ (أي من الرأس لا من غيره كاللحية والشارب) أو تقصيرِها والأفضلُ في التقصيرِ قدرُ أنملةٍ من جميعِ شعرِه.

وأمّا المرأةُ فالأفضلُ لها التقصيرُ على هذا الوجه (فالحلق لها مكروه).

j9.8 While having one's hair cut it is best:

(1) to face the direction of prayer (qibla);

(2) to say "Allahu akbar" (O: that is, "Allahu akbar, Allahu akbar, Allahu akbar, wa lillahi l-hamd");

(3) for the person shaving to start from the right;

(4) and to bury the hair afterwards (O: a measure recommended for any parts separated from a living being).

j9.8 ويكونُ حالَ الحلقِ مستقبلَ القبلةِ مُكَبِّراً (أي قائلاً الله أكبر الله أكبر الله أكبر ولله الحمد) ويَبْدَأُ الحالقُ (استحباباً) بشقِّهِ الأيمنِ ويَدْفِنُ شعرَهُ (ندباً كسائر الأجزاء المنفصلة من الحي).

j9.9 Cutting the hair is an integral without which the hajj remains unfinished (O: and which may not be compensated for by merely slaughtering), and a person remains in ihram until it is done. Someone without hair can simply pass a razor over his head (O: which is recommended, not obligatory, because it is a rite whose condition is the existence of a particular site, as is also the case with washing a hand (n: for ablution) when the hand has been amputated (A: i.e. it need not be done if the site does not exist).

After one's hair, has been cut, it is sunna to say, "O Allah, for each hair reckon for me a good deed, annul a bad one, and raise me a degree. For-

j9.9 والحلقُ ركنٌ لا يَتِمُّ الحجُّ إلاّ بِهِ (ولا يجبر تركه بدم) ويَبْقى مُحْرِماً إلى أنْ يأتيَ بِهِ، ومَنْ لا شعرَ لهُ أمرَّ الموسى على رأسِهِ (ندباً ولا يجب لأنه قربة تتعلق بمحل فتسقط بفواته كغسل اليد إذا قطعت، وسن أنْ يقول بعد فراغه: «اللهمَّ آتِني بكلِّ شعرةٍ حسنةً وامْحُ عنّي بها سيّئةً وارْفَعْ لي بها درجةً واغْفِرْ لي

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give me, those who shave their hair, those who shorten it, and all the Muslims").

وللمُحَلِّقِينَ والمُقَصِّرِينَ ولجميعِ المسلمين).

RELEASE FROM IHRAM: THE GOING-FORTH CIRCUMAMBULATION (TAWAF AL-IFADA)

التحلل : طواف الإفاضة

j9.10 On the same day (A: 10 Dhul Hijja) one enters Mecca and performs the going-forth circumambulation (tawaf al-ifada), which is an integral without which the hajj remains unfinished (O: the author's expression "without which the hajj remains unfinished" meaning that it may not be compensated for by merely slaughtering, though the time it may be performed is anytime thereafter, according to our school. The Hanafis hold it must be done by sunset on 12 Dhul Hijja, and if the sun sets and one has not performed it, this obliges one to slaughter), and one remains in ihram until one does it. Its obligatory features are as described above (dis: j5.16).

After it, one prays two rak'as (O: intending the sunna of circumambulation (def: j5.18)).

j9.10 ثمَّ يأتي مكةَ في يومِهِ فيَطُوفُ طوافَ الإفاضةِ وهو ركنٌ لا يتمُّ الحجُّ إلاَّ بِهِ (وأفاد قوله إنه لا يتم الحج إلا به أنه لا يجبر بدم ووقته موسع إلى ما لا نهاية عندنا بخلاف بقية المذاهب فعند الحنفية يبقى إلى غروب شمس يوم النفر الأول فإذا غربت ولم يطف وجب عليه دم) ويَبْقَى محرماً إلى أنْ يأتي بِهِ وصفتُهُ كما تقدَّم.

ثم يُصَلِّي ركعتَيْن (وينوي بهما مصليهما سنة الطواف).

j9.11 Then, if one has already gone between Safa and Marwa after the arrival circumambulation (dis: j6.1), one does not repeat it, though if one has not yet done it, one must do so, since going between Safa and Marwa is also an integral without which the hajj is unfinished, and one remains in ihram (O: legally, regarding one's relations with women (dis: j9.13)) until it is performed.

j9.11 ثمَّ إنْ كانَ سَعَى مَعَ طوافِ القدومِ لمْ يُعِدْهُ وإلاَّ سَعَى (وجوباً) لأنَّ السعيَ أيضاً ركنٌ لا يَتِمُّ الحجُّ إلاَّ بِهِ ويَبْقَى محرماً (حكماً بالنسبة لما يتعلق بالنساء) إلى أنْ يأتيَ بِهِ.

RELEASE FROM IHRAM: GENERAL PROVISIONS

التحلل : أحكامه العامة

j9.12 The best order in which to perform:

(1) stoning Jamrat al-'Aqaba;

(2) cutting the hair;

(3) and the going-forth circumambulation (tawaf al-ifada):

j9.12 [وَاعْلَمْ أنَّ] الرمي، والحلقَ وطوافَ الإفاضةِ (كل منها يسن فعله في هذا اليوم و) الأفضلُ (في ترتيبها) تقديمُ الرمي ثمَّ الحلقُ ثمَّ الطوافُ (والمراد

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is (1), (2), and (3) (O: and the sunna is to do all three on this day), though it is valid to do them in some other order.

The time for these three begins at the middle of the night (A: between sunset of 9 Dhul Hijja and dawn of the tenth) on 'Eid al-Adha (O: though it is best for the stoning to take place after sunrise). The (O: preferred) time for stoning Jamrat al-'Aqaba ends at the end of the day of the 'Eid (O: at sunset. As for the permissible time, it lasts until the end of the three days after the 'Eid. The best time to stone on 'Eid al-Adha finishes at noon. Thus, the stoning has three times: the best, the preferred, and the merely permissible), while the time for cutting one's hair and the going-forth circumambulation lasts indefinitely, even if years.

بالرمي رمي جمرة العقبة) فلوْ أتى بها على غير هذا الترتيب فَقَدَّمَ وأخَّرَ جَازَ.

ويَدْخُلُ وقتُ الثلاثةِ بنصفِ الليلِ منْ ليلةِ النحرِ (والأفضل أنْ يكون الرمي واقعاً بعد طلوع الشمس) ويَخْرُجُ وقتُ رمي جمرةِ العقبةِ (أي وقت الاختيار) بخروجِ يومِ النحرِ (بغروبِ شمسها. وأما وقت الجوازِ فيمتد إلى آخر أيام التشريق. ووقت الفضيلة لرمي يوم النحر ينتهي بالزوال. فيكون لرميه ثلاث أوقات: وقت فضيلة ووقت اختيار ووقت جواز) ويَبْقَى وقتُ الحلقِ والطوافِ متراخياً ولوْ إلى سنين.

j9.13 The release from ihram in hajj is in two stages, partial (lit. "first") and full ("second").

Partial release from ihram occurs when any two of the three rites of stoning, cutting the hair, and the going-forth circumambulation are performed, whether cutting the hair and stoning, cutting the hair and circumambulation, or stoning and circumambulation. Doing any two of them accomplishes partial release from ihram, rendering permissible all the things that were made unlawful by ihram (def: j3.5) except those relating to women, such as sexual intercourse, getting married, or touching with desire.

Full release from ihram occurs when all three rites have been performed, and it renders permissible everything made unlawful by ihram (O: though one still has to stone at the three stoning sites and stay overnight at Mina during the days following the 'Eid (Ayam al-Tashriq)).

j9.13 وللحجِّ تحلُّلانِ أولُ وثانٍ. فالأولُ يَحْصُلُ باثنينِ منْ هذه الثلاثةِ أيُّها كَانَ، إمَّا حلقٌ ورميٌ أوْ حلقٌ وطوافٌ أوْ رميٌ وطوافٌ فمتَى فَعَلَ اثنين منها حَصَلَ التحللُ الأولُ ويَحِلُّ بِهِ جميعُ مَا حَرُمَ عليهِ مَا عَدَا النساءَ منْ وطءٍ وعقدِ نكاحٍ ومباشرةٍ فإذا فَعَلَ الثالثَ حَلَّ لهُ كلُّ مَا حَرَّمَهُ الإحرامُ (ويجب عليه أن يأتي بما بقي عليه من الرمي لأيام التشريق والمبيت).

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j10.0 ENCAMPMENT AND STONING AT MINA ON THE DAYS AFTER 'EID

j10.0 المبيت والرمي بمنى لأيام التشريق

j10.1 When finished with the going-forth circumambulation (tawaf al-ifada) and going between Safa and Marwa (O: i.e. doing the latter if

j10.1 فإذا فَرَغَ منْ طوافِ الإفاضةِ والسعي (إن لم يكن سعى بعد طواف

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one had not previously performed it after the arrival circumambulation (dis: j6.1)), one is obliged to return to Mina (O: to stay overnight there and stone on the days following the 'Eid (Ayam al-Tashriq). It is desirable to arrive before noon to perform the noon prayer there as the Prophet did (Allah bless him and give him peace)), and one spends the night there.

One picks up twenty-one pebbles from Mina on the days after the 'Eid (the first of which is the second day of the 'Eid), taking care to shun the three places mentioned above (dis: j9.4(end)).

القدوم) رَجَعَ إلى منىً (وجوباً لأجل المبيت بها والرمي لأيام التشريق ويستحب كون الرجوع قبل الظهر بحيث يدرك الصلاة فيها اقتداء به ﷺ) وبَاتَ بها.

ويَلْتَقِطُ في أيامِ التشريقِ وهو ثاني العيدِ إحدى وعشرينَ حصاةً مِنْ منىً ويَتَجَنَّبُ المواضعَ الثلاثةَ المتقدمةَ.

j10.2 After the time for the noon prayer has come (O: on 11 Dhul Hijja, the first day after the 'Eid) one stones with the pebbles before performing the noon prayer.

j10.2 فإذا زالَتِ الشمسُ (أي شمس يوم الحادي عشر الذي هو أول أيام التشريق) رَمَى بها قبلَ الصلاةِ.

(N: It is well to mention some rulings about stoning that enable one to avoid the crowding at Mina on a contemporary hajj. The time for stoning on each of the three days that follow the 'Eid (Ayam al-Tashriq) begins at *noon of that day* and ends at *sunset on the third day* after the 'Eid. This means that one may postpone all of one's stoning until the afternoon of the third day, having remained at Mina until then. But in such a case, the correct order is still obligatory: one must begin by stoning with the intention of performing it for the first day, starting at the first stoning site (Jamrat al-Kubra), then the second site (Jamrat al-Wusta), and then the third (Jamrat al-'Aqaba). Then one stones with the intention of performing it for the second day, the first stoning site first, then the second, then the third. And then one stones for the third day, observing the same order.)

THE PROPER SEQUENCE FOR STONING

ترتيب رمي الجمار

j10.3 The first site one stones (O: called Jamrat al-Kubra) is the one closest to al-Khayf mosque. One (A: optimally) walks up to it, keeping it on one's left and facing the direction of prayer (qibla), stones it pebble by pebble as mentioned above (j9.5), and turns from the direction of prayer to avoid others' pebbles, after which one puts the stoning site behind one and again turns to the direction of prayer, to supplicate and invoke Allah humbly and imploringly for as much time as it takes to recite al-Baqara (Koran 2) (N: about an hour).

One then proceeds to the second site (O: called Jamrat al-Wusta), repeats the stoning procedure, and when finished, supplicates (O: and

j10.3 فَيَرْمِي الجمرةَ الأولى (وتسمى الجمرة الكبرى) وهي التي تَلي مسجدَ الخيفِ فَيَصْعَدُ إليها ويَجْعَلُها عن يسارِهِ ويَسْتَقْبِلُ القبلةَ ويَرْمِيها بسبعِ حصياتٍ حصاةً حصاةً كَمَا تَقَدَّمَ ثُمَّ يَنْحَرِفُ قليلاً [(أي عن استقبال القبلة ويمشي قليلاً وهذا معنى التقدم)] بحيثُ لا يَنالُهُ الحصى الذي يَرْمِيهِ الناسُ وتَبْقَى الجمرةُ خلفَهُ ويَسْتَقْبِلُ القبلةَ ويَدْعُو ويَذْكُرُ بخشوعٍ وتضرعٍ بقدرِ سورة البقرة.

ثمَّ يَأْتي الجمرةَ الثانيةَ (وتسمى الجمرة الوسطى) فَيَفْعَلُ كَمَا فَعَلَ في

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invokes Allah Most High) for as long as it takes to recite al-Baqara.

Then one goes to the third site, which is Jamrat al-'Aqaba that was previously stoned with seven pebbles on 'Eid al-Adha, and stones it as one did at that time (dis: j9.5), facing it with the direction of prayer (qibla) to the left, though when finished, one does not stand there.

الأولى فإذا فَرَغَ منها وَقَفَ ودَعَا (وذكر الله تعالى) قدرَ سورة البقرة.

ثمَّ يأتي الجمرةَ الثالثةَ وهي جمرةُ العقبةِ التي رَمَاها يومَ النحر فيَرْميها بسبعٍ، كَمَا فَعَلَ يومَ النحر فيَسْتَقْبِلُهَا والقبلةَ عنْ يسارِه فإذا فَرَغَ لا يَقِفُ عندَهَا.

THE SECOND DAY AFTER THE 'EID

اليوم الثاني من أيام التشريق

j10.4 One is obliged to spend the night at Mina (A: that evening, after sunset on 11 Dhul Hijja).

The following day, the second day after the 'Eid (A: i.e. 12 Dhul Hijja), one picks up twenty-one pebbles, and after the noon prayer's time has come, one stones the three stoning sites as described above, seven pebbles at each site. It is not permissible to stone for each of the days after the 'Eid until after the noon prayer's time arrives.

The correct sequence of stoning the sites is obligatory: the one closest to al-Khayf mosque first, the middle one second, and Jamrat al-'Aqaba third.

j10.4 ويَبيتُ بمنىً.

ثمَّ يَلْتَقِطُ مِنَ الغدِ وهوَ ثاني أيامِ التشريقِ إحدى وعشرينَ حصاةً فيَرْمي بهَا الجمراتِ الثلاثَ كلَّ جمرةٍ بسبعٍ بعدَ الزوالِ كَمَا تَقَدَّمَ.

ولا يَجُوزُ رَمْيُ الجمارِ في أيامِ التشريقِ إلاَّ بعدَ الزوالِ.

ويَجِبُ الترتيبُ فيَرْمي ما يَلِي مسجدَ الخيفِ أولاً والوسطَى ثانياً والعقبةَ ثالثاً.

j10.5 It is recommended to take a bath (ghusl) each day for stoning.

j10.5 ويُنْدَبُ الغسلُ كلَّ يومٍ للرمي.

THE PERMISSIBILITY OF LEAVING MINA ON THE SECOND DAY

جواز النفر في ثاني التشريق

j10.6 After stoning on the second day after the 'Eid, it is recommended for the imam to give a sermon informing people about the permissibility of leaving early (A: on the second day rather than the third) (O: which is permissible provided:

(a) that one's departure takes place after the noon prayer's time has come;

(b) after having stoned the three stoning sites;

(c) that one's departure is from Mina itself,

j10.6 فإذَا رَمَى في ثانِي التشريقِ نُدِبَ للإمامِ أنْ يَخْطُبَ خطبةً يُعَلِّمُهُمْ فيهَا جوازُ النفرِ (وهو أن يكون واقعاً بعد الزوال وأن يكون بعد الرمي وأن يكون النفر من منى فلا يصح النفر من غيرها

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as it is not permissible to leave directly from Jamrat al-'Aqaba, in view of the position that it is not part of Mina;

(d) that one intends leaving while within the boundries of Mina;

(e) and that one leaves before sunset).

Then the imam bids them farewell.

كمن ينفر من جمرة العقبة على القول بأنها ليست منى وأن ينويه منها وأن يكون قبل الغروب) ويُوَدِّعُهُمْ.

j10.7 One then has a choice between leaving early on the second day after the 'Eid, or waiting (A: until having stoned on the third day). If one wishes to leave early, one may do so, provided the departure from Mina occurs before sunset. If the sun sets and one is still at Mina, it is not permissible to leave early, and one is obliged to spend the night there and stone the sites the next day.

If one does not wish to leave early, one stays overnight at Mina, picking up twenty-one pebbles and stoning the sites on the following day after the time of the noon prayer has begun, as previously mentioned.

j10.7 ثُمَّ يُخَيَّرُ بَيْنَ أَنْ يَتَعَجَّلَ فِي يَوْمَيْنِ وَبَيْنَ أَنْ يَتَأَخَّرَ فَإِذَا أَرَادَ التَّعَجُّلَ فَلْيَنْفِرْ بِشَرْطِ أَنْ يَرْتَحِلَ مِنْ مِنًى قَبْلَ الغُرُوبِ فَإِنْ غَرَبَتْ وَهُوَ بِمِنًى امْتَنَعَ التَّعَجُّلُ وَلَزِمَهُ المَبِيتُ وَرَمْيُ الغَدِ. وَإِنْ لَمْ يُرِدِ التَّعَجُّلَ بَاتَ بِمِنًى وَالْتَقَطَ إِحْدَى وَعِشْرِينَ حَصَاةً يَرْمِيهَا مِنَ الغَدِ بَعْدَ الزَّوَالِ كَمَا تَقَدَّمَ.

CONDITIONS FOR THE VALIDITY OF STONING

شروط صحة الرمي

j10.8 (O: Having mentioned the conditions for stoning in various rulings above, it is well to enumerate all seven together:

(a) that seven pebbles be used;

(b) that they be thrown one by one;

(c) that one's action may be termed *throwing*, not merely putting the pebbles into the throwing place;

(d) that what is thrown be some form of stone;

(e) that it be done with the hand, as a bow or foot would be inadequate;

(f) that one aim at the throwing place;

j10.8 (تنبيه في حاصل شروط الرمي إجمالاً بعد ذكرها مفصلة مشتتة وهي سبعة: الأول كون الرمي بسبع حصيات، والثاني كونها واحدة واحدة، والثالث أن يسمى رمياً بحيث يصدق عليه مسمى الرمي لا بوضع الحصاة في المرمى، والرابع كون المرمي حجراً بأي نوع كان من أنواعه فكل ما يصدق عليه اسم الحجر يصح الرمي به، والخامس كونه باليد لا بغيرها فلا يكفي بقوس ورجل، والسادس قصد المرمى وهو المكان الذي يجتمع الحصى فيه،

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(g) that one be certain that the pebble reaches it, even if it falls out again, for if one doubts that the stone reached it, then that stone does not count;

(the above seven conditions hold for both 'Eid al-Adha (dis: j9.5) and for the days following the 'Eid, though the days following the 'Eid require two additional conditions:)

(h) that the stoning be done after the time for the noon prayer arrives;

(i) and that one stone the three sites in the proper sequence (dis: j10.3).)

والسابع تحقق إصابته بالحجر وإن لم يبق فيه كأن تدحرج وخرج منه فلو شك في إصابته لم يحسب ولا يعتد به. فهذه سبعة شروط تكون عامة لرمي يوم النحر ولرمي أيام التشريق، ويزاد عليه شرطان لرمي أيام التشريق: [الأول] أن يكون الرمي واقعاً بعد الزوال و[الثاني] أن يكون مرتباً وتقدم معنى الترتيب).

j10.9 Then one (O: who has (n: remained at Mina and) stoned on the third day after the 'Eid) leaves (O: after stoning. None of the conditions for leaving early (def: j10.6) are necessary to leave at this point).

j10.9 ثمَّ (بعد رمي يوم الثالث) يَنْفِرُ (ولا يشترط لهذا النفر الثاني شيء مما يشترط للأول).

VALID EXCUSES FOR NOT SPENDING THE NIGHT AT MINA

أعذار لترك المبيت

j10.10 (O: If there is an acceptable excuse for not spending the night at Mina, then not doing so does not entail any consequences. Excuses include:

(1) having property one fears to lose were one to stay overnight;

(2) fearing for one's person or the funds with one;

(3) having a sick person with one who requires care;

(4) having an illness that makes spending the night a hardship;

(5) or a similar excuse.

People in such circumstances do not have to spend the night, and may leave on the second day after the 'Eid, even after sunset.

j10.10 (وترك المبيت لعذر لا شيء فيه كمن له مال يخاف ضياعه لو اشتغل بالمبيت أو يخاف على نفسه أو مال معه أو له مريض يحتاج إلى تعهده أو يكون به مرض يشق معه المبيت أو نحو ذلك فالصحيح أنه يجوز لهم ترك المبيت ولهم أن ينفروا بعد الغروب ولا شيء عليهم

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These excuses, which permit one to not spend the night at Mina, likewise permit not spending the night at Muzdelifa, in connection with which some other excuses have been previously mentioned (dis: j9.1(1–2)).)

فهذه الأعذار المذكورة كما تكون عذراً لترك المبيت بمنى تكون عذراً لترك المبيت بمزدلفة وتقدم بعضها هناك).

j10.11 It is recommended (N: after leaving Mina) to spend the night at al-Muhassab, which is by the mountain near the cemetery of Mecca, one's hajj now being finished.

j10.11 ويُندَبُ أنْ ينْزِلَ المُحَصَّبَ وهوَ عندَ الجبلِ الذي عندَ مقابرِ مكةَ وقَدْ فرَغَ منْ حجِّهِ.

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j11.0 THE FAREWELL CIRCUMAMBULATION AND FINAL MEASURES

j11.0 طواف الوداع والرحيل

j11.1 If one wishes to perform the 'umra, one may do so (O: i.e. enter ihram for it) from any point outside of the Sacred Precinct (Haram), as mentioned below in the description of 'umra (def: j12).

j11.1 وإذَا أرادَ الاعتمارَ اعْتَمَرَ (أي أحرم بها) منَ الحلِّ كما سيأتي في صفةِ العمرةِ.

THE FAREWELL CIRCUMBULATION

طواف الوداع

j11.2 When one wants to return home, one comes to Mecca and performs the farewell circumambulation (tawaf al-wada') (O: as is obligatory. It is disobedience to Allah to leave without the farewell circumambulation, and one must return to Mecca to perform it if still within 81 km./ 50 mi. of it. If farther than this, one is not obliged to return, but must slaughter (def: j12.6(1)) (N: i.e. if one goes by the position that the farewell circumambulation is obligatory, though slaughtering is sunna if one goes by the position (A: the weaker position in the Shafi'i school) that the farewell circumambulation is merely sunna). The integrals and conditions of the farewell circumambulation are the same as the obligatory circumambulation (def: j5.16).

The farewell circumambulation is not only for those performing hajj or 'umra, but is required

j11.2 فإذَا أرادَ الرجوعَ إلى بلدِهِ [(والحال أنه بمنى أو في المحصب)] أتَى مكةَ وطَافَ للوداعِ (فلو خرج بلا وداع عصى ولزمه العود ما لم يبلغ مسافة القصر من مكة فإن بلغها لم يجب العود بعد ذلك ولكن تستقر عليه الفدية (ح: على القول بأنه واجب وتسن على القول بأنه سنة)، وما وَجَبَ وشُرِطَ في طواف الفرض يجب في طواف الوداع، وطواف الوداع لا يختص بمن حج واعتمر بل يؤمر

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from (A: i.e. obligatory for) anyone leaving Mecca a considerable distance, no matter whether intending to return or not).

به كل من أراد فراق مكة إلى مسافة بعيدة سواء نوى أنه يرجع إلى مكة أم لا).

j11.3 After the farewell circumambulation, one prays two rak'as (O: a sunna in our school) and stands at the place between the Black Stone and the door of the Kaaba, and supplicates: "O Allah, the house is Your house, the servant Your servant and son of Your two servants. You have carried me on a creature You have made submissive to me, bringing me to Your city and showing me Your grace that I might fulfill Your rites. If You are pleased with me then be the more so, and if not, then bless me now before my residence and the place where I am visited grow far from Your house. Now is the time I depart if You permit me, who seek none but You and no other than Your house, and am not averse to You or Your house. O Allah, give me good health in body and protect me in my religion. Make my affairs turn out well and give me the sustenance of obedience to You as long as You let me live. Give me the best of this world and the next, for truly, You have power over everything." One blesses the Prophet (Allah bless him and give him peace), and then walks away normally (O: turning one's back on the Kaaba) without backing away from it (O: while facing it, as many people do, which is offensive because it is a reprehensible innovation (bid'a, def: w29.3)).

j11.3 ثمَّ ركَعَ ركعتين (وهي عندنا سنة) ووقفَ في الملتزم بينَ الحجر الأسود والباب وقال: «اللهمَّ إنَّ البيت بيتُكَ والعبدَ عبدُكَ وابنُ عبديْكَ حَمَلْتَني على ما سخَّرْتَ لي مِنْ خَلْقِكَ حتَّى صيَّرْتَني في بلادِكَ وبلَّغْتَني بنعمتِكَ حتَّى أعنْتَني على قضاءِ مناسِكِكَ فإنْ كنتَ رَضِيتَ عنِّي فازْدَدْ عنِّي رضاً وإلاَّ فمِنَ الآنَ قبلَ أنْ تَنْأى عنْ بيتِكَ داري ويَبْعُدَ عنهُ مَزاري هذا أوانُ انصرافي إنْ أذِنْتَ لي غيرَ مُسْتَبْدِلٍ بِكَ ولاَ ببيتِكَ ولاَ راغبٍ عنْكَ ولاَ عنْ بيتِكَ. اللهُمَّ فأصْحِبْني العافيةَ في بَدَني والعصمةَ في دِيني وأحْسِنْ مُنْقَلَبي وارْزُقْني العملَ بطاعَتِكَ ما أبْقَيْتَني واجْمَعْ لي خيرَيِ الدنيا والآخرةِ إنَّكَ على كلِّ شيءٍ قديرٌ». ثمَّ يُصَلِّي على النبيِّ ﷺ. ثمَّ يمضي على عادتِه (من جعل ظهره للبيت) ولا يرْجعُ القهقرى (وجهه للبيت كما يفعله كثير من الناس فإنه مكروه لأنه بدعة).

j11.4 One then immediately prepares for departure. If one stops to stand (O: lengthily), or becomes involved in something unconnected with travel (O: like shopping, paying a debt, visiting a friend or sick person, and so forth), then one's farewell circumambulation is invalid (A: though such things do not nullify it in the Hanafi school) and it is obligatory to repeat it. But if one's activity concerns travelling, such as making one's baggage fast or buying travel provisions and the like (O: such as a rope with which to tie up one's baggage) then it is permissible.

j11.4 ثمَّ يُعَجِّلُ الرحيلَ. فإنْ وقَفَ بعدَ ذلكَ (أي وقوفاً طويلاً) أوْ تشاغلَ بشيءٍ لاَ تَعَلُّقَ لهُ بالرحيلِ (كشراءِ متاعٍ أو قضاءِ دينٍ أو زيارةِ صديقٍ أو عيادةِ مريضٍ أو نحوِ ذلكَ) لمْ يُعْتَدَّ بطوافِهِ عنِ الوداعِ وتَلْزَمُهُ إعادتُهُ. فإنْ تَعَلَّقَ بالرحيلِ كشدِّ رَحْلٍ وشراءِ زادٍ ونحوِهِ (أي الزاد كشراء حبل يشد به الرحل) لمْ يضُرَّ.

j11.5 A woman in her monthly period may depart without a farewell circumambulation, and

j11.5 وللحائضِ أنْ تنفِرَ بلا وداعٍ

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need not slaughter in expiation (O: though it is sunna for her to come to the door of the mosque and say the supplication mentioned above (j11.3)).

ولاَ دمَ عليْهَا (لكن يسن لها أن تأتي على باب المسجد وتقول الدعاء المتقدم).

RECOMMENDED MEASURES FOR THOSE STAYING IN MECCA

ما يندب للمقيم بمكة

j11.6 It is recommended to do much of:

(1) performing 'umra (O: the whole time one is in Mecca, especially in Ramadan);

(2) looking at the Kaaba (O: as it is said that Allah Most High sends down one hundred and twenty mercies day and night upon the Noble House, sixty for those circumambulating, forty for those praying there, and twenty for those looking at it);

(3) drinking the water of the Well of Zamzam for whatever intention one wishes, religious or this-worldly (O: as the Prophet (Allah bless him and give him peace) said,

"The water of Zamzam is for whatever it is drunk for."

It is sunna to face the Kaaba while drinking, to breathe three times, and say "al-Hamdu lillah" and "Bismillah" each time one drinks), drinking one's fill of it;

(4) and visiting the noble places of Mecca (O: which are many, such as the birthplace of the Prophet (Allah bless him and give him peace) and that of 'Ali (Allah be well pleased with him).

j11.6 وَيُنْدَبُ أنْ [يَدْخُلَ البيتَ حافياً إنْ لمْ يُؤذِ أحداً بمزاحمةٍ ونحوِهَا فإذا دَخَلَ مَشَى تلقاءَ وجهِهِ حتى يَبْقَى بينَهُ وبينَ الجدارِ المقابلِ للبابِ ثلاثةُ أذرعٍ فهناكَ يُصَلِّي فهوَ مصلَّى النبيِّ ﷺ وَ] يُكْثِرُ منَ الاعتمارِ (مدة إقامته بمكةَ وخصوصاً في رمضانَ) والنظرِ إلى البيتِ (ويقال إن الله تعالى ينزل على البيت الشريف في كل يوم وليلة مائة وعشرين رحمة ستون للطائفين وأربعون للمصلين وعشرون للناظرين) وشُرْبِ ماءِ زمزمَ لِمَا أحَبَّ مِنْ أمرِ الدينِ والدنيا (فقد قال عليه الصلاة والسلام: «ماء زمزم لما شرب له» ويسن في شربه استقبال الكعبة وأن يتنفس ثلاثاً وفي كل مرة يحمد الله ويبسمل عند الشرب) وأنْ يَتَضَلَّعَ منهُ وأنْ يَزُورَ المواضعَ الشريفةَ بمكةَ (وهي كثيرة كمولد النبي ﷺ ومولد علي رضي الله عنه).

j11.7 It is unlawful to take the slightest bit of the earth of the Sacred Precinct or its stones, or take cups or jugs made from the clay of the Sacred Precinct of Medina.

j11.7 ويَحْرُمُ أخذُ شيءٍ منْ [طيب الكعبةِ و] ترابِ الحرمِ وأحجارِهِ ولاَ يَتَّخِذُ شيئاً منَ الأكوزةِ والأباريقِ المعمولةِ منْ حَرَمِ المدينةِ أيضاً.

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j12.0 THE OBLIGATORY FEATURES OF HAJJ AND 'UMRA

j12.0 واجبات الحج والعمرة

A DESCRIPTION OF 'UMRA

صفة العمرة

j12.1 The 'umra consists of entering ihram as one does for hajj (def: j3) (O: resembling the hajj in the obligatoriness of the intention when one enters ihram, in the sunna of bathing (ghusl) for it, and in the necessity of divesting oneself of sewn clothing before or after the intention). If one is a Meccan (N: or a temporary resident (dis: j2.2)), one must go to (n: enter ihram from at least as far as) the nearest place outside of the Sacred Precinct. If one is from outside (O: meaning a stranger travelling towards Mecca), then one enters ihram at the ihram site (O: which one passes, meaning the hajj ihram sites (def: j2.1)), as previously mentioned. All of the things unlawful while in ihram for hajj (def: j3.5) are unlawful while in ihram for 'umra.

Then one enters Mecca and performs the circumambulation (def: j5.16) of 'umra, though the arrival circumambulation (tawaf al-qudum) is not called for by Sacred Law (O: at all, since one is performing an obligatory circumambulation).

One then goes between Safa and Marwa (j6), and finally shaves the head or shortens the hair (def: j9.7) (O: the former being preferable for men and the latter for women). When this has been done, one is released from the ihram of 'umra.

j12.1 صفةُ العمرة أنْ يُحْرِمَ بِهَا كَمَا يُحْرِمُ بالحجِّ (مشبه بإحرام الحج في وجوب النية عند الإحرام وفي سنية الاغتسال لها وفي وجوب التجرد بعد النية أو قبلها). فإنْ كانَ مكياً فمِنْ أدنى الحِلِّ. وإنْ كانَ آفاقياً (أي غريباً متوجهاً إلى مكة) فمِنَ الميقاتِ (التي يمر عليها وهي مواقيت الحج) كَمَا تقدَّمَ. ويَحْرُمُ بإحرامِها جميعُ ما يَحْرُمُ بإحرامِ الحجِّ.

ثمَّ يَدْخُلَ مكةَ فيَطُوفَ طوافَ العمرةِ ولا يُشْرَعُ لَهَا طوافُ قدومٍ (من أصله لدخول طوافها المفروض).

ثمَّ يَسْعَى.

ثمَّ يَحْلِقَ رأسَهُ أوْ يُقَصِّرَ (والأول أفضل للرجل والثاني أفضل للمرأة) و(حينئذ) قدْ حَلَّ مِنْهَا.

THE INTEGRALS OF HAJJ AND 'UMRA

أركان الحج والعمرة

j12.2 The integrals of 'umra are:

(a) ihram (def: j3);

(b) circumambulation (def: j5.16);

(c) going between Safa and Marwa (def: j6.4);

(d) shaving or shortening the hair (def: j9.7);

j12.2 فأركانُها إحرامٌ وطوافٌ وسعيٌ وحلقٌ (وترتيب وبه تصير الأركان

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(O: and performing them in the order given, which is a fifth integral).

خمسة).

j12.3 The integrals of hajj are these four (n: (a), (b), (c), and (d) above) plus standing at 'Arafa (def: j8.4).

The hajj's other *requisites* (wajibat, dis: c2.1(A:)) are:

(a) that one enter ihram at the proper site (def: j2.1–2);

(b) stoning the stoning sites at Mina (def: j9.4, j10);

(c) staying the night at Muzdelifa (def: j9.1) (N: another position is that this is sunna and not obligatory);

(d) staying the nights following the 'Eid at Mina (def: j10.1,4,7);

(e) and the farewell circumambulation (def: j11.2).

Everything besides the above is sunna.

j12.3 وأركانُ الحجِّ هذه الأربعةُ والوقوفُ وواجباتُهُ كونُ الإحرامِ منَ الميقاتِ ورميُ الجمارِ والمبيتُ بمزدلفةَ وليالي منىً وطوافُ الوداعِ.

وما عدا ذلكَ سننٌ.

THE NONPERFORMANCE OF AN OBLIGATORY FEATURE OF HAJJ OR 'UMRA

ترك ركن أو واجب

j12.4 Someone who does not perform an integral (N: of hajj or 'umra) remains in ihram until he performs it.

Someone who does not perform some other obligatory feature of them must slaughter in expiation (def: j12.6(I)) (O: if he does not return and perform it before its time is finished, as in such cases as:

(1) returning to enter ihram at the proper site before one starts circumambulating (dis: j2.5), though if one returns after having begun circumambulating, it does not lift the obligation to slaughter;

(2) not spending the night at Muzdelifa

j12.4 فإنْ تَرَكَ ركناً لمْ يَحِلَّ منْ إحرامِهِ حتَّى يأتيَ بِهِ ومَنْ تَرَكَ واجباً لَزِمَهُ دمٌ (إن لم يعد إليه ويفعله كأن يعود إلى الميقات قبل التلبس بالطواف وإلا فلا ينفعه العود فإنه قد استقر الدم عليه فلا يسقط عنه بالعود إلى الميقات حينئذ أي حين إذ شرع في الطواف؛ وكترك المبيت

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(j9.1), which necessitates slaughtering if one does not return before sunrise, though to do so after sunrise does not lift the obligation to slaughter;

(3) or not spending most of the night at Mina, if one does not return to it before most of the time has passed, though if one does (n: return while most of it remains), then one need not slaughter.

And similarly for the other requisites). Someone who does not perform a sunna is not obliged to do anything.

بمزدلفة فإنه يجب عليه الدم ما لم يعد إليها قبل طلوع الشمس وإلا فلا ينفعه العود، وكترك المبيت بمنى معظم الليل أي أكثره ما لم يعد إليها قبل مضي أكثر الليل وإلا سقط عنه الدم وغير ذلك من الواجبات) ومَنْ تَرَكَ سنةً لمْ يَلْزَمْهُ شيءٌ.

BEING PREVENTED BY OTHERS FROM COMPLETING THE INTEGRALS OF HAJJ OR 'UMRA AFTER HAVING ENTERED IHRAM

الإحصار

j12.5 Someone prevented by an enemy (O: non-Muslim or Muslim) from entering Mecca (O: and fulfilling the integrals (A: of hajj or 'umra, including being barred from performing the obligatory circumambulation (tawaf al-ifada) or going between Safa and Marwa) when there is no alternative route, releases himself from ihram by intending release from it, shaving his head, and slaughtering a sacrifice animal at the place he has been prevented, if an animal is available. If not (O: such as when unable to find an animal at all, or finding one for more than the going price of similar animals at that place and time), one gives the animal's value in food (A: wheat) (O: as charity to the poor and those short of money in the Sacred Precinct (N: or place one is prevented)); or if unable (O: to give food), one fasts a single day for each 0.51 liters of food (A: wheat) that would have been given had the latter been done (O: fasting the days wherever one wishes. When fasting is the only option possible, one is immediately released from ihram after shaving one's head with the intention of releasing oneself).

If such a hajj or 'umra was to have been supererogatory, one is not obliged to make it up.

j12.5 ومَنْ أحْصَرَهُ عدوٌ (والعدو المذكور يشمل المسلم والكافر) عنْ مكةَ (وعن إتمام الأركان) ولمْ يَكُنْ لَهُ طريقٌ آخرُ تَحَلَّلَ بأنْ يَنْوِيَ التحللَ ويَحْلِقَ رأسَهُ ويُريقَ دماً مكانَهُ إنْ وَجَدَهُ. وإلاَّ (إن لم يجده أصلاً أو وجده لكن زاد ثمنه عن ثمن المثل) أخْرَجَ طعاماً بقيمته (ويتصدق به على فقراء الحرم ومساكينه) وإنْ عَجَزَ (عن إخراج الطعام) صامَ لكلِّ مدٍّ يوماً (في أي مكان شاء. وإذا انتقل إلى الصوم تحلل حالاً بما تقدم من الحلق مع النية) ولا قضاءَ إنْ كان تطوعاً.

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A FULL SUMMARY OF THE EXPIATIONS CONNECTED WITH HAJJ AND 'UMRA

محصل دماء الحج والعمرة

j12.6 (n: Muhammad 'Abdullah Jurdani distinguishes between four categories of expiations relating to hajj and 'umra.

(I) The first category consists of *alternatives in a fixed precedence order and predetemined amount* (dam tartib wa taqdir), meaning that one must either slaughter a *shah* (def: h2.5) meeting sacrifice specifications (def: j14.2), distributing its meat to the poor and those short of money (def: h8.11) in the Sacred Precinct; or if unable to slaughter (N: from lack of money (def: j1.17(2)) while on the hajj, even if one has enough money back home), then one must fast three days during the hajj and seven more at home, making ten days. (N: If this expiation is for something that should have been performed after standing at 'Arafa (n: (4), (5), (6), or (9) below), the three days "during the hajj" may be fasted after one's release from ihram while still in Mecca, or if one fails to do so while there (A: as is obligatory), they become a makeup fast that must be performed before the other seven fasted at home (A: by an interval equal to the days of one's journey home).)

There are nine things which necessitate this type of expiation:

(1) performing an 'umra first (tamattu') hajj (def: j1.15,17);

(2) performing hajj and 'umra simultaneously (qiran, def: j1.16,17);

(3) not standing at 'Arafa (def: j8.4);

(4) to miss stoning (def: j10.8) at the stoning sites of Mina on the three days after the 'Eid, the time for which ends at sunset on the third day (dis: j10.2(N:)) if one does not leave early (def: j10.6);

(5) to miss all three nights at Mina after the 'Eid (def: j10.1,4,7), though if one only misses a single night, one distributes 0.51 liters of wheat to the poor of the Sacred Precinct, and if two nights, then double this amount;

(6) to miss spending the night at Muzdelifa (def: j9.1, second par.);

(7) not entering ihram at the proper site (dis: j2.5);

(8) breaking one's vow (def: j18.5);

(9) or not performing the farewell circumambulation (tawaf al-wada', def: j11.2).

(II) The second category consists of expiations in which one is *free to choose one of three predetermined alternatives* (dam takhyir wa taqdir), namely: to

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slaughter and distribute a *shah* as described above (I); to fast three days, even if unconsecutive, wherever one wishes; or to give 1.015 liters of wheat to each of six of the poor or those short of money at the Sacred Precinct.

There are eight things which necessitate this type of expiation:

(1) removal of three hairs (dis: j3.8) at one time and place, meaning that the interval between removing each is not considered *long* (dis: f4.5), and one has remained at the same place, though if their removal does not occur at a single time and place, one must pay 0.51 liters of wheat to the poor or fast one day for each hair, even if their number exceeds three;

(2) trimming three nails at one time and place, with the same rules and restrictions as just mentioned;

(3) men wearing sewn garments or covering their head (dis: j3.6), or women covering their faces (dis: j3.24);

(4) using oil (def: j3.7(1));

(5) using scent (j3.7);

(6) sexual foreplay (n: other than intercourse) (dis: j3.13);

(7) having sexual intercourse a second time after having spoiled one's hajj (dis: j3.14) by an initial sexual intercourse;

(8) or having sexual intercourse between partial and full release (def: j9.13) from ihram.

(III) The third category consists of expiations in a *fixed precedence order of alternatives involving estimate-based substitutes* (dam tartib wa ta'dil). It is necessitated by two things.

(1) The first is being prevented by another from completing all the integrals of the hajj or 'umra (def: j12.5), in which case one must release oneself from ihram by slaughtering and distributing a *shah* as described above (I); or if unable to slaughter, one estimates its value, buys food for that amount, and distributes it to the poor of the Sacred Precinct (N: or place one is prevented); or if unable to give food, one fasts one day for each 0.51 liters of wheat that would have been given if one had been able to.

(2) The second is having spoiled one's hajj or 'umra by sexual intercourse (def: j3.14), in which case one must slaughter a camel, or if unable to, one must perform the alternative one is capable of, of those mentioned at j3.15.

(IV) The fourth category involves *choosing between alternatives consisting of estimate-based substitutes* (dam takhyir wa ta'dil). It is necessitated by two things.

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(1) The first is killing a game animal while in ihram, where if there is a domestic animal of similar value (lit. "like"), one has a choice between the alternatives mentioned at j3.22, though if there is not, then those mentioned at j3.23.

(2) The second is destroying a tree of the Sacred Precinct, where, if it is large in relation to other trees of its kind, one slaughters and distributes a cow, and if small, one slaughters a sheep. In either case, one has a choice between slaughtering it and distributing its meat to the poor of the Sacred Precinct, estimating its cost and buying wheat to distribute to the poor of the Sacred Precinct, or fasting a day for each 0.51 liters of wheat that would have been bought had the latter been done.

(*Mufid 'awam al-Muslimin ma yajibu 'alayhim min ahkam al-din* (y67), 230–38))

(N: Throughout the above, whenever one is obliged to slaughter an animal, it is permissible to commission (wakala, def: k17) another person to do so by means of the written contracts readily available at a modern hajj, simply paying an amount of money and signing the agreement. They then slaughter for one in the early morning of the 'Eid and distribute the meat to deserving recipients. Secondly, giving *food* or *wheat* to the poor, wherever it is mentioned in connection with expiations, means giving them the type of food that is valid for the zakat of 'Eid al-Fitr (def: h7.6), and the remarks made in that section about the Hanafi school permitting other than wheat apply equally here.) (n: In the Hanafi school, slaughtering must take place in the Sacred Precinct, though one may distribute both the meat and other expiations anywhere (*al-Lubab fi sharh al-Kitab* (y88), 1.212, 1.224).)

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j13.0 VISITING THE TOMB OF THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE)

j13.0 زيارة قبر النبي ﷺ

j13.1 It is recommended when one has finished the hajj to visit the tomb of the Prophet (Allah bless him and give him peace) (n: in Medina). (O: One should enter his mosque with the right foot first, as in any mosque, and say the well-known supplication: "In the name of Allah, praise be to Allah. O Allah, bless our liegelord Muhammad, his folk and his Companions, and give them peace. O Allah, open unto me the gates of Your mercy.")

j13.1 يُنْدَبُ إذَا فَرَغَ مِنْ حَجِّهِ زِيارةُ قبرِ النبيِّ ﷺ (فإذا دخلَ المسجد فليقدم رجله اليمنى كما في سائر المساجد وحينئذ فليقل الدعاء المشهور وهو: «بسم الله والحمدُ لله اللهُمَّ صلِّ على سيدنا محمدٍ وعلى آله وأصحابه وسلِّمْ، اللهُمَّ افْتَحْ لي أبوابَ رَحْمَتِكَ»).

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HOW TO VISIT THE PROPHET'S TOMB

j13.2 It is recommended to pray two rak'as to greet his mosque, and then approach the noble and honored tomb and stand at the head of it with one's back to the direction of prayer (qibla). One bows one's head and summons to mind reverent awe and humility, then greets the Prophet (Allah bless him and give him peace) and blesses him in a normal voice (O: saying: "Peace be upon you, O Messenger of Allah. Peace be upon you, O Prophet of Allah. Peace be upon you, O Chosen One of Allah. Peace be upon you, O Best of Allah's Creation. Peace be upon you, O Beloved of Allah"), after which one supplicates Allah for whatever one wishes. Then one steps half a meter to the right to greet Abu Bakr, and again to the right to greet 'Umar (Allah be well pleased with them). Then it is recommended to return to one's original place and do much of supplicating Allah, turning to Allah through the Prophet (tawassul, def: w40) (O: concerning one's aims and goals, since he is the greatest intermediary, in intercession and other things), and invoking blessings upon him (Allah bless him and give him peace), after which one supplicates beside the pulpit (minbar) and in the Rawda (N: which is the space designated by the white pillars between the chamber containing the noble tomb and the pulpit).

j13.3 It is unlawful to circumambulate the tomb.

It is offensive to nudge the wall around the tomb with one's back or front, to kiss it, or touch it (O: with one's hand. Proper conduct here is to stand back from it as one would if present during his life (Allah bless him and give him peace). This is what is right, and what scholars have said and are agreed upon. One should not be deceived by what some common people do in their ignorance of proper manners, for it is reprehensible innovation (bid'a, def: w29.3)).

One of the most disgraceful innovations is the eating of dates in the Rawda.

كيفية زيارة القبر الشريف

j13.2 فَيُصَلِّي تحيةَ مسجدِهِ ثمَّ يأتي القبرَ الشريفَ المكرَّمَ فَيَسْتَدْبِرُ القبلةَ (ويَجْعَلُ قنديلَ القبلةِ الذي عندَ رأسِ القبرِ على رأسِهِ) ويُطْرِقُ رأسَهُ ويَسْتَحْضِرُ الهيبةَ والخشوعَ ثمَّ يُسَلِّمُ ويُصَلِّي على النبيِّ ﷺ بصوتٍ متوسطٍ (وصيغةُ السلامِ هي قولُ المسلمِ: «السلامُ عليكَ يا رسولَ اللهِ، السلامُ عليكَ يا نبيَّ اللهِ، السلامُ عليكَ يا خيرةَ اللهِ، السلامُ عليكَ يا خَيْرَ خلقِ اللهِ السلامُ عليكَ يا حبيبَ اللهِ») ويَدْعُو بما أَحَبَّ ثمَّ يتأخَّرُ إلى جهةِ يمينِهِ قدرَ ذراعٍ فَيُسَلِّمُ على أبي بكرٍ ثمَّ يتأخَّرُ قدرَ ذراعٍ فَيُسَلِّمُ على عُمَرَ رَضِيَ اللهُ عنهُما.

ثمَّ يَرْجِعُ إلى موقفِهِ الأولِ ويُكْثِرُ الدعاءَ والتوسلَ (بهِ ﷺ في مطلوبِهِ ومقصودِهِ لأنَّهُ الوسيلةُ العظمى في الشفاعةِ وغيرِها) والصلاةَ عليْهِ.

ثمَّ يَدْعُو عندَ المنبرِ وفي الروضةِ.

j13.3 ولاَ يَجُوزُ الطوافُ بالقبرِ.

ويُكْرَهُ إلصاقُ الظهرِ والبطنِ بِهِ ولا يُقَبِّلُهُ (أي الجدارَ) ولا يَسْتَلِمُهُ (بيدِهِ والأدبُ أن يبعدَ منه كما يبعدُ منه لو حضرَ في حياتِهِ ﷺ هذا هو الصوابُ وهو الذي قالَهُ العلماءُ وأطبقوا عليهِ ولا تغترَّ بما يفعلُهُ العوامُ لجهلِهِم بالأدبِ فهذا من البدعِ المحدثةِ) ومِنْ أقبحِ البدعِ أكلُ التمرِ في الروضةِ.

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j13.4 It is recommended to visit al-Baqi' (O: the cemetery of Medina. It is desirable to go to it every day, for buried there are the wives of the Prophet (Allah bless him and give him peace), some of his children, his father's brother 'Abbas, our liegelord 'Uthman ibn 'Affan the successor of the Messenger of Allah (Allah bless him and give him peace), a number of his Companions (Sahaba), and Imam Malik, founder of the Maliki school of jurisprudence, the bliss and benefaction of Allah be upon them all).

j13.4 ويُزُورُ البقيعَ (وهو مقابر المدينة فيستحب أن يخرج إليه كل يوم لأن فيه نساء رسول الله ﷺ وبعض أولاده وفيها العباس عم رسول الله ﷺ وسيدنا عثمان بن عفان خليفة رسول الله ﷺ وجملة من الصحابة وفيها قبر الإمام مالك صاحب المذهب رضوان الله عليهم أجمعين).

j13.5 When one desires to travel, one bids farewell to the mosque by praying two rak'as, and to the noble tomb with a visit and supplication. And Allah knows best.

j13.5 فإذا أرادَ الرحيلَ وَدَّعَ المسجدَ بركعتين والقبرَ الكريم بالزيارةِ والدعاء. واللهُ أعلمُ.

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j14.0 SACRIFICES ON 'EID AL-ADHA

(O: *Sacrifices* are the livestock slaughtered in worship of Allah Most High between 'Eid al-Adha and the last of the three days that follow it. They are a general hospitality from Allah to believers (A: to whom the meat is distributed. It is unlawful to give any of it to non-Muslims).)

j14.0 باب الأضحية

(وهي ما يذبح من النعم تقرباً إلى الله تعالى من يوم عيد النحر إلى آخر أيام التشريق والأضحية ضيافة عامة من الله تعالى للمؤمنين).

j14.1 'Eid al-Adha sacrifices are a confirmed sunna (def: c4.1) (N: which is considered obligatory in the Hanifi school) (O: being sunna for those able to slaughter, though uncalled-for from the poor person who is unable).

It is recommended for someone who intends to sacrifice not to cut his hair or trim his nails on 10 Dhul Hijja until he slaughters (O: these being offensive until he does). The time for slaughtering begins when it is long enough after sunrise to have performed the 'Eid prayer (def: f19) with its two sermons (A: i.e. about forty minutes) (O: even if one does not attend it) and it ends at (A: sunset on) the last of the three days following the 'Eid.

j14.1 هيَ سنةٌ مؤكدةٌ ([وطلبها على سبيلِ الندب] مقيد بكون الفاعل لها قادراً فلا تطلب من الفقير العاجز عنها). يُنْدَبُ لمنْ أرادَهـا أنْ لا يحْلِقَ شعـرهُ ولاَ يُقَلِّمَ ظفـرَهُ في عشـرِ ذي الحجـةِ (فتستمـر الكراهة) حتَّى يُضَحِّيَ. ويَدْخُلُ وقْتُها إذا طَلَعَتِ الشمسُ ومضى قدرُ صلاةِ العيـدِ والخطبتين (وإن لم يفعـل ذلك) ويَخْرُجُ بخروجِ أيامِ التشريقِ [وهي ثلاثةٌ بعدَ العيد].

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SACRIFICE ANIMAL SPECIFICATIONS

j14.2 Only camels, cattle, sheep, or goats may be slaughtered. At the youngest, camels must be over five full years, cattle and goats over two full years, and sheep over one full year.

A single camel or cow fulfills the sunna for seven (A: men and their families), though a *shah* (def: h2.5) only fulfills it for one. It is superior to slaughter a single *shah* than to have a share in slaughtering a camel.

The best animal to sacrifice is a camel, then a cow, then a sheep, and then a goat. The best kind of *shah* (h2.5) to slaughter is white, then tawny-colored, then black and white, and then a black one.

It is a necessary condition that a sacrifice animal be free of defects that diminish (A: the quality of) its meat. It is invalid to slaughter:

(1) a lame animal (O: that has an obvious walking problem that hinders its going to pasture and thus weakens it);

(2) a blind or one-eyed animal (O: whose defect is manifest, as this diminishes its ability to graze);

(3) a sick animal (O: whose infirmity is plain);

(though if these defects are slight, the animal will suffice. It is likewise invalid to sacrifice an animal that is:)

(4) deranged by malnutrition or insane;

(5) mangy or scabrous (O: even when it is not obvious);

(6) with an ear that has been cut off or a piece of it separated, even if not much (O: or one born without an ear);

(7) or missing a considerable part of the haunch or similar meat-bearing portion (O: though not if it is a slight amount).

ما يجزىء في الأضحية

j14.2 ولا تَجُوزُ إلاَّ بإبلٍ أوْ بقرٍ أوْ غنمٍ. وأقلُّ سنِّهِ في الإبلِ خمسُ سنينَ ودَخَلَ في السادسةِ وفي البقرِ والمعزِ سنتانِ ودَخلَتْ في الثالثةِ وفي الضأنِ سنةٌ ودخلَ في الثانيةِ.

وتُجْزِىءُ البدنةُ عنْ سبعةٍ والبقرةُ عنْ سبعةٍ ولا تُجْزِىءُ شاةٌ إلاَّ عنْ واحدٍ وشاةٌ أفضلُ منْ شركةٍ في بدنةٍ وأفضلُها البدنةُ ثمَّ البقرةُ ثمَّ الضأنُ ثمَّ المعزُ.

وأفضلُها (أي الشاة) البيضاءُ ثمَّ الصفراءُ ثمَّ البلقاءُ ثمَّ السوداءُ.

وتُشْتَرَطُ سلامةُ الأضحيةِ عنِ العيوبِ التي تَنْقصُ اللحمَ.

فلا تُجْزِىءُ العرجاءُ (أي البيّن عرجها بأن يمنعها من ذهابها إلى المرعى فتضعف بسبب ذلك) والعوراءُ (أي البيّن عورها لأنه يضعفها عن المرعى) والمريضةُ (أي البيّن مرضها). فإنْ قلَّتْ هذهِ الأشياءُ جازَ. ولا تُجْزِىءُ العجفاءُ [(وهي ذاهبة المخّ من شدة هزالها)] والمجنونةُ والجرباءُ (وإن لم يكن بيناً) والتي قُطِعَ بعضُ أذنِها وأبينَ (أي انفصل) وإنْ قلَّ (ولا مخلوقة بلا أذن) أوْ قطعةٌ منْ فخذِها ونحوِهِ إنْ كانَتْ كبيرةً (بخلاف الفلقة اليسيرة منه) وتُجْزِىءُ

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It is permissible to sacrifice an animal with a slit in its ear (O: a measure for identification that does not diminish the meat) or one with part or all of a horn broken off.

مشروطةُ الأذنِ (لأنه وسم لا ينقص لحماً) ومكسورةُ كلِّ القرنِ أوْ بعضِه.

HAVING ANOTHER SLAUGHTER FOR ONE

التوكيل في الذبح

j14.3 It is best to slaughter (def: j17.4) the animal oneself (O: if one can slaughter well. If not, then it is obligatory to have someone who can slaughter properly do it for one). If unable to slaughter well, it is recommended to be present when it is done.

j14.3 والأفضلُ أنْ يَذْبحَ بنفسِه (إن أحسنَ الذبحَ فإن لم يحسنه فليوكل من يحسنُ الذبحَ وجوباً). فإنْ لمْ يُحْسِنْ فَلْيَحْضُرْ (ندباً).

THE INTENTION

النية

j14.4 The intention to sacrifice must be made at the time of slaughtering. (O: It suffices the person who is having another slaughter for him to make the intention when he authorizes the other to do so.)

j14.4 ويَجِبُ أنْ يَنْوِيَ عندَ الذبحِ (والنية تكفي من الموكل عند التوكيل).

DISTRIBUTING THE MEAT

توزيع اللحم

j14.5 It is recommended that a third of the animal sacrificed be eaten, a third be given away (O: even if to wealthy Muslims), and a third be given as charity (O: raw, not cooked).

It is obligatory to give away some of the (O: raw) meat as charity, even if it is not much (O: it suffices to give it to one Muslim), and the hide is given in charity or used at home.

It is not permissible to sell the hide or meat (O: all of the above applying to sunna or voluntary sacrifices). It is not permissible for a person who has vowed (def: j18) a sacrifice to eat any of the animal slaughtered.

j14.5 ويُسْتَحَبُّ أنْ يأكلَ الثلثَ ويُهْدِيَ الثلثَ (ولو لأغنياء المسلمين) ويَتَصَدَّقَ بالثلثِ (أي نيئاً لا مطبوخاً).

ويَجِبُ التصدُّقُ بشيءٍ (أي نيئاً أيضاً) وإنْ قلَّ (ويكفي تمليكه لمسلم واحد) والجلدُ يَتَصَدَّقُ بِهِ أوْ يَنْتَفِعُ بِهِ في البيتِ.

ولا يَجُوزُ بَيْعُهُ ولا بيعُ شيءٍ مِنَ اللحمِ (هذا كله في الأضحية المندوبة أو المتطوع بها) ولا يَجُوزُ لهُ الأكلُ مِنَ الأضحيةِ المنذورةِ.

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j15.0 SACRIFICE FOR A NEWBORN ('AQIQA) AND NAME-GIVING

(O: Lexically, *'aqiqa* means the hair on a baby's head at birth. In Sacred Law, it means the animal sacrificed when the baby's hair is cut, which is a confirmed sunna (def: c4.1).)

j15.0 العقيقة

(وهي لغة الشعر الذي على رأس الولد حين ولادته وشرعاً ما يذبح عند حلق شعره وهي سنة مؤكدة).

SUNNAS AFTER BIRTH

ما يندب بعد الولادة

j15.1 It is recommended for anyone to whom a child is born to shave its hair on the seventh day thereafter (O: meaning any newborn, whether male or female; a baby girl should also have her hair shaved) and give away in charity gold or silver equal to the weight of the hair.

It is also recommended (N: when the baby is first born) to give the call to prayer (adhan, def: f3.6) in its right ear and the call to commence (iqama) in its left.

j15.1 يُنْدَبُ لِمَنْ وُلِدَ لهُ ولدٌ أنْ يَحْلِقَ رأسَهُ يومَ السابعِ (والولد معناه المولود ولو أنثى فإنه يسن حلق رأسها) ويَتَصدَّقَ بوزنِ شعرِهِ ذهباً أوْ فضةً.

وأنْ يُؤَذِّنَ في أُذُنِهِ اليمنى ويُقِيمَ في اليسرى.

THE SACRIFICE

الذبح عن المولود

j15.2 If the baby is male, it is recommended to slaughter two *shahs* (def: h2.5) that meet 'Eid Sacrifice specifications (def: j14.2), while if the baby is female, it is recommended to slaughter one.

(O: The person called-upon to slaughter for a newborn is the one obliged to support the child (dis: m12.1).)

After slaughtering, the *shah* is cooked (O: as at any feast) in sweet sauce, but none of its bones are broken (A: it is cut at the joints), and it is recommended to distribute the meat to the poor.

j15.2 ثمَّ إنْ كانَ غلاماً ذُبِحَ عنهُ شاتانِ تُجْزِيانِ في الأضحيةِ، وإنْ كانتْ جاريةً فشاةٌ (والمخاطب بالذبح عن المولود هو من تلزمه نفقته).

وتُطْبَخُ (العقيقة كسائر الولائم) بحلوٍ ولا يُكْسَرُ العظمُ ويُفَرَّقُ (ندباً لحمها) على الفقراء.

NAME-GIVING

تسمية المولود

j15.3 It is sunna to give the child a good name such as *Muhammad* or *'Abd al-Rahman*. (O: It is desirable to name a child even if it dies before being named.) (A: It is sunna for a new Muslim to take a good name like the above, or one of the names of the prophets (def: u3.5) (Allah bless them and give them peace).)

j15.3 ويُسَمِّيهِ باسمٍ حسنٍ كمحمدٍ وعبدِ الرحمنِ (ولو مات قبل التسمية استحب تسميته).

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j16.0 FOODS

(O: This section is an explanation of what is lawful (halal) and unlawful (haram), the knowledge of which is among the most important concerns of the religion, since knowing it is personally obligatory for every Muslim.)

j16.0 الأطعمة

(أي بيـان ما يحـل منهـا ومـا يحـرم. ومعـرفتهمـا من آكـد مهمـات الـدين لأن معرفة الحلال والحرام فرض عين).

AVOIDING DOUBTFUL FOODS

ترك الشبهات

j16.1 (n: The following hadith and its commentary have been added here by the translator.)

Anas (Allah be well pleased with him) relates that the Prophet (Allah bless him and give him peace) found a date in his path, and said,

"But for fear that it was charity, I would have eaten it."

(*Riyad al-salihin* (y107), 277)

(Muhammad ibn 'Allan Bakri:) The hadith shows that when a person doubts that something is permissible, he should not do it. The question arises, Is refraining from it in such a case obligatory, or recommended?—to which our Imams explicitly reply that it is the latter, because a thing is initially assumed to be permissible and fundamentally not blameworthy, as long as some prior reason for considering it unlawful is not known about it that one doubts has been removed. For example, when one doubts that one of the conditions for valid slaughtering (def: j17.2–4) has been met, conditions which make (N: a particular piece of meat) lawful, the assumption is that it remains unlawful (N: since initially the animal was alive, a state in which it is unlawful to eat, while it only becomes lawful by a specific procedure, i.e. Islamic slaughtering), so that the meat does not become lawful except through certainty (A: that it has been slaughtered. The case of meats is exceptional in this, since most other foods are initially permissible, and one assumes they remain so unless one is certain something has occurred which has made them unlawful).

In cases of doubt, only likely possibilities are taken into consideration, since it appears probable (n: in the above hadith) that dates for charity

j16.1 (ت: قد أضـاف الـمتـرجم الحديث التالي وشرحه هنا لعموم فائدته).

ـ وعـن أنـس رضي الله عنـه أنَّ النبيَّ ﷺ، وَجَدَ تمرةً في الطريق، فقالَ: «لَوْلاَ أنِّي أخـافُ أن تكونَ من الصدقةِ لأكَلْتُهَا» [متفقٌ عليـه] (حـديث ٥٨٧ من كتـاب رياض الصالحين للنووي).

(محمـد بن علان البكـري:) [...] يؤخـذ من الحـديث أنه ينبغي للإنسان إذا شك في إبـاحـة شيء ألا يفعله لكن هل الترك حينئـذ واجب أو مندوب؟ [وتقدم فيـه الخلاف في حديث النعمان]. وكلام أئمتنـا مصـرح بالثاني لأن الأصل الإباحة والبـراءة الأصليـة ما لم تعلم جهة محرمة قبل ذلك في شيء بعينه ويشك في زوالها كأن يشـك في شرط من شروط الـذبيح المبيح هل وجـد أم لا لأن الأصـل حينئذ بقـاء الحـرمـة فلا يحـل إلا بيقين. ثم لا يراعى من الاحتمـال في ذلك إلا القريب لأن الظاهر أن تمر الصدقة كان موجوداً إذ

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were present at the time. As for remote possibilities, taking them into consideration only leads to a blameworthy extremism and departure from how the early Muslims were, for the Prophet (Allah bless him and give him peace) was given some cheese and a cloak (A: by members of a non-Muslim Arab tribe) and he ate the one and wore the other without considering whether they might have mixed the former with pork, or whether the wool came from a slaughtered or unslaughtered animal. Were one to take such possibilities into consideration, one would not find anything lawful on the face of the earth. This is why our colleagues say, "Complete certainty that something is lawful is only conceivable about rainwater falling from the sky into one's hand" (*Dalil al-falihin li turuq Riyad al-salihin* (y25), 5.37–38).

ذاك.

أما الاحتمال البعيد فتؤدي مراعاته إلى التنطع المذموم والخروج عما عرف من أحوال السلف فقد أتي ﷺ بجبنة وجبة فأكل ولبس ولم ينظر لاحتمال مخالطة الخنزير لهم ولا إلى صوفها من مذبوحة أو ميتة. ولو نظر أحد للاحتمال المذكور لم يجد حلالاً على وجه الأرض. ومن ثم قال أصحابنا لا يتصور الحلال بيقين إلا في ماء المطر النازل من السماء المتلقى باليد [محرر من دليل الفالحين لطرق رياض الصالحين: ٥/ ٣٧ - ٣٨].

ANIMALS LAWFUL AND UNLAWFUL TO EAT

ما يحل وما يحرم من الحيوان

j16.2 It is permissible to eat the oryx, zebra, hyena, fox, rabbit, porcupine, daman (n: a Syrian rock badger), deer, ostrich, or horse.

j16.2 يُؤْكَلُ بقرُ الوحشِ وحمارُ الوحشِ والضبعُ والثعلبُ والأرنبُ والقنفذُ والوبرُ والظبيُ [والضبُّ] والنعامةُ والخيلُ.

j16.3 It is unlawful to eat:

(1) (N: any form of pork products);

(2) cats or disgusting small animals that creep or walk on the ground such as ants, flies, and the like (O: *disgusting* being used here to exclude inoffensive ones such as the jerboa, locust, and hedgehog, which are small creeping animals, but are recognized as wholesome, and are pure);

(3) predatory animals that prey with fangs or tusks, such as the lion, lynx, leopard, wolf, bear, simians, and so forth (O: including the elephant and weasal);

(4) those which hunt with talons, such as the falcon, hawk, kite, or crow, except for the barnyard crow, which may be eaten;

(5) or the offspring of an animal permissible

j16.3 ولا يُؤْكَلُ السنورُ ولا الحشراتُ المستخبثةُ كالنملِ والذبابِ ونحوِهما (ووصف الحشرات بالاستخباث يخرج ما ليس خبيثاً منها كاليربوع [والضب] والجراد فإنها داخلة في مسماها مع أنها مستطابة فهي طاهرة).

ولا ما يَتَقَوَّى (أي يعدو) بنابه كالأسد والفهد والنمر والذئب والدبُّ والقرد ونحوها (كالفيل والنمس).

وما يَصْطادُ بالمخلب كالصقر والشاهين والحدأة والغراب إلا غراب الزرع فيُؤْكَلُ.

وما تولَّدَ منْ مأكولٍ وغيرِ مأكولٍ لا

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to eat and one not permissible to eat, such as a mule (O: which is a cross between one eaten, the horse, and one not eaten, the donkey).

يُؤكَلُ كالبغلِ (فهو متولد من مأكول وهو الفرس وغير مأكول وهو الحمار الأهلي) [واليعفور].

j16.4 It is permissible to eat any aquatic game (sayd al-bahr) except frogs and crocodiles.

j16.4 ويُؤكَلُ كلُّ صيدِ البحرِ إلاّ الضفدعَ والتمساحَ

OTHER SUBSTANCES UNLAWFUL TO EAT

ما يحرُم أكله

j16.5 It is unlawful to eat anything harmful, such as poison, glass, or earth. (A: If something has been proven harmful, it is unlawful to consume, while if suspected to be harmful, it is offensive to.) (n: w41 discusses cigarette smoking.)

j16.5 وكلُّ ما ضرَّ أكلُهُ كالسمِّ والزجاجِ والترابِ [(لا يحل أكله)].

j16.6 It is unlawful to eat anything impure (najasa, def: e14.1) (O: whether impure in itself, or because of being affected with something impure, as is the case with (N: befouled) milk, vinegar, or honey).

It is also unlawful to eat substances which are pure, but generally considered repulsive, such as saliva or sperm.

j16.6 أوْ كانَ نجساً (نجاسة عين أو كانت نجاسة عارضة كاللبن والخل والعسل (ح: [إذا تنجست))، أوْ طاهراً مستقذراً كالبصاقِ والمنيِّ، لا يَحِلُّ أكلُهُ.

j16.7 If forced to eat from a unslaughtered dead animal (O: out of fear of losing one's life or fear of an illness growing worse), then one may eat enough (O: the necessary minimum) to avert destruction (O: meaning enough to keep life from ending. One may not eat to repletion from a dead animal unless one believes that confining oneself to the survival minimum entails dangerous consequences, in which case it is obligatory to take the edge off one's hunger). If circumstances force one to choose between a dead animal and some permissible food belonging to someone else (O: who is not present), one is obliged to eat of the dead animal.

j16.7 فإنِ اضْطُرَّ إلى أكلِ الميتةِ (بأن خاف على نفسه الهلاك أو زيادة المرض) أكَلَ منها مَا (أي شيئاً قليلاً) يَسُدُّ رمقَهُ (أي بقي روحه من الهلاك ولا يشبع من أكل الميتة إلا إن خاف من اقتصاره على سد الرمق محذوراً فإنه يشبع وجوباً بأن يأكل حتى يكسر سورة الجوع أي شدته وحدته).

فإنْ وَجَدَ ميتةً وطعامَ الغير (أي طعاماً مملوكاً لغيره وصاحبه غائب) [أو ميتةً وصيداً وهو مُحرِمٌ] أكَلَ الميتةَ (وجوباً في الصورة الأولى والثانية).

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j17.0 HUNTING AND SLAUGHTERING

j17.0 الصيد والذبائح

j17.1 It is not permissible to eat any animal (O: that Muslims are permitted to eat) until it has been properly slaughtered, the only exceptions to which are fish (def: j16.4) and locusts, which are permissible to eat even when they die unslaughtered.

j17.1 لا يَحِلُّ الحيوانُ (المأكول) إلاّ بالذكاة [(أي إلا بالذبح)].
إلاّ السمك والجرادَ فيَحِلُّ ميتُهُمَا.

j17.2 It is unlawful to eat meat slaughtered by a Zoroastrian, someone who has left Islam (murtadd, def: o8), or an idol worshipper, (O: included with whom are those (zanadiqa) with corrupt convictions about tenets of faith that are well-known as essential parts of Islam (def: books u and v),) or a Christian of the desert Arab tribes (O: the upshot of which is that it is a necessary condition that the slaughterer be of a people whose women we are permitted to marry, whether Muslims, Jews, or Christians).

j17.2 ويَحْرُمُ ما ذَبَحَهُ مجوسيٌّ ومرتدٌّ وعابدُ وثنٍ (والزنادقة ملحقة بعبدة الأوثان في عدم حل ذبيحتهم) ونصرانيُّ العربِ ([ونصارى العرب هم بهز وتنوخ وتغلب] والحاصل أنه يشترط في الذابح حل نكاحنا لأهل ملته بأن يكون مسلماً أو كتابياً).

j17.3 It is permissible to slaughter with anything that has a cutting edge; but not a tooth, bone, or claw, whether human or otherwise, attached to the body or not.

j17.3 ويَجُوزُ الذبحُ بكلِّ ما لهُ حدٌّ يَقْطَعُ إلا السنَّ والعظمَ والظفرَ من الآدميِّ وغيرِه متصلاً أو منفصلاً.

j17.4 The necessary condition for slaughtering any animal which is within one's capacity to slaughter (O: domesticated or wild) is to cut both the windpipe and the gullet (O: *windpipe* meaning the channel of breath, and *gullet* meaning the channel of food and drink which lies beneath the windpipe.

It is not necessary for the validity of slaughtering to cut the carotid arteries, which are two blood vessels on the sides of the neck encompassing the windpipe.

If the slaughterer neglects to cut any part of either the windpipe or gullet and the animal dies, it is considered an unslaughtered dead animal, as is an animal with nothing but purely reflexive movement left when one finishes cutting a part of the windpipe or gullet previously missed. If the slaughterer cuts from the back of the neck until he severs the windpipe and gullet, it is a sin because

j17.4 ومَا قُدِرَ على ذبحِهِ (أي الحيوان إنسياً كان أو وحشياً) اشْتُرِطَ قطعُ حلقومِهِ ومريئِهِ (والحلقوم هو مجرى النفس والمريء هو مجرى الطعام والشراب وهو تحت الحلقوم، ولا يشترط في صحة الذبح قطع الودجين وهما عرقان في صفحتي العنق يحيطان بالحلقوم، فلو ترك من الحلقوم والمريء شيئاً ومات الحيوان فهو ميتة وكذا لو انتهى إلى حركة المذبوح فقطع بعد ذلك المتروك فهو ميتة. ولو قطع من القفا حتى وصل إلى الحلقوم والمريء عصى بزيادة

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of the excess pain caused (A: though it is valid as slaughtering. Chopping off heads of chickens with a hatchet is offensive. though the meat is lawful).

The slaughterer should cut swiftly and not take his time such that he has to cut two or more times. If he does. and there is no life remaining in the animal on the second swipe, then the animal (A: has died unslaughtered and) is impermissible to eat. The determining factor is whether life remains in the animal when the knife is applied at the beginning of the last stroke (A: the one which successfully severs both the windpipe and gullet), no matter whether this is the second or third).

الإبـلام. وينبغي للذابـح أن يسـرع في القطع ولا يتأنى في القطع بحيث يقطع ما ذكـر في دفعتين فأكثـر فإذا كان كذلك فلا يحـل المـذبوح حينئذ إذا لم توجد الحياة المستقرة عند الدفعة الثانية أما إذا وجدت الحيـاة المستقرة عند الدفعة الثانية فيحل المـذبـوح، فالشـرط في وجـود الحيـاة المستقـرة في ابتـداء وضـع السكين على الذبح آخر مرة سواء كانت الثانية أم الثالثة).

j17.5 It is recommended when slaughtering:

(1) to turn the animal towards the direction of prayer (qibla);

(2) to sharpen the knife;

(3) to cut rapidly (O: even faster than is obligatory, such that it does not take two or more swipes, as mentioned above);

(4) to mention Allah's name (O: for the spiritual grace therein, saying "Bismillah," as is sunna) (A: this is obligatory in the Hanafi school);

(5) to bless the Prophet (Allah bless him and give him peace);

(6) and to cut the large blood vessels (O: on either side of the neck).

j17.5 ويُنْـدَبُ أنْ يُوَجِّـهَ إلى القبلة وأنْ يُحِـدَّ الشفـرةَ (والمـراد هنا الـسكين) ويُسْرِعَ إمرارَها (والمراد أن يـسرع إسراعاً زائداً على ما يجب بحيث لا يكون الذبح بدفعتين أو دفعات كما تقدم) ويُسَمِّيَ اللهَ تعـالى (لأجل حصول البركة فيقول «بسم الـله» للاتبـاع) ويُـصَلِّي على النبيِّ ﷺ ويَقْطَعَ الأوداجَ كلَّها (والمراد بالجمع ما فوق الواحد لأن كل حيوان له ودجان] أي عرقان في صفحتي عنقه).

j17.6 It is recommended to slaughter camels by thrusting the knife (O: into the hollow at the base of the neck (A: between the two collarbones) above the chest so that one severs them (A: the windpipe and gullet) in this concavity, since it is easier than cutting the throat, for it speeds the exit of the spirit from the body by bypassing the length of the neck, being the preferable way to slaughter any animal with a long neck, such as a duck, goose, ostrich, or giraffe), with the camel left standing, one foreleg bound up.

j17.6 وأنْ يَنْحَرَ الإبلَ (في لبتها وهي أسفـل العنق وفـوق الصدر [وتـسمى ثغرة الـنحـر] بأن يقطعهـا بالسكين في هذه الـوهـدة لأنـه أسهل من ذبحها لأنه أسرع لخروج الروح بسبب طول عنقه ويشارك الإبل في هذا كل مأكول طال عنقه كالبط والـوز والنعامة والزرافة) قائمةً مُعَقَّلَةَ (أي حال كونها مربوطة إحدى يديها).

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j17.7 It is recommended to slaughter other than camels (O: such as cattle, sheep, goats, or horses (A: by drawing the knife) across the throat at the top of neck) after laying them on their left side. (O: Slaughtering them this way is only called for to easily enable the slaughterer to hold the knife in his right hand and the animal's head with his left. It is also sunna for the animal's legs to be bound, except the right hind leg, so the animal will not jerk during slaughtering and cause the slaughterer to miss his mark. The right hind leg is left free in order to pacify the animal by giving it something to move).

j17.7 ويُذْبَحُ ما عداها (من نحو بقر كغنم وخيل في حلقٍ وهو أعلى العنق) مضطجعةً على جنبها الأيسر (وإنما طلب ذبحها مع هذه الحالة لسهولته على الذابح لأخذه السكين باليمين وإمساكه الرأس باليسار، ويسن أن تكون مشدودة القوائم غير الرجل اليمنى لئلا تضطرب حالة الذبح فيخطىء الذابح المذبح وإنما تركت الرجل اليمنى بلا شد لتستريح بتحريكها) [ولا يَكْسِرَ عنقَها ولا يَسْلَخَها حتى تَمُوتَ].

j17.8 It is a necessary condition that the slaughterer not raise his knife-hand while slaughtering (O: while drawing it across the neck). If he lifts it before completely severing both the windpipe and gullet, and then returns to cut them, the animal is not lawful to eat.

j17.8 ويُشْتَرَطُ أنْ لا يَرْفَعَ يدَهُ في أثناءِ الذبحِ (أي في أثناء جر آلته على المذبح) فإنْ رَفَعَها قبل تمامِ قطعِ الحلقومِ والمريء ثمَّ قطعَهُما لمْ تحلّ.

HUNTING

أحكام الصيد

j17.9 As for hunting, a game animal is lawful to eat whenever one hits it with an arrow (A: or according to the Maliki school, shoots it with a rifle or shotgun) or brings it down with a trained hunting animal (A: such as a falcon or dog) (O: but only if trained), and it dies before one can slaughter it (O: that is, provided that one did not reach it when there was any life left in it besides reflexive motion. If one reaches it while it is alive or any life remains, then one must properly slaughter it), provided that the hunter is not blind, is of a people whose slaughtered food Muslims may eat (def: j17.2), and provided that the animal does not die from being struck by the mere weight of the arrow, but rather dies by its edge (O: meaning that it hits the animal point-first, wounding it).

If the game was brought down by a trained hunting animal, it is a necessary condition that the animal ate nothing of the game.

If the game animal dies from being struck by the weight of the trained hunting animal (A: as in falconing), then the game is lawful to eat.

j17.9 وأمّا الصيدُ فحيثُ أصابَهُ السهمُ أو الجارحةُ المعلمةُ (قيد لا بد منه) فمَاتَ قبلَ القدرةِ على ذبحِه حلَّ (بشرط أنه لم يدركه حياً أو لم يبق فيه إلا حركة مذبوح فإن أدركه حياً ذكاه أو وجد فيه حياة مستقرة فلا بد حينئذ من تذكيته) إذا أرْسَلَهُ بصيرٌ تحِلُّ ذكاتُهُ ولمْ يَمُتْ الصيدُ بثقلِ السهمِ بلْ بحدِّه (أي سقط السهم على الصيد من جهة حده الجارح له) ولا أكَلَتِ الجارحةُ منهُ شيئاً.

فإنْ مَاتَ بثقلِ الجارحةِ حلّ.

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j17.10 A game animal is not lawful to eat if:

(1) an arrow hits it and it then drops into water (O: because of the likelihood that it died from drowning (N: if that is probable) rather than from being shot);

(2) it is brought down on a peak which it then falls from (O: because of the likelihood that it died from the fall);

(3) or if it disappears after having been wounded and is found dead (O: because it might have died for some other reason than being wounded (N: though if it is obvious that it died from the wound, it is lawful to eat)).

j17.10 وإنْ أصابَهُ السهمُ فوقعَ في ماءٍ أوْ على جبلٍ ثمّ تَرَدّى منهُ فمَاتَ أوْ غابَ عنهُ بعدَ أنْ جُرِحَ ثمّ وَجَدَهُ ميتاً لمْ يَحِلّ (في الصورة الأولى لاحتمال موته بسبب الغرق لا بسبب الجرح، وفي الصورة الثانية لاحتمال موته بالتردي، وفي الثالثة لاحتمال موته بسبب آخر غير الجرح).

j17.11 A camel or other (O: domestic animal such as a cow, sheep, goat, or horse) that strays and cannot be retrieved, or that falls into a well and cannot be gotten out may be made lawful to eat by shooting it (O: because of the impossibility of slaughtering it), no matter where one hits its body (N: provided one mortally wounds it).

And Allah knows best.

j17.11 وإذا نَدَّ بعيرٌ ونحوُهُ (من كل حيوان إنسي كبقرة وشاة وفرس) وتَعَذَّرَ رَدُّهُ أوْ تَرَدّى في بئرٍ وتَعَذَّرَ إخراجُهُ فرَماه بحديدةٍ في أيِّ موضعٍ كانَ منْ بدنِهِ فمَاتَ حَلَّ (ح: لكن بشرط أنْ يجرحه جرحاً مزهقاً للروح) (لتعذر ذكاته).

والله أعلمُ.

*

j18.0 VOWS (NADHR)

(O: Lexically, the word *vow* means any promise. It is legally defined as making obligatory some act of worship that was not originally obligatory in Sacred Law, such as a supererogatory prayer or fast, and the like. There is a difference of opinion among scholars whether a vow in itself is an act of worship or whether it is offensive. The strongest position is that it is an act of worship when made to perform a pious act (A: since Allah Most High describes the pious as "fulfilling their vows" (Koran 76:7)), for it is an intimate discourse with Allah Most High; though it is offensive in the heat of an argument.)

(A: The advantage of a vow is that one may obtain the reward of an obligatory act by fulfilling it. Its drawback is that unlike broken oaths, which may be expiated (dis: o20), there is no way to lift

j18.0 النذر

(وهو لغة الوعد مطلقاً وتعريفه شرعاً التزام قربة لم تلزم بأصل الشرع كالنوافل من الصلاة والصوم وغيرهما وفي كونه قربة أو مكروهاً خلاف والراجح أنه قربة في نذر التبرر لأنه مناجاة لله تعالى مكروه في نذر اللجاج).

(ع: فائدة النذر أن ثوابه ثواب الفرض. لكن من جانب آخر، لا سبيل

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the vowed action: it remains obligatory unless one is physically unable (N: in which case one performs an alternative (n: e.g. giving food in place of fasting) if there is one in Sacred Law). For this reason, many pious and learned Muslims avoid making vows.)

لرفع موجبه. فيبقى في الذمة إلا عند العجز الفعلي (ح: فحينئذ يصار إلى بدل إن كان له بدل في الشرع)؛ بخلاف اليمين، فلها كفارة. ولذلك يجتنب كثير من أهل الورع والعلم النذور).

THE CONDITIONS FOR THE LEGAL VALIDITY OF A VOW

شروط صحة النذر

j18.1 A vow (O: to perform some pious act) is only valid:

(a) if made by a Muslim who is legally responsible (mukallaf, def: c8.1);

(b) when it concerns some act of worship (A: meaning, for the Shafi'is, any recommended act, though for the Hanafi school it can only be an act that is similar in kind to an *obligatory* form of worship (n: such as prayer, fasting, or hajj));

(c) and is stated in words such as "I hereby owe Allah to perform such and such," or "I am hereby obliged to do such and such."

(O: A vow to do something that is merely permissible, such as standing, sitting, eating, or sleeping, is not legally valid because these are not acts of worship; the reason being the hadith related by Bukhari that the Prophet (Allah bless him and give him peace) passed a man standing in the sun without seeking shade, whom he inquired about and was told that it was Abu Isra'il, who had vowed to stand while fasting without sitting, taking shade, or speaking; to which he replied,

"Pass by him and have him sit in the shade and speak, but let him finish fasting."

By *act of worship*, our author means acts that are supererogatory and not obligatory, since an oath to undertake an obligatory act is invalid whether it involves performance of something, such as an obligatory prayer or fast, or nonperformance of something, such as vowing to abstain from wine or fornication and the like. Such vows are not valid to begin with, as Allah has made

j18.1 لا يصحُّ النذرُ (للتبرر) إلَّا مِنْ مسلمٍ مكلَّفٍ في قربةٍ (أي طاعة) باللفظ وهوَ لله عليَّ كذا أو عليَّ كذا. (ولا يصح نذر المباح كالقيام والقعود لأنه ليس بقربة والأكل والنوم لما رواه البخاري أنّ النبي ﷺ مرّ برجل قائم في الشمس لا يستظل فسأل عنه فقالوا هذا أبو إسرائيل نذر أن يقف ولا يقعد ولا يستظل ولا يتكلم ويصوم فقال: «مروه فليقعد وليستظل وليتكلم وليتم صومه». ومراد المصنف من القربة النوافل منها لا الفرائض لأنه لا يصح نذر الواجب سواء كان فعلاً كالصلاة الواجبة والصوم كذلك أو تركاً كأن نذر أن لا يشرب الخمر ولا يزني وهكذا فلا ينعقد نذره كذلك لأن الله

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these obligatory and "obligating oneself to do them" is meaningless.

The obligatory acts which are not valid to vow are restricted to the personally obligatory. As for the communally obligatory (def: c3.2), a vow to do such an act obliges one to fulfill it, because it is an act of worship not originally obligatory in the law, meaning not initially called for from any particular person.)

أوجب فعل الواجبات فلا معنى لالتزامها. والمراد بالواجب الذي لا يصح نذره الواجب العيني وأما الكفائي فيصح نذره ويلزمه فعله لأنه قربة لم تتعين بأصل الشرع أي لم يطلب من شخص معين).

GENERAL PROVISIONS REGARDING VOWS

أحكام عامة تتعلق بالنذر

j18.2 A valid vow to do an act of worship makes the act obligatory.

j18.2 فَيَلْزَمُهُ الإتيانُ بِهِ.

j18.3 One must fulfill a vow that one has made conditional upon the occurrence of some event, such as by saying, "If Allah heals my sick friend, I am obliged to do such and such" (O: of fasting, praying, or charity), which becomes obligatory if the sick person regains his health.

j18.3 ومَنْ عَلَّقَ النذرَ على شيءٍ فقالَ إنْ شَفَى اللهُ مريضي فعَلَيَّ كذا (أي أن أصوم أو أصلي أو أتصدق) لَزِمَهُ الوفاءُ بِمَا الْتَزَمَهُ عندَ الشفاءِ.

j18.4 If someone makes a vow by way of argument and in anger, saying, for example, "If I speak to Zayd, I am obliged to do such and such," then if he speaks to Zayd, he has a choice between doing what he has vowed, or else paying the expiation for a broken oath (def: o20).

j18.4 ومَنْ نَذَرَ على وجهِ اللجاجِ والغضبِ فقالَ إنْ كَلَّمْتُ زيداً فَعَلَيَّ كذا فهوَ بالخيارِ إذا كَلَّمَهُ بينَ الوفاءِ وبينَ كفارةِ اليمينِ.

j18.5 If one vows to perform the hajj riding but instead does so on foot, or vows to perform it on foot but then does so riding, this accomplishes the vow, though one is obliged to slaughter (O: as one does for an 'umra first (tamattu') hajj (def: j12.6(I)).

(N: Because the vowed walking or riding has become one of the obligatory elements of one's hajj, the expiation for its nonperformance is as other unperformed obligatory acts of hajj, and if such a person lacks a *shah* (def: h2.5) or lacks the money for it, he may fast. As for a person who vows to do something unconnected with the hajj and finds he cannot fulfill it, he performs a valid alternative if one exists in Sacred Law (dis:

j18.5 فإنْ نَذَرَ الحجَّ راكباً فَحَجَّ ماشياً أوْ نَذَرَ الحجَّ ماشياً فَحَجَّ راكباً أجزأهُ وعليه دمٌ (كدم التمتع). (ح: لأن المشي أو الركوب المنذور قد صار واجباً من واجبات الحج، فإن فقد شاة أو ثمنها أجزأه الصوم. أما من نذر ما لا يتعلق بالحج ثم عجز عن فعله، فإن كان له بدل

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j18.0(A:)). If there is no valid alternative in Sacred Law, he remains responsible for performing the vowed act.)

(O: If one does not fulfill a vow because of being unable to or because of forgetfulness, it is not a sin, but one must slaughter, an obligation that incapacity or forgetfulness does not lift. To summarize, the sin (A: of not fulfilling one's vow) only exists when one is capable of fulfilling it, not when one is incapable, though someone who does not fulfill a vow because of incapacity must slaughter a *shah* meeting sacrifice specifications (def: j14.2).)

في الشرع أتى به، وإلا بقي في ذمته).

(وإن ترك المنذور عجزاً فلا إثم عليه والدم لازم على كل حال لأن العجز لا يسقط الدم وكذلك إذا تركه نسياناً له لا يسقطه أيضاً وإن لم يكن أثماً. فالحاصل أن الإثم يكون مع القدرة دون العجز فيجب على تارك ما ذكر شاة مجزئة في الأضحية).

j18.6 If one vows to go to the Kaaba, Masjid al-Medina, or al-Masjid al-Aqsa (n: in Jerusalem), then one is obliged to. If one vows to go to the Kaaba, then one must perform hajj or 'umra (O: because hajj and 'umra are what is fundamentally intended in Sacred Law by going to the Sacred Precinct, and the vow is interpreted according to this convention of the Law as a vow to perform either hajj or 'umra). If one vows to go to Masjid al-Medina or al-Masjid al-Aqsa, then one must either perform the prayer or else spend a period of spiritual retreat (i'tikaf, def: i3) in the mosque (O: i.e. one is entitled to choose between prayer or spiritual retreat).

If one vows to go to some other mosque, the vow does not oblige one to do so (dis: i3.4(end)) (O: since travelling to other mosques is not an act of worship (N: that is, if intended for itself, though if one intends it in order to perform the prayer or for spiritual retreat therein, it is an act of worship)).

j18.6 وإنْ نَذَرَ المشيَ إلى الكعبةِ أوْ مسجدِ المدينةِ أو الأقصى لزمَهُ ذلك ويَجِبُ أنْ يقصِدَ الكعبةَ بحجٍّ أوْ عمرةٍ (لأن ذلك هو المقصود شرعاً بالأصالة من إتيان الحرم فصار محمولاً في عرف الشرع عليه أي على ذلك النسك من حج أو عمرة) وأنْ يُصلِّيَ في مسجدِ المدينةِ أو الأقصى أوْ يَعْتَكِفَ (فهو مخير فيهما بين الصلاة والاعتكاف).

وإنْ نَذَرَ المشيَ إلى غيرِهَا من المساجدِ لمْ يَلْزَمْهُ (لأنه ليس في قصده قربة (ح): أي قصده لذاته أما القصد للصلاة أو الاعتكاف فقربة)).

j18.7 If one vows to fast for the whole of a particular year, one does not have to make up days not fasted on the two 'Eids or the three days following 'Eid al-Adha (dis: i2.3), or the days fasted during Ramadan, or the days a woman misses during her monthly period or postnatal bleeding.

j18.7 ومَنْ نَذَرَ صومَ سَنةٍ بعينِهَا لمْ يَقْضِ أيامَ العيدِ والتشريقِ ورمضانَ وأيامَ الحيضِ والنفاسِ.

j18.8 Someone who vows to perform the prayer (A: but does not specify how much) must pray two rak'as.

j18.8 ومن نَذَرَ صلاةً لزِمَهُ ركعتان [أو عتقاً أجزأهُ ما يقعُ عليه الاسمُ].

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BOOK K

TRADE

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k1.0 SALE

(O: The legal basis for sale, prior to scholarly consensus (ijma'), is such Koranic verses as the word of Allah Most High,

"Allah has made sale lawful..." (Koran 2:275).

The more reliable of the two positions reported from our Imam (Allah Most High be well pleased with him) is that this verse is general in meaning, referring to all sales except those specifically excluded by other evidence. For the Prophet (Allah bless him and give him peace) forbade various sales but did not explain the permissible ones, his not doing so proving that the initial presumption for the validity of a sale is that it is lawful. This is also borne out by hadiths such as the one in which the Prophet (Allah bless him and give him peace) was asked what type of earning was best,

k1.0 صفة البيع وعقده

(والأصل فيه قبل الإجماع آيات كقوله تعالى: ﴿وَأَحَلَّ اللَّهُ الْبَيْعَ﴾ [البقرة: ٢٧٥]. [. . . قال في النهاية:] وأظهر قولي إمامنا رضي الله تعالى عنه أن هذه الآية عامة تتناول كل بيع إلا ما خرج لدليل فإنه ﷺ نهى عن بيوع ولم يبين الجائز أي فدل عدم بيانه على أن الأصل في البيع الحل [. . .] وأخبار كخبر سئل النبي ﷺ أي كسب أطيب فقال: «عمل

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and he answered,

"The work of a man's own hand, and every pious sale,"

meaning sales free of cheating and deceit. Hakim related this hadith, which he classified as rigorously authenticated (sahih).

Lexically, *sale* means to transact something for something else. In Sacred Law it means to exchange an article of property for other property in a particular way. Its integrals are six:

(a) the seller;

(b) the buyer;

(c) the price;

(d) the article purchased;

(e) the spoken offer;

(f) and the spoken acceptance.)

(N: *Sale* (bay'), wherever it is used in the rulings below, refers to both exchanging goods for money and exchanging them for other goods (n: i.e. barter).)

الرجل بيده وكل بيع مبرور» أي لا غش فيه ولا خيانة رواه الحاكم وصححه.

والبيع لغة مقابلة شيء بشيء وشرعاً مقابلة مال بمال على وجه مخصوص وأركانه [كما في المجموع ثلاثة وهي في الحقيقة] ستة وهي: [عاقد:] بائع ومشتر، [ومعقود:] ثمن ومثمن. [وصيغة:] إيجاب وقبول).

(ح: وحيث تطلق كلمة البيع فيما يأتي من الأحكام فهي تشمل مقابلة سلعة بعملة مالية، ومقابلة سلعة بسلعة).

THE SPOKEN OFFER AND ACCEPTANCE

الإيجاب والقبول

k1.1 A sale is not valid unless there is a spoken offer (O: by the seller) and spoken acceptance (O: by the buyer). *Offer* means the statement of the seller or his agent (wakil, def: k17) "I sell it to you" or "I make it yours." *Acceptance* means the statement of the buyer or his agent "I buy it" or "I take possession of it" or "I accept."

(A: Regarding *mu'atah,* which is giving the seller the price and taking the merchandise without speaking, as when buying something whose cost is well known, Bajuri notes, "Nawawi and a group of scholars have adopted the position that sales conducted by it [A: mu'atah] are valid for all transactions that people consider sales, since the determining factor therein is the acceptance of

k1.1 لا يَصِحُّ إلَّا بالإيجاب (من البائع) والقبول (من المشتري) فالإيجابُ هوَ قولُ البائع أوْ وكيلِهِ بِعْتُكَ أوْ مَلَّكْتُكَ. والقبولُ هوَ قولُ المشتري أوْ وكيلِهِ: اشْتَرَيْتُ أوْ تَمَلَّكْتُ أوْ قَبِلْتُ.

(ع: وأما المعاطاة وهي دفع الثمن وقبض المبيع دون التلفظ بإيجاب وقبول، كأن يكون الثمن معتاداً معروفاً، فقد قال الباجوري: «واختار النووي وجماعة صحة البيع بها [ع: أي بالمعاطاة] في كل ما يعده الناس بيعاً لأن المدار فيه على

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both parties, and there is no decisively authenticated primary text stipulating that it be spoken, so common acknowledgement ['urf, def: f4.5] is the final criterion [A: as to what legally constitutes *acceptance*]" (*Hashiya al-Shaykh Ibrahim al-Bajuri* (y5), 1.355).)

(N: The category of *mu'atah* also includes sales conducted by means of vending machines (A: provided it is clear what one is buying before one puts the money in the machine).)

It is permissible for the buyer's acceptance to precede the offer, such as his saying, "I buy it for so-and-so much," and for the seller to reply, "I sell it to you." It is also permissible to say, "Sell it to me for so-and-so much," and for the seller to reply, "I sell it to you." All of these are unequivocal expressions. Sales can likewise be effected, if the intention exists, by equivocal expressions such as "Take it for so-and-so much," or "I consider it yours for so-and-so much," thereby intending a transaction with the buyer, who then accepts. If one does not intend a transaction by such expressions, then the sale is nothing (O: but empty words, and the buyer is obliged to return the merchandise to its owner if it still exists, or replace it if used up while in his possession).

It is obligatory (O: for the validity of the sale agreement that other conditions be met, among them):

(a) that the interval between the offer and its acceptance not be longer than what is customary (O: the criterion being whether it gives the impression that one is averse to accepting, not merely a brief interval. Other conditions include:

(b) that conversation extraneous to the agreement by either of the two parties not intervene between the offer and acceptance, even if inconsiderable, since it gives the impression of nonacceptance;

(c) that the offer and its acceptance correspond, for if the offered price is one thousand, and the buyer "accepts" for five hundred, the transaction is invalid;

(d) that neither the offer nor acceptance be made conditional (ta'liq) upon an event extrane-

رضا المتعاقدين ولم يثبت اشتراط لفظ فيرجع فيه إلى العرف، [نقل من حاشية الشيخ إبراهيم الباجوري: ١/ ٣٥٥].

ويجوز أن يتقدم لفظ المشتري مثل أن يقول: اشتريت بكذا، فيقول: بعتك. ويجوز أن يقول: بعني بكذا فيقول: بعتك. فهذه صرائح وينعقد أيضاً بالكناية مع النية مثل: خذه بكذا، أو: جعلته لك بكذا، وينوي بذلك البيع فيقبل (المشتري). فإن لم ينو به البيع فليس بشيء (فهو لغو فيجب على المشتري رده على مالكه إن كان باقياً أو بدله إن تلف تحت يده).

ويجب (أي يشترط في صحة عقد البيع شروط منها) أن لا يطول الفصل بين الإيجاب والقبول عرفاً (وضابط الطول هو ما أشعر بإعراضه عن القبول بخلاف اليسير، ومنها أن لا يتخللهما كلام أجنبي عن العقد ممن يريد أن يتمه ولو يسيراً لأن فيه إعراضاً عن القبول، ومنها أن يتوافقا أي الإيجاب والقبول معنى فلو أوجب بألف صحيحة وقبل نصفه بخمسمائة لم يصح العقد، ومنها عدم تعليق لا يقتضيه

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ous to the agreement, such as saying, "I sell it to you, should my father die";

(e) and that the sale not be subject to time stipulations (ta'qit) such as saying, "I sell it to you for a period of one month";

—because both (d) and (e) vitiate the necessary intention).

A mute's gesture is as binding as a speaker's words.

العقد وعدم تأقيت فلو قال إن مات أبي فقد بعتك هذا أو بعتكه شهراً لم يصح لأن الأول اشتمل على التعليق والثاني على التأقيت وكل منهما مناف للنية).

وإشارةُ الأخرسِ كلفظِ الناطقِ.

THE BUYER AND SELLER

المتبايعان

k1.2 The conditions that must exist in the buyer and seller are:

(a) having reached puberty (A: Imam Ahmad permits the buying and selling of minor items by children, even before they have reached the age of discrimination (def: f1.2) and without their guardian's permission);

(b) sanity;

(c) that one's disposal over one's property not be suspended (def: k13);

(d) and that one not be unjustly forced to make the sale. (O: The agreement of someone unjustly forced to sell his property is invalid because of lack of consent, though it is valid if he is justly forced, as when he is ordered to sell his property to repay a debt.)

(e) If a Koran is being purchased for someone, it is obligatory that the person be Muslim. (O: The same is true of books of hadith and books containing the words and deeds of the early Muslims. "Koran" in this context means any work that contains some of the Koran, even a slight amount.) (A: This ruling holds for any religious books, even the *Tabaqat* of Sha'rani (n: a collection of biographical sketches of Muslims), though the Hanafi school permits non-Muslims to buy or be given the Koran and other Islamic books.)

k1.2 وشرطُ المتبايعَيْنِ البلوغُ والعقلُ وعدمُ [الرقِّ و] الحجرِ والإكراهِ بغيرِ حقٍّ (فلا يصح عقد مكره على بيع ماله بغير حق لعدم رضاه ويصح إذا كان بحق كأن توجه عليه بيع ماله لوفاء دينه).

ويُشترطُ أيضاً الإسلامُ فيمَنْ يُشتَرى لهُ مصحفٌ (ومثل المصحف كتب الحديث أو كتب فيها آثار السلف والمراد بالمصحف ما فيه قرآن وإن قل) [أوْ مسلمٌ لا يَمْتَنُ عليْهِ]. وعدمُ الحرابةِ في شراءِ السلاحِ [فإنْ أذِنَ السيدُ لعبدِهِ البالغِ في التجارةِ تصرَّفَ بحسبِ الإذنِ. ولا يَجوزُ لأحدٍ معاملةُ عبدٍ إلاَّ أنْ يَعلَمَ أنَّ سيدَهُ أذِنَ لهُ ببيِّنةٍ أوْ بقولِ

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(f) It is a condition that someone buying weapons be of a people who are not at war with Muslims.

السيد. ولا يُقْبَلُ فيه قولُ العبدِ. والعبدُ لا يَمْلِكُ شيئاً وإنْ مَلَّكَهُ سيدُهُ].

THE OPTION TO CANCEL A SALE AT THE TIME OF THE AGREEMENT

خيار المجلس

k1.3 When a sale is effected, both buyer and seller have the *option to cancel at the time of the agreement* (khiyar al-majlis), meaning the right to nullify the agreement at any time before they (O: physically) part company, or both waive the right to cancel, or until one of them cancels the sale.

(O: The option to cancel at the time of the agreement exists at every sale, and for its duration, the ownership of the articles exchanged is suspended (def: k1.5).)

k1.3 وإذا انْعَقَدَ البيعُ ثَبَتَ لكلٍ مِنَ البائعِ والمشتري خيارُ المجلسِ مَا لَمْ يَتفرَّقَا (أي مدة عدم تفرقهما بأبدانهما) أو يختارا الإمضاءَ جميعاً [(ح: أي يختارا لزوم العقد وعدم فسخه)] أوْ يَفْسَخَهُ أحدُهُمَا (وخيار المجلس يثبت في كل بيع والملك في زمن الخيار موقوف).

STIPULATING AN OPTION TO CANCEL PERIOD

شرط الخيار

k1.4 Both the buyer and seller have the right to stipulate an *option to cancel period*, an interval during which either party may cancel the agreement, of up to three days (O: provided the days are consecutive. The option to cancel period is not valid if the two parties stipulate an indeterminate period, or leave it open-ended by merely stipulating "an option to cancel" (A: though the buyer has the right to return the article because of defects (dis: k5) regardless of what they stipulate), or when the period is determinately known, but exceeds three days). The option to cancel may be given (A: depending on what the buyer and seller agree upon) to both parties, or just one of them (O: and not the other, or they may give the option to a third party, since the need for this might arise. In any case, both buyer and seller must agree to the conditions). But such a period may not be stipulated for transactions in which it is unlawful to part company before taking possession of the commodities exchanged (O: by one or both parties) as is the case in exchanging the kinds of foodstuffs and moneys in which usurious gain (riba, dis: k3.1–2) is present, or in buying in advance (salam, dis: k9.2(a)).

k1.4 ولكلٍ مِنَ البائعِ والمشتري شرطُ الخيارِ في البيعِ ثلاثةَ أيامٍ فَمَا دونَهَا (بشرط أن تكون متوالية فلو شرطا مدة مجهولة أو أطلقا الشرط بأن قالا بشرط الخيار أو كانت المدة معلومة لكنها زادت على الثلاثة فلا يصح الشرط) لهُمَا أوْ لأحدِهِمَا (شرطه دون الآخر ولأجنبي لأن الحاجة قد تدعو إلى ذلك. وبكل حال لا بد من اجتماعهما عليه) إلاّ إذا كَانَ العقدُ مِمَّا يَحْرُمُ فيهِ التفرُّقُ قبلَ القبضِ (للمبيع إما من الجانبين معاً أو من أحدهما فقط) كَمَا في الربَا والسَّلَمِ.

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k1.5 If the option to cancel is given to the seller alone, then the merchandise is considered his property during this period (O: meaning that he owns the proceeds earned by the property, and its increments such as its milk, eggs, or fruit, and he is obliged to cover its maintenance and other expenses).

If the option to cancel is given to the buyer alone, then the merchandise is considered his property during this period (O: and the above increments and expenses are his).

If the option to cancel is given to both buyer and seller, then the ownership of the merchandise during this period is *suspended*, meaning that if the transaction is finalized, it is established that it belonged to the buyer (O: from the time the agreement was first made, together with its increments and expenses), but if the transaction is cancelled, it is established that it belonged to the seller (O: meaning that it never left his ownership).

k1.5 ثمّ إذا كانَ الخيارُ للبائع وحدَهُ فالمبيعُ في زمنِ الخيارِ ملكُهُ (فيكون له أكسابه وزوائده كاللبن والبيض والثمرة ويكون عليه النفقة).

وإنْ كانَ للمشتري وحدَهُ فالمبيعُ في زمنِ الخيارِ ملكُهُ (فيكون له وعليه ما تقدم من الزوائد والنفقة).

وإنْ كانَ لهُمَا فالمِلْكُ فيه موقوفٌ: إنْ تَمَّ البيعُ تَبيَّنَ لَنَا أنَّهُ كانَ مِلْكَ المشتري (من حين العقد مع توابعه من فوائده [(ت:] ونفقته)) وإنْ فُسِخَ البيعُ تَبيَّنَ أنَّهُ كانَ ملكاً للبائع (بمعنى أنه لم يخرج عن ملكه).

*

k2.0 THE THINGS EXCHANGED IN A TRANSACTION

(N: *Things* here refers to both the merchandise and its price.)

k2.1 Five conditions must exist in any article transacted. It must:

(a) be pure (O: in itself, or if affected with filth, it must be capable of being purified by washing);

(b) be useful;

(c) be deliverable (O: by the seller to the buyer, meaning that the buyer is able to take possession of it);

(d) be the property of the seller or the person whom the seller has been authorized to represent;

(e) and be determinately known (ma'lum) (O: to the buyer and seller, as to which particular

k2.0 المبيع

(ح: وكلمة المبيع تشمل السلعة ومقابلتها).

k2.1 للمبيع شروطُ خمسةٌ أنْ يَكُونَ طاهراً (أي طاهر العين أو متنجس يطهر بالغسل)، مُنْتَفَعاً بِهِ، مقدوراً على تسليمِهِ (أي تسليم البائع المبيع للمشتري أو على تسلمه من البائع والمدار على التسلم)، مملوكاً للعاقد (وهو البائع) أوْ لِمَنْ نَابَ العاقدُ عنْهُ، معلوماً (للمتعاقدين عيناً وقدراً وصفة

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thing it is, how much it is, and what kind it is, in order to protect against chance or risk (gharar), because of the hadith related by Muslim that the Prophet (Allah bless him and give him peace) forbade the transaction of whatever involves chance or risk). (n: w42 discusses buying and selling insurance policies.)

حذراً من الغرر لما روى مسلم أنه ﷺ نهى عن بيع الغرر).

PURITY

كون المبيع طاهراً

k2.2 It is invalid to transact something that is impure in itself (najasa, def: e14.1) such as a dog, or something affected with filth that cannot be purified (O: by washing), like milk or shortening, though if it can be, like a garment, then it may be transacted.

k2.2 فلا يَصِحُّ بيعُ عينٍ نجسةٍ كالكلبِ أو متنجسةٍ ولمْ يُمْكِنْ تطهيرُهَا (أي بالغسل) كاللبنِ والدهنِ مثلاً. فإنْ أُمْكِنَ كثوبٍ متنجسٍ جَازَ.

USEFULNESS

كون المبيع منتفعاً به

k2.3 It is invalid to transact something which is not useful (O: whether the reason for invalidity is the article's baseness or the smallness of the amount being dealt with.) such as vermin, a single grain of wheat, or unlawful musical instruments (dis: r40) (O: such as the mandolin or flute, since there is no lawful benefit in them).

k2.3 ولا يصحُّ بيعُ مَا لا يُنْتَفَعُ بِهِ (وعدم صحته إما لخسته أو لقلته) كالحشراتِ وحبةِ حنطةٍ وآلاتِ الملاهي المحرمةِ (كطنبور ومزمار إذ لا نفع بها شرعاً).

DELIVERABILITY

كون المبيع مقدوراً تسليمه

k2.4 It is invalid to transact something undeliverable, such as a bird on the wing or something that a third party has wrongfully taken from one, though if one sells the latter to a buyer who is able to take it back from the third party, the sale is valid; while if the buyer is unable to take it from him, then the buyer has the option to either declare the sale binding or cancel it.

It is invalid to transact a particular half of a whole object such as a vessel, sword, or garment (O: since the buyer cannot take possession of that part without breaking or cutting the article, involving the lessening and loss of property), or part of anything whose value is diminished by cut-

k2.4 ولا بيعُ مَا لا يَقْدِرُ على تسليمِهِ كـ [عبدٍ آبقٍ و] طيرٍ طائرٍ ومغصوبٍ لكنْ إنْ بَاعَ المغصوبَ مِمَّنْ يَقْدِرُ على انتزاعِهِ جَازَ. فإنْ تَبَيَّنَ عجزُهُ (أي عجز المشتري عن الانتزاع من يد الغاصب) فلَهُ (أي للمشتري) الخيارُ (بين إمضاء لزوم البيع والفسخ).

ولا بيعُ نصفٍ مُعَيَّنٍ منْ إناءٍ أوْ سيفٍ أوْ ثوبٍ (لأن التسلم فيه لا يمكن إلا بالكسر أو القطع وفيه نقص وتضييع مال) وكذا كلُّ ما تَنْقُصُ قيمتُهُ بالقطعِ

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ting or breaking, though if it does not diminish its value, as with a bolt of heavy cloth, such portions may be sold.

والكسر. فإنْ لمْ تَنْقُصْ كثوبٍ ثخينٍ جاز.

LAWFUL DISPOSAL OVER THE PROPERTY

التصرف في المبيع

k2.5 It is not valid for the owner of an article that has been put up as collateral (def: k11) to sell it without the permission of the person to whom the collateral has been given.

Nor is it valid to sell property belonging to another, unless the seller is the owner's guardian (def: k13.2) or authorized representative (def: k17).

k2.5 ولاَ يَجُوزُ بيعُ المرهونِ دونَ إذنِ المرتهنِ [(أي ولا يصح)].

ولاَ [بيعُ الفضوليِّ وهُوَ] أنْ يبيعَ مالَ غيرِه بغيرِ ولايةٍ ولاَ وكالةٍ.

BEING DETERMINATELY KNOWN

كون المبيع معيناً

k2.6 It is not valid to sell property not determinately identified such as "one of these two garments" (O: since "one of them" is not an identification. Likewise with saying, "I sell you one of these sheep." It makes no difference whether all the objects are of equal or unequal value).

It is not valid to transact a particular thing that is not in view (O: meaning that it has not been seen by both buyer and seller or by one of them) such as saying, "I sell you the Mervian robe I have up my sleeve," or "the black horse that is in my stable." But if the buyer has seen it before and the article is something that does not generally change within the time that has elapsed since it was last seen, then such sales are valid.

It is permissible to sell something like a pile of wheat that is in plain view when its weight is unknown, or to sell something for a heap of silver that is visible when the silver's weight is unknown, for seeing is sufficient.

The selling and buying of a blind person are not valid. He must commission another to buy and sell for him (A: though the Hanafi, Maliki, and Hanbali schools permit him to buy and sell for himself). It is valid for a blind person to buy in advance (def: k9) or for another to buy in advance from him, provided the payment is forwarded to and held by the person being bought from in advance.

k2.6 ولاَ بيعُ مَا لَمْ يُعَيَّنْ كأحدِ العبدينِ (أو) الثوبينِ فإن الأحد منها غير معين ومثلُ ذلك: بعتك شاة من هذه الشياه. ولا فرق بين أن تتساوى القيمة في جميع ذلك أو تختلف).

ولاَ بيعُ عينٍ غائبةٍ عنْ عينٍ (أي التي لم تشاهد للمتعاقدين ولا لأحدهما) مثلُ: بِعْتُكَ الثوبَ المروزيَّ الذي في كُمِّي والفرسَ الأدهمَ (أي الأسود) الذي في اصطبلي. فإنْ كانَ المشتري رآها قبلَ ذلكَ وهي مِمَّا لاَ يتغيَّرُ في مدةِ الغيبةِ غالباً جَازَ.

ولَوْ بَاعَ عُرْمَةَ حنطةٍ ونحوِهَا وهيَ مشاهَدَةٌ ولمْ يُعْلَمْ كيلُها أوْ بَاعَ شيئاً بعرمةِ فضةٍ مشاهَدَةٍ ولمْ يُعْلَمْ وزنُها جَازَ وتكْفِي الرؤيةُ.

ولا يَصِحُّ بيعُ الأعمى ولا شراؤُهُ وطريقُهُ التوكيلُ ويصحُّ سلمُهُ بعوضٍ في ذمتِهِ.

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k3.0 USURIOUS GAIN (RIBA)

(O: The word *riba* lexically means *increment*. In Sacred Law it is (N: of two types, the first being usurious gain (riba) in selling, which is) an agreement for a specific recompense whose equivalence to the merchandise is unknown (def: k3.1(a)) according to the standards of the Law at the time of the transaction, or in which the exchange of the two properties transacted is delayed, or one of them is delayed. (N: The second type concerns loans, and consists of any loan by which the lender obtains some benefit (dis: k10.5).) The basis for its unlawfulness, prior to scholarly consensus (ijma', def: b7), is such Koranic verses as:

"Allah permits trade but forbids usurious gain" (Koran 2:275),

and,

"Fear Allah and relinquish what remains of usury, if you are believers" (Koran 2:278),

and such hadiths as that related by Muslim,

"The Messenger of Allah (Allah bless him and give him peace) cursed whoever eats of usurious gain (riba), feeds another with it, writes an agreement involving it, or acts as a witness to it."

Another hadith, in *al-Mustadrak* (n: by Hakim), relates that the Prophet (Allah bless him and give him peace) said,

"Usurious gain is of seventy kinds, the least of which is as bad as a man marrying his mother.")

(n: w43 discusses taking interest in enemy lands (dar al-harb).)

USURIOUS GAIN IN SALES OF FOODSTUFFS, GOLD, AND SILVER

k3.1 Gain is not unlawful except in certain exchanges involving (O: human) foodstuffs, gold, and silver (A: or other money) (N: which is the ruling for usurious gain in sales. As for usurious

k3.0 الربا

(وهو لغة الزيادة وشرعاً عقد على عوض مخصوص غير معلوم التماثل في معيار الشرع حالة العقد أو مع تأخير في البدلين أو أحدهما. (ح: الربا نوعان: الأول في باب البيع كما تقدم والنوع الثاني في باب القرض وهو كل قرض جر نفعاً للمقرض). والأصل في تحريمه قبل الإجماع آيات كآية: ﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾ [البقرة: ٢٧٥]، و﴿اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنْ كُنْتُمْ مُؤْمِنِينَ﴾ [البقرة: ٢٧٨]، وأخبار كخبر مسلم: «لعن رسول الله ﷺ آكل الربا وموكله وكاتبه وشاهده». وفي المستدرك عن النبي ﷺ الربا سبعون باباً أيسرها مثل أن ينكح الرجل أمه».

الربا في بيع المطعومات والذهب والفضة

k3.1 لا يحرم الربا إلا في المطعومات (مطعوم الآدميين) والذهب والفضة (ح: هذا ربا البيع أما ربا القرض

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gain or *interest* from loans, it is unlawful for any type of property whatever). The determining factor in the prohibition of usurious gain in foodstuffs is their being edible, and in gold and silver, their being the value of things.

When a foodstuff is sold for a foodstuff of the same kind, such as wheat exchanged for wheat (O: or when gold is traded for gold), three conditions are obligatory:

(a) exact equivalence in amount (def: k3.5) (O: which must be made certain of, this stipulation precluding exchanges of foodstuffs, gold, or silver in which the amounts are not known, for such sales are not valid even if the two quantities transacted subsequently turn out to be equal, because of the ignorance of their equivalence at the time of the transaction, since ignorance of it is the same as actual nonequivalence);

(b) that the properties transacted be in the respective possession of buyer and seller before they part company;

(c) and immediacy (N: such that the agreement does not mention any delay in the exchange, even if brief).

فيحرم في كل الأموال).

والعلةُ في تحريم المطعومات الطعمُ وفي تحريم الذهب والفضةِ كونهُمَا قيمَ الأشياء.

فإذا بيع مطعومٌ بمطعومٍ مِنْ جنسِهِ كبرٌ ببرٌ (أي وكذهب بذهب) اشْتُرِطَ ثلاثةُ أمورٍ المماثلةُ في القدر (يقيناً خرج بهذا القيد ما لو باع ربوياً بجنسه جزافاً فلا يصح وإن خرجا سواء للجهل بالمماثلة حالة البيع. والجهل بالمماثلة كحقيقة المفاضلة) والتقابُضُ قبلَ التفرُّقِ والحلولُ (ح: بأن لا يذكر في العقد أجل وإن كان قصيراً).

k3.2 When foodstuffs are sold for foodstuffs of a different kind, such as wheat for barley (O: or when gold is sold for silver), only two conditions are obligatory:

(a) that the exchange be immediate;

(b) and that the properties exchanged be in the respective possession of buyer and seller before they part company.

If these two conditions are met, the two commodities exchanged may differ in amount.

k3.2 وإنْ كانَ منْ غيرِ جنسِهِ كبرٌ بشعيرٍ (أي وذهب بفضة) اشْتُرِطَ شرطانِ الحلولُ والتقابضُ قبلَ التفرُّقِ وجَازَ (حينئذ) التفاضُلُ.

TRANSACTING GOLD AND SILVER

بيع الذهب والفضة

k3.3 When gold is exchanged for gold, or silver for silver, conditions k3.1(a,b,c) are obligatory. If

k3.3 وإنْ بَاعَ نقداً بجنسه كذهب بذهبٍ اشْتُرِطَ الشروطُ الثلاثةُ المتقدمةُ.

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gold is exchanged for silver, their amounts may differ, but conditions k3.2(a,b) are obligatory.

وإنْ بَاعَ بغيرِ جنسِهِ كذهبٍ بفضةٍ اشْتُرِطَ الشرطانِ وجَازَ التفاضلُ.

k3.4 When foodstuffs are sold for gold or silver, the transaction is unconditionally valid (O: meaning none of the above conditions are necessary).

k3.4 وإنْ بَاعَ مطعوماً بنقدٍ صَحَّ مطلقاً (والمعنى أنه لا يشترط شيء من الشروط السابقة).

k3.5 *Equivalence in amount* for commodities customarily sold by volume is reckoned according to volume (O: even if weights differ), and for articles customarily sold by weight according to weight. Thus, it is invalid to sell a pound of wheat for a pound of wheat when there is a difference between the two's volume, though it is valid to sell a bushel of wheat for a bushel of wheat even when their weights differ.

Customarily transacted by weight or volume means according to the prevalent custom in the Hijaz during the time of the Messenger of Allah (Allah bless him and give him peace). If this is unknown, then according to the custom of the town where the transaction takes place. If the foodstuff is of a kind not customarily exchanged by either weight or volume, and it has no dried storage state, such as cucumbers, quinces, or citrons, then it may not be traded for its own sort.

Equivalence in amount is not applicable to foodstuffs until they are completed, meaning, for fruits, in the dried storage state. It is invalid to trade fresh dates for fresh dates, fresh dates for dried dates, fresh grapes for fresh grapes, or fresh grapes for raisins. Types of dates and grapes not sold as dried dates and raisins may not be exhanged for their own sort. It is also invalid (A: because of ignorance of their equivalence) to exchange:

(1) flour for flour (O: when they are of the same type);

(2) flour for wheat;

(3) bread for bread (O: when of the same type);

(4) a pure foodstuff for a mixed one;

k3.5 ويُعْتَبَرُ التماثلُ في المكيلِ بالكيلِ (وإن اختلفا وزناً) وفي الموزونِ بالوزنِ فلا يَصِحُّ رطلُ برٍّ برطلِ برٍّ إذا كانَ يَتفاوتُ بالكيلِ ويَجُوزُ إردبُّ بإردبٍ وإنْ تفاوتَ الوزنُ. والمرادُ ما كانَ يُوزَنُ أو يُكالُ في الحجازِ في عهدِ رسولِ اللهِ ﷺ. فإنْ جُهِلَ حالُهُ اعْتُبِرَ ببلدِ البيعِ. وإنْ كانَ (المبيعُ الربوي) مِمَّا لا يُوزَنُ ولا يُكالُ في العادةِ ولا جَفافَ لهُ كالقثاءِ والسفرجلِ والأُتْرُجِّ لَمْ يَصِحَّ بيعُ بعضِهِ ببعضٍ.

[فلَوْ بَاعَ برّاً ببرٍّ جزافاً لَمْ يَصِحَّ وإنْ ظَهَرَ مِنْ بعدُ تساويهما كيلاً]. وإنَّما تُعْتَبَرُ المماثلةُ حالةَ الكمالِ. فحالةُ كمالِ الثمرةِ الجفافُ، فلا يَصِحُّ رطبٌ برطبٍ أوْ رطبٌ بتمرٍ وكذا عنبٌ بعنبٍ أوْ بزبيبٍ وإنْ تماثلا. فإنْ لَمْ يَجِفْ منهُ تمرٌ ولا زبيبٌ لَمْ يَصِحَّ بيعُ بعضِهِ ببعضٍ.

ولا يُباعُ دقيقٌ بدقيقٍ (أي عند اتحاد الجنس) ولا برٌّ ولا خبزٌ بخبزٍ (أي إن اتحد الجنس) ولا خالصٌ بمشوبٍ ولا

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(5) cooked food for uncooked, or cooked food for other cooked food, unless the cooking is very slight, such as separating honey (O: from the comb) or milkfat (O: from milk).

It is not permissible to exchange (N: for example) a measure of dates plus one dirham for two dirhams, or for two measures of dates, or for a measure of dates and a dirham. Nor is it permissible to exchange a measure of dates and a garment for two measures, nor a dirham and a garment for two dirhams.

It is invalid to transact meat for a live animal (O: even when the two are not of the same kind of animal).

مطبوخٌ بنيءٍ ولا مطبوخٌ إلاّ أنْ يَخِفَّ الطبخُ كتمييزِ العسلِ (أي من الشمع) والسمنِ (أي من اللبن). ولا يَجُوزُ مدُّ عجوةٍ ودرهمٌ بدرهمَيْنِ أوْ بمدَّينِ ولا مدُّ ودرهمٌ بمدٍّ ودرهمٍ، ولا مدُّ وثوبٌ بمدَّينِ، ولا درهمٌ وثوبٌ بدرهمَيْنِ، ولا يَصِحُّ بيعُ اللحمِ بالحيوانِ (ولو غير جنسه).

*

k4.0 SOME PROHIBITED KINDS OF TRANSACTIONS

(O: Prohibited transactions may be invalid, as is usually the case with the prohibited, for prohibition generally entails invalidity; or not, such that the transaction is valid despite being prohibited (dis: c5.2).)

k4.0 البيوع المحرمة

(إما مع البطلان وهو الغالب فيما نهى عنه لأن النهي عن الشيء يقتضي الفساد غالباً وإما مع عدمه بأن يصح البيع مع الحرمة).

SELLING THE OFFSPRING OF EXPECTED OFFSPRING

بيع نتاج النتاج

k4.1 It is invalid to sell the offspring of (A: expected) offspring, such as saying, "When my she-camel gives birth, and her offspring in turn gives birth to a camel, I hereby sell you that camel" (O: i.e. the offspring of the offspring. The reason for invalidity is that it is a transaction of an article that is not owned, known, or deliverable). Nor is it valid to sell something for a price whose payment is deferred to a time similar to the above (O: that is, till the time the offspring of an offspring is born, because the date of payment is not known).

k4.1 لا يصحُّ بَيْعُ نَتاجِ النتاجِ كقولِه: إذا وَلَدَتْ ناقتي وَوَلَدَ وَلَدُها فقدْ بِعْتُكَ الولدَ (أي ولد الولد لأنه بيع ما ليس بمملوكٍ ولا معلومٍ ولا مقدورٍ على تسليمه) ولا أنْ يَبِيعَ شيئاً ويُؤَجِّلَ الثمنَ بذلكَ (أي لزمن نتاج النتاج لأنه إلى أجلٍ مجهولٍ) [ولا بيعُ الملامسةِ والمنابذةِ والحصاةِ].

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EITHER-OR SALES

k4.2 It is invalid to make a transaction whose terms include two different possible deals (A: without specifying which has been agreed upon) such as saying, "I sell you this for either one thousand in cash or two thousand in deferred payment" (O: which is invalid because the price is not known), or such as saying, "I sell you my robe for a thousand, provided you sell me your sword for five hundred" (O: which is invalid because of the invalid stipulation (dis: below)).

بيعتان في بيعة

k4.2 ولا بَيْعَتَانِ في بَيْعَةٍ كقولك: بِعْتُكَ هذا بألفٍ نقداً أَوْ بألفَيْنِ مُؤجَّلاً (للجهل بالعوض)، أَوْ: بِعْتُكَ ثوبي بألفٍ على أَنْ تَبِيعَني [عبدَكَ] (ت: سيفَكَ) بخمسمائةٍ (وعدم الصحة في هذا للشرط الفاسد).

SALES WITH EXTRANEOUS STIPULATIONS

k4.3 It is not valid to make a transaction that includes an invalid stipulation (A: such as a condition that is extraneous to the original agreement which adds to its price) (O: because the Prophet (Allah bless him and give him peace) forbade transactions with such conditions, like stipulating a loan or a second transaction), saying, for example, "I hereby sell it to you [n: for a thousand] provided you loan me a hundred" (O: or "provided you sell me your house for such and such a price" (A: or "provided you do not sell it to So-and-so"). Its invalidity is due to considering both the thousand and the accompanying second deal as the price. Stipulating this invalidates the transaction, and paying this "price" is void, it not being determinately known (def: k2.1(c))). (A: The invalidating factor is *stipulating* a second transaction, not the mere fact that it accompanies the first transaction, for it is permissible to join two transactions, as discussed at k4.12 below.)

بيع وشرط

k4.3 ولا بيعُ وشرطٌ (لنهيه ﷺ عن بيع وشرط كشرط قرض أو بيع) مثلُ: بِعْتُكَ بشرطِ أَنْ تقرِضَني مائةً (أو على أن تبيعني دارك بكذا وعدم الصحة في هذا لكونه جعل الألف ورفق العقد الثاني ثمناً واشتراطه فاسد فبطل مقابله من الثمن وهو مجهول).

SALES WITH VALID STIPULATIONS

k4.4 The following types of conditions do not invalidate transactions that stipulate them:

(1) a condition to postpone payment, though this requires that the date of payment be specified;

صحة بيع مع شرط في بعض الصور

k4.4 ويصحُّ بيعٌ وشرطٌ في صور وهي شرطُ الأجل في الثمن بشرطِ أنْ يَكُونَ الأجلُ معلوماً وأنْ يَرْهَن به رهناً أَوْ

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(2) a condition that collateral (def: k11) be put up as security (N: for payment of the price or for delivery of the merchandise);

(3) a condition that a particular individual will guarantee (def: k15) payment;

(4) or other conditions (O: from the seller, the buyer, or both) that the deal requires, such as an option to return the merchandise if defective, and so forth.

It is valid for the seller to stipulate that he is free of responsibility for defects in the merchandise. By doing so, he is not held responsible for an animal's internal defects which he does not know of, though he remains responsible for all other kinds of defects. (O: The conditions for this ruling are that the defect be internal, be found in an animal, be unknown to the seller, and that it exist at the time of the agreement.)

يَضْمَنُهُ بِهِ زَيدٌ [أَوْ أَنْ يُعْتِقَ العَبْدَ المبيعَ] أَوْ شَرْطَ (أي البائع أو المشتري أو كل منهما) مَا يَقْتَضِيهِ العقدُ كالردِّ بالعيبِ ونحوِهِ.

فإنْ بَاعَ وشَرَطَ البراءةَ مِنَ العيوبِ صَحَّ وبَرِىءَ مِنْ كلِّ عيبٍ باطنٍ في الحيوانِ لَمْ يَعْلَمْ بِهِ البائعُ ولا يَبْرَأُ مِمَّا سِواهُ (فالعيبُ الباطنُ قيدٌ أول، وفي الحيوانِ قيدٌ ثانٍ، ولم يعلمه قيدٌ ثالثٌ، ويزاد قيدٌ رابعٌ على هذه الثلاثة وهو وجود العيبِ في الحيوانِ حال العقد).

PAYING NONREFUNDABLE DEPOSITS

بيع العربون

k4.5 It is not valid to pay a nonrefundable deposit towards the price of an article, such as paying a dirham for piece of merchandise on the basis that if the buyer decides to keep it, the dirham is part of the price, but if he does not, then the seller keeps the dirham for free.

(A: The school of Imam Ahmad permits nonrefundable deposits.)

k4.5 ولا يَصِحُّ بيعُ العربونِ بأنْ يَشْتَرِي سلعةً ويَدْفَعَ درهماً على أنَّهُ إنْ رَضِيَ بالسلعةِ فالدرهمُ مِنَ الثمنِ وإلاَّ فهو للبائعِ مجاناً. [ولوْ فَرَّقَ بينَ الجاريةِ وولدِها قبلَ سنِّ التمييزِ ببيعٍ أو هبةٍ بَطَلَ العقدُ وبعدَ التمييزِ يَصِحُّ].

k4.6 [ويَحْرُمُ أنْ يبيعَ حاضرٌ لبادٍ بأنْ يَقُولَ الحاضرُ للبدويِّ الذي قَدِمَ بسلعةٍ وهي مِمَّا يُحتاجُ إليها في البلدِ: لا تَبِعِ الآنَ حتَّى أبيعَها لكَ قليلاً قليلاً بثمنٍ غالٍ.

وأنْ يَتَلَقَّى الركبانَ فيُخْبِرَهُمْ بكسادِ ما مَعَهُمْ لِيَشْتَرِيَ منهمْ بغبنٍ].

UNDERCUTTING ANOTHER'S DEAL

السوم على سوم أخيه

k4.7 It is unlawful to undercut a brother's deal (A: or a non-Muslim's, since there is no difference between Muslims and non-Muslims in rulings concerning commercial dealings) that he has made with a customer, after they have settled on the

k4.7 وأنْ يَسُومَ على سَوْمِ أخيهِ (ع: ولو غيرَ مسلمٍ إذ لا فرقَ بينَ مسلمٍ وكافرٍ في المعاملاتِ) بأنْ يَزِيدَ في السلعةِ بعدَ استقرارِ الثمنِ (بأنْ يقولَ لمن

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price (O: meaning to say to someone who has accepted something with the intention to buy it for so-and-so much, "Return it to its owner and I'll sell you a better one for the same price or less," or tell the seller, "Take it back from him and I'll pay you more for it." The above restriction *after they have settled on the price* excludes someone going around taking bids from those who are increasing them, as auctioneers do, which is not unlawful).

It is also unlawful to undercut a brother's price (O: that is, during the option to cancel at the time of the agreement (def: k1.3), or during a stipulated option to cancel period (def: k1.4)) by telling the buyer, "Cancel the deal and I'll sell you one cheaper." (O: This also holds for other contracts, such as renting or lending the use of something.)

اخذ شيئاً ليشتريه بكذا: رده على صاحبه حتى أبيعك خيراً منه بهذا الثمن أو بأقل منه. أو يقول لمالكه: استرده لأشتريه منك بأكثر. وخرج بقوله بعد استقرار الثمن ما يطاف به على من يزيد كالدلالين فلا يحرم).

وأنْ يبيعَ على بيعِ أخيهِ (وذلك في زمن خيار المجلس أو الشرط) بأنْ يقولَ للمشتري: افْسَخِ البيعَ وأنا أبيعُكَ بأرْخَصَ منهُ. (ومثل البيع في هذا غيره من بقية العقود كالإجارة والعارية).

BIDDING UP MERCHANDISE

النجش

k4.8 It is unlawful to bid up the price of a piece of merchandise that one is not really interested in, to fool another bidder.

k4.8 وأنْ يَنْجُشَ بأنْ يزيدَ في السلعةِ وهوَ غيرُ راغبٍ فيها ليَغُرَّ بها غيرَهُ.

SELLING GRAPES TO A WINEMAKER

بيع عنب ممن يتخذه خمراً

k4.9 It is unlawful to sell grapes to someone who will make wine from them. (O: Like grapes in this is the sale of dates, bread, wheat, or barley, whenever one knows that this (A: i.e. alcoholic drink) will result, or thinks it will. If there is doubt or if one merely imagines it, then the transaction is merely offensive. (N: *Think* (zann) means to believe it probable, *doubt* (shakk) means one is undecided, and *imagine* (wahm) means to merely consider it possible.) Selling in such cases is unlawful or offensive because it is a means to disobedience, whether certain or suspected (A: *means* meaning an instrumental cause, as opposed to something which is not instrumental, such as renting a house to a drunkard, which is not unlawful because it is not a cause, though it is unlawful to rent a building to someone who intends to open a bar, for example). Tirmidhi relates that the Prophet (Allah bless him and give him peace)

k4.9 وأنْ يبيعَ العنبَ ممَّنْ يَتَّخِذُهُ خمراً. (ومثل العنب الرطب والخبز والحنطة والشعير بأن يعلم ذلك منه أو يظنه فإن شك فيه أو توهمه منه فالبيع له مكروه. وإنما حرم أو كره لأنه سبب لمعصية محققة أو مظنونة. وروى الترمذي أنه ﷺ لعن شاربها وساقيها

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cursed whoever drinks wine, gives it to others to drink, sells it, buys it, presses it for another, transports it, receives it, or eats its price.)

وبائعها ومبتاعها وعاصرها ومعتصرها وحاملها والمحمولة إليه وآكل ثمنها).

k4.10 If one makes any of the above unlawful transactions (k4.6–9), the agreement is valid (dis: c5.2).

k4.10 فإنْ باعَ في هذه الصورِ كلِّها المحرمة صَحَّ البيعُ.

A VALID SALE COMBINED WITH AN INVALID SALE

الجمع بين بيع صحيح وبيع فاسد في عقد واحد

k4.11 If one combines something valid to sell with something invalid to sell in one transaction, such as selling one's own garment together with someone else's without his permission, or such as selling wine and vinegar, then the transaction is valid for the portion of the price that covers the valid sale (O: no matter whether the person knew what the case was, or whether he did not and believed the sale permissible, thinking at the time, e.g. that the wine was vinegar) and is invalid for the portion of the price that was not valid (A: and the portion must be refunded to the buyer). The buyer has the option to cancel the whole agreement if, at the time the deal was made, he did not know it included something impermissible.

k4.11 وإنْ جَمَعَ في عقدٍ واحدٍ ما يَجُوزُ وما لا يَجُوزُ [(ع: ويُحمل الجواز هنا على الصحة)] مثلُ [عبدِه وعبدِ] (ت: ثوبه وثوب) غيره بغير إذنِه أو خمرٍ وخلٍّ صَحَّ فيما يَجُوزُ بقسطِه من الثمن ([باعتبار قيمته] سواء علم الحال أم جهل وأجاز البيع ويقدر الخمر عند البيع خلاً) وبَطَلَ فيما لا يَجُوزُ. وللمشتري الخيارُ إنْ جَهِلَ.

JOINING TWO TYPES OF TRANSACTIONS IN ONE CONTRACT

الجمع بين عقدين مختلفي الحكم

k4.12 It is valid to join two contracts of different kinds (O: for example, a sale with a rent agreement) such as saying, "I sell you my horse and rent you my house for a year for such and such an amount" (O: though it is not necessary that they be different kinds, for the ruling also applies to two contracts of the same type, such as a partnership (def: k16) linked with financing a profit-sharing venture (qirad, def: k22)), or such as saying, "I marry you my daughter and sell you her house [N: as her proxy, the proceeds being hers] for so-and-so much," and the price is considered as proportionately distributed over the two transactions.

k4.12 وإنْ جَمَعَ عقدَيْنِ مختلفي الحكم (كالبيع والإجارة) مثلُ: بِعْتُكَ [عبدِي] (ت: فرَسِي) وآجَرْتُكَ داري سنةً بكذا (والاختلاف ليس بقيد بل مثله المتحدان فيه كالشركة والقراض)، وزَوَّجْتُكَ ابنتي وبِعْتُكَ [عبدَها] (ت: دارَها) بكذا صَحَّ وقُسِّطَ العوضُ عليهما.

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k5.0 THE RETURN OF MERCHANDISE BECAUSE OF A DEFECT

(O: The criterion for *defect* is based on something that is expected to exist (n: in merchandise), whether this expectation results from:

(1) stipulations agreed upon (dis: k4.4(4));

(2) the customary level of quality (dis: f4.5) for merchandise of its type;

(3) or outright deception by the seller.

The author does not mention (1) in this section, but confines himself to (2) and (3).)

k5.0 رد المبيع بالعيب

(وهو ما يتوقف على شيء مظنون الحصول نشأ ذلك الظن من التزام شرطي أو قضاء عرفي أو تغرير فعلي. ولم يذكر المصنف القسم الأول وذكر الثاني والثالث).

INFORMING A PROSPECTIVE BUYER OF DEFECTS IN MERCHANDISE

k5.1 Whoever knows of a defect in the article (O: he is selling) is obliged to disclose it. If he does not, he has cheated (O: the buyer, which is prohibited by the Prophet's statement (Allah bless him and give him peace),

"He who cheats us is not one of us"),

though the transaction is valid (A: provided the buyer accepts it, as discussed below).

التنبيه على عيب السلعة

k5.1 مَنْ عَلِمَ بالسلعةِ عيباً لَزِمَهُ (أي البائع) أنْ يُبَيِّنَهُ. فإنْ لمْ يُبَيِّنْ فَقَدْ غَشَّ (المشتري وهو منهي عنه لقوله ﷺ: «من غشنا فليس منا») والبيعُ صحيحٌ.

RETURNING DEFECTIVE MERCHANDISE

k5.2 When a buyer notices a defect in the merchandise that existed when the seller had it, he is entitled to return it (O: though if he is content to accept the defect, he does not have to return it. He may also return it when the defect occurred after the sale but before the merchandise was delivered, since the merchandise is the seller's responsibility during this period).

رد المبيع

k5.2 فإذا اطَّلَعَ المشتري على عيبٍ كانَ عندَ البائعِ فلَهُ الردُّ (فإن رضي به فلا يجب رده، ولـه أن يرده بالعيب الحادث بعد العقد وقبل القبض لأن المبيع في تلك الحالة من ضمان البائع).

k5.3 The criterion (O: of *defectiveness*) is:

(a) any flaw that diminishes the article or its value to a degree that hinders a valid purpose;

k5.3 وضابطُهُ (أي ضابط العيب هو) مَا نَقَصَ العينَ أو القيمةَ نقصاناً يَفُوتُ به غرضٌ صحيحٌ والغالبُ في مثلِ ذلكَ

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(b) provided that such an imperfection does not usually exist in similar merchandise.

(O: The former restriction excludes such things as amputation of a surplus digit or a minor nick from the animal's thigh or hock that is inconsequential and does not obviate its purpose, in which case there is no option to return it. The latter restriction excludes defects not generally absent in similar merchandise, such as missing teeth in older animals. There is no option to return such merchandise, even if the value is diminished.)

المبيع عدمُهُ (وخرج بالقيد الأول قطع إصبع زائدة أو فلقة يسيرة من فخذ أو ساق لا تؤثر شيئاً ولا تفوت غرضاً فلا خيار به وبالثاني ما لا يغلب فيه ما ذكر كقلع سن في الكبير فلا خيار به وإن نقصت القيمة به) [فَيُرَدُّ إنْ بَانَ العبدُ خصياً (والخصاء حرام وقال ابن القاسم الظاهر أنه من الكبائر) أوْ سارقاً أوْ يَبُولُ في الفراش وهوَ كبيرٌ].

k5.4 If the buyer notices a defect in the merchandise after it has been destroyed (O: whether physically, such as an animal being killed, a garment worn out, or food eaten; or whether *legally* finished, by being no longer permissible to transfer from person to person, as when a site has been made an endowment (waqf, def: k30))—then a compensation (A: from the seller to the buyer) is obligatory. (O: The buyer is entitled to it because of the impossibility of returning the article due to its no longer existing. *Compensation* means a part of the article's price whose relation to the whole price is the same as the relation of the value which the defect diminished to the full value of the article if it had been without defect. (N: The difference between price and value is that the *value* is how much money an article is worth in the marketplace, while the *price* is whatever the sale agreement specifies, whether this be more or less than the value.) The value in such a case is fixed at the lowest value (A: for articles of its type current in the marketplace) between the time the deal was made and the time the buyer took possession of it.)

The buyer is no longer entitled to seek compensation for such a defect if (O: he notices the defect after) he no longer owns the article because of having sold it or otherwise disposed of it. But if such an article returns to the buyer's possession after this (O: i.e. after having left his ownership, whether as a gift, or returned (A: from a subsequent buyer) because it was defective, or because of a cancelled deal, or he buys it back), then he is entitled to return it (A: to the person who originally sold it to him).

k5.4 فلو اطَّلَعَ (المشتري) على العيب بعدَ تلف المبيع (حساً كأن قتل أو أتلف الثوب أو أكل الطعام أو شرعاً بأن خرج عن قبول النقل من شخص إلى شخص كما إذا أوقف المكان) تَعَيَّنَ (على المشتري أخذ) الأرش (لتعذر الرد لفوات المبيع. والأرش جزء من الثمن نسبته إليه كنسبة ما نقص المعيب من القيمة إلى تمامها لو كان سليماً. (ح: والفرق بين الثمن والقيمة أن القيمة ما تساويه السلعة في السوق من النقود؛ وأما الثمن فما وقع عليه العقد سواء كان أكثر أم أقل من القيمة). والأصح اعتبار أقل قيمة المبيع من حين العقد إلى حين القبض) أو (اطلع على العيب) بعدَ زوال الملك عنهُ ببيع أو غيره لمْ يَكُنْ لَهُ (أي للمشتري) طلبُ الأرش الآن. فإنْ رَجَعَ إليه بعدَ ذلكَ (أي بعد زواله عنه إما بهبة أو برد بعيب أو إقالة أو شراء) فلَهُ (أي للمشتري الأول الذي وجد بالمبيع عيباً) الردُّ.

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k5.5 If an additional defect occurs in an article (O: other than the above-mentioned defect (A: that existed before the buyer received the article)) while it is in the buyer's possession, then the buyer is only entitled to take a compensation (O: from the seller, to compensate for the original defect) and is not entitled to (A: insist that the seller accept) return (A: of the article for a full refund).

But if the original seller is willing to accept it back with the (O: new) defect, (A: refunding the original price,) then the buyer is not entitled to (A: keep the article and) demand compensation (O: for the original defect. Rather, the buyer is told, "Either return it, or else be content with it as it is and you get nothing"; for the harm to the original seller which is what prevents (A: it being obligatory for him to accept) its return no longer exists if the seller is content to take it back, and the merchandise is as if the additional defect never occurred.

Their agreement is implemented if buyer and seller agree upon:

(1) the seller taking it back with (A: the seller refunding the original price, and the buyer giving him) compensation for the new additional defect;

(2) or the buyer keeping the merchandise, and the seller paying him compensation for the original defect;

since either of these options might satisfy the interests of the two parties. If the buyer and seller disagree about which of these two options should be implemented, the decision goes to whichever of them requests option (2), whether this person is the buyer or the seller, since it confirms the original contract).

k5..5 وإنْ حَدَثَ عندَ المشتري عيبٌ آخرُ (غير العيب المتقدم) [مثلُ أنْ يَفْتضَّ البكرَ] تَعيَّنَ الأرشُ (من البائع لأجل العيب القديم) وامْتَنَعَ الردُّ (القهري) فإنْ رَضِيَ البائعُ بالعيب (الحادث) لمْ يَكُنْ للمشتري طلبُ الأرش (للعيب القديم بل يقال له: إما أن ترده وإما أن تقنع به ولا شيء لك؛ لأن المانع من الرد هو ضرر البائع وقد زال برضاه فصار كما لو لم يحدث فيه عيب. ولو توافقا على الرد مع الأرش الحادث أو الإمساك مع الأرش القديم فُعِلَ لما فيه من الجمع بين المصلحتين ومراعاة الجانبين. وإن تنازعا فيما يفعل منهما أجيب من طلب إمساك المبيع مع أرش القديم بائعاً كان أو مشترياً لما فيه من تقرير العقد).

k5.6 If the new defect which occurs while the article is in the buyer's possession is the sole means of disclosing the old defect, such as breaking open a (A: spoiled) watermelon or eggs, and so forth, then the new defect does not prevent (A: the obligation of the seller to accept) its return. But if the new damage exceeds the extent that was necessary to reveal the original defect, then the seller is no longer compelled to accept it back.

k5.6 فإنْ كان العيبُ الحادثُ لا يُعرفُ العيبُ القديمُ إلاّ به ككسر البطيخ والبيض ونحوهما لمْ يَمْنَعْ (العيب الحادث) الردَّ. فإنْ زادَ على ما يُمكنُ المعرفةُ به فلا ردَّ [(أي سقط الرد القهري)].

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k5.7 It is a necessary condition for (A: cases where the buyer seeks a refund for something he is) returning (O: because of a defect) that the buyer return it immediately upon noticing the defect (O: and his option to return it is cancelled if he delays without an excuse). On his way back to the seller, he should have two witnesses affirm that he is cancelling the agreement (A: so if the seller is unavailable at the time, the buyer is nevertheless able to prove that he went to return it immediately). If the defect is noticed while one is praying, eating, using the lavatory, or at night (A: if the night presents a problem in returning it), then one is entitled to delay returning it until the hindrance preventing one from doing so is no longer present, provided one stops using and benefiting from it. If the buyer delays returning it when capable of doing so, then the seller is no longer obliged to accept the article back for a refund, or no longer obliged (A: in cases like k5.5 above) to compensate the buyer for the original defect (O: because the delay gives the impression that the buyer is satisfied with the defect).

k5.7 وشرطُ الردِّ (بالعيب) أنْ يكون على الفور (فيبطل بالتأخير بلا عذر) ويُشهدُ في طريقه أنَّهُ فسخ. فلو عرفَ العيبَ وهوَ يُصلّي أوْ يأكلُ أوْ يقضي حاجةً أوْ ليلاً فلهُ التأخيرُ إلى زوال المعارض بشرط ترك الاستعمال والانتفاع فإنْ أخّرَ (الرد) متمكناً (منه) سقطَ الردُّ (أي القهري) والأرشُ (لإشعار التأخير بالرضا).

k5.8 [وتَحْرُمُ التصريةُ وهي أنْ يَشُدَّ البائعُ أخلافَ البهيمةِ ويَتْرُكَ حلبَها أياماً ليَغُرَّ غيرَهُ بكثرةِ اللبنِ. فإذا اطّلعَ عليه المشتري فلهُ الردُّ مطلقاً. فإنْ كانَ بعدَ حلبِها وتلفَ اللبنُ ردَّ صاعاً منْ تمرٍ بدلَ اللبنِ إنْ كانَ الحيوانُ مأكولاً. ويُلحقُ بالتصريةِ في الردِّ تحميرُ وجهِ الجاريةِ وتسويدُ الشعرِ ونحوُهُما].

k5.9 (A: The term *murabaha* applies to sales where the seller states the price in terms of "the original price plus such and such an amount as profit," whether by *original price* he means the amount he originally paid for the whole lot, or whether he means the proportion of that price represented by the percentage of the lot which he is now selling.)

The seller in *murabaha* (O: meaning an agreement where the price consists of the original price plus increment) is obliged to inform the buyer of any defect that occurred in the merchandise while in his possession, such as by saying, "I bought it for ten [O: or "bought it for one hundred and sell it to you at what I bought it for, plus one dirham's profit on every ten"] but such and such a defect happened to it while I had it." (O: He is likewise obliged to say, for example, "Such and

k5.9 (ع: كلمة المرابحة تنسحب على البيع الذي يعبّر البائع عن الثمن فيه بنحو قوله: ثمن التكلفة زائد كذا؛ سواء عنى بالزائد مقداراً زائداً على ثمن التكلفة أو نسبة مأوية منها).

ويَلْزَمُ البائعَ أنْ يُخبرَ في بيعِ المرابحةِ (وهي عقد يبقى الثمن فيه على ثمن المبيع الأول مع زيادة) بالعيبِ الذي حَدَثَ عندَهُ فيَقولُ: اشْتَريْتُهُ بعشرةٍ مثلاً (أي أو: بمائة وبعتكه بما اشتريته أي بمثله وربح درهم لكل عشرة) لكنْ حَدَثَ عندي العيبُ الفلانيُّ (ومثل هذا

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such a defect appeared in it that was from the previous owner, and I accepted this.")

The seller in *murabaha* is also obliged to explain how much time he was given to pay the original price (A: since deferring payment generally raises the price, and merely stating such a raised price without mentioning that it was deferred would give the new buyer a false impression).

(O: The author should have mentioned (A: that telling the prospective buyer the above information is also obligatory in sales of) *discount* (A: on a lot of goods or portion thereof), as when the seller tells someone, "I sell it to you for what I bought it for, minus one from every eleven." These rulings likewise apply to agreements stated in terms of, "I sell you it at the same price the original deal was made for.")

أن يقول ظهر به عيب قديم ورضيت به).
ويُبَيِّن الأجل (وكان على المصنف أن يذكر المحاطة أيضاً [من الحط وهو النقص] كقول من ذكر لغيره: بعتك بما اشتريت وحط واحد من كل أحد عشر: ويدخل في: بعت بما اشتريت ثمنه الذي استقر عليه العقد فقط).

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k6.0 SELLING FRUIT AND CROPS

k6.0 بيع الثمار والزرع

k6.1 It is not permissible (O: or valid) to sell the fruit alone from a tree (A: without the tree, while still on it) before it is ripe, unless the agreement stipulates immediate picking of the fruit. But such a sale is valid without restriction if made after the fruit is *ripe,* meaning, for fruits that do not change color, to become fit to eat; and for fruits whose color changes, to start to turn the color of ripeness.

If both the tree and the fruit are sold together, the sale is permissible without stipulating that the fruit be picked.

k6.1 بيعُ الثمرة وحدَها على الشجرة إنْ كانَ قبلَ بدوِّ الصلاح لمْ يَجُزْ (ولم يصح) إلاّ بشرط القطع. وإنْ كانَ بعدَهُ (أي بعد بدوّ الصلاح) جَازَ مطلقاً.
وبدوُّ الصلاح هوَ أنْ يطيبَ أكلُهُ فيمَا لا يَتلوَّنُ أوْ يأْخذَ (أي يشرع) بالتلوين فيمَا يتلوَّنُ.
وإنْ بَاعَ الشجرةَ وثمرتَها جازَ منْ غيرِ شرطِ القطع.

k6.2 Grain, when green, is subject to the same rulings as fruit before it is ripe: it may not be sold (O: nor would the sale be valid) unless the agreement stipulates immediate harvest, though there are no restrictions on sales made after the grain is solid and firm.

k6.2 والزرعُ الأخضرُ كالثمرةِ قبلَ بدوِّ الصلاح: لا يَجُوزُ (البيع ولا يصح فيه) إلاّ بشرط القطع. وبعدَ اشتداد الحبِّ يَجُوزُ مطلقاً.

k6.3 It is not permissible to sell grain when still in the husk, or to sell unripe nuts, almonds, or

k6.3 ولا يَجُوزُ بيعُ الحبِّ في سنبله ولا الجوز واللوز والباقلاء الأخضر

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broadbeans when these are in the shell. (A: When the latter three are dried, they may be sold in the shell.)

[(صفة لكل من هذه الثلاثة أي الجوز الأخضر وما بعده)] في القشرين.

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k7.0 MERCHANDISE BEFORE THE BUYER TAKES POSSESSION OF IT

k7.0 قبض المبيع وضمانه

k7.1 Merchandise is the responsibility of the seller before the buyer has taken possession (def: k7.3) of it. If such merchandise is destroyed (Ar. talifa, to be finished off or used up) by itself or through an act of the seller, then the agreement is cancelled and no payment is due for it. If the buyer destroys such merchandise, he must pay its price, and his destroying it is considered as having taken possession of it. If a third party destroys such merchandise, the deal is not cancelled but rather the buyer is given a choice to either:

(1) cancel the agreement and make the value (def: k5.4(N:)) (O: of what the third party destroyed) a debt that the third party owes to the seller;

(2) or effect the deal, paying the seller the price (O: if he agrees to effect the deal) and making the third party liable to pay the value (O: to the buyer).

k7.1 المبيعُ قبلَ قبضِهِ مِنْ ضمانِ البائعِ. فإنْ تلفَ (المبيع بنفسه) أوْ أتْلَفَهُ البائعُ انْفَسَخَ البيعُ وسَقَطَ الثمنُ.

وإنْ أتْلَفَهُ المشتري استقرَّ عليه الثَّمنُ ويكونُ إتلافُهُ قبضاً.

وإنْ أتْلَفَهُ أجنبيٌ لمْ يَنْفَسِخْ بلْ يُخَيَّرُ المشتري بينَ أنْ يَفْسَخَ فَيَغْرَمَ الأجنبيُّ للبائعِ القيمةَ (أي قيمة ما أتلفه) أوْ يُجيزَ (أي عقد البيع) ويُعْطِيَ الثمنَ (للبائع إن أجاز العقد) ويُغَرِّمَ الأجنبيَّ القيمةَ (للمشتري).

k7.2 When one buys something, it is not permissible (O: or valid) to sell it until one has taken possession of it. (O: The invalidity of selling it likewise applies to all transactions disposing of it (A: such as renting it, giving it away, and so forth).

It is also invalid for the seller to dispose of the price in any way before it has been received from the buyer, unless the new transaction is with the same buyer and involves the very same (A: article that is the) price.)

But if the price is a financial obligation (N: that is, an amount of money, unspecified as to which particular pieces of money it is), the seller may ask for a different sort of payment, provided

k7.2 وإذا اشْتَرَى شيئاً لمْ يَجُزْ (أي ولم يصح) أنْ يَبِيعَهُ حتَّى يَقْبِضَهُ. (ومثل عدم صحة بيعه سائر التصرفات. ومثل عدم صحة بيع المبيع قبل قبضه الثمن فلا يصح للبائع التصرف فيه قبل قبضه من المشتري في جميع ما تقدم إلا مع المشتري إذا كان بعين المقابل). لكنْ للبائع إذا كانَ الثمنُ في الذمة (ح: أي نقداً غير معين) أنْ يَسْتَبْدِلَ عنهُ (أي عن

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he has not already accepted the payment, as when he sells something for dirhams, but then accepts gold, a garment, or something else instead of them.

ذلك الثمن) قبل قبضه (من المشتري) مثل أنْ يبيع بدراهم فيَعْتاض عنها ذهباً أوْ ثوباً ونحوَ ذلك.

k7.3 *Taking possession* means:

(1) for transportable things such as wheat or barley, that they be transported (N: by the buyer or his representative) (O: that is, when he moves the merchandise to a place not belonging to the seller, such as the street or the buyer's house);

(2) for things dealt with by hand, such as a garment or book, that they be taken in hand;

(3) and for other things, such as a house or land, that they be given over (O: i.e. the seller give the buyer control over them, such as by handing the key to him or moving others' belongings off the property).

k7.3 والقبضُ فيما يُنْقَلُ النقلُ (ح: من قبل المشتري أو نائبه) مثلَ القمح والشعير (إذا نقله إلى مكان لا يختص به بائع كشارع أو دار للمشتري) وفيما يُتناوَلُ باليد التناوُلُ مثلَ الثوب والكتاب. وفيما سواهُما التخليةُ مثلَ الدار والأرض (بأن يمكنه البائع منه ويسلمه المفتاح وأنْ يفرغه عن متاع غيره أي غير المشتري).

k7.4 [فلوْ قالَ البائعُ: لا أُسَلِّمُ المبيعَ حتى أقبضَ الثمنَ، وقالَ المشتري: لا أُسَلِّمُ الثمنَ حتى أقبضَ المبيعَ؛ فإنْ كانَ الثمن في الذمة ألزمَ البائعُ بالتسليم أولاً ثمَّ يُلْزَمُ المشتري بالتسليم، وإنْ كانَ الثمنُ معيناً ألزما معاً بأنْ يُؤمَرا فيُسَلِّما إلى عدلٍ ثمَّ العدلُ يُعْطي لكلِّ واحدٍ حقَّهُ].

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k8.0 DISPUTES OVER WHAT THE TERMS OF A TRANSACTION WERE

k8.0 الاختلاف في كيفية العقد

k8.1 When two parties agree on the validity of a transaction but disagree on its terms, and there is no proof, then they each swear an oath (dis: k8.2) affirming their side of the story. Such a disagreement could be:

(1) the seller saying that he sold it for immediate payment, while the buyer asserts that payment was to be deferred;

(2) the seller stating that he sold for ten, while the buyer maintains it was five;

k8.1 إذا اتفقا على صحة العقد واختلفا في كيفيته بأنْ قال البائعُ: بعتُكَ بحالٍ؛ فقالَ (أي المشتري): بلْ بمُؤجَّلٍ؛ أوْ: بعتُكَ بعشرةٍ؛ فقالَ: بلْ بخمسةٍ؛ أوْ: بعتُكَ بشرطِ الخيارِ؛

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(3) the seller saying he sold it to the buyer on condition that there be an option to cancel period (def: k1.4), while the buyer asserts that no such option was stipulated;

or similar disputes.

فقال: بلْ بلا خيارٍ، وما أشْبَهَ ذلك ولمْ يكُنْ ثَمَّ بينةٌ تحالفا.

k8.2 (N: Swearing an oath (def: o18) is a means for urging one's case when there is no proof, meaning no witnesses. When rulings mention, for example, that "So-and-so's word is believed;" or "So-and-so's word is accepted," it means that his word is accepted when he swears an oath in cases where there is no proof presented by either of the two parties. If there is proof, whether from the plaintiff or defendant, it is given precedence over an oath.)

k8.2 (ح: واليمين تكون حجة حيث لا بينة. والبينة الشهود. وإذا قيل صدق فلان أو القول قول فلان فمعناه قبل قوله مع يمينه حيث لا بينة لأحد الطرفين. فإنْ كانت بينة قدمت على اليمين سواء كانت للمدعي أو المدعى عليه).

k8.3 In the oath for such cases, the seller swears first, saying, for example, "By Allah, I did not sell it to you for such and such an amount, but rather for such and such an amount." Then the buyer swears, "By Allah, I did not buy it for such and such, but rather bought it for such and such." It consists of one oath (A: from each party) which joins the denial of the other's claim with the affirmation of one's own claim, and in which the denial is recommended to precede the affirmation.

k8.3 فيَبْدَأُ البائعُ فيقولُ: والله ما بِعْتُكَ بكذا ولقدْ بِعْتُكَ بكذا، ثمَّ يقولُ المشتري: والله ما اشْتَرَيْتُ بكذا ولقد اشْتَرَيْتُ بكذا، وهي يمينٌ واحدةٌ يُجْمَعُ فيها بين نفي قول صاحبه وإثبات قوله ويُقدَّمُ النفي (استحباباً).

k8.4 When the buyer and seller have sworn, but subsequently reach a solution that both accept, the agreement is not cancelled. But if they cannot reach an accord, they cancel the agreement, or one of them cancels it, or the Islamic magistrate does (O: to end the trouble between them. When the agreement is cancelled, each returns whatever he has accepted from the other).

k8.4 فإذا تحالفا فإنْ تراضيا بعد ذلك فلا فسخ للعقد. وإلاّ فيَفْسخانه أو أحدُهما أو الحاكمُ (قطعاً للنزاع بينهما وإذا حصل الفسخ فكل واحد منهما يرد ما قبضه من العوضين على الآخر).

k8.5 If either the buyer or seller testifies that a particular agreement is invalid, but the other party says it is valid, then the word of whichever of them asserts it is valid is accepted if he swears an oath (dis: k8.2).

If the buyer comes to the seller with a piece of merchandise that he wants to return because of a

k8.5 فلوْ ادَّعى أحدُهما شيئاً يقتضي أنَّ البيعَ وقع فاسداً وكذَّبَهُ الآخرُ صُدِّقَ مُدَّعي الصحة بيمينه.

ولوْ جاء (المشتري) بمعيبٍ ليَرُدَّهُ فقال

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defect, but the seller says that it is not the one he sold him, then the seller's word is accepted (O: when he swears).

If the buyer and seller disagree about a defect in an article that could have occurred while it was in the buyer's possession, but each party asserts that the defect occurred while in the other's possession, then the seller's word is accepted (O: when he swears).

البائعُ: لَيْسَ هوَ الذي بِعْتُكَهُ؛ صُدِّقَ البائعُ (بيمينه).

ولو اخْتَلَفَا في عيبٍ يُمْكِنُ حدوثُهُ عند المشتري فقال البائعُ: حَدَثَ عندكَ؛ وقالَ المشتري: بَلْ كانَ عندكَ؛ صُدِّقَ البائعُ (بيمينه).

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k9.0 BUYING IN ADVANCE (SALAM)

k9.0 السلم

k9.1 *Buying in advance* means the sale of described merchandise which is under (A: the seller's) obligation (A: to deliver to the buyer at a certain time).

k9.1 هوَ بيعُ موصوفٍ في الذمة.

THE CONDITIONS FOR THE VALIDITY OF BUYING IN ADVANCE

شروط صحة السلم

k9.2 In addition to the conditions for valid sales (def: k1.1–2, k2.1), other conditions (O: seven of them) must be met for buying in advance to be valid:

(a) that the price of the merchandise be received when the agreement is first made. It is sufficient to merely see the price that is being accepted, even when its exact amount is unknown;

(b) that the merchandise bought in advance be a *financial obligation* (dayn) (O: owed by the seller (N: meaning that buying in advance is not valid for particular individual articles ('ayn) (A: i.e. "this one" and no other)) which the seller will deliver when its time comes). Its delivery may be due from the present onwards, or may be due later through deferment (O: by clearly stating whether it is to be due immediately or deferred) to a specific date (O: which specificity is a necessary condition for the validity of deferring payment). It

k9.2 ويُشْتَرَطُ فيهِ مَعَ شروطِ البيعِ أمورٌ (أي شروط سبعة) أحدُها قبضُ الثمنِ في المجلسِ وتَكْفي رؤيةُ الثمنِ وإنْ لَمْ يَعْرِفْ قدرَهُ، والثاني كونُ المسلمِ فيهِ ديناً (أي في ذمة المسلم إليه يحضره وقت حلول الأجل) (ح: فلا يصح السلم إذا كان المبيع معيناً) ويَجُوزُ حالاً ومؤجلاً (بأن يصرح بهما) إلى أجلٍ معلومٍ (شرط في صحته مؤجلاً) فلَوْ قالَ

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is not permissible to say, "I advance you these dirhams for that particular horse" (O: which is invalid because of the condition that the merchandise bought in advance be a financial obligation (dayn), which the above-mentioned horse is not, but is rather a particular individual article ('ayn));

(c) that the location to which the merchandise is to be delivered be clearly stipulated (A: though this is only a condition) in cases in which the buyer pays for it at a place where it cannot be delivered, such as the wilderness; or to which the merchandise can be delivered, but transporting it there involves considerable difficulty;

(d) that the merchandise bought in advance be determinately known by volume, weight, quantity, or yardage in terms of a familiar measure. It is not valid for someone to say "the weight of this stone," or "the capacity of this basket," if the (O: stone's) weight or basket's capacity is not known;

(e) that the merchandise be within the seller's power to deliver (def: k2.4) when the time for delivery arrives;

(f) that the merchandise not be generally subject to unavailability. If it is something rare (O: such as a great quantity of the season's first fruits of a particular kind of produce) or something not typically safe from unavailability, such as "the fruit of this particular date palm," then its sale in advance is not permissible;

(g) that those characteristics of the merchandise over which the buyer and seller might be at cross-purposes be expressly delineated by clear specifications. It is not permissible (O: to buy things in advance which cannot be defined by clear criteria, such as) for jewels or composites like meat pastry (O: composed of wheat, meat, and water, all of which are expected but not delineable in terms of minimal or maximal amounts), *ghaliya* perfume (O: composed of musk, ambergris, aloes, and camphor), or slippers (O: composed of outer and inner layers and padding), nor articles whose top randomly differs from their bottom, like a lamp or pitcher (O: the top of which is some-

أَسْلَمْتُ إِلَيْكَ هٰذِهِ الدَّرَاهِمَ فِي هٰذَا [الْعَبْدِ] (ت: الحصان) لَمْ يَجُزْ (أي لم يصح العقد لفقد الشرط وهو كونه ديناً لأن [العبد] (ت: الحصان) المذكور ليس ديناً بل هو عين)، الثَّالِثُ إِذَا أَسْلَمَ فِي مَوْضِعٍ لَا يَصْلُحُ لِلتَّسْلِيمِ (أي تسليم المسلم فيه) مثل البرية أَوْ يَصْلُحُ ولكن لنقله إليه مؤنة اشْتُرِطَ بَيَانُ مَوْضِعِ التَّسْلِيمِ وشروطُ المسلَّم فيه كونُهُ معلومَ القدرِ كيلاً أَوْ وزناً أَوْ عدداً أَوْ ذرعاً بمقدارٍ معلومٍ. فَلَوْ قَالَ: زِنَةَ هٰذِهِ الصخرةِ، أَوْ: ملءَ هٰذا الزنبيلِ، ولا يعرفُ وزنَها (أي الصخرة) ولا ما يَسَعُ الزنبيلُ لَمْ يَصِحَّ، وأَنْ يَكُونَ مقدوراً عليه عندَ وجوبِ التسليمِ مأمونَ الانقطاعِ فإنْ كانَ عزيزَ الوجودِ (كقدرٍ كثيرٍ من الباكورة) [كجاريةٍ وبنتِها] أَوْ لا يُؤْمَنُ انقطاعُهُ كثمرةِ نخلةٍ بعينِها لَمْ يَجُزْ، وأَنْ يُمْكِنَ ضبطُهُ [كالأدقةِ والمائعاتِ والحيوانِ واللحمِ والقطنِ والحديدِ والأحجارِ والأخشابِ ونحوِ ذلك] فَيُشْتَرَطُ ضبطُهُ بالصفاتِ التي يَخْتَلِفُ بِهَا الغرضُ (أي غرض المتعاقدين) [فَيَقُولُ مثلاً: أَسْلَمْتُ إِلَيْكَ في عبدٍ تركيٍّ أبيضَ رباعيِّ السنِّ طولُهُ وسمنُهُ كذا، ونحوُ ذلكَ] فلا يَجُوزُ (السلم فيما لا ينضبط بالصفات كالسلم) في الجواهرِ والمختلطاتِ كالهريسةِ (فإنها مركبة من قمح ولحم وماء وهي أجزاء مقصودة لا تنضبط بالقلة والكثرة) والغاليةِ (وهي مركبة من مسك وعنبر وعود وكافور) والخفافِ (وهي مركبة من ظهارة وبطانة وحشو) وكذا ما اخْتَلَفَ أعلاهُ وأسفلُهُ كمنارةٍ وإبريقٍ (فإن

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times wider than the bottom, or vice versa) (N: though the Hanafi school permits such agreements, calling them *made to order* (istisna'), which they hold includes whatever is customarily bought in this way. They affirm the buyer's option to cancel the agreement when he sees the merchandise, and it is obligatory that the article be described very precisely), nor something substantially processed and altered by fire (A: meaning heat), such as bread or roast meat, since describing it (A: i.e. how much cooking it takes) is impossible in a precise way.

أعلى ما ذكر تارة يكون أعرض من أسفله وتارة بالعكس) (ح: وأجاز الحنفية هذه العقود وسموها الاستصناع وهو عندهم فيما جرت به العادة، وأثبتوا للمشتري خيار الرؤية، وأوجبوا أن يضبط المشترى بوصف دقيق) أو ما دَخَلَتْهُ نارٌ قويةٌ كالخبز والشواء إذْ لا يُمْكِنُ ضبطُ ذلك بالصفة.

k9.3 It is not permissible for the buyer to sell something he has bought in advance until he has received it.

k9.3 ولا يَجُوزُ بيعُ المسلمِ فيه قبلَ قبضِه.

k9.4 It is not permissible to take some other type of merchandise in place of the article bought in advance (A: that is, when the buyer demands the substitute before the delivery of the original is due, though they may agree on it after that).

If the seller delivers the merchandise specified, or better (O: than what was specified), the buyer must accept it (O: since it is apparent that the seller could not find a way to fulfill his obligation save through this means. If the seller delivers merchandise that is inferior to what was specified, then the buyer may accept it, as this is voluntarily refraining from demanding his due, but he is not obliged to, because of the loss therein).

k9.4 ولا الاستبدالُ.

وإذا أَحْضَرَهُ مثلَ ما شَرَطَ أوْ أَجْوَدَ (مما شرطه) وَجَبَ قبولُهُ (لأن ظاهر حاله أنه لم يجد سبيلاً إلى براءة الذمة إلا بذلك ولو أحضر أردأ منه جاز قبوله لأنه نزول عن حقه ولم يجب لتضرره بذلك).

*

k10.0 PERSONAL LOANS (QARD)

(A: A *loan* means repayable financial aid. It does not refer to lending a particular article ('ayn) for someone to use and then return after use, which is termed an *'ariyya* (def: k19).)

k10.0 القرض

(ع: كلمة القرض إنما تنطبق على مساعدة مالية في ذمة المستقرض. فتخرج به إعارة الأعيان لتستعمل وترد إلى صاحبها فإنها تسمّى عاريّة).

k10.1 Loaning (O: meaning to give something to the borrower on the basis that he will return its equal) is recommended.

k10.1 القرضُ (وهو تمليك الشيء على أن يرد المقترض مثله) مندوبٌ إليه.

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k10.2 A loan is effected through a spoken offer and acceptance (def: k1.1), such as saying, "I loan you this," or, "I advance you it."

k10.2 (ويحصل) بإيجاب وقبول. مثل: أقرضتك (هذا)، أو: أسلفتك.

k10.3 It is permissible to give as a personal loan any article that may be bought in advance (def: k9.2(b,d,e,f,g)) and nothing else (A: though this restriction does not apply to *lending for use* ('ariyya, dis: k10.0(A:))).

k10.3 ويجوز قرض كل ما يجوز السلم فيه. وما لا فلا.

k10.4 It is not permissible for the lender to impose as a condition that the loan be repaid on a certain date (N: though for the Maliki school, to stipulate that repayment is obligatory on a certain date is valid and legally binding).

k10.4 ولا يجوز فيه (أي القرض) شرط الأجل (ح: ولكن عند المالكية شرط الأجل صحيح لازم).

k10.5 It is not permissible for the lender to impose some condition that will enable him to benefit from the loan, such as a condition that the borrower must return superior to what was loaned, or such as saying, "on condition that you sell me your horse for such and such an amount," for these are usurious gain (riba). But it is permissible for the borrower to return superior to what was loaned without this having been stipulated.

k10.5 ولا شرط جر منفعة (للمقرض) كرد الأجود أو: على أن تبيعني [عبدك] (ت: حصانك) بكذا؛ فإنه ربا. فإن رد عليه المقترض أجود من غير شرط جاز.

k10.6 It is permissible for the loan agreement to include the condition of collateral (O: meaning for the recipient to give the lender something as collateral (def: k11) for what he borrows) or the condition of a guarantor (O: such that the recipient brings someone to guarantee that the loan will be repaid (def: k15)).

k10.6 ويجوز شرط الرهن (أي بأن يعطي المقترض للمقرض رهناً على ما يأخذه) والضامن (أي أن المقترض يأتي بمن يضمنه على أن يرد ما اقترض).

k10.7 The recipient of a loan is obliged to repay the equal of what was lent, though it is permissible for the lender to accept something other than the (A: type of) thing loaned. If the lender gives the recipient a loan and later meets him in another town and asks for it back, the recipient must repay it if it was gold or silver and the like, though if the loaned commodity was something troublesome to carry, such as wheat or barley, then the recipient is not obliged to pay it back (A: in kind) but is merely obliged to pay back its value.

k10.7 ويجب على المقترض رد المثل. وإن أخذ (المقرض) عنه عوضاً (عن الشيء المقرض) جاز. وإن أقرضه ثم لقيه في بلد آخر فطالبه لزمه (أي لزم المقترض) الدفع (للمقرض) إن كان ذهباً أو فضة ونحوهما. وإن كان لحمله مؤنة نحو حنطة وشعير فلا، بل تلزمه القيمة.

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k11.0 PUTTING UP COLLATERAL (RAHN)

(O: In Sacred Law *collateral* is a piece of saleable property put up as security for a financial obligation to cover the amount if it should prove impossible to repay.)

k11.0 الرهن

(وهو شرعاً جعل عين مالية وثيقة بدين يستوفى منها عند تعذر وفائه).

CONDITIONS FOR THE VALIDITY OF PUTTING UP COLLATERAL

شروط صحة الرهن

k11.1 Putting up collateral is only valid when done by someone with full disposal over his own property, as security for a financial obligation (dayn, dis: k9.2(b)) that is currently due, such as the price (O: due for merchandise after its delivery), or a personal loan, or for a financial obligation that is currently becoming due (N: such as something's price) during the option to cancel period (def: k1.4). (O: The collateral's being security for a *financial obligation* is one restriction on its validity, and for one that is *currently due* is another. It is not valid to put up collateral for a particular individual article ('ayn) or the use of an article, since (A: the obligation to deliver) a particular article is not a *financial* obligation (dayn), as the selfsame article cannot be obtained by selling the collateral.)

Putting up collateral is not valid in cases in which the financial obligation is not yet due, such as collateral accepted (O: by a lender) as security for a loan that he will make (O: in the future).

It is necessary (O: for the validity of putting up collateral) that there be a spoken offer (O: by the person putting up the collateral) and spoken acceptance (O: from the person accepting it, just as it is necessary for sales, the conditions mentioned in connection with sales (k1.1) applying equally here).

The agreement is not legally binding until the collateral has been taken possession of with the permission of the person putting it up, who is entitled to cancel the agreement (A: at any point) before the collateral has been taken possession of (def: k7.3).

When the agreement has been effected, if the two parties (A: the collateral's giver and receiver) agree that the collateral should be kept with either

k11.1 لا يصحُّ إلاَّ من مطلقِ التصرف بدينٍ لازمٍ كالثمن (أي للمبيع بعد قبضه) والقرضِ أو يؤولُ (ذلك الدين) إلى اللزوم في مدة الخيار. (فالدينُ قيد وكونه لازماً قيد أيضاً. فلا يصح الرهن بعين ولا بمنفعتها لأنها ليست ديناً لأنها لا تستوفى من ثمن المرهون).

فإنْ لمْ يَلْزَمْهُ الدينُ بعدُ مثلُ أنْ يرْهَنَ (أي يأخذ المرتهن رهناً) على ما سَيُقْرِضُهُ (في المستقبل) لمْ يَصِحُّ.

وشرطُهُ (أي شرط صحة الرهن) إيجابٌ (من الراهن) وقبولٌ (من المرتهن. فافتقر إليهما كالبيع فيأتي فيهما ما تقدم في البيع).

ولا يَلْزَمُ (أي الرهن) إلاَّ بالقبضِ بإذنِ الراهنِ، فيَجُوزُ للراهنِ فسخُهُ قبلَ القبضِ.

وإذا لَزِمَ فإنِ اتَّفقا أنْ يُوضَعَ عندَ

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of them, or with a third party, this is done. If not (O: if they do not agree), the Islamic magistrate has it kept with an upright person (def: o24.4) (O: to end the disagreement. But the magistrate is not entitled to place it with either of the two parties without the other's permission).

أحدهما أو ثالث وضع وإلا (أي وإن لم يتفقا) وضعه الحاكم عند عدل (قطعاً للنزاع. وليس له أن يسلمه لأحدهما بدون إذن الآخر).

GENERAL PROVISIONS CONCERNING COLLATERAL

أحكام عامة تتعلق بالرهن

k11.2 The collateral must be an article that is permissible to sell (def: k2.1).

None of the collateral may be separated from the rest of it until the financial obligation has been entirely paid off.

The person who put up the collateral is not entitled to dispose of it in any way which infringes upon the right of the person who has received it as collateral (O: such as transferring its ownership to another) by selling it or giving it away (O: or putting it up as collateral for another person), or to dispose of it in any way that diminishes its value, such as wearing (O: a garment put up that would depreciate by being worn), though he may use it in ways that do not harm (O: the interests of the person who has received it) such as riding it, or living (O: in a house that has been put up as collateral).

k11.2 وشرط المرهون أن يكون عيناً يجوز بيعها.

ولا ينفك من الرهن شيء حتى يقضي جميع الدين.

وليس للراهن أن يتصرف فيه [(أي في المرهون)] بما يبطل حق المرتهن (وينقل الملك في المرهون إلى غيره) كبيع وهبة (أو رهنه عند رجل آخر) أو [(كان التصرف)] ينقص قيمته كاللبس (للثوب المرهون إذا كان ينقص باللبس) [(والوطء)]. ويجوز [(للراهن التصرف فيه)] بما لا يضر (المرتهن) كركوب وسكنى (للدار المرهونة).

k11.3 An article put up as collateral for a financial obligation may not (A: at the same time) be put up as collateral for a second financial obligation, even when the second obligation is with the same person who has accepted the article (A: for the first one).

k11.3 ولا يجوز رهنه بدين آخر ولو عند المرتهن.

k11.4 The expenses for maintaining an article put up as collateral (O: such as fodder for livestock, or the wages of a person watering trees) are the responsibility of the person who put it up, and he may be compelled to pay them to protect the rights of the person receiving it (O: lest it be destroyed). The person who put it up is entitled to the increments produced by it (O: that are separable from it) such as milk or fruit.

k11.4 وعلى الراهن مؤنة الرهن (كعلف دابة وأجرة سقي أشجار) ويلزم [(أي الراهن)] بها صيانة لحق المرتهن (عن التلف) وله (أي للراهن) زوائده (أي المرهون أي الأشياء التي تنفصل منه) كلبن وثمرة.

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k11.5 If the article is destroyed while in the possession of the person who received it as collateral without negligence on his part (A: meaning he took the precautions normal for similar articles), then he is not obliged to pay anything for its loss. But if destroyed because of his negligence, then he is obliged to pay the article's value to the person who put it up, though its destruction does not eliminate any of the original financial obligation for which the destroyed collateral was put up. (O: When the collateral has been destroyed and the two parties are at a disagreement,) the final word as to how much the article was worth (A: when there is no proof (dis: k8.2)) belongs to the person who received it as collateral (O: provided he swears an oath as to how much it was). But the final word as to whether the collateral has been returned (A: to its owner after his financial obligation has been paid) belongs to the person who put it up (A: when there is no proof, and he swears).

k11.5 وإنْ هَلَكَ عندَ المرتهنِ بلا تفريطٍ لمْ يَلْزَمْهُ شيءٌ. أوْ بتفريطٍ ضَمِنَهُ. ولا يَسْقُطُ بتلفِهِ شيءٌ منَ الدينِ والقولُ في القيمةِ قولُهُ (أي المرتهن فيما إذا أتلفه وتنازعا في قدرها فيصدق المرتهن بيمينه في قدرها) وفي الردِّ قولُ الراهنِ.

k11.6 The benefit of collateral is that the article is sold (A: by the person who put it up) when there is need to pay the amount which is due. If the person who put it up refuses (O: to sell the article when the person who has received it as collateral asks him to), then the Islamic magistrate has him either pay the original obligation or else sell the article. (O: He is given a choice between the two alternatives.) If he continues to refuse (O: to sell), then the Islamic magistrate sells it for him. (O: If the person who put it up is absent, then this is established by proof to the magistrate, who sells it for him and gives the person who accepted the collateral his due. If there is no Islamic magistrate and no proof (A: that there is a financial obligation for which the collateral has been put up), then the person who accepted it as collateral is entitled to sell it himself.)

k11.6 وفائدةُ الرهنِ بيعُ العينِ عندَ الحاجةِ إلى وفاءِ الحقِّ.

فإنِ امْتَنَعَ الراهنُ منهُ (أي من البيع عند طلب المرتهن البيع) أَلْزَمَهُ الحاكمُ إمَّا الوفاءَ أو البيعَ (فهو مخير بين هذين الأمرين) فإنْ أصرَّ (أي الراهن على الامتناع من البيع) باعَها الحاكمُ (فإن كان الراهن غائباً أثبت ذلك عند الحاكم فيبيعه عليه ويعطي المرتهن حقه. فإن لم يكن حاكم ولم تكن بينة فله بيعه بنفسه).

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k12.0 BANKRUPTCY (TAFLIS)

(O: Bankruptcy occurs when the Islamic magistrate makes a debtor bankrupt by (N: declaring him so and) forbidding him to dispose of

k12.0 التفليس

(وهو جعل الحاكم المديون مفلساً (ح: أي بأن يحكم عليه بذلك) بمنعه من

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his property (N: such that if he disposes of it, his disposition is not effected).)

التصرف في ماله (ح: فلو تصرف لم ينفذ تصرفه)).

k12.1 When someone obliged to pay a current debt is being asked to pay it, and he claims that he is unable to (O: while his creditors deny this), then if it is known that he has saleable property, he is kept under arrest until he provides evidence that he cannot pay. If not (O: i.e. if it is not known that he has saleable property), then he swears an oath (O: that there is no property), and (O: when it is established that he is unable to pay, whether through evidence, or through his oath) he is released (O: and given time) until his circumstances allow him to pay (O: and his creditors may not keep after him, because of Allah's word,

"If there be someone in difficulties, let him have respite until things are easier" (Koran 2:280)).

k12.1 إذا لزمه دينٌ حالٌّ فطُولِبَ فادَّعى الإعسارَ (وأنكر غرماؤه ذلك) فإنْ عُهِدَ [(أي علم)] لهُ مالٌ حُبِسَ حتّى يُقيمَ بيّنةً على إعساره وإلاّ (أي وإن لم يعلم له مال) حَلَفَ (على نفي المال) و(إذا أثبت إعساره بالبيّنة أو باليمين) خُلِّيَ سبيلُهُ (ترك بلا حبس وينتظر) إلى أنْ يُوسِرَ (ولا يلزمه غريمه حينئذ لقوله تعالى: ﴿وإنْ كانَ ذُو عُسْرَةٍ فنظِرَةٌ إلى مَيْسَرَةٍ﴾).

k12.2 But if he has saleable property (O: such as real estate, home furnishings, or livestock) and refuses to pay his debt, then the Islamic magistrate sells it for him and pays his debt. If the proceeds of the sale are insufficient to cover the debt, and he or his creditor asks the magistrate that he be suspended from dealing in his property, then this is done (O: obligatorily, if requested). When the person is *suspended*, his disposal over his own saleable property is not legally binding or effective, and the magistrate pays the person's expenses and those of his family (O: whom he is obliged to support (def: m12.1)) out of this (O: suspended) property if he is unable to earn enough to pay his expenses.

Then (O: after the person has been suspended) the magistrate sells the property in the most profitable manner and divides the proceeds according to the percentage of the total debt which is owed to each creditor.

k12.2 فإنْ كانَ له مالٌ (كالعقار والأمتعة والبهائم) وامْتَنَعَ منَ الوفاءِ باعَهُ الحاكمُ ووَفّى عنهُ.

فإنْ لمْ يَفِ مالُهُ بدينِهِ وسَأَلَ هوَ أوْ غرماؤُهُ الحاكمَ الحجرَ حَجَرَ عليْهِ (وجوباً عند الطلب) فإذا حَجَرَ لمْ يَنْفُذْ تصرفُهُ في المالِ ويُنْفِقُ (أي الحاكم) عليهِ وعلى عيالِهِ (الذين يلزمه نفقتهم) منهُ (أي من المالِ المحجورِ عليه) إنْ لمْ يَكُنْ لهُ كسبٌ. ثُمَّ (بعد الحجر) يَبيعُهُ الحاكمُ ويَحْتاطُ ويُقَسِّمُهُ على قدرِ ديونِهِم.

k12.3 If one of the creditors is owed money on a debt which is not yet due, he is not entitled to be paid from the proceeds. (N: Rather, if the bankrupt does not agree to pay the person

k12.3 وإنْ كانَ فيهِمْ مَنْ دَيْنُهُ مؤجلٌ لمْ يُقْضَ (ح: بل يجعل الحاكم نصيبه

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immediately, the magistrate keeps this person's share until the debt is due (A: and then pays him).)

تحت يده حتى يحل الأجل ما لم يرض المفلس بالتعجيل).

k12.4 If one of the creditors has accepted an article of the bankrupt's property as collateral from him for a debt, he is paid the amount owed to him from the sale of the collateral (O: and if there is money from its sale in excess of what was owed to him, it is distributed among the other creditors).

k12.4 أَوْ مَنْ عندَهُ بدينِهِ رهنٌ خُصَّ مِنْ ثمنِهِ بقدرِ دينِهِ (وما زاد من ثمنه يوزع على باقي الغرماء).

k12.5 If one of the creditors finds the very piece of merchandise he sold to the bankrupt person, he may choose between selling it and dividing the profits with the other creditors, or cancelling the deal and taking back the piece of merchandise, provided there is nothing to prevent taking it back such as it being subject to preemption by a part owner (shuf'a, def: k21), or the bankrupt person having made it collateral to another person, or the merchandise's being mixed with merchandise better than it, or some similar objection.

k12.5 ولوْ وَجدَ أحدُهُمْ عينَ مالِهِ التي باعَها لهُ فإنْ شاءَ ضَارَبَ مَعَ الغرماءِ وإنْ شاءَ فَسَخَ البيعَ ورَجَعَ فيها إلاَّ أنْ يَمْنَعَ مانعٌ مِنَ الرجوعِ فيها مثلُ أنْ تَسْتَحِقَّ بشفعةٍ أوْ رهنٍ أوْ خَلِطَتْ بأجودَ ونحوِ ذلكَ.

k12.6 The bankrupt person is permitted to keep a suitable set of clothes and enough food for himself and his dependents to suffice for the day on which his saleable property is divided up. (N: If the bankrupt is then earning enough to suffice himself and his dependents, he is left as is. If not, then he is supported by the Muslim common fund (bayt al-mal), like all poor people. If there is no common fund, he must be supported by all the Muslims.)

k12.6 ويُتْرَكُ للمفلس دستُ ثوبٍ يَليقُ بهِ وقوتُهُ وقوتُ عيالِهِ يومَ القسمةِ (ح: ثم إن كانَ المفلس مكتسباً ما يكفيه وعيالَه فيها، وإلاَّ أنفق عليه من بيت المال كسائر الفقراء. فإن لم يكن بيت مال فنفقته على عامة المسلمين).

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k13.0 THE SUSPENSION OF CHILDREN AND THE INSANE FROM DEALINGS

(O: Suspension is of two types:

(1) The first has been established in Sacred Law for the interests of others, such as the suspension of a bankrupt person in the interests of his creditors, or the suspension of the person putting

k13.0 الحجر

(والحجر نوعان: نوع شرع لمصلحة الغير كالحجر على المفلس للغرماء

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up collateral from dealing in it, in the interests of the person who has accepted it.

(2) The second has been established in Sacred Law in the interests of the suspended person, which is the type of suspension our author refers to in the following.)

والراهن للمرتهن في المرهون، ونوع شرع لمصلحة المحجور عليه نفسه، وقد أشار له المصنف بقوله:)

k13.1 It is not permissible for a child or insane person to dispose of their own property (N: and their doing so is considered legally invalid) (O: to protect them from loss. The fact that a person is a child, male or female, even if at the age of discrimination (def: f1.2), negates the legal efficacy of whatever he says, as well as his legal authority over others, both in respect to transactions such as sale, and in respect to religion, such as Islam. His Islam is not valid, since it requires full capacity for legal responsibility (taklif, dis: c8.1). And this state continues until he reaches puberty. Insanity similarly negates the legal efficacy of whatever the insane person says, as well as his legal authority over others. His Islam is not valid, nor his leaving Islam (def: o8), nor are his dealings, as previously mentioned).

(A: Also suspended from commercial dealings is the *foolhardy* person (safih), meaning a spendthrift who is chronically careless with his money. In the schools of Shafi'i and Ahmad, this class also includes those who are careless about their religious obligations, as they too are considered too foolish to deal in their own property.)

k13.1 لا يَجُوزُ تصرفُ الصبيِّ والمجنونِ في مالِهِمَا (ح: ويعتبر باطلاً شرعاً) (أي حفظاً لهما عن الضياع فالصبا القائم بالشخص ذكراً أو أنثى ولو مميزاً يسلب العبارة والولاية أي في المعاملة كالبيع وفي الدين [بكسر الدال] كالإسلام أي فلا يصح إسلامه لتوقفه على التكليف ويستمر ذلك إلى البلوغ. والجنون كذلك أي يسلب العبارة والولاية فلا يصح الإسلام منه ولا الارتداد ولا معاملته كما تقدم)

k13.2 A guardian conducts such a charge's affairs, the *guardian* being:

(1) the charge's father;

(2) the father's father, if the father is deceased;

(O: it is a necessary condition that they be upright (def: o24.4), at least outwardly, though they need not be Muslim unless the child is Muslim)

(3) if neither of them is alive, then the person designated by the guardian's will (wasiyya, def: L3) to take custody of the charge;

k13.2 ويَتَصَرَّفُ لهُمَا الوليُّ وهوَ الأبُ أو الجدُّ أبُو الأبِ عندَ عدمِهِ (ويشترط ظهور عدالتهما ولا يشترط إسلامهما إلا أن يكون الولد مسلماً) ثمَّ

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(4) or if no one has been designated by the will, then the Islamic magistrate or his representative.

الوصيُّ ثمَّ الحاكمُ (الشرعي) أوْ أمينُهُ [(معطوف على الحاكم)].

THE GUARDIAN'S DISPOSAL OF HIS CHARGE'S PROPERTY

تصرف الولي في مال المحجور عليه

k13.3 The guardian deals with the charge's property to the charge's best financial advantage (O: and is entitled to sell it for needs that arise, such as when he does not have enough to cover his charge's expenses and clothing).

k13.3 وَيَتصرَّفُ لهُمَا بالغبطةِ (وله بيع المال لحاجة مثل أن لا يجد له ما يصرفه عليه من نفقة وكسوة).

k13.4 If the guardian claims to have spent his charge's property to cover the charge's expenses, or claims that the property has been destroyed (O: by an act of God (A: and not through his negligence)), then his word is accepted (O: about it without having to swear an oath). But if the guardian claims to have given the property to the charge (O: i.e. to the child who has reached maturity or the insane person who has regained his sanity), then his word is not accepted (O: because of the ease with which he could have legally established that he gave the property to his charge at the time of doing so. If he did not obtain witnesses to observe the property being handed over, he is guilty of remissness for neglecting to have it witnessed).

k13.4 فإنْ ادَّعى أنَّهُ أنفقَ عليهِ مالهُ أوْ (ادعى أنه) تلفَ (أي المال بآفة سماوية) قُبِلَ (ادعاؤه ذلك بلا يمين) أوْ أنَّهُ دَفَعَهُ إليهِ (أي إلى الصبي أو المجنون الذي بلغ رشده أو الذي أفاق من الجنون) فلا (يقبل قوله بالدفع له لسهولة البينة عند الدفع إليه فإذا لم يشهد عليه عند الدفع له فيكون مفرطاً بترك الإشهاد).

k13.5 Suspension from dealings ends (O: without a ruling from the judge) when a child reaches puberty and mental maturity, meaning that he:

(a) is physically mature;

(b) shows religious sincerity;

(c) and is competent to handle his own property.

(O: For an insane person, suspension ends when he regains his sanity, shows religious sincerity, and displays competence in handling his property. *Religious sincerity* means that a person

k13.5 فإذا بَلَغَ [أوْ أفاقَ] رشيداً بأنْ بلغ مصلحاً لدينه وماله (وأفاق المجنون مصلحاً لدينه وماله وذلك بأن يفعل

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performs acts of obedience and avoids disobedience and the unlawful. *Competence in handling one's property* means that one does not waste it by losing it, for example, in buying something outrageously overpriced. Both of these traits ((b) and (c)) are the criteria for maturity according to Imam Shafi'i, as opposed to Abu Hanifa and Malik, who hold that competence in handling property is sufficient.)

الطاعات ويتجنب المحرمات والمعاصي ولا يبذر ماله بتضييعه باحتمال غبن فاحش وتفسير الرشد هو عند إمامنا الشافعي خلافاً لأبي حنيفة ومالك حيث اعتبرا إصلاح المال فقط) انْفَكَّ الحجرُ (فينفك بغير القاضي).

k13.6 A charge is not given his property until his competence in handling it has been tested before puberty in a manner appropriate to him. (O: Thus a merchant's son is tried at striking a bargain in dealings, having been given money to do this, though not actually concluding the deal, which is done by the guardian. A farmer's son is tested at agriculture and managing the expenditures connected with it. An examination is also made of the charge's religion, by observing whether he performs acts of worship, avoids acts of disobedience, shuns the unlawful, and is wary of things that are doubtful (dis: j16.1).

It is necessary that this testing be repeated one or more times.)

k13.6 ولاَ يُسَلَّمُ إليه المالُ إلاَّ بالاختبارِ فيمَا يَليقُ به قبلَ البلوغِ (فيختبر ولد تاجر بمماكسة في شأن معاملة ويسلم له المال ليماكس لا ليعقد والعاقد هو الولي. ويختبر ولد الزراع بزراعة ونفقة عليها. والاختبار المذكور يكون في الدين أيضاً وذلك كإقبال المحجور عليه على العبادات وتجنب المعاصي والمحظورات وتوقي الشبهات. ويشترط تكرار الاختبار مرة أو مرتين أو أكثر).

k13.7 If the suspended person reaches puberty or regains his sanity but is corrupt in his religion or incompetent in financial dealings, then his suspension continues and he is not permitted to deal in his property by selling or anything else, with or without his guardian's permission, though if the guardian permits him to marry, the marriage is valid.

If the suspended person reaches puberty with religious sincerity and financial competence, but subsequently squanders his wealth, then he is resuspended by the Islamic magistrate, not the guardian. But if the person becomes morally corrupt (A: after having reached puberty), he is not resuspended (N: provided his corruption does not involve spending money on what is unlawful, though if it does, he is suspended from dealing).

k13.7 وإنْ بلَغَ أوْ أفَاقَ مفسداً لدينِهِ أو مالِهِ اسْتُدِيمَ الحجرُ عليهِ ولاَ يَجُوزُ تصرفُهُ في المالِ ببيعٍ وغيرِه [(من سائر التصرفات)] سواءٌ أذِنَ الوليُّ أمْ لا. فإنْ أذِنَ لهُ في نكاحٍ صَحَّ.

فإنْ بَلَغَ رشيداً ثمَّ بَذَّرَ حَجَرَ عليه الحاكمُ لا الوليُّ. وإنْ فَسَقَ لمْ يُعدْ عليه الحجرُ (ح: إن كان فسقه بغير إنفاق مال، فإن كان بإنفاق مال على المحرمات حجر عليه).

k13.8 *Puberty* applies to a person after the first wet dream, or upon becoming fifteen (O: lunar)

k13.8 والبلوغُ بالاحتلامِ أوْ باستكمالِ خمسَ عشرةَ سنةً (قمريةً) أوْ

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years old, or when a girl has her first menstrual period or pregnancy.

بالحيض والحبل في الجارية [(أي الأنثى) واللهُ أعلمُ].

*

k14.0 TRANSFERRING THE RIGHT TO COLLECT A DEBT (HAWALA)

(O: In Sacred Law, a transfer is an agreement that moves a debt from one person's responsibility to another's.)

(n: Given three persons, X (al-muhtal), Y (al-muhil), and Z (al-muhal 'alayhi) (A: where X loans Y a dirham, and Z already owes Y a dirham, so Y transfers the right to collect the old debt (that Z owes him) to X, instead of repaying X for the new debt. Such transfers have six integrals:

(a) Y;

(b) X;

(c) Z;

(d) Y's debt to X;

(e) Z's debt to Y;

(f) Y's spoken offer and X's spoken acceptance).)

k14.0 الحوالة

(وهي في الشرع عقد يقتضي نقل دين من ذمة إلى ذمة).

(ت: يمثل لها بثلاثة أشخاص: زيد (المحتال) وعمرو (المحيل) وبكر (المحال عليه) (ع: حيث يقرض زيد لعمرو درهماً. ولعمرو على بكر درهم. فجعل عمرو حق استيفاء الدين القديم لزيد بدلاً من أن يدفع لزيد الدين الجديد. وأعثال هذه الحوالة لها ستة أركان: محيل، ومحتال، ومحال عليه، ودين للمحتال على المحيل، ودين للمحيل على المحال عليه، والصيغة)).

k14.1 It is a necessary condition for the validity of transferring a debt that Y wishes to do so, and that X accepts. It is not necessary that Z wishes it.

(O: The agreement also requires a form, which is the spoken offer and acceptance (def: k1.1), meaning Y's offer and X's acceptance.)

k14.1 يُشترطُ فيها رضا المحيل وقبول المحتال دون رضا المحال عليه. (ولا بد من صيغة للعقد وهي إيجاب وقبول أي إيجاب من المحيل وقبول من المحتال).

k14.2 Such a transfer is not valid unless Z owes Y a debt and Y owes X a debt.

A transfer is valid respecting a legally binding debt (O: owed to X) for another legally binding debt (O: Z owes to Y), provided:

(a) that X and Y know what is being transferred (A: gold, silver, or wheat, for example) for what;

k14.2 ولا تصحُّ على مَنْ لا دَيْنَ عليه (أي لا للمحيل على المحال عليه ولا للمحتال على المحيل).

وتصحُّ بدينٍ لازمٍ (للمحتال) على دينٍ لازمٍ (للمحيل على المحال عليه) بشرط العلم (أي علم المحتال والمحيل) بما يُحالُ به و(بشرط العلم بما

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(b) that X and Y know that the two debts are homogeneous in type (A: such as money for money, or wheat for wheat) and in amount (O: though if Y owes X five, and Z owes Y ten, and Y transfers (A: the right to collect) five of it to X, then this is valid);

(c) and that X and Y know whether the debts are currently due or payable in the future (A: the two debts may differ in this respect if both parties agree).

يحال) عليه وتساويهما جنساً وقدراً (ولو كان لبكر على زيد خمسة ولزيد على عمرو عشرة فأحال زيد بكراً بخمسة منها صح) [وصحةً وتكسيراً] وحلولاً وأجلاً.

k14.3 (O: The validity of a transfer is not affected by the existence of collateral (def: k11) or of a guarantor (def: k15) as security for one of the debts, but the occurrence of the transfer eliminates (A: either form of) security, the guarantor being relieved of any responsibility and the collateral no longer being collateral.)

k14.3 (ولو كان بأحد الدينين توثق برهن أو ضامن لم يؤثر في صحة الحوالة ولم ينتقل بصفة التوثق بل يسقط التوثق بل يبرأ الضامن وينفك الرهن بها).

k14.4 Through a valid transfer, Y no longer owes X a debt, Z no longer owes Y a debt, and the debt owed to X becomes the responsibility of Z. If X is unable to collect the debt from Z because Z is bankrupt or denies the existence of the debt or for some other reason (O: such as Z's death), then X is not entitled to go back to Y (A: to collect it) (N: but rather it is as though X has accepted for the debt a remuneration which was subsequently destroyed in his possession).

k14.4 ويبرأ بها المحيل عن دين المحتال والمحال عليه عن دين المحيل وينتحول حق المحتال إلى ذمة المحال عليه.

فإن تعذر على المحتال أخذه من المحال عليه لفلس المحال عليه أو جحده أو غير ذلك (وذلك كالموت) لم يرجع (أي المحتال) إلى المحيل (ح: كما لو أخذ عوضاً عن الدين فتلف في يده).

*

k15.0 GUARANTEEING PAYMENT (DAMAN)

(O: *Guarantee* lexically means ensuring implementation, and in Sacred Law means to ensure a financial obligation which is another's or ensure the appearance of a particular person whose presence is required.)

(n: Given three persons, P (al-madmun lahu), Q (al-madmun 'anhu), and R (al-damin) (A: where P loans Q a dirham, and R guarantees

k15.0 الضمان

(وهو لغة الالتزام وشرعاً يقال الالتزام بدين ثابت في ذمة الغير أو بدن من يستحق حضوره).

(ت: ويمثل له بثلاثة أشخاص: زيد (المضمون له) وعمرو (المضمون عنه) وبكر (الضامن) (ع: حيث يقرض زيد لعمرو درهماً فيضمن بكر لزيد أن عمراً

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to P that either Q will repay it or else he, R, will repay it. Such guarantees have five integrals:

(a) R;

(b) P;

(c) Q;

(d) the debt covered;

(e) and the form of the agreement).)

سيفي به، وإلا سيفي به بكسر نفسه. وأمثال هذا الضمان لها خمسة أركان: الضامن، والمضمون له، والمضمون عنه، والدين المضمون به، والصيغة)).

GUARANTEEING ANOTHER'S FINANCIAL OBLIGATION

ضمان دين الغير

k15.1 It is a necessary condition for the validity of guaranteeing payment that R have full right to manage his own property. It is not valid from a child, someone insane, or a foolhardy person (def: k13.1(A:)), though it is valid from someone suspended for bankruptcy.

k15.1 يَصِحُّ ضمانُ مَنْ يَصِحُّ تصرفُهُ في مالِهِ فلا يَصِحُّ مِنْ صبيٍّ ومجنونٍ وسفيهٍ [وعبدٍ لَمْ يأذَنْ لهُ سيدُهُ] ويَصِحُّ مِنْ محجورٍ عليه بفلسٍ [ومن عبد أذِنَ له سيدُهُ].

k15.2 It is a condition for the validity of a guarantee that R know P, though it is not necessary that P agree to it.

It is not necessary that Q agree, or that R know Q.

k15.2 ويُشْتَرَطُ معرفةُ المضمونِ لَهُ [(أي معرفة الضامن عين المضمون له)] ولا يُشْتَرَطُ رضاهُ.

ولا رضا المضمونِ عنهُ ولا معرفتُهُ.

k15.3 It is necessary that the guaranteed debt be a financial obligation (dayn, dis: k9.2(b)) that is existent (O: since it is not valid to guarantee a debt before it exists, such as "tomorrow's expenses") and is determinately known (O: in terms of amount, type, and description).

k15.3 ويُشْتَرَطُ أنْ يَكُونَ المضمونُ ديناً ثابتاً معلوماً (قدراً وجنساً وصفة، فلا يصح الضمان قبل ثبوته كنفقة الغد).

k15.4 It is necessary that R make the guarantee in words (O: or their written equivalent, with the intention) that imply he is effecting it, such as "I guarantee your debt [O: that So-and-so owes you]," or "I will cover it," or the like. (O: These are explicit expressions in that they mention the guaranteed financial obligation. When it is not mentioned, the expression is allusive, which is

k15.4 وأنْ يأتيَ (أي الضامن) بلفظٍ (وما يقوم مقامه من الكتابة مع النية) يَقْتَضي الالتزامَ كَضَمِنْتُ دَيْنَكَ (الذي على فلان) أوْ تَحَمُّلْتُهُ ونحوِ ذلكَ. (وهذه الألفاظ صريحة لذكر المال فيها وإذا لم يذكر المال فهي كناية فإذا نوى المال

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valid provided the financial obligation is what is intended, and the speaker knows how much it is. Otherwise, allusive expressions are not valid.)

It is not valid to base the implementation of a guarantee on a condition, such as saying, "When Ramadan comes, I hereby guarantee it." (O: Nor is it valid to make it subject to time stipulations, such as saying, "I guarantee what So-and-so owes for one month, after which I no longer guarantee it.")

وعرف قدره صح وإلا فلا).

ولا يَجُوزُ تعليقُهُ على شرط مثل : إذا جاء رمضانُ فقد ضَمِنْتُ. (ولا يصح توقيته نحو: أنا ضامن ما على فلان إلى شهر فإذا مضى برئت).

k15.5 When a seller has accepted the price of something, it is valid (O: for someone) to guarantee the buyer his money back if the merchandise should prove to belong to another or to be defective. (O: It is likewise valid for someone to guarantee to the seller that the merchandise will be returned if the price paid for it should turn out to belong to someone other than the buyer.)

k15.5 ويَصِحُّ ضمانُ الدرك بعد قبض الثمن (وبالعكس أي بعد قبض المشتري المبيع) وهو أنْ يَضْمَنَ (شخص) للمشتري الثمنَ إنْ خرج المبيعُ مستحقاً أو معيباً. (أو أن يضمن للبائع المبيع إن خرج الثمن مستحقاً).

k15.6 P is entitled to collect the guaranteed debt from R and Q (O: by asking both of them or either for the full amount, or one of them for part of it and the other for the rest of it).

If another guarantor guarantees the debt for R (O: by saying (A: to P), "I guarantee Q's debt [A: to you] for R"), then P is entitled to collect it from all (A: from Q, R, and the new guarantor).

k15.6 وللمضمونِ لهُ مطالبةُ الضامنِ والمضمونِ عنهُ (بأن يطالبهما جميعاً أو يطالب أيهما شاء بالجميع أو يطالب أحدهما ببعضه والآخر بباقيه). فإنْ ضَمِنَ عن الضامن ضامنٌ آخرُ (بأن قال ذلك الآخر: أنا أضمن المضمون عنه عن هذا الضامن) طَالَبَ الكلَّ.

k15.7 If P asks for payment from R, then R is entitled to ask Q to pay the debt, provided that Q had given his permission to R before R guaranteed it.

k15.7 وإنْ طَالَبَ الضامنَ فللضامنِ مطالبةُ الأصيلِ بتخليصه إنْ ضَمِنَ بإذنِهِ.

k15.8 If P cancels the debt Q owes him, then R is also free of the obligation to pay P. But if P cancels R's obligation to cover Q's debt, then Q is not thereby free of the debt he owes P.

k15.8 فإنْ أبْرأَ (أي مستحق الدين) الأصيلَ بَرِئَ الضامنُ. وإنْ أبرأ الضامنَ لمْ يَبْرَإِ الأصيلُ.

k15.9 If R pays Q's debt to P, then R can collect it from Q, provided that Q had given his permission to R before R guaranteed it. But if Q had not (O: given his permission to R to guarantee), then R is not now entitled to collect it from Q, no

k15.9 وإنْ قَضَى الضامنُ الدينَ رَجَعَ به على الأصيلِ إنْ كان ضَمِنَ بإذنِهِ. وإلاَّ (أي وإن لم يكن ضمن بإذنه)

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matter whether R paid it off with Q's leave or without it.

فلا (رجوع له) سواءٌ قَضاهُ بإذنِهِ أمْ لا.

k15.10 It is not valid to guarantee delivery of particular articles ('ayn) (A: as they are not *financial* obligations (dis: k9.2(b)), such as something wrongfully taken, or articles loaned for use (O: i.e. "guaranteeing" they will be returned to their owner).

k15.10 ولا يَصِحُّ ضمانُ الأعيانِ كالمغصوبِ (فالمراد ضمان ردها لمالكها) والعواري.

GUARANTEEING ANOTHER'S APPEARANCE

الكفالة

k15.11 It is permissible for R to guarantee that Q will appear in person (O: in court) provided:

(a) that Q owes someone something or is liable to punishment for a crime against another person, such as when the other is entitled to retaliate (def: o1–o3) against Q, or when Q has charged someone with adultery without evidence (def: o13);

(b) and that Q gives R permission to guarantee his appearance.

It is not valid to guarantee Q's appearance if (non-(a) above) Q's crime is against Allah Most High (O: such as drinking, adultery, or theft).

k15.11 وتَصِحُّ الكفالةُ ببدنِ مَنْ عليْهِ مالٌ (أي يكفل إحضاره مجلس الحكم) أوْ عقوبةٌ لآدميٍّ كالقصاص وحدِّ القذفِ بإذْنِ المكفولِ. وإنْ كانَ عليْهِ حقُّ الله تعالى فلا تَصِحُّ (الكفالة وذلك كحد خمر وزنا وسرقة).

k15.12 If R guarantees Q's appearance but does not specify when, he is required to produce Q at once. But if R stipulates a certain time, then he is required to do so at that time.

If Q disappears and his whereabouts is unknown, R is not required to produce Q until he knows where Q is.

(A: When R knows where Q is, then) R is given time to travel to where Q is and return. If R does not bring Q, then R is under arrest, though he is not responsible for Q's (A: unfulfilled) financial obligations.

If Q dies, the guarantee is nullified, though if R is asked to produce Q's body before burial to verify its identity, he is obliged to if able.

k15.12 ثمَّ إذا صَحَّتِ الكفالةُ فأطْلَقَ طُولِبَ (أي الكفيل) بهِ في الحالِ. وإنْ شَرَطَ أجَلاً طُولِبَ بهِ عندَ الأجَلِ. وإنِ انْقَطَعَ خَبَرُهُ لمْ يُطالَبْ بهِ حتَّى يَعْرِفَ (الكفيل) مكانَهُ، ويُمْهَلُ مدةَ الذهابِ والعودِ. فإنْ لمْ يُحْضِرْهُ حُبِسَ ولا تَلْزَمُهُ غرامةُ ما عليهِ. وإنْ ماتَ المكفولُ سَقَطَتِ الكفالةُ لكنْ إنْ طُولِبَ بإحضارِهِ قبلَ الدفنِ لِيُشْهِدَ على عينِهِ وأمْكَنَهُ ذلكَ لَزِمَهُ.

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k16.0 PARTNERSHIPS (SHARIKA)

k16.0 الشركة

k16.1 Partnership is valid with anyone having full right to dispose of his own property.

k16.1 تصحُّ من كلِّ جائز التصرف.

COOPERATIVE PARTNERSHIP

شركة العنان

k16.2 There are four kinds of partnership (dis: k16.9) of which one alone, cooperative partnership, is valid. It consists of each of the two (A: or more) partners putting up capital, which must be either money or a fungible commodity typically transacted measure for measure (mithli, def: k20.3(1)) (O: as opposed to goods appraised and sold as particular pieces of merchandise (mutaqawwim), which cannot form the basis of a partnership because it is impossible to mix each partner's share with the other's (dis: below)).

k16.2 وهي أنواعٌ أربعةٌ. وإنما تصحُّ منها شركةُ العنانِ خاصةً وهي أنْ يأتيَ كلٌّ منهما بمالٍ وتصحُّ على النقودِ وعلى مثليٍّ (بخلاف المتقومات فلا تجوز الشركة عليها لأنه لا تمكن الخلطة فيها).

k16.3 It is a condition for the validity of a cooperative partnership that the two shares of capital put up by the partners be intermixed such that it is impossible to tell them apart.

k16.3 ويُشترطُ أنْ يُخلطَ المالانِ بحيثُ لا يتميَّزانِ.

k16.4 [وأنْ يكونَ مالُ أحدِهما من جنسِ مالِ الآخرِ وعلى صفتِهِ. فلوْ كانَ لهذا ذهبٌ ولهذا فضةٌ أوْ لهذا حنطةٌ ولهذا شعيرٌ أوْ لهذا صحيحٌ ولهذا مكسّرٌ لمْ يصحَّ].

k16.5 It is a necessary condition that each partner give the other his permission to handle the capital (O: that they have put up in common).

Each partner must deal in a way that realizes their common capital's best advantage and maximal safety. Thus, neither partner may travel with it (O: i.e. the shared capital, because of the danger in travelling) or sell for postponed payment (N: unless the other partner gives him permission, in which case (A: either of) these are permissible).

k16.5 ويُشترطُ أنْ يأذنَ كلٌّ منهما للآخرِ في التصرفِ (في المالِ المعقودِ عليه).

فيتصرفُ كلٌّ منهما بالنظرِ [(فيما يصلحُ للمالِ المشتركِ)] والاحتياطِ فلا يُسافرُ به (أي بالمالِ المشتركِ لأن السفرَ فيه خطر) ولا يَبيعُ بمؤجَّلٍ (ح: إلا بإذنِ صاحبِه فإنْ أذنَ جازَ).

k16.6 It is not necessary that the two shares of capital put up by the partners be equal in amount.

Both profits and losses are divided between the two partners in proportion to the percentage

k16.6 ولا يُشترطُ تساوي المالينِ. ويكونُ الربحُ والخسرانُ بينهما على

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of the shared capital each of them put up (O: even if there is a difference in the amount of work that each does). If they stipulate otherwise, the partnership is not valid (O: such as stipulating that the partner who put up one hundred, for example, gets two-thirds, while the partner who put up two hundred gets one-third; or stipulating that each gets an equal share, despite having put up unequal amounts). (N: This is in the Shafi'i school. The Hanafis and Hanbalis hold that it is permissible for the distribution of profits to be disproportionate (A: to the amount of capital each invests), corresponding to the disproportionate amount of work each puts into the venture (A: or any other division of the profits which they both agree upon).)

قدر المالين (وإن تفاوت الشريكان في العمل) فإنْ شرطا خلاف ذلك (بأن شرطا أن لصاحب المائة مثلاً ثلثين ولصاحب المائتين ثلثاً، أو شرطا التساوي فيهما مع التفاوت) بَطَلَتْ. (ح: هذا مذهب الشافعية وذهب الحنفية والحنابلة إلى جواز التفاوت بتفاوت العمل في الشركة).

k16.7 If partner A forbids partner B to handle the shared capital, then B is not entitled to handle it, though A is still entitled to (O: handle both shares, one of which is his by ownership, and the other by permission of his partner) until B forbids him to handle it.

k16.7 فإنْ عَزَلَ أحدُهما الآخرَ عن التصرف انْعَزَلَ وللآخر التصرفُ (في المالين ماله بطريق الملكية ومال الآخر بطريق الإذن) إلى أنْ يَعْزِلَهُ صاحبُهُ.

k16.8 Each partner is entitled to cancel the partnership whenever he wants (O: and it is also cancelled by the death or insanity of either or both partners).

k16.8 ولكلٍ منهما فسخُها متى شاء (وتنفسخ بموتهما وبموت أحدهما وبجنونهما أو أحدهما).

k16.9 The following types of partnerships are not valid:

(1) *manual partnership* (sharika al-abdan), such as the partnership of two porters or other workers agreeing to divide their earnings between them (N: though this type of partnership is valid in the Maliki, Hanafi, and Hanbali schools);

(2) *well-known partner partnership* (sharika al-wujuh) (n: such as of two individuals who put up no capital, but have good reputations among people which create confidence and enable them to purchase trade goods for deferred payment, the profits from the sale of which they agree to divide between them (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 2.212)).

k16.9 وأمّا شركةُ الأبدانِ فباطلةٌ كشركةِ الحمالينِ وغيرِهما مِنْ ذوي الحرفِ على أنْ يكونَ الكسبُ بينَهُما (ح: وأجازها المالكية والحنفية والحنابلة).

وشركةُ الوجوهِ والمفاوضةِ أيضاً باطلتانِ. (ت: وشركة الوجوه هي أن الوجيهين (عند الناس) لا يأتيان بالنقد لكن يتفقان ليبتاع كلُّ واحدٍ بمؤجلٍ لهما، فإذا باعا كان الفاضلُ عن الأثمان

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(3) and *comprehensive partnership* (sharika al-mufawada) (n: an agreement by which the partners share whatever they each earn from their respective (A: separate) funds and labor, mutually covering the financial liabilities incurred by either (ibid., 2.212)).

بينهما. وشركة المفاوضة أن يكون بينهما كسبهما وعليهما ما يعرض من غرم (مغني المحتاج إلى معرفة معاني ألفاظ المنهاج: ٢/ ٢١٢).

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k17.0 COMMISSIONING ANOTHER TO DO SOMETHING (WAKALA)

(n: Given persons X (al-muwakkil) and Y (al-wakil) (A: where X gives Y an article to sell for him. This section deals with commissioning others to carry out such requests, which have four integrals:

(a) X;

(b) Y;

(c) the act that is being commissioned (al-muwakkal fihi);

(d) and the words by which X commissions Y to do it).)

k17.0 الوكالة

(ت: يمثل لها بشخصين: زيد (الموكِّل) وعمرو (الوكيل) (ع: حيث يعطي زيد لعمرو سلعة فيوكله أن يبيعها له. وأمثال هذه الوكالة لها أربعة أركان: الموكِّل، والوكيل، والموكَّل فيه، والصيغة)).

k17.1 It is a necessary condition that both X and Y have full right to perform the act being commissioned, though it is permissible to commission a child to let people into one's house or take a gift to someone.

k17.1 يُشترطُ في الموكِّل والوكيل أنْ يكونا جائزي التصرف فيما يُوكَّلُ فيه وتصحُّ وكالةُ الصبيِّ في الإذن في دخول الدار وحمل الهدية [والعبد في قبول النكاح].

THINGS ONE MAY COMMISSION OTHERS TO DO

ما يجوز التوكيل فيه

k17.2 X may commission Y:

(1) to conclude contracts on X's behalf (O: such as a sale, gift, putting up collateral, conducting a marriage contract, guaranteeing payment, or transferring a debt);

(2) to cancel contracts on X's behalf (O: such as cancelling a sale or returning defective merchandise);

k17.2 ويَجُوزُ التوكيلُ في العقود (كعقد بيع وهبة ورهن ونكاح وضمان وحوالة) والفسوخ (كإقالة ورد بعيب)

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(3) to conduct X's divorce;

(4) to make claims (A: by lawsuit against others, as lawyers do);

(5) to ensure fulfillment of established claims (O: from whoever owes them to X, after they have been established by proof);

(6) or to take possession of something that is free to take, such as wild game, pasturage, or water (O: by Y conveying it from land which X is permitted to take it from, since this is a way of gaining property just as sale is).

والطلاق [والعتق] وإثبات الحقوق واستيفائها (ممن هي عليه بعد إثباتها بالبينة) وفي تمليك المباحات كالصيد والحشيش والمياه (بأن ينقله الوكيل من أرض مباحة للموكل لأن ذلك أحد أسباب الملك كالشراء).

k17.3 It is not permissible for Y to undertake obligations of worship that X owes Allah Most High, except for:

(1) distributing zakat to deserving recipients (O: or giving food or alms as an expiation, or voluntary charity);

(2) performing hajj (O: or 'umra, which another may perform on the behalf of an invalid or a deceased person);

(3) and slaughtering sacrifices (dis: j12.6(end), j14.3).

k17.3 وأمّا حقوق الله تعالى فإنْ كانت عبادة لمْ تجُزْ إلاّ في تفرقة الزكاة (والكفارة فإنه يصح التوكيل فيها ومثل الزكاة فيما ذكر صدقة التطوع) والحجّ (أو العمرة، فإنه يصح التوكيل فيه عن المعضوب وعن الميت) وذبح الأضحية.

k17.4 It is permissible to commission Y to perform an obligation (O: to Allah) that consists of inflicting a prescribed legal penalty (hadd) (O: such as the penalties for the crimes of accusing another of adultery without proof (def: o13), adultery, or drinking), but is not permissible to commission Y to establish that such an obligation exists (O: such as by X telling Y, "I commission you to affirm [A: in court, by Y submitting X's testimony] that So-and-so has committed adultery," or "that So-and-so has drunk wine").

k17.4 وإنْ كانَ (حق الله) حدّاً (أي حد قذف وزنا وشرب خمر) جاز في استيفائه دونَ إثباته (وذلك بأن يقول شخص لآخر: وكلتك في إثبات زنا فلان أو إثبات شربه الخمر).

k17.5 It is a necessary condition for the validity of X's commissioning Y that there be:

(a) a spoken proposal (O: indicating X's wish for Y to handle some matter for him) that

k17.5 وشرطها الإيجابُ باللفظ (الدال على رضا الموكل بتصرف الغير

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does not restrict the (A: fact of there being a) commission by giving conditions under which the commission takes effect (O: such as saying, "If So-and-so comes, I hereby commission you," which is invalid) (A: but rather, a valid commission must be) such as saying, "I commission you," or "Sell this garment for me";

له) من غير تعليق (كقوله: إذا قدم زيد فقد وكلتك بكذا، فلا يصح عقدها حينئذ) كوكَّلْتُك أو بِعْ هذا الثوب، والقبولُ (من الوكيل إما) باللفظ أو الفعل وهو امتثالُ ما وُكِّلَ به ولا يُشترطُ الفورُ في القبول.

(b) and an acceptance (O: by Y, whether this be) in word or deed, i.e. by Y simply doing what he has been asked to. It is not necessary that his acceptance take place immediately.

k17.6 When X validly commissions Y to do something, X may include stipulations about how it is to be carried out, such as saying, "I commission you, but don't sell it till after a month." (A: The previous ruling prohibits stipulations restricting the *fact* of Y being commissioned, while here X has already commissioned Y and his stipulations merely govern *how* Y is to do it.) (O: A temporary commission, such as saying, "I commission you for one month," is also valid.)

k17.6 فإنْ نَجَّزَها وعلَّقَ التصرفَ على شرطٍ جازَ كقولِه: وَكَّلْتُك ولا تَبِعْ إلى شهرٍ (وتصحُّ الوكالةُ المؤقتةُ كقوله: وكلتك إلى شهر).

k17.7 Y may not commission another to perform what X has commissioned Y to do unless X either gives Y permission to commission another, or Y cannot undertake the task (O: because he is unable to, or it does not befit him) or is incapable of it because it is too much (A: for a single person to perform).

k17.7 وليسَ للوكيلِ أنْ يُوَكِّلَ (أحداً فيما وكِّلَ فيه) إلَّا بإذنٍ (أي للموكل) أو (إلا إن) كانَ (ح: الموكَّلُ به) ممَّا لا يَتَوَلَّاهُ (الوكيل) بنفسه (لكونه لا يحسنه أو لا يليق به) أو لا يَتَمَكَّنُ منْهُ لكثرته.

THE AGENT'S DISCRETIONARY POWERS

ما يصح وما لا يصح من تصرفات الوكيل

k17.8 Y is not entitled to sell an article (A: he has been comissioned to sell) to himself or his underage son, nor (O: is it valid) to sell it:

k17.8 وليسَ له أنْ يَبيعَ ما وُكِّلَ فيه لنفسه أو لابنه الصغيرِ ولا (يصح أن يبيع الموكل فيه) بدونِ ثمنِ مثله ولا بمؤجلٍ ولا بغيرِ نقدِ البلدِ إلَّا أنْ يأذَنَ له في ذلك

(1) for less than the current price of similar articles;

(2) for deferred payment;

(3) or for other than the type of money used locally;

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though Y may do these (O: (1), (2), or (3)) if X grants him permission to.

(المذكور من دون ثمن المثل وما بعده).

k17.9 Y's sale of the commissioned article is not valid when X specifies the type of funds he wants as its price, but Y sells it for a different type, such as when X says, "Sell it for a thousand dirhams," but Y sells it for a thousand dinars. But Y's selling it is valid if X specifies the amount he wants and Y sells it for more, provided the type of funds is the same, as when X says, "Sell it for a thousand," but Y sells it for two thousand—unless X has specifically prohibited this (O: in which case the sale would not be valid, as it contravenes X's commission).

k17.9 ولوْ نَصَّ لهُ على جنسِ الثمن فخالف لمْ يَصِحَّ البيعُ كبيْعٍ بألفِ درهمٍ ، فباعَ بألفِ دينارٍ . وإنْ نَصَّ على القدرِ فزادَ منْ الجنسِ صَحَّ كبيْعٍ بألفٍ ، فباعَ بألفينِ إلاَّ أنْ يَنْهاهُ ([الموكل عن هذه الزيادة] فلا يصح البيع للمخالفة).

k17.10 If X commissions Y to "buy such and such a thing for a hundred," but Y buys one worth a hundred for less than a hundred, then the purchase is valid. But if Y buys one for two hundred that is worth two hundred (A: when X has commissioned him to buy one for a hundred), then the purchase is not valid. If X tells Y, "Buy a sheep with this dinar," (O: and describes it in type and so forth, since without such a description, the commission would not be valid), but Y buys two sheep (A: with that dinar) of which each one is worth a dinar, then the purchase is valid and both sheep belong to X, though if the sheep are not each worth a dinar, then the purchase is not valid.

k17.10 ولوْ قالَ : اشْترِ بمائةٍ ، فاشترى ما يُساويها بدونِ مائةٍ صَحَّ . وإنِ اشْترى بمائتينِ ما يُساوي مائتينِ فلا [(يصح الشراء للمخالفة في الثمن لأنه اشترى بمائتين ما يساويهما بلا إذن في زيادة الثمن على المائة)] . وإنْ قالَ : اشْترِ بهذا الدينار شاةً ، (ووصفها بصفة بأن بين نوعها وغيره وإلا لم يصح التوكيل) فاشْترى به شاتين تُساوي كلُّ واحدةٍ ديناراً صَحَّ وكانتا للموكِّل . فإنْ لمْ تُساوِ كلُّ واحدةٍ ديناراً لمْ يَصِحَّ العقدُ .

k17.11 When X commissions Y to sell something to a particular person, it is not permissible (O: or valid) for Y to sell it to another.

k17.11 وإنْ قال : بِعْ لزيدٍ ، فباعَ لغيره لمْ يجُزْ (أي ولم يصح).

k17.12 When X tells Y, "Buy this [A: particular] garment," and Y buys it and X finds it is defective, then Y may return it for a refund (O: and so may X, since he is its owner). But when X merely tells Y to "buy a garment" (O: without further restriction), then it is not permissible for Y to buy a defective one (O: because the lack of further restrictions is understood to mean being free of defects, and if Y buys a defective one, the purchase is invalid).

k17.12 وإنْ قالَ : اشْترِ هذا الثوبَ ، فاشتراهُ (الوكيل) فوَجَدَهُ (الموكل) معيباً فلهُ (أي للوكيل) الردُّ (وللموكل كذلك لأنه المالك) . أو : اشْترِ ثوباً ، (وأطلقه) لمْ يَجُزْ (للوكيل) شراءُ (ثوب) معيبٍ (لأن الإطلاق يحمل على السلامة من العيب فإذا اشتراه فالشراء باطل).

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k17.13 It is a necessary condition that the thing Y is being commissioned to do is determinately known (O: to X and Y) in some respects. Thus, if X says, "I commission you to sell my property and conduct the divorce of my wives," his commission is valid, though if he merely commissions Y to "handle everything, large or small," or "all of my affairs," it is not valid.

k17.13 ويُشْتَرَطُ كونُ الموكَلِ فيه معلوما (لهما) مِنْ بعضِ الوجوه فلوْ قالَ: وكَّلْتُكَ في بيعِ مالي [وعتقِ عبيدي] وطلاقِ زوجاتي؛ صَحَّ، أوْ: في كلِّ قليلٍ وكثيرٍ؛ أوْ: في كلِّ أموري؛ لمْ يَصِحَّ.

k17.14 Y's responsibility in a commission is that of someone who has been given a trust (O: since he represents X, and his possession of the article is like X's), meaning that if (O: X's) property is destroyed without negligence while in Y's possession, Y does not have to pay for it. (O: But when Y is to blame and negligent, as when he uses the article himself or keeps it in a place lacking the normal precautions for safeguarding similar articles, then he must pay for its loss, as with any trust.)

k17.14 ويدُ الوكيلِ يدُ أمانةٍ (لأنه قائم مقام الموكل فكانت يده كيده) فما يَتْلَفُ مَعَهُ (من المال الموكل فيه) بلا تفريطٍ لا يَضْمَنُهُ (فإذا فرّط وتعدّى كأن استعمل العين أو وضعها في غير حرز مثلها ضمن كسائر الأمناء).

k17.15 Y's word (dis: k8.2) is accepted over X's when there is a dispute:

(1) concerning the commissioned article's destruction;

(2) as to whether the article was or was not returned to X;

(3) or whether Y betrayed his trust.

k17.15 والقولُ في الهلاكِ (للموكل فيه) والردِّ (أي على الموكل أي رد الموكل فيه عليه) وما يُدَّعَى عليْهِ (أي على الوكيل) من الخيانةِ (في الموكل فيه) قولُهُ [(أي فالقول في هذه المذكورات قول الوكيل بيمينه)].

k17.16 Either X or Y may cancel the commission at any time. If X relieves Y of his commission, but Y does not learn of this and performs it, then what he has done is not legally binding or effective (O: because he did not have the right to handle the matter).

k17.16 ولكلٍّ منهما الفسخُ متى شاء. فإنْ عزلَهُ (أي عزل الموكل الوكيل) و(الوكيل المعزول) لمْ يَعْلَمْ فتصرَّفَ لمْ يَصِحَّ التصرفُ (لأنه غير مالك للتصرف).

k17.17 The commission is cancelled when X or Y dies, loses his sanity, or loses consciousness (Ar. ughmiya 'alayhi, i.e. through other than falling asleep).

k17.17 وإنْ ماتَ أحدُهُما أوْ جُنَّ أوْ أُغمي عليْهِ انْفَسَخَتْ.

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k18.0 DEPOSITS FOR SAFEKEEPING (WADI'A)

(n: Given persons P (al-mudi') and Q (al-wadi') (A: where P deposits an article with Q for safekeeping until such time as P should want it back. Such deposits have four integrals:

(a) the article (al-wadi'a);

(b) the verbal agreement;

(c) P;

(d) and Q).)

(O: The appropriateness of mentioning deposits for safekeeping after having discussed commissioning others is plain, namely that both the person commissioned and the person with whom something is deposited are bearers of a trust, and do not pay for the loss or destruction of the article in their care unless the destruction is the result of their wrongdoing (A: or remissness in taking normal precautions).)

k18.0 الوديعة

(ت: يمثل لها بشخصين: زيد (المودع) وعمرو (الوديع) (ع: حيث يودع زيد عيناً عند عمرو أمانة إلى أن يطلبها زيد. وأمثال هذه الودائع لها أربعة أركان: عين الوديعة، وصيغة العقد، والمودع، والوديع)).

(ومناسبة ذكرها عقب الوكالة ظاهرة وهي أن كلاً من الوكيل والوديع أمين لا يضمن إلا بالتعدي).

k18.1 Deposits for safekeeping are only valid when both P and Q have full right to handle their own property.

Thus, if a child or a foolhardy person (def: k13.1(A:)) deposits something for safekeeping with an adult, he should not accept it. If he does, then he is responsible for it (O: and must cover the cost if it is destroyed) and is not free of the responsibility until he returns it to the child's guardian. He is not free of the responsibility if he merely returns it to the child.

If an adult deposits something for safekeeping with a child (A: or other person without full disposal over their affairs), then the child is not responsible if the article is destroyed through negligence or otherwise (O: as when an act of God befalls it), though if the child *destroys* the article, he is financially responsible for it.

k18.1 لا تَصِحُّ إلاَّ مِنْ جائزِ التصرف عند جائزِ التصرف. فإنْ أَوْدَعَ صبيٌّ أوْ سفيهٌ عندَ بالغٍ شيئاً فلا يَقْبَلْهُ. فإنْ قَبِلَهُ دَخَلَ في ضمانِهِ ولا يَبْرَأُ (الوديع المذكور من الضمان) إلاَّ بدفعِهِ لوليِّهِ. فلوْ ردَّهُ للصبيِّ لمْ يَبْرَأْ. وإنْ أَوْدَعَ بالغٌ عندَ صبيٍّ فَتَلِفَ عندَ الصبيِّ لتفريطٍ أوْ غيرِه (كآفة سماوية نزلت على الشيء المودع) لمْ يَضْمَنْهُ الصبيُّ. وإنْ أَتْلَفَهُ ضمِنَهُ.

k18.2 It is unlawful for Q to accept a deposit for safekeeping when he is not able to protect it. It is offensive for him to accept it if he is able to protect

k18.2 ومَنْ عَجَزَ عنْ حفظِ الوديعة حرُمَ عليْهِ قبولُها.

وإنْ قَدَرَ ولمْ يَثِقْ بأمانةِ نفسِهِ وخافَ

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it but cannot trust himself and fears he may betray the responsibility. But if he can trust himself, it is desirable and praiseworthy for him to accept it.

أنْ يخونَ كُرِهَ لهُ أخذُها. فإنْ وثِقَ اسْتُحِبَّ.

k18.3 If Q accepts a deposit for safekeeping, he is obliged to keep it in a place meeting the normal specifications for safeguarding similar articles (A: for his town and times) (O: which varies according to the nature of the article deposited, as each thing has precautions proper to safeguarding it (dis: o14.3)).

k18.3 ثمَّ يَلْزَمُهُ (أي الوديع) الحفظُ [(أي حفظ الوديعة)] في حِرْزِ مثلها (وهو يختلف باختلاف الوديعة فكل شيء له حرز يليق به).

k18.4 If Q plans to travel or fears he may die, he must return the deposited article to P. If Q cannot find P or someone commissioned by P (A: to manage P's affairs), then he must deliver it to the Islamic magistrate (A: to keep for P). If there is none, Q leaves it with a trustworthy person (O: and he is not obliged to delay his trip), though if he deposits the article with a trustworthy person when there *is* an Islamic magistrate, he is still financially responsible for it.

If Q fails to take the above measures (A: of returning it to the owner or next most appropriate person available) and he dies without having provided in his will for returning the article, or he travels with it, then he is financially responsible for it, unless he dies suddenly, or looting or fire breaks out in the city, and he travels with it because of being unable to give it to any of the above persons

k18.4 فإنْ أرادَ (الوديع) السفرَ أوْ خافَ الموتَ فَلْيَرُدَّها إلى صاحبِها. فإنْ لمْ يَجِدْهُ ولا وكيلَهُ سَلَّمَها إلى الحاكم. فإنْ فُقِدَ فإلى أمينٍ (ولا يكلف تأخير السفر) فإنْ سَلَّمَها إلى أمينٍ مَعَ وجودِ الحاكم ضَمِنَ.

فإنْ لمْ يَفْعَلْ فمَاتَ ولمْ يُوصِ بها أوْ سافرَ بها ضَمِنَها، إلَّا أنْ يَمُوتَ فجأةً أوْ يقعَ في البلدِ نهبٌ أوْ حريقٌ ولمْ يتمكَّنْ مِنْ شيءٍ مِنْ ذلكَ فسافرَ بها.

k18.5 Whenever P asks for the deposited article, Q is obliged to return it by allowing P to take it (O: i.e. by relinquishing possession of it, though this does not mean he has to transport it to P).

k18.5 ومتى طلبَها المالكُ لزمَهُ (الوديع) الردُّ بأنْ يُخَلِّيَ بينَهُ (أي المالك) وبينَها (أي الوديعة بأن يرفع الوديع يده عنها وليس المراد أنه يلزمه حملها له).

k18.6 Q is financially responsible for the deposited article if:

(1) without excuse, he delays allowing P to take it;

(2) he deposits the article for safekeeping with a third party, without having had to travel and when there was no need;

k18.6 فإنْ أخَّرَ بلا عذرٍ أوْ أوْدَعَها عندَ غيرِهِ بلا سفرٍ ولا ضرورةٍ أوْ خلطَها

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(3) he mixes the deposited property with his own property or with some of P's other property such that the deposited property is no longer distinguishable from what it has been mixed with (O: as opposed to when the deposited property can be easily distinguished and has not depreciated as a result of being mixed);

(4) he takes the article out of the place of safekeeping to use, even if he did not use it (O: because merely taking it out with such an intention is a betrayal of his trust);

(5) he does not keep it in a place meeting the normal specifications for safeguarding similar articles;

(6) or if P has told him, "Keep it in such and such a particular place for safeguarding." but he instead puts it in a different place less protected (O: than the one P indicated), even when this second place meets the normal specifications for safeguarding similar articles (O: though if Q puts it in a different place with protection equal or superior to the place P has indicated, Q is not responsible for it).

(أي الوديعة) بمال له (أي للوديع) أو للمودع أيضاً بحيث لا يتميّز (بخلاف ما إذا تميز بسهولة ولم تنقص الوديعة بهذا الخلط) أو استعملها أو أخرجها من الحرز لينتفع بها فلم ينتفع (لأن الإخراج على هذا القصد خيانة) أو حفظها في دون حرزها أو قال له المالك: احفظها في هذا الحرز: فوضعها في دونه (أي أقل في الحرز مما أمره) وهو حرزها أيضاً ضمنها. (ولو وضع الوديعة في مثل الحرز الأول أو أعلى منه في الحرز فلا ضمان).

k18.7 Either party may cancel the deposit for safekeeping agreement at any time. The agreement is also annulled when either party dies, loses his sanity, or loses consciousness (Ar. ughmiya 'alayhi, i.e. through other than falling asleep).

k18.7 ولكلٍّ منهما الفسخ متى شاء. فإن مات أحدهما أو جُنّ أو أُغمي عليه انفسخت.

k18.8 Q's responsibility in accepting a deposit for safekeeping is that of someone who has been given a trust (O: meaning that his claims when he swears an oath (N: and neither side has proof (dis: k8.2)) are accepted, as he is a trustee). His word is accepted over P's when there are disputes about:

(1) whether the deposit for safekeeping was actually made (O: When P claims that it was);

(2) whether the article was returned to P;

(3) or whether and how the article was destroyed (O: when Q claims it was).

k18.8 ويدُ المودع [(بفتح الدال بمعنى الوديع)] أمانةٌ (فيصدق بما يدعيه بيمينه (ح: حيث لا بينة لأحد الطرفين) لأنه أمين) فالقولُ في أصل الإيداع (إذا ادعاه المالك) أو في الردّ أو التلف (إذا ادعاه الوديع) قولُه. فلو قال: ما أودعتني

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Thus if Q says, "You did not deposit anything with me," or "I returned it to you," or "It was destroyed without negligence on my part," then his word is accepted when he swears.

شيئاً؛ أو: رَدَدْتُهَا إليكَ؛ أوْ: تَلِفَتْ بلا تفريطٍ؛ صُدِّقَ بيمينه.

k18.9 It is a necessary condition for the validity of a deposit for safekeeping that P states it in words such as "I entrust it to you to keep," or "I entrust it to you to protect." It is not necessary that Q give a spoken reply to this, but is sufficient for him to simply accept the article.

k18.9 ويُشْتَرَطُ لفظٌ مِنَ المودِع كاسْتَوْدَعْتُكَ؛ أوْ: اسْتَحْفَظْتُكَ؛ ولا يُشْتَرَطُ القبولُ (لفظاً من الوديع) بلْ يكْفي القبضُ.

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k19.0 LENDING SOMETHING FOR USE ('ARIYYA)

(n: Given persons A (al-mu'ir) and B (al-musta'ir) (A: where A lends B an article to use and return after use. This section discusses such loans, which have four integrals:

(a) the article (al-'ariyya):

(b) the verbal agreement;

(c) A;

(d) and B).)

k19.0 العارية

(ت: يمثل لها بشخصين: زيد (المعير) وعمرو (المستعير) (ع: حيث يعير زيد لعمرو عيناً ليستعملها ويردها بعد الاستعمال. وأمثال هذه المعاملة لها أربعة أركان: العاريَة [وهي العين المعارة]، وصيغة العقد، والمعير، والمستعير)).

k19.1 A's lending an article for B to use is valid if A possesses full disposal over his own property and has the lawful right to the article's use, even if he is only renting it (n: though not if someone else has lent him the article without giving him permission to relend it, as at k19.8).

k19.1 تَصِحُّ مِنْ كُلِّ جائزِ التصرفِ مالكٍ للمنفعةِ ولوْ بإجارةٍ.

k19.2 It is permissible to lend anything that can be benefited from while the article itself still remains (O: such that B gets some use out the article, as is usually the case, or else he materially gains from it, as when he borrows a sheep for its milk or its expected offspring, or borrows a tree for its fruit. It is not valid to lend something of no lawful benefit such as a musical instrument (dis:

k19.2 ويَجُوزُ إعارةُ كلِّ ما يُنْتَفَعُ به مع بقاءِ عينه (بأن يستفيد المستعير منفعة من الشيء المعار وهو الأكثر أو يستفيد عيناً منه كما لو استعار شاة ليأخذ درها ونسلها أو شجرة ليأخذ ثمرها. ولا يصح إعارة ما يحرم الانتفاع به كآلة لهو. ولا

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r40), or such things as edibles, which do not themselves exist after use, since their use consists solely in their consumption). (A: The latter would be a *loan* (qard, def: k10) repayable in kind, and hence not included in *lending for use*.)

يعار المطعوم ونحوه من كل ما لا تبقى عينه لأن الانتفاع إنما هو باستهلاكه).

k19.3 It is necessary for the validity of lending something for use that either A or B state the agreement in words. (O: The loan is not valid except by either A or B stating it, such as by B telling A, "Loan me such and such," and then A giving it to him. The action alone, between A and B, is insufficient.)

k19.3 بشرط لفظٍ مِنْ أحدِهِمَا. (أي لا تصح العارية إلا به من أحد المتعاقدين بأن يقول المستعير للمعير: أعرني الشيء الفلاني؛ فيدفعه المعير له. ولا يكفي الفعل من الطرفين).

k19.4 B may then use the article according to the permission given. He may:

(1) do what A has given him permission to;

(2) or do the equivalent (O: in respect to the wear and tear on the article involved) or something less, though not if A has forbidden B to do other than what he has specifically given him permission to do.

If A tells B, "Plant wheat," (A: on land lent), then it is permissible for B to plant barley, though not vice versa (O: since wheat is harder on the soil than barley), while if A merely permits B to *plant*, without further restriction, then B may plant whatever he wishes.

k19.4 ويَنْتَفِعُ بحسب الإذْنِ فيَفْعَلُ المأذونَ فيه أوْ مثلَهُ (أي مثل المأذون فيه في الضرر) أوْ دونَهُ إلاَّ أنْ ينهاهُ عن الغير. فإنْ قَالَ: ازْرَعْ حنطةً؛ جازَ الشعيرُ لا عكسُهُ (لأن البر أعظم ضرراً من الشعير في الأرض). فإنْ قالَ: ازْرَعْ؛ وأطْلَقَ زَرَعَ ما شاءَ [فإنْ زَرَعَ قبلَ الحصادِ بقِيَ إلى الحصادِ لكنْ بأجرةٍ إنْ أذِنَ مطلقاً وبغيرِها إنْ أذِنَ في معيَّنٍ فزَرَعَهُ].

k19.5 When A permits B to plant an orchard or build buildings on property he lends B, but later wants the land back, then:

(1) if A had stipulated that B would have to remove the trees or buildings, then B removes them (O: obligatorily, performing what was stipulated, for if B will not, then A may remove them);

(2) but if A had not stipulated this, then if B wishes, he may remove them, though if B does not (O: but rather chooses to keep them there), then A has a choice between leaving them on the land for rent (O: from B for the land), or else removing

k19.5 وإنْ قالَ: اغْرِسْ؛ أو: ابْنِ؛ ثمَّ رَجَعَ (في الأرض المأذون فيها) فإنْ كانَ (قد) شرَطَ عليه القلعَ قلَعَ. (أي قلعه المستعير بمعنى أنه يجب عليه ذلك عملاً بالشرط. فإن امتنع قلعه المعير) وإنْ لمْ يَشْرِطْ واخْتارَ المستعيرُ القلعَ قلَعَ. وإنْ لمْ يَخْتَرْ (بأن اختار الإبقاء) فالمعيرُ بالخيارِ بينَ تبقيتِهِ بأجرةٍ (للأرض المستعارة يدفعها المستعير له) وبينَ قلعِهِ

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them (O: the trees or buildings) and being obliged to pay B a compensation for the loss of value (O: to the trees (A: or buildings)) caused by removal.

A is entitled to take back the article lent at any time he wishes.

(أي الغراس والبناء) و(على المعير حينئذ) ضمان أرش ما نقص (من الغراس) بالقلع.

ولهُ الرجوعُ في الإعارة متى شاء [إلاّ أنْ يُعير أرضاً للدفن فإنّهُ لا يرْجِعُ فيها ما لمْ يَبْلَ الميّتُ].

k19.6 B is financially liable for the article lent (N: even if it is destroyed by an act of God). If it is destroyed while B is using it for other than what A gave him permission to do with it, even if not through B's negligence, then B is responsible to A for the article's value (A: at the market price current for similar articles on) the day of its destruction (O: and he may either replace it or pay A for it).

But if the loaned article wears out through being used in the way that A gave permission to use it, then B is not financially responsible for it (N: as when B borrows a garment to wear which becomes worn out through use alone).

k19.6 والعاريةُ مضمونةٌ (ح: ولو هلكت بآفة سماوية). فإنْ تلفَتْ بغير الاستعمال المأذونِ فيه ولوْ بغير تفريطٍ (من المستعير) ضَمِنَها بقيمتها يومَ التلفِ (بدلاً أو أرشاً).

فإنْ تلفتْ بالاستعمال المأذون فيه لمْ يَضْمَنْ (ح: كأن استعار ثوباً ليلبسه فبلي باللبس لا بشيء آخر).

k19.7 B is responsible for the measures entailed in returning the article to A.

k19.7 ومؤنةُ الردِّ على المستعير.

k19.8 B may not loan (O: the article lent to him) to a third party (O: without permission).

k19.8 وليسَ لهُ أنْ يُعيرَ (الشيء المعار بغير إذن).

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k20.0 THE RETURN OF WRONGFULLY TAKEN PROPERTY (GHASB)

(O: Taking another's property is an enormity (dis: p20), the scriptural basis for its prohibition being Koranic verses such as the word of Allah Most High,

"Do not consume each other's property through falsehood" (Koran 2:188).)

(n: Given persons X and Y (A: where X takes an article belonging to Y. This section presents the details of X's obligation (dis: p77.3) to restore Y his property).)

k20.0 الغصب

(هو كبيرة من الكبائر. والأصل في تحريمه آيات كقوله تعالى: ﴿وَلاَ تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ﴾ [أي لا يأكل بعضكم مال بعض بالباطل]).

(ت: يمثل له بشخصين. زيد (الغاصب) وعمرو (المغصوب منه) (ع: حيث يغصب زيد عيناً من عمرو. هذا الباب يبين واجب زيد في رد العين المغصوبة لصاحبها عمرو [(ح: وما يترتب على عدم الرد)]).

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k20.1 *Wrongfully taking* (ghasb) means to appropriate what is another's right (O: even if this consists of the right to use something, such as forcing someone sitting in a mosque or marketplace to get up from his place) unjustly.

k20.1 هوَ الاستيلاءُ على حقِّ الغيرِ (ولو كانَ ذلكَ الحقِ منفعة كإقامة من قعد بمسجد أو سوق) عدواناً [(أي تعدياً وظلماً)].

k20.2 When X wrongfully takes anything of value from Y, even if the value is inconsiderable, he is obliged to return it unless this involves destruction to life or lawful property, as when X takes a plank and nails it over a leak in the hull of a ship at sea that is bearing others' property or worthy people or animals (N: meaning those not obligatory to kill (def: e12.8(O:))).

k20.2 فمَنْ غصَبَ شيئاً لهُ قيمةٌ وإنْ قلَّتْ لزمَهُ ردُّهُ إلاَّ أنْ يترتَّبَ على ردِّهِ تلفُ حيوانٍ أوْ مالٍ معصوميْنِ مثلُ أنْ غصَبَ لوحاً فسَمَّرَهُ على خرقِ سفينةٍ في وسطِ البحرِ وفيها مالٌ لغيرِ الغاصبِ أوْ حيوانٌ معصومٌ (ح: وهو مالا يجب قتله).

k20.3 If the article taken is destroyed while in X's possession or X himself destroys it, then:

(1) if it was *fungible* (mithli, a homogeneous commodity transacted by weight or measure, an equal amount of which precisely supplies the place of another), then X is financially responsible for replacing it with an equal amount, *fungible* meaning that which is measured by volume or weight, and which can be validly sold in advance (def: k9.2(b,d,f,g)) such as grain, gold or silver, and so forth, while *nonfungible* (mutaqawwim, commodities appraised and transacted as particular pieces of merchandise) means everything else, such as livestock and articles of heterogeneous composition, like meat pastry, and so forth;

(2) if the article was fungible (mithli) but it is no longer possible for X to obtain an equal amount to return to Y, then X owes Y its value, which is reckoned at its highest market value between the time X seized it and the time of its subsequent unavailability;

(3) but if the article was nonfungible (mutaqawwim), X owes Y its highest market value during the interval between X's taking it and the time of its destruction.

(N: The foregoing apply to when X has appropriated a physical article or commodity ('ayn). As for when he has wrongfully appro-

k20.3 فإنْ تلفَ عندَهُ أوْ أتلفَهُ فإنْ كانَ مثلياً ضمِنَهُ بمثلِهِ. والمثليُّ هوَ ما حصرُهُ كيلٌ أوْ وزنٌ وجازَ فيهِ السلمُ كالحبوبِ والنقودِ وغيرِ ذلكَ. والمتقومُ غيرُ ذلكَ كالحيواناتِ والمختلطاتِ كالهريسةِ وغيرِ ذلكَ. فإنْ تعذَّرَ المثلُ فالقيمةُ أكثرُ ما كانتْ منَ الغصبِ إلى تعذرِ المثلِ. وإنْ كانَ متقوماً ضمِنَهُ بقيمتِهِ أكثرَ ما كانتْ منَ الغصبِ إلى التلفِ [حتَّى لوْ زادَ عندَ الغاصبِ بأنْ سمِنَ لزمَهُ قيمتُهُ سميناً سواءٌ هزَلَ بعدَ ذلكَ أمْ لا]. (ح: هذا إذا كانَ المغصوبُ عيناً أما المنفعة، فـ [الأصح أنها] تضمن

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priated the use of something, the obligation consists of repaying Y the cost of renting a similar article for a similar amount of time.)

بأجرة المثل).

k20.4 X's word (O: provided he swears an oath (N: and neither side has proof (dis: k8.2))) is accepted over Y's when there is a dispute about the destroyed article's value (O: when both agree that it has been destroyed) or about its destruction (A: as to when it occurred, for example). But Y's word is accepted over X's when there is a dispute about whether or not X returned the article to Y.

k20.4 فإنِ اخْتَلَفَا في قدر القيمةِ (أي بعد اتفاقهما على تلفه) أوْ في التلفِ فالقولُ قولُ الغاصب (بيمينه (ح: حيث لا بينة لأحد الطرفين)) أوْ في الردِّ فقولُ المالك.

k20.5 If the property returned by X is materially diminished or has depreciated in value because of some new defect, or both, then X is obliged to pay Y compensation for the loss of value (O: while still being obliged to return the rest).

But if the article has diminished in value solely because its market price is now less, then X is not required to pay anything.

k20.5 وإنْ ردَّهُ ناقصَ العينِ أوِ القيمةِ لعيبٍ أوْ ناقصَهُما ضَمِنَ الأرشَ (مع لزوم رد الباقي من العين).

وإنْ نَقَصَتِ القيمةُ بانخفاضِ السعر فقطْ لمْ يَلْزَمْهُ شيءٌ.

k20.6 If the article possesses a utility (O: meaning a rentable utility, as a house does), then X owes Y its rent for the period that X had it, no matter whether he used it or not.

k20.6 وإنْ كانَتْ لهُ منفعةٌ (تقابل بأجرة كدار) ضَمِنَ أجرتَهُ للمدةِ التي قامَ في يدِه سواءٌ انْتَفَعَ بهِ أمْ لا [لكنْ لا يَلْزَمُهُ مهرُ الجاريةِ المغصوبةِ إلاّ أنْ يَطَأَها وهيَ غيرُ مطاوعةٍ].

k20.7 Anyone who obtains the wrongfully appropriated article from X, or subsequently obtains it from the person who got it from X, and so forth, on down, is financially responsible (def: k20.2–6) to Y for it, no matter whether such a person knows of its having been wrongfully appropriated or not.

k20.7 وكلُّ يدٍ ترتَّبَتْ على يدِ الغاصبِ فهيَ يدُ ضمانٍ سواءٌ عَلِمَتْ بالغصبِ أمْ لا.

k20.8 (N: Given persons X, Y, and Z, where X has wrongfully taken something from Y, and then Z obtains it from X. This ruling describes the compensation due to Y when the article has been damaged or destroyed in Z's possession.)

Y is entitled to demand restoration or payment for the loss or depreciation of the article from either X or Z. The obligation to cover this

k20.8 فللمالكِ أنْ يَضمَّنَ الأولَ (الذي هو الغاصب) والثاني (الذي تلقى الملك فيه من الغاصب) لكنْ إنْ كانَتْ

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becomes Z's own financial liability--meaning that if Y asks Z for compensation, Z may not in turn demand it from X; though if Y asks X for it, X may it turn demand it from Z—in the following cases:

(1) when Z obtained it knowing that it had been wrongfully appropriated;

(2) when Z obtained it not knowing that it had been wrongfully appropriated, but the means by which Z obtained it would have made him financially responsible for its destruction anyway, as when Z himself wrongfully appropriated it or borrowed it for use (def: k19) from X. (O: Z is also financially liable if he bought it from X);

(3) or when Z obtained it not knowing it had been wrongfully taken, and the means by which he got it from X would not otherwise have made him responsible for its destruction except for the fact that he himself precipitated its destruction (A: as when X deposits it with Z for safekeeping and Z destroys it).

اليدُ الثانيةُ عالمةً بالغصبِ أوْ جاهلةً وهي يدُ ضمانٍ كغصبٍ (من غاصبٍ) أوْ عاريةٍ (من الغاصبِ ومثلهما المشتري منه) أوْ لمْ تكنْ (يدُه يد ضمانٍ) وباشرتْ الإتلافَ فقرارُ الضمانِ على الثاني أي إذا غرِمَهُ المالكُ لا يرْجعُ (الثاني) على الأولِ وإنْ غرِمَ الأولُ (وهو الغاصبُ) رجعَ عليهِ (أي على الثاني) [وإنْ جهلتْ (يد الثاني) الغصبَ وهي يدُ أمانةٍ (لا يد ضمانٍ) كوديعةٍ فالقرارُ (في الضمانِ) على الأولِ أي إذا غرِمَ الثاني رجعَ على الأولِ وإنْ غرِمَ الأولُ فلا (يرجعُ على الثاني) وإنْ غصبَ كلباً فيه منفعةٌ أوْ جلدَ ميتةٍ أوْ خمراً من ذميٍّ أوْ منْ مسلمٍ وهي محترمةٌ لزمَهُ الردُّ فإنْ أتلفَ ذلكَ لمْ يضمنْهُ فإنْ دبغَ الجلدَ أوْ تخللتِ الخمرةُ فهما للمغصوبِ منه].

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k21.0 PREEMPTING THE SALE OF A CO-OWNER'S SHARE TO ANOTHER (SHUF'A)

(n: Given P, Q, and R (A: where P and Q each own part of some dividable piece of real estate, and P sells his part to R, a third party. In such a case, Q can legally force R to sell the part to him by right of preemption (N: whose purpose is to prevent the harm to Q that would result if R were to subsequently go to the Islamic magistrate and demand that the property be divided to distinguish his property from Q's)).)

k21.1 Preemption is only legally binding:

(a) on a portion of real estate (A: that belonged to P and Q) which can be divided without loss of value;

(b) when P has sold his part (A: to R) for recompense.

k21.0 الشفعة

(ت: يمثل لها بثلاثة أشخاص: زيد وعمرو وبكر (ع: حيث يشترك كل من زيد وعمرو في ملك جزء من أرض تحتمل القسمة فيبيع زيد جزأه لبكر؛ فعندئذ يجوز شرعاً لعمرو أن يجبر زيداً على بيع الجزء له (أي لعمرو) بالشفعة (ح: وفائدتها حماية عمرو من ضرر يحصل لو اشترى بكر الجزء فطالب القاضي بقسمة الأرض ليميز جزأه من جزء عمرو))).

k21.1 إنّما تجبُ في جزءٍ مشاعٍ منْ أرضٍ تحتملُ القسمةَ إذا ملكتْ بمعاوضةٍ فيأخذُها الشريكُ أو الشركاءُ

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In such a case, Q may preempt its being sold to R by buying R's share for the price that P and R agreed on. If there are several co-owners in place of Q, they each buy a part of the share proportionate to the percentage of the whole property they respectively own.

(A: If there is disagreement between the parties as to how much P sold it to R for, and there is no proof, then) R is the one to say (A: when he swears (def: k8.2)) how much the price of the part was.

على قدر حصصهم بالعوض الذي استقرّ عليه العقد. والقولُ قولُ المشتري في قدره.

k21.2 It is a necessary condition for the preemptive sale that Q effect it with words such as "I hereby appropriate this property by preemption."

It is also necessary that Q give R the price, that R agree to let Q pay it later, or that the Islamic magistrate rule that Q may buy the property by preemption; in any of which cases Q takes possession of it.

If R paid P with something fungible (mithli, def: k20.3(1)), then Q must pay R an equal amount. If R paid with something nonfungible, then Q must pay its value (A: in the marketplace on) the day of the sale.

k21.2 ويُشترَطُ اللفظُ كتَملَّكتُ [أو أخذتُ] بالشفعة. ويُشترَطُ مع ذلك إمّا تسليمُ العوض إلى المشتري أو رضاهُ بكونه في ذمة الشفيع أو قضاءُ القاضي له بالشفعة فحينئذٍ يَملِكُ. فإنْ كان ما بذلَه المشتري مثلياً دَفَعَ مثلَهُ وإلا فقيمتَهُ حالَ البيع.

k21.3 There is no preemption if:

(1) the property is divided (N: already, by boundary markers or similar);

(2) the building and trees on the land are sold separately from it;

(3) the property cannot be divided without eliminating its usefulness (non-k21.1(a)), such as a cistern or a narrow walkway;

(4) R acquired it without paying a price for it, as when it has been given to him as a gift;

(5) or if R bought it with a price whose amount was not known (A: such as "for this pile of silver you see").

k21.3 أمّا الملكُ المقسومُ أو البناءُ والغراسُ إذا بيعا منفردَيْن أو ما تَبطُلُ بالقسمة منفعتُه المقصودةُ كالبئر والطريق الضيق أو ما مُلِكَ بغير معاوضة كالموهوب أو ما لم يُعلَمْ قدرُ ثمنه فلا شفعة فيه.

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k21.4 If the building and trees have been sold with the land (A: for one price), then Q also takes them as part of the land he preempts.

k21.4 وإنْ بيعَ البناءُ والغراسُ مَعَ الأرضِ أخذَهُ بالشفعة تبعاً.

k21.5 Preemption must occur immediately (A: upon Q's learning of P's having sold the property to R). When Q learns of it, he must preempt at once (def: f4.5). If he delays without excuse, he no longer has the right to preempt, unless R bought the property from P for postponed payment, in which case Q has a choice between buying it at once, or waiting until payment is due and then buying it.

If Q learns of the sale while ill, or being detained, he must commission someone (def: k17) to preempt for him. If he does not, he loses the right to preempt, unless he was unable to commission someone, or the person who informed him of the sale was a child or someone unreliable, or he was informed of it while travelling and then started returning in order to preempt; in all of which cases he may still preempt.

k21.5 والشفعةُ على الفور فإذا علمَ فليبادرْ على العادة فإنْ أخّرَ بلا عذرٍ سقطتْ إلاّ أنْ يكونَ الثمنُ مؤجلاً فيتخيّرُ إنْ شاء عجّلَ وأخذَ وإنْ شاءَ صبرَ حتى يحلَّ ويأخذ. ولوْ بلغَهُ الخبرُ وهو مريضٌ أو محبوسٌ فلْيُوكِّلْ. فإنْ لمْ يفعلْ بطلتْ. فإنْ لمْ يقدرْ أوْ كانَ المُخبِرُ صبياً أوْ غيرَ ثقةٍ أوْ أُخبرَ وهوَ مسافرٌ فسافرَ في طلبه فهوَ على شفعته.

k21.6 If R has built, or planted trees (A: before Q could preempt), then Q has a choice between paying R the value of the new buildings (A: or trees) and taking possession of them, or else removing them and paying R for the loss of value (A: to them as a result of being removed).

If R has given away the part of the property (A: that he bought from P), made it a charitable endowment (waqf, def: k30), sold it, or returned it to P because of a defect, then Q may annul any of these transactions that R has effected.

Q also has the right to take the property from the person who bought it from R, by paying this person the amount for which he bought it.

k21.6 وإنْ تصرّفَ المشتري فبنى أوْ غرسَ تخيّرَ الشفيعُ بينَ تملّكِ ما بناهُ بالقيمة وبينَ قلعه وضمانِ أرشه.

وإنْ وهبَ المشتري الشقص أوْ وقفهُ أوْ باعهُ أوْ ردّهُ بالعيب فلهُ أنْ يفسخَ ما فعلَهُ المشتري، ولهُ أنْ يأخذَ منَ المشتري الثاني بما اشترى به.

k21.7 If Q dies (A: before he is able to preempt), his heirs can preempt. If some of them decline to do so, the rest of the heirs may still preempt the entire portion, or may relinquish the right to preempt any of it.

k21.7 وإذا ماتَ الشفيعُ فللورثة الأخذُ. فإنْ عفا بعضُهُمْ أخذَ الباقونَ الكلَّ أوْ يدعُونَ

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k22.0 FINANCING A PROFIT-SHARING VENTURE (QIRAD)

(n: Given persons X (al-malik) and Y (al-'amil) (A: where X gives Y a sum of money for Y to do business with, on the basis that X will take a percentage of the profits. Such ventures have six integrals:

(a) X;

(b) Y;

(c) the work performed by Y;

(d) the profit (n: divided between them at a given percentage);

(e) the spoken form;

(f) and the venture's capital (n: which is put up by X)).)

k22.0 القراض

(ت: يمثل له بشخصين: زيد (المالك) وعمرو (العامل) (ع: حيث يدفع زيد إلى عمرو مبلغاً من المال ليتجر عمرو به على أن يأخذ زيد نسبة معينة من الربح. ولمثل هذه المعاملة ستة أركان: المالك، والعامل، والعمل، والربح، والصيغة، والمال)).

k22.1 *Financing a profit-sharing venture* (qirad) means for X to give Y money with which to trade, the profits to be shared between them. (O: It is not valid to finance such a venture on the basis that a third party gets any of the profit.)

It is only valid when both parties have full right to manage their own property. It also requires that there be:

(a) a spoken proposal (O: by X, such as "I finance you," or "I engage you," or "Take these dirhams [N: as a trade loan]");

(b) an acceptance (O: by Y in words. It is insufficient for him to begin working without saying anything);

and that the invested capital be:

(c) money (lit. "gold or silver" (A: money taking their place in these rulings));

(d) of known amount;

(e) physically existent (A: i.e. it can be seen and handled, not merely a debt or financial obligation to be collected);

k22.1 هو أنْ يَدْفَعَ (المالك) إلى رجلٍ (وهو العامل) مالاً ليَتَّجِر فيه ويكونَ الربحُ بينهما (فلا يصح على أن لغيرهما شيئاً).

ويَجُوزُ مِنْ جائزِ التصرفِ مَعَ جائزِ التصرف.

وشرطُهُ إيجابٌ (أي من المالك كقارضتك وعاملتك وخذ هذه الدراهم (ح: مقارضة)) وقبولٌ (من العامل لفظاً فلا يكفي الشروع في العمل مع السكوت) وكونُ المالِ نقداً [خالصاً مضروباً] معلومِ القدرِ معيَّناً مسلَّماً إلى

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(f) delivered to Y (O: it is not valid to finance a profit-sharing venture on condition that the funds be held by someone other than Y, such as X holding them and paying for what Y buys, since Y might not find X when he needs him);

(g) (A: and that Y be given the funds) in return for (A: X's receiving) a known fraction of the entire profit, such as a half or a third.

Financing a profit-sharing venture is not valid when:

(1) (non-(c) above) the capital put up consists of commodities;

(2) (non-(f)) X holds the funds;

(3) (non-(g)) it is stipulated that either X or Y be specifically entitled to the profits from a certain part of the business (O: such as saying, "You get the profits from the clothing, and I get the profits from the livestock");

(4) (non-(g)) either X or Y is guaranteed (N: for example) ten dirhams of the profit (O: since they might not make more than ten, in which case the second partner would get nothing) (A: rather, they must specify the percentage that each will take);

(5) (non-(g)) it is stipulated that one of them be entitled to all of the profit;

(6) or (non-(f)) it is stipulated that X work with Y in the business.

العامل (فلا يصح القراض بشرط كون المال بيد غير العامل كالمالك ليوفي منه ثمن ما اشتراه العامل، لأنه قد لا يجده عند الحاجة) بجزء معلوم من الربح كالنصف والثلث.

فلا يجوز على عروض [ومغشوش وسبيكة] ولا على أنّ يكون المالُ عند المالك ولا على أنّ لأحدهما ربح صنف معيّن (كأن يقول لك ربح الثياب ولي ربح الدواب) ولا عشرة دراهم (لأنه قد لا يربح إلا العشرة فيبقى الآخر بلا شيء) ولا على أنّ الربح كلّهُ لاحدهما ولا على (شرط) أنّ المالك يعمل معهُ.

k22.2 Y's role is to conduct business and related matters with consideration for their best financial advantage and with circumspection. Y may not sell at a loss, sell for deferred payment, or travel with the capital, and so forth, without X's permission.

k22.2 ووظيفةُ العامل التجارةُ وتوابعها بالنظر والاحتياط فلا يبيعُ بغبن ولا نسيئة ولا يسافرُ بلا إذن ونحو ذلك.

k22.3 The agreement between X and Y is nullified whenever X stipulates (O: something that is not obligatory for Y in such ventures, such as) that

k22.3 فلوْ شرط (المالك) عليه (أي على العامل ما ليس عليه وذلك مثل) أنْ

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Y buy wheat, mill it, and bake it; that Y buy yarn, weave it, and sell it; that Y not deal except in such and such a rare commodity; or that Y deal exclusively with So-and-so.

يشتري حنطة فيطحن ويخبز، أو غزلاً فينسج ويبيع، أو أن لا يتصرف إلا في كذا وهو عزيز الوجود، أو لا يعامل العامل إلا زيداً، فسد.

k22.4 When such an agreement is invalid, the transactions Y has conducted are valid, and Y is paid the wages that are usual for such work, unless X had stipulated, "I get all the profits," in which case he takes all of it and Y gets nothing (O: since he worked without expecting anything).

k22.4 فحيث فسد فقد تصرف العامل بأجرة المثل وكل الربح للمالك إلا إذا قال المالك الربح كله لي فلا شيء للعامل (لأنه عمل غير طامع في شيء).

k22.5 When either X or Y cancels the agreement, loses his sanity, or loses consciousness (Ar. ughmiya 'alayhi, i.e. through other than falling asleep), then the agreement is annulled and Y is obliged to liquidate the holdings (A: by changing them back into funds).

k22.5 ومتى فسخه أحدهما أو جن أو أغمي عليه انفسخ العقد فيلزم العامل تنضيض رأس المال.

k22.6 (A: When neither party has proof,) Y's word (O: if he swears (dis: k8.2)) is accepted over X's when there are disputes:

(1) concerning the amount of capital originally put up;

(2) as to whether or not the capital was restored to X;

(3) concerning the destruction of the holdings;

(4) or as to whether Y betrayed his trust.

k22.6 والقول قول العامل (بيمينه) في قدر رأس المال وفي رده وفيما يدعي من هلاك وفيما يدعى عليه من الخيانة.

k22.7 If X and Y dispute as to how much of the profit was stipulated (O: as Y's share, as when for example Y says, "You stipulated half for me," and X replies, "To the contrary, it was one-third"), then each party swears an oath supporting his own claim (O: and when they have sworn, X gets all the profit, and Y receives the wages customary for the work he did).

k22.7 وإن اختلفا في قدر الربح المشروط (للعامل كأن قال شرطت لي النصف فقال المالك بل الثلث مثلاً) تحالفا (وإذا تحالفا كان جميع الربح للمالك وللعامل أجرة المثل لما عمل).

k22.8 Y does not own his share of the profit until the venture's final division. (O: His possession of

k22.8 ولا يملك العامل حصته من الربح إلا بالقسمة (وإنما يستقر ملكه

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it is only finalized by dividing the profits when the holdings are liquidated and the agreement is terminated.)

بالقسمة إن نض رأس المال وفسخ العقد).

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k23.0 WATERING GRAPES OR DATES FOR PART OF THE CROP

k23.0 المساقاة

k23.1 [تصحُّ ممنْ يصحُّ قراضُهُ على كرمٍ ونخلٍ خاصةً مغروسَيْن إلى مدةٍ يبْقى فيها الشجرُ ويُثمِرُ غالباً بجزءٍ معلومٍ من الثمرةِ كثلثٍ وربعٍ كالقراضِ ويَمْلِكُ حصتَهُ من الثمرةِ بالظهورِ. ووظيفتُهُ أنْ يَعْمَلَ ما فيه صلاحُ الثمرةِ كتلقيحٍ وسقيٍ وتنقيةِ ساقيةٍ وقطعِ حشيشٍ مضرٍ ونحوِه وعلى المالكِ ما يَحْفَظُ الأصلَ كبناءِ حائطٍ وحفرِ نهرٍ ونحوِه. والعاملُ أمينٌ فإنْ ثبتَتْ خيانتُهُ ضُمَّ إليه مشرفٌ لأنَّ المساقاةَ لازمةٌ ليس لأحدِهما فسخُها كالإجارةِ. فإنْ لمْ يَتحفَّظْ بالمشرفِ اسْتُؤْجِرَ عليه مَنْ يَعْمَلُ عنْهُ].

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k24.0 SHARECROPPING (MUZARA'A)

k24.0 المزارعة

(n: Sharecropping means to farm someone's land for a share of the harvest. In the Shafi'i school, it is not permissible or valid except on strips of land between date groves under certain conditions, such as:

(a) that the landowner provide the seed;

(b) that it be unfeasible to separate working the trees from working the ground;

(c) and that the sharecropper be currently working the trees also, under the above (k23) arrangement.

This section has been left in Arabic below, and rulings from the Hanafi school, which permits sharecropping, have been added by the translator.)

k24.1 [العملُ في الأرضِ ببعضِ ما يَخْرُجُ منها إنْ كانَ البذرُ من المالكِ سُمِّيَ مزارعةً أوْ من العاملِ سُمِّيَ مخابرةً وهما باطلتانِ إلاَّ أنْ يكونَ بينَ النخيلِ بياضٌ وإنْ كثُرَ فتصحُّ المزارعةُ عليه تبعاً للمساقاةِ على النخيلِ وإنْ تفاوتَ المشروطُ في المساقاةِ والمزارعةِ بشرطِ أنْ يَتَّحِدَ العاملُ في الأرضِ والنخيلِ ويَعْسُرَ إفرادُ النخيلِ بالسقيِ والبياضِ بالعمارةِ وأنْ يُقدَّمَ لفظُ المساقاةِ فيقولُ: ساقيْتُكَ وزارَعْتُكَ، وأنْ لا يَفْصِلَ بينَهُما. ولا تجوزُ المخابرةُ تبعاً للمساقاةِ].

k24.2 (Ahmad Ouduri:) Abu Hanifa (Allah have mercy on him) holds that sharecropping, for one-third or one-fourth of the harvest (or any-

k24.2 (أحمد القدوري): قال أبو حنيفة رحمه الله: المزارعةُ بالثلث

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thing less or more), is invalid, though Abu Yusuf and Muhammad (A: the colleagues of Abu Hanifa) hold it to be valid.

Sharecropping, in the view of the latter two, is of four types (A: three of them valid and one invalid). (n: Given persons X and Y, and the four agricultural variables: land, seed, labor, and oxen (i.e. the means of plowing):)

(1) X provides the land and seed, and Y provides the labor and oxen; which is permissible;

(2) X provides the land, and Y provides the labor, oxen, and seed; which is permissible;

(3) X provides the land, oxen, and seed, and Y provides the labor; which is permissible;

(4) or X provides the land and oxen, and Y provides the seed and labor; which is not valid.

A sharecropping agreement is only valid if the period of the agreement is determinately specified (lit. "known"), and it requires that the total produce be divided between the partners (A: not a specific number of bushels to one, for example, or on condition that the produce from one part of the land belong to one of them and the produce from another part belong to the other) (*al-Lubab fi sharh al-Kitab* (y88), 2.228–30).

والربع (أو أقل أو أكثر) باطلةٌ وقال أبو يوسف ومحمدٌ: جائزةٌ.

وهي عندهُما على أربعة أوجهٍ: إنْ كانت الأرضُ والبذرُ لواحدٍ والعملُ والبقرُ لواحدٍ جازت المزارعةُ. وإنْ كانت الأرضُ لواحدٍ والعملُ والبقرُ والبذرُ لآخر جازتْ. وإنْ كانتْ الأرضُ والبقرُ لواحدٍ والبذرُ والعملُ لآخر فهي باطلةٌ.

ولا تصحُّ المزارعةُ إلاّ على مدةٍ معلومةٍ، ومنْ شرائطها أنْ يكونَ الخارجُ مشاعاً بينهما [نقل من اللباب في شرح الكتاب: ٢/ ٢٢٨ - ٢٣٠].

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k25.0 RENTING THINGS AND HIRING PEOPLE'S SERVICES (IJARA)

(n: Given persons P and Q, where Q rents a pack animal from P, or hires P as a guide. The title of this section, *Ijara*, has the dual significance of renting an article and hiring a person's services.)

(O: Lexically, *rent* is a name for the rental fee. In Sacred Law it means to take possession of a utility or service for payment under certain conditions. It has four integrals:

(a) the spoken form;

(b) the fee:

k25.0 الإجارة

(وهي لغة اسم للأجرة وشرعاً تمليك منفعة بعوض بشروط. وأركانها أربعة:

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(c) the utility or service;

(d) and the persons making the agreement.)

صيغة وأجرة ومنفعة وعاقد).

k25.1 A rental agreement is only valid between two persons entitled to conduct sales (def: k1.2). It requires both a spoken offer, such as "I rent this to you," or "the use of it"; and a spoken acceptance. (O: The agreement must also specify how much the rental fee is.)

k25.1 تصحُّ ممَّنْ يَصِحُّ بيعُهُ. وشرطُها إيجابٌ مثلُ: آجرْتُكَ هذا أوْ منافعَهُ، [أوْ: أكْرَيْتُكَ.] وقبولٌ. (ولا بد في الصيغة من بيان الأجرة).

k25.2 There are two types of rental agreements:

(1) renting anticipated utilities or services described in advance and under obligation to deliver (ijara dhimma);

(2) or renting the use or services of an identified thing or individual who is present (ijara 'ayn).

Rental of something anticipated (ijara dhimma) consists of Q saying, for example, "I am renting from you a pack animal of such and such a description," or "I am hiring you to tailor a garment for me," or "to provide me with transportation to Mecca."

Rental of something identified and present (ijara 'ayn) consists of Q saying, for example, "I rent this animal from you," or "I hire you to sew this particular garment for me."

k25.2 وهي على قسمَيْن: إجارةُ ذمة وإجارةُ عين.

وإجارةُ الذمة أنْ يقول: اسْتأجرْتُ منك دابةً صفتُها كذا. أو: اسْتأجرْتُك لتحصِّلَ لي خياطةَ ثوب، أوْ ركوبي إلى مكة.

وإجارةُ العين مثلُ: اسْتأجرْتُ منك هذه الدابة، أو اسْتأجرْتُك لتخيط لي هذا الثوب.

k25.3 It is a necessary condition for a valid rental of something anticipated (ijara dhimma) that P accepts the fee for it at the time the agreement is made.

k25.3 وشرطُ إجارة الذمة قبضُ الأجرة في المجلس.

k25.4 The necessary conditions for a valid rental of something identified and present (ijara 'ayn) are:

(a) that the article (or person whose services are) being rented be a particular individual (O: meaning visible to the eye, as in sales);

k25.4 وشرطُ إجارة العين أنْ تكون العينُ معيَّنةً (أي مشاهدة بالعين مثل البيع)، مقدوراً على تسليمها يُمْكنُ

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(b) that the article (or person's service) be within P's power to deliver such that Q can utilize it as intended (O: *within one's power to deliver* including both the actual ownership of an article and the possession of the right to use it, such that if Q is renting it from P, Q may in turn rent it out to a third party);

(c) that Q have the right to utilize the article (or services of the person hired) as soon as the deal is made;

(d) that the utility for which the article is being rented not entail the article's destruction;

(e) and that the agreement specify a rental period that the rented article will probably outlast, even if it be a hundred years, as in the case of land.

Thus, rental of something identified and present (ijara 'ayn) is invalid when it consists of:

(1) (non-(a) above) hiring the services of "one of these two servants";

(2) (non-(a)) hiring someone absent (A: from the place where the agreement is made);

(3) (non-(b)) renting land for agricultural use when the land is without water and the area's rainfall is insufficient for crops;

(4) (non-(c)) P renting out something (A: that he is already renting to Q) to a third party for the year following the current one, though Q may rent if for the following year (O: since his rental period is unexpired and the two periods are contiguous);

(5) (non-(d)) wax for fuel;

(6) (non-(e)) or renting out an article unlikely to last, for example, more than a year, for a period longer than that.

k25.5 (O: Additional) conditions for rental of something identified and present (ijara 'ayn) (O:

استيفاءُ المنفعة المذكورة منها (والقدرة على التسليم يشمل مالك العين وملك منفعتها ليدخل المستأجر فإن له أن يؤجر) ويتصلُ استيفاءُ منفعتها بالعقد. ولا يتضمّن الانتفاعُ استهلاكُ عينها وأنْ يُعقَدَ إلى مدةٍ تبقى فيها العينُ غالباً ولو مائة سنة في الأرض.

فلا تصحُّ إجارةُ أحد العبدَيْن ولا غائب [وآبق] وأرضٍ لا ماء لها ولا يكفيها المطرُ للزرع [وحائض لكنس مسجد ومنكوحة للرضاع بلا إذن زوج] ولا استئجارُ العامِ المستقبلِ لغير المستأجر (لأن مدة المستأجر الأول لم تفرغ) ويجوزُ له (أي لذلك المستأجر الأول لاتصال المدتين) ولا الشمع للوقود ولا ما لا يبقى إلاّ سنةً مثلاً أكثر منها.

k25.5 وشرطُها (أي شرط الإجارة العينية زيادة على الشروط السابقة بالنسبة

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relating to its use or service) are that its utility be:

(a) permissible in Sacred Law;

(b) of some value;

(c) determinately known (O: as to which one it is, its amount, and its utility, meaning that both P and Q know these things), such as saying, "I rent you this land to raise crops on," or "to build on," or "[A: I rent you this pack animal] to carry such and such a quantity of iron," or "of cotton";

(d) for a period known (O: to both P and Q);

(e) and for a fee known (O: to both P and Q, in type and amount), even when it is merely seen in bulk, or when it consists of the use of some other utility or service.

Thus, rental of something identified and present (ijara 'ayn) is not valid when the utility for which it is being hired or rented consists of:

(1) (non-(a) above) playing a flute;

(2) (non-(a)) transporting wine, other than to pour it out;

(3) (non-(b)) a hawker's cry that does not require any effort, even if it increases the demand for the merchandise;

(4) (non-(c)) carrying such and such a quantity (O: on a pack animal) when the nature of the load is unspecified;

(5) (non-(d)) being rented for "one dirham per month" when the total period (A: of occupancy, for example) is unspecified (A: though one may renew a valid rent agreement each month, and in such a case the landlord has the right to ask for it in advance);

(6) or (non-(c)) hiring someone for the "fee" of providing him with food and clothing.

k25.6 The particulars of the utility (N: such as its precise duration) might not become determi-

للمنفعة) أنْ تَكُونَ المنفعةُ مباحةً متقومةً (أي لها قيمة) معلومةً (عيناً وقدراً ومنفعة، والمراد أن كلاً من المتعاقدين يعلم ذلك) كقوله: آجَرْتُكَ لِتَزْرَع، أوْ تَبْنِيَ أوْ تَحْمِل قنطارَ حديدٍ أوْ قطنٍ في مدةٍ معلومةٍ (للمتعاقدين) وبأجرةٍ معلومةٍ (لهما أيضاً جنساً وقدراً) ولوْ بالرؤية جزافاً أوْ منفعةً أخرى.

فلا تصحُّ على زمرٍ وحملِ خمرٍ لغيرِ إراقتِها وكلمةٍ يباعُ لا كلفةَ فيها وإنْ رُوِّجَت السلعةُ و(لا تصح الإجارة أي إجارة الدابة لـ) حملِ قنطارٍ لمْ يُعَيِّنْ ما هو، وكلَّ شهرٍ بدرهمٍ ولمْ يُبَيِّنْ جملةَ المدةِ، ولا بالطعمةِ والكسوةِ.

k25.6 ثمَّ المنفعةُ قدْ لا تُعْرَفُ إلاَّ

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nately known except through the passage of time, as when renting a house or hiring a wet nurse. In such cases the time must be preestimated (A: when the agreement is made, as a condition for its validity). Similarly, the utility or service might not become determinately known except through the work itself, such as when hiring someone to perform hajj in one's place (dis: j1.10) or the like, in which case the amount of work involved must be preestimated.

If the utility requires both time and work to become determinately known, as is the case with tailoring, building, or teaching someone the Koran, then the utility is preestimated (A: i.e. stated in the rental agreement) with regard to one of these two variables alone. It is not valid to estimate the utility with regard to both, such as Q saying, "[O: I hire you to] tailor this garment for today's daylight hours" (O: since the work involved might take more or less time than that).

بالزمان كالسكنى والرضاع فتقدّر به. وقد لا تُعرف إلاّ بالعمل كالحجّ ونحوه فتقدّر به. وقد تُعرف بهما كالخياطة والبناء وتعليم القرآن فتقدّر بأحدهما، فإن قُدّرت بهما فقال (المستأجر استأجرتك لتخيط لي هذا الثوب بياض هذا اليوم لم يصحّ (لأن العمل فيها قد يتقدم وقد يتأخر). [وتشترط معرفة الراكب (في إجارة دابة للركوب) بمشاهدة أو وصف تام وكذا ما يركب عليه من محمل وغيره. وفي إجارة الذمة ذكر جنس الدابة ونوعها وكونها ذكرا أو أنثى في الاستئجار للركوب لا للحمل إلاّ أن يكون لنحو زجاج].

k25.7 The necessary things required by Q in order to utilize the article, such as the key (A: to a house), or the reins, girth, or saddle (A: of a mount), are P's responsibility to provide. Things that merely *enhance* or improve the utility for which Q has rented the article are Q's responsibility.

k25.7 وما يحتاج إليه للتمكن من الانتفاع كالمفتاح والزمام والحزام [والقتب] والسرج فهو على المكري. أو لكمال الانتفاع [كالمحمل والغطاء والدلو والحبل] فعلى المكتري. [وعلى المكري في إجارة الذمة الخروج معه والتحمل والحط وإركاب الشيخ وإيراك لجمل للمرأة والضعيف].

k25.8 Q is entitled to normal use of the article in obtaining the utility for which he has rented it or an equivalent utility (A: riding it in a different direction, for example, the same distance as that agreed upon and under the same conditions). If Q travels farther than the agreed upon destination, then he is obligated to pay the rental fee agreed upon, plus the amount customarily paid for a distance comparable to the excess.

k25.8 وللمكتري أن يستوفي المنفعة بالمعروف أو مثلها [إمّا بنفسه أو مثله فإذا استأجر ليزرع حنطة زرع مثلها أو ليركب أركب مثله] وإن جاوز المكان المكترى إليه لزمه المسمّى في المكان وأجرة المثل للزائد.

k25.9 It is permissible (O: only when renting something identified and present (ijara 'ayn)) for Q to pay in advance or to defer payment to the future. If neither party states whether it is to be paid in advance or whether in the future, then it is

k25.9 ([وقد أشار المصنف إلى حكم مختص] بالإجارة العينية [بقوله]:) ويجوز تعجيل الأجرة وتأجيلها. فإن

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payable in advance.

When renting anticipated utilities or services (ijara dhimma), it is permissible to let Q use the utility prior to the agreed upon period, or to delay use until after the period.

k25.10 (O: When renting something identified and present (ijara 'ayn)), if the article being rented is destroyed, the agreement is thereafter cancelled (O: with respect to the future, since the article to be utilized is no longer available then, as opposed to the period that has transpired after the article's delivery, for which Q must pay an appropriate proportion of the agreed upon fee, based on the current market value of similar utilities or services).

(O: When renting an identified and present utility or service (ijara 'ayn),) if a defect occurs (O: in the article being rented, and the defect obviously entails a discrepancy in the rental fee), then Q has the option to cancel the agreement (O: unless P immediately undertakes to correct or repair the defect, for if he does, Q is not entitled to cancel it). But if the rental agreement concerns an anticipated utility or service (ijara dhimma) (O: and the rented article has been destroyed after its delivery), then the agreement is not nullified and Q may not cancel it, but is only entitled to ask P to replace the article so that Q can obtain the utility anticipated.

k25.11 If the material Q has hired P to work on (A: e.g. when Q hires P to tailor a garment from material Q has given him) is destroyed in P's possession without his negligence, then P is not obliged to pay for its loss.

If Q has rented an article from P and it is ruined in Q's possession without his negligence, then Q is not obliged to pay for its loss.

k25.12 If P or Q dies while the rental agreement is in effect, it is not cancelled. (O: Rather, if P has died, Q finishes using the article, while if Q has died, then Q's heirs finish utilizing its. Neither party has the right to cancel the agreement in such a case when the article itself still exists.) (A: The

أطلقا تعجلت. ويجوز في إجارة الذمة تعجيل المنفعة وتأجيلها.

k25.10 وإن تلفت العينُ المستأجرةُ (إجارة عين) انفسخت في المستقبل (أي بالنسبة للمدة المستقبلة لفوات محل المنفعة فيه بخلاف المدة الماضية بعد قبض العين فيقابلها قسط من المسمى باعتبار أجرة المثل).

وإن تعيبت (العين المستأجرة بعيب يؤثر تأثيراً يظهر به تفاوت الأجرة) تخير (وحل التخيير ما لم يبادر المؤجر إلى الإصلاح في الحال. فإن وقع ذلك سقط خيار المستأجر. هذا إذا كانت الإجارة عينية) فإن كانت الإجارة في الذمة (وقد تلفت العين المسلمة) لم تنفسخ ولم يتخير (المستأجر) بل له طلب بدلها ليستوفي المنفعة

k25.11 وإن تلفت العينُ التي استؤجر على العمل فيها في يد الأجير، أو العينُ المستأجرة في يد المستأجر بلا عدوان لم يضمنها.

k25.12 وإن مات أحد المتكاريين والعينُ المستأجرةُ باقية لم تنفسخ (أي الإجارة) فيستوفي المكتري مدته إن كان المكري هو الذي قد مات وإن كان المكتري هو الذي قد مات فيقوم وارثه

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death of either party is considered by the Hanafi school to nullify the agreement.)

مقابله في الاستيفاء المذكور ولا تخيير فيهما مع بقاء العين).

k25.13 When the rental period is over, Q must return the article rented and is responsible for the measures (A: and the expenses) entailed in returning it.

k25.13 إذا انقضت المدةُ لزمَ المستأجر ردُّ العين وعليه مؤنةُ الردّ.

k25.14 When P or Q stipulates a particular rental period or a specific use for the article, then when P has delivered the article to Q, and the period stipulated elapses, or a period elapses that is sufficient for the utility stipulated to have been obtained from the article (O: even if it has not in fact been obtained), then the rental fee is due (O: from Q, who rented the article under such stipulations), and the article must be returned. (O: This ruling holds for both renting something identified and present (ijara 'ayn) and renting something anticipated (ijara dhimma).)

k25.14 وإذا عقدَ (أي أحد المكتريين) على مدةٍ (معينة) أو منفعةٍ معيّنةٍ فسلّم (المكري) العينَ (للمكتري) وانقضتِ المدةُ (المعينة) أو زمنٌ يُمكنُ فيه استيفاءُ المنفعةِ (وإن لم يستوف بالفعل) استقرّت (أي الأجرة على المستأجر بهذه القيود المذكورة) الأجرةُ ووجبَ ردُّ العين (وهذا الحكم المذكور عام للإجارتين العينية والذمية).

k25.15 In an invalid agreement, Q owes P the amount typically paid for renting similar utilities, due whenever he would have owed P the fee agreed upon had the agreement been valid.

k25.15 وتستقرُّ في الإجارة الفاسدة أجرةُ المثل حيثُ يستقرُّ المسمّى في الصحيحة.

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k26.0 JOB WAGES (JA'ALA)

(n: Given persons X and Y, where X offers Y a dirham to do a certain job.)

k26.0 الجعالة

k26.1 When X says, "I owe whoever builds me a wall a dirham" (A: or makes a similar offer), this is termed *job wages*. It is permissible that (A: the particulars of) such a job be unknown, though not the amount of the wage. Whoever then builds the wall for X is entitled to the amount stated, even if they are a group of people.

k26.1 إذا قال: مَنْ بنى لي حائطاً فله (عليَّ) درهمٌ [أو مَنْ ردَّ لي آبقي له كذا] فهذه جعالةٌ يُغتفرُ فيها جهالةُ العملِ دونَ جهالةِ العوض. فمَنْ بنى (الحائط) [أو ردَّ إليه الآبق] ولو جماعةً استحقَّ الجُعْل (المشروط له).

k26.2 Whoever works when no wage has been stipulated does not deserve anything. If X gives Y

k26.2 ومَنْ عملَ بلا شرطٍ لم يستحقَّ شيئاً. فلو دفعَ ثوباً لغسّالٍ فقال:

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a garment to clean, saying, "Wash it," but does not mention a wage, and Y washes it, then Y deserves nothing (N: unless it is a well known, customary usage that Y should receive a fee, as when Y is a barber or presses clothes and the like). If Y says, "You stipulated a wage for me," but X denies it, then X's word is accepted (A: when there is no proof (dis: k8.2)) (O: if he swears an oath).

اغسلْهُ. ولمْ يُسمِّ لهُ أجرةً فغسلهُ لمْ يستحقّ شيئاً (ح: إلاّ إذا اقتضى العرف أجرة كالحلاق والكواء وغيرهما). فإنْ قال: شرطْت لي عوضاً. فأنكر فالقولُ قولُ المنكر (بيمينه).

k26.3 Both X and Y are entitled to cancel their agreement (O: before the job is finished), but if X cancels it after Y has begun work, then X is obliged to pay Y an appropriate portion of the wage agreed upon (O: such that if the job is half done, then X owes Y half the amount, and so forth).

Otherwise (O: if X cancels it before Y has begun, or if Y cancels it himself after having begun), Y gets nothing.

k26.3 ولكلٍّ منهُما فسخُها (أي قبل تمام العمل) لكنْ إنْ فسخ صاحبُ العمل بعدَ الشروع لزمهُ قسطُهُ من العوض (فإن كان العمل نصفاً فيستقر له نصف العوض وعلى هذا القياس).

وفيما سِوى ذلك (أي بأن كان الفسخ الملتزم قبل الشروع في العمل أو فسخ العامل بعد الشروع لا شيء للعامل.

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k27.0 LOST AND FOUND (LUQTA)

(n: Given Z, who finds an article lying on the ground and picks it up.)

k27.0 اللقطة

k27.1 When a responsible adult finds a lost and found article it is permissible for him to take (O: or leave) it.

k27.1 إذا وَجَدَ (الحرُّ) الرشيدُ لقطةً جازَ التقاطُها (وتركها).

k27.2 If he can trust himself to take the proper measures for such articles (dis: below), it is recommended that he pick it up, though if he cannot depend on himself not to betray the trust (A: by simply appropriating the article without telling anyone), then it is offensive for him to take it.

k27.2 فإنْ وثق بأمانة نفسه نُدِبَ، وإنْ خاف الخيانةَ كُرِهَ.

k27.3 It is recommended that the finder determine the type, description, and amount of the article he has found, its container, and the string with which it was tied (O: it being preferable that he record this in writing so as not to forget), and

k27.3 ثمَّ يُندَبُ أنْ يَعرف جنسها وصفتَها وقدرها ووعاءها ووكاءها وهو الخيطُ الذي رُبِطَتْ به (ويستحب أن يقيد ذلك بالكتابة خشية النسيان) و(يندب) أنْ

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for him to have witnesses attest to his having found it.

يُشهِدَ عليها.

k27.4 The following two kinds of articles are permissible to pick up for safekeeping (def: k27.5) but unlawful to pick up as lost and found (A: to be advertised and then appropriated (def: k27.6)), and should he do the latter, Z is financially responsible for the article:

(1) something lost and found within the Meccan Sacred Precinct (Haram);

(2) or an animal unmenaced by small predators, such as a camel or a horse lost and found on open range.

In other than these two cases it is permissible for Z to pick up the article, either for safekeeping, or to be advertised and then appropriated.

k27.4 ثمَّ إنْ كانَ الالتقاطُ في الحرمِ (المكي) [أوْ كانَت اللقطةُ جاريةً يَحِلُّ له وطؤُها بملكٍ أو نكاحٍ] أوْ وَجَدَ في بريّةٍ حيواناً يَمْتنِعُ منْ صغارِ السباعِ كبعيرٍ وفرسٍ [وأرنبٍ وظبيٍ وطيرٍ] فلا يَجُوزُ في هذهِ المواضعِ أنْ يَلْتقِطَ إلاّ للحفظِ على صاحبِها. فإنِ الْتَقَطَ (شيئاً من ذلك) للتملكِ حَرُمَ وكانَ ضامناً.

وفيما عدا ذلك يَجُوزُ للحفظِ والتملكِ.

k27.5 If Z picks up the article for safekeeping, he is not obliged to advertise having found it, and it remains in his care as a trust (def: k17.14) which he is never entitled to dispose of in any way until he finds its owner, in which case he gives it to him. If Z wishes to deliver it to the Islamic magistrate, the latter must accept it.

If Z picks up the article within the Meccan Sacred Precinct (Haram) for safekeeping, he is obliged to advertise his having found it (n: as below).

k27.5 وإنِ الْتَقَطَ للحفظِ لمْ يَلْزَمْهُ تعريفُها وتكُونُ عندَهُ أمانةً لا يَتَصَرَّفُ فيها أبداً إلى أنْ يَجِدَ صاحبَها فيَدْفَعَها إليه. وإنْ دَفَعَها إلى الحاكمِ [(وهو القاضي)] لَزِمَهُ القبولُ.

نَعَمْ لُقَطَةُ الحرمِ مع كونِها للحفظِ يَجِبُ تعريفُها.

k27.6 If Z picks up an article intending to appropriate it if he cannot find the owner, then he is obliged to advertise its having been found for a (O: full) year on the doors of mosques, in the marketplaces, and the vicinity where he found it, in the manner customary for advertising such things. At the first of the period he should publicize it morning and evening, then subsequently once a day, then once a week, then once a month, such that the first advertisement is not forgotten and that it is realized that the subsequent notices are repetitions of it (O: and this is what is meant by the *customary manner* mentioned above). Z should

k27.6 وإنِ الْتَقَطَ للتملكِ وَجَبَ أنْ يُعرِّفَها سنةً (كاملة) على أبوابِ المساجدِ والأسواقِ والمواضعِ التي وَجَدَها فيها على العادةِ ففي أولِ الأمرِ يُعَرِّفُ طرفَيِ النهارِ ثمَّ في كلِّ يومٍ مرةً ثمَّ في كلِّ أسبوعٍ ثمَّ في كلِّ شهرٍ مرةً بحيثُ لا يُنْسَى التعريفُ الأولُ (وهذا هو معنى العادةِ فيما تقدم) ويُعْلَمُ أنَّ هذا تكرارٌ له فيَذْكُرُ

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mention some of the article's characteristics in the advertisement, but not all of them (A: so that a would-be claimant is able to prove ownership by describing it in detail) (O: for if Z divulges them all (A: and a pretender takes it), then Z is financially responsible for its loss (A: if the real owner should appear and the pretender cannot be found)).

If the lost and found item is not something major, meaning something unlikely to cause much regret and which will probably be unsought after its loss, then it is not obligatory to advertise it for a whole year, though one must advertise it long enough that its owner will probably have ceased to be concerned about it (N: and this latter is the criterion for advertising most lost and found things, which need not be advertised for a whole year).

بعض أوصافها ولا يستوعبها (فإن استوعبها ضمن).

وإنْ كانت اللقطةُ يسيرةً وهي مِمّا لا يُتأسَّفُ عليه ويُعْرَضُ عنهُ غالبًا إذا فُقِدَ لمْ يَجِبْ تعريفُها سنةً بلْ (يعرفها وجوبًا) زمنًا يُظَنُّ أنَّ فاقدها أعْرَضَ عنْها.

k27.7 When Z advertises a lost and found article for a year, it does not enter his possession until he chooses to appropriate it with a formal statement to that effect (O: and not by the mere intention. The statement consists of saying, "I take possession of it," or the like). Z takes possession of it when he chooses to do so (O: by uttering the above words). If it is destroyed before he chooses to appropriate it, Z is not financially responsible for its loss.

k27.7 ثمَّ إذا عرَّفَ سنةً لمْ تَدْخُلْ في ملكِهِ حتَّى يَخْتارَ التملكَ باللفظِ (لا بالنيةِ. وصيغةُ التملك هي أن يقولَ الملتقط: تملكتها، ونحوه) فإذا اختارهُ (أي التملك بالصيغة المذكورة) ملَكَهُ حتَّى لوْ تلفَتْ قبلَ أنْ يَخْتارَ لمْ يَضْمَنْهُ.

k27.8 If Z has appropriated the article (N: which thus enters his financial liability), and the owner one day appears, then the owner is entitled to take:

(1) the article itself, if it still exists;

(2) an equal quantity (O: if it was fungible (mithli, def: k20.3(1)));

(3) its market value (O: if it was nonfungible (mutaqawwim), where *market value* refers to the going price for similar articles on the day Z formally appropriated it);

(4) or, if the article still exists but some defect has occurred in it, then the owner takes it

k27.8 وإذا تَمَلَّكَها (ح: ودخلت في ضمانه) ثمَّ جاء صاحبُها يوماً من الدهر فلهُ أخذُها بعينها إنْ كانتْ باقيةً وإلاَّ فمثلُها (إن كانت مثلية) أوْ قيمتُها (إن كانت متقومة والمعتبر قيمة يوم التملك) وإنْ تعيَّبتْ أخذها مع الأرش (للنقص

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back with an appropriate compensation (def: k5.4) (O: for the new defect that occurred while Z had it).

بسبب العيب الحادث عنده).

k27.9 It is offensive for a corrupt person (def: o24.3) to pick up a lost and found article. If he does, the article is taken from him and deposited with someone trustworthy, and a reliable person is dispatched to oversee the corrupt person's advertising (def: k27.6) of the find, after which the corrupt person may appropriate it.

k27.9 ويُكْرَهُ التقاطُ الفاسق ويُنْزَعُ منهُ ويُسلَّمُ إلى ثقةٍ ويضمُّ إلى الفاسق ثقةٌ يُشرفُ عليه في التعريف ثمَّ يتملَّكُها الفاسقُ [ولا يصحُّ لقطُ العبد فإنْ أخذها السيدُ منهُ كانَ السيدُ ملتقطاً].

k27.10 In cases where safekeeping the article is not practicable, as when it is a watermelon or similar, Z may choose to either eat it or sell it (A: in either case covering the cost if the owner subsequently appears), after which he advertises finding it for a year (O: if it is something major, or less than a year (dis: k27.6, second par.) if minor).

If it is possible to preserve the article, as when it consists of dates (A: which are conserved by drying), then if it is to the owner's advantage to sell it, Z sells it, while if it is to the owner's advantage to dry it, then Z dries it. (O: In such a case, if Z wants to simply donate the cost of drying it to the owner, he does so. Otherwise, he sells part of the lot to cover the cost of drying the rest, in the owner's interests. The difference between this and an animal found, of which all is sold, is that an animal's maintenance requires repeated expenditures that may add up to more than it is worth.)

k27.10 وإذا لم يُمكِنْ حفظُ اللقطة كالبطيخ ونحوه يُخيَّرُ بينَ أكلِه وبيعِه ثمَّ يُعرِّفُ سنةً (إن كان جسيماً عظيماً أو أقل من سنة إن كان حقيراً) وإنْ أمكنَ إصلاحُهُ كالرطب فإنْ كان الحظُّ [(أي الأنفع للمالك)] في بيعِه باعَهُ أو في تجفيفِه جفَّفَهُ (ثم إن تبرع الملتقط بتجفيفه فذاك وإلا فيبيع بعضه لتجفيف باقيه محافظة على المصلحة والفرق بينه وبين الحيوان حيث يباع جميعه أن نفقة الحيوان تتكرر فيؤدي إلى أن يأكل نفسه).

*

k28.0 A FOUNDLING CHILD (LAQIT)

(O: Meaning a child found abandoned without anyone to care for it. The scriptural basis for these rulings is Allah's word:

"And do what is good" (Koran 22:77),

and,

"Cooperate with one another in [works of] piety and godfearingness" (Koran 5:2).)

k28.0 اللقيط

(وهو اسم للطفل الذي يوجد مطروحاً لا متعهد له. والأصل فيه قوله تعالى: ﴿... وافْعَلُوا الخَيْرَ﴾ [الحج: ٧٧]، وقوله تعالى: ﴿وتَعاوَنُوا عَلَى البِرِّ والتَّقْوَى﴾ [المائدة: ٢]).

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k28.1 To pick up a foundling is a communal obligation (def: c3.2). A child that is found (N: in a Muslim town) is considered a Muslim, and likewise if found in a non-Muslim town if there is a single Muslim therein, even if he denies the child is his (N: because the religion of someone whose religion is unknown is considered to be that of the people of his own city, and in this case there are two religions, with Islam given precedence, as it always surpasses and is never surpassed. Moreover, considering the child a Muslim is a cause for his own happiness and salvation, as he will be raised in Islam).

k28.1 التقاطُ المنبوذ فرضُ كفايةٍ.
فإذا وُجد لقيطٌ (ح: في بلد مسلمين) حُكِمَ [بحريته وكذا] بإسلامِه (ح: وكذا) إنْ وُجد في بلدٍ (ح: كافرٍ) فيه مسلمٌ وإنْ نفاهُ (ح: لأنّ من جُهِلَ دينه ينسب إلى دين أهل بلده وهنا وجد دينان فيقدم الإسلام لأنه يعلو ولا يعلى عليه، والحكم بإسلامه سبب لسعادته إذ سينشأ على ذلك).

k28.2 If money is found with the child or under his head, it belongs to him.

k28.2 فإنْ كانَ معهُ مالٌ متصلٌ به أوْ تحتَ رأسِه فهو لهُ.

k28.3 If the finder is a resident, trustworthy, and Muslim, then the child remains with him, and he is obliged to have witnesses attest to his having found the child and whatever was found with him (O: such as clothing or money).

The finder spends the money found with the child for its own expenses with the permission of the Islamic magistrate. If there is no Islamic magistrate, then the finder spends it anyway, but has witnesses attest to the amount of the expenditures. If no money was found with the child, then its expenses are paid for by the Muslim common fund. If there is no money in the Muslim common fund (N: or no Muslim common fund), then the finder may borrow money to cover its expenses as a financial obligation to be later repaid by the child.

If the finder is a corrupt person (def: o24.3(A:)) or a non-Muslim, then if the child is considered a Muslim (dis: k28.1), he is taken from the finder.

If two people find the child and disagree about whom the child should remain with, then the one who is a resident and wealthy is given preference.

k28.3 فإذا الْتقطهُ [حرٌّ] مسلمٌ أمينٌ مقيمٌ أقرَّ في يدِه ويَلْزَمُهُ الإشهادُ عليه وعلى ما معَهُ (من ملبوس ودنانير). ويُنْفِقُ عليه مِنْ مالِه بإذنِ الحاكمِ فإنْ لمْ يكنْ حاكمٌ أنْفَقَ منهُ وأشْهدَ فإنْ لمْ يكُنْ لهُ مالٌ فمنْ بيتِ المالِ وإلاَّ (أي وإن لم يكن مال في بيت المال (ح: أو لم يكن للمسلمين بيت مال)) اقْتَرَضَ على ذمةِ الطفلِ.
وإنْ أخَذَهُ [عبدٌ أوْ] فاسقٌ [أو منْ يظْعَنُ بهِ منَ الحضرِ إلى البادية] وكذا كافرٌ وهو محكومٌ بإسلامه انْتُزِعَ منهُ.
وإنْ الْتقطهُ اثنانِ وتنازعا فالموسرُ المقيمُ أولى.

k28.4 (A: Adoption is unlawful in Islam when it means giving a child one's own name, a share of one's estate division (irth, def: L1.0), and so on. But when it

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merely means giving the child a home and other advantages provided by family life until it grows up, then it is a charitable act rewarded by Allah. And Allah knows best.)

*

k29.0 GAMES, CONTESTS, AND PRIZES

(O: The scriptural basis for competitions and races entailing prize money is the word of Allah Most High,

"And make ready against them whatever force and lines of horses you can" (Koran 8:60).

Muslim relates from 'Uqba ibn 'Amir that the Prophet (Allah bless him and give him peace) said,

"Force means marksmanship,"

repeating this three times.)

k29.0 المسابقة

(والأصل فيها قوله تعالى:
﴿وأعدوا لهم ما استطعتم من قوة ومن رباط الخيل﴾ [الأنفال: ٦٠].
وروى مسلم عن عقبة بن عامر: «إن القوة الرمي» (كررها ثلاثاً).

RACES FOR PRIZE MONEY

المسابقة

k29.1 Races with prize money for the winner are permissible between horses, mules, donkeys, camels, or elephants, provided that the animals competing are of the same species, though it is not, for example, permissible to have such a race between a camel and a horse.

It is a necessary condition for such a race that the participants know which animals will be ridden, the amount of the prize, and the distance to be run.

k29.1 تجوز على العوض بين الخيل والبغال والحمير والإبل والفيلة بشرط اتحاد الجنس فلا تجوز بين بعير وفرس.
ويشترط معرفة المركوبين وقدر العوض والمسافة.

k29.2 The prize money may be put up by both contestants, either one, or by a third party. If the prize money is put up by either contestant or by a third party, then the race is unconditionally permissible, and the winner takes all (N: regardless whether he was the one who put up the money or whether it was the other person).

But if the prize money is put up by both con-

k29.2 ويجوز أن يكون العوض منهما أو من أحدهما أو من أجنبي. فإن كان من أحدهما أو من أجنبي جاز بلا شرط فمن سبق أخذه (ح: سواء سبق من دفع المال أو سبق صاحبه).
وإن كان منهما اشترط أن يكون معهما

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testants, then it is a necessary condition that a third rider enter the contest with a mount equal to theirs (A: in speed, stamina, and so forth,) who puts up no money (N: so that it may be distinguished from gambling. If all three put up the money, then it is necessary that there be a fourth contestant with them who does not pay, and so on). (A: Similarly, bets from one side alone, such as saying, "I will give you ten dinars if what you have said proves to be correct," are lawful when the other party bets nothing.)

Here, the winner takes all. If two riders finish together, they divide the prize.

مُحلِّلٌ وهو ثالثٌ على مركوب كفء لمركوبيهما لا يُخرِجُ عوضاً (ح: حتى يتميز هذا عن القمار. وإن كان المال من الثلاثة اشترط أن يكون معهم رابع لم يخرج عوضاً وهكذا) فمَنْ سَبَقَ من الثلاثة أخذ. وإنْ سبق اثنان اشتركا فيه.

COMPETITIONS IN MARKSMANSHIP FOR PRIZE MONEY

المناضلة

k29.3 It is also permissible to compete for prize money in competitions of skill at archery, spear throwing, or other military weaponry, when the prize is put up by both contestants, either one, or a third party, though if put up by both, it is necessary that a third marksman enter the contest, as mentioned above (A: meaning one comparable to the others in marksmanship, who puts up nothing).

It is a necessary condition for the validity of such a competition that the following details be specified before the contest:

(a) who will be shooting;

(b) the number of shots per bout, how many shots are needed to win, and the criterion for a hit (A: that is, in archery, whether the arrow must stick or whether it need merely leave a mark);

(c) the distance to the target;

(d) and which of the contestants is to begin.

k29.3 ويَجُوزُ على النشاب والرمح وآلات الحرب والعوضُ منهما أو من أحدهما أو من أجنبيٍّ والمحلِّلُ معهما إذا كان منهما على ما تقدّم.

ويُشترطُ تعيينُ الرماةِ وعددِ الرشق والإصابة وصفةِ الرمي والمسافةِ ومن البادئُ منهما.

k29.4 It is not permissible to conduct contests for prize money that involve birds, footracing, or wrestling (O: since they are not military weaponry or equipment).

k29.4 ولا يجُوزُ بالعوض على الطيور والأقدام والصراع (لأن هذه المذكورات ليست من آلات الحرب).

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RULINGS CONCERNING GAMES

k29.5 (N: As for games:

(1) every game played by two or more people that relies on luck, conjecture, and guessing is unlawful, no matter whether money is stipulated or not;

(2) paying prize money in every game that encourages and assists fighting for Allah (jihad, def: o9) is permissible if the terms of the competition conform to the rulings discussed above in this section (k29.1–4);

(3) every game not of the preceding two types is permissible if no money is paid therein;

(4) and any of the above-mentioned things which are permissible become unlawful if they prevent one from performing a religious or this-worldly duty.)

أحكام الألعاب

k29.5 (ح: وأما الألعاب فكما يلي:

- كل لعب بين اثنين فأكثر اعتمد على الحظ والحزر والتخمين فهو حرام سواء كان بشرط مال أم لا؛

- كل لعب يعين على الجهاد جاز فيه بذل المال إن وافق الأحكام التي تقدمت في هذا الباب؛

- كل لعب ليس من النوع الأول ولا الثاني فهو جائز بشرط عدم بذل المال فيه؛

- كل ما تقدم مما حكم بجوازه يصير حراماً إذا شغل عن واجب ديني أو دنيوي).

*

k30.0 ESTABLISHING AN ENDOWMENT (WAQF)

(O: Lexically, *waqf* means to be retained. In Sacred Law, it refers to the retention of any property that can be benefited from while the property itself still remains, by suspending disposal of it; with the financial proceeds of it going to some permissible expenditure. The scriptural basis for it is the hadith related by Muslim that the Prophet (Allah bless him and give him peace) said,

"When a human being dies, his work comes to an end, except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him."

from which scholars understand *ongoing charity* as meaning an endowment (waqf).)

(n: Given persons P (al-waqif) and Q (al-mawquf 'alayhi) (A: where P owns, for example, an apartment building that he makes an endow-

k30.0 الوقف

(هو لغة الحبس وشرعاً حبس مال يمكن الانتفاع به مع بقاء عينه بقطع التصرف في رقبته على مصرف مباح والأصل فيه خبر مسلم «إذا مات ابن آدم انقطع عمله إلا من ثلاث: صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له» والصدقة الجارية محمولة عند العلماء على الوقف).

(ت: يمثل له بشخصين: زيد (الواقف) وعمرو (الموقوف عليه) (ع: حيث يملك زيد عمارة شقق مثلاً فيجعلها وقفاً [(ح: على عمرو ثم

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ment (waqf), the rent of which will henceforth go to Q, and P stipulates that Q must supervise the upkeep of the building. This section deals with such endowments).)

الفقراء)) ويشترط أن يستلم عمرو أجرتها ويقوم بصيانتها [(ح : ويكون الباقي له ثم للفقراء من بعده)]. وهذا الباب يتناول مثل هذا الوقف)).

k30.1 Establishing an endowment is an act of worship.

k30.1 هو قربةٌ.

k30.2 Establishing an endowment is not valid unless the following conditions are met:

(a) that P have full right to manage his own property (O: *full right to manage his own property* including the non-Muslim, whose endowment is legally valid, even if it is for a mosque);

(b) that the endowment concern a particular identified article ('ayn) (O: it being invalid to make the mere "right to use something" an endowment, because it is not a particular article);

(c) that the article have a (O: lawful) use;

(d) that it remain existent (O: for a period in which it would be feasible to rent or hire it out), such as real estate or an animal (O: or clothing, weapons, Korans, or books. It is not permissible to make an endowment of something that cannot be utilized except by using it up, such as food);

(e) that the beneficiary be some particular party (O: such as the poor, for example) besides P himself, whether the endowment is an act of worship, as when the beneficiary is mosques (O: or Islamic schools), one's relatives, or the general good; or whether it is merely permissible, such as an endowment that benefits the wealthy, or Jewish and Christian subjects of the Islamic state;

(f) and that the endowment be formally established by words that effect it such as "I make it an endowment," or "I restrict [O: such and such a thing to benefit So-and-so]," or "I give [A: such and such] as nonsaleable charity."

k30.2 ولا يصحُّ إلاّ مِنْ مطلقِ التصرفِ (ويدخل في قوله مطلق التصرف الكافر فيصح وقفه ولو مسجداً) في عينٍ معيَّنةٍ (فلا يصح وقف منفعة لأنها ليست عيناً) يُنْتَفَعُ بها (نفعاً مباحاً) مع بقاءِ عينها دائماً (أي مدة يصح استئجارها فيها) كالعقار والحيوان (أي والثياب والسلاح والمصاحف والكتب لا ما لا يفيد نفعاً إلا بفواته كطعام) على جهةٍ معينةٍ (كالفقراء مثلاً) وغيرِ نفسه غيرَ محرمةٍ إمَّا قربةً كالمساجد (والمدارس) والأقاربِ وسبيلِ الخيرِ وإمَّا مباحةً كالأغنياء وأهلِ الذمةِ باللفظ المنجَز وهو: وقفْتُ وحبَسْتُ [وسبَّلْتُ] (كذا على كذا) أوْ تصدَّقْتُ صدقةً لا تباعُ.

k30.3 When the endowment has been made, the ownership of the article belongs to Allah Most

k30.3 فحينئذٍ يَنْتقِلُ الملكُ في الرقبةِ إلى اللهِ تعالى (فلا يكون الملك للواقف

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High (O: not P or Q) (N: meaning that even though everything is the property of Allah, the article is now dissevered from its metaphorical human ownership), while Q owns the proceeds from it and its utilities (O: and all the benefits that come from it after the endowment has been made, such as rent, the fruit of trees, or offspring. Q may dispose of these as an owner would, as this is the purpose of the endowment. He may utilize the endowment either personally, or through another by loaning it for use or renting it out).

ولا للموقوف عليه) (ح: وكل شيء ملك لله لكن المعنى هنا ينفك عنه ملك الآدميين المجازي) ويَمْلِكُ الموقوفُ عليه غلّتَهُ ومنفعتَهُ (وجميع الفوائد الحادثة بعد الوقف كالأجرة وثمرة الأشجار وولد، ويتصرف الموقوف عليه في هذه المذكورات تصرف المالك لأن ذاك هو المقصود. فيستوفي منافعه بنفسه وغيره بإعارة وإجارة) [إلا الوطء إنْ كانتْ جاريةً].

k30.4 The interests of the endowment (O: i.e. its concerns, condition, upkeep (N: and supervision)) are looked after by whoever P stipulates, whether himself or Q or a third party. If P does not stipulate (O: that anyone in particular look after it), then the responsibility belongs to the Islamic authority (N: by himself, or through the person he appoints to do so).

k30.4 ويُنْظَرُ فيه (أي في شأنه وحاله وحفظه (ح: وإدارته)) مَنْ شَرَطَ الواقفُ إمّا بنفسه أو الموقوف عليه أوْ غيرهما [(بأن شرطه لأجنبي)] فإنْ لمْ يَشْرطْ (الواقف النظارة لأحد) فالحاكمُ (ح: إما بنفسه أو بمن يعيّنه لذلك).

k30.5 The proceeds of the endowment (O: such as the produce of an acreage endowment, or the rent of a property endowment) are disposed of as P stipulates, in terms of (A: for example):

(1) proportionality of shares (O: between recipients as to the amount each receives, such as having stipulated twice as much for males as females, or vice versa, or equal shares for each);

(2) precedence (O: in some receiving the proceeds before others when they are a group, through a condition that determines who deserves to receive it);

(3) inclusiveness (O: of (A: all) recipients, as by saying, "I make this an endowment for my children and their children," where the word *and* implies that each person must be given a share);

(4) priority (O: such as saying, "I make this an endowment for the benefit of Islamic scholars, without restriction, and after that [A: if there are no more to be given a share] to the poor," or "I make this an endowment for the benefit of Zayd, and then 'Amr," where if one dies, the next one receives his share):

k30.5 وتُصْرَفُ الغَلّةُ (أي غلة ما يخرج من الأرض الموقوفة وأجرة الأماكن الموقوفة) على مَا شَرَطَ مِنَ المفاضلةِ (بين الموقوف عليهم في قدر الاستحقاق كأن يشرط للذكر ضعف ما للأنثى أو بالعكس أو التسوية فيه) والتقديمِ (أي تقديم بعضهم على بعض في أخذ الغلة إن كانوا جماعة، بوجود شرط الاستحقاق) والجمعِ (بينهم كأن يقول وقفت هذا على أولادي وأولاد أولادي فالعطف هنا اقتضى إعطاء لكل) والترتيبِ (كوقفت هذا على العلماء مطلقاً ثم من بعدهم على الفقراء أو وقفت هذا على زيد ثم من بعده على عمر و فإذا مات أحدهما صرف نصيبه للآخر) وغيرِ ذلك

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(5) or other conditions (O: such as the proceeds going to those most closely related to P (N: of his offspring), and then the less closely related).

(كالأعلى فالأعلى (ح: من فروع الذرية)).

k30.6 (n: The following are examples of invalidity of establishing an endowment due to lack of one of the conditions mentioned at k30.2 above.) An endowment is not valid when it consists of:

(1) (non-k30.2(b)) a debt (N: that someone owes to P);

(2) (non-(b)) "One of these two houses";

(3) (non-(d)) food;

(4) (non-(d)) sweet basil (A: which used to be spread on floors as an air freshener) (O: since it quickly deteriorates) (N: i.e. if it is uprooted, though if it is growing, it is valid to make it an endowment);

(5) (non-(e)) when its beneficiary is unidentified by P, or unknown (O: since the endowment cannot be implemented. It is thus invalid if P stipulates "whoever Zayd says" as the beneficiary), or is P himself (O: including P stipulating that the proceeds of the endowment be used to pay off his debts, or when P eats of its produce, or utilizes the endowment for his own benefit, any of which invalidates the endowment);

(6) (non-(c)) when the proceeds are directed to an unlawful use, such as building a church (dis: o11.5(7)) (O: or purchasing lamps for a church, or building walls around it, since this assists disobedience to Allah. Rafi'i says, "The same is true of an endowment for printing the Torah or New Testament, which is invalid because the Jews and Christians have altered the texts and interpolated spurious material, it not being permissible to occupy oneself with printing their scriptures because doing so is to participate in their disobedience to Allah");

(7) (non-(f)) when the beginning or end of the endowment's being in effect are subject to conditions such as saying, "I make it an endow-

k30.6 وإنْ وَقَفَ شيئاً في الذمة أو إحدى الدارين أو مطموماً أو ريحاناً (لسرعة فساده) (ح: مقلوعاً وأما المزروع فيصح وقفه) أوْ وَقَفَ ولمْ يُعَيِّنْ المصرفَ أوْ وَقَفَ على مجهولٍ (لتعذر تنفيذ الوقف، ولو قال: وقفت على من شاء زيد، كان باطلاً) أوْ على نفسه (ومنه ما لو شرط أن يقضى من ريع الوقف ديونه أو يأكل من ثماره أو يستنفع به فكل ذلك يبطل الوقف) أوْ على محرَّمٍ كعمارة كنيسةٍ (وكذا على قناديلها وحصرها لم يصح لما فيه من الإعانة على المعصية. قال الرافعي وكذا لو وقف على كتبة التوراة والإنجيل لا يصح لأنهم حرفوا وبدلوا فيهما والاشتغال بكتبها حينئذٍ غير جائز فيصير من جملة المعصية) أو عَلَّقَ [(أي علق صيغة الوقف)] ابتداءَهُ وانتهاءَهُ على شرطٍ كقوله إذا جاء رأسُ الشهرِ فقدْ

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ment starting from the first of next month," or "for one year," or "provided that I am entitled to sell it" (O: or "on condition that I may take it back whenever I wish");

(8) or (non-(e)) when (n: P stipulates, as a priority order of beneficiaries, "Q, then R," and) Q is not an eligible recipient—such as P stipulating himself as the first beneficiary—but R *is* an eligible recipient, as when P stipulates (A: after himself) "and then the poor."

وقفتُ أو وقفتُهُ إلى سنةٍ أو على أنّ لي بيعهُ (أو على أن أرجع عنه متى شئت) أو على مَنْ لا يَجُوزُ ثمّ على مَنْ يَجُوزُ كعلى نفسه ثمّ للفقراء بَطَلَ.

k30.7 If P designates a particular recipient (O: or group of recipients), it is a necessary condition for the validity of the endowment that the recipient accept it. If he refuses it, this invalidates the endowment.

k30.7 ولوْ وقفَ على (شخص) معين (وكذا على جماعة معيّنين) اشترطَ قبولُهُ فإنْ ردّهُ بَطَلَ.

k30.8 If P designates a particular person (lit. "Zayd") as an endowment's beneficiary, but does not stipulate anyone after him, then the endowment is valid, and after the particular person is gone, its beneficiaries are the poor of P's relatives.

k30.8 وإنْ وَقَفَ على زيدٍ ولمْ يَقُلْ وبعدَهُ إلى كذا صَحَّ ويُصْرَفُ بعدَ زيدٍ لفقراءِ أقاربِ الواقفِ [وإنْ وَقَفَ على العبدِ نفسِهِ بطَلَ. وإنْ أطْلَقَ فهوَ لسيدِهِ].

*

k31.0 GIFT GIVING (HIBA)
(n: As when X gives Y a gift.)

k31.0 الهبة

k31.1 Gift giving is recommended. It is superior to give gifts to one's relatives than to nonrelatives. When giving gifts to one's children, it is recommended to give each child the equal of what the others are given.

k31.1 هيَ مندوبةٌ، وللأقاربِ أفضلُ. وتُنْدَبُ التسويةُ فيها بينَ أولادِهِ [حتّى بينَ الذكرِ والأنثى].

k31.2 Gift giving is only valid under the following conditions:

(a) that X have full right to manage his own property;

(b) that the gift be something permissible to sell (def: k2.1);

k31.2 وإنّما تَصِحُّ مِنْ مطلقِ التصرفِ فيما يَجُوزُ بيعُهُ بإيجابٍ منجَزٍ

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(c) that X give it with spoken words that effect it;

(d) and that Y accept it with a spoken reply.

وقبول.

k31.3 Y does not own the gift until he takes possession (def: k7.3) of it, before which X may take it back. It is not valid for Y to take possession of the gift without X's permission. In cases where X gives Y an article that is already being kept with Y (O: as when Y has it as a trust for safekeeping, or has borrowed it), or X has put up the article as collateral for Y, and now simply gives Y the article, then it is necessary that Y obtain X's permission to take possession of the gift, and that enough time elapse for Y to reach the gift (O: if it is distant) and take possession of it.

Once Y has taken possession of the gift, X is no longer entitled to take it back. An exception to this is when one gives a gift to one's child, or their descendant, in which case one may take the gift back, unless such a receiver has sold it in the meantime, and the article has subsequently returned to him (O: by sale or gift), in which case one may no longer take it back.

k31.3 ولا تُملكُ إلاّ بالقبض فلهُ الرجوعُ قبله. ولا يصحُّ القبضُ إلاّ بإذن الواهب فلوْ وهبهُ شيئاً عندهُ (أي عند الموهوب له بأن كان عنده على سبيل الأمانة أو الوديعة أو العارية) أوْ رهنهُ [(رهن الواهب الموهوب له الشيء الذي وهبه)] إيّاهُ فلا بدّ من الإذن في قبضه ومُضيّ زمن يتأتّى فيه قبضهُ والمضيُّ إليه (إن كان الموهوب بعيداً).

فإذا ملك لمْ يكُنْ للواهب الرجوعُ إلاّ أن يهب لولده أوْ ولد ولده [وإن سفل] فلهُ الرجوعُ فيه بعد قبضه [بزيادته المنفصلة كالسمن لا المنفصلة كالولد] فلوْ [حُجر على الولد بفلس أو] باعَ (الولد) الموهوب ثمّ عاد إليه (أي إلى الولد إمّا بشراء أو هبة له) فلا رجوع.

k31.4 If X gives Y something and stipulates that Y give him something determinately known in return, this is valid, but is a sale (A: not a gift). If X stipulates that Y give him something in return that is not determinately known, then the gift is invalid. If X does not stipulate that anything be given him in return, then Y is under no obligation to him.

k31.4 فإنْ وهب وشرطَ ثواباً معلوماً صح وكان بيعاً. أو مجهولاً بطل. وإنْ لمْ يشرطْهُ لمْ يلزمْ.

*

k32.0 MANUMISSION ('ITQ)

k32.0 العتق

(n: This section, which begins, "To free a slave is an act of worship," deals with a system of ownership that Islam did not invent but found fully established and not possible to instantly abolish, so it rather encouraged its elimination in steps, with incentives. It closed all avenues for obtaining new slaves except the capture of war prisoners, the soldiers of whom the caliph had the option to enslave or not; it encouraged the freeing of slaves by the tremendous reward from Allah Most High; and it materially helped slaves to purchase their freedom by providing

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them the money to do so from zakat funds (dis: h8.15). Like previous references to slaves, the following four sections have been left untranslated because the issue is no longer current, unlike the times of our author Ibn Naqib, whose rulers, the Mamelukes of Egypt, were themselves slaves who legally belonged to the Islamic state, a fact sufficient to show the fallacy of understanding slavery in the Islamic milieu in terms of the institution that existed in nineteenth-century America and elsewhere in the West (dis: w13).)

k32.1 [هو قربةٌ لا يَصِحُّ إلاَّ مِنْ مطلقِ التصرفِ ويصِحُّ بالصريحِ بلا نيةٍ وبالكنايةِ مع النيةِ. فصريحُهُ العتقُ والحريةُ وفكَكْتُ رقبتَكَ والكنايةُ لا مِلْكَ لي عليكَ ولا سلطانَ لي عليكَ وأنتَ للهِ وحبلُكَ على غاربِكَ وشبهُ ذلكَ. ويَجُوزُ تعليقُهُ على شرطٍ مثلُ إذا جاءَ زيدٌ فأنتَ حرٌّ. فإذا علَّقَ بصفةٍ لمْ يَمْلِكْ الرجوعَ فيهِ بالقولِ، ويَجُوزُ الرجوعُ بالتصرفِ كالبيعِ ونحوِهِ فإنِ اشْتَراهُ بعدَ ذلكَ لمْ تَعُدِ الصفةُ. ويَجُوزُ في العبدِ وفي بعضِهِ. فإنْ أعْتَقَ بعضَ عبدِهِ عَتَقَ كلُّهُ. فإنْ كانَ عبداً بينَ اثنينِ فعَتَقَ أحدُهُمَا نصيبُهُ عَتَقَ. ثمَّ إنْ كانَ موسراً عَتَقَ عليهِ نصيبُ شريكِهِ في الحالِ ولَزِمَهُ قيمتُهُ حينئذٍ. وإنْ كانَ معسراً عَتَقَ نصيبُهُ فقطْ. ومَنْ مَلَكَ أحدَ الوالدينِ وإنْ عَلَوا أوِ المولودينَ وإنْ سَفَلُوا عَتَقَ عليهِ. وإنْ مَلَكَ بعضَهُ فإنْ كانَ برضاهُ وهوَ موسرٌ قُوِّمَ عليهِ الباقي وعَتَقَ وإلاَّ فلا. ولوْ أعْتَقَ الحاملَ عتقَتْ هيَ وحملُها. أوْ أعْتَقَ الحملَ عَتَقَ دونَها. ولوْ قالَ أعْتَقْتُكَ على ألفٍ أوْ بعتُكَ نفسَكَ بألفٍ وقبِلَ عَتَقَ ولَزِمَهُ الألفُ.

k32.2 [(التدبيرُ) التدبيرُ قربةٌ وهوَ أنْ يَقُولَ: «إذا متُّ فأنْتَ حرٌّ أوْ دبَّرْتُكَ أوْ أنتَ مُدَبَّرٌ ويُعْتَبَرُ مِنَ الثلثِ. ويَصِحُّ مِنْ مطلقِ التصرفِ وكذا من مبذِّرٍ لا صبيٍّ. ويَجُوزُ تعليقُهُ على صفةٍ مثلُ إنْ دخلْتَ الدارَ فأنتَ حرٌّ بعدَ موتي فيُشْتَرَطُ الدخولُ قبلَ الموتِ. وإنْ دبَّرَ بعضَ عبدِهِ أوْ كلَّ ما يَمْلِكُهُ مِنَ العبدِ المشتَرَكِ لمْ يَسْرِ إلى الباقي. ويَجُوزُ الرجوعُ فيهِ بالتصرفِ لا بالقولِ. ولو أتتِ المدبَّرةُ بولدٍ لمْ يَتْبَعْها في التدبيرِ].

k32.3 [(الكتابة) الكتابةُ قربةٌ تُعْتَبَرُ في الصحةِ مِنْ رأسِ المالِ وفي مرضِ الموتِ مِنَ الثلثِ ولا تصِحُّ إلاَّ مِنْ جائزِ التصرفِ مع عبدٍ بالغٍ عاقلٍ على عوضٍ في الذمةِ معلومِ الصفةِ في نجمينِ فأكثرَ يَعْلَمُ ما يؤدِّي في كلِّ نجمٍ بإيجابٍ منجَزٍ وهوَ: كاتَبْتُكَ على كذا تُؤدِّيهِ في نجمينِ كلُّ نجمٍ كذا فإذا أدَّيْتَ فأنتَ حرٌّ، وقبولٍ. ولا يَجُوزُ كتابةُ بعضِ عبدٍ إلاَّ أنْ يَكُونَ باقيهِ حرّاً ولا تُسْتَحَبُّ إلاَّ لِمَنْ يَعْرِفُ كسبَهُ وأمانتَهُ وللعبدِ فسخُها متى شاءَ. وليسَ للسيدِ فسخُها إلاَّ أنْ يَعْجِزَ المكاتَبُ عنِ الأداءِ. وإنْ ماتَ العبدُ انْفَسَخَتْ أوِ السيدُ فلا. ويَلْزَمُ السيدَ أنْ يَحُطَّ عنهُ جزءاً مِنَ المالِ وإنْ قَلَّ قبلَ العتقِ أوْ يَدْفَعَهُ إليهِ وفي النجمِ الأخيرِ أَلْيَقُ. ويُنْدَبُ الربعُ. فإنْ لمْ يَفْعَلْ حتَّى قَبَضَ المالَ ردَّ عليهِ بعضَهُ. ولا يَعْتِقُ المكاتَبُ ولا شيءٌ منهُ ما بقيَ عليهِ شيءٌ ويَمْلِكُ بالعقدِ منافعَهُ واكتسابَهُ وهوَ مع السيدِ كالأجنبيِّ. ولا يتزوَّجُ ولا يَهَبُ ولا يَعْتِقُ ولا يُحابي إلاَّ بإذنِ السيدِ ولا يَجُوزُ بيعُ المكاتَبِ ولا بيعُ ما في ذمتِهِ مِنَ النجومِ وولدُ المكاتَبةِ يَعْتِقُ إذا عَتَقَتْ.

k32.4 [(فصلٌ) إذا أوْلَدَ جاريتَهُ أوْ جاريةَ يَمْلِكُ بعضَها أوْ جاريةَ ابنِهِ فالولدُ حرٌّ والجاريةُ أمُّ ولدٍ لهُ فتَعْتِقُ بموتِهِ ويُمْنَعُ بيعُها وهبتُها ويَجُوزُ استخدامُها وإجارتُها وتزويجُها. وكسبُها للسيدِ وسواءٌ وَلَدَتْهُ حياً أوْ ميتاً لكنْ لوْ لمْ يُتَصَوَّرْ فيهِ خلقُ آدميٍّ لمْ تَصِرْ أمَّ ولدٍ. ولوْ أوْلَدَ جاريةَ أجنبيٍّ بنكاحٍ أوْ زنا فالولدُ مِلْكٌ لسيدِها. أوْ بشبهةٍ فهوَ حرٌّ. فلوْ ملكَها بعدَ ذلكَ لمْ تَصِرْ أمَّ ولدٍ].

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BOOK L

INHERITANCE

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L1.0 BEQUESTS (WASIYYA)

L1.0 الوصية

(n: Sections L1, L2, and L3 have been moved here from their original place at the end of last book. They deal with bequests, meaning testamentary disposition of one's property (wasiyya) such as to say, "I bequeath such and such to So-and-so"; while sections L4 through L10 form the original content of book L, and deal with estate division (irth).)

(A: The difference between bequests (wasiyya) and estate division (irth) is that a *bequest* is the act of a living person disposing of his own property, even if it is to be implemented after his death, while *estate division* occurs after his death according to the Koranic rules of inheritance. Because a bequest is the act of a living person with his own money, it is legally valid for a Muslim to bequeath up to a third of his property to a non-Muslim (dis: L3.13(1)) and similarly valid for a non-Muslim to bequeath his property to a Muslim. Nawawi says:

"A bequest is legally valid from any legally responsible free person, even if non-Muslim" (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 3.39).

(النووي:) تصحُّ وصيةُ كلِّ مكلفٍ حرٍّ وإنْ كان كافراً. [نقل من مغني المحتاج: ٣/ ٣٩].

But it is invalid and unlawful for a non-Muslim to inherit property through *estate division* from a Muslim (dis: L5.2), or vice versa. The determining factor in the permissibility of a Muslim and non-Muslim inheriting from each other is whether the property comes by way of a bequest (wasiyya) made by the deceased before his death, in which case it is permissible, or whether it comes by way of estate division (irth) made after the deceased's death according to the Koranic rules of inheritance, in which case the difference between their respective religions prevents it.)

(O: Our author only mentions bequests at this point (n: at the end of book k, as mentioned above) before estate division because of the fact that a person first makes bequests, then dies, and then the estate is divided. The scriptural basis for the validity of bequests, prior to the consensus of scholars, is the word of Allah Most High,

"... after any bequest which has been made, and after any debts" (Koran 4:12).)

(إنما ذكرها المصنف هنا قبل الفرائض نظراً إلى أن الشخص يوصي ثم يموت ثم تقسم تركته. والأصل فيها قبل الإجماع قوله تعالى:
﴿مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ﴾ [النساء: ١٢]).

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(n: Given persons X (al-musi), Y (al-wasiyy), and Z (al-musa lahu) (A: where X has made provision in his will for Z to receive a bequest (wasiyya) of a sum of money, and X appoints Y as his executor to make sure this is done).)

L1.1 A bequest made by X is valid if he is legally responsible (mukallaf, def: c8.1), even if he is a spendthrift.

L1.1 تَصِحُّ مِنَ المكلف [الحرّ] ولوْ مبذراً

L1.2 The discussion is in two parts (n: namely, section L2, on X's appointing Y as the executor, and section L3, on the bequest itself).

L1.2 ثمَّ الكلامُ في فصلَيْن.

*

L2.0 THE BEQUEST'S EXECUTOR

(O: *Appointing an executor* means for X to put Y in charge of his property and young children, bequests, paying his debts, or collecting his property from others. The verbal form is, "I appoint So-and-so to execute such and such a bequest.")

L2.0 الوصي

[أحدُهُما في نَصبِ الوصيّ] (أي إقامته على أمر ماله وصغار أولاده وتنفيذ الوصية وما عليه من الدين وقبض ماله على الناس، فيقال في صيغته «أوصيت لفلان بكذا»).

L2.1 The necessary conditions for the validity of X appointing Y as the executor of his bequest are that Y be:

(a) legally responsible (mukallaf, def: c8.1);

(b) upright (def: o24.4) (O: meaning the uprightness of Islam, as it is not valid under any circumstances for Y to be a non-Muslim if X is a Muslim);

(c) and that Y have the knowledge and capacity to properly undertake the bequest.

L2.1 وشرطُهُ التكليفُ [والحريةُ] والعدالةُ (والمراد بالعدالة عدالة الإسلام فلا يصح إيصاء المسلم إلى الكافر مطلقاً) والإهتداءُ للموصى به.

L2.2 The following examples of X appointing Y as the executor of his bequest are legally valid:

(1) when X appoints Y as his executor at a time when Y is not legally eligible to be it, but by the time of X's death, Y is eligible (O: by fulfilling all the above (L2.1) conditions);

L2.2 فلوْ أوْصَى لغيرِ أهلٍ فصارَ عند الموتِ أهلاً (للإيصاء بأن صار كاملاً متصفاً بالشروط المذكورة) أوْ أوْصَى

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(2) when X appoints a group of two or more people as his executors (O: and if he does so, then if he does not stipulate that each of them must manage their respective role, but rather says that they are to manage the legacy collectively, or does not say anything, then they must cooperate and not manage the work, maintenance, and dealings as separate individuals. *Cooperate* in such a case means that their acts proceed from the decision of the group, and does not mean, for example, that when they buy something they must all conduct the transaction together. Rather, if all agree to permit something, it is sufficient for one of them to take the matter in hand and carry it out);

(3) when X appoints (n: for example,) W, and then after him, Y (N: or vice versa) (O: saying, "I appoint W as executor until Y comes, but when Y arrives, he is the executor," or "I make W executor for one year, and when it has passed, then Y is the executor");

(4) or when X appoints Y as executor, authorizing him to appoint in turn whomever he chooses as executor of the bequest (O: if the person fulfills the conditons (L2.1)).

لجماعة (فإن لم يشرط الموصي الإنفراد بالتصرف لكل واحد على حدته بل شرط الاجتماع عليه أو أطلق وجب عليهم التعاون في الموصى عليه ولا ينفرد واحد بالعمل والحفظ والتصرف والمراد بالاجتماع على ما ذكر صدور الشيء عن رأي الجميع وليس المراد أنهم عند عقد البيع مثلا يتلفظون معاً بل إن حصل الرضا أو الإذن منهم بأن يتولى أمر الشيء واحد منهم ويباشره كان كافياً) أوْ لزيد ثمَّ مِن بعده لعَمْرو (كأن قال أوصيت لزيد إلى قدوم عمرو فإذا قدم فهو الوصي أو أوصيت إلى زيد سنة فإذا مضت فعمرو هو الوصي) أوْ جعل للوصيّ أنْ يُوصي مَنْ يَخْتار (الوصي من شخص عدل حر إلى آخر ما تقدم من الشروط السابقة في الوصي الأصلي) صحَّ.

L2.3 X's appointing Y as the executor of his bequest is not legally effective until Y accepts this responsibility after X's death, even if this acceptance is not immediately thereafter.

Both X and Y are entitled to cancel the appointment of Y as executor of the bequest whenever they wish (O: unless (A: after X's death) Y feels it almost certain that the property will be lost through a wrongdoer appropriating it, in which case Y may not withdraw as executor, meaning it is unlawful for him to do so. In such a case, if Y withdraws of his own choice, he is not thereby free of having to execute the bequest, though he is not obliged to continue therein without remuneration, but does so for a fee.)

L2.3 ولا يَتمُّ إلاَّ بالقبول بعد موت الموصي ولوْ على التراخي.

ولكلٍ منهمَا [رأي من الموصي والوصي] العزلُ متَى شاء (إلا أن يغلب على ظن الوصي تلف المال باستيلاء ظالم عليه فليس له الرجوع أي يحرم عليه ولو عزل نفسه لم ينعزل لكن لا يلزم ذلك مجاناً بل بالأجرة).

L2.4 It is not legally valid to appoint an executor unless the bequest consists of some good work or pious act such as paying off a debt, mak-

L2.4 ولا تَصِحُّ الوصيةُ (بمعنى الإيصاء) إلاَّ في معروفٍ أوْ بِرٍ كقضاء دين

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ing up a hajj (dis: j1.9), looking after the welfare of one's children, and so forth (O: excluding actions that are not dispositions of property, such as marrying off the children) (A: and excluding acts of disobedience such as those mentioned above at k30.6(6)).

وحج والنظر في أمر الأولاد وشبهه (وخرج ما لم يكن تصرفاً مالياً كتزويج الأولاد).

L2.5 When X's father is still alive and fit for guardianship (def: m13.2), X may not appoint Y to look after the welfare of his children.

L2.5 وليس له أن يوصي على الأولاد وصياً والجدُّ أبو الأب حيّ أهلٌ للولاية. [والفصل الثاني في]:

*

L3.0 THE BEQUEST

L3.0 الموصى به

L3.1 X may devote one-third or less of his financial resources to bequests, but not more than this, *one-third* meaning a third of his property as it stands at the time of his death (O: not before or afterwards).

L3.1 تجوز الوصية [(أي تصح الوصية)] بثلث المال فما دونه ولا تجوز [(أي لا تصح)] بالزيادة عليه والمراد ثلثه عند الموت (لا قبله ولا بعده).

(A: If there are no Muslim heirs, or if the existent Muslim heirs do not deserve the whole estate, such as when the sole eligible estate division heir is a husband or wife (dis: L6.3–4), then the Hanafi school permits disposing of more than a third of one's property in bequests (dis: w44), *more than a third* meaning everything in excess of what one's eligible heirs deserve by estate division (irth).) (n: The ruling in the Shafi'i school is that such an excess may not be disposed of in bequests, but rather is given to the Muslim common fund (bayt al-mal) if it exists, as mentioned below (L3.3(O:) and L9.1).)

L3.2 If X's heirs (def: L4.4) are not poor, it is recommended for X to devote a full one-third to bequests, but if not (O: i.e. if his heirs are not well off, as when they do not have any money at all, or have some, but not enough for their expenses, and the other two-thirds (A: of the estate that constitutes their obligatory shares) which they deserve is insufficient), then it is not recommended for X to devote a full one-third to bequests.

L3.2 فإن كان ورثته أغنياء نُدِبَ استيفاء الثلث [(أي يندب حينئذ للموصي أن لا ينقص عن الثلث بل يستوفيه بالوصية)] وإلاّ (أي بأن لم تكن ورثته أغنياء بأن لم يكن لهم مال أصلاً أو لهم ولكن لا يغنيهم ولا يكفيهم الثلثان الباقيان لهم) فلا [(يندب له استيفاء الثلث)].

L3.3 If X wills more than one-third in bequests, then his dispositions are not valid regarding the portion in excess of one-third when he has no one (O: in particular) to lawfully inherit the rest (A:

L3.3 فإن زاد عليه بطلت في الزايد إن لم يكن له وارث (خاص لأن الحق

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who, if they existed, could give permission for the excess, as discussed below). (O: In cases where there are no heirs, the Muslim people have better right to X's property, and no one may waive this right.)

Nor are X's bequests in excess of one-third valid when he has an heir, but the heir refuses to authorize the excess, though if the heir (N: or group of heirs unanimously) permits it, such a bequest is valid. It is not valid for the heir to authorize the excess or refuse to do so until after X's death.

للمسلمين فلا مجيز) وكذا إنْ كانَ وَرَدَّ الزائدَ. فإنْ أجازَهُ (أي أجاز الوارث الخاص المطلق التصرف الزائد على الثلث) صحَّ ولا تصحُّ الإجازةُ والردُّ (له من الوارث المذكور) إلاّ بعد الموت.

L3.4 Charitable expenditures made by X in his will (O: such as an endowment (waqf, def: k30), gift, and so forth) are considered as part of the bequeathable one-third.

L3.4 وما وَصّى به من التبرعات تُعتَبَرُ من الثلث (وذلك كوقف وهبة وغيرهما)

L3.5 Bequests concerning obligatory expenditures are also considered from the bequeathable one-third, provided that X has stipulated that they come from it. (O: Though if the bequeathable third does not cover these (A: despite X having stipulated that they come from it), then the excess is paid from the remaining two-thirds. *Obligatory expenditures* include such things as paying debts, making up the hajj (dis: j1.9), paying zakat (A: for any year that the deceased neglected to pay it), expiations, and the fulfillment of vows that would have been binding had X been well.) But if X did not stipulate (O: that these obligatory expenditures come from the bequeathable one-third), then they come directly from the other two-thirds.

L3.5 وكذا من الواجبات (أي فيعتبر من الثلث أيضاً فإن لم يوف الثلث بها تمت من الثلثين كالديون وأداء فرض الحج والزكاة والكفارة والنذر اللازم له في الصحة) إنْ قيّدهُ (أي قيد الواجب) بالثلث. فإنْ أطْلَقَهُ (أي أطلق الوصية ولم يقيده بالثلث) فمِنْ رأس المال.

L3.6 Current charitable dispositions of property made by X during his life, such as establishing an endowment (waqf, k30), giving a gift, or others, are considered as personal expenditures of his own money (O: and he could spend it all without any objection) if made while he was in sound health. But if X makes such current dispositions under any of the following circumstances, when these are linked with his death, then the dispositions are considered as having come from the bequeathable one-third:

L3.6 وما نجّزهُ في حياته من التبرعات كالوقف [والعتق] والهبة وغيرها فإنْ فَعَلَهُ في الصحة اعْتُبِرَ مِنْ رأس المال (فلو تصرف فيه كله فلا حرج عليه) وإنْ فَعَلَهُ في مرض الموت أو في

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(1) in the final illness which brought about X's death;

(2) in military combat;

(3) while travelling on rough seas in a storm;

(4) as a final request before being killed;

(5) or (O: if female) X dies while giving birth, or afterwards before separation of the placenta.

If otherwise. (O: meaning if the current charitable disposition was not made under any of the above circumstances, or was, but the circumstance was not linked with X's death,) then the disposition is not taken from the bequeathable one-third.

حال التحام الحرب أو تموّج البحر أو التقديم للقتل أو (فعلته المرأة في حال) الطلق (أي وجع الولادة) أو بعد الولادة قبل انفصال المشيمة واتصلت هذه الأشياء بالموت اعتبر من الثلث وإلا (أي وإن لم يكن ذلك التبرع في حال من الأحوال المتقدمة أو وقع في هذه الأحوال ولم يتصل بالموت) فلا (أي فلا يحسب من الثلث).

L3.7 (N: We distinguish between the above-mentioned current dispositions (n: such as gifts, endowments, and donations), and between bequests by noting that current dispositions are effective before X's death, while bequests are effective after. Current dispositions are normally implemented even if X uses up all his money, while bequests—unless X's heirs unanimously agree to allow otherwise—are restricted to one-third of the estate. An exception to permitting current dispositions to amount to as much of X's property as he wishes is when they are effected during his death illness (n: or other L3.6 circumstance), in which case they are limited to one-third of the estate, just as bequests are.)

If one-third of the estate does not cover the cost of the (N: current) dispositions which X made during his (N: final) illness, then (O: if these have been given in some order) they are implemented first thing first, then second, then third, and so on.

فإن عجز الثلث عما نجزه في المرض (وكانت هذه التبرعات مرتبة) بُدِئ بالأول فالأول.

(N: Thus, if during his death illness, X said to his three friends P, Q, and R, "I give P a gift of 100 dinars, Q 100 dinars, and R 100 dinars," but it turns out that X's total estate is only 600 dinars, then his gifts to P and Q are valid, but we take back his gift to R, which is not valid because it exceeds the 200 dinars that is a third of the 600 dinars constituting the whole estate. This is what is meant by implementing them *in order*.)

L3.8 The bequeathable one-third of the estate is divided (O: proportionally (N: if shares vary)) between all the recipients X designates when:

(1) (N: in cases of death illness current dispositions, such as gifts) X did not state them in any

L3.8 فإن وقعت دفعة أو عجز الثلث

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particular order (N: such as by saying (n: in a situation like the above example) to P, Q, and R, "I give you each a hundred dinars," in which case the bequeathable one-third is divided between them);	عن الوصايا متفرقة كانت أو دفعة قُسِّمَ الثلثُ بينَ الكلِّ (ووزع عليها) [سواءٌ كان ثَمَّ عتقٌ أم لا].
(2) or (N: in cases where X has explicitly made bequests) the bequeathable one-third will not cover all the bequests, whether they were made separately or not.	
(N: All of the above (L3.6–8) only holds if the heirs do not agree to permit more than one-third of the estate for bequests or current dispositions, since if they unanimously agree, it may exceed a third, even if it takes the whole estate.)	
L3.9 Bequests made to nonspecific individuals such as *the poor* are effective when X dies. (O: They own the property without the fact of ownership depending on their accepting it.)	L3.9 وتَلْزَمُ الوصيةُ بالموتِ إنْ كانتْ لغيرِ مُعيَّنٍ كالفقراءِ (فإنهم يملكون الموصى به ولا يتوقف ذلك على القبول).
L3.10 When X bequeaths something to Z, a particular individual, the ownership of the article bequeathed is *suspended,* meaning that if Z accepts it after X's death, even if after some time has passed, then Z has owned it from the moment X died; but if Z declines to accept it, then X's heirs own it. If Z accepts it, but then refuses it before having taken possession of it (def: k7.3), this cancels his ownership of it, though if he refuses after having taken possession of it, it does not cancel his ownership (O: as his refusal is meaningless in such a case).	L3.10 فإنْ كانتْ لمعيَّنٍ [كزيدٍ] فالملكُ موقوفٌ فإنْ قبلَ بعد الموتِ ولوْ متراخياً حُكِمَ بأنَّهُ ملكُهُ منْ حينِ الموتِ. وإنْ ردَّهُ حُكِمَ بالملكِ للوارثِ. وإنْ قبلَ [(أي الموصى له الموصى به)] وردَّ قبلَ القبضِ سقطَ الملكُ [(أي ملك الموصى له الموصى به)] أوْ بعدَهُ فلا (فلا عبرة لرده حينئذ).
L3.11 It is permissible to make the implementation of a bequest subject to a condition, whether the condition is something occuring before X's death (O: such as his saying, "If Z enters So-and-so's house, I bequeath to him such and such of my property,") or after (O: such as his saying, "If Z enters So-and-so's house after my death, I bequeath to him such and such of my property").	L3.11 ويجوزُ تعليقُ الوصيةِ على شرطٍ في الحياةِ (كإن دخل زيد دار فلان فقد أوصيت له بكذا من مالي) أوْ بعد الموتِ (كإن دخل زيد دار فلان بعد موتي فقد أوصيت له بكذا من مالي).

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THINGS WHICH MAY BE BEQUEATHED

ما يوصى به

L3.12 It is permissible to bequeath any of the following:

(1) the right to utilize something (O: while not bequeathing the actual thing);

(2) particular things;

(3) something not yet existent, such as "what this tree will bear";

(4) something not determinately known (O: whether it be an unknown thing (A: such as "the contents of this box"), or something unknown in amount);

(5) something undeliverable (non-k2.4);

(6) something not currently owned (O: at the time the bequest is made, but which X owns at the time of his death);

(7) or something impure (najasa, def: e14.1) that has a lawful use, such as a (O: trained hunting) dog, or oil contaminated with impurity; though not something impure that is without lawful use, such as wine or pigs.

L3.12 ويجوز بالمنافع (فقط دون العين) والأعيان وبالمعدوم كالوصية بما تحمل هذه [الجارية أو] الشجرة وبالمجهول (كشيء أو كان يكون مجهول القدر) وبما لا يُقدَرُ على تسليمه [كالآبق] وبما لا يَملِكُهُ الآن (أي عند الوصية ثم يملكه عند الموت) وبما يجوز الانتفاع به من النجاسات كالكلب (المعلم للصيد) والزيت النجس لا بما لا يُنتفَعُ به (من النجاسات) كالخمر والخنزير.

THOSE TO WHOM BEQUESTS ARE VALID

لمن يوصى

L3.13 It is permissible for X to bequeath something to Z even if Z is:

(1) a non-Muslim at war with Muslims (A: and with still better right when Z is an ordinary non-Muslim);

(2) a Jewish or Christian subject of the Islamic state;

(3) an apostate from Islam;

(4) the person who kills X;

L3.13 ويجوز الوصية للحربيّ والذميّ والمرتدّ ولقاتله وكذا لوارثه عند

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(5) X's heir (def: L4.4), provided X's other heirs permit him to receive it (O: though if they do not, then the bequest is not carried out);

(6) or to a person yet unborn, in which case the bequest is paid to the person (O: i.e. guardian) who knows of the unborn's existence at the time X makes the bequest, provided that the child is either born alive within six months of the time the bequest is made, or is born alive more than six months and less than four years after the bequest is made, during which time the mother has had no husband (O: from whom the pregnancy could have resulted).

الموت إنْ أجازهُ بقيةُ الورثة (أما إذا لم يجيزوا فلا تنفذ الوصية) وللحمل فتُدْفعُ لمَنْ (أي لولي) علم وجودهُ (أي الحمل) عند الوصية إذا انفصل حيًا بأنْ تلد لدون ستة أشهر من الوصية أوْ فوقها ودون أربعة سنين ولا زوج لها [ولا سيد يطؤها] (أمكن كون الحمل منه) [وإنْ أوْصى لعبدٍ فقبل دُفع إلى سيده].

CANCELLING ONE'S BEQUESTS

الرجوع عن الوصية

L3.14 If X makes some article a bequest but then changes his mind, his taking it back is valid, annulling his bequest. X's doing any of the following is also considered *taking it back* (A: and cancels the bequest):

(1) X's loss of ownership (O: of the bequeathed article) such as by sale or gift;

(2) X's subjecting the article to loss of ownership by putting it up as collateral, offering it for sale, or making another bequest that stipulates that it be sold;

(3) or when the name of the article changes, such as wheat being ground into flour, flour made into dough, yarn woven into fabric, or when X mixes a particular article with other goods.

L3.14 وإنْ وصَّى بشيءٍ ثمَّ رجع عن الوصية صحَّ الرجوعُ وبطلت الوصيةُ.
وإزالةُ الملك فيه (أي في الموصى به) كالبيع والهبة أوْ تعرضهُ (أي تعرض الموصي) لزواله (أي زوال ملك الموصى به) بأنْ [دبَّره أوْ كاتبهُ أوْ] رهنهُ أوْ عرضهُ على البيع أوْ أوصى ببيعه أوْ أزال اسمهُ بأنْ طحن القمح أوْ عجن الدقيق أوْ نسج الغزل أوْ خلطهُ إذا كان معيَّنًا بغيره رجوعٌ

L3.15 If Z dies before X, then X's bequest to him is invalid. If Z dies after X but before Z accepts the bequest, then Z's heirs may accept or reject it.

L3.15 وإنْ مات الموصى له قبل الموصي بطلت الوصيةُ.
وإنْ مات (الموصى له) بعده وقبل القبول فلوارثه قبولهُ وردُّهُ.

*

L4.0 ESTATE DIVISION (IRTH)
(O: *Estate division* refers to the share allotted to each heir by Sacred Law. The scriptural basis

L4.0 [كتاب] الفرائض
(وهو نصيب مقدر شرعًا للوارث.

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for estate division, prior to the consensus of scholars, consists of the Koranic verses on inheritance (Koran 4:11–12, 4:176) and hadiths such as the one related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said,

"Give the obligatory shares of the estate to those who deserve them, and the rest belongs to the closest male to the deceased."

Encouragement to master the knowledge of estate division comes from such hadiths as the one from Ibn Mas'ud (Allah be well pleased with him) that the Prophet (Allah bless him and give him peace) said,

"Learn estate division and teach it to people, for I am someone who will be taken from you, and this knowledge will be taken from you and calamities will ensue, until two men will one day disagree about the obligatory apportionment and will not find anyone to judge between them.")

والأصل في كتاب الفرائض قبل الإجماع آيات المواريث وأخبار كخبر الصحيحين: «ألحقوا الفرائض بأهلها فما بقي فلأولى رجل ذكر» وقد ورد الحث على تعلم علم الفرائض كحديث ابن مسعود وهو أن النبي ﷺ قال: «تعلموا الفرائض وعلموها الناس فإني امرؤ مقبوض وإن هذا العلم سيقبض وتظهر الفتن حتى يختلف الرجلان في الفريضة فلا يجدان من يفصل بينهما» [صححه الحاكم وغيره]).

HOW TO WORK AN ESTATE DIVISION PROBLEM

كيفية حل مسائل المواريث

L4.1 (n: To work an estate division problem, one should:

(a) determine the amount of the deceased's estate after deducting the L4.2–3 expenses;

(b) make a list showing which of the deceased's heirs mentioned at L4.4 exist;

(c) eliminate from the list any heirs with preventives L5.1–4;

(d) on a sheet of paper, copy the parenthesized introductory paragraph ("N: summary of ——'s share.") for every eligible heir that exists, such as the deceased's:

(1) husband (dis: L6.3);

(2) wife (L6.4);

(3) father (L6.5);

(4) mother (L6.6);

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(5) daughter (L6.7);

(as mentioned at L6.8, the shares of the above-named family members are not eliminated by anyone, though the shares of those named below may be eliminated by the existence of certain other heirs)

(6) son's daughter (L6.9);

(7) full sister (L6.10);

(8) half sister from the same father (L6.11);

(9) grandfather (father's father only) (L6.13);

(10) grandmother (L6.18);

(11) half brother or half sister from the same mother (L6.20);

(12) and then the others (sons and so forth) mentioned at L6.22;

(e) read section L7 and cross off the list of heirs those whose shares are eliminated by the other existent heirs;

(f) if any *universal heirs* (def: L10.5) exist, see which of them eliminates the shares of the other universal heirs, as at L10.6;

(g) make a table of the heirs remaining (after (e) and (f) above) like the tables shown at L6.6, where one writes the type of heir, the fraction each deserves (with the universal heir receiving the remainder, if any), and then at the top writes the total shares (this being the common denominator of the fractions), after which one calculates the shares that go to each;

(h) if the fractions (of those besides the universal heir) add up to more than one (i.e. the total estate), then one must adjust for this as shown at L8.2;

(i) but if the fractions add up to less than the total estate and there is no universal heir to inherit the rest, then one must redistribute the shares as described at L9.1–2.

One may practice and test one's skill at estate division by reading through the present section and doing the problems depicted in the tables, though to do all the problems one must have (or memorize) a full worksheet that contains all the information mentioned in (d), (h), and (i), above, plus the rules concerning universal heirs discussed at L10.1–4. Finally, it is best to check one's answers with an Islamic scholar, preferably a teacher from whom to take instruction, since this is a subject that is easier to acquire from its masters than from books.)

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EXPENSES DEDUCTED FROM THE ESTATE PRIOR TO ESTATE DIVISION

ما يؤخذ من تركة الميت قبل الإرث

L4.2 The first thing (O: obligatorily) taken from X's property is the expense of preparing his body (O: such as the cost of the water to wash him, the washer's fee, cost of the shroud and perfume placed therein, pallbearers' fees, and so forth) and of burying him. These expenses are deducted before X's debts are paid, his bequests fulfilled, or his estate divided, unless there is a financial obligation due on the property itself, such as:

(1) when there is zakat (A: due from any year X neglected to pay it before his death);

(2) when some of the property has been put up as collateral (dis: k11.2);

(3) or when X dies bankrupt with unpaid-for merchandise among his property (A: which must be returned to the seller before paying other expenses from X's property).

L4.2 يَبْدَأُ مِنْ تركة الميت (وجوباً) بمؤنة تجهيزه (من ثمن ماء غسله وأجرة مغسله وكفنه وثمن حنوط يوضع في الكفن وأجرة الحامل وغير ذلك) ودفنه قبلَ الديون والوصايا والإرث. إلاّ أنْ يَتعلّق بعين التركة حقّ كالزكاة والرهن [والجاني] والمبيع إذا مات المشتري مفلساً. فإنّ حقوق هؤلاء تُقدَّم على مؤنة التجهيز والدفن.

L4.3 After the above are paid, the following measures are taken (A: and the sequence given is obligatory):

(1) X's debts are paid (N: though if a government takes non-Islamic estate taxes, these are deducted from the main part of the estate (A: before debts or bequests, as any other loss would be));

(2) then X's bequests (def: I.1–3) are carried out (O: from a third of what remains after debts);

(3) and then X's remaining property is divided between his estate division heirs.

L4.3 ثمّ بعد ذلك تُقضى ديونُهُ ثمّ تُنفَّذُ وصاياهُ (من ثلث ما بقي بعد الدين) ثمّ تُقسَّمُ تركتُهُ بينَ ورثتِهِ.

HEIRS

L4.4 X's male heirs consist of:

(1) X's son;

L4.4 والوارثون مِنَ الرجال [عشرةٌ] الابنُ وابنُهُ وإنْ سَفَل والأبُ وأبوهُ

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(2) X's son's son, son's son's son, and on down;	وإنْ عَلَا والأخُ شقيقاً كانَ أوْ لأبٍ أوْ لأمٍ وابنُ الأخِ الشقيقِ أوْ لأبٍ والعمُّ الشقيقُ أوْ لأبٍ وابْنُهُمَا والزوجُ [والمعتقُ]. والوارثاتُ مِنَ النساءِ [سبعٌ] البنتُ وبنتُ الابنِ وإنْ سَفَلَ والأمُّ والجدةُ أمُّ الأمِّ وأمُّ الأبِ وإنْ علَتْ والأختُ شقيقةً كانَتْ أوْ لأبٍ أوْ لأمٍ والزوجةُ [والمعتقةُ].
(3) X's father;	
(4) X's father's father (A: the term *grandfather* throughout the book of inheritance refers only to this paternal grandfather), father's father's father, and on up;	
(5) X's full brother, or half brother from X's father or mother;	
(6) the son of X's full brother, or son of X's half brother from the same father;	
(7) X's father's full brother, or father's half brother from the same father;	
(8) the son of X's father's full brother or father's half brother from the same father;	
(9) and X's husband.	
X's female heirs are:	
(1) X's daughter;	
(2) X's son's daughter, son's son's daughter, son's son's son's daughter, and on down;	
(3) X's mother;	
(4) X's grandmother (whether she is the mother of X's father or mother), great-grandmother, and on up;	
(5) X's full sister, or half sister from the same father or mother;	
(6) and X's wife.	
EXTENDED FAMILY MEMBERS WHO DO NOT NORMALLY INHERIT	ذوو الأرحام الذين لا يرثون بطريق الأصالة
L4.5 The following extended family members may not inherit from X's estate (except under the conditions discussed at L10.8):	L4.5 وأمّا ذوو الأرحام وهمْ أولادُ

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(1) X's daughter's children (O: male or female);

(2) X's mother's brother's sons;

(3) X's sister's children, the sons or daughters of X's daughter's children, or the sons or daughters of X's sister's children;

(4) X's brother's (O: whether full brother's, or half brother's from either parent) daughters;

(5) X's father's brother's (O: whether full brother's, or half brother's from the same father) daughters;

(6) X's father's half brother from the same mother;

(7) X's mother's father;

(8) X's mother's brother or sister;

(9) X's father's sister;

(10) or anyone related to X through one of the above.

البنات (ذكوراً كانوا أو إناثاً) وبنو الإخوة للأم وأولاد الأخوات وبنوهنّ (وبنو أولاد البنات وبنو أولاد الأخوات) وبناتهنّ (أي بنات أولاد البنات وبنات أولاد الأخوات) وبناتُ الإخوة (مطلقاً أي أشقاء أو لأب أو لأم) وبناتُ الأعمام (سواء كان الأعمام أشقاء أو لأب) والعمُّ للأمّ أي أخو الأب لأمه وأبو الأمّ والخالُ والخالةُ والعمةُ ومَنْ أدْلَى بهمْ فلا يَرِثُونَ عندَنا بطريق الأصالة بلْ (يرثون) إذا فسد بيتُ المال كما سيأتي.

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L5.0 THE FOUR PREVENTIVES OF INHERITING AN ESTATE DIVISION SHARE

(O: *Preventive* means that if someone is an estate division heir (def: I.4.4) but one of the following characteristics exists in him, then he may not inherit.) (A: In calculating the estate division, an heir who is made ineligible by a preventive is considered nonexistent. Such a person is a nonheir, and as such is eligible for a bequest (def: L1.0) if X wills him one.)

(n: Given X, the deceased; and Z, his heir.)

L5.0 وموانعُ الإرث أربعةٌ :

(والمراد أنه إذا وجد شخص فيه سبب الإرث لكنه اتصف بوصف مانع منه فلا يرث).

L5.1 The first preventive is killing. Whoever kills X may not inherit from him, no matter whether the killing was:

L5.1 الأولُ القتلُ فمَنْ قَتَلَ مُوَرِّثَهُ لَمْ يَرِثْهُ سواءٌ قَتَلَهُ بحقٍّ كالقصاص أوْ في

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(1) lawful, as in retaliation (def: o3) or imposing a criminal penalty;

(2) without lawful right;

(3) accidental;

(4) intentional;

(5) direct (O: such as Z shooting while hunting, and the shot hitting X);

(6) or when Z is a causal factor in X's death, such as testifying to an act of X's that calls for retaliation against X, or such as digging a well into which X falls.

To summarize, whoever has a hand in X's death, no matter how, cannot inherit from him.

الحدّ أو بغيره خطأً كان أو عمداً مباشرةً كان (كأن رمى صيداً فأصاب مورثه) أو سبباً مثل أن يشهد عليه بما يوجب القصاص أو حفر بئراً فوقع فيها. والحاصل أنه لا يرثه متى كان له مدخل في قتله بأي طريق كان.

L5.2 The second preventive is being non-Muslim: a Muslim may not inherit from a non-Muslim, and a non-Muslim may not inherit from a Muslim (dis: L1.0).

L5.2 الثاني الكفر فلا يرث مسلم من كافر ولا كافر من مسلم [ولا يرث الكافر الحربي إلا من الحربي وأما الذمي والمعاهد والمستأمن فيتوارثون بعضهم من بعض وإن اختلفت مللهم ودارهم. وأما المرتد فلا يرث ولا يورث].

L5.3 The third preventive is slavery.

L5.3 الثالث الرق [فالرقيق لا يرث ولا يورث ومن بعضه حر لا يرث لكن يورث بما جمعه ببعضه الحر].

L5.4 The fourth is uncertainty as to who died first, such as when X and Z both drown or both die in the collapse of a building, and it is not known who died before the other. In such a case neither may inherit from the other.

L5.4 الرابع استبهام وقت الموت فإذا مات متوارثان بغرق أو تحت هدم ولم يعلم السابق منهما لم يرث أحدهما من الآخر.

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L6.0 THE ESTATE DIVISION SHARES

L6.0 ميراث أهل الفروض

L6.1 The six obligatory shares mentioned in the

L6.1 [أعني] الفروض الستة

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Koran (Koran 4:11–12) are one-half, one-fourth, one-eighth, two-thirds, one-third, and one-sixth.

المذكورة في القرآن [و] هي النصفُ والربعُ والثمنُ والثلثانِ والثلثُ والسدسُ.

1.6.2 They go to ten categories:

(1) X's husband;

(2) X's wife;

(3) X's father;

(4) X's mother;

(5) X's daughters;

(6) X's son's daughters, or the daughters of X's son's son, son's son's son, and on down;

(7) X's sisters;

(8) X's father's father;

(9) X's mother's or father's mother;

(10) X's half brothers or half sisters from the same mother.

1.6.2 وهي لعشرةِ الزوجانِ [(هما الزوج والزوجة)] والأبوانِ [(هما الأب والأم)] والبناتُ وبناتُ الابنِ (وإن نزل) والأخواتُ والجدُّ والجداتُ والإخوةُ والأخواتُ من الأمّ.

1.6.3 (N: A summary of X's husband's share:
—1/2 if there is no inheriting descendant.
—1/4 if there is an inheriting descendant.
—The husband's share is not eliminated by anyone.)

X's husband:

(1) receives one-half the estate when X has no child who may inherit (O: even if the child is from a different husband) (N: the word *child* (Ar. walad) including both males and females (A: of all ages)), and X's son has no child who may inherit;

(2) but receives one-fourth the estate when X has a child who may inherit (O: whether from X by this husband or a different husband, and whether male or female), or when X's son has a child who may inherit.

1.6.3 (ح: وفرض الزوج بشكل مختصر:
- ١/ ٢ إذا لم يكن معه فرع وارث.
- ١/ ٤ إذا كان معه فرع وارث.
- ولا يحرمه من الميراث أحد).
فأمّا الزوجُ فلهُ النصفُ مَعَ عدم الولدِ (لزوجته ولو من غيره) (ح: والولد يشمل الذكر والأنثى) أوْ ولدِ ابنٍ وارثٍ (قيد فيهما) ولهُ (أي للزوج) الربعُ مع الولدِ (سواء كان منه أو من غيره ذكراً كان أو أنثى) أوْ ولد الابن.

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L6.4 (N: A summary of X's wife's share:
—1/4 if there is no inheriting descendant.
—1/8 if there is an inheriting descendant.
—The wife's share is not eliminated by anyone.)

X's wife:

(1) receives one-fourth the estate when X has no child to inherit (O: even if by a different wife) and X's son has no child to inherit;

(2) but receives one-eighth the estate when X has a child to inherit, or X's son has a child to inherit (O: whether X's son is from her or from another wife).

If there are two, three, or four wives, they jointly receive the one-fourth or one-eighth (O: meaning that the share apportioned to one wife is given to two or more (A: to divide up between them)).

L6.4 (ح: وفرض الزوجة بشكل مختصر:
- ١/٤ إذا لم يكن معها فرع وارث.
- ١/٨ إذا كان معها فرع وارث.
- ولا يحرمها من الميراث أحد).
وأمّا الزوجةُ فلها الربعُ مع عدم الولد (للزوج ولو من غيرها) أوْ ولد ابن (أي للزوج) وارث ولهـا الثمنُ مَعَ (وجود) الولدِ أوْ (مع وجود) ولدِ الابن (سواء كان منها أو من غيرها) وللزوجتين والثلاث والأربع ما للواحدة من الربع والثمن (والمعنى أن ما ثبت للزوجة الواحدة ثابت للزوجتين فأكثر).

L6.5 (N: A summary of X's father's share:
—1/6 if there is an inheriting descendent.
—*Universal heir* (def: L10.5) if there is no male inheriting descendant.
—The father's share is not eliminated by anyone.)

X's father:

(1) receives one-sixth of the estate when X has a son to inherit, or when X's son has a son to inherit (O: or when X has a daughter or X's son has a daughter, who may inherit (N: though in such a case, the father takes (A: the sixth plus) the remainder of the estate as universal heir (n: as discussed next)));

(2) but is universal heir (O: by himself, meaning he takes the whole estate if there are no others who have an obligatory share coming; or if there are such others, he receives the remainder of the estate after they have received their shares) when X has no son to inherit and X's son has no son to inherit.

L6.5 وفرض الأب بشكل مختصر:
- ١/٦ مع الفرع الوارث.
- عصبة إن لم يكن فرع وارث ذكر.
- ولا يحرمه من الميراث أحد).
وأمّا الأبُ فلهُ السدسُ معَ (وجود) الابن وابن الابن (والواو بمعنى أو، وكذا يستحقه مع وجود البنت وبنت الابن (ح: لكنه يأخذ الباقي تعصيباً)) فإنْ لمْ يكُنْ معهُ ابنٌ ولا ابنُ ابنٍ فهو (أي الأب) حينئذٍ عصبةٌ (أي بنفسه فقط فيأخذ جميع المال إذا انفرد أو ما بقي بعد أصحاب الفروض) [كما سيأتي].

L6.6 (N: A summary of X's mother's share:
- 1/6 if there is an inheriting descendant, or if

L6.6 (ح: وفرض الأم بشكل مختصر:

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there are two or more of X's brothers or sisters.
—1/3 of the remainder after deducting the share of X's husband or wife in cases where the heirs include both X's father and the husband or wife, but no inheriting descendant.
—1/3 of the estate when none of the above-mentioned heirs exists.
—The mother's share is not eliminated by anyone.)

X's mother:

(1) receives one-third of the estate when all three of the following are the case:

(a) X has no child (male or female) who may inherit, nor does X's son;

(b) X does not have two or more brothers or sisters, whether full brothers or sisters, or half brothers or sisters from either parent;

(c) and the heirs do not include X's husband and X's two parents, or X's wife and two parents (A: of which X's mother is one);

(2) she receives one-sixth of the estate when (non-(a) above) X has a child who may inherit, or when (non-(b)) X has two or more brothers or sisters;

(3) and she receives one-third of the remainder after deducting the share of X's husband or wife when:

—(non-(c) above) the heirs include X's husband and two parents, in which case she receives one-third of the remainder after X's husband receives his share of one-half, meaning she receives a sixth of the estate, as that is a third of the remainder, and X's father receives the rest:

		shares: *6
husband	1/2	3
mother	1/6	1
father	universal heir	2

(*common denominator of 1/2 and 1/6)

- ١/٦ مع الفرع الوارث، وكذا مع عدد من الإخوة والأخوات.
- ١/٣ الباقي بعد حصة الزوج أو الزوجة إن كان معها أحد الزوجين وأب بلا فرع وارث.
- ١/٣ مع عدم المذكورين أعلاه.
- ولا يحرمها من الميراث أحد).

وأمّا الأمُّ فلها الثلثُ إذا لمْ يكُنْ معها ولدٌ ولا ولدُ ابنٍ ذكراً كانَ أوْ أنثى ولا اثنانِ (فأكثر) منَ الإخوة والأخواتِ سواءً كانُوا أشقّاء أوْ لأبٍ أوْ لأمٍ، ولمْ تكُنْ في مسألةِ زوجٍ وأبوينِ ولا (في مسألةِ) زوجةٍ وأبوينِ. فإنْ كانَ معها ولدٌ أوْ ولدُ ابنٍ، أو اثنانِ (فأكثر) منَ الإخوةِ والأخواتِ فلهَا السدسُ (في هذه الصور كلها) وإنْ كانَتْ في مسألةِ زوجٍ (والميت فيها الزوجة) وأبوينِ أوْ زوجةٍ (والميت فيها الزوج وهي المسألة الثانية) وأبوينِ فلها ثلثُ ما بقيَ بعدَ فرضِ الزوجِ أوِ الزوجةِ والباقي للأبِ. فيأخذُ الزوجُ في الأولى النصفَ

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—or (non-(c) above) when the heirs include X's wife and two parents, in which case she receives one-third of the remainder after X's wife receives her share of one-fourth, meaning that the mother receives one-fourth of the estate, as that is a third of the remainder, and the father receives the rest:

ولهـا السدسُ لأنَّهُ ثلثُ ما بقي والباقي للأب. وفي الثانيةِ تأخُذُ الزوجةُ الربع والأمُّ الربعَ لأنَّهُ ثلثُ ما بقي والباقي للأب.

		shares: 4
wife	1/4	1
mother	1/4	1
father	universal heir	2

L6.7 (N: A summary of X's daughter's share:
—1/2 if there are no other of X's sons or daughters (n: whether full or half brothers or sisters to her).
—2/3 for her to share equally (if there are no sons) with other daughters, if any.
—She is *co-universal heir* (def: L10.3) with X's son(s) if existent, meaning that they jointly constitute the universal heir, dividing this share so that each male receives twice the amount of each female (A: since men are obliged to support women in Islam (dis: m11) and not vice versa).
—The daughter's share is not eliminated by anyone.)

(1) X's sole daughter (O: who is without a co-universal heir such as her brother, and without someone else on her own level, such as her sister) receives half of the estate.

(2) Two or more daughters jointly receive two-thirds.

L6.7 (ح: وفرض البنت بشكل مختصر:
- ١/٢ إذا لم يكن معها بنت ولا ابن.
- ٢/٣ لها ولمن معها من البنات (عند عدم الابن) يقسم بالتساوي.
- وهي عصبة بالابن فأكثر للذكر كالأنثيين.
- ولا يحرمها من الميراث أحد).
وأمّـا البنتُ المنفـردةُ (عمن يعصبهـا كأخيهـا وعمن في درجتهـا كأختهـا) فلها النصفُ وللبنتين فصاعداً الثلثان.

L6.8 (N: It is important to remember for the persons named in the following rulings that the share of any of them who is related to X through an inheriting heir is *eliminated* by the existence of that heir (dis: L7.4–6), except for X's half brother from the same mother, whose share is not eliminated by the mother's existence.)

L6.8 (ح: ومن المهم أن يذكر فيما يتعلق بالأحكام التالية أن كل من أدلى إلى الميت بوارث، يحجبه ذلك الوارث حجب حرمانٍ إلّا الأخ لأم فلا تحجبه الأم بل يرث نصيبه مع وجودها).

L6.9 (N: A summary of the share of X's son's daughter:
—Her share is eliminated if X's son exists (n: an

L6.9 (ح: وفرض بنت الابن بشكل مختصر:
- تحرم مع الابن.

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example of the above rule).
—1/2 if X has no daughter, son's son, or any other daughter of a son.
—2/3 for her to share equally with the other daughters of X's son(s), if X has no daughter(s) or son's son(s).
—1/6 when there is a sole daughter (def: L6.7(1)).
—She is co-universal heir (def: L10.3) with X's son's son(s) (A: in the absence of X's daughter, dividing this share so that each male receives twice the share of each female).
—Her share is eliminated when X has two or more daughters.)

When X's sole daughter (def: L6.7(1)) exists, X's son's daughter(s) (A: if there are more than one, they share) receives one-sixth of the estate, which with the sole daughter's share of one-half, makes two-thirds (N: which is the maximum that may go to the category of daughters).

- ١/ ٢ إذا لم يكن معها بنت ولا بنت ابن ولا ابن ابن.
- ٢/ ٣ إذا كان معها بنت ابن ولا توجد بنت ولا ابن ابن.
- ١/ ٦ [(تكملة الثلثين)] إذا كانت معها بنت.
- عصبة بابن ابن.
- تحرم مع بنتين فصاعداً).
ولبنت الابن فصاعداً مَعَ بنتِ الصلب الفردةِ السدسُ تكملةُ الثلثين (ح: لأنَّ جنس البنات غاية فرضه الثلثان).

L6.10 (N: A summary of the share of X's full sister:
—1/2 if there are no other full brothers or sisters.
—2/3 for her to share equally with other full sisters.
—She is co-universal heir (def: L10.3) with full brother(s) if any, each male receiving twice the share of each female.
—She is *universal heir through* X's daughter(s) (def: L10.4).
—Her share is eliminated if X's father or X's son exists.)

(1) X's sole full sister (N: meaning no other full brothers or sisters exist) receives one-half of the estate.

(2) Two or more such sisters (N: when there are no full brothers) jointly receive two-thirds.

(n: L6.12 discusses X's full sister(s) with X's daughters.)

L6.10 (ح: وفرض الأخت الشقيقة بشكل مختصر:
- ١/ ٢ إذا لم يكن معها أخ شقيق ولا أخت شقيقة.
- ٢/ ٣ لها ولأختها إذا كانت معها أخت شقيقة فأكثر.
- عصبة بالشقيق.
- عصبة مع البنات.
- تحرم مع الأب أو الابن).
وأمَّا الأختُ الفردةُ الشقيقةُ فلهَا النصفُ ولاثنتين فصاعداً الثلثان.

L6.11 (N: A summary of the share of X's half sister from the same father:
—1/2 in the absence of X's full brother, full sister,

L6.11 (ح: وفرض الأخت لأب بشكل مختصر:
- ١/ ٢ مع عدم الشقيق والشقيقة

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other half sister from the same father, and half brother from the same father.
—2/3 for her to share equally with other half sister(s) from the same father, when there are no full brothers or sisters, and no half brothers from the same father.
—1/6 when there is X's sole full sister.
—She is universal heir through X's daughters or X's son's daughters (def: L10.4), provided there are no full brothers or sisters, or half brothers from the same father.
—She is co-universal heir (def: L10.3) with X's half brother(s) from the same father, the male receiving twice the share of each female.
—Her share is eliminated if X's father or son exists.)

والأخت لأب والأخ لأب.
ـ ٢/٣ لها ولأختها من الأب مع عدم الشقيق والشقيقة والأخ لأب.
ـ ١/٦ مع الشقيقة [(تكملة الثلثين)].
ـ عصبة مع البنات أو بنات الابن إذا لم يكن شقيق ولا شقيقة ولا أخ لأب.
ـ عصبة بالأخ لأب.
ـ تحرم مع الأب أو الابن).
وإنْ كانتْ (ح: الأخت الفردة) مِنَ الأب فلها النصفُ ولاثنتين فصاعداً الثلثانِ وللأختِ مِنَ الأب فصاعداً مَعَ الشقيقةِ الفردة السدسُ تكملةَ الثلثين.

(1) X's sole half sister from the same father receives one-half of the estate.

(2) Two or more such paternal half sisters jointly receive two-thirds.

(3) When such a half sister, or two or more, exists with X's sole full sister, then the half sister(s) (A: jointly, if more than one) receives one-sixth, which, with the half that goes to the full sister, makes two-thirds.

L6.12 X's full sister(s) is universal heir through X's daughter(s) (def: L10.4). If X has no full sisters, X's half sisters by the same father are the estate's universal heirs through X's daughter(s) (L10.4).

An example of the former is when the heirs are X's daughter and full sister. The daughter receives one-half (dis: L6.7(1)), and the sister receives the rest (A: as universal heir):

		shares: 2
daughter	1/2	1
full sister	universal heir	1

Another example is when there are X's two daughters, a full sister, and a paternal half sister, in which case the two daughters jointly receive two-thirds (dis: L6.7(2)), and the full sister receives the rest (A: as universal heir), while the

L6.12 والأخواتُ الشقيقاتُ مَعَ البنات عصبةٌ. فإنْ فُقِدْنَ (أي الأخوات الشقيقات) فالأخواتُ مِنَ الأب [(يقمن مقامهن في التعصيب)] مثالُهُ بنتٌ وأختٌ: للبنتِ النصفُ والباقي للأختِ؛ بنتانِ وأختٌ شقيقةٌ وأختٌ لأبٍ: للبنتين الثلثان والباقي للشقيقة ولا شيءَ للأخرى

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paternal half sister's share is eliminated (A: by the full sister's universal heirship):

		shares:	3
2 daughters	2/3		2
full sister	universal heir		1
half sister	eliminated		0

[(ح: أي للأخت لأب)].

L6.13 (N: summary of X's grandfather's (father's father's) share:
—His share is eliminated if X's father exists.
—1/6 if X has an inheriting male descendant.
—He is universal heir in the absence of both X's father and any inheriting male descendant.
—If X's brother(s) or sister(s) exists, then:

(1) when there is no other heir who has an obligatory share coming, then the grandfather receives whichever of the following two alternatives yields the maximum:

— 1/3 of the estate;

— or dividing the estate with X's brother(s) or sister(s) as if he were one of them, the male receiving twice the share of the female. If only X's sister(s) exists, then she becomes co-universal heir (def: L10.3) with him;

(2) but when there are one or more other heirs who have an obligatory share coming besides the brother(s) or sister(s), then the grandfather receives whichever of the following three alternatives yields the maximum:

—1/6 of the estate;

—1/3 of the remainder after the (non-brother/sister) heir(s) receives their share;

—or dividing the estate with X's brother(s) or sister(s) as if he were one of them, the male receiving twice the share of the female. If only X's sister(s) exists, then she becomes co-universal heir (L10.3) with him.)

As for the grandfather, sometimes X's brothers or sisters exist with him and sometimes they do not.

L6.13 (ح: وفرض الجد بشكل مختصر:
- يحرم مع الأب.
- ١/٦ مع فرع وارث ذكر.
- عصبة مع عدم الأب وفرع وارث ذكر.
- وإذا كان معه إخوة وأخوات:
(١) فإن لم يكن صاحب فرض فللجد الأوفر من شيئين:
أ: الثلث.
ب: المقاسمة مع الإخوة والأخوات كواحد منهم للذكر كالأنثيين ويعصّب الأخوات.
(٢) وإنّ كان هنالك صاحب فرض فللجد الأوفر من ثلاثة أشياء:
أ. ١/٦.
ب: ١/٣ الباقي بعد حصة صاحب الفرض.
ج: المقاسمة مع الإخوة والأخوات كما تقدم ويعصّب الأخوات).
وأمّا الجدُ فتارةً يكونُ معَهُ إخوةٌ وأخواتٌ وتارةً لا. فإنْ لمْ يكونوا معَهُ فلَهُ

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When they do not, then the grandfather receives one-sixth of the estate if X's son or son's son (O: or X's daughters or son's daughters) exist (N: but in such a case he takes the sixth plus the rest as universal heir); while the grandfather is the universal heir (def: L10.5) in the absence of X's son or son's son (N: or daughter or son's daughter).

When X's (full or paternal half) brothers or sisters exist, then sometimes there are other inheriting heirs (dis: L6.15) and sometimes not (L6.14).

السدسُ مَعَ الابن أو ابن الابن (ومثل الذكر في ذلك الأنثى مع البنت وبنت الابن (ح : ولكنه يأخذ الباقي تعصيباً)). ومَعَ عدمهما (أي الابن وابن الابن) هوَ عصبةٌ كما سيأتي. وإنْ كانَ معهُ إخوةٌ وأخواتٌ أشقاءُ أوْ لأبٍ فتارةً يكونُ معهُ ذو فرضٍ وتارةً لا.

L6.14 When (besides X's brother(s) or sister(s)) the grandfather's cosurvivors do not include other inheriting heirs, the grandfather divides the estate with the brothers (A: and sisters) as if he were one of them, and (if there are only sisters) is co-universal heir (def: L10.3) with the sisters.

But such a division is only effected when it does not result in less than one-third of the estate going to the grandfather. If it would result in less than a third for him, then his obligatory share is one-third of the estate, and the brothers or sisters divide the rest between them, the males receiving the share of two females. This is illustrated by the following examples (A: in each of which the grandfather receives at least a third):

L6.14 فإنْ لمْ يَكُنْ مَعَهُمْ ذو فرضٍ قاسم الجدُّ الإخوةَ وعصَّبَ إناثَهُمْ ما لمْ ينقُصْ ما يَخُصُّهُ بالمقاسمةِ عنْ ثلثِ جميعِ المالِ. فإنْ نقصَ فإنَّهُ يُفْرَضُ لهُ الثلثُ ويُجْعَلُ الباقي للإخوةِ والأخواتِ للذكرِ مثلُ حظِّ الأنثيين مثالُهُ:

(1) X's grandfather and one sister:

(١) جدٌّ وأختٌ.

	shares: 3
grandfather	2
sister	1

(2) grandfather and two sisters:

(٢) أوْ أختين.

	shares: 4
grandfather	2
sister	1
sister	1

(3) grandfather and three sisters:

(٣) أوْ ثلاثُ.

	shares: 5
grandfather	2
sister	1
sister	1
sister	1

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(4) grandfather and four sisters:

	shares: 6
grandfather	2
sister	1
sister	1
sister	1
sister	1

(٤) أوْ أربعُ.

(5) grandfather and one brother:

	shares: 2
grandfather	1
brother	1

(٥) أوْ جدٌ وأخٌ.

(6) grandfather and two brothers:

	shares: 3
grandfather	1
brother	1
brother	1

(٦) أوْ أخوانِ.

(7) grandfather, brother, and sister:

	shares: 5
grandfather	2
brother	2
sister	1

(٧) أوْ أخٌ وأختٌ.

(8) grandfather, brother, and two sisters:

	shares: 6
grandfather	2
brother	2
sister	1
sister	1

(٨) أوْ أخٌ وأختانِ.

In each of the above examples, the grandfather divides the estate with them, the male receiving the share of two females.

فَيُقاسِمُ في هذهِ الصورِ للذكرِ مثلَ حظِّ الأنثيينِ.

L6.15 When (besides X's brothers or sisters) the grandfather's cosurvivors include another inheriting heir, then the heir is given his share, and the grandfather receives the maximal amount of three possibilities:

(a) division (A: meaning to divide it with the brothers or sisters as in the above examples);

(b) a third of the remainder (A: taking a third of what remains after the (non-brother/sister) heir has taken his share);

L6.15 وإنْ كانَ مَعَهُ ذُوفرضٍ فُرِضَ لِذي الفرضِ فرضُهُ ثُمَّ يُعْطَى الجدُّ مِنَ الباقي الأوفرَ لَهُ مِنْ ثلاثةِ أشياءَ إمَّا المقاسمةُ أو ثلثُ ما يَبْقَى أوْ سدسُ

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(c) or one-sixth of the estate (A: as the estate stands before the above-mentioned heir has received his share).

جميع المال .

This ruling may be illustrated by (n: the following four examples):

مثالُهُ :

(1) X's husband, grandfather, and brother, where division is better for the grandfather. (n: To show why division ((a) above) is better, we may compare the three possibilities ((a), (b), and (c)) for this example:

(١) زوجٌ وجدٌ وأخٌ : المقاسمةُ خيرٌ لهُ .

(a) division:

		shares: 4
husband	1/2 (dis: L6.3(1))	2
grandfather	division	1
brother	division	1

(b) third of remainder (after the husband's share):

		shares: 6
husband	1/2	3
grandfather	1/3 remainder	1
brother	universal	2

(c) sixth of estate:

		shares: 6
husband	1/2	3
grandfather	1/6 estate	1
brother	universal	2

The comparison reveals that division, giving the grandfather 1/4, is better than the other alternatives, which only give him 1/6, and so division is the alternative that must be implemented.)

(2) X's two daughters, two brothers, and grandfather, where a sixth of the estate is better for him. (n: Comparison:

(٢) بنتانِ وأخوانِ وجدٌ : سدسُ جميعِ المالِ خيرٌ لهُ .

(a) division:

		shares: 9
daughter	2/3 (dis: L6.7(2))	3
daughter	2/3 (dis: L6.7(2))	3
grandfather	division	1
brother	division	1
brother	division	1

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(b) third of remainder (after the daughters' share):

		shares: 9
daughter	2/3	3
daughter		3
grandfather	1/3 remainder	1
brother	universal	1
brother		1

(c) sixth of estate:

		shares: 12
daughter	2/3	4
daughter		4
grandfather	1/6 estate	2
brother	universal	1
brother		1

The comparison reveals that a sixth of the estate is better than the other alternatives, which only give him 1/9, and so the former is the alternative that must be implemented.)

(٣) زوجةٌ وثلاثةُ إخوةٍ وجدٌّ: ثلثُ الباقي خيرٌ لهُ.

(3) X's wife, three brothers, and grandfather, where a third of the remainder is better for him. (n: Comparison:

(a) division:

		shares: 16
wife	1/4 (dis: L6.4(1))	4
grandfather	division	3
brother		3
brother		3
brother		3

(b) third of remainder (after the wife's share):

		shares: 12
wife	1/4	3
grandfather	1/3 remainder	3
brother	universal	2
brother		2
brother		2

(c) sixth of estate:

		shares: 36
wife	1/4	9
grandfather	1/6 estate	6
brother	universal	7
brother		7
brother		7

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The comparison reveals that a third of the remainder, which gives the grandfather 1/4, is better for him than division with the brothers (which gives him 3/16), or a sixth of the estate, so he must receive a third of the remainder.)

(٤) بنتان وأمّ وجدٌ وإخوةٌ: للبنتين الثلثان وللأمّ السدسُ وللجدّ السدسُ وتَسْقُطُ الإخوةُ.

(4) X's two daughters, mother, grandfather, and brothers, where a sixth of the estate is better for him. (n; Comparision:

(a) division:

		shares: 6
daughter		2
daughter	2/3 (dis: L6.7(2))	2
mother	1/6 (dis: L6.6(2))	1
grandfather / brothers	division	1

(b) third of remainder (after the shares of the daughters and mother):

		shares: 18
daughter		6
daughter	2/3	6
mother	1/6	3
grandfather	1/3 remainder	1
brothers	universal	2

(c) sixth of estate:

		shares: 6
daughter		2
daughter	2/3	2
mother	1/6	1
grandfather	1/6	1

(In this case, there is no one who can eliminate the shares of the inheriting heirs above, who have used up the estate so that there is nothing left for the universal heir (the brothers) to inherit (dis: L10.5):)

brothers	eliminated	0

The comparison shows that a sixth of the estate is better for the grandfather than a third of the remainder, which would give him 1/16, or division with the brothers, which would give him 1/12 or less, and so he must receive a sixth of the estate.)

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L6.16 If both X's brothers and half brothers from the same father exist with the grandfather, the brothers add the number of the half brothers' shares with their own shares in calculating their own versus the grandfather's, but then the brothers receive both their own shares and the half brothers' shares. (A: The latter are eliminated (dis: L7.3) by the brothers, but are initially reckoned in as a dispensation for the brothers.)

This may by illustrated by the following example, in which there is X's grandfather, brother, and half brother from the same father.

(initial division)		shares: 3
grandfather	division	1
brother		1
half brother		1

but then, because the brother eliminates the half brother's share,

		shares: 3
grandfather		1
brother		2
half brother	eliminated	0

and this is the actual division.

In a second, similar case, if there is a sister, half brother from the same father, and grandfather, then (A: the half brother's share is reckoned with the sister's share versus that of the grandfather, and) her portion of the estate is brought up to one-half (A: which is the maximum she may receive, as at L6.10(1)) from the (n: additive) amount, and the rest goes to the half brother (A: since the grandfather already has his share, and she may receive no more than her obligatory share of one-half). (n: To illustrate, first we make a plain division, the males receiving the share of two females:

		shares: 5
grandfather	division	2
sister		1
half brother		2

Then, as in the previous case, we give the half brother's share to the sister, since there is none to eliminate her full share of one-half (dis: L6.10(1)).

L.6.16 وإن اجتمع معه الإخوة الأشقاء والإخوة للأب فإن الأشقاء عند المقاسمة يعدون على الجد الإخوة من الأب ثم يأخذون نصيبهم. مثاله جد وأخ شقيق وأخ لأب: للجد الثلث والثلثان للأخ الشقيق: الثلث الذي خصه بالقسمة والثلث الذي هو نصيب الأخ من الأب لأن الشقيق يحجبه فيعود نفعه إليه.

فإن كان الشقيق أختا فردة كمل لها الأخ من الأب النصف والباقي له.

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		shares:	5
grandfather			2
sister			3
half brother			0

But since this gives the sister more than her maximal share of one-half, the surplus is returned to the half brother, and this is the final division. Here, for convenient redivision, we multiply the case's shares by two:

(2 × 5 =)		shares:	10
grandfather			4
sister			5
half brother			1

which is the actual division.)

L6.17 When there is a sister (O: full sister or half sister from the same father) and grandfather, the sister does not normally receive a particular obligatory share (O: since she is co-universal heir (def: L10.3) with the grandfather), except in the following case (Ar. al-akdariyya, lit. "the murkiest") in which there is X's husband, mother, grandfather, and sister.

		shares:	6
husband	1/2 (dis: L6.3(1))		3
mother	1/3 (dis: L6.6(1))		2
grandfather	1/6 (dis: L6.15(c))		1

But at this point, the estate has been used up, despite the fact that the sister deserves her share of one-half, and no one can eliminate it:

sister	1/2 (dis: L6.10(1))	3

so we redivide the estate by adding the three shares that the sister deserves to the initial division's six shares, which become nine (A: this procedure being an *adjustment* ('awl, def: L8.1) for not being able to give everyone full shares, one which proportionately distributes the deficit to all recipients).

(6 + 3 =)		shares:	9
husband			3
mother			2
grandfather			1
sister			3

L6.17 ولا يُفْرَضُ للأخت ([الغير أم] وهي الأخت الشقيقة والأخت للأب) مَعَ الجدِّ (وإنما لم يفرض لها معه لأنه يعصبها) إلا في الأكدرية وهي زوجٌ وأمٌّ وجدٌّ وأختٌ شقيقةٌ فللزوجِ النصفُ وللأمِّ الثلثُ وللجدِّ السدسُ استُغْرِقَ المالُ وليس هنا مَنْ يَحْجُبُ الأختَ عن فرضِها فتَعُولُ المسألةُ بنصيبِ الأختِ فتُقْسَمُ مِنْ تسعةٍ للزوجةِ ثلاثةٌ مِنَ التسعةِ وللأمِّ اثنانِ يَبْقى أربعةٌ وهي نصيبُ الأختِ والجدِّ فتُجْمَعُ وتُقْسَمُ بينَها وبينَهُ

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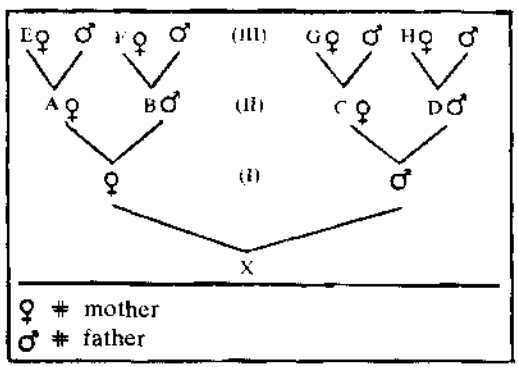
But this results in the grandfather receiving less than if he were to divide the remaining estate with the sister (n: which is impermissible because of ruling L6.15), and so the grandfather and sister add their shares to together (equalling four) and divide them, the male receiving the portion of two females. (n: Here, for convenient redivision, we multiply the case's shares by three:

(3 × 9 =)	shares:	27
husband		9
mother		6
grandfather		8
sister	division	4

and this is the actual division.)

للذكر مثلُ حظِّ الأنثيين.

L6.18 (N: A summary of the share of X's grandmother (whether she is X's father's mother or mother's mother, or, if both exist, they share the portion):
—1/6 if X's mother does not exist.
—Her share is eliminated if X's mother exists.
—Her share is eliminated by the existence of X's father if X is descended from her through the father.)



(1) X's grandmother (or great-grandmother) gets one-sixth of the estate when:
—she is A, E, and so on, up that line (n: on the chart above);
—she is C, G, and so on, up that line;
—or when she is H, and so on, up that line.

L6.18 (ح: وفرض الجدة (أي أم الأب أو أم الأم، وإن كانتا معاً فالحصة لهما) بشكل مختصر:
- ١/٦ مع عدم الأم.
- تحرم مع الأم.
- تحرم مع الأب إن كانت من جهته).
وأمّا الجدة فإنْ كانَتْ أمّ الأمّ وأمّ أمّ الأمّ وهكذا أوْ أمّ الأبِ أو أمّ أمّ الأب وهكذا أوْ أمّ أبي الأب وهكذا فلهَا السدسُ. وإن

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(2) If there are two grandmothers/great-grandmothers on the same level (A: level II, for example), they jointly get one-sixth to share between them, such as when both C and A exist, or when both G and H exist.

(3) If one of two surviving grandmothers/great-grandmothers is closer (A: on a closer level) to X, then:

(a) if the closer of the two is on X's mother's side (n: the left of the chart) then she eliminates the share of the farther of the two. For example, the existence of A eliminates G's share;

(b) but if the closer of the two is on the father's side (n: the right of the chart), she does not eliminate the share of the one on the mother's side who is farther from X. Rather, both jointly receive the sixth to divide between them. For example, C does not eliminate E.

اجْتَمَعَتْ جدتانِ في درجةٍ فلهُمَا السدسُ مثلَ أمِّ أبٍ وأمِّ أمٍّ أوْ أمِّ أمِّ أبٍ وأمِّ أبي أبٍ.
وإنْ كانَتْ إحداهُمَا أقربَ فإنْ كانَتِ القربى مِنْ جهةِ الأمِّ أسْقَطَتِ البُعْدى مثلُ أمِّ أمٍّ وأمِّ أمِّ أبٍ وإنْ كانَتْ مِنْ جهةِ الأبِ لمْ تُسْقِطِ البُعْدى بلْ تشْتَرِكانِ في السدسِ مثلَ أمِّ أبٍ وأمِّ أمِّ أمٍّ.

L6.19 As for great-grandmother F, she does not inherit, as she is an extended family member who may not inherit (A: being related to X through B, who may not inherit (dis: L4.5(7,10))).

L6.19 وأمّا الجدةُ التي هِيَ أمُّ أبي الأمِّ فلا ترِثُ بلْ هِيَ مِنْ ذَوِي الأرحامِ [كَمَا سَبَقَ].

L6.20 (N: A summary of the share of X's half brother or sister from the same mother:
—1/6 if there is just one of them, when none of X's inheriting male ancestors (A: father on up) exists, nor any inheriting descendants.
—1/3 if there are two or more of them, to share between them, but which is divided so that males and females receive equal shares.
—Their share is eliminated by the existence of any of X's inheriting male ancestors or inheriting descendants.)

(1) X's half brother or sister from the same mother receives one-sixth if alone.

(2) When there are two or more of them, they jointly receive one-third. This amount is divided with equal shares going to male and female alike.

L6.20 (ح: وفرض الأخ لأم أو الأخت لأم بشكل مختصر:
- ١/٦ للواحد إذا لم يكن معه أصل وارث ذكر ولا فرع وارث.
- ١/٣ للاثنين فأكثر من الإخوة لأم (للذكر كالأنثى).
- يحرم بأصل ذكر وارث وفرع وارث).
وأمّا الإخوةُ والأخواتُ مِنَ الأمِّ فللواحدِ منهُمُ السدسُ وللاثنينِ فصاعداً الثلثُ ذكورُهُمْ وإناثُهُمْ فيهِ سواءٌ.

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L.6.21 To summarize all of the foregoing:

(1) One-half of the estate is the obligatory share of five types of heir:
—X's husband, under certain circumstances (dis: L6.3(1));
—X's (sole) daughter (L6.7(1));
—X's son's daughter (L6.9(N:));
—X's (sole) full sister (L6.10(1));
—and X's (sole) half sister from the same father (L6.11(1)).

(2) One-fourth of the estate is the obligatory share of two types of heir:
—X's husband, under certain circumstances (L6.3(2));
—and X's wife (L6.4(1)).

(3) One-eighth of the estate is the obligatory share of X's wife, under certain circumstances (L6.4(2)).

(4) Two-thirds of the estate is the obligatory share of four types of heir:
—two or more of X's daughters (L6.7(2));
—two or more of X's son's daughters (L6.9(N:));
—two or more of X's full sisters (L6.10(2));
—and two or more or X's half sisters from the same father (L6.11(2)).

(5) One-third of the estate is the obligatory share of:
—X's mother, under certain circumstances (L6.6(1));
—two or more of X's half brothers or sisters from the same mother (L6.20(2));
—and it may be the share of the grandfather when X's brothers exist (L6.14, second par.).

(6) One-sixth of the estate is the obligatory share of seven types of heir:
—X's father (L6.5(1));
—X's grandfather (L6.13(N:) and L6.15(c));
—X's mother (L6.6(N:));
—X's grandmother (L6.18(1));
—one or more daughters of X's son when X's daughter also exists (L.6.9);
—one or more of X's half sisters from the same

L.6.21 فتلخّص مِنْ ذلكَ أنّ النصف فرضُ خمسة:

الزوجُ في حالةِ والبنتُ وبنتُ الابنِ والأختُ الشقيقةُ أوْ لأبٍ. والربعُ فرضُ اثنينِ الزوجُ في حالةٍ والزوجةُ في حالةٍ. والثمنُ فرضُ للزوجةِ في حالةٍ. والثلثانِ فرضُ أربعةِ البنتانِ فصاعداً أوْ بنتا الابنِ فصاعداً والأختانِ فصاعداً الشقيقتانِ أوْ للأبِ. والثلثُ فرضُ اثنينِ الأمُّ في حالةٍ واثنانِ فأكثرُ مِنْ ولدِ الأمِّ وقدْ يُفْرَضُ للجدِّ مَعَ الإخوةِ. والسدسُ فرضُ سبعةِ الأبُ في حالةٍ والجدُّ في حالةٍ والأمُّ في حالةٍ والجدةُ في حالةٍ ولبنتِ الابنِ فصاعداً مَعَ بنتِ الصلبِ ولأختٍ أوْ أخواتٍ لأبٍ مَعَ

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father when X's sole full sister also exists (L6.11(3));
—and X's sole half brother from the same mother (L6.20(1)).

شقيقة فردة ولواحد من الإخوة للأم.

L6.22 (N: A summary of the other heirs' shares:

(1) X's son is universal heir.

(2) X's son's son:
—is eliminated by X's son;
—and is universal heir in the absence of X's son.

(3) X's full brother:
—is eliminated by the existence of an inheriting male descendant;
—is eliminated by X's father;
—and is universal heir in the absence of both an inheriting male descendant and father.

(4) X's half brother by the same father:
—is eliminated by any inheriting male descendant;
—is eliminated by X's father;
—is eliminated by X's full brother;
—and is universal heir in the absence of all these.

(5) The son of X's full brother is the same as X's full brother ((3) above), but eliminated by him.

(6) The son of X's half brother by the same father is the same as (5) above, but eliminated by him.

(7) The brother of X's father:
—is eliminated by any of the following: X's father, grandfather, brothers, and their sons;
—and is universal heir in the absence of all of these.

(8) The son of the brother of X's father is the same as (7) above, but eliminated by him.)

L6.22 (ح: وفروض الوارثين الآخرين بشكل مختصر:
الابن:
- عصبة.
ابن الابن:
- يحرم مع الابن.
- عصبة مع عدم الابن.
الأخ الشقيق:
- يحرم بالفرع الوارث الذكر.
- يحرم بالأب.
- عصبة مع عدم فرع وارث ذكر وأب.
الأخ لأب:
- يحرم بالفرع الوارث الذكر.
- يحرم بالأب.
- يحرم بالشقيق.
- عصبة مع عدم المذكورين أعلاه.
ابن الأخ الشقيق:
- كالأخ الشقيق لكن يحرم معه.
ابن الأخ لأب:
- كابن الأخ الشقيق لكن يحرم معه.
العم:
- يحرم بالأب والجد والإخوة وأبنائهم.
- عصبة مع عدم المذكورين.
ابن العم:
- كالعم لكن يحرم معه).

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L7.0 THOSE WHOSE SHARES ARE ELIMINATED BY OTHERS (HAJB)	L7.0 الحجب
L7.1 The share of X's half brother from the same mother is eliminated by the existence of four types of heir: —X's inheriting descendant (male or female); —the descendant (male or female) of X's son; —X's father; —or X's grandfather.	L7.1 لا يَرِثُ الأخُ مِنَ الأمِّ مَعَ أربعةٍ: الولدُ وولدُ الابنِ ذكراً كانَ أوْ أنثى والأبُ والجدُّ.
L7.2 The share of X's full brother is eliminated by three: —X's son; —X's son's son; —or X's father.	L7.2 ولا يَرِثُ الأخُ الشقيقُ مَعَ ثلاثةٍ: الابنُ وابنُ الابنِ والأبُ.
L7.3 The share of X's half brother from the same father is eliminated by four: —X's son; —X's son's son; —X's father; —or X's full brother.	L7.3 ولا يَرِثُ الأخُ مِنَ الأبِ مَعَ أربعةٍ: هؤلاءِ الثلاثةُ والأخُ الشقيقُ.
L7.4 The share of the son of X's son is eliminated by X's son, and likewise the son of the son of X's son, and on down: each is eliminated by the existence of a son closer to X (A: meaning fewer generations from X, even if the one who is closer is from a different one of X's sons).	L7.4 ولا يَرِثُ ابنُ الابنِ فسافلاً مَعَ الابنِ ولا مَعَ ابنِ ابنٍ أقربَ منهُ.
L7.5 X's grandmother or great-grandmother does not inherit if X's mother exists.	L7.5 ولا الجداتُ كلُّهنَّ مِنْ أيِّ جهةٍ كُنَّ مَعَ الأمِّ.
L7.6 Neither X's grandfather (A: i.e. father's father) nor grandmother or great-grandmother on the father's side may inherit when X's father exists.	L7.6 ولا الجدُّ والجدةُ التي مِنْ جهةِ الأبِ مَعَ الأبِ.
L7.7 When X's daughters receive a full two-thirds of the estate (dis: L6.7(2)), then the daughters of X's son do not inherit, unless they are	L7.7 وإذا استكملت البناتُ الثلثين لمْ ترِثْ بناتُ الابنِ إلاّ أنْ يكونَ في

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made co-universal heirs (def: L10.3) by the existence of a male who is at the same distance (A: number of generations) from X as they are, or by one who is farther from X than they. When they are co-universal heirs, the male receives the share of two females.

For example, if there are two daughters and a daughter of X's son, the two daughters take two-thirds and the son's daughter receives nothing. But if there also exists with her X's son's son, or son's son's son, then she (A: as co-universal heir (def: L10.3) with him) gets the rest of the estate with him, the male receiving the share of two females (N: and such a male is nicknamed her *blessed brother* (akh mubarak)).

درجتهنّ أوْ أسفل منهنّ ذكر يُعصِّبُهُنّ للذكر مثلُ حظّ الأنثيين. مثالُهُ بنتانِ وبنتُ ابنٍ: للبنتين الثلثان ولا شيءَ لبنتِ الابن. فلوْ كانَ معهـا ابنُ ابنٍ أو ابنُ ابنِ ابنٍ كانَ الباقي لها ولهُ، للذكرِ مثلُ حظّ الأنثيين.

L7.8 Similarly, when X's full sisters receive two-thirds of the estate (dis: L6.10(2)), then X's half sisters from the same father do not inherit, unless they have a brother to make them co-universal heirs, the male receiving the share of two females.

L7.8 وإذا استكملتِ الأخواتُ الشقيقاتُ الثلثين لمْ ترثِ الأخواتُ مِنَ الأبِ إلاّ أنْ يكونَ معهنّ أخٌ لهنّ فيُعصِّبُهنّ للذكرِ مثلُ حظّ الأنثيين.

L7.9 Someone who does not inherit to begin with (N: due to the existence of a preventive (def: L5)) cannot eliminate the share of anyone (A: such a person being as if nonexistent in figuring the estate division).

L7.9 ومنْ لا يرثُ أصلاً لا يَحْجُبُ أحداً.

L7.10 Someone who may inherit, but whose share has been eliminated by another, can not eliminate the share of anyone, although such a person's existence may diminish the share of someone, as when there exist X's half brothers from the same mother, and X's father and mother. In such a case, the half brothers do not inherit (dis: L6.20(N:)), but their existence diminishes the mother's share from a third to a sixth (dis: L6.6(2)).

L7.10 ومنْ يرثُ ولكنهُ محجوبٌ لا يَحْجُبُ أيضاً حَجْبَ حرمانٍ لكنهُ قدْ يَحْجُبُ حجبَ تنقيصٍ مثلَ الإخوةِ مِنَ الأمّ مع الأبِ والأمّ لا يرثُونَ ويَحْجُبُونَ الأمّ مِنَ الثلثِ إلى السدس.

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L8.0 ADJUSTMENT WHEN THE SHARES EXCEED THE TOTAL ESTATE ('AWL)

L8.0 العول

L8.1 (A: *Adjustment* ('awl) is used in cases where the estate is not enough to give everyone their full shares, and proportionately distributes the deficit to all the heirs in an equitable way.)

L8.2 Whenever the shares deserved by heirs exceed the number of available shares, the number of shares is additively increased to the number needed.

An example is the case (al-mubahala) in which there are X's husband, mother, and full sister:

	shares:	6
husband	1/2 (dis: L6.3(1))	3
sister	1/2 (dis: L6.10(1))	3

but at this point, the estate has been used up despite the fact that the mother deserves her share of one-third, and no one can eliminate it:

mother	1/3 (dis: L6.6(1))	2

so we redivide the estate by adding the mother's portion (n: two shares) as an adjustment:

(6 + 2 =)	shares:	8
husband		3
sister		3
mother		2

and this is the actual division. (n: L6.17 furnishes another example of adjustment.)

L8.2 ومتى زادت الفروض على السهام أعيلت بالجزء الزائد مثل مسألة المباهلة وهي زوج وأم وأخت شقيقة فللزوج النصف وللأخت النصف استغرق المال والأم لا تحجب فيفرض لها الثلث فتعال بفرض الأم فتنقسم من ثمانية للزوج ثلاثة وللأخت ثلاثة وللأم اثنان.

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L9.0 REDISTRIBUTION WHEN THE SHARES ARE LESS THAN THE ESTATE (RADD)

(n: This section has been moved here from its original place after L10.7 below.)

L9.0 الرد

(ت: قد نُقل هذا الباب هنا من مكانه الأصلي بعد ترتيب عصبات الولاء في باب العصبات).

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L9.1 If X has no (A: universal heir) relatives (def: L10.5), then (A: the remainder of) his estate goes to the Muslim common fund (bayt al-mal) as an inheritance to the Muslims, provided the Islamic ruler is just.

If the Islamic ruler is not just (A: or not existent), then it (A: the excess) is *redistributed* among the inheriting heirs in proportion to their relative shares, except for X's husband or wife, who may not receive any of the redistributed amount.

L9.1 فإذا لم يكن للميت أقارب [ولا ولاء عليه] انتقل ماله إلى بيت المال إرثاً للمسلمين إن كان السلطان عادلاً. فإن لم يكن عادلاً رُدّ على ذوي الفروض من غير الزوجين على قدر فروضهم [إن كان ثم ذو فرض].

L9.2 (N: Three illustrations of redistribution follow:

(1) X's sister and grandmother:

		shares:	6
sister	1/2	(dis: L6.10(1))	3
grandmother	1/6	(dis: L6.18(1))	1

But at this point, the obligatory shares are less than the estate, so we redistribute the excess estate in proportion to the heirs' respective shares by reducing the shares of the case to four, which is the number of the existing heirs' shares:

(3 + 1 =)	shares:	4
sister		3
grandmother		1

and this is the solution, and is how we redistribute in cases that require it, when there is neither a husband nor wife among the heirs. As for when there is a husband or wife, the examples below furnish illustrations of the division.

(2) X's wife, half brother from the same mother, and grandmother:

		shares:	12
wife	1/4	(dis: L6.4(1))	3
half brother	1/6	(dis: L6.20(1))	2
grandmother	1/6	(dis: L6.18(1))	2

But here, the obligatory shares are still less than the estate, in which there are five remaining shares:

excess	5

So, excluding the wife as mentioned above (L9.1 (end)), we divide the excess between the half brother and grandmother in proportion to their respective shares, namely two-to-two, which means a half-and-half division of the excess five shares. For convenient division of these five shares, we first multiply the case's total shares by two:

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(12 × 2 =)	shares:	24
wife		6
half brother		4
grandmother		4
excess		10

and then we divide the ten excess shares between the half brother and grandmother, while the wife gets only her original share (dis: L9.1 (end)):

	shares:	24
wife		6
half brother	(5 + 4 =)	9
grandmother	(5 + 4 =)	9

and this is the solution.

(3) X's wife, mother, and half brother from the same mother:

	shares:	12
wife	1/4 (dis: L6.4(1))	3
mother	1/3 (dis: L6.6(1))	4
half brother	1/6 (dis: L6.20(1))	2

But the obligatory shares are still less than the estate, in which there are three remaining shares:

excess	3

So, excluding the wife, as before, we divide the excess between the mother and half brother in proportion to their respective shares, namely four-to-two, which means a two-to-one division of the three excess shares:

	shares:	12
wife		3
mother	(2 + 4 =)	6
half brother	(1 + 2 =)	3

and this is the solution.)

*

L10.0 UNIVERSAL HEIR ('ASABA) | العصبات L10.0

L10.1 (A: A universal heir ('asaba) is someone who takes the remaining estate, if any, after heirs deserving obligatory shares have taken them. When there are no such heirs, the universal heir takes all. There are three types of universal heir:

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(1) universal heir by oneself ('asaba bi nafsihi);

(2) co-universal heir ('asaba bi ghayrihi);

(3) and universal heir through the existence of another ('asaba ma'a ghayrihi).)

(n: The following three definitional entries have been added to this section by the translator.)

UNIVERSAL HEIR BY ONESELF

العصبة بنفسه

L10.2 (Hasanayn Muhammad Makhluf:) The *universal heir by oneself* is X's male relative who is not related to X through a female, whether this be because:

(1) there is no one between him and X, as is the case with X's father or son;

(2) or whether because there is someone between him and X, but not a female, such as X's grandfather (the father of X's father), X's son's son, X's full brother, or X's half brother from the same father.

L10.2 (حسنين محمد مخلوف:) العاصب بنفسه: هو القريب الذكر الذي لا يدخل في نسبته إلى الميت أنثى بأن لم يكن بينه وبين الميت واسطة أصلاً كالأب والابن، أو كانت بينهما واسطة غير أنثى كالجد أبي الأب وابن الابن والأخ لأبوين أو لأب.

CO-UNIVERSAL HEIR

العصبة بغيره

L10.3 The *co-universal heir* is any female deserving an obligatory share who requires someone else in order to become a universal heir, and with whom she participates in this universal share.

It is a class confined to four types of women, those whose share if alone is one-half, and if there are more than one is two-thirds. They are:

(1) X's daughter;

(2) X's son's daughter;

(3) X's full sister;

(4) and X's half sister from the same father.

Whenever a male exists with one of these four who

L10.3 العصبة بغيره: كل أنثى صاحبة فرض احتاجت في عصوبتها إلى الغير وشاركته في تلك العصوبة. وتنحصر في أربع من النساء فرضهن النصف للواحدة والثلثان للأكثر من الواحدة وهن:

- البنت الصلبية.
- وبنت الابن.
- والأخت الشقيقة.
- والأخت لأب.
- فإذا وُجد مع كل واحدة منهن

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is universal heir by himself (def: L10.2), of the same generation as her and of the same strength (N: i.e. both are full or half siblings), she becomes co-universal heir with him and inherits by the universal share, not her obligatory share. They divide the universal share so the male receives the portion of two females.

عاصب بنفسه في درجتها وقوتها صارت عصبة به فترث معه بالتعصيب لا بالفرض، ويرثان معاً الذكر مثل حظ الأنثيين.

UNIVERSAL HEIR THROUGH THE EXISTENCE OF ANOTHER

العصبة مع غيره

L10.4 The *universal heir through the existence of another* is any female deserving an obligatory share who requires someone else to become a universal heir, but with whom she does not share this universal share.

These are only two people from among those who deserve obligatory shares:

(1) X's full sister;

(2) and X's half sister from the same father;

provided that X's brother, who would form a co-universal heir (def: L10.3) with them (A: in which case they would not be a *universal heir through another*) does not exist, and provided that either of the above two females exists with X's daughter(s) or son's daughter(s), and on down (A: these being the someone else needed to make them a universal heir through another) (*al-Mawarith fi al-shari'a al-Islamiyya* (y80), 99, 102, 103).

L10.4 العصبة مع غيره كل أنثى صاحبة فرض احتاجت في عصوبتها إلى الغير ولم يشاركها ذلك الغير في العصوبة.

وهما اثنتان فقط من أصحاب الفروض:

- الأخت الشقيقة.
- والأخت لأب.

إذا لم يكن مع الواحدة منهما أخ معصِّب، ووُجدت مع بنت صلبية أو أكثر، أو بنت ابن وإن نزل [محرّر من كتاب المواريث في الشريعة الإسلامية].

L10.5 The *universal heir* is a person who takes the whole estate if there is no other heir, or takes any of it that is in excess of the obligatory portions which are given to heirs, when they also exist. If there is nothing in excess of the heirs' obligatory shares, then the universal heir does not receive anything.

L10.5 والعصبةُ من يأخذُ جميعَ المالِ إذا انْفَرد أوْ ما يَفْضُلُ عنْ صاحبِ الفرضِ إذا اجْتَمعَ مَعَهُ. فإنْ لمْ يَفْضُلْ عنْ صاحبِ الفرضِ شيءٌ سَقَطَتِ العصباتُ.

L10.6 Their order (A: these being the *universal heirs by themselves* (def: L10.2)) in closeness to X (A: such that the existence of someone at the first of the list eliminates the universal heirship of anyone following him) is:

L10.6 وأقربُهُمُ الابنُ ثُمَّ ابنُ الابنِ

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(1) X's son;

(2) X's son's son;

(3) X's son's son's son, and on down, no matter how many generations;

(4) X's father;

(5) X's father's father;

(6) X's father's father's father, and on up, no matter how many generations;

(7) X's full brother;

(8) X's half brother from the same father;

(9) the son of X's full brother;

(10) the son of X's half brother from the same father;

(11) the brother of X's father;

(12) the son of the brother of X's father, this son's son, and on down;

(13) the brother of X's father's father;

(14) and then (13)'s son, this son's son, and on down.

وإنْ سَفَلَ ثمَّ الأبُ ثمَّ الجدُّ وإنْ عَلا والأخُ للأبوين ثمَّ للأب ثمَّ ابنُ الأخ للأبوين ثمَّ ابنُ الأخ للأب ثمَّ العمُّ ثمَّ ابنُه وإنْ سَفَلَ ثمَّ عمُّ الأب ثمَّ ابنُه وهكذا.

L10.7 [فإنْ لمْ يَكُنْ لَهُ عصباتُ نسبٍ فعصباتُ الولاءِ. فمَنْ عَتَقَ عليْهِ عبدٌ إمَّا بإعتاقٍ أوْ تدبيرٍ أوْ كتابةٍ أو استيلادٍ أوْ غيرِ ذلكَ فولاؤُهُ لهُ. فإذا مَاتَ هذا العتيقُ ولَيْسَ لهُ وارثٌ ذُو فرضٍ ولا عصبةٌ وَرِثَهُ المُعْتِقُ بالولاءِ. فإنْ كانَ المعتقُ ميتاً انْتقلَ الولاءُ إلى عصباتِهِ دونَ سائرِ الورثةِ يُقدَّمُ الأقربُ فالأقربُ على الترتيبِ المتقدِّمِ إلاَّ أنَّ الأخَ يُشارِكُ الجدَّ وهنا الأخُ مقدَّمٌ على الجدِّ. فإنْ لمْ يَكُنْ للمعتِقِ عصبةُ نسبٍ انْتقلَ إلى مُعْتِقِ المعتقِ ثُمَّ إلى عصبتِهِ وللمعتِقِ أيضاً الولاءُ على أولادِ العتيقِ فيُقَدَّمُ معتقُ الأبِ على معتقِ الأمِّ. فلَوْ تزوَّجَ عبدٌ بمعتقةٍ فأتَتْ بولدٍ فولاؤهُ لمعتقِ الأمِّ، فلوْ عَتَقَ أبوهُ بعدَ ذلكَ انْجَرَّ الولاءُ مِنْ معتقِ الأمِّ إلى معتقِ الأبِ. ولا تَرِثُ المرأةُ بالولاءِ إلاَّ مِنْ عتيقِها وأولادِهِ وعتقائِهِ].

L10.8 When there is no universal heir, and no heir inheriting an obligatory portion that the excess estate could be redistributed to (dis: L9.1), then the estate is divided between the extended family members (def: L4.5) such that each of them

L10.8 وإلا [(ت: أي وإن لم يكن للميت صاحبُ فرض ولا أقارب عصبة)] فيُصْرَفُ إلى ذوي الأرحامِ فيُقامُ كلُّ واحدٍ

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takes the place of the person through whom they are related to X. For example:

(1) X's daughter's child takes the share of X's daughter;

(2) X's sister's child takes the share of X's sister;

(3) X's brothers' daughters take the share of the brothers;

(4) the daughters of X's father's brother take the latter's share;

(5) X's mother's father takes her share;

(6) X's mother's brother or sister takes her share;

(7) and X's father's half brother or sister from the same mother takes the father's share.

منهُمْ مقامَ مَنْ يُدلي به فيُجْعَلُ ولدُ البناتِ والأخواتِ كأمهاتِهم وبناتُ الإخوةِ والأعمامِ كآبائِهم وأبو الأمِّ والخالُ والخالةُ كالأمِّ، والعمُّ للأمِّ والعمةُ كالأبِ.

L10.9 No universal heir may inherit (A: a universal share) when there is a universal heir who is closer to X than he is.

L10.9 ولا يرثُ أحدٌ بالتعصيبِ وثَمَّ أقربُ منهُ.

L10.10 No one constitutes a co-universal heir (def: L10.3) with his sister except:

(1) X's son (N: with X's daughter);

(2) X's son's son (N: with X's son's daughter);

(3) and X's brother (A: with X's sister).

Each of them constitutes a co-universal heir with his sister, the male receiving the portion of two females.

L10.10 ولا يُعَصِّبُ أحدٌ أختَهُ إلاَّ الابنُ وابنُ الابنِ والأخُ فإنهُمْ يُعَصِّبُونَ أخواتِهم للذكرِ مثلُ حظِّ الأنثيينِ.

L10.11 (N: In addition to being co-universal heir with X's son's daughter ((2) above),) X's son's son (N: or son's son's son, and on down) is (n: also) co-universal heir with the daughters of his father's brother who are of the same generation as he, and

L10.11 ويُعَصِّبُ ابنُ الابنِ مَنْ يُحاذيه

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those of his father's sisters and the daughters of his father's father's brother(s) who are above him (N: of a closer generation to X), provided they (A: those closer to X than he) have no obligatory shares coming. (N: Because if they do, then they take their share and are not co-universal heirs with him. This may be illustrated by the following example:

مِنْ بناتِ عمِّه ويُعَصِّبُ مَنْ فوقَهُ مِن عماتِه وبناتِ عمِّ أبيه إذا لَمْ يَكُنْ لَهُنَّ فرضٌ.

(1) X's husband, daughter, son's daughter, son's son's daughter, and son's son's son:

		shares: 12
husband	1/4 (dis: L6.3(2))	3
daughter	1/2 (dis: L6.7(1))	6
son's daughter	1/6 (dis: L6.9)	2
son's son's daughter son's son's son	universal	1

But if there were two of X's daughters in the above case, we would have to divide the estate as follows:

		shares: 12
husband		3
2 daughters	2/3 (dis: L6.7(2))	8

Here, the son's daughter does not have an obligatory share coming, since the two daughters have taken the full two-thirds, and so the son's daughter (dis: text above) is co-universal heir with the son's son's daughter and son's son's son:

son's daughter son's son's daughter son's son's son	universal	1

L10.12 A person who is a universal heir does not participate in the share of someone who has an obligatory share coming, except in the following case (al-musharraka):

L10.12 ولا يُشارِكُ عاصبٌ ذا فرضٍ إلّا المشركةَ وهي: زوجٌ وأمٌّ أو جدةٌ واثنانِ [فأكثرُ] من الإخوةِ للأمِّ وأخٌ شقيقٌ [فأكثرُ،] للزوجِ النصفُ وللأمِّ [أو الجدةِ] السدسُ وللإخوةِ للأمِّ الثلثُ

Given X's husband, mother (or grandmother, for the result is the same), two half brothers from the same mother, and a full brother:

		shares: 6
husband	1/2 (dis: L6.3(1))	3
mother	1/6 (dis: L6.6(2))	1
2 half brothers	1/3 (dis: L6.20(2))	2

in which case the estate has been used up and nothing remains for the brother:

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full brother	universal	0

يشاركهم فيه الشقيق.

(N: But the full brother is closer to X than the half brothers, and should not be eliminated by their share, so an exception is made and the half brothers and full brother are made co-universal heirs:)

		shares: 6
husband		3
mother		1
2 half brothers	universal	2
full brother		

(N: It is important to remember in such cases that the universal share is divided so the males and females receive *equal* shares (dis: L6.20(2)).)

L10.13 When a person both deserves an obligatory share and is a universal heir, then he inherits both of these.

An example is when the son of X's father's brother (A: who is universal heir (dis: L6.22(8))) is also X's husband (A: deserving a husband's share (dis: L6.3)); or when the son of X's father's brother is also X's half brother from the same mother.

L10.13 ومتى وُجِدَ في شخصٍ جهتا فرضٍ وتعصيبٍ وَرِثَ بهما كابنِ عمٍّ هو زوجٌ أو ابنِ عمٍّ هو أخٌ لأمٍّ.

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BOOK M

MARRIAGE

كتاب النكاح

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m1.0 WHO SHOULD MARRY

(O: The legal basis for marriage, prior to scholarly consensus (ijma'), is such Koranic

m1.0 من يندب له النكاح

(والأصل فيه قبل الإجماع آيات كقوله

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verses as,

"Marry such women as seem good to you" (Koran 4:3),

and hadiths such as,

"Marry one another, that you may increase,"

which was related by Shafi'i.)

تعالى: ﴿فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ﴾ [النساء: ٣]، وأخبار كخبر: «تناكحوا تكثروا» رواه الشافعي).

m1.1 A man who needs to marry (O: because of desire for sexual intercourse) and has enough money (O: for the brides's marriage payment (mahr, def: m8), for clothing for the season of the year in which he marries, and the expenditures of one day) is recommended to do so (O: to protect his religion, no matter whether he is occupied with religious devotions or not). One who needs to marry but does not have enough to pay for these expenses is recommended not to marry, but rather to suppress his sexual desire by fasting (O: and if it is not suppressed by fasting, then he should marry, borrowing the money to pay the bride's marriage payment if she will not accept his owing it to her).

m1.1 مَنِ احْتَاجَ إلى النكاح (بتوقانه للوطء) مِنَ الرجال ووَجَدَ أهبةً (من مهر وكسوة فصل التمكين ونفقة يومه) نُدِبَ لَهُ (أي [لمن احتاج] تحصيناً لدينه سواء كان مشتغلاً بالعبادة أم لا).

ومَنِ احْتَاجَ وفَقَدَ الأهبةَ نُدِبَ تركُهُ، ويَكْسِرُ شهوتَهُ بالصوم (فإن لم ينكسر بالصوم يتزوج ويكلف اقتراض المهر إن لم ترض بذمته).

m1.2 It is offensive for someone who does not need marriage (O: being undesirous of it because of a physical defect or other reason) to marry when he does not have enough money to cover the expenses. Marriage is not offensive for a man who has enough money, even when there is something that might prevent him from doing so such as old age or a chronic illness, though it is superior for him to devote himself to worship instead. If he does not devote himself to worship (O: being occupied with enjoyments and not thinking of worship at all) then marriage is better (O: since someone whose lack of sexual desire is not due to a physical defect may later have such desire, as opposed to someone whose lack of desire is because of such a defect, to whom this will not happen).

m1.2 ومَنْ لَمْ يَحْتَجْ إلى النكاح (بأن كان غير تائق إليه لعلة أو غيرها) وفَقَدَ الأهبةَ كُرِهَ لَهُ.

ومَنْ وجَدَها (أي الأهبة) ووُجِدَ مانعٌ به مِنْ هرمٍ ومرضٍ دائمٍ لَمْ يُكْرَهْ لكن الاشتغالُ بالعبادةِ أفضلُ.

فإنْ لَمْ يَتَعَبَّدْ (بأن كان مشتغلاً باللذات ولم يلتفت إلى العبادة أصلاً) فالنكاحُ أفضلُ (لأن غير التائق لا لعلة ربما حصل له التوقان بعد ذلك، بخلاف غير التائق لعلة لا يحصل له ذلك).

m1.3 As for a woman, if she needs to marry, it is recommended for her to do so, though if she does

m1.3 وأمَّا المرأةُ فإن احْتاجَتْ إلى النكاح نُدِبَ لَها. وإلاَّ (بأن كانت نفسها

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not, (O: not feeling any sexual desire within herself, and she is engaged in worship,) then it is offensive for her to do so. (N: Though such a woman needs a husband or unmarriageable relative to travel and so forth (dis: m10.3).)

غير تائقة وهي مشتغلة بالعبادة) فيُكْرَهُ.

DESIRABLE CHARACTERISTICS IN A BRIDE

الصفات المحمودة شرعاً في المخطوبة

m1.4 It is recommended for a man to marry a virgin (O: unless there is a reason not to, such as sexual incapacity or needing someone to take care of his children) (A: though it is permissible to marry a nonvirgin even if she has not previously married (dis: p12.1(3(n:)))) who is fertile (O: which in a virgin is inferable from her relatives), attractive, intelligent, religious, of a good family, and not a close relative. (O: In *Sharh al-Minhaj*, Ibn Hajar notes that when one must choose between the above characteristics, the order of preference should be:

(1) religiousness, which takes precedence over anything else;

(2) intelligence;

(3) a good character and disposition;

(4) fertility;

(5) a good family;

(6) virginity;

(7) beauty;

(8) and then that which fulfills some other relevant interest.)

m1.4 ويُنْدَبُ أنْ يَتَزَوَّجَ بِكْرٍ (إن لم يقم به عذر [كضعف الآلة أو] احتياجه لمن يقوم على عياله) ولودٍ (ويعرف كون البكر ولوداً بأقاربها) جميلةٍ عاقلةٍ دَيِّنَةٍ نسيبةٍ (أي طيبة النسب) لَيْسَتْ ذاتَ قرابةٍ قريبةٍ (قال الشيخ ابن حجر في شرح المنهاج ولو تعارضت عليه تلك الصفات [فالذي يظهر أنه] تقدم ذات الدين مطلقاً ثم العقل وحسن الخلق ثم الولادة ثم النسب ثم البكارة ثم الجمال ثم ما المصلحة فيه).

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m2.0 ENGAGEMENT AND LOOKING AT THE OPPOSITE SEX

m2.0 آداب الخطبة وأحكام النظر إلى غير محرم

SUNNAS OF ENGAGEMENT

مندوبات تتعلق بالنكاح

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m2.1 (O: It is recommended for a guardian to offer his marriageable female charges in marriage to righteous men. It is sunna:

(1) to intend by one's marriage to fulfill the sunna and protect one's religion, since one is only rewarded for it if one intends some form of obedience to Allah, such as remaining chaste or having a pious son;

(2) for the marriage contract to be made in a mosque;

(3) and for it to take place on Friday, at the first of the day, and in the month of Shawwal.)

m2.1 (يندب للولي عرض موليته على ذوي الصلاح. ويسن أن ينوي بالنكاح السنة وصون دينه وإنما يثاب عليه إن قصد به طاعة من نحو عفة وولد صالح وأن يكون العقد في المسجد ويوم الجمعة وأول النهار وفي شوال).

LOOKING AT ONE'S PROSPECTIVE BRIDE

حكم النظر إلى المخطوبة

m2.2 The sunna when one wants to marry a woman is to look at her face and hands (O: as the face indicates her beauty, and the hands her robustness of body. Tirmidhi reports from al-Mughira that when he got engaged to a woman, the Prophet (Allah bless him and give him peace) said,

"Look at her, for it is likelier to last between you,"

meaning that love is likelier to last, and tenderness) before getting engaged to her, even if the woman does not give her permission to do so (O: since the Lawgiver's permission is sufficient). Such a person is entitled to repeat looking at her (A: as many times as he wishes) (O: when he needs to make sure of how she looks, so he does not come to have regrets after getting married. And she is entitled to do the same) but he may not look at other than her face and hands. (O: If unable to go see her, he should send a reliable woman to go see her for him, as such a woman would be likely to notice more than he, and she may describe her to him, this being an exception to the unlawfulness of describing a woman to a man who is not one of her unmarriageable kin.)

m2.2 فإذا عزم على نكاح امرأة فالسنة أن ينظر إلى وجهها وكفيها (لأن الوجه يدل على الجمال واليدين على خصب البدن وروى الترمذي عن المغيرة أنه خطب امرأة فقال له النبي ﷺ: «انظر إليها فإنه أحرى أن يؤدم بينكما» أي تدوم بينكم المودة والألفة) قبل أن يخطبها وإن لم تأذن في ذلك (اكتفاء بإذن الشارع) وله تكرير النظر (إليها عند حاجته إليه ليتبين هيئة منظوره فلا يندم بعد نكاحه ولها مثله) ولا ينظر غير الوجه والكفين. (وإن لم يتيسر له النظر فيبعث امرأة أمينة تنظرها له وهي ترى منها أكثر مما يرى هو ولها أن تصفها له ويكون مستثنى من النهي عن وصف الأجنبية للأجنبي).

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LOOKING AT MEMBERS OF THE OPPOSITE SEX

m2.3 It is unlawful for a man to look at a woman who is not his wife or one of his unmarriageable kin (def: m6.1) (O: there being no difference in this between the face and hands or some other part of a woman (N: if it is uncovered), though *part* excludes her voice, which is not unlawful to listen to as long as temptation is unlikely. Allah Most High says,

"Tell believers to lower their gaze" (Koran 24:30).

A majority of scholars (n: with the exception of some Hanafis, as at m2.8 below) have been recorded as holding that it is unlawful for women to leave the house with faces unveiled, whether or not there is likelihood of temptation. When there *is* likelihood of temptation, scholars unanimously concur that it is unlawful, *temptation* meaning anything that leads to sexual intercourse or its usual preliminaries. As for when there is real need (dis: m2.11), looking is not unlawful, provided temptation is unlikely).

(A: Being alone with a woman who is not one's wife or unmarriageable kin is absolutely unlawful, though if there are two women and a man, the man and the woman are no longer considered *alone*.)

m2.4 A man may look at his wife (N: or vice versa) including her nakedness (def: f5.3), though it is offensive for either husband or wife to look at the other's genitals.

m2.5 A man may look at his unmarriageable female relatives (def: m6.1), and a woman look at her unmarriageable male relatives (m6.2), viewing any part of the body (N: that shows e.g. while they are working) except what is between the navel and knees.

m2.6 As for a woman looking at (O: a man) other than her husband or unmarriageable male

أحكام نظر الرجال إلى النساء

m2.3 ويَحْرُمُ أنْ يَنْظُرَ الرجلُ إلى شيءٍ من الأجنبيةِ (ولا فرق في الشيء المذكور بين الوجه والكفين أو غيرهما [كالشعر] [والمراد بالشيء ما كان جزءاً منها] وليس الصوت منها فلا يحرم سماعه ما لم يخف منه فتنة. قال تعالى: ﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ﴾ وقد نقل الاتفاق على منع النساء من الخروج سافرات الوجوه ولا فرق بين خوف الفتنة وعدمها وهو عند خوفها مجمع عليه والمراد من خوف الفتنة ما يدعو إلى الجماع ومقدماتها وأما مع الحاجة فلا يحرم إن لم يخف فتنة) [حرةً كانتْ أوْ أمةً أو الأمرد الحسن بلا شهوة مع أمن الفتنة وقيل يجُوزُ أنْ يَنْظُرَ مِنَ الأمةِ ما عَدا عورتَها عند الأمنِ].

m2.4 ويَنْظُرُ إلى زوجتِه [وأمتِه] حتى العورة لكنْ يُكْرَهُ نظرُ كلٍّ من الزوجين إلى فرج الآخر.

m2.5 ويَنْظُرُ [العبدُ إلى سيدته والممسوحُ إلى الأجنبية و] الرجلُ إلى محارمه (ح: إلى ما يبدو عند المهنة) والمرأةُ إلى محرمها فيما عدا ما بين السرة والركبة.

m2.6 وأما نظرُها إلى (رجل) غير زوجها ومحرمها فحرامٌ كنظره إليها

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relatives, it is unlawful, just as a man's looking at her is.

[وقيل يحلُّ أنْ تَنْظُرَ منْهُ ما عدا عورتَهُ عند الأمن].

m2.7 It is unlawful for a woman to show any part of her body to an adolescent boy or a non-Muslim woman (n: unless the latter is her kinswoman (def: m6.1(1–12)), in which case it is permissible (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 3.132)).

m2.7 ويَحْرُمُ عليْها كشفُ شيءٍ منْ بدنِها لمراهقٍ أو لامرأةٍ كافرةٍ [فلْيَحْذرِ النساءُ في الحماماتِ منْ ذلك].

m2.8 (n: The following rulings from the Hanafi school have been added here as a dispensation (dis: c6.3).)

(Ahmad Quduri:)

(1) It is not permissible for a man to look at a woman who is not his wife or unmarriageable relative except for her face and hands ((Maydani:) because of the necessity of her need to deal with men in giving and taking and the like). If a man is not safe from lust, he may not look at her face except when it is demanded by necessity.

(2) A man may look at the whole body of another man except for what is between the navel and (A: including) the knees (A: as the knees are considered nakedness by Hanafis, though not by Shafi'is).

(3) A woman may look at the parts of a man that another man is permitted to look at.

(4) A woman may look at the parts of another woman that a man is permitted to look at of another man.

(*al-Lubab fi sharh al-Kitab* (y88), 4.162–63)

m2.8 (ت: قد نقل المترجم الأحكام التالية هنا من المذهب الحنفي على سبيل الرخصة).

(أحمد القدوري:)

- لا يجوزُ أنْ يَنْظُرَ الرجلُ منَ الأجنبيةِ إلاّ إلى وجهِها وكفّيْها (ضرورة احتياجها إلى المعاملة مع الرجال أخذاً وإعطاءً وغير ذلك). وإنْ كانَ لا يأمَنُ الشهوةَ لا يَنْظُرُ إلى وجهِها إلاّ لحاجةٍ [(ضرورية)].

- ويَنْظُرُ الرجلُ منَ الرجلِ إلى جميعِ بدنِهِ إلاّ ما بين سرّتِهِ إلى ركبتِهِ.

- ويَجُوزُ للمرأةِ أنْ تَنْظُرَ منَ الرجلِ إلى ما يَنْظُرُ الرجلُ إليهِ منهُ.

- وتَنْظُرُ المرأةُ منَ المرأةِ ما يَجُوزُ للرجلِ أنْ يَنْظُرَ إليهِ منَ الرجلِ.

[محرّر من اللباب في شرح الكتاب: ٤/١٦٢ - ١٦٣].

m2.9 Whenever looking is unlawful, so is touching (O: *whenever* meaning the *part;* i.e. whatever is unlawful to look at is also unlawful to touch). (N: And any permissible looking that leads to temptation is unlawful.) (A: Ordinary people sometimes mistakenly assume that the Hanafi position that touching a woman does not nullify one's ablution (wudu) means they permit men shaking

m2.9 ومتى (والمعنى على المكان أي كل جزء حرم نظره حرم مسه) حَرُمَ النظرُ حَرُمَ اللمسُ (ح: وكل نظر مباح أدى إلى فتنة يمنع). (ع: قد يتوهم العوام بأن عدم نقض الوضوء بلمس المرأة عند الحنفية يعني أنهم يجيزون

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hands with women who are not wives or unmarriageable relatives, something which is unlawful, and which neither the Hanafi school nor any other holds to be permissible.)

للرجل مصافحة غيرَ محارمه من النساء، وهي حرام عندهم وعند غيرهم من المذاهب).

DOCTORS TREATING PATIENTS OF THE OPPOSITE SEX

أحكام معالجة الرجل والمرأة

m2.10 Both (O: looking and touching) are permissible for medicinal bloodletting, cupping, and medical treatment (N: when there is real need. A Muslim woman needing medical attention must be treated by a Muslim woman doctor, or if there is none, then by a non-Muslim woman doctor. If there is none, then a male Muslim doctor may treat her, while if none of the above are available, then a male non-Muslim doctor. If the doctor is of the opposite sex, her husband or an unmarriageable male relative (def: m6.2) must be present. It is obligatory to observe this order in selecting a doctor). (A: The same rules apply to Muslim men with regard to having a doctor of the same sex and religion: the same sex takes precedence over the same religion.)

(O: Necessary treatment of her face or hands permits looking at either. As for other parts of the body, the criterion for permissibility is the severity of the need for treatment, meaning that there must be an ailment as severe as those permitting dry ablution (def: e12.9), and if the part concerned is the genitals, the need must be even more acute (N: though it includes gynecological examinations for women with fertility problems, which are permissible).

m2.10 ويُباحان (أي النظر والمس) لفصد وحجامة ومداواة.

(ع: أي: عند الحاجة المؤكدة. والمسلمة المحتاجة إلى معالجة طبية تعالج وجوباً عند طبية مسلمة، فإن فُقدت فطبيبة كافرة، فإن فقدت فطبيب مسلم، فإن فُقدوا جميعا فطبيب كافر. وإن تعين طبيب ذكر فلا بد من حضور زوجها أو محرمها الذكر. ومراعاة هذا الترتيب واجب). (ع: والترتيب المذكور ينطبق على الرجل المسلم المحتاج إلى معالجة، بحيث وحدة الجنس تقدم على وحدة الأديان).

(والمعالجة في الوجه والكفين يكفي فيهما الحاجة المحجوزة للنظر ويعتبر في غيرهما تأكدها وهو ما يبيح التيمم وفي الفرج مزيد تأكدها).

PERMISSIBLE LOOKING AT A MARRIAGEABLE MEMBER OF THE OPPOSITE SEX

ما يبيح النظر إلى غير المحارم

m2.11 Looking at a woman is permissible for testimony in court, for commercial dealings (O: with a marriageable man, or noncommercial dealings, as when he wishes to marry her), and so forth (O: such as obligatory or recommended learning (def: a4, a6)), in which cases looking is permissible to the degree required. (O: It is not permissible to

m2.11 ويُباحُ النظرُ لشهادة ومعاملة (الأجنبي لها وغير ذلك كأن يريد نكاحها) ونحوهما (كتعليم واجب أو مندوب) بقدر الحاجة. (فلا يجوز مجاوزتها كأن

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exceed the degree required, as when looking at part of the face is sufficient, in which case looking at the rest of it is not permissible, as it exceeds the amount required.)

يكتفي في النظر للوجه ببعضه فلا يجوز حينئذ النظر إلى باقيه لأنه زائد على قدر الحاجة).

RULES FOR PROPOSING MARRIAGE OR ACCEPTING A PROPOSAL

متى تجوز خطبة المرأة

m2.12 It is unlawful to propose marriage, openly or allusively, to another's wife when she is in the waiting period of an unfinalized (A: i.e. less than threefold (dis: n9.0(N:))) divorce (O: because she is still considered as a wife is).

m2.12 ويحرم أن يصرح أو يعرض بخطبة المعتدة من غيره إذا كانت رجعية (لأنها حينئذ في معنى الزوجة).

m2.13 As for a woman who is in any of the following types of waiting period (def: n9), it is unlawful for a suitor to propose openly to her, though not for him to hint at it:

(1) the waiting period of a finalized (threefold) divorce;

(2) the waiting period after having had her husband release her for payment (def: n5);

(3) or the waiting period to remarry after her husband's death (def: n9.11).

(O: Proposing allusively is only permissible in such cases because of the husband's lack of authority over her. To propose *openly* means to decisively indicate one's desire to wed, such as by saying, "I want to marry you," while to propose *allusively* means to employ words that could indicate a desire to marry or something else, such as "I am desirous of you," or "You are beautiful," for these do not necessarily imply a desire for marriage.)

m2.13 وأما المعتدة البائن بثلاث أو خلع أو عن الوفاة فيحرم التصريح دون التعريض (وإنما حلت في البائن وما بعدها لعدم سلطة الزوج عليها والتصريح ما يقطع بالرغبة في النكاح كأريد أن أنكحك والتعريض ما يحتمل الرغبة في النكاح وغيرها نحو: أنا راغب فيك، وأنت جميلة، فهذه الألفاظ لا تستلزم الرغبة في النكاح).

m2.14 (O: The rulings regarding the lawfulness or unlawfulness of a woman's *accepting* a marriage proposal are the same as those for proposing to her (def: m2.12–13).)

m2.14 (وحكم جواب الخطبة حكم الخطبة حلاً وحرماً).

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m2.15 It is unlawful to propose marriage to a woman to whom another has already done so, if the first proposal has been openly accepted, unless the first suitor gives his permission. (O: And like his permission in the legality of another proposing to her is when the first suitor has shown himself disinclined, such as by having given up, or when enough time has elapsed to give others the impression that he no longer wants to marry, or when the woman's guardian (def: m3.4) becomes averse to him.) But if the first suitor's proposal was not openly accepted, then a second suitor may propose to her. (O: It is also permissible for one to take the initiative and propose to a woman when one does not know whether or not she is engaged, or whether the first proposal was plainly accepted or not.)

m2.15 وتَحْـرُمُ الخِطْبَةُ على خطبةِ الغيرِ إذا صُرِّحَ لهُ إلّا بإذنِهِ (ومثل الإذن في جواز خطبة الثاني إعراض الخاطب الأول، وفي معناه ما لو ترك الأول أو طال الزمان بعد إجابته بحيث يعدونه معرضاً، أو إعراض الولي عن الخاطب) فإنْ لمْ يُصَرِّحْ بإجابتِهِ جازَ. (ويجوز الهجوم على الخطبة لمن لم يدر أخطبت المرأة وأجيب الخاطب أم لا).

m2.16 Whoever is asked about what kind of person a prospective groom is should truthfully mention his failings (O: meaning his defects and mistakes. This is obligatory (N: but only to the degree necessary (A: to protect the person who is asking)), as Nawawi has stated in *al-Adhkar* (dis: r2.20(2))).

m2.16 ومَنِ اسْتُشِيـرَ في خاطبٍ فَلْيَذْكُرْ مساويَهُ (بمعنى العيوب والزلات وظاهر الأمر الوجوب كما عبر به النووي في الأذكار) بصدقٍ.

m2.17 It is recommended to give a short address when (O: i.e. before) making a marriage proposal (O: *address* meaning words begun by praising Allah and concluded with a supplication and moral exhortation. If one wants to be brief, one may simply say, "Praise be to Allah, and blessings and peace upon the Messenger of Allah (Allah bless him and give him peace). I enjoin you to fear Allah. I have come to you to engage your noblest [A: mentioning her name]." Then her guardian gives a similar address).

It is also recommended to give another brief address when (O: i.e. just before) the marriage contract is made, saying (O: i.e. it is recommended for the guardian to say, before the contract is formally effected), "I marry her to you according to the command of Allah Most High, to kindly retain or graciously release."

m2.17 ويُنْـدَبُ أنْ يَخْطُـبَ عنـدَ الخِطْبَةِ (أي قبلها وهي كلام مفتتح بحمد الله مختتم بدعاء ووعظ، فإن أراد اختصارها فيقول الحمدُ لله والصلاةُ والسلامُ على رسول الله ﷺ أوصيكُمْ بتقوى الله جئتُكُمْ خاطباً كريمتَكُمْ فلانة ... فيخطب الولي كذلك).

(ويندب خطبة أخرى) عند (أي قبل) العقد ويقول (أي الولي قبل العقد): أزوِّجُك على ما أمرَ اللهُ تعالى به من إمساكٍ بمعروفٍ أو تسريحٍ بإحسانٍ. [ولوْ خطَبَ الوليُّ عندَ الإيجاب فقال الزوجُ الحمدُ لله والصلاةُ على رسول الله قَبِلْتُ صحَّ ولكنَّهُ لا يُنْدَبُ وقيلَ يُنْدَبُ]

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m3.0 THE INTEGRALS OF A MARRIAGE AGREEMENT

m3.1 Marriage has integrals (A: which are five in number:

(a) the spoken form;

(b) the witnesses;

(c) the bride's guardian;

(d) the groom;

(e) and the bride).

THE SPOKEN FORM

m3.2 The first integral is the explicitly stated spoken form (O: comprising a spoken offer by the guardian and its acceptance by the groom, like other, nonmarital transactions. Its necessary conditions are the same as those of valid sale (def: k1.1(a,b,c,d,e))), the form being valid in languages other than Arabic even when one is able to speak Arabic.

The spoken form is not valid if allusive. Nor is it valid without:

(a) a statement (N: from the guardian) that effects it, namely "I marry you" (n: i.e. *to her*, the Arabic *zawwaja* meaning to marry someone to another);

(b) and an immediate spoken acceptance (A: by the groom), namely "I marry her," or "I accept her marriage."

(N: The spoken form, when the other integrals exist, is what is meant by the term *marriage contract*, not an actual written document, though it is sunna to write it. Extraneous conditions added to the marriage contract, such as that the husband observe monogamy or the like, are not binding, being meaningless, though they do not invalidate the marriage agreement, which remains effective.)

m3.0 أركان النكاح

m3.1 وللنكاح أركانٌ (ع: خمسة، هي: الصيغة، والشهود، والولي، والزوج، والمرأة).

الصيغة

m3.2 الأولُ الصيغةُ الصريحةُ (المشتملة على الإيجاب من الولي والقبول من الزوج كغير النكاح من المعاملات وشرط فيه ما شرط في صيغة البيع) ولو بالعجمية لمَنْ يُحْسِنُ العربيةَ لا بالكناية، فلا يَصِحُّ إلاَّ بإيجابٍ منجزٍ وهو: زَوَّجْتُكَ؛ [أوْ: أنكحتُكَ؛ فقط] وقبولٍ على الفورِ وهوَ: تَزَوَّجْتُهَا؛ [أوْ: نَكَحْتَهَا؛] أوْ: قَبِلْتُ نكاحَهَا [أو تزويجَهَا. فلو اقْتَصَرَ على قَبِلْتُ لمْ يَنْعَقِدْ. ولوْ قَالَ زَوِّجْنِي فقَالَ زَوَّجْتُكَ صَحَّ].

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THE WITNESSES

الشهود

m3.3 The second integral is that the marriage have witnesses, it not being valid unless two witnesses are present who are:

(a) male (O: since a marriage witnessed by a man and two women would not be valid (A: though it would be valid in the Hanafi school));

(b) sound of hearing;

(c) sound of eyesight;

(d) familiar with the language of the two contracting parties;

(e) Muslims;

(f) and upright (def: o24.4) witnesses, even if their uprightness is merely apparent (O: since marriages take place among average, common people, and if they were made responsible to know the inward uprightness of witnesses, it would cause delays and difficulties. *Apparent* uprightness means the person is outwardly known to be upright, even if he is inwardly unknown).

m3.3 الثاني الشهودُ فلا يَصِحُّ إلاَّ بحضرة شاهدين ذكرين (فلا ينعقد برجل وامرأتين) [حرين] سميعين بصيرين عارفين بلسان المتعاقدين مسلمين عدلين ولوْ مستوري العدالة (لأن النكاح يجري بين أوساط الناس والعوام ولو كلفوا معرفة العدالة الباطنة لطال الأمر وشق عليهم، فالمستور هو من عرف بالعدالة ظاهراً لا باطناً).

THE BRIDE'S GUARDIAN

الولي

m3.4 The third integral is the (A: bride's) guardian (O: since a woman may not conduct her own marriage. Ibn Majah relates that the Prophet (Allah bless him and give him peace) said,

"Let no woman marry a woman to another or marry herself to another."

Daraqutni related this hadith with a chain of transmission meeting the standards of Bukhari and Muslim). The marriage agreement is not valid without a guardian who is:

(a) male;

m3.4 الثالثُ الوليُّ (فلا تعقد المرأة النكاح وروى ابن ماجه خبر «لا تزوج المرأة المرأة ولا المرأة نفسها» أخرجه الدارقطني بإسناد على شرط الشيخين) فَلَا يصِحُّ إلاَّ بولي ذكر مكلَّف [حر]

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(b) legally responsible (mukallaf, def: c8.1);

(c) Muslim;

(d) upright (def: o24.4);

(e) and of sound judgement.

The following may not be a bride's guardian:

(1) (non-(a) above) a woman;

(2) (non-(b)) a child or insane person;

(3) (non-(c)) a non-Muslim;

(4) (non-(d)) a corrupt person (def: o24.3) (O: though the opinion of most later scholars is that a corrupt person may be a guardian);

(5) or (non-(e)) someone whose judgement is unsound because of old age or weakmindedness (O: whether innate or acquired. *Old age* includes someone with severe pain or illnesses which distract him from realizing what is most advantageous for his charge and her interests, since such a person would be incapable of learning how suitors really are and whether they are an appropriate match (def: m4) for the bride). It is of no consequence if the guardian is blind.

A non-Muslim responsible for a non-Muslim bride may be her guardian (O: provided he does not violate the rules of his own religion), though a Muslim may not.

مسلم عدل تام النظر. فلا ولاية لامرأة وصبيّ ومجنونٍ [ورقيقٍ] وكافرٍ وفاسقٍ (ولكن أفتى أكثر المتأخرين [لا سيما الخراسانيون] بأنه يلي) [وسفيهٍ] ومختلّ النظر بهرمٍ وخبلٍ (جبلي أو عارضي وفي معنى الهرم كثرة الآلام والأسقام الشاغلة عن العلم بمواضع الحظ والمصلحة أي فيكون عاجزاً عن البحث عن أحوال الأزواج ومعرفة الكفء منهم). ولا يَضُرُّ العَمَى. ويَلِي الكافرُ مولِيَّتَهُ الكافرة (بشرط أن لا يرتكب محظوراً في دينه). ولا يَلِيهَا (أي الكافرة) المسلمُ.

m3.5 [إلاّ السيدُ في أمَتِهِ والسلطانُ في نساءِ أهلِ الذمةِ فَيُزَوِّجُهَا السيدُ ولوْ فاسقاً. فإنْ كانتْ لامرأةٍ زَوَّجَهَا مَنْ يُزَوِّجُ السيدةَ بإذنِ السيدةِ. فإنْ كانَتْ السيدةُ غيرَ رشيدةٍ زَوَّجَهَا أبو السيدةِ أوْ جدُّهَا].

m3.6 (n: If the bride has no Muslim guardian and there is no Islamic magistrate to act as one, she may authorize a male Muslim who has the qualifications of an Islamic judge (def: o22.1)—or if there is none, then a male Muslim who is legally upright (def: o24.4)—to act as her guardian in marrying her to the groom (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 3.147).)

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THE ORDER OF LAWFUL GUARDIANSHIP AMONG THE BRIDE'S RELATIVES	أحق الأولياء بتزويج المرأة
m3.7 The male relatives of a free woman are the ones who may marry her to another, and the order (O: as to who has the right to be her guardian) is her: (1) father; (2) father's father (O: and on up); (3) brother; (4) brother's son; (5) father's brother; (6) her father's brother's son (O: and so on, in the same order as the universal heirs in estate division (def: L10.6(12–14)); (7) and then the Islamic magistrate (A: i.e. the judge (qadi)). None of the above may marry her to someone when a family member higher on the list exists. If there are two of equal standing (A: two brothers, for example) and one is related to her through two parents while the other is related to her through the father alone, then the one related to her through both parents is the guardian. If both are equal in this respect, precedence is given to the oldest, most learned in Sacred Law, and most god-fearing. But if the other (A: less deserving of two would-be guardians who are of equal affiliation to her) marries her to the groom, the marriage is valid. If both insist on being the one, they draw lots to see who will do it, though if the loser marries her to the groom, the marriage is also legally valid.	m3.7 وأمّا الحرةُ فيُزَوِّجُها عصباتُها وأولاهُمْ (أي أحقهم بالـولاية) الأبُ ثمّ الجدُّ (وإن علا) ثمّ الأخُ ثمّ ابنُهُ ثمّ العمُّ ثمّ ابنُهُ (وكذا بقية عصبات النسب على ترتيب الإرث) [ثمّ المعتقُ ثمّ عصبتُهُ ثمّ معتقُ المعتق ثمّ عصبتُهُ] ثمّ الحاكمُ. ولا يُزَوِّجُ أحـدٌ منهُمْ وهنـاكَ مَنْ هوَ أقربُ منهُ. فإنِ استوى اثنانِ في الدرجةِ وأحدُهُما مَنْ يُدْلي بأبوين والآخرُ بأب فالـوليُّ مَنْ يُدْلي بأبـوين. فإنِ استـويـا فالأولى أنْ يُقـدَّمَ أسـنُّهُمـا وأعلمُهُمـا وأورعُهُمـا. فإنْ زوَّجَ الآخرُ صحَّ. وإنْ تشـاحّـا أقرعَ. وإنْ زوَّجَ غيرُ مَنْ خرجَتْ قرعتُهُ صحَّ أيضاً.
m3.8 If a guardian does not have the right to be a guardian because of the existence of one of the above-mentioned preventives (dis: m3.4(1–5)), the guardianship devolves to the next family member in the m3.7 order of lawful guardians.	m3.8 وإنْ خرجَ الوليُّ عنْ أنْ يكونَ وليـا بشيءٍ مِنَ الموانعِ المتقدمةِ انتقلتِ الولايةُ إلى مَنْ بعدهُ مِنَ الأولياءِ.

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THE BRIDE'S RIGHT TO MARRY A SUITABLE MATCH OF HER CHOICE

حكم عضل الولي المرأة عن النكاح

m3.9 Whenever a free woman asks to marry a suitor who is a suitable match (def: m4) (O: by telling her guardian, "Marry me to him"), the guardian must marry her to him (O: whether she is a virgin or nonvirgin, and whether prepubescent or not). The Islamic magistrate (A: i.e. judge) marries her to such a groom if the guardian:

(1) in the presence of the magistrate refuses to marry her to the groom;

(2) is on a journey farther than 81 km./50 mi. from home;

(3) or is in a state of pilgrim sanctity (ihram) (O: for hajj, 'umra, or both) (dis: j3.20).

In such cases, the guardianship does not devolve to the next most eligible in the m3.7 order of lawful guardians. If (non-(2) above) the guardian is on a journey of less than 81 km./50 mi. from home, the bride may not be married to someone without the guardian's leave.

m3.9 ومتى دَعَتِ الحرةُ إلى كفءٍ (بأن قالت لوليها زوجني منه) لزمه تزويجُها (سواء كانت الطالبة للتزويج بكراً أم ثيباً وكلامه أيضاً يشمل غير البالغة) فإنْ عضلها أي منعها بين يَدَي الحاكم أو كانَ (الولي) غائباً في مسافة القصر أو كانَ مُحْرِماً (بحج فقط أو بعمرة فقط أو محرماً بهما) زَوَّجَها الحاكمُ ولا تنتقلُ الولايةُ إلى الأبعد. وإنْ غابَ إلى دون مسافة القصر لمْ تُزَوَّجْ إلا بإذنه.

COMMISSIONING ANOTHER TO EFFECT THE MARRIAGE AGREEMENT

توكيل الولي غيره بعقد النكاح

m3.10 The guardian may commission another (def: k17.5–6) to marry his charge to someone, though it is not permissible to commission someone who himself lacks the requisite conditions (m3.4(a,b,c,d,e)) to be a guardian.

The groom too may commission someone to accept the marriage agreement on his behalf, provided the person commissioned is someone who would be legally entitled to accept such a marriage for himself. (O: A child, for example, may not accept a marriage for himself, let alone someone else, nor may a woman be commissioned for this, nor someone in a state of pilgrim sanctity (ihram).)

m3.10 ويجوز للوليِّ أنْ يُوكِّلَ بتزويجها. ولا يَجوزُ أنْ يُوكِّلَ إلا مَنْ يَجوزُ أنْ يَكونَ ولياً.

وللزوج أنْ يُوكِّلَ في القبول مَنْ يَجوزُ أنْ يَقْبَلَ النكاحَ لنفسه (فلا يوكل صبي لأنه لا يصح أن يقبل الصبي النكاح لنفسه فلا يقبل لغيره بالأولى ولا امرأة ولا محرماً) [ولوْ عبداً].

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m3.11 Neither the guardian of the bride nor his agent may state the marriage offer (def: m3.2(a)) for the guardian's own marriage (A: to her). If her guardian wants to marry her, as when, for example, he is the son of her father's brother, then he lets a different son of the father's brother stand in as guardian. If there is no one in his own degree (A: of relation to her), then the Islamic judge stands in as guardian.

m3.11 ولَيْسَ للوليِّ ولا للوكيلِ أنْ يُوجِبَ النكاحَ لنفسِهِ. فلَوْ أرادَ وليُّها أنْ يتزوَّجَها كابنِ العمِّ فَوَّضَ العقدَ إلى ابنِ عمٍّ في درجتِهِ. فإنْ فُقِدَ فالقاضي.

m3.12 No one may state both the proposal and its acceptance (def: m3.2(a,b)) for one marriage, except the bride's grandfather when marrying his son's daughter to his (A: other) son's son.

m3.12 ولَيْسَ لأحدٍ أنْ يَتَوَلَّى الإيجابَ والقبولَ في نكاحٍ واحدٍ إلاَّ الجدَّ في تزويجِ بنتِ ابنِه بابنِ ابنِهِ.

GUARDIANS WHO MAY MARRY A VIRGIN TO A MAN WITHOUT HER CONSENT

الوليّ المجبر

m3.13 Guardians are of two types, those who may compel their female charges to marry someone, and those who may not.

(1) The only guardians who may compel their charge to marry are a virgin bride's father or father's father, *compel* meaning to marry her to a suitable match (def: m4) without her consent.

(2) Those who may not compel her are not entitled to marry her to someone unless she accepts and gives her permission.

Whenever the bride is a virgin, the father or father's father may marry her to someone without her permission, though it is recommended to ask her permission if she has reached puberty. A virgin's silence is considered as permission.

As for the nonvirgin of sound mind, no one may marry her to another after she has reached puberty without her express permission, no matter whether the guardian is the father, father's father, or someone else.

m3.13 ثمَّ الوليُّ على قسمين مجبرٌ وغيرُ مجبرٍ. فالمجبرُ هو الأبُ والجدُّ خاصةً في تزويجِ البكرِ فقطْ [وكذا السيدُ في أمتِهِ مطلقاً] ومعنى المجبرِ أنَّ لهُ أنْ يُزَوِّجَها مِنْ كفءٍ بغيرِ رضاها. وغيرُ المجبرِ لا يُزَوِّجُ إلاَّ برضاها وإذنِها.

فمتى كانَتْ بكراً جازَ للأبِ أو الجدِّ تزويجُها بغيرِ إذنِها لكنْ يُنْدَبُ استئذانُ البالغةِ، وإذنُها السكوتُ.

وأمّا الثيبُ العاقلةُ فلا يُزَوِّجُها أحدٌ إلاَّ بإذنِها بعدَ البلوغِ باللفظِ سواءٌ الأبُ والجدُّ وغيرُهُما.

m3.14 [وأمّا قبلَ البلوغِ فلا تُزَوَّجُ (الثيبُ) أصلاً. وإنْ كانَتْ (الثيبُ) مجنونةً صغيرةً زَوَّجَها الأبُ أو الجدُّ. أوْ كبيرةً زَوَّجَها الأبُ أو الجدُّ أو الحاكمُ. لكنِ الحاكمُ يُزَوِّجُها للحاجةِ والأبُ والجدُّ يُزَوِّجُها للحاجةِ والمصلحةِ. ولا يَلْزَمُ السيدَ تزويجُ الأمةِ والمكاتبةِ وإنْ طَلَبَتا].

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m3.15 No guardian may marry a woman to someone who is not a suitable match (def: m4) without her acceptance and the acceptance of all who can be guardians (def: m3.7). If the Islamic magistrate is her guardian, he may not under any circumstances marry her to someone who is not a suitable match for her.

If the bride selects a suitor who is not a suitable match for her, the guardian is not obliged to marry her to him. If she selects a suitable match but her guardian chooses a different suitor who is also a suitable match, then the man chosen by the guardian takes precedence if the guardian is one who may lawfully compel her to marry (def: m3.13(1)), while the one she selects takes precedence when the guardian may not lawfully compel her to marry (m3.13(2)).

m3.15 ولا يُزَوِّجُ أحدٌ من الأولياء المرأة من غير كفء إلا برضاها ورضا سائر الأولياء فإنْ كانَ وليُّها الحاكمَ لم يُزَوِّج من غير كفء أصلاً وإنْ رضيَتْ. وإنْ دعَتْ إلى غير كفء لم يَلْزَم الوليَّ تزويجُها. وإنْ عيَّنَتْ كفئاً وعيَّنَ الوليُّ كفئاً غيرهُ فمَنْ عيَّنَهُ الوليُّ أولى إنْ كانَ مجبراً وإلا فمَنْ عيَّنَتْهُ أولى.

*

m4.0 A SUITABLE MATCH (KAFA'A)

(N: The definition of a *suitable match* should not be misunderstood as a recommendation for whom to marry. It is merely a legal restriction to protect a woman's interests when the father or grandfather of a virgin marry her to someone without her consent (dis: m3.13,15). As for when she wishes to marry someone who is not a suitable match, and her guardian has no objection, there is nothing wrong or offensive in her doing so.)

m4.0 الكفاءة

(ح: لا يُتوهم أن الكفاءة إرشاد للإنسان ليعرف الأفضل عند الزواج؛ بل إنما هي تقييد للولي لحفظ مصالح البكر التي يزوجها الأب أو الجد بغير إذنها. أما إذا أرادت [البالغة] أن تتزوج من غير كفء، ولا مانع عند الولي. فلا حرمة حينئذ ولا كراهة).

m4.1 *Suitability* concerns lineage, religiousness, profession, and being free of defects that permit annulling the marriage contract (def: m7). (N: As for color, it is of no consideration in suitability.)

m4.1 والكفاءةُ في النسب والدين [والحرية] والصنعة وسلامة العيوب المثبتة للخيار (ح: وأما اللون فلا اعتبار له في الكفاءة).

m4.2 The following are not suitable matches for one another:

(1) a non-Arab man for an Arab woman (O: because of the hadith that the Prophet (Allah bless him and give him peace) said,

"Allah has chosen the Arabs above others");

m4.2 فلا يُكافئُ العجميُّ عربيةً (لما في الحديث من قوله ﷺ «إن الله اصطفى العرب على غيرهم») [ولا غيرُ قرشيٍّ ولا غيرُ هاشميٍّ أو مطلبيٍّ هاشميةً

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(2) a corrupt man (def: o24.3) for a virtuous woman (O: though it is sufficient for the would-be husband to have given up his wrongdoing);

(3) a man of a lowly profession for the daughter of someone with a higher profession, such as a tailor wanting to marry a merchant's daughter (A: though an Islamic scholar is a suitable match for any level whatever);

(4) or someone with a defect that permits annulling the marriage (def: m7) for someone without such defects.

Being wealthy has nothing to do with suitability (O: for money comes and goes, and those with self-respect and intelligence do not take pride in it), nor does being elderly.

أوْ مطلبيـةً] ولا فاسقٌ عفيفةً (ويكفي في الزوج خلوصه من الفسق) [ولا عبدٌ حرةً ولا الـعـتـيـقُ أوْ مَنْ مَسَّ آبـاؤهُ رقٌّ حرةَ الأصلِ] ولا ذو حرفةٍ دنيئةٍ بنتَ ذي حرفةٍ أرفعَ كخياطٍ بنتَ تاجرٍ. ولا معيبٌ بعيبٍ يُثْبِتُ الخيارَ سليمةً منهُ ولا اعتبارَ باليسارِ (لأن المـال غادٍ ورائـحٌ ولا يفتخر به أهل المروءات والبصائر) والشيخوخة.

m4.3 The marriage agreement is invalid whenever a guardian marries his charge to someone who is not a suitable match for her, if done without both her acceptance and the acceptance of all who are eligible as guardians (def: m3.7) and are on the guardian's level of relation to her (A: such as his brothers). But if both these parties agree, then the bride's relatives further from her than the guardian may not object.

m4.3 فمتى زوَّجها بغير كفء بغير رضاها ورضا الأولياء الذين هُمْ في درجته فالنكاحُ باطلٌ. وإنْ رَضُوا أوْ رَضِيَتْ فليْسَ للأبعدِ اعتراضٌ.

m4.4 When the father or father's father see that the best advantage is to be served by marrying a young boy (or girl) to someone, they may do so, though they are not entitled to marry the child to someone with a physical defect (dis: m7) that legally permits annulment of the marriage.

m4.4 وإذا رأى الأبُ أو الجدُّ المصلحةَ في تزويج الصغير والصغيرة زوَّجهُ وليْسَ لهُ أنْ يُزَوِّجَهُ [أمةً ولا] معيبةً.

m4.5 If a person is foolhardy (safih, def: k13.1(A:)) or continuously insane, but needs to marry, then his father, grandfather, or the Islamic magistrate may marry him to someone. If they grant permission to the foolhardy person to marry himself, his marriage is valid, though if he does so without their leave, it is invalid.

m4.5 وإنْ كانَ سفيهاً أوْ مجنوناً مطبقاً واحْتاجَ إلى النكاحِ زوَّجهُ الأبُ أو الجدُّ أو الحاكمُ. فإنْ أذِنُوا للسفيهِ ليَعْقِدَ لنفسهِ جازَ. وإنْ عَقَدَ بلا إذنٍ فباطلٌ.

m4.6 [وإنْ كانَ مطلاقاً تَسَرَّى جاريةً واحدةً. والعبدُ الصغيرُ يُزَوِّجُهُ السيدُ. والكبيرُ يتزوَّجُ بإذنِهِ. وليْسَ للسيدِ إجبارُهُ على النكاحِ ولا للعبدِ إجبارُ السيدِ عليه].

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m5.0 CONJUGAL RIGHTS

m5.0 الاستمتاع

THE WIFE'S MARITAL OBLIGATIONS

متى يجب تسليم المرأة للزوج

m5.1 It is obligatory for a woman to let her husband have sex with her immediately when:

(a) he asks her;

(b) at home (O: *home* meaning the place in which he is currently staying, even if being lent to him or rented);

(c) and she can physically endure it.

(d) (O: Another condition that should be added is that her marriage payment (mahr, def: m8) has been received or deferred to a term not yet expired.

As for when sex with her is not possible, such that having it would entail manifest harm to her, then she is not obliged to comply.)

If she asks him to wait, she is awaited, to a maximum of three days. (O: She does not ask to wait because of not having finished her period or postnatal bleeding, for there is no physical harm entailed in her complying as she is, though if she fears that such foreplay with him will lead to actual copulation (A: which is unlawful under such circumstances), then she may refuse, as that is not obligatory). (n: w45 discusses wives' other duties to husbands.)

m5.1 يَجِبُ تسليمُ المرأةِ على الفورِ إذا طَلَبَها في منزلِ الزوجِ (والمراد بالمنزل مكانه الذي هو مستقر فيه ولو بالعارية أو بالاستئجار) إنْ كانَتْ تَطِيقُ الاستمتاعَ (ويضاف إلى هذه الشروط المذكورة كون الصداق مقبوضاً أو مؤجلاً لم يحل. أما إذا لم يمكن الاستمتاع بها بحيث يحصل لها ضرر بيّن بالوطء فلا يجب تسليمها) فإنْ سألَتِ الانتظارَ انْتَظَرَتْ وأكثرُهُ ثلاثةُ أيامٍ (ولا تمهل لزوال الحيض أو النفاس إذ لا ضرر عليها في تسليمها كذلك نعم لو خافت من مضاجعته الوطء فلها الامتناع منها إذ لا يجب عليها ذلك) [فإنْ كانَتْ أمةً لمْ يَجِبْ تسليمُها إلا بالليلِ وهي بالنهارِ عند السيد].

THE WIFE'S RIGHT TO INTERCOURSE

القول بوجوب تحصين الزوجة

m5.2 (Imam Ghazali:) One should make love to one's wife every four nights, as is fairest, since the number of wives one may have is four, and one may wait this long to do so, though one should make love to her more or less than this, according to the amount she needs to remain chaste and free of want for it (N: if one is able), since it is obligatory for a husband to enable her to keep chaste (*Ihya' 'ulum al-din* (y39), 2.46).

m5.2 (الإمام الغزالي:) وينبغي أن يأتيها في كل أربع ليال مرة فهو أعدل إذ عدد النساء أربعة فجاز التأخير إلى هذا الحد نعم ينبغي أن يزيد أو ينقص بحسب حاجتها (ح: وقدرته) في التحصين فإن تحصينها واجب عليه [نقل من إحياء علوم الدين: ٢/ ٤٦].

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THE WEDDING NIGHT

m5.3 The first time they sleep together, it is recommended for the husband to grasp his bride's forelock and supplicate Allah for an increase in blessings (baraka) (O: such as by saying, "May Allah bless each of us in their partner").

ما يقال أول ما يلقاها

m5.3 والمستحبُّ أنْ يأْخُذَ الزوجُ بناصيتها أولَ ما يَلْقاها ويدْعُو بالبركةِ (كأنْ يقول بارك الله لكل منا في صاحبه).

THE HUSBAND'S RIGHTS

m5.4 A husband possesses full right to enjoy his wife's person (A: from the top of her head to the bottoms of her feet, though anal intercourse (dis: p75.20) is absolutely unlawful) in what does not physically harm her.

He is entitled to take her with him when he travels.

حق الزوج في الاستمتاع

m5.4 ويَمْلِكُ الاستمتاعَ بها مِنْ غيرِ إضرارٍ.

ولَهُ أنْ يُسافِرَ بِها [وإنْ كانَتْ حرةً].

CONTRACEPTION

m5.5 The husband is permitted to practice coitus interruptus (n: w46 discusses the relation of this to other methods of contraception) in lovemaking with his wife (O: meaning to make love to her until he feels an impending orgasm, when he withdraws to ejaculate outside the vagina) though it is better not to (O: it being considered offensive in our school (dis: w46.2) because it is a means to prevent reproduction).

العزل

m5.5 ولهُ أنْ يَعْزِلَ عنْها (بأن يجامع الزوج حتى يقرب الإنزال فينزع لينزل (خارج الفرج) [حرةً كانَتْ أو أمةً] لكنِ الأولى أنْ لا يفْعَلَ (والعزل مكروه عندنا لأنه طريق إلى قطع النسل).

m5.6 The husband is entitled to insist that his wife undertake both the measures necessary for having sex with her such as the purificatory bath (ghusl) after her monthly period, and those necessary to full enjoyment of her such as the purificatory bath after major ritual impurity (janaba), shaving her private parts, and removing filth.

m5.6 ولـهُ أنْ يُلْزِمَها بما يَتَوَقَّفُ الاستمتاعُ عليهِ كالغسلِ مِنَ الحيضِ وبما يَتَوَقَّفُ عليهِ كمالُ اللذاتِ كالغسلِ مِنَ الجنابةِ والاستحدادِ وإزالةِ الأوساخِ.

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m6.0 UNMARRIAGEABLE KIN (MAHRAM)

(N: It is unlawful for one to marry one's ancestors, descendants, parents' descendants, or the first generation of one's grandparent's offspring, meaning one's paternal or maternal aunts (n: or uncles, if one is female). One's *unmarriageable kin* (mahram) are those one is forbidden to marry forever.)

m6.0 المحارم

(ح: يحرم على الإنسان أصوله وفروعه وفروع أبويه والطبقة الأولى من فروع أجداده وجداته (عماته وخالاته). والمحرم هي التي يحرم نكاحها على التأبيد).

m6.1 It is unlawful (O: meaning both sinful and legally invalid) for a man to marry his:

(1) mother;

(2) grandmothers (O: from his mother's or father's side) and on up;

(3) daughters;

(4) daughters of his children, children's children, and on down;

(5) sisters;

(6) daughters of brothers or sisters, their children's daughters, and on down;

(7) mother's sisters, grandmother's sisters, and on up;

(8) father's sisters, father's father's sisters, and on up;

(9) wife's mother;

(10) wife's grandmother;

(11) the wives of his father, father's father, and on up;

(12) the wives of his children, children's children, and on down;

(all of whom ((9) through (12)) are unlawful for him to marry by the mere fact of marriage. As for a man's wife's daughter (N: from a different husband), she is not unlawful for him to marry until

m6.1 يَحْرُمُ (بمعنى التأثيم وعدم الصحة) نكاحُ الأمِّ والجداتِ (من جهة الأم أو من جهة الأب) وإنْ عَلَوْنَ والبناتِ وبناتِ الأولادِ وإنْ سَفَلْنَ والأخواتِ وبناتِ الإخوةِ والأخواتِ وإنْ سَفَلْنَ والعماتِ والخالاتِ وإنْ عَلَوْنَ وأمِّ الزوجةِ وجدتِها وأزواجِ آبائِه وأولادِه: هؤلاءِ كلُّهنَّ يَحْرُمْنَ بمجردِ العقدِ. وأمّا بنتُ زوجتِه فلا تَحْرُمُ إلاّ بالدخولِ بالأمِّ.

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he has had sexual intercourse with her mother. Were he to divorce the mother before intercourse, it would be permissible for him to marry the daughter)

(13) (n: and all those considered as unmarriageable kin to him through his having been breast-fed by a particular wet nurse in infancy, as at n12.2).

فإنْ أبَانَ الأمَّ قبلَ الدخولِ بها حلَّتْ لهُ بنتُها. [ويَحْرُمُ عليهِ مَنْ وطِئَها أحدُ آبائِهِ (وإن علوا) أوْ أبنائِهِ (وإن سفلوا) بملكٍ أوْ شبهةٍ، وأمهاتُ موطوأتِهِ هو بملكٍ أوْ شبهةٍ، وبناتُها؛ كلُّ ذلكَ تحريماً مؤبداً].

m6.2 (N: It is unlawful and invalid for a woman to marry her:

(1) father, grandfather, and on up;

(2) son, son's son, daughter's son, and on down;

(3) brother;

(4) father's brother, meaning the brother of any male ancestor;

(5) mother's brother, meaning the brother of any female ancestor;

(6) brother's son, sister's son, or any other descendants of brothers or sisters;

(7) the husband of her mother, grandmother, and on up;

(8) the husband of her daughter or other female descendant;

(9) her husband's father, grandfather, and on up, and husband's son and descendants;

(10) (n: and unmarriageable kin to her through her having been breast-fed by a particular wet nurse in infancy, as at n12.2).

m6.2 (ح: يحرم ولا يصح نكاح المرأة محارمها وهم من الرجال ما يلي:

١- أبوها وجدها وإن علا.

٢- ابنها وابن ابنها وابن بنتها وإن سفل.

٣- أخوها.

٤- عمها، وهو أخو كل رجل ولدها.

٥- خالها، وهو أخو كل امرأة ولدتها.

٦- ابن أخيها وابن أختها، وكذا كل ذرية أخيها أو أختها.

٧- زوج أمها أو جدتها وإن علت.

٨- زوج ابنتها وكل امرأة من ذريتها.

٩- أبو زوجها وجده وإن علا، وابن زوجها وذريته).

١٠- (ت: ومحارمها بالرضاع).

m6.3 It is unlawful for a man to marry both:

(1) a woman and her sister;

(2) a woman and her father's sister;

m6.3 ويحْرُمُ أنْ يَجْمَعَ بينَ المرأةِ وأختِها أوْ عمتِها أوْ خالتِها.

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(3) or a woman and her mother's sister.

(N: But if a man is no longer married to one of the above and the waiting period (def: n9) has expired, then he may marry the other.)

(ح: لكن إن انتهى زواج الرجل بإحدى المذكورات وانقضت العدة فلا مانع من التزوج بأخرى).

m6.4 [وإنْ تزوَّجَ امرأةً ثمَّ وطئها أبوهُ أو ابنُهُ بشبهةٍ أوْ وطيءَ هو أمَّها أوْ بنتَها بشبهةٍ انْفَسَخَ نكاحُها (ح: وأما إن زنيا فلا ينفسخ لأن التحريم بالمصاهرة احترام للوطء الشرعي وأما الزنا فليس له احترام ولا يترتب عليه تحريم الأمهات والبنات ونحوهن)].

m6.5 The same categories of relatives who are unlawful for one to marry because of one's kinship relation to them are also unlawful to one by "foster relationship," through having been breast-fed by a particular wet nurse in infancy (dis: n12.2) (N: since someone nursed in infancy by a woman is prohibited to marry those whom her offspring and her husband's offspring are prohibited to marry).

m6.5 وما حَرُمَ مِنْ ذلك بالنسب حَرُمَ بالرضاع (ح: فمن رضع من امرأة حرم عليه ما يحرم على أبنائها وأبناء زوجها).

m6.6 [ومَنْ حَرُمَ نكاحُها مِمَّنْ ذَكَرْنَاهُ حَرُمَ وطؤُها بِملكِ اليمينِ ومَنْ وَطِيءَ أمَتَهُ ثمَّ تزوَّجَ أختَها أوْ عمتَها أوْ خالتَها حلَّتْ لهُ المنكوحةُ وحَرُمَتِ المملوكةُ].

m6.7 It is unlawful for a Muslim man to marry:

(1) a Zoroastrian woman;

(2) an idol worshipper;

(3) an apostate from Islam (murtadd, def: o8);

(4) or a woman with one parent who is Jewish or Christian, while the other is Zoroastrian.

(5) (N: It is not lawful or valid for a Muslim man to be married to any woman who is not either a Muslim, Christian, or Jew; nor is it lawful or valid for a Muslim woman to be married to anyone besides a Muslim.)

m6.7 ويَحْرُمُ على المسلمِ نكاحُ المجوسيةِ والوثنيةِ والمرتدةِ ومَنْ أحدُ أبويها كتابيٌّ والآخرُ مجوسيٌّ [والأمةِ الكتابيةِ وجاريةِ ابنِهِ وجاريةِ نفسِهِ ومالكتِهِ لكنْ يَجوزُ وطءُ الأمةِ الكتابيةِ بملكِ اليمينِ].

m6.8 It is unlawful for a man who has divorced his wife by public imprecation (def: n11) to

m6.8 وتحْرُمُ الملاعنةُ على الملاعِنِ (ح: لكنها ليست بمحرم له،

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remarry her (N: though she is not considered his unmarriageable kin (mahram), and he may not look at or be alone with her).

فلا يجوز له النظر إليها ولا الخلوة بها).

m6.9 It is unlawful to marry a woman who is in a state of pilgrim sanctity (ihram, def: j3) (N: for hajj or 'umra), or in her waiting period (def: n9) after marriage to another.

m6.9 ونكاحُ المُحْرِمةِ (ع: بحج أو عمرة) والمعتدةِ مِنْ غيرِه.

m6.10 It is unlawful for a free man to marry more than four women. It is fitter to confine oneself to just one.

m6.10 ويَحْرُمُ على الحرِّ أنْ يَجْمَعَ بين أكثرَ مِنْ أربعٍ والأولى الاقتصارُ على واحدةٍ.

m6.11 [ولهُ أنْ يَطأَ بملكِ اليمينِ ما شاءَ. ويَحْرُمُ على العبدِ أكثرُ من اثنتينِ. ويَحْرُمُ على الحرِّ نكاحُ الأمةِ المسلمةِ إلاّ أنْ يخافَ العنتَ وهو الوقوعُ في الزنا وليْسَ عندهُ حرةٌ تَصْلُحُ للاستمتاعِ وعَجَزَ عنْ صداقِ حرةٍ أوْ ثمنِ جاريةٍ تَصْلُحُ].

m6.12 The following types of marriage are legally invalid:

(1) to marry by "trading daughters [or sisters]" (A: such that the marriage of each by the guardian of the other supposedly takes the place of the woman's marriage payment (mahr));

(2) to have a "temporary marriage" (mut'a), meaning to marry a woman for a stipulated period (O: whether specified, such as a month, or unknown, such as "until So-and-so comes");

(3) or to marry a woman after her threefold divorce solely to cohabit and thus permit her (dis: n7.7) to remarry her previous husband (A: which is an enormity (dis: p29)), though if the marriage agreement is made for this reason but does not expressly stipulate it, then it is legally valid (dis: c5.2).

m6.12 ولا يَصِحُّ نكاحُ الشغارِ، ونكاحُ المتعةِ وهو أنْ يَنْكِحَها إلى مدةٍ (معلومةٍ كشهرٍ أو مجهولةٍ كقدومِ زيدٍ)، ولا نكاحُ المحلِّلِ، وهو أنْ يَنْكِحَها ليُحَلِّلَها للذي طَلَّقَها ثلاثاً. فإنْ عَقَدَ لذلك ولمْ يَشْتَرِطْ صَحَّ.

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m7.0 DEFECTS IN THE SPOUSE PERMITTING ANNULMENT OF MARRIAGE

m7.0 العيوب المثبتة للخيار في فسخ النكاح

m7.1 In any of the following circumstances, the husband or wife has the option to annul the marriage agreement immediately, if this is done in the presence of the Islamic magistrate (O: or a third party chosen to judge between them (dis: o21.4), provided that he is a *mujtahid* (def: o22.1(d)) and there is no Islamic judge), even when the partner annulling the marriage has the same defect whose existence in the spouse has motivated him or her to annul it (O: as when, for example, both are insane):

(1) one finds that the spouse is not sane, or has elephantiasis or leprosy;

(2) the husband finds that the wife's vagina is closed or nearly so because of an abnormal growth of flesh or bone;

(3) or the wife finds that the husband is impotent, or that his penis has been dissevered.

The agreement may also be annulled when the defect occurs after making the marriage agreement, except when a husband's impotence occurs after he has had sexual intercourse with his wife, in which case annulment is no longer possible. When a husband (N: impotent from the beginning) acknowledges his impotence, the magistrate postpones action on the case for one year from the day it is first submitted to his consideration. If the husband has intercourse with her during the year, then she is not entitled to annul the marriage, though if he does not, then she may annul it. In cases of impotence, her above-mentioned prerogative of annulling the marriage "immediately" means after this period of one year.

m7.1 إذا وَجَدَ أحَدُهُمَا الآخرَ مجنوناً أوْ مجذوماً أوْ أبرص أوْ وَجَدَها رتقاءَ أوْ قرناءَ أوْ وَجدتْهُ عنيناً أوْ مجبوباً ثَبتَ الخيارُ في فسخِ النكاحِ على الفورِ عندَ الحاكمِ (ومثلُ القاضي في ذلكَ المحكمِ بشرطه وهو أن يكونَ مجتهداً ولا قاضي) سواءٌ كانَ بهِ ذلكَ العيبُ (بأن اتحد عيبهما كجنون كل منهما) أمْ لا.

ولوْ حَدَثَ العيبُ (المثبتُ للخيارِ بعد العقدِ) ثَبتَ الخيارُ أيضاً. إلاّ أنْ تَحدُثَ العنّةُ بعدَ أنْ يطأها فلا خيارَ وإذا أقرَّ (الزوج) بالعنةِ أجّلهُ الحاكمُ سنةً منْ يومِ المرافعةِ إليهِ (أي القاضي). فإنْ جامعَ فيها فلا فسخَ لها. وإلاّ فلها الفسخُ. والمرادُ بالفورِ في العنةِ عقيبَ السنةِ.

m7.2 When a marriage is annulled before sexual intercourse, the woman does not receive her marriage payment (mahr) (N: no matter whether the defect is in her or in him (A: as opposed to divorce before sexual intercourse, as discussed at m8.7)).

m7.2 ومتى وقعَ الفسخُ فإنْ كانَ قبلَ الدخولِ فلا مهرَ (ح: سواء كانَ العيبُ بها أم به).

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When a marriage is annulled after intercourse because of a defect that occurred after it, the full marriage payment stipulated by their agreement must be paid to her.

When a marriage is annulled (N: after sexual intercourse) because of a defect that occurred before intercourse (O: whether simultaneously with the marriage agreement or after it but before intercourse), then the bride is only given the amount typically received as marriage payment by similar brides (def: m8.8).

أوْ بعدَهُ بعيبٍ حدَثَ بعدَ الوطءِ وجَبَ المسمَّى.

أوْ (كانَ الفسخ) بعيبٍ حدَثَ قبلَهُ (أي قبلَ الدخولِ سواء كانَ مقارنًا للعقد أو حادثًا بعده وقبل الوطء) فمهرُ المثلِ.

m7.3 [وإنْ شَرَطَ أنَّها حرةٌ فبانَتْ أمةً وهو ممَّنْ يَحِلُّ لهُ نكاحُ الأمةِ تخيَّرَ. وإنْ شَرَطَ أنَّها أمةٌ فبانَتْ حرةً، أوْ لمْ يشْرطْ فبانَتْ أمةً أوْ كتابيةً فلا خيارَ. وإنْ تزوَّجَ عبدٌ بأمةٍ فأُعْتِقَتْ فلَها أنْ تفْسَخَ نكاحَهُ على الفورِ منْ غيرِ الحاكمِ].

m7.4 If any of the following occurs before intercourse has taken place, then the marriage is immediately annulled:

(1) one of a couple who are idolators becomes a Muslim;

(2) one of a Zoroastrian couple becomes Muslim;

(3) the wife of a Jew or Christian becomes a Muslim;

(4) both husband and wife leave Islam;

(5) or one of them does.

But when one of the above things happens after intercourse, then a waiting period (def: n9) must intervene before the marriage is annulled. If both husband and wife (A: are, or) become Muslim before the waiting period finishes, then their marriage continues. And if not, then the marriage is considered to have been over since the change of religion first took place.

m7.4 وإذا أسْلَمَ أحدُ الزوجينِ الوثنيينِ أوْ المجوسيينِ أوْ أسْلَمَتِ المرأةُ والزوجُ يهوديٌّ أو نصرانيٌّ أو ارْتَدَّ الزوجانِ المسلمانِ أوْ أحدُهُما فإنْ كانَ قبلَ الدخولِ تعَجَّلتِ الفرقةُ. وإنْ كانَ بعدَهُ تَوَقَّفَتْ على انقضاءِ العدةِ. فإنْ اجْتَمَعا على الإسلامِ قبلَ انقضائِها دامَ النكاحُ وإلاَّ حُكِمَ بالفرقةِ منْ حينِ تبديلِ الدينِ.

m7.5 When a (A: non-Muslim) man who has more than four wives becomes Muslim, he is obliged to choose just four of them (A: and the others' marriages are annulled).

m7.5 وإنْ أسْلَمَ على أكثرَ منْ أربعٍ اخْتارَ أربعًا منْهُنَّ.

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m8.0 THE BRIDE'S MARRIAGE PAYMENT (MAHR)

(O: The marriage payment is the money or property a husband must pay a woman to marry her.)

m8.0 المهر

(والمهر هو اسم للمال الواجب للمرأة على الزوج بنكاح).

m8.1 It is sunna to name the amount of the marriage payment in the marriage agreement (O: to prevent discord). If it is not mentioned, it does not hurt (O: the validity of the marriage, though if unmentioned in the agreement, it is considered to be the amount typically received as marriage payment by similar brides (def: m8.8). There is complete scholarly consensus on the validity of a contract that does not mention it, though it is offensive not to).

m8.1 يُسَنُّ تسميتُهُ في العقد (لأنه أدفع للخصومة) فإنْ لمْ يُذكَرْ لمْ يَضُرَّ (أي في صحة النكاح فإذا خلا العقد عن تسميته فيرجع فيه إلى مهر المثل وإخلاؤه عنه جائز إجماعاً لكن مع الكراهة).

m8.2 A guardian may not marry his prepubescent daughter to someone for less than the amount typically received as marriage payment by similar brides, nor marry his prepubescent son to a female who is given more than the amount typically received. If he does either of these, the amount stipulated is void and the amount typically received is paid instead (O: in both these cases, as a necessary condition for the validity of the marriage contract).

m8.2 ولا يُزَوِّجُ ابنتَهُ الصغيرةَ بأقلَّ مِنْ مهرِ المثلِ ولا ابنَهُ الصغيرَ بأكثرَ مِنْ مهرِ المثلِ. فإنْ فَعَلَ بَطَلَ المسمّى ووَجَبَ مهرُ المثلِ (في الصورتين لصحة النكاح).

m8.3 Nor may a foolhardy man (def: k13.1(A:)) marry a woman for more than the amount typically received as marriage payment by similar brides.

m8.3 ولا يَتَزَوَّجُ السفيهُ [والعبدُ] بأكثرَ مِنْ مهرِ المثلِ.

m8.4 Anything that may be lawfully used as a price (def: k2) may be given as marriage payment. It may be paid immediately or deferred, and may be an individual article ('ayn), a financial obligation (dayn), or the use or benefit of something.

m8.4 وكلُّ ما جازَ أنْ يكونَ ثمناً جازَ جعلُهُ صداقاً. ويَجُوزُ حالاً ومؤجلاً وعيناً ودَيناً ومنفعةً.

m8.5 The bride possesses the marriage payment when it has been expressly stipulated (O: in the marriage agreement, whether validly stipulated or invalidly. If valid, she owns the amount stated, while if invalid, she owns the amount typically

m8.5 وتَمْلِكُهُ بالتسمية (أي ذكره في صلب العقد سواء كانت صحيحة أو فاسدة ففي التسمية الصحيحة تملك المسمى بعينه وفي الفاسدة تملك مهر

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received as marriage payment by similar brides (def: m8.8). She may dispose of it when she accepts it, and her ownership of it is finalized when her husband has sexual intercourse with her (O: after which none of it is refundable), or when one of them dies before they have had intercourse.

المثل). وتتصرَّفُ فيه بالقبض ويَسْتقرُّ بالدخول (فلا يسقط حينئذ منه شيء) أوْ بموت أحدهما قبلَ الدخول.

m8.6 If payable immediately, the bride may refuse to have sexual intercourse until her husband gives her the marriage payment, though if she allows him to have intercourse with her before she accepts the amount, she may no longer refuse to have intercourse (N: but may demand the amount).

m8.6 ولها أنْ تَمْتنع من تسليم نفسها حتّى تقبضه إنْ كانَ حالاً. فإنْ سلّمتْ نفسها إليه فوطئها قبلَ القبض سقطَ حقُّها من الامتناع (ح: وتطالب بالمهر).

m8.7 If the couple is separated (A: by having annulled the marriage (dis: m7.4)), before intercourse because of an act on the bride's part, as when she becomes a Muslim (O: and the husband remains non-Muslim), or she leaves Islam (O: and the husband remains Muslim), then she is not entitled to any of the marriage payment. But if it is because of an act on the husband's part, as when he becomes Muslim, leaves Islam, or divorces her, then she receives only half of the marriage payment; or the husband may ask for half of it back (O: if she has already accepted it), provided the article given as payment still exists. If it does not, he receives half of the lowest market value of similar articles between the time of the marriage agreement and when the article ceased to exist. If the article was diminished while in the bride's possession, the husband has a choice between taking it back in its defective condition, or accepting half of its value.

m8.7 وإنْ وردتْ فرقةٌ منْ جهتها قبلَ الدخول بأنْ أسْلمتْ (وبقي الزوج على الكفر) أو ارْتدّتْ (وبقي الزوج على الإسلام) سقطَ المهرُ. أوْ منْ جهته بأنْ أسْلمَ أو ارْتدَّ أوْ طلّقَ سقطَ نصفُهُ ويرْجعُ في نصفه (إن قبضته) إنْ كانَ باقياً بعينه وإلاّ فنصف قيمته أقلُّ ما كانتْ منَ العقد إلى التلف. [فإنْ كانَ زائداً زيادةً منفصلةً رجعَ في النصف دون الزيادة. أوْ متصلةً تخيّرتْ بينَ ردِّه زائداً وبينَ نصف قيمته]. وإنْ كانَ ناقصاً تخيّرَ بينَ أخذه ناقصاً وبينَ نصف قيمته.

THE AMOUNT TYPICALLY RECEIVED AS MARRIAGE PAYMENT BY SIMILAR BRIDES

مهر المثل

m8.8 The *amount typically received as marriage payment by similar brides* (mahr al-mithl) means that which would be desirable to a woman like her (O: a woman like the bride, under normal circumstances), *like her* meaning a woman of her

m8.8 ثمّ مهرُ المثل هو ما يُرْغبُ به في مثلها (أي مثل المتزوجة عادة من النساء) فيُعْتبرُ بمنْ يُساويها منْ نساء

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relatives resembling her in such characteristics as age, intelligence, beauty, wealth, being virgin or nonvirgin, and in having the same hometown. (O: Her relatives living therein are taken as the standard, and not those living elsewhere, since the amount typically received varies in different towns. Rafi'i holds that if all of them live in another town, they are nevertheless more suitable to be taken as the standard than nonfamily women from the same town.) If the bride is superior to them (O: respecting the above characteristics) or inferior, then this is taken into consideration (O: meaning she deserves a marriage payment that suits how she is). If she has no female relatives related to her through her father, then those *like her* refers to her maternal relatives (O: i.e. the mother's relatives, such as the bride's grandmother or mother's sister). If none of the above exist, then the standard for comparison is the marriage payment of those women of the same town who resemble the bride.

عصباتها في السنّ والعقل والجمال واليسار والثيوبة والبكارة والبلد (فيعتبر بمن فيها من نساء عصباتها دون غيرها لأن عادة البلاد في المهر مختلفة. قال الرافعي ولو كان جميعهن في بلد أخرى فالاعتبار بهن أولى من الاعتبار بالأجنبيات في تلك البلدة) فإن اختصّت (المرأة عنهن) بمزيد (من الصفات المذكورة) أو نقص روعي ذلك (والمعنى فرض لها مهر لائق بالحال) فإنْ لمْ يَكُنْ لَهَا عصباتٌ منَ النساء فبالأرحام (قرابات الأم كالجدة والخالة) وإلاّ فبنساء بلدها ومَنْ يُشْبِهُهَا.

WHEN A HUSBAND IS UNABLE TO PAY THE MARRIAGE PAYMENT

إعسار الزوج بالمهر

m8.9 When a husband proves financially unable to give his wife the marriage payment (A: if it has not been deferred) before the first time they have sexual intercourse, then the bride may annul the marriage, though if he proves unable afterwards, she may not.

If husband and wife disagree (A: in court, when neither side has proof) as to whether he has given her (O: all, or part of) the marriage payment, then the wife's word is accepted over the husband's (dis: k8.2). But if they disagree as to whether they have had sexual intercourse, the husband's word is accepted over the wife's.

m8.9 وإذا أعْسَرَ (الزوج) بالمهر قبلَ الدخول فلها الفسخُ. أوْ بعدَهُ فلا. فإن اخْتَلَفَا في قبض الصداق (كله أو بعضه) فالقولُ قولُها. أوْ في الوطء فقولُهُ.

m8.10 A man is obliged to pay a woman the amount typically received as marriage payment by similar brides (def: m8.8) when the marriage was (N: consummated, but) invalid, or when a man forces a woman to fornicate with him. When a woman voluntarily fornicates with a man, she does not receive any marriage payment.

m8.10 ومَنْ وَطِئَ امرأةً [بشبهة أو] في نكاح فاسد أوْ زنىً وهي مكرهةٌ لزمَهُ مهرُ المثل. وإنْ طاوعَتْهُ على الزنا فلا مهرَ لها.

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AMENITY PAYMENT

تمتيع المطلقة

m8.11 Whenever a woman is divorced (O: before having had intercourse) and the marriage payment is reduced to one-half (dis: m8.7), she does not receive an *amenity payment* (def: below). But she is entitled to one when the marriage payment is not reduced to one-half, such as when:

(1) she receives no marriage payment because of having allowed her guardian to choose a spouse for her and then having been divorced before intercourse and before any payment was stipulated;

(2) or when she receives the full marriage payment, as when she is divorced after intercourse.

An *amenity payment* is an amount (N: paid by the husband) determined by the Islamic judge through his own personal reasoning (O: it being obligatory that both the husband and wife agree to it, and sunna that it not be less than thirty dirhams (n: 88.94 grams of silver) or something worth that much, and that it amount to less than half the marriage payment), in view of the circumstances of both parties (O: such as how rich or poor the husband is, and the wife's lineage and other characteristics previously discussed).

m8.11 وحيثُ طُلِّقَتْ (الزوجة قبل الدخول) وشُطِرَ المهرُ لا مُتْعَةَ لها. وحيثُ لمْ يَشْطُرْ إمَّا بأنْ لا يَجِب شيءٌ كالمفوِّضةِ إذا طُلِّقَتْ قبلَ الدخولِ والفرضِ، أوْ بأنْ يَجِبَ الكلُّ كالطلاقِ بعدَ الدخولِ، وَجَبَ لها المتعةُ.

وهيَ شيءٌ [(من المال)] يُقَدِّرُهُ القاضي باجتهاده (والواجب فيها ما يتراضى الزوجان عليه ويسن أن لا تنقص عن ثلاثين درهماً أو ما قيمته ذلك وأن لا تبلغ نصف المهر) ويُعْتَبَرُ فيه حالُ الزوجين (من يسار الزوج وإعساره ونسب المرأة وصفاتها السابقة).

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m9.0 THE WEDDING FEAST

m9.0 وليمة العرس

m9.1 The wedding feast is a sunna (A: whose time never expires, though it is recommended to be after intercourse). The sunna is for the meal to consist of a sheep or goat (*shah*, def: h2.5), though it is permissible to serve whatever food is readily available.

m9.1 وليمةُ العرسِ سنَّةٌ. والسنَّةُ أنْ يُولِمَ بشاةٍ ويَجُوزُ ما تيسَّرَ من الطعامِ.

THE OBLIGATION TO ATTEND

وجوب الحضور لمن دعي

m9.2 It is obligatory for whoever is invited to attend (O: and whoever does not respond to the

m9.2 ومَنْ دُعِيَ إليها لزمتْهُ الإجابةُ (ومن لم يجب الدعوة فقد عصى الله

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invitation has disobeyed Allah and His messenger (Allah bless him and give him peace)), whether fasting or not. If one attends, it is recommended to eat, though not obligatory. If one is performing a voluntary fast and attends, and it is not burdensome for the host, then it is best to complete one's fast, though if this would weigh on the host, it is better for one to eat. It is only obligatory to respond to such an invitation if the following conditions are met:

(a) that the host not have invited the rich to the exclusion of the poor;

(b) that the invitation be for the first day of the wedding feast, for if the host celebrates it for three days, it is not obligatory to respond if invited on the second day, and offensive to do so on the third;

(c) that the motive for attending not be fear of the host or desire for the prestige of having attended;

(d) that no one will be there who will hurt one, or whose company is unsuitable (O: because of their vileness, for example, such as people devoid of morals or character);

(e) and that there will be nothing blameworthy there such as flutes, wine, silk-covered sitting mats, or pictures of animate life (dis: p44) on the ceiling, walls, upright pillows (O: not those lying flat (dis: below)), or draperies; or clothing inscribed with something blameworthy, and so forth (O: since a person who attends in the presence of such things is as though accepting and acquiescing to what is condemnable). But if the blameworthy thing will be removed through one's attending, or if the above-mentioned pictures are on the ground, a carpet, or pillows people lean upon (N: or other humiliated deployment, which is lawful), or if the living figures are decapitated, or there are pictures of (n: vegetative life such as) trees, then one must attend.

m9.3 Strewing sweets and the like around at marriage agreements or picking them up is not offensive, but it is better not to.

ورسوله) صائماً كان أو مفطراً. فإذا حضر نُدِب له الأكل ولا يجب. فإنْ كان صائماً تطوعاً ولمْ يشقّ على صاحب الوليمة صومُهُ فإتمامُ الصوم أفضلُ. وإنْ شقّ عليه صومُهُ فالفطرُ أفضلُ. ولوجوب الإجابة شروطٌ: أنْ لا يَخُصّ بها الأغنياءَ دون الفقراء، وأنْ يدعوهُ في اليوم الأول. فإنْ أوْلَم ثلاثة أيام فدعاهُ في اليوم الثاني لمْ تجبْ أو في الثالث كُرِهتْ إجابتُهُ، وأنْ لا يَحْضُرَهُ لخوفٍ منهُ أوْ طمعاً في جاهه، وأنْ لا يكونَ ثمّ مَنْ يتأذّى أوْ لا تليقُ به مجالستُهُ (لقبحه مثلاً كالأراذل) ولا منكرٌ مِنْ زمرٍ وخمرٍ وفُرُشٍ حريرٍ وصورِ حيوانٍ على سقفٍ أوْ جدارٍ أوْ وسادةٍ منصوبةٍ (لا مطروحة) أوْ سترٍ أوْ ثوبٍ مكتوبٍ عليه منكرٌ وغيرِ ذلك (لأنه بالحضور يصير كالراضي بالمنكر ومقرراً له) فإنْ كانَ المنكرُ يزولُ بحضورِهِ أوْ كانت الصورُ على الأرضِ في بساطٍ أوْ مخدةٍ يُتّكَىءُ عليها أوْ مقطوعةَ الرأسِ أو صُوَرَ الشجرِ فلْيَحْضُرْ.

m9.3 ولا يُكْرهُ نثرُ السُكّرِ ونحوِهِ في الإملاكاتِ بَلْ هو خلافُ الأولى والتقاطُهُ أيضاً خلافُ الأولى.

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m10.0 RELATIONS BETWEEN A HUSBAND AND WIVES

m10.0 معاشرة الأزواج

m10.1 It is obligatory for both husband and wife to treat each other well (O: since Allah Most High says,

"Women deserve the like of what they are obliged to give, in kindness" (Koran 2:228)),

and for each to give the other what they must (O: meaning that both spouses are required to, the husband giving her the expenditures he is obliged to (def: m11), and the wife giving herself to him and obeying him concerning his rights therein) without intentional delays or displaying resentment.

m10.1 يَجِبُ على كلِّ واحدٍ من الزوجين المعاشرةُ بالمعروف (قال تعالى: ﴿ولَهُنَّ مِثْلُ الَّذي عَلَيْهِنَّ بالمَعْرُوف﴾) وبذلُ ما يَلْزَمُهُ (أي يلزم كل من الزوجين بأن يبذل الزوج ما يجب عليه من النفقة وتسلم المرأة نفسها له وتطيعه فيما يتعلق به من حقه) مِنْ غيرِ مَطْلٍ [(والمطل مدافعة الحق مع القدرة على التأدية)] ولا إظهارِ كراهةٍ.

m10.2 It is unlawful for a man to house two wives in the same lodgings unless they both agree.

m10.2 ويَحْرُمُ على الرجلِ أنْ يُسْكِنَ زوجتينِ في مسكنٍ واحدٍ إلاّ برضاهُمَا.

PERMITTING ONE'S WIFE TO LEAVE THE HOUSE

حكم خروج المرأة من بيتها

m10.3 (A: A husband may permit his wife to leave the house for a lesson in Sacred Law, for invocation of Allah (dhikr), to see her female friends, or to go to any place in the town. A woman may not leave the city without her husband or a member of her unmarriageable kin (def: m6.2) accompanying her, unless the journey is obligatory, like the hajj. It is unlawful for her to travel otherwise, and unlawful for her husband to allow her to.) (n: In the Hanafi school, it is not unlawful for her to travel beyond city limits without a husband or member of her unmarriageable kin unless the distance to her intended destination exceeds ca. 77 km./ 48 mi. (*al-Lubab fi sharh al-Kitab* (y88), 1.105).)

m10.4 The husband may forbid his wife to leave the home (O: because of the hadith related by Bayhaqi that the Prophet (Allah bless him and give him peace) said,

"It is not permissible for a woman who believes in Allah and the Last Day to allow someone into her husband's house if he is opposed, or to go out if he is averse").

But if one of her relatives dies, it is preferable to let her leave to visit them.

m10.4 ولهُ أنْ يَمْنَعَها مِنَ الخروجِ مِنْ منزلِهِ (لما روى البيهقي من قوله ﷺ: «لا يحلُّ لامرأةٍ تؤمن بالله واليوم الآخر أن تأذن في بيت زوجها وهو كاره ولا أن تخرج وهو كاره»). فإنْ ماتَ لها قريبٌ استُحِبَّ أنْ يأذنَ لها في الخروجِ.

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TAKING TURNS WITH WIVES

القسم بين الزوجات

m10.5 A husband with more than one wife is not obliged to spend his nights with them in turns but may keep away from them (A: all) without sin. But he may not begin spending the night with one of them unless he chooses her by drawing lots. Whenever he spends the night with one wife, he is obliged to spend nights with the others, giving equal time to each one. When a husband intends to begin staying with his wives (A: after an intermission or absence), the wife whose lot is drawn is the first with whom he spends the night. All are included in taking turns, whether a wife in her period or postnatal bleeding, one who is ill, or one who cannot have intercourse because of a vaginal birth defect.

The minimal amount of time for one turn is a night and day, whether the day comes before or after the night; while the maximum is three days (A: and nights. The minimal turn for the Hanafi and Maliki schools is whatever all can agree upon). It may not be more than three days (A: except by their leave). The basic *turn* of someone who makes their living by day is the night, with the day being an adjunct, while for someone who makes their living at night, such as a watchman, the basic turn is the day.

In staying the night, the husband is not obliged to have sexual intercourse with the wife, though it is recommended to have intercourse (and share all other marital enjoyments) with all one's wives on an equal basis.

m10.5 ومَنْ لهُ نساءٌ لا يَجبُ عليه أنْ يَقسِم لهُنَّ بلْ لهُ الإعراضُ عنهنَّ بلا إثم. وليْسَ لهُ أنْ يَبْتدِىء المبيتَ عندَ إحداهُنَّ إلاَّ بالقرعةِ. فإنْ باتَ عندَ واحدةٍ منهُنَّ لزِمهُ المبيتُ عندَ الباقياتِ بقدرِه. فإذا أرادَ القسمَ أقرعَ فمنْ خرجتْ قرعتُها قدَّمَها. ويقْسِمُ للحائضِ والنفساءِ والمريضةِ والرتقاءِ. [فإنْ كانَ معهُ حرةٌ وأمةٌ قَسَمَ للحرةِ مثلَ ما للأمةِ مرتين]. وأقلُّ القسمِ ليلةٌ ويتْبعُها يومٌ قبلَها أوْ بعدَها وأكثرُهُ ثلاثةُ أيامٍ ولا يُزادُ على ذلكَ. وعمادُ القسمِ الليلُ. والنهارُ تابعٌ لِمَنْ معيشتُهُ بالنهارِ. فإنْ كانتْ معيشتُهُ بالليلِ كالحارسِ فعمادُ قسمِه بالنهارِ. ولا يَجبُ عليه وطءٌ لكنْ تُنْدَبُ التسويةُ بيْنهُنَّ فيه وفي سائرِ الاستمتاعاتِ.

m10.6 If the husband wants to take one of his wives on a journey with him, he may not do so unless he draws lots to see who it will be. If he draws lots (A: and takes the winner with him), then when he returns, he does not need to make up the turns which the other wives missed while he was on the journey. If he did not draw lots but just chose a wife to travel with him, this is a sin, and on his return he must give equal time to the other wives for the time they missed.

m10.6 وإنْ أرادَ أنْ يُسافِرَ بامرأةٍ منهُنَّ لمْ يَجُزْ إلاَّ بقرعةٍ. فإنْ سافَرَ بقرعةٍ لمْ يَقْضِ للمقيمةِ. وإنْ سافَرَ بها بغيرِ قرعةٍ أثِمَ ولزِمَهُ القضاءُ.

m10.7 It is permissible for one of the wives to give her turn to another wife, if the husband

m10.7 ومَنْ وهَبَتْ حقَّها منَ القسمِ لبعضِ ضرائرِها برضا الزوجِ جازَ. وإنْ

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agrees. If one of them gives him her turn, then he may give it to whomever he wants. If the wife later chooses to take her turn back, she returns to her usual place in the order of taking turns as it stands on the day she takes it back.

وَهَبَتْ للزوجِ جَعَلَهُ لِمَنْ شاءَ منهنَّ . فإن رَجَعَتْ في الهبة عادَتْ إلى الدورِ مِنْ يومِ الرجوع .

m10.8 It is not permissible for a husband to enter the quarters of a wife during another wife's turn without business there, though if he stops in during the day because of something he needs, or during the night because of something absolutely necessary (A: such as bringing her supper), then he may enter. Otherwise he may not.

If he prolongs such a visit, then he is obliged to make up the turn of the wife whose turn it originally was.

m10.8 ولا يَجُوزُ أنْ يَدْخُلَ على امرأةٍ في نوبةِ أخرى بلا شُغْلٍ . فإنْ دخلَ بالنهارِ لحاجةٍ أوْ بالليلِ لضرورةٍ جازَ . وإلاّ فلا . وإنْ أقامَ لزمَهُ القضاءُ .

m10.9 If a man marries a new wife when he already has another, he interrupts the succession of turns to spend time with the new wife. If she is a virgin, then he stays with her seven days and need not make them up with the other wives. If she is a nonvirgin, then he may choose to either spend seven days with her and make up (O: to the others the number in excess of three days), or spend three days with her and not make up the time with the others. In such cases it is recommended to let the new wife choose the alternative she prefers. If the husband stays with her for seven days at her request, he must make up all seven days with the others, though if he stays seven days without her having requested it, he need only make up four with the others.

m10.9 وإن تزوَّجَ جديدةً وعندهُ غيرُها قطعَ الدورَ للجديدةِ . فإنْ كانتْ بكراً أقامَ عندَها سبعاً ولمْ يَقْضِ . وإنْ كانتْ ثيباً فهوَ بالخيارِ بينَ أنْ يُقيمَ عندَها سبعاً ويَقْضِي (للباقياتِ ما زادَ على ثلاثٍ) وبينَ أنْ يُقيمَ ثلاثاً ولا يَقْضِي . ويُنْدَبُ لهُ أنْ يُخيِّرَها بينَهُما . فإنْ أقامَ سبعاً بطلبِها قَضَى السبعَ . أوْ بدونِه قَضَى أربعاً فقطْ .

m10.10 The husband is entitled to leave home during the day to fulfill his needs and obligations.

m10.10 ولهُ الخروجُ نهاراً لقضاءِ الحاجاتِ والحقوقِ .

m10.11 [ومَنْ ملكَ إماءً لمْ يَلْزَمْهُ أنْ يَقْسِمَ لهنَّ . ويُنْدَبُ أنْ لا يَعْطَلَهُنَّ مِن الوطءِ وأنْ يُساوِيَ بَيْنَهُنَّ فيهِ] .

DEALING WITH A REBELLIOUS WIFE

معاملة الناشز

m10.12 When a husband notices *signs* of rebelliousness in his wife (nushuz, dis: p42) (O:

m10.12 وإذا رأى مِنَ المرأةِ أماراتِ النشوزِ (قولاً كانَ النشوزُ كأنْ تجيبَه بكلامٍ

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whether in words, as when she answers him coldly when she used to do so politely, or he asks her to come to bed and she refuses, contrary to her usual habit; or whether in acts, as when he finds her averse to him when she was previously kind and cheerful), he warns her in words (O: without keeping from her or hitting her, for it may be that she has an excuse. The warning could be to tell her, "Fear Allah concerning the rights you owe to me," or it could be to explain that rebelliousness nullifies his obligation to support her and give her a turn amongst other wives, or it could be to inform her, "Your obeying me [def: (3) below] is religiously obligatory"). If she *commits* rebelliousness, he keeps from sleeping (O: and having sex) with her without words, and may hit her, but not in a way that injures her, meaning he may not (A: bruise her,) break bones, wound her, or cause blood to flow. (O: It is unlawful to strike another's face.) He may hit her whether she is rebellious only once or whether more than once, though a weaker opinion holds that he may not hit her unless there is repeated rebelliousness.

(N: To clarify this paragraph, we mention the following rulings:

(1) Both man and wife are obliged to treat each other kindly and graciously.

(2) It is not lawful for a wife to leave the house except by the permission of her husband, though she may do so without permission when there is a pressing necessity. Nor may a wife permit anyone to enter her husband's home unless he agrees, even their unmarriageable kin. Nor may she be alone with a nonfamily-member male, under any circumstances.

(3) It is obligatory for a wife to obey her husband as is customary in allowing him full lawful sexual enjoyment of her person. It is obligatory for the husband to enable her to remain chaste and free of want for sex if he is able. It is not obligatory for the wife to serve her husband (dis: w45.1); if she does so, it is voluntary charity.

(4) If the wife does not fulfill one of the above-mentioned obligations, she is termed "rebellious" (nashiz), and the husband takes the

خشن بعد أن كان بليناً، وإذا دعاها إلى فراشه لا تجيبه بعد أن كانت تجيبه، أو فعلاً كأن يجد منها إعراضاً وعبوساً بعد لطف وطلاقة وجه) وعظها بالكلام (بلا هجر وضرب فلعلها أن تبدي عذراً، كأن يقول لها: اتقي الله في الحق الواجب لي عليك؛ ويبين لها أن النشوز يسقط النفقة والقسم. وكأن يقول لها: طاعتي عليك فرض) وإنْ صَرَّحَتْ بالنشوز هجرها في الفراش (فلا يضاجعها) دون الكلام وضربها ضرباً (وضرب الوجه لا يجوز) غير مُبَرِّح أيْ لا يَكْسِرُ عظماً ولا يَجْرَحُ لحماً ولا يُنْهِرُ دماً سواءٌ نَشَزَتْ مرةً أوْ تَكَرَّرَ مِنْها. وقيلَ لا يضربُها إلا إذا تَكَرَّرَ نشوزُها.

(ح: توضيحاً لهذه الفقرة نذكر الأحكام التالية:

- يجب على كل من الزوجين معاملة صاحبه بالمعروف والإحسان.

- لا يجوز للزوجة أن تخرج من بيت الزوجية إلا بإذن الزوج، ويجوز لها أن تخرج عند الضرورة بلا إذن. ولا يجوز للزوجة أن تأذن لأحد أن يدخل بيت الزوج إلا برضاه حتى محارمها. ولا تجوز الخلوة بالأجنبي على كل حال.

- يجب على الزوجة طاعة الزوج في الاستمتاع الجنسي المشروع بالمعروف، وعلى الزوج أن يعف زوجته إن استطاع. ولا يجب على المرأة خدمة الزوج فإن فعلت فهي متبرعة.

- إذا لم تقم الزوجة بما يجب عليها مما سبق سميت ناشزاً، وعندئذ يتبع

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following steps to correct matters:

(a) admonition and advice, by explaining the unlawfulness of rebellion, its harmful effect on married life, and by listening to her viewpoint on the matter;

(b) if admonition is ineffectual, he keeps from her by not sleeping in bed with her, by which both learn the degree to which they need each other;

(c) if keeping from her is ineffectual, it is permissible for him to hit her if he believes that hitting her will bring her back to the right path, though if he does not think so, it is not permissible. His hitting her may not be in a way that injures her, and is his last recourse to save the family;

(d) if the disagreement does not end after all this, each partner chooses an arbitrator to solve the dispute by settlement, or divorce.)

الزوج الخطوات التالية للإصلاح:

(١) الوعظ والنصيحة فيبين لها حرمة النشوز وضرره على الحياة الزوجية، ويسمع وجهة نظرها في الموضوع.

(٢) إن لم ينفع الوعظ هجرها فلا ينام معها في الفراش، وبذلك يعرف كل منهما مدى حاجته لصاحبه.

(٣) إذا لم ينفع الهجر جاز له ضربها إن ظن أن الضرب يردها للصواب، وإلا فلا. ويكون الضرب غير مبرح، وهو محاولة أخيرة لإنقاذ الأسرة.

(٤) إذا لم ينته الخلاف بعد كل هذا انتخب كل من الزوجين حكماً لحل الخلاف، بالإصلاح أو الطلاق).

*

m11.0 THE WIFE'S FINANCIAL SUPPORT

(O: *Support* means the financial rights of a wife.)

m11.0 نفقة الزوجة

(والمراد ما يجب للزوجة من الحقوق المالية)

m11.1 (A: The rulings of this section are not recommendations for how much to spend, but rather define the minimum permissible, which a stingy husband may not lawfully spend less than. Extra spending on one's wife is charity.)

FOOD

الطعام

m11.2 The husband is obliged to provide his wife's sustenance day by day. If affluent, he must daily furnish her with one liter of the grain that is the staple food of the town in which they live. (O: By the *grain that is the staple food* of the town, the author means *if people eat it.* If not, then whatever they eat, even if it is hardened, dried white cheese. If the wife asks for something other than the staple food of the town, the husband does not have to

m11.2 يَجِبُ على الزوج نفقةُ زوجته يوماً بيوم. فإنْ كانَ موسراً لَزِمَهُ مدّانِ من الحب المقتاتِ في البلد. (وقول المصنف من الحب المقتات أي إن كانوا يقتاتونه؛ وإلا فمما يقتاتونه. ولو أقطاً فلو طلبت غير ما يقتات في البلد لم تلزمه الإجابة. ولو بذل لها غيره لم يلزمها

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provide it for her, and if he gives her something besides the staple, she need not accept it. The staple food is what is obligatory.) If he is not affluent, then he is obliged to provide 0.51 liters of grain a day for his wife; while if between affluence and nonaffluence, he must provide 0.77 liters per day.

He is also obliged to cover the expenses of grinding it into flour and baking it into bread (O: even when she is used to doing it herself, as there would otherwise be need for this expenditure), and to buy the foods that normally accompany bread to make it savory and agreeable, as much as is customary in the town of meat, oil, and so forth (O: such as dates, vinegar, and cheese. The obligatory measures differ with the seasons, it being necessary in each season to provide that which is proper to it. Fruits might predominate in one season, and thus be obligatory. As for the obligatory amount of meat, one sees how much is customarily consumed in town per week).

If husband and wife agree that he give her compensation in place of the above-mentioned (O: grain and other things she is entitled to, the compensation being in money or clothing), this is permissible.

القبول بل يتعين ما يقتاتونه). وإنْ كانَ معسراً فمدٌّ. وإنْ كانَ متوسطاً فمدٌّ ونصفٌ. ويلْزَمُهُ مَعَ ذلكَ أجرةُ الطحنِ والخبزِ (وإن اعتادته بنفسها للحاجة لهذه الأجرة) والأدمِ على حسبِ عادةِ البلدِ مِنَ اللحمِ والدهنِ وغيرِ ذلكَ (كالتمر والخل والجبن. ويختلف الواجب بالفصول فيجب في كل فصل ما يناسبه، وقد تغلب الفواكه في أوقاتها فتجب. وينظر في اللحم إلى عادة المحل من أسبوع أو غيره).

فإنْ تَرَاضَيَا على أخذِ العوضِ عنْ ذلكَ (المذكور مما وجب لها من الحب وما بعده. وذلك العوض كالدراهم والدنانير والثياب) جازَ.

ARTICLES FOR PERSONAL HYGIENE

أدوات التنظيف

m11.3 The wife in entitled to what she needs of oil for her hair, shampoo (lit. "sidr"), and a comb (O: to keep her hair clean, of the kind and amount that is customary in town, in order to prevent harm to herself. If oil scented with rose or violet is the custom of the town, it must be provided, though not things which are merely cosmetic and not for cleanliness, such as eyeliner or henna, which need not be provided, though the husband may provide them if he wishes. It is also obligatory for him to provide deodorant (lit. "litharge") or the like to stop underarm odor if water and soap will not suffice), and the price of water for her purificatory bath (ghusl) when the reason for it is sexual intercourse or the end of postnatal bleeding, though not if the reason is the end of her monthly period or something else (dis: m11.1).

m11.3 ولها ما تَحْتاجُ إليهِ مِنَ الدهنِ للرأسِ والسدرِ والمشطِ (لتنظيفه على عادة البلد جنساً وقدراً، دفعاً للضرر. وإن جرت العادة فيه باستعمال الدهن المطيب بنحو الورد والبنفسج وجب بخلاف ما لا يقصد منه التنظيف بل التزين كالكحل والخضاب. فإنه لا يجب بل هو باختيار الزوج. ويجب لها مرتك ونحوه لدفع الصنان إن لم يندفع بالماء و[التراب) (ت: أو في زماننا] الصابون) وثمن ماء الاغتسال إنْ كانَ سببُهُ جماعاً أوْ نفاساً فإنْ كانَ سببُهُ حيضاً أوْ غيرَ ذلكَ لمْ يَلْزَمْهُ.

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COSMETICS AND MEDICINE

الطيب والأدوية

m11.4 The husband is not obliged (N: but rather is recommended) to pay for his wife's cosmetics, doctor's fees, the purchase of medicine for her, and similar expenses (A: though he must pay for expenditures connected with childbirth).

m11.4 ولا يَلْزَمُهُ ثمنُ الطيبِ [(الذي يقصد للزينة)] ولا أجرةُ الطبيبِ ولا شراءُ الأدوية ونحو ذلكَ

CLOTHING

الكسوة

m11.5 A wife is entitled to the kind of clothing that is customary in town for dressing oneself (O: and not just anything termed *clothing* will suffice. What is obligatory is the amount necessary for the woman, which varies according to whether she is tall or short, thin or fat, and with the hot or cold climate of various towns. In the summertime, it is obligatory to provide her with a head covering, shift, underdrawers, shoes, and a shawl, because of her need to go out; and the same in the wintertime, plus a cloak quilted with cotton to protect her against the cold. If she needs two cloaks because of the extreme cold, it is obligatory to provide them. If she needs fuel because of the severity of the winter, it is obligatory to buy the necessary wood and coal) and (O: he must also provide the amount customary in town of the) bedding, blankets, and pillows that are suitable for someone of his income. (O: She also deserves cooking implements, and utensils for eating and drinking).

m11.5 ويجبُ لها مِنَ الكسوةِ ما جَرت به العادةُ في البلدِ مِنْ ثيابِ البدنِ (ولا يكفي ما ينطلقُ عليه اسم الكسوة بل تجب على قدر كفاية المرأة فتختلف بطولها وقصرها وهزالها وسمنها واختلاف البلد حرارة وبرودة. فيجب لها في الصيف خمار وقميص وسراويل وخف ورداء لحاجتها إلى الخروج وفي الشتاء مثل ذلك وتزاد جبة محشوة بقطن لدفع البرد. ولو احتاجت إلى جبتين لشدة البرد وجبتا. وإذا لم تستغن بالشتاء عن الوقود لشدة البرد فيجب لها من الحطب والفحم ما يندفع به الحاجة) ويجب لها أيضاً ما جرت به العادة في البلد من) الفرش والغطاء والوسادة على حسب ما يَليقُ بيسارِهِ وإعسارِه (ويجب لها أيضاً عليه آلة الطبخ والأكل والشرب).

m11.6 It is obligatory for the husband to give his wife the expenditures for her support at the first of each day, and to provide her clothing at the first of each season (O: meaning the beginning of winter and summer).

m11.6 ويجبُ تسليمُ النفقةِ إليها مِنْ أولِ النهارِ وتسليمُ الكسوةِ مِنْ أولِ الفصلِ (أي أول فصل الشتاء وأول فصل الصيف).

m11.7 If he gives her clothing for a season, and it wears out before the end of the season, he is not obliged to furnish new clothing, though if it lasts beyond the season, he is nevertheless obliged to provide new clothing for each new season. The wife is entitled to dispose of the clothing as she

m11.7 فإنْ أعطاها كسوةَ مدةٍ فبليَتْ قبلها لم يَلْزَمْهُ إبدالُها. وإنْ بقيتْ بعد المدةِ لَزِمَهُ التجديدُ.
ولها أنْ تتصرَّفَ في كسوتِها بالبيعِ

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wishes, whether by selling it or other (O: means of disposal, such as giving it away, the reason being that it is her own property).

وغيره (من أنواع التصرفات كالهبة وهذا مبني على أنها تمليك).

HOUSING AND SERVANTS

المسكن والخادم

m11.8 The wife is entitled to housing of the same quality as that of similar women. (O: The standard of housing depends on the wife herself, while the standard for her clothing and support takes the state of the husband into consideration. The difference is because the expenditures for her support and clothing become her own property and are not merely for her use, while housing is solely for use (N: meaning that while she can take compensation in place of food or clothing and buy some other kind, she cannot rent a different house). In any case, she is obliged to stay in the lodgings her husband arranges for her.)

If she had servants in her father's house, the husband is obliged to provide servants for her.

m11.8 ويجب لها سكنى مثلها (والسكنى تعتبر بالزوجة بخلاف النفقة والكسوة فإنهما تعتبر بالزوج والفرق أن النفقة والكسوة تمليك لا إمتاع بخلاف السكنى فإنها إمتاع (ح: فتستطيع أن تشتري بدل الطعام والكساء ولا تستطيع أن تستأجر بدل المسكن) وعلى كل حال يجب عليها ملازمة المسكن الذي أعده وهيأه الزوج لها). وإنْ كانتْ تُخْدَمُ في بيت أبيها لزمَهُ إخْدامُها [وتلْزمُهُ نفقةُ الخادم إذا كانَ مِلْكَها].

THE CONDITIONS THAT ENTITLE A WIFE TO SUPPORT

شروط لزوم النفقة

m11.9 The husband is only obliged to support his wife when she gives herself to him or offers to, meaning she allows him full enjoyment of her person and does not refuse him sex at any time of the night or day. She is not entitled to support from her husband when:

(1) she is rebellious (nashiz, def: m10.12(N:)) (O: meaning when she does not obey him) even if for a moment;

(2) she travels without his permission, or with his permission but for one of her own needs;

(3) she assumes ihram for hajj or 'umra (def: j3);

(4) or when she performs a voluntary fast without her husband's permission (O: though if he allows her to fast and does not ask her to break it, he must provide her support).

m11.9 وإنما تلزمُهُ النفقةُ إذا سلَّمتْ المرأةُ نفسَها إليه أوْ عَرَضتْ نفسَها عليْه [أوْ عرَضَها وليُّها إنْ كانتْ صغيرةً سواءٌ كان الزوجُ كبيراً أوْ صغيراً لا يتأتى منهُ الوطءُ. إلاَّ أنْ تُسلَّم وهي صغيرةٌ ولا يُمْكنُ وطؤُها فلا نفقةَ لها] وشرطُ ذلك أيضاً أنْ تُمكِّنَهُ التمكينَ التامَّ بحيثُ لا تَمْتنعُ منهُ في ليلٍ أوْ نهارٍ. فلوْ نشزَتْ (الزوجة أي خرجت عن طاعة الزوج) ولوْ في ساعةٍ [(أو لحظة من لحظات النهار أو الليل)] أوْ سافرَت بغير إذنه أوْ بإذنه لحاجتها أوْ أحْرَمَتْ أوْ صامَتْ تطوعاً بغير إذنه (وفي صوم النفل إذا أقرها ولم يأمرها بالإفطار فلا تسقط نفقتها) [أوْ كانتْ أمةً فسلَّمها السيدُ ليلاً فقطْ] فلا نفقةَ لها.

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SUPPORT FOR A WOMAN IN HER POSTMARITAL WAITING PERIOD	نفقة المعتدة
m11.10 As for a woman in her postmarital waiting period (def: n9), she is entitled to housing during it no matter if it is because of her husband's death, a divorce in which the husband may take her back, or a threefold, finalized divorce. As for her support (A: in terms of food) and clothing: (1) it is not obligatory to provide her with it during the waiting period after (N: a threefold divorce, a release for payment (def: n5), or) her husband's death; (2) it must be provided in the waiting period of a (A: not yet threefold) divorce in which her husband may take her back; (3) and if a woman in the waiting period of a threefold divorce is pregnant, she is given support each day (A: until the child is born, after which she is entitled to support and wages for taking care of it), but if not pregnant, she is not entitled to support.	m11.10 وأمّا المعتدةُ فيجبُ لَهَا السكنى في مدة العدةِ سواءٌ كانَتْ العدةُ عدةَ وفاةٍ أوْ رجعية أوْ بائنٍ. وأمّا النفقةُ فلا تجبُ في عدةِ الوفاةِ وتجبُ للرجعية مطلقاً وللبائنِ إنْ كانَتْ حاملاً يُدْفَعُ إليها يوماً بيومٍ وإنْ لمْ تكُنْ البائنُ حاملاً فلا نفقةَ لَهَا. والكسوةُ كالنفقةِ.
m11.11 If the husband and wife disagree (A: in court, when neither has proof (dis: k8.2)) about whether she received her support from him, her word is accepted over his. If they disagree as to whether she allowed him full enjoyment of her person, then his word is accepted over hers unless he admits that she first made herself available to him, but claims she then refused, in which case her word is accepted over his.	m11.11 وإنِ اخْتَلَفَ الزوجانِ في قبضِ النفقةِ فالقولُ قولُها. وإنِ اخْتَلَفَ في التمكينِ فالقولُ قولُهُ إلاّ أنْ يَعْترفَ بأنها مَكَّنَتْ أولاً ثمّ يدَّعي النشوزَ [(أي بعد التمكين)] فالقولُ قولُها.
m11.12 Whenever the husband neglects to provide his wife's support for a period of time, the amount he should have paid remains a debt he owes to her.	m11.12 ومتى ترَكَ الإنفاقَ عليها مدةً صارتْ النفقةُ عليه ديناً.
m11.13 The wife is entitled to annul their marriage whenever the husband is unable to provide her with the support obligatory for a nonaffluent person to pay (def: m11.2) and provide clothing or	m11.13 وإذا أعْسَرَ بنفقةِ المعسرين أوْ بالكسوةِ أوْ بالسكنى ثبتَ لَهَا فسخُ

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housing for her.

If she wishes, she may choose to bear with him (O: supporting herself with her own money), and it (O: the amount the husband is unable to pay) remains a financial obligation that he owes her. (O: If she does not wish to tolerate his financial incapacity, she cannot annul the marriage by herself, but must establish her husband's inability to support her before the Islamic judge, who annuls the marriage or allows her to do so, since he is the one who judges the matter (A: and if there is no judge, she has two persons (def: o21.4) decide)).)

النكاح . فإنْ شاءتْ صَبَرتْ (بأن أنفقت على نفسها من مالها) وبقي ذلك (أي ما أعسر به الزوج) لَها في ذمته (وإذا لم تصبر على الإعسار فلا تستقل بالفسخ بل لا بد من ثبوت الإعسار عند القاضي فيفسخه أو يأذن لها فيه لأنه مجتهد فيه).

m11.14 The wife is not entitled to annul the marriage when the husband is unable to provide foods besides the staple food, support her servant, or provide the support that must be provided by an affluent person or person between affluence and nonaffluence (def: m11.2).

m11.14 وإنْ أعْسَر بالأدم أوْ بنفقةِ الخادم أوْ بنفقةِ الموسرين أو المتوسطين فلا فسخ لَها.

m11.15 [وإنْ كَانَ الزوجُ عبداً فالنفقةُ في كسبه. وإلاّ ففي يده إنْ كَانَ مأذوناً لهُ في التجارة. وإلاّ فإنْ شاءتْ فَسَخَتْ وإنْ شاءت صَبَرتْ إلى أنْ يَعْتِقَ فتأْخذ منْهُ].

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m12.0 SUPPORT OF ONE'S PARENTS AND CHILDREN

m12.0 وجوب الإنفاق على الأصول والفروع

m12.1 It is obligatory for one to support the persons listed below, whether one is male or female, when one has money in excess of one's own living expenses and (n: if male,) those of one's wife (O: meaning enough for a day and night, oneself taking priority over others, followed by one's wife, who takes precedence over other family members):

(1) one's father, father's father, and on up;

(2) one's mother, grandmothers (from either parent's side) and on up (O: it making no difference what their religion is (A: since the religion of

m12.1 يَجبُ على الشخص ذكراً كَانَ أوْ أنثى إذا فَضَل عنْ نفقته ونفقة زوجته (يومه وليلته، فهو مقدم على غيره والزوجة مقدمة على القريب) أنْ يُنْفِقَ على الآباء والأمهات وإنْ عَلَوْا منْ أيِّ جهةٍ كانُوا (وإن اختلفت ملتهما) وعلى

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the family members is of no consequence in any of the rulings of this section));

(3) and one's children, male and female, their children, and on down.

(O: Money *in excess* of one's own living expenses and those of one's wife means one is obliged to sell (A: if necessary to fulfill the obligation to support the above-mentioned persons) whatever must be sold when one has to pay debts, including real estate and other property.)

But supporting the above-mentioned persons is only obligatory when:

(a) there is poverty (O: a restriction applicable to both support of one's ancestors and one's descendants, meaning that it is necessary in order for it to be obligatory to support one's ancestor that the ancestor be poor, since if he has enough money, one need not support him);

(b) and incapacity (O: to earn a living) due to chronic illness, being a child, or to mental illness. (O: This condition is only applicable to support of one's offspring, not of one's ancestors. If an (A: impoverished) ancestor (A: such as one's father) were able to earn a living from a job suitable to him, it would nevertheless be obligatory for one to support him, and he would not be called upon to gain a livelihood, because of the extreme respect due to him, as opposed to one's descendant, whom one need not support if the descendant is able to earn his own living, but who rather is called upon to do so himself.

The upshot is that the support of whoever has enough money for their own support is not obligatory upon another family member, no matter whether the former is mentally ill or sane, a child or adult, chronically ill or well; because he does not deserve charity in such a condition—while a descendant able to earn an adequate living does not deserve support from his ancestors.)

m12.2 A child is obliged to support his father's wife (A: if the father cannot).

الأولاد وأولادهمْ وإنْ سفلُوا ذكوراً كانُوا أوْ إناثاً (ويفهم من اقتصار المصنف على الفاضل عن قوته وقوت زوجته أنه يباع في هذه النفقة ما يباع في الدين من عقار وغيره)، يشرط الفقر (وهو معتبر في الأصول والفروع. أي يشترط في وجوب نفقة الأصل على الفرع أن يكون الأصل فقيراً. فإن كان غنياً بمال فلا تجب نفقته على الفرع) والعجز (أي عن الكسب، شرط في الفرع دون الأصل. ولو قدر الأصل على كسب لائق به وجبت النفقة له ولا يكلف الكسب لعظم حرمته بخلاف الفرع إذا قدر على الكسب فلا تجب نفقته على الأصل بل يكلف الكسب) إمّا بزمانةٍ أوْ طفولةٍ أوْ جنونٍ (والحاصل أن من له ما يكفيه لنفقته لم تجب نفقته على القريب، مجنوناً كان أو عاقلاً، صغيراً كان أو كبيراً، زمناً أو صحيح البدن، إذ لم يكن أهلاً للمواساة في هذه الحالة ومن يكتسب ويغنيه بالنسبة للفرع لا نفقة له على أصله).

m12.2 وتجبُ نفقةُ زوجة الأب (على الولد).

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m12.3 When a person has both ancestors and children (A: deserving support) but does not have enough for all, then (O: after himself and then his wife) he gives precedence (A: in order) to:

(1) his mother;

(2) his father;

(3) his young son (O: or daughter);

(4) and then to his adult children (A: if they are unable to earn).

m12.3 فإنْ كانَ لهُ آباءٌ وأولادٌ ولمْ يَقْدِرْ على نفقةِ الكلِّ قَدَّمَ (بعد نفسه ثم زوجته) الأمَّ ثمَّ الأبَ ثمَّ الابنَ الصغيرَ (والبنت الصغيرة في معناه) ثمَّ الكبيرَ.

m12.4 The amount of such support must be enough to suffice, though (N: if this much is not paid) it does not become a debt owed by the person who should have given it. (O: It is no longer obligatory after its time has passed (A: but if the deserving person borrows money to support himself during this period, the person who should have supported him is obliged to pay the debt), even though the person who was obliged to give it has committed a sin by thus allowing the time to pass.)

m12.4 وهذهِ النفقةُ مقدَّرةٌ بالكفايةِ ولا تَسْتَقِرُّ في الذمةِ (بل تسقط بمضي الزمان وإن أثم المنفق بهذا المضي).

m12.5 When a father who is poor needs to marry, then a son who is financially able must provide him with the means to keep chaste by finding him a wife (O: i.e. by giving her the marriage payment (mahr, def: m8). It is not permissible to marry him to a deformed or aged woman).

m12.5 وإنِ احْتاجَ الوالدُ المعسرُ إلى النكاحِ لَزِمَ الولدَ الموسرَ إعفافُهُ بالتزويجِ (بأن يسلمها مهرها ولا يجوز أن ينكحه شوهاء أو عجوزاً [أو التسري].

m12.6 Whoever owns an animal is obliged to pay for its maintenance.

(O: The restoration and maintenance of property without a living spirit, such as a canal or house, is not obligatory for its owner. Mutawalli explains this by the fact that such maintenance is an augmentation to the property and as such is not mandatory, as opposed to livestock, whose owner must feed them, since to neglect to do so would entail harm for them. Other scholars explain the difference in terms of the sacredness of animate life, which the author of *al-Istiqsa'* (n: 'Uthman ibn 'Isa Marani) says is the reason that it is wrong

m12.6 ومَنْ مَلَكَ [رقيقاً أوْ] دوابَّ لَزِمَهُ النفقةُ [والكسوةُ فإنْ امْتَنَعَ ألْزَمَهُ الحاكمُ، فإنْ لمْ يَكُنْ لهُ مالٌ أكْرى عليهِ إنْ أمْكَنَ، وإلاَّ بِيعَ عليهِ]. (وما لا روح له كقناة ودار لا تجب عمارتها على مالكها وعلله المتولي بأن ذلك تنمية للمال ولا تجب تنميته بخلاف البهائم يجبر على علفها لأن في تركه إضراراً بها. وفرق غيره بحرمة الروح. قال في الاستقصاء:

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for someone to prevent living things from drinking surplus water (dis: p69), while it is not a sin to neglect watering crops.)

ولهذا يأثم بمنعه فضل الماء عن الحيوان ولا يأثم بمنعه عن الزرع).

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m13.0 CHILD CARE AND CUSTODY

(O: The meaning of *child care* in Sacred Law is the protection of someone who does not possess discernment and cannot manage for himself, whether a child or a mentally ill adult, by seeing to his interests through such things as bathing him, washing his clothes, or grooming him; or securing an infant in the cradle, turning him over to sleep, and protecting him from death or harm. It entails a kind of authority and control and may be possessed by either men or women, though women have a better right to it, since they are tenderer towards children, more patient in carrying out the demands of the task, more discerning in raising children, and more steadfast in staying with them. The following discussion first centers on who best deserves the custody of a child, in order of precedence, and then treats the characteristics of the guardian and ward.)

m13.0 الحضانة

(وحقيقتها شرعاً القيام بحفظ من لا يميز ولا يستقل بأمر نفسه طفلاً كان أو مجنوناً كبيراً وتربيته بما يصلحه كأن يتعهده بغسل جسده وثيابه ودهنه وكحله وربط الصغير في المهد وتحريكه لينام ووقايته عما يهلكه ويضره. وفيها نوع ولاية وسلطنة وتثبت لكل من الرجال والنساء لكن النساء بها أليق لأنهن بالمحضون أشفق وعلى القيام بها أصبر وبأمر التربية أبصر وأشد ملازمة للأطفال. والكلام أولاً في مستحق الحضانة وترتيبهم، ثم في صفات الحاضن والمحضون).

m13.1 The person with best right to custody of a child (A: in order) (O: when there is a dispute concerning who should have it) is:

(1) the mother;

(2) the mother's mother, mother's mother's mother, and on up, such that the one of the generation closest to the child takes precedence;

(3) the father;

(4) the father's mother, father's mother's mother, and on up, where again, the one of the generation closest to the child takes precedence;

(5) the father's father;

(6) the father's father's mother, her mother, and on up, where the one of the generation that is closest takes precedence;

m13.1 أحقُّ الناس بحضانة الطفل (عند التنازع في طلبها) الأمُّ ثمَّ أمهاتُها المدليات بإناثٍ تُقدَّمُ القربى فالقربى ثمَّ الأبُ ثمَّ أمهاتُهُ كذلك ثمَّ أبوهُ ثمَّ أمهاتُهُ

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(7) full sister;

(8) full brother (O: though when the siblings are all male or all female and there is a disagreement over who should have custody, they draw lots to see who will get it. When both males and females exist, females take precedence);

(9) the child's half brothers or sisters from the same father;

(10) the half brothers or sisters from the same mother;

(11) the mother's sister;

(12) the daughters of the full brothers;

(13) the sons of the full brothers;

(14) the daughters of the half brothers from the same father;

(15) the sons of the half brothers from the same father;

(16) the daughters of the half brothers from the same mother;

(17) the sons of the half brothers from the same mother;

(18) the father's sister;

(19) the father's brother;

(20) the daughters of the mother's sister;

(21) the daughters of the father's brother;

(22) and then the son of the father's brother.

كذلك ثمّ الأختُ الشقيقةُ ثمّ الأخ الشقيقُ (وعند الاتحاد في الذكورة فقط أو الأنوثة فقط يقرع بينهم أو بينهن عند التنازع و[تقدم قريباً أن] الأنثى أليق من الذكر عند الاختلاف بينهما) ثمّ للأب ثمّ للأمّ ثمّ الخالةُ ثمّ بناتُ الإخوةِ للأبوين ثمّ بنوهم ثمّ للأب ثمّ بنوهم ثمّ للأمّ ثمّ بنوهم ثمّ العمةُ ثمّ العمُّ ثمّ بناتُ الخالةِ ثمّ بناتُ العمّ ثمّ ابنُ العمّ.

m13.2 The necessary conditions for a person to have custody of a child are:

(a) uprightness (def: o24.4) (O: a corrupt person may not be a guardian, because child care is a position of authority, and the corrupt are

m13.2 وشرطُ الحاضنِ العدالةُ (فلا يكون الفاسق حاضناً لأن الحضانة ولاية والفاسق ليس من أهلها. وقال الماوردي

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unqualified for it. Mawardi and Ruyani hold that outward uprightness (def: m3.3(f)) is sufficient unless there is open wrongdoing. If the corruptness of a child's mother consists of her not performing the prayer (salat), she has no right to custody of the child, who might grow up to be like her, ending up in the same vile condition of not praying, for keeping another's company has its effects);

والروياني إنه تكفي العدالة الظاهرة حتى يتبين الفسق. ولو كانت الأم فاسقة بترك الصلاة فلا حضانة لها لأن المحضون ربما يشب على طريقتها فيتربى عندها على حالة قبيحة من ترك الصلاة لأن الصحبة تؤثر) والعقلُ (فلا حضانة لمجنونة أطبق جنونها فإن قل جنونها كيوم في سنة لم يبطل حق الحضانة بذلك) [والحريةُ].

(b) sanity (O: since a mother uninterruptedly insane has no right to custody, though if her insanity is slight, such as a single day per year, her right to custody is not vitiated by it);

وكذا الإسلامُ إنْ كانَ الطفلُ مسلماً (لأنها ولاية والكافر ليس من أهلها ولا حق له في تربية المسلم لأنه لو ثبت له الحضانة عليه والتربية له لشب الولد على خصال الكفر).

(c) and if the child is Muslim, it is a necessary condition that the person with custody be a Muslim (O: because it is a position of authority, and a non-Muslim has no right to authority and hence no right to raise a Muslim. If a non-Muslim were given charge of the custody and upbringing of the child, the child might acquire the character traits of unbelief (kufr)).

m13.3 (A: It is offensive to send one's children to a day-care center run by non-Muslims. It is unlawful to send Muslim children to Christian schools, or those which are designedly atheist, though it is not unlawful to send them to public schools in which religion is not mentioned (N: in a way that threatens the students' belief in Islam).)

m13.4 A woman has no right to custody (A: of her child from a previous marriage) when she remarries (O: because married life will occupy her with fulfilling the rights of her husband and prevent her from tending the child. It makes no difference in such cases if the (A: new) husband agrees or not (N: since the child's custody in such a case automatically devolves to the next most eligible on the list (dis: m13.1)), unless the person she marries is someone (A: on the list) who is entitled to the child's custody anyway (O: as opposed to someone unrelated to the child, since such a person, even if willing, does not deserve custody because he lacks the tenderness for the child that a relative would have).

m13.4 ولا حقَّ للمرأة إذا نكحت (لأن النكاح يشغلها بحق الزوج ويمنعها من القيام بخدمة المحضون ولا أثر لرضا الزوج (ح: وعندئذ ينتقل حق الحضانة لمن بعدها)) إلا أنْ تنكح مَنْ لهُ حضانتهُ (على الولد بخلاف الأجنبي فلا حق له في الحضانة ولو رضي بها لأنه لا شفقة له كشفقة القريب).

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m13.5 When a child reaches the age of discrimination (O: which generally occurs around seven or eight years of age) he is given a choice as to which of his parents he wants to stay with (O: since the Prophet (Allah bless him and give him peace) gave a young boy the choice between his father and his mother. The child is only given such a choice when the necessary conditions for child custody (def: m13.2) exist in both parents. If one of them lacks a single condition, then the child is not given a choice, because someone lacking one of the conditions is as though nonexistent).

If the child chooses one of the parents, he is given to the care of that one, though if a son chooses his mother, he is left with his father during the day so the father can teach him and train him. (O: Other possible outcomes of such a choice are when the child chooses both parents, in which case they draw lots to see who receives custody of him; or when he chooses neither, in which case the mother takes precedence since the custody is hers, and the child has not chosen someone else.) If the child subsequently chooses the other parent, he is given to the care of them (O: for he might want to stay with one of them at one time and with the other at another, just as one desires food at one time but not another. Or the child's intention might be to maintain good relations with both sides. The author restricts the permissibility of such cases of transferring the child's custody from one to another by saying:) unless it is apparent that the child is merely enamored with going back and forth or is weakminded (O: indicating his lack of discernment. In such cases his choice is not followed, and he remains with whomever he was with before reaching the age of discernment).

m13.5 وإذا بلغ الصغيرُ حدّاً يُميِّزُ فيه (وهو يحصل غالباً سن السبع أو الثمان من السنين) خُيِّرَ بين أبويْه (لتخييره ﷺ غلاماً بين أبيه وأمه [حسنه الترمذي]. وإنما يخير بين الأبوين إذا اجتمعت شروط الحضانة فيهما فإذا فقدت الشروط كلها أو بعضها من أحدهما فلا تخيير لأن من فقدت فيه الشروط كالعدم) فإن اختار أحدَهما سُلِّمَ إليه لكنْ إنِ اختار الابنُ أمَّهُ كان عندَ أبيهِ بالنهار ليُعَلِّمَهُ ويُؤَدِّبَهُ. (قد بقي من صور الاختيار ما لو اختارهما فحينئذ يقرع بينهما ويسلم لمن خرجت له القرعة منهما. وما لو لم يختر واحداً منهما فالأم أولى لأن الحضانة لها ولم يختر غيرها). فإنْ عادَ واختارَ الآخرَ دُفِعَ إليه فإنْ عاد واختار الأولَ أُعيدَ إليه (فقد يشتهي المقام عند أحدهما في وقت وعند الآخر في وقت كما يشتهي الطعام في وقت ويزهد فيه في وقت آخر. وقد يقصد مراعاة الجانبين وقيد المصنف جواز تنقله من واحد إلى واحد بقوله) وهكذا إلى أنْ يظهرَ منهُ بهذا وَلَعٌ وخبلٌ (يدل ذلك على قلة تمييزه فلا يتبع اختياره بل يترك عند من كان عنده قبل التمييز).

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BOOK N

DIVORCE

كتاب الطلاق

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n1.0 WHO MAY EFFECT A DIVORCE

(O: The legal basis for the permissibility of divorce is the Koran, sunna, and consensus of Muslims. As for the Koran, Allah Most High says,

"Divorce is two times ..." (Koran 2:229).

And as for the sunna, there is the rigorously authenticated (sahih) hadith,

"No permissible thing is more detested by Allah than divorce."

Our sheikh, Bajuri, says the meaning of *permissible* in the hadith is *offensive,* since it is permissible, meaning lawful, though detested by Allah.

Its integrals are five:

(a) the spoken form;

(b) the wife;

(c) the authority to effect it;

(d) the intention;

(e) and the person who effects it (A: i.e. the husband).)

n1.0 ممن يصح الطلاق

(والأصل في الطلاق الكتاب والسنة وإجماع الأمة. أما الكتاب فقد قال الله تعالى فيه: ﴿الطَّلَاقُ مَرَّتَانِ﴾ وأما السنة فللخبر الصحيح «ليس شيء من الحلال أبغض إلى الله من الطلاق». وقال شيخنا العلامة الباجوري والمراد بالحلال في هذا الحديث الشريف المكروه فإنه حلال بمعنى جائز لكنه مبغوض لله. وأركانه خمسة: صيغة ومحل وولاية عليه وقصد ومطلق).

n1.1 Divorce is valid from any:

(a) husband;

(b) who is sane;

(c) has reached puberty;

(d) and who voluntarily effects it.

n1.1 يَصِحُّ الطلاقُ مِنْ كلِّ زوجٍ عاقلٍ بالغٍ مختارٍ.

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A divorce is not valid from:

(1) (non-(c) above) a child;

(2) (non-(b)) someone insane;

(3) or (non-(d)) someone who is wrongfully coerced to do it, as when one is threatened with death, dismemberment, being severely beaten, or even mere verbal abuse or a slight beating if the person being coerced is someone whose public image is important and would thereby suffer. (O: Someone being forced should use words that give a misleading impression (def: r10.2) for his ostensible "divorce.")

فلا يصحُّ طلاقُ صبيٍّ ومجنونٍ ومكرهٍ بغير حقٍّ مثل أنْ هُدِّدَ بقتلٍ أوْ قطعِ عضوٍ أوْ ضربٍ مُبَرِّحٍ ، وكذا شتمٍ أوْ ضربٍ يسيرٍ و(المهدَّد) هو مِنْ ذوي المروآت والأقدار . (وينبغي للمكره أنْ يوري) .

n1.2 A statement of divorce is legally effective when pronounced by a person whose mental faculties are lacking because of something inexcusable such as having become intoxicated or having needlessly taken some mind-altering drug (O: though someone who takes such a drug out of need for medical treatment is considered as an insane person, in that his statement of divorce is not legally effective).

n1.2 ومَنْ زالَ عقلُهُ بسببٍ لا يُعْذَرُ فيه كالسكرانِ ومَنْ شَرِبَ دواءً يُزيلُ العقلَ بلا حاجةٍ يَقَعُ طلاقُهُ (ومن شرب ما يزيل عقله لحاجة التداوي فهو كالمجنون فلا يقع طلاقه) .

n1.3 The person conducting the divorce may effect it himself or commission another (def: k17.5–6) to do so, even if the person commissioned is a woman.

The person commissioned may effect the divorce at any time (O: provided the one who commissions him does not cancel the commission before the divorce takes place (dis: k17.16)), though when a husband tells his wife, "Divorce yourself," then if she immediately says, "I divorce myself," she is divorced, but if she delays, she is not divorced unless the husband has said, "Divorce yourself whenever you wish."

n1.3 ولـهُ أنْ يُطَلِّقَ بنفسـه ولـهُ أنْ يُوَكِّلَ ولو امرأةً .

وللوكيـلِ أنْ يُطَلِّقَ متى شاءَ (مـا لم يعـزلـه الموكل قبل إيقاع الطلاق الموكل فيه) لكنْ إذا قالَ لزوجتِهِ : طَلِّقي نفسَكِ ؛ فقـالَـتْ على الفـور : طَلَّقْـتُ نفسي ؛ طُلِّقَتْ . وإنْ أخَّـرَتْ فلا . إلاَّ أنْ يَقُـولَ : طَلِّقي نفسَكِ متى شِئْتِ .

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n2.0 GENERAL PROVISIONS CONCERNING DIVORCE

n2.1 A free man has three pronouncements of divorce (O: because of the word of Allah Most High,

"Divorce is two times, then retain with kindness or graciously release" (Koran 2:229),

and when the Prophet (Allah bless him and give him peace) was asked about the third time, he said,

"It is Allah's having said, 'or graciously release' ").

n2.2 It is offensive to make a pronouncement of divorce when there is no need (O: *need* including when the wife has displeasing qualities or morals), to make three pronouncements (N: even if separate) being more offensive, and combining them in one interval of purity between menstruations even more offensive.

n2.3 There are various categories of divorce: sunna, unlawful innovation, and that which is neither sunna nor unlawful innovation.

The *sunna* is to make a pronouncement of divorce in an interval between menstruations in which no sexual intercourse with the wife has taken place.

Unlawful innovation consists of either making a pronouncement of divorce during the woman's menstrual period when this is not for payment (O: from the wife in exchange for the husband's releasing her from marriage (def: n5), though if the divorce *is* in exchange for a sum paid by the wife, it is not unlawful innovation because it implies that she accepts that the waiting period should be thus prolonged (dis: n9.7))—or else making the pronouncement during an interval between menstruations in which they have had sexual intercourse. If one effects such a divorce, it is recommended to take the wife back (O: if one did not pronounce it the full number of (n: three)

n2.0 أحكام عامة تتعلق بالطلاق

n2.1 ويَمْلِكُ الحرُّ ثلاثَ تطليقاتٍ (لقوله تعالى: ﴿الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾ وقد قال ﷺ [كما صححه ابن القطان] حين سئل عن الثالثة «هو قوله أو تسريح بإحسان») [والعبدُ طلقتين].

n2.2 ويُكْرَهُ الطلاقُ من غيرِ حاجةٍ (ومن الحاجة أن لا تكون الزوجة مرضية الصفات والأخلاق) والثلاثُ (ح: ولو مفرقة) أشدُّ وجمعُها في طهرٍ واحدٍ أشدُّ.

n2.3 ثمَّ الطلاقُ على أقسامٍ سنيٌّ وبدعيٌّ محرمٌ وخالٍ عن السنة والبدعة. فأمّا السنيُّ فهو أنْ يُطَلِّقَ في طهرٍ لمْ يُجامِعْ فيه.

والبدعيُّ المحرمُ أنْ يُطَلِّقَ في الحيضِ بلا عوضٍ (أي من غير عوض تدفعه الزوجة في مقابلة الطلاق فإن كان الطلاق في مقابلة ما دفعته الزوجة له فلا يكون بدعيا لأنها راضية بتطويل العدة) أوْ في طهرٍ جامعها فيه. فإذا فعَلَ [(أي طلق الزوجة طلاقاً بدعياً)] نُدِبَ له أنْ يُراجِعَها (إن لم يستوف عدد الطلاق. وأمّا

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times).

Neither sunna nor unlawful innovation means the divorce of a wife who is prepubescent, post-menopausal, pregnant, or one with whom one has not yet had sexual intercourse.

الخالي عنهما فطلاقُ الصغيرة والآيسة من الحيض والحامل وغير المدخول بها.

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n3.0 THE WORDS THAT EFFECT A DIVORCE

n3.0 الألفاظ التي يقع بها الطلاق

n3.1 The words that effect a divorce may be plain or allusive. Plain words effect the divorce whether one intends divorce by them or not, while allusive words do not effect it unless one intends divorce by them.

n3.1 الألفاظُ التي يَقَعُ بها الطلاقُ صريحٌ وكنايةٌ. فالصريحُ يقعُ به سواءٌ نَوَى به الطلاقَ أم لا. ولا يَقَعُ بالكنايةِ إلاَّ أنْ يَنوِيَ به الطلاقَ.

n3.2 Using *plain words* to effect a divorce means expressly pronouncing the word *divorce* (O: or words derived from it). When the husband says, "I divorce you," or "You are divorced," the wife is divorced whether he has made the intention or not.

(A: Here and in the rulings below, expressions such as "The wife is divorced," or "The divorce is effected," mean just one of the three times (def: n9.0(N:)) necessary to finalize it, unless the husband thereby intends a two- or threefold divorce (dis: n3.5) or repeats the words three times.)

n3.2 فالصريحُ لفظُ الطلاقِ (أي المشتق منه) [والفراق والسراح]. فإذا قالَ طلَّقتُكِ [أوْ فارقتُكِ أوْ سرَّحتُكِ] أوْ أنتِ طالقٌ [أوْ مطلَّقةٌ أوْ مفارقةٌ أوْ مسرحةٌ] طلَّقتْ سواءٌ نَوَى به الطلاقَ أمْ لا.

n3.3 Using *allusive words* to effect a divorce includes:

(1) the husband's saying, "You are now alone," "You are free," "You are separated," "You are parted," "You are no longer lawful to me," "Rejoin your kin," "You are footloose," and the like;

(2) his saying, "I am divorced from you";

(3) or when he commissions the wife to pronounce the divorce, and she says, "You are divorced";

n3.3 والكنايةُ قولُهُ: أنتِ خليةٌ أوْ بريةٌ أوْ بتةٌ أوْ بائنٌ وحرامٌ [وَاعْتَدِّي وَاسْتَبْرِئي وتَفَنَّعي] والْحقي بأهلكِ وحبلُكِ على غاربكِ ونحو ذلكَ؟ أوْ قالَ: أنا منكِ طالقٌ، أوْ فوَّضَ الطلاقَ إليْها فقالَتْ: أنتَ طالقٌ أو قيلَ ألكَ زوجةٌ؟

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(4) when someone asks, "Do you have a wife?" and he says "No"

(5) or when the husband writes words that effect the divorce (O: no matter whether able or unable to speak at the time of writing, or whether he is present or absent, or whether he writes in plain or allusive words).

When one intends divorce by any of the above, the words effect it, but if one does not, they do not.

فقال لا ؛ أوكتب لفظ الطلاق (سواء كان وقت الكتابة أخرس أو ناطقاً حاضراً أو غائباً وسواء كتب لفظ الصريح أو لفظ الكناية). فإذا نوى بجميع ذلك الطلاق وقع وإن لم ينو لم يقع.

n3.4 When a husband is asked, "Have you divorced your wife?" and he says "Yes," then she is divorced (O: even if he does not intend).

n3.4 وإذا قيل له: طلّقت امرأتك؟ فقال: نعم؛ طُلّقت (وإن لم ينو).

n3.5 If the husband says, "You are divorced," and thereby intends a two- or threefold pronouncement, then whatever number he intends is effected, this rule holding for all words that effect divorce, whether plain or allusive. (O: The proof that a single pronouncement can validly effect a threefold divorce is the hadith classified as rigorously authenticated (sahih) by Ibn Hibban that the Prophet (Allah bless him and give him peace), when Rukana divorced his wife and then said, "I did not intend it except as one time," made him swear an oath to that effect, and then returned her to him. If a single pronouncement could not effect a threefold divorce, there would not have been any point in the Prophet's making him swear the oath (Allah bless him and give him peace).)

n3.5 وإذا قال: أنتِ طالقٌ؛ ونوى به إيقاعَ طلقتين أو ثلاثاً وقع ما نوى وكذا سائرُ ألفاظِ الطلاقِ صريحها وكنايتها. (والدليل على وقوع الثلاث ما رواه ابن حبان وصححه أنه ﷺ حلف ركانة حين طلق زوجته البتة ثم قال ما أردت إلا واحدة فحلفه ﷺ على ذلك وردها عليه ولو لم تقع الثلاث لم يكن في الحلف فائدة).

n3.6 [وإذا أضاف الطلاق إلى بعضٍ منْ أبعاضها مثل أنْ قال: نصفُكِ طالقٌ طُلّقتْ طلقةً واحدةً. وكذا إذا قال: أنتِ طالقٌ نصفَ طلقةٍ، أوْ ربعَ طلقةٍ طُلّقتْ طلقةً. وإذا قال: أنتِ طالقٌ ثلاثاً إلاّ طلقةً طُلّقتْ طلقتين؛ أوْ ثلاثاً إلاّ طلقتين طُلّقتْ طلقةً، أو ثلاثاً إلاّ ثلاثاً طُلّقتْ ثلاثاً].

n3.7 If a husband tells his wife, "You are divorced *in sha' Allah* [if Allah wills]," or "if Allah does not will," or "unless Allah wills," then the divorce is not effected.

n3.7 وإنْ قال: أنتِ طالقٌ إنْ شاءَ اللهُ أوْ إنْ لمْ يشأِ اللهُ وكذا إلاّ أنْ يشاءَ اللهُ لمْ تطلّقْ.

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n4.0 CONDITIONAL EXPRESSIONS THAT EFFECT DIVORCE

n4.0 تعليق الطلاق على شرط

n4.1 It is permissible to make the efficacy of a divorce conditional. If the husband makes the divorce conditional on something, and the event occurs, then the wife is divorced. If he says, "If your monthly period begins, you are divorced," then she is divorced when her menstrual flow appears.

n4.1 ويجوزُ تعليقُ الطلاقِ على شرطٍ. وإنْ عَلَّقَهُ على شرطٍ ووُجِدَ ذلك الشرطُ طُلِّقَتْ. فإذا قالَ: إنْ حِضْتِ فأنتِ طالقٌ طَلُقَتْ بمجرد رؤيةِ الدمِ.

n4.2 [فإذا قالتْ حِضْتُ فكذَّبها فالقولُ قولُها مع يمينها. وإنْ قال: إنْ حِضْتِ فضرتُكِ طالقٌ فقالتْ: حِضْتُ: فكذَّبها فالقولُ قولُهُ ولمْ تُطَلَّقْ الضرةُ].

n4.3 If the husband says, "If you leave the house without my permission, you are divorced," then gives her permission to go out, and she does but then goes out a second time without permission, she is not divorced.

If he says, "Anytime you go out without my permission you are divorced," then if she leaves at anytime without permission, she is divorced.

n4.3 وإنْ قالَ: إنْ خرجْتِ إلاّ بإذني فأنتِ طالقٌ؛ ثمَّ أذِنَ لها في الخروجِ مرةً فخرجتْ ثمَّ خرجتْ بعدَ ذلكَ بلا إذنٍ لمْ تُطَلَّقْ. وإنْ قال: كلَّما خرجْتِ إلاّ بإذني فأنتِ طالقٌ؛ فبأيِّ مرةٍ خرجتْ بغيرِ إذنِهِ طُلِّقَتْ.

n4.4 [وإنْ قالَ: متى وقعَ عليكِ طلاقي فأنتِ طالقٌ قبلَهُ ثلاثاً ثمَّ قالَ بعدَ ذلكَ أنتِ طالقٌ طُلِّقَتْ المنجزُ فقطْ].

n4.5 When a husband makes a divorce conditional on one of his own acts but then does the act not remembering that he made it a condition, or does the act because he is forced to, the wife is not divorced.

n4.5 ومَنْ عَلَّقَ بفعلِ نفسِهِ ففَعَلَ ناسياً أوْ مكرَهاً لمْ يَقَعْ.

n4.6 When the husband makes a divorce conditional on another person's act, such as by saying, "If So-and-so enters the house, you are divorced," and the person enters before or after he knows it is a condition, whether remembering it or not, then if the person named is not someone who would mind if they were divorced (O: meaning it is no problem for him if it happens, and he would not be saddened if it did, because of lack of friendship for them), then the wife is divorced. But if the person knows it is a condition and enters forgetfully, then if he is someone who would mind

n4.6 وإنْ عَلَّقَ بفعلِ غيرِه مثلَ: إنْ دَخلَ زيدٌ الدارَ فأنتِ طالقٌ؛ فدَخلَها قبلَ علمِهِ بالتعليقِ أوْ بعدَهُ ذاكراً لهُ أوْ ناسياً وكانَ غيرَ مبالٍ بحنثِهِ (يعني أنه لا يشق عليه حنثه ولا يحزن عليه لعدم صداقة بينهما) طُلِّقَتْ. وإنْ علِمَ بالتعليقِ فدَخلَ ناسياً وهوَ ممَّنْ يُبالي بحنثِهِ لمْ

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if they were divorced, the wife is not divorced.

If the husband, tells his wife, "If you enter that house, you are divorced," and she is subsequently divorced from him with a finalized divorce, after which he remarries her, and she then enters the house, then she is not divorced.

تَطَلَّقْ. وإنْ قال: إنْ دَخَلْتِ الدارَ فأنتِ طالقٌ ثمَّ بانَتْ منهُ [إمَّا بطلقةٍ أوْ بثلاثٍ] ثمَّ تزوَّجَها ثمَّ دَخَلَتِ الدار لمْ تَطَلَّقْ.

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n5.0 A RELEASE FOR PAYMENT FROM THE WIFE (KHUL')

(O: A *release for payment* means a separation in return for remuneration given to the husband (A: which is a finalized cancellation of the marriage agreement, differing from a threefold divorce by the fact that they may remarry in such a case without her marrying another husband first (dis: n7.7)).)

n5.0 الخلع

(وهو فرقة على عوض يرجع إلى الزوج).

(ع: وهو طلاق بائن، يختلف عن الطلاق الثلاثي البائن بجواز عقد نكاح جديد بينهما بدون محلِّل).

n5.1 A release for payment is valid from any person whose divorce is valid (def: n1.1).

n5.1 يَصِحُّ الخلعُ مِمَّنْ يَصِحُّ طلاقُهُ

n5.2 Release is offensive except when:

(1) the husband or wife fear they will not be able to keep within Allah's limits (O: i.e. those that Allah Most High has made obligatory upon them (dis: m10.1)) while the marriage lasts;

(2) or when the husband swears that a threefold divorce is incumbent upon him if he performs some action, but then finds he needs to do it (O: since he cannot clear himself from the oath without giving her a release), so he releases her, marries her (O: with a new agreement, a new marriage payment (mahr), and upright witnesses), and then does the act on which the divorce was conditional (O: though it is fitter to do it before the new marriage, as the oath is nullified as soon as they are unmarried), for then its performance does not necessitate a threefold divorce.

n5.2 ويُكْرَهُ إلاَّ في حالين: أحدُهُمَا أنْ يخافا أوْ أحدُهُمَا أنْ لا يُقِيمَا حدود الله (أي ما افترضه تعالى عليهما) ما دامَا على الزوجية. والثاني أنْ يَحلفَ بالطلاق الثلاث على ترك فعل شيءٍ ثمَّ يَحْتاجُ إلى فعله (فلا يتخلص من اليمين إلا بالخلع فحينئذ) فيُخالِعُهَا ثمَّ يتزوَّجُها (بعقد جديد ومهر جديد وشهود عدول) ثمَّ يَفْعَلُ المحلوفَ عليه (وفعله قبل التزوج أولى لانحلال اليمين في حال البينونة) فإنَّهُ لا يَقَعُ عليه الطلاقُ الثالثُ [كما سَبَقَ].

n5.3 If the husband is foolhardy (A: meaning suspended by the court from dealing in his own

n5.3 وإنْ كانَ الزوجُ سفيهاً صَحَّ

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money because of chronic carelessness (dis: k13.1(A:)), his granting a release is valid, though his guardian accepts the compensation.

A release for compensation is not legally valid from a wife who is foolhardy.

خُلْعُهُ ويدْفعُ العوضَ إلى وليِّه.

ولا يصحُّ خُلْعُ سفيهةٍ. [وليْسَ للوليِّ أنْ يُخالِعَ امرأةَ الطفلِ. ولا أنْ يُخالِعَ الطفلَ بمالِها ويصحُّ بمالِ الوليِّ].

n5.4 A release is validly effected by both the words for divorce and the words for release, such as "You are divorced for a thousand," or "I release you for a thousand," and if the wife says "I accept," then she is separated from him and she owes him the thousand. She is also released when the husband says, "If you give me a thousand, you are divorced," and then she gives him it, or when she says, "Divorce me for a thousand," and he says, "You are divorced," in which case she is released and owes him the thousand.

n5.4 ويصحُّ بلفظِ الطلاقِ ولفظِ الخلعِ مثلُ: أنتِ طالقٌ على ألفٍ، أو خالعتُكِ على ألفٍ. فإنْ قالتْ: قبلْتُ، بانتْ ولزمَها الألفُ. وكذلكَ إنْ قالَ: إنْ أعْطيْتِني ألفاً فأنْتِ طالقٌ، فأعْطتْهُ بانتْ. وكذلكَ إذا قالتْ: طلِّقْني على ألفٍ فقالَ: أنتِ طالقٌ، بانتْ ولزمَها الألفُ.

n5.5 Anything that may be used as a marriage payment (def: m8.4) may be used as recompense for a release. If a husband releases his wife for something not determinately known (non-k2.1(e)) or without lawful value (non-k2.3) such as wine, then she is released in exchange for the amount typically received as marriage payment by women like her (def: m8.8).

n5.5 وما جازَ أنْ يكونَ صداقاً جازَ أنْ يكونَ عوضاً في الخلعِ. فلوْ خالعَ بمجهولٍ أوْ غيرِ متمولٍ كالخمرِ بانتْ بمهرِ المثلِ.

n5.6 A release enacted by words that effect it is a divorce in plain words (A: in not needing the intention (dis: n3.2), (N: in having a waiting period (def: n9).) and in being a finalized cancellation of the marriage, though as previously mentioned (n5.0(A:)), the partners may remarry each other (N: even if before the end of the waiting period) without the wife first having to marry another).

n5.6 وهوَ بلفظِ الخلعِ طلاقٌ صريحٌ (ع: في عدمِ احتياجِه إلى النيةِ (ح: وفي أنَّ له عدةً) وفي أنه طلاقٌ بائنٌ، ولكنْ للزوجينِ أنْ يعقدا عقداً جديداً (ح: ولو قبلَ انقضاءِ العدةِ) بلا محلِّلٍ، كما سبقَ).

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n6.0 DOUBTS ABOUT THE FACT OF HAVING DIVORCED

(A: *Doubt* means that one does not remember exactly what one said or did. As for when one is ignorant of rulings about divorce or

n6.0 الشك في الطلاق

(ع: ومعنى الشكِّ في الطلاقِ أنَّ الزوجَ لا يذكرُ بدقةٍ ماذا قد قالَ أو فعلَ أما منْ جهلَ أحكامَ الطلاقِ أوما يترتبُ

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the consequences of one's actions, it is not an excuse, and one must ask those who know.)

على فعله ، فليس بعذر ويلزمه سؤال أهل العلم).

n6.1 Whoever does not know whether he has divorced his wife or not has not divorced her. It is more godfearing in such a case to take the wife back.

n6.1 مَنْ شكَّ هلْ طلَّقَ أمْ لا لمْ تطلَّقْ. والورعُ أنْ يُراجِع.

n6.2 If one does not know whether one has divorced one's wife once or whether more than once, then one has divorced her the least number one is certain of.

n6.2 وإنْ شكَّ هلْ طلَّقَ طلقةً أوْ أكثر وقع الأقلُّ

n6.3 When a husband divorces his wife with a threefold divorce during his deathbed illness (def: L3.6(1–4)), she does not inherit (A: a wife's estate division share (def: L6.4)) from the division of his estate (A: though if it is less than a threefold divorce, she inherits).

n6.3 ومَنْ طلَّقَ ثلاثاً في مرضِ موته لمْ ترثْهُ المطلَّقةُ.

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n7.0 TAKING BACK A DIVORCED WIFE (RAJ'A)

(O: Lexically, *to take back* means returning, and in Sacred Law it means the return of a woman who is in her waiting period (def: n9) from an unfinalized, non-threefold divorce to the state of marriage.)

n7.0 **الرجعة**

(وهو لغة المرة من الرجوع وشرعاً رد المرأة إلى النكاح من طلاق غير بائن في العدة).

n7.1 When a free man pronounces divorce upon his wife once or twice after previously having had sexual intercourse with her, then if the divorce is not (A: a release) for compensation (def: n5), he may take her back at any time before the end of her waiting period (def: n9), whether she wishes to return or not. Or he may finalize the divorce during this period (A: by pronouncing it a third time).

n7.1 وإذا طلَّق الحرُّ طلقةً أوْ طلقتينِ [أو طلَّقَ العبدُ طلقةً] بعدَ الدخولِ بلا عوضٍ فلهُ قبلَ أنْ تنقضيَ العدةُ أنْ يراجعَ سواءٌ رضيتْ أمْ لا. ولهُ أنْ يطلِّقَها.

n7.2 If the husband or wife dies (A: during the waiting period (N: of an unfinalized, non-

n7.2 وإنْ ماتَ أحدُهما ورثهُ الآخرُ

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threefold divorce)), then the spouse inherits his or her obligatory share from the deceased's estate division (dis: L6), though it is not permissible for the husband to have sexual intercourse with, look at, or physically enjoy the wife before he takes her back.

لكنْ لا يحلُّ لهُ وطؤُها ولا النظرُ إليْها ولا الاستمتاعُ بها قبلَ المراجعة.

n7.3 When a divorce occurs before the husband has made love to the wife, or afterwards (A: in a release) for compensation from her, then he may not take her back (A: without remarrying her).

n7.3 وإنْ كانَ الطلاقُ قبلَ الدخول أوْ بعدَهُ بعوضٍ فلا رجعةَ لهُ.

n7.4 Returning the wife to marriage is only valid by explicitly stating it, such as by saying, "I return her," "I take her back," or, "I retain her." (N: The Hanafis consider the husband's touching her with desire, such as kissing her, to be a valid return to marriage.)

n7.4 ولا تصحُّ الرجعةُ إلاّ باللفظ فقطْ فيقولُ: راجعْتُها أوْ رددْتُها أوْ أمسكْتُها. (ح: وعند الحنفية تعتبر المباشرة بشهوة كالتقبيل مراجعة).

n7.5 It is not a necessary condition (O: but is sunna) to have the return attested to by witnesses.

n7.5 ولا يُشترَطُ الإشهادُ (بل سنن).

n7.6 When a husband takes a wife back, she returns with whatever number (A: of times of saying "I divorce you") remains to complete a threefold divorce. (A: If, for example, he has said it twice, then she only has one time left.)

n7.6 وإذا راجعَها عادتْ إليهِ بما بقيَ مِنْ عددِ الطلاقِ.

n7.7 When a free man has pronounced a threefold divorce, the divorced wife is unlawful for him to remarry until she has married another husband in a valid marriage and the new husband has copulated (dis: p29) with her, which at minimum means that the head of his erect penis fully enters her vagina.

n7.7 أمّا إذا طلّقَ الحرُّ ثلاثاً [أو العبدُ طلقتين] حرُمتْ عليْهِ حتّى تنكحَ زوجاً غيرَهُ نكاحاً صحيحاً ويطأها في الفرجِ وأدناهُ تغيبُ الحشفةِ بشرطِ انتشارِ الذكرِ.

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n8.0 FORSWEARING ONE'S WIFE MORE THAN FOUR MONTHS

(O: In Sacred Law, *forswearing* means that the husband swears he will not have sexual inter-

n8.0 الإيلاء

(وهو شرعاً حلف زوج على الامتناع

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course with his wife, either for an unrestricted period or for more than four months.)

من وطء زوجته مطلقاً أو أكثر من أربعة أشهر).

n8.1 Forswearing one's wife is unlawful. It consists in the husband swearing an oath by Allah (def: o18) that for more that four months (O: *more than four months* including oaths in which no time period is stipulated) he will not have sexual intercourse with his wife, or swears that if he does, then he is obliged to divorce her, fast, pray, or something else.

n8.1 الإيلاءُ حرامٌ وهو أنْ يَحلفَ الزوجُ باللهِ أوْ بالطلاقِ [أوْ بالعتقِ] أوْ بالتزامِ صومٍ أوْ صلاةٍ أوْ غيرِ ذلكَ يميناً يَمْنَعُ الجماعَ في الفرجِ أكثرَ منْ أربعةِ أشهرٍ (ودخلَ في قولِه أربعة أشهر ما لو أطلق الامتناع).

n8.2 [فإذا حَلَفَ كذلكَ صارَ موليا فتُضْرَبُ (أي تقدر) لهُ مدةُ أربعةِ أشهرٍ (وجوباً ولو بلا قاضٍ وابتداؤها من الإيلاء) فإذا انقضتْ ولمْ يُجامعْ فيها ولا مانعَ منْ جهتها فلها عقبَ المدةِ أنْ تُطالبَهُ إمّا بالطلاقِ أوْ بالوطءِ إذا لمْ يكنْ بهِ مانعٌ يَمْنَعُهُ منَ الوطءِ. فإنْ جامعَ فذاكَ، وإلاّ (أي وإن لم يجامع ولم يطلق) طَلّقَ عليه الحاكمُ (طلقة واحدة)].

n8.3 A husband is not considered to have forsworn his wife (A: in the above unlawful sense) when he forswears sexual intercourse for four months or less, or when he is impotent.

n8.3 ومتى حَلفَ على أربعةِ أشهرٍ فما دونَها أوْ كانَ الزوجُ عنيناً [أوْ مجبوباً] فليسَ موليا.

n8.4 [(والظهارُ) الظهارُ هو أنْ يُشَبِّهَ امرأتَهُ بظهرِ أمِّهِ أوْ غيرِها منْ محارمِهِ أوْ بعضوٍ منْ أعضائها فيقولَ: أنتِ عليَّ كظهرِ أمّي أوْ كفرجِها أوْ كيدِها. فإذا قالَ ذلكَ ووُجِدَ العودُ لَزِمَتْهُ الكفارةُ وحرُمَ وطؤُها حتّى يُكَفِّرَ. والعودُ هوَ أنْ يُمْسِكَها بعدَ الظهارِ زمناً يُمْكِنُهُ أنْ يَقولَ لها فيه: أنتِ طالقٌ، فلمْ يَقُلْ. فإنْ عَقَبَ الظهارَ بالطلاقِ على الفورِ طُلِّقَتْ ولا كفارةَ. والكفارةُ عتقُ رقبةٍ مؤمنةٍ سليمةٍ منَ العيوبِ التي تَضُرُّ بالعملِ فإنْ لمْ يَجِدْ فصيامُ شهرينِ متتابعينِ. فإنْ لمْ يَسْتَطِعْ فإطعامُ ستينَ مسكيناً كلَّ مسكينٍ مداً منْ قوتِ البلدِ حباً بالنيةِ].

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n9.0 A WOMAN'S POSTMARITAL WAITING PERIOD ('IDDA)

(O: Meaning the period in which a woman waits (N: before she may remarry) to verify that she is not pregnant, or out of mourning for her deceased husband.)

n9.0 العدة

(وهي مدة تتربص فيها المرأة لمعرفة براءة رحمها [أو للتعبد] أو لتفجعها على زوج).

(N: If the waiting period finishes after a once- or twice-pronounced divorce, the wife is free to marry another man or to remarry the husband with a new contract—returning to the latter with the number of times left (one or two) needed to enact a threefold, finalized divorce (dis: n7.7); while if the waiting period of a less-than-thrice-pronounced divorce has not yet expired, the husband may take her back (def: n7) without a new contract.)

(n: The husband's obligation to support her during the waiting period is discussed at m11.10 above.)

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n9.1 There is no waiting period for a woman divorced before having had sexual intercourse with her husband.

n9.1 مَنْ طَلَّقَ امرأتَهُ قبلَ الدخولِ فلا عدةَ عليْها.

n9.2 A waiting period is obligatory for a woman divorced after intercourse, whether the husband and wife are prepubescent, have reached puberty, or one has and the other has not.

Intercourse means copulation (def: n7.7). If the husband was alone with her but did not copulate with her, and then divorced her, there is no waiting period.

n9.2 وإنْ طَلَّقَ بعدَهُ لزِمَتْها العدةُ سواءٌ كانَ الزوجانِ صغيرينِ أوْ بالغينِ أوْ أحدُهُمَا بالغاً والآخرُ صغيراً. والمرادُ بالدخولِ الوطءُ فلَوْ خلا بها ولمْ يَطَأْها ثمَّ طَلَّقَ فلا عِدَّةَ.

n9.3 When a waiting period is obligatory (O: upon a woman, because of divorce or annulment of marriage), then if she is pregnant, the waiting period ends when she gives birth, provided two conditions are met:

(a) The first is that she has given birth to all she was carrying. If carrying two or more children, it is necessary that she have given birth to all, whether live or stillborn, and whether fully developed or an undeveloped fetus which midwives (O: two or more) swear is the beginning of a human form. Whenever there is less than six months between two births, the babies are considered twins. There is no maximal number that may be born, as it is possible for a woman to give birth to four or more babies from one pregnancy.

(b) The second condition is that the child is from the husband whom the waiting period is for. If the woman is pregnant from committing adultery (def: n11.2(O:)) (O: or from a marriage which was invalid, after which the husband divorced her), the waiting period does not end when she gives birth, but rather (N: after giving birth), she completes the waiting period of a woman who has been divorced (def: n9.6).

n9.3 وإذا وَجَبَت العدةُ (على المرأة بطلاق أو فسخ) فإنْ كانَتْ حاملاً انْقَضَتْ بوضْعِه بشرطَيْنِ:

أحدُهُمَا: أنْ يَنْفَصِلَ جميعُ الحملِ، حتّى لوْ كانَ ولدَيْنِ أوْ أكثرَ اشْتُرِطَ انْفِصالُ الجميعِ حياً أو ميتاً كاملَ الخِلْقةِ أوْ مضغةً لمْ يُتَصَوَّرْ وشَهِدَ القوابلُ (اثنتان فأكثر) أنَّهُ مَبْدَأُ خلقِ آدميٍّ. ومتى كانَ بينَ الولدينِ ستةُ أشهرٍ فهمَا توأمانِ. ولا حدَّ لعددِ الحملِ فيَجُوزُ أنْ تضعَ في حملٍ واحدٍ أربعةَ أولادٍ أوْ أكثرَ منْ ذلكَ.

الثاني: أنْ يَكُونَ الولدُ منسوباً إلى مَنْ لهُ العدةُ. فلوْ حَمَلَتْ من زنًا [أوْ وطءِ شبهةٍ] (أوحملت في نكاحٍ فاسدٍ ثم طلقها الزوج) لمْ تنقضِ عدةُ المطلَّقِ به بلْ [في حملِ وطءِ الشبهةِ] تَسْتَقْبِلُ عدةَ المطلَّقِ بعدَ الوضعِ.

n9.4 [وكذا في حملِ الزنا (لكن هذه الصورة ضعيفة، والمعتمد فيها أنها تكمل عدة الطلاق ولا نظر لحمل الزنا) إنْ لمْ تحِضْ على الحملِ. فإنْ حَاضَتْ على الحملِ انْقَضَتْ بثلاثةِ أطهارٍ (محسوباً منهُ (أي من الحيض المفهوم من الفعل)).

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n9.5 The minimal duration of a pregnancy (A: from which a live child is born) is six months, while the maximum is four years.

n9.5 وأقلُّ مدة الحمل ستةُ أشهر وأكثرُهُ أربعُ سنين.

n9.6 If a woman is not pregnant and has menstrual periods, her waiting period ends when three intervals between menstruations have finished. A part of an interval between menstruations is considered the same as a whole interval. Thus, if the woman's husband divorced her and her menses began an instant later, her waiting period would end after two more intervals between menstruations had finished and a third menstruation begun.

n9.6 وإنْ لم تكنْ حاملاً فإنْ كانتْ ممَّنْ تحيضُ اعتدَّتْ بثلاثةِ قروءٍ. «القروءُ الأطهارُ».

ويُحْسَبُ لَهَا بعضُ الطهرِ طهراً كاملاً. فإنْ طلَّقَهَا فحاضتْ بعدَ لحظةٍ انْقضَتْ بمضيِّ طهرينِ آخرينِ والشروعِ في الحيضةِ الثالثةِ.

n9.7 If a woman is divorced during her menstrual period, she must wait until the end of three intervals between menstruations. When her fourth menstruation begins, her waiting period is over.

n9.7 وإنْ طلَّقَ في الحيضِ فلا بدَّ منْ ثلاثةِ أطهارٍ كواملَ. فإذا شرَعَتْ في الحيضةِ الرابعةِ انْقضَتْ.

n9.8 There is no difference in respect to the above rulings (n9.6–7) whether a woman's menstrual periods are close together or far apart, *close together*, for example, meaning a woman whose period lasts a single day and night, and who has fifteen days between periods. Were such a woman divorced just before the end of an interval between menses (A: by a single moment), then her waiting period would finish in thirty-two days and two moments (O: one of which would be part of the waiting period, i.e. the one in which the divorce occurred, and the second of which would not be part of it, namely, that in which it became evident that the waiting period was over by the onset of a subsequent menstruation). If such a woman were divorced at the end of a menstrual period, her waiting period would be forty-seven days plus a moment. These are the shortest possible waiting periods.

An example of a woman whose periods are *far apart* is one whose menstruation lasts fifteen days, and whose intervals between menses last, for example, a year or more. Such a woman must wait for three intervals between menstruations, even if it takes years (N: though medicine may be taken to induce or regulate menstruations).

n9.8 ولا فرقَ بينَ أنْ يتقاربَ حيضُها أوْ يتباعدَ فمثالُ التقاربِ أنْ تحيضَ يوماً وليلةً وتطْهُرَ خمسةَ عشرَ يوماً. فإذا طُلِّقَتْ في آخرِ الطهرِ انْقضَتْ عدتُها باثنينِ وثلاثينَ يوماً ولحظتينِ (إحداهما محسوبةٌ منَ العدةِ وهي اللحظةُ التي وقعَ الطلاقُ فيها والثانيةُ ليستْ منها بل يتبينُ بها انقضاءُ العدةِ بالشروعِ فيها). أوْ في آخرِ حيضٍ فسبعةٍ وأربعينَ يوماً ولحظةٍ وهوَ أقلُّ الممكنِ [في الحرةِ] ومثالُ التباعُدِ أنْ تحيضَ خمسةَ عشرَ يوماً وتطْهُرَ سنةً مثلاً أوْ أكثرَ. فلا بدَّ منَ الأطهارِ الثلاثةِ ولوْ أقامَتْ سنينَ.

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n9.9 The waiting period for a woman who does not menstruate, whether prepubescent or post-menopausal, is three months.

If a woman normally menstruates, but her periods have stopped for some reason such as breastfeeding or the like, or without apparent reason, then she must wait until the age of menopause, after which her waiting period is three months. (N: In the Maliki school, such a woman must wait nine months, and if neither pregnancy nor menses appear, she is considered to be as if menopausal, and her waiting period is three more months, making a total of one entire year in which there is no menstrual flow.)

n9.9 وإنْ كانَتْ مِمَّنْ لا تَحيضُ لصغرٍ أوْ إياسٍ اعْتَدَّتْ بثلاثةِ أشهُرٍ.
وإنْ كانَتْ مِمَّنْ تَحيضُ فانْقَطَعَ دمُها لعارضٍ كرضاعٍ ونحوِه أوْ بلا عارضٍ ظاهرٍ صَبَرَتْ (وجوباً) إلى سنِّ اليأسِ مِنَ الحيضِ ثمَّ تَعْتَدُّ بثلاثةِ أشهرٍ. (ح: وفي مذهبِ المالكيةِ تنتظر تسعة أشهر فإن لم يظهر حمل ولا وجد حيض اعتبرت آيسة فتعتد بثلاثة أشهر ويكون المجموع سنة بيضاء، أي لا دم فيها).

n9.10 All of the above rulings apply to the waiting period for divorce (N: or release (def: n5)).

n9.10 هذا كلُّهُ في عدةِ الطلاقِ.

THE WAITING PERIOD FOR A DECEASED HUSBAND

عدة الوفاة

n9.11 If a woman's husband dies, even if during the waiting period of a nonfinalized divorce, then if she is pregnant, her waiting period ends when she gives birth, as previously mentioned (n9.3). But if not (O: i.e. if the deceased's wife is not pregnant from him), her waiting period is four months and ten days, no matter whether she normally menstruates or not (N: and no matter whether the husband has had sexual intercourse with her or not).

n9.11 فإنْ تُوُفِّيَ عنْها زوجُها ولوْ في خلالِ عدةِ الرجعيةِ فإنْ كانَتْ حاملاً اعْتَدَّتْ بالوضعِ كَمَا تَقَدَّمَ. وإلاَّ (أي وإن لم تكن المتوفى عنها زوجها حاملا منه) فبأربعةِ أشهرٍ وعشرةِ أيامٍ سواءٌ كانَتْ مِمَّنْ تَحيضُ أمْ لا (ح: وسواء دخل بها الزوج أم لا).

n9.12 [هذا كلُّهُ في الحرةِ. أمَّا إذا كانَتْ زوجتُهُ أمةً أوْ مبعضةً فالحاملُ بالوضعِ وغيرُهَا مِمَّنْ تَحيضُ بطهرينِ، ومَنْ لا تَحيضُ بشهرٍ ونصفٍ وفي الوفاةِ بشهرينِ وخمسةِ أيامٍ. ومَنْ وُطِئَتْ بشبهةٍ تَعْتَدُّ مِنَ الوطءِ كالمطلقةِ].

THE LODGINGS OF A WOMAN IN HER WAITING PERIOD

سكنى المعتدة

n9.13 A woman in her waiting period is obliged to remain in the home (O: and neither the husband nor his family may force her out; nor may she leave. If the husband agrees to allow her to leave when there is no necessity, it is still not permissible).

n9.13 ويَلْزَمُ المعتدةَ ملازمةُ المنزلِ (فليس للزوج ولا لأهله إخراجها منه. ولا لها أن تخرج. ولو وافقها الزوج على خروجها منه بغير حاجة لم يجز). فأمَّا

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A woman in the waiting period of an unfinalized, less than threefold divorce is under the husband's authority and may not leave without his permission. If in the waiting period of a finalized divorce (N: or release (def: n5)) (O: or annulment,) or after her husband's death, a woman may leave home during the day to fulfill her needs (N: including work, if she has no means of support) and obligations.

الرجعيةُ ففي حكمِ الزوجِ لا تَخْرُجُ إلاّ بإذنِه ويَجُوزُ للبائنِ (بطلاق أو فسخ) وللمتوفّى عنْها زوجُها أنْ تَخْرُجَ بالنهارِ لقضاءِ حاجتِها وأداءِ الحقوقِ.

n9.14 The waiting period must take place in the same lodgings where the divorce occurred, and the woman may not be moved to other quarters unless there is a real necessity, such as fear (O: for her person or property), or when the landlord objects (O: such as when the house in question was on loan to the husband and its time has expired), or because of considerable annoyance to the woman from neighbors or the husband's relatives, or annoyance to them from her in all of which cases she may move to the nearest available housing.

n9.14 وتَجِبُ العدةُ في المسكنِ الذي طَلَّقَها فيهِ. ولا يَجُوزُ نقلُها إلاّ لضرورةٍ: إمّا الخوفُ (على نفسها أو مالها) أوْ منعُ مالِكِه (أي المنزل الذي هو محل الفراق بأن كان معاراً للزوج وقد فرغت مدة العارية) أوْ كثرةُ تأذِيهَا بجيرانِهَا أوْ أقاربِ زوجِها أوْ تأذِيهِمْ بها فتَنْتَقِلُ إلى أقربِ مسكنٍ إليه.

n9.15 It is unlawful for the husband of a woman in her waiting period to be alone with her or share the same housing (N: i.e. he must move out) unless she is in a (O: separate) wing of the house (O: with its own kitchen, restroom, cistern, and stairs to the roof, in which case it is permissible to share the housing, which is as if it were two neighboring houses).

n9.15 ويَحْرُمُ على المطلِّقِ الخلوةُ بها في العدةِ أوْ مساكنتُها إلاّ أنْ يكونَ كلٌّ منْهُما في بيتٍ (منفرد) بمرافقه (من المطبخ والمستراح (ح: أي المرحاض) والبئر والمصعد إلى السطح. فيجوز لأنهما كدارين متجاورتين).

AVOIDING ADORNMENT AFTER A HUSBAND'S DEATH OR A FINALIZED DIVORCE

الإحداد

n9.16 It is obligatory for a woman whose husband has died (N: while she was his wife, or died while she was in the waiting period of an unfinalized divorce from him) to avoid adornment during the subsequent waiting period. It is recommended for a woman to do so during the waiting period of a finalized divorce. It is unlawful for a woman to avoid adornment longer than three days for the death of anyone besides her husband. *Avoiding adornment* means not to enhance her

n9.16 ويَجِبُ (ح: على الزوجة والرجعية) الإحدادُ في عدةِ الوفاةِ.
ويُنْدَبُ في البائنِ.
ويَحْرُمُ على ميتٍ غيرِ الزوجِ أكثرَ منْ ثلاثةِ أيامٍ.
وهوَ أنْ تَتْرُكَ الزينةَ ولا تَلْبَسَ الحليَّ

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beauty, wear jewelry or cosmetics, and so forth. A woman avoiding adornment should not wear solid colors (N: if intended to beautify) such as blues, greens, reds, or yellows; or style her hair or use cosmetics for body, clothes, or food (A: such as saffron in rice). She may wear silk, wash her hair (N: or comb it, or bathe) for cleanliness, or pare her nails during this period.

ولا تَخْتَضِبُ ولا تكتحِلُ بإثمدٍ ونحوِه [فإنْ احْتاجتْ إلى الكحلِ (لرمدٍ ونحوه) فبالليلِ وتزيلُهُ بالنهارِ] ولا تَلْبَسُ الصافيَ مِنْ أزرقَ وأخضرَ وأحمرَ وأصفرَ ولا تُرَجِّلُ الشعرَ ولا تَسْتَعْمِلُ طيباً في بدنٍ وثوبٍ ومأكولٍ ولهَا لبسُ الإبريسمِ وغسلُ الرأسِ للتنظيفِ (ح: والامتشاط والحمام) وتقليم الأظفار.

THE END OF THE WAITING PERIOD

أحكام متفرقة في انقضاء العدة

n9.17 If the husband of a woman in her waiting period takes her back but divorces her again before having had sexual intercourse with her, then a new waiting period starts over from the beginning (N: though it is unlawful for him to do this merely to prolong her waiting period).

If a husband releases his wife for payment (def: n5), remarries her during the release's waiting period, but divorces her before having had sexual intercourse, then she merely finishes the remainder of the release's waiting period.

n9.17 وإذا راجَعَ المعتدةَ ثمَّ طَلَّقَها قبلَ الدخولِ تَسْتأنِفُ عدةً جديدةً (ح: ويحرم عليه أن يفعل هذا ليطيل عدتها).

وإنْ تَزَوَّجَ مَنْ خالَعَها في عدتِهِ ثمَّ طَلَّقَها قبلَ الدخولِ بَنَتْ على العدةِ الأولى.

n9.18 When a woman claims that her waiting period has expired (O: if it does not comprise a particular number of months, but rather consists of a number of intervals between menstruations, or of giving birth) within an amount of time in which it could have possibly ended, then her word is accepted (dis: k8.2).

n9.18 ومتى ادَّعَتِ المرأةُ انقضاءَ العدةِ (بغيرِ الأشهرِ سواء كان بالأقراء أو بوضعِ الحملِ) في زمنٍ يُمْكِنُ انْقِضاؤُها فيه قُبِلَ قولُها.

n9.19 If news of a husband's death reaches a woman after his death by four months and ten days, her waiting period is already over (O: since her knowledge of his death is not a condition for the waiting period).

n9.19 وإذا بَلَغَها خبرُ موتِه بعدَ أربعةِ أشهرٍ وعشرةِ أيامٍ فَقَدِ انْقَضَتِ العدةُ (لأن علمها بموته ليس شرطاً في انقضاء العدة).

n9.20 [مَنْ مَلَكَ أمةً حَرُمَ عليه وطؤُها والاستمتاعُ بها حتَّى يَسْتَبْرِئَها بعدَ قبضِها بالوضعِ إنْ كانَتْ حاملاً وبحيضةٍ إنْ كانَتْ حائلاً تحيضُ. وإلَّا فبشهرٍ. وإنْ كانَتْ زوجتَهُ فَاشْتَراها انْفَسَخَ النكاحُ وحَلَّتْ لَهُ بملكِ اليمينِ مِنْ غيرِ استبراءٍ. ومَنْ زَوَّجَ أمتَهُ أوْ كاتَبَها ثمَّ زالَ النكاحُ والكتابةُ لمْ يَطَأْها حتَّى يَسْتَبْرِئَها. ولهُ الاستمتاعُ بالمسبيةِ في مدةِ الاستبراءِ بغيرِ الجماعِ. ومَنْ وطِئَ أمتَهُ حَرُمَ عليه أنْ يُزَوِّجَها حتَّى يَسْتَبْرِئَها].

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n10.0 ESTABLISHING PATERNITY

n10.0 ثبوت نسب الولد

n10.1 [وَمَنْ أَتَتْ أَمَتُهُ بولدٍ فإنْ ثَبَتَ أنَّهُ وَطِئَهَا لَحِقَهُ سواءٌ كَانَ يَعْزِلُ منيَّهُ عنْهَا أمْ لا . وإن لَمْ يَكُنْ وَطِئَهَا لَمْ يَلْحَقْهُ].

n10.2 The husband of a woman who bears a child (O: no matter whether his marriage to her is valid or invalid) is considered to be the child's father whenever it is (N: legally) possible that the child could be his, meaning that:

(a) the woman gave birth to the child six months plus a moment after the marriage agreement;

(b) she gave birth to it less than four years from when she and her husband could last have possibly met and had sexual intercourse, even if they were living at a distance from one another, and even if the husband does not know whether he had sexual intercourse with her. (A: These conditions are for the child's protection against being disowned, and only concern what can be established in court. Hence, if the husband and wife were living apart at a distance at which they could possibly have travelled and met, for the child's sake the court presumes the child to be the husband's);

(c) and the husband is at least nine and a half years old.

n10.2 وَمَنْ أَتَتْ زوجتُهُ (سواء تزوجها بعقد صحيح أو فاسد) بولدٍ لَحِقَهُ نَسَبُهُ إنْ أمْكَنَ أنْ يَكُونَ منهُ بأنْ تَأتِي بِهِ بعد ستةِ أشهرٍ ولحظةٍ مِنْ حينِ العقدِ ودونَ أربعِ سنينَ منْ حينِ إمكانِ الاجتماعِ معَها إذا أمْكَنَ وطؤُها ولَوْ على بعدٍ، وإنْ لَمْ يَعْلَمْ أنهُ وطِيءَ [بخلافِ ما سَبَقَ في أمتِهِ] بشرطِ أنْ يَكُونَ للزوجِ تسعُ سنينَ ونصفٌ [ولحظةٌ تَسَعُ الوطءَ].

n10.3 The husband is not legally considered the child's father when the child could not possibly be his, such as when:

(1) (non-(a) and (b) above) the wife gave birth to the child in less than six months or more than four years since intercourse;

(2) (non-(b)) the husband is absolutely certain he did not have sexual intercourse with her;

(3) (non-(c)) the husband is under the above-mentioned age;

(4) or the husband's genitals have been dissevered.

n10.3 فإنْ لَمْ يُمْكِنْ أنْ يَكُونَ منهُ بأنْ أتَتْ بِهِ لدونِ ستةِ أشهرٍ أوْ لأكثرَ منْ أربعِ سنينَ أوْ مَعَ القطعِ بأنهُ لَمْ يَطَأْهَا أوْ كانَ للزوجِ منَ السِّنِّ دونَ ما تَقَدَّمَ أوْ كانَ مقطوعَ الذكرِ والأنثيينِ جميعاً لَمْ يَلْحَقْهُ.

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n10.4 Whenever a husband is absolutely certain that a child which is legally considered his (def: n10.2) is not his, by knowing that he never had intercourse with the wife at all (O: or did, but less than six months or more than four years before the birth), then he is obliged to deny paternity by public imprecation (li'an, def: n11.3) (O: immediately, because denying paternity of a child immediately is like the return of defective merchandise (dis: k5.7). He does so by going to the Islamic judge and saying, "This child is not mine." If he delays, his denial is no longer valid. As for the public imprecation itself, he may perform it at any time thereafter. If he claims that he was ignorant of the necessity of denying paternity, or the obligatory character of its immediacy, and he is someone who might well be ignorant of it, then his claim (A: of ignorance) is accepted when he swears an oath to that effect. Denial of paternity likewise entails charging the wife with adultery, and this too is obligatory immediately).

n10.4 ومتى تَحَقَّقَ الزوجُ أنَّ الولدَ الذي أَلْحقَهُ الشرعُ به لَيْسَ منهُ بأنْ عَلِمَ هوَ أنَّهُ لمْ يَطَأْهَا أبداً (أو وطئها ولكن ولدته لدون ستة أشهر من وطئه أو لفوق أربع سنين منه) لَزِمَهُ نَفْيُهُ باللعانِ (فوراً لأن نفي الولد على الفور كالرد بالعيب بأن يأتي القاضي ويقول له: إن هذا الولد ليس مني. فإن أخر ذلك لم يصح نفيه بعد. وأما اللعان فهو على التراخي بعد ذلك ولو ادعى جهل النفي أو الفورية وكان ممن يخفى عليه ذلك صدق بيمينه ويلزم من نفي الولد قذف الزوجة وهو واجب حينئذ فوراً).

n10.5 If a husband is not absolutely sure that the child is from someone else, it is unlawful for him to deny paternity (O: as mere doubts that have arisen in his mind are of no consequence) and unlawful to charge his wife with adultery. (O: It is also unlawful for him to publicly imprecate (def: n11.3) against her in such a case, even when he knows she has committed adultery, because the child would suffer harm through his mother being charged with adultery and its being established against her by public imprecation, the child being disgraced by this and gossip circulated about him. The child need not endure this harm merely to satisfy the husband's revenge, who may separate from her by divorce.)

n10.5 وإنْ لمْ يَتَحَقَّقْ أنَّهُ منْ غيرِه حَرُمَ عليهِ نفيُهُ (ولا عبرة بريبة يجدها في نفسه) وقذفُهَا (وكذلك يحرم عليه لعانها وإن علم زناها لأن الولد يتضرر بنسبة أمه إلى الزنا وإلباسه عليها باللعان لأنه يعير بذلك وتطلق فيه الألسنة فلا يحتمل هذا الضرر لغرض الانتقام والفراق ممكن بالطلاق) [وإنْ كَانَ الولدُ أسودَ وهوَ أبيضُ أوْ غيرَ ذلكَ].

n10.6 When a child is legally considered (def: n10.2) to be from a husband who is entitled to deny paternity but delays doing so without excuse and subsequently wants to deny it by public imprecation, we (O: i.e. the judge) do not allow him to do so (O: because denial of paternity must take place immediately, as mentioned above (n10.4), and his delay obviates the possibility of denial). But if the husband intends to deny paternity immediately, we implement his intention.

n10.6 ومَنْ لَحِقَهُ نسبٌ فأخَّرَ نفيَهُ بلا عذرٍ ثمَّ أرادَ أنْ يَنْفِيَهُ باللعانِ لمْ نُجِبْهُ إلى ذلكَ (والمعنى أن القاضي لم يجاوبه فيه لأن نفي الولد يكون على الفور كما مر والتأخير يسقط نفيه عنه [كالرد بالعيب]) وإنْ أرادَ نفيَهُ على الفورِ أجَبْنَاهُ إليه.

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n11.0 CHARGING ONE'S WIFE WITH ADULTERY

n11.0 قذف الزوجة بالزنا

n11.1 Anyone who charges his wife with adultery (O: in plain words, as when he says, "You adulteress," or allusively, as when he says, "I did not find you a virgin,") and who is thereby liable to be punished for accusing another of adultery without witnesses (dis: o13.1), may prevent the punishment by public imprecation against her (li'an, def: n11.3), provided he:

(a) has reached puberty;

(b) is sane;

(c) does so voluntarily;

and provided his wife:

(d) is legally innocent of adultery (A: meaning there is neither a confession from her nor four eyewitnesses (dis: n11.2(O:)));

(e) and that she is capable of sexual intercourse.

n11.1 مَنْ قَذَفَ زوجَتَهُ بالزنا (صريحاً كقوله: يا زانية أو كناية كقوله: لم أجدك عذراء) فطُولِبَ بحدِّ القذف فلهُ أنْ يُسْقِطَهُ باللعانِ بشرطِ أنْ يَكُونَ الزوجُ بالغاً عاقلاً مختاراً وأنْ تَكُونَ الزوجةُ عفيفةً يُمْكِنُ أنْ تُوطأ.

n11.2 A husband who accuses his wife of adultery is disciplined (ta'zir, def: o17) by the magistrate and not allowed to imprecate against her when her adultery is already legally established (O: whether by her own admission, or by proof, meaning that four upright witnesses (o24.4) have looked at her when she was copulating and seen the adulterer's penis in her vagina), or when (N: adultery is impossible, such as when) the person accused is a mere infant.

n11.2 فلَوْ قَذَفَ مَنْ ثَبَتَ زِنَاهَا (إمَّا بإقرارها أو بالبينة وهي أربعة من الرجال العدول بأن نظروا إليها وقت زناها ورأوا ذكر الزاني في فرجها) أوْ طفلةً [كبنت شهرٍ] عُزِّرَ ولَمْ يُلاعِنْ.

PUBLIC IMPRECATION (LI'AN)

اللعان

n11.3 Public imprecation consists of the Islamic magistrate (O: or his equivalent) telling the husband to repeat four times, "I testify by Allah that I am truthful in charging her with adultery" (O: and it is necessary to identify her by her first and family name, though if she is present he says, "this

n11.3 واللعانُ أنْ يأمُرَهُ الحاكمُ (أو من يقوم مقامه) أنْ يقُولَ أربعَ مراتٍ: أشْهَدُ باللهِ إنِّي مِنَ الصادقينَ فيما رَمَيْتُها بهِ من الزنا (ولا بد أن يميزها باسمها ويرفع نسبها. وإن كانت حاضرة قال

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wife of mine." and points to her); and if there is a child, "and that this child [O: or if absent, "the child she gave birth to from adultery"] is not from me." The fifth time, after the magistrate warns him, enjoins him to fear Allah (O: reminding him that the punishment of the hereafter is worse than punishment in the present life), and after he has put his hand in front of the husband's mouth, the husband adds, "And may the curse of Allah be upon me if I am lying."

زوجتي هذه وأشار إليها) وأنّ هذا الولد (وإن كان غائبا قال وإن الولد الذي ولدته من الزنا) ليس مني إنّ كان هناك ولدٌ ثمّ يقول في الخامسة بعد أنْ يعظهُ الحاكمُ ويخوّفهُ (بالله تعالى ويذكره بأن عذاب الآخرة أشد من عذاب الدنيا) ويضع يدهُ على فيه: وعليّ لعنةُ الله إنْ كنتُ من الكاذبين.

n11.4 When the husband has done this, he is no longer liable to be punished for accusing another of adultery without witnesses, he has denied paternity of the child, and his wife is divorced from him and unlawful for him to marry, be alone with, or look at, forever. She is now liable to be punished for adultery.

n11.4 فإذا فعل ذلك سقط عنهُ حدُّ القذف وانتفى عنهُ نسبُ الولد وبانتْ منهُ وحرُمتْ على التأبيد ولزمها حدُّ الزنا.

n11.5 The wife in such a case may avoid being punished for adultery by public imprecation against the husband. Upon being ordered by the magistrate, she says four times, "I testify by Allah that he is lying about what he has charged me with." The fifth time, after being warned by the magistrate of the severity of the consequences, as described above, she says, "And may the wrath of Allah be upon me if he is telling the truth." When she has done this, she is no longer liable to be punished for adultery.

n11.5 ولها أنْ تُسْقطهُ عنْ نفسها باللعان فتقول بأمر الحاكم أربع مرات: أشهدُ بالله إنهُ لمنَ الكاذبينَ فيما رماني به؛ ثمّ تقول في الخامسة بعد الوعظ كما سبق: وعليّ غضبُ الله إنْ كانَ منَ الصادقين. فإذا فعلتْ هذه سقطَ عنها حدُّ الزنا.

n11.6 (O: Public imprecation is legally valid in a non-Arabic language even when the speaker knows Arabic, because the imprecation is a kind of oath or attestation, either of which may be given in any language.)

n11.6 (وصح اللعان بغير عربية وإن عرفها لأن اللعان يمين أو شهادة وهما في اللغات).

*

n12.0 BECOMING UNMARRIAGEABLE KIN BY SUCKLING (RIDA')

n12.0 الرضاع

n12.1 An infant becomes the "child" of the female who breast-feeds him (A: in respect to

n12.1 إذا ثاز (أي ظهر) لبنت تسع

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being unable to marry her, to the permissibility of looking at her and being alone with her, and in his ablution (wudu) not being nullified by touching her) when:

(a) the milk comes from a female at least nine years old, whether it is occasioned by sexual intercourse or something else;

(b) and she breast-feeds a child who is less than two full years old;

(c) in at least five separate breast-feedings (O: a restriction that excludes anything less than five, which is of no consequence. *Separate* breast-feedings means whatever is commonly acknowledged (def: f4.5) to be separate).

سنينَ لبنٌ مِنْ وطءٍ أوْ مِنْ غيـرِه فأرْضَعَتْ طفـلاً لهُ دونَ الحـولين خمسَ رضعـاتٍ متفـرقـاتٍ (فخـرج به ما إذا كان أقل منها فلا يؤثر. والتفرق مرجعه العرف) صارَ ابنَهَا.

n12.2 In such a case:

(1) it is unlawful for the wet nurse to marry the child and its subsequent descendants (O: by familial relation or by suckling) exclusively (O: *exclusively* meaning that only the child's descendants become unlawful for her to marry, not the child's ancestors (N: or brothers));

(2) she becomes the child's "mother," and it is unlawful for the child to marry her, her ancestors (O: by familial relation or by suckling), her descendants (O: who become as if they were the child's brothers and sisters), or her brothers and sisters (O: though the child is not forbidden to marry the latters' children).

n12.2 فَيَحْـرُمُ عليْهَا هوَ وفروعُهُ (من النسـب والـرضـاع) فَقَـطْ (ومـراده به أن التحـريم خاص بفـروعـه ولا يسـري إلى أصـولـه (ح: وحـواشـيـه)). وصَارَتْ أمُّهُ فتَحْـرُمُ عليـهِ هيَ وأصـولُهَـا (من النسب والرضاع) وفروعُهَا (فيصير أولادها إخوته وأخـواتـه) وإخـوتُهَـا وأخواتُهَا (ولا تثبت الحـرمـة بين الـرضيـع وبين أولاد إخـوة المرضعة وأخواتها).

n12.3 If the wet nurse's milk was occasioned by a pregnancy from her husband, then:

(1) the child she nurses becomes the husband's "child," and the husband may not marry the child or its descendants (O: by familial relation or by suckling, since they are now as if his grandchildren) exclusively;

(2) and the husband becomes the child's "father," and it is unlawful for the child to marry him, his ancestors, his descendants, or his brothers and sisters.

n12.3 وإنْ كَانَ اللبنُ مِنْ حمـلٍ مِنْ زوجٍ صَارَ الـرضيـعُ ابنـاً للزوجِ فيَحْـرُمُ عليـهِ الـرضيـعُ وفـروعُـهُ (من النسب والرضاع لأنهم أحفاده) فقطْ وصَارَ الزوجُ أبـاهُ. فيَحْـرُمُ على الـرضيـعِ هوَ وأصولُهُ وفروعُهُ وإخوتُهُ وأخواتُهُ.

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n12.4 Upon becoming unmarriageable kin through suckling, marriage between the above-mentioned persons is prohibited, and it is permissible for the respective members of the opposite sex to look at each other as they do with their familial unmarriageable relatives (dis: m2.5), and to be alone with them (O: though other kinds of rulings applicable to natural relatives, such as inheritance (def: L4–6) or having to support them (m12) are not applicable to unmarriageable kin by suckling).

n12.4 فَيَحْرُمُ النكاحُ ويَحِلُّ النظرُ والخلوةُ كالنسبِ (دون سائر أحكامه كالميراث والنفقة).

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o1.0 WHO IS SUBJECT TO RETALIATION FOR INJURIOUS CRIMES

(O: *Injurious crimes* includes not only those

o1.0 على من يجب القصاص في الجنايات

(والجنايات شاملة للجناية بالجارح

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committed with injurious weapons, but those inflicted otherwise as well, such as with sorcery (def: x136). Killing without right is, after unbelief, one of the very worst enormities, as Shafi'i explicitly states in (n: Muzani's) *The Epitome*. The Prophet (Allah bless him and give him peace) said:

"The blood of a Muslim man who testifies that there is no god but Allah and that I am the Messenger of Allah is not lawful to shed unless he be one of three: a married adulterer, someone killed in retaliation for killing another, or someone who abandons his religion and the Muslim community."

and in another hadith,

"The killing of a believer is more heinous in Allah's sight that doing away with all of this world."

Allah Most High says:

"... and not to slay the soul that Allah has forbidden, except with right" (Koran 6:151),

and,

"O you who believe, retaliation is prescribed for you regarding the slain..." (Koran 2:178).)

وبغيره كسحر. والقتل بغير حق من أكبر الكبائر بعد الكفر نص عليه الشافعي في المختصر. قال ﷺ: «لا يحلُّ دم امرىء مسلم يشهد أن لا إله إلا الله وأنّي رسول الله إلا بإحدى ثلاث الثيّبُ الزاني والنفس بالنفس والتارك لدينه المفارق للجماعة»؛ وفي الحديث: «لقتلُ مؤمن عند الله أعظم من زوال الدنيا». قال تعالى: ﴿وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ﴾ [الأنعام: ١٥١]؛ وقال تعالى: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ﴾ [البقرة: ١٧٨]).

o1.1 Retaliation is obligatory (A: if the person entitled wishes to take it (dis: o3.8)) against anyone who kills a human being purely intentionally and without right. (O: *Intentionally* is a first restriction and excludes killing someone through an honest mistake, while *purely* excludes a mistake made in a deliberate injury (def: o2.3), and *without right* excludes cases of justifiable homicide such as lawful retaliation.)

o1.1 يجبُ القصاصُ على مَنْ قتل إنساناً عمداً محضاً عدواناً. (فالعمد قيد أول خرج به الخطأ وبالمحض عمد الخطأ وبالعدوان ما لو قتله بحق كالقصاص).

o1.2 The following are not subject to retaliation:

(1) a child or insane person, under any circumstances (O: whether Muslim or non-Muslim.

o1.2 لكنْ لا يجبُ على صبيٍّ ومجنونٍ مطلقاً (سواء كانا مسلمين أو

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The ruling for a person intermittently insane is that he is considered as a sane person when in his right mind, and as if someone continuously insane when in an interval of insanity. If someone against whom retaliation is obligatory subsequently becomes insane, the full penalty is nevertheless exacted. A homicide committed by someone who is drunk is (A: considered the same as that of a sane person,) like his pronouncing divorce (dis: n1.2));

(2) a Muslim for killing a non-Muslim;

(3) a Jewish or Christian subject of the Islamic state for killing an apostate from Islam (O: because a subject of the state is under its protection, while killing an apostate from Islam is without consequences);

(4) a father or mother (or their fathers or mothers) for killing their offspring, or offspring's offspring;

(5) nor is retaliation permissible to a descendant for (A: his ancestor's) killing someone whose death would otherwise entitle the descendant to retaliate, such as when his father kills his mother.

كافرين. والذي جنونه متقطع فهو كالعاقل في وقت إفاقته وكالمطبق في وقت جنونه. ومن وجب عليه القصاص وقد جن بعد الوجوب استوفي منه في حال جنونه. وقتل السكران كطلاقه) ولا على مسلم بقتل كافر [ولا على حرٍّ بقتل عبد] ولا على ذمّيٍّ بقتل مرتدٍ (لأن الذمي معصوم والمرتد مهدر) ولا على الأب والأمّ وأبائهما وأمهاتهما بقتل الولد وولد الولد ولا بقتل مَنْ يَثْبُتُ القصاصُ فيه للولد مثلُ أنْ يَقْتُلَ الأبُ الأمَّ.

*

o2.0 INTENTIONALITY IN INJURIOUS CRIMES

o2.0 أقسام الجنايات

o2.1 Injurious crimes (O: of all types, whether killing or something less) are of three types:

(1) an honest mistake;

(2) a mistake made in a deliberate injury;

(3) or purely intentional.

o2.1 ثمَّ الجناياتُ (من حيث هي سواء كانت على النفس أو على ما دونها) ثلاثةٌ: خطأٌ؛ وعمدُ خطإٍ؛ وعمدٌ محضٌ.

o2.2 An *honest mistake* is an act such as shooting an arrow at a wall and hitting a person (O: or shooting at a person and hitting someone else), or

o2.2 فالخطأ مثلُ أنْ يَرْمِيَ إلى حائطٍ فيُصيبَ إنساناً (وكذا لو رمى إنساناً

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slipping from a height and falling on someone. The criterion for it is that the act is intended but not the person, or neither the act nor the person is intended.

فأصاب غيره) أوْ يزْلِقَ منْ شاهقٍ فيقعَ على إنسانٍ وضابطُهُ أنْ يقْصِدَ الفعلَ ولا يقْصِدَ الشخصَ أوْ لا يقْصِدَهُمَا.

o2.3 A *mistake made in a deliberate injury* is when one intends an injury that is not generally fatal, such as hitting someone with a light stick in a nonvital spot (A: from which the person dies) and the like.

o2.3 وعمدُ الخطإِ أنْ يقْصِدَ الجنايةَ بما لا يَقْتُلُ غالباً مثلَ أنْ يضْرِبَهُ بعصاً خفيفةٍ في غيرِ مقْتلٍ ونحوِ ذلك.

o2.4 *Purely intentional* means to intend an injury of the type that is generally fatal, whether with a blunt instrument or a sharp one.

o2.4 والعمدُ أنْ يقْصِدَ الجنايةَ بما يقْتُلُ غالباً سواءٌ كانَ مثقَّلاً أوْ محدَّداً.

*

o3.0 RETALIATION FOR BODILY INJURY OR DEATH (QISAS)

o3.0 أحكام العمد في الجنايات

o3.1 Retaliation is obligatory (A: if those entitled wish to take it (dis: o3.8)) when there is a (N: purely) intentional injury (def: o2.4) against life or limb.

o3.1 فإنْ كانَتِ الجنايةُ عمداً (ح: محضاً) على النفسِ أوِ الأطرافِ وَجَبَ القصاصُ.

o3.2 Retaliation is obligatory in return for injuries (A: part for commensurate part) whenever the retaliatory injury can be (O: fully) inflicted without exceeding the extent of the original injury, such as (A: when the retaliatory injury is on) an eye, eyelid, the soft part of the nose, the ear, tooth, lip, hand, foot, finger, fingertip, penis, testicles, vulva, and the like; provided that the retaliatory injury is like the original, meaning that a right member is not taken for a left, an upper one for a lower, nor a functional member for a paralyzed one. (N: Nor is there retaliation for nonfatal bullet wounds in the stomach or chest, for example, because such injuries cannot be reproduced without risk of greater damage than the original, for which reason they call for an indemnity (dis: o4.15) alone.) There is no retaliation for (O: breaking) a bone (A: though payment is due to cover the cost of treatment and so forth).

o3.2 فيجِبُ في الأعضاءِ حيثُ أمْكنَ (استيعابُ القصاصِ فيها) مِنْ غيرِ حَيْفٍ [(بأن لا يزيد على أخذ الواجب)] كالعينِ والجفنِ ومارنِ الأنفِ [وهو ما لانَ منهُ] والأذنِ والسنِّ والشفةِ واليدِ والرِّجلِ والأصابعِ والأناملِ والذكرِ والأنثيينِ والفرجِ ونحوِ ذلك بشرطِ المماثلةِ. فلا تُؤخذُ يمينٌ بيسارٍ ولا أعلى بأسفلَ [وبالعكسِ] ولا صحيحٌ بأشلَّ. ولا قصاصَ في (كسرِ) عظمٍ. [فلوْ قطعَ اليدَ منْ وسطِ الذراعِ اقْتُصَّ مِنَ الكفِّ وفي الباقي حكومةٌ (وهي جزء مقدر من الدية لتعذر القصاص)].

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o3.3 Females are entitled to retaliate against males, children against adults, and lower class people against upper class; whether the retaliation is a life for a life, or limb for a limb.

o3.3 ويُقْتَصُّ للأنثى مِنَ الذكرِ وللطفلِ مِنَ الكبيرِ وللوضيعِ مِنَ الشريفِ في النفسِ والأعضاءِ.

o3.4 It is not permissible to exact retaliation against someone without the presence of the caliph (def: o25) or his representative (O: meaning that it is necessary to have the permission of one of them because of the danger and lack of knowledge involved in exacting retaliation oneself, as it requires the judgement and personal reasoning of a ruler. If someone takes retaliation without the caliph's permission, then it is valid (A: i.e. suffices the demand for it) but the person who took it is disciplined (def: o17) for arrogating the caliph's prerogative, since administering retaliation is one of his functions, and to encroach upon it is wrong).

If a person who is entitled to retaliate is able to do so proficiently (O: being a strong man who knows how to do it), he is allowed to. If not, he is ordered (N: by the ruler or his representative) to have another do it.

o3.4 ولا يَجُوزُ أنْ يُسْتَوْفَى القصاصُ إلاّ بحضرةِ السلطانِ أوْ نائبِه. (أي أنه يتوقف على إذن أحدهما لما في استيفائه بنفسه من الخطر وعدم المعرفة فيحتاج فيه إلى نظر الحاكم واجتهاده فلو استوفاه بغير إذنه وقع الموقع وعزر لافتياته على السلطان لأن القصاص من وظيفته والمخالفة فيه لا تليق). فإنْ كانَ مَنْ لهُ القصاصُ يُحْسِنُهُ (بأن كان رجلاً قوياً عارفاً بكيفيته) مَكَّنَهُ منهُ وإلاّ أمَرَهُ بالتوكيلِ (ح: أي أمره الحاكم أو نائبه).

o3.5 If two (O: or more) people are entitled to exact retaliation against the offender, it is not permissible for just one of them to insist on doing so (O: though if they choose one of themselves to exact it, this is permissible, and the one chosen is considered as the other's commissioned agent. The two may not take retaliation together, as this amounts to torturing the person being retaliated against). If each insists that he be the one, they draw lots to see who will do it.

o3.5 وإنْ كانَ القصاصُ لاثنينِ (أو أكثر) لمْ يَجُزْ لأحدِهِمَا أنْ يَنْفَرِدَ بِهِ (وإن اتفقا على أن أحدهما يستوفي القصاص جاز وكان وكيلاً عن الآخر. ولا يستوفيانه معاً لأن فيه تعذيباً للمقتص منه). فإنْ تَشَاحَّا فيمَنْ يَسْتَوْفِيهِ أقْرِعَ بينَهُمَا.

o3.6 There is no retaliation against a pregnant woman until she has given birth and the infant is able to suffice with another's milk.

o3.6 ولا يُقْتَصُّ مِنْ حامِلٍ حتّى تَضَعَ ويَسْتَغْنِيَ الولدُ بلبنِ غيرِهَا.

o3.7 [ومَنْ قَطَعَ اليدَ ثمَّ قَتَلَ تُقْطَعُ يدُهُ ثمَّ يُقْتَلُ. فإنْ قَطَعَ اليدَ فَمَاتَ مِنْ ذلكَ قُطِعَتْ يدُهُ. فإنْ مَاتَ فَهُو. وإلاّ قُتِلَ].

o3.8 Whenever someone who is entitled to exact retaliation decides instead to forgive the

o3.8 ومتى عَفَا مستحقُّ القصاصِ (عنه) على الديةِ سَقَطَ القصاصُ ووَجَبَتِ

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offender and take an indemnity (def: o4) from him, then retalition is no longer called for, and the deserving person is entitled to the indemnity. If some of a group of people who are entitled to retaliaton agree to forgo it, as when a murder victim has children and one of them forgives the murderer, then retaliation is no longer obligatory, and the group deserves an indemnity from the offender. (A: Or the indemnity may also be waived.)

الدية. بل لو عفا بعض المستحقين مثل إن كان للمقتول أولاد فيعفو أحدهم سقط القصاص ووجبت الدية.

o3.9 When someone kills a group of people or maims them one after another, retaliation is exacted for the first individual attacked, and the other deserving parties receive an indemnity. If the offender injures them all at once, then those entitled to retaliate against him draw lots to determine who will do so.

o3.9 ومن قتل جماعة أو قطع عضواً من جماعة واحداً بعد واحد اقتص منه للأول وللباقين الدية. فإن جنى عليهم دفعة أقرع.

o3.10 When a group of people together murder a single person, they are all killed in retaliation, no matter whether the amount of injury inflicted by each upon the victim is the same or whether it differs.

o3.10 فإن اشترك جماعة في قتل واحد قتلوا به سواء استوت جنايتهم أو تفاوتت.

o3.11 [حتى لو جرحه واحد جراحة وآخر مائة جراحة ومات وكانت تلك الجراحة المنفردة أو تلك الجراحات مما لو انفردت لقتلت لزمهما القصاص. اللهم إلا إن يقطع الثاني جناية الأول بأن يقطع الأول يده ونحوها ويقطع الثاني رقبته أو يقده نصفين، فالأول جارح والثاني قاتل].

o3.12 There is no retaliation against anyone for an injury or death caused by someone who did so intentionally but in conjunction with someone who did so by mistake.

When an injurious crime is caused by a non-family member in cooperation with the victim's father, retaliation is only taken against the non-family member (dis: o1.2(4)).

o3.12 ولو شارك العامد مخطئاً فلا قصاص على أحد.

ولو شارك الأجنبي أباً اقتص من الأجنبي.

o3.13 Retaliation is also obligatory (dis: o3.8) for every wound that cuts to the bone, such as a cut on the head or face that reaches the skull, or a cut to the bone in the upper arm, lower leg, or thigh. *To the bone* means that it is known that a knife or

o3.13 ويجب القصاص أيضاً في كل جرح انتهى إلى عظم كالموضحة في الرأس والوجه وجرح العضد والساق والفخذ إذا انتهى الجرح إلى العظم. والمراد بالموضحة وبانتهاء الجرح إلى العظم أن يعلم وصول السكين أو

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a needle, for example, has reached the bone, not that the wound actually exposes the bone to view.

المسلة مثلاً إلى العظم ولا يُشترطُ ظهورُ العظم ورؤيتُهُ.

*

o4.0 INDEMNITY (DIYA)

(A: The rulings below concern the maximum that the victim or victim's family may demand. If both sides agree on an indemnity of lesser amount, or nothing at all, this is legally valid and binding.)

o4.0 الدية

(ع: ما يأتي من الأحكام يبين أكثر ما يمكن أن يطلبه المجني عليه أو عائلته. فإن صالحوا على أقل منه أو عفوا فصحيح لازم).

o4.1 An indemnity is obligatory (N: though it may by waived by deserving recipients, like retaliation) in cases of death caused:

(1) by an honest mistake (def: o2.2);

(2) by a mistake made in a deliberate injury (o2.3);

(3) or intentionally, if those entitled to retaliate agree to forgo retaliation (dis: o3.8).

o4.1 إذا كانَ القتلُ خطأً أو عمداً خطأً أو آلَ الأمرُ في العمدِ بالعفوِ إلى الدية وَجبت الديةُ.

o4.2 The indemnity for killing a male Muslim is 100 camels.

(N: Shafi'i scholars early converted the pastoral equivalents to gold dinars (n: one dinar equalling 4.235 grams of gold (dis: w15)), the amount due in the rulings below being the *weight* of the gold, regardless of its current market value.) (A: The stronger position in the Shafi'i school is that indemnities should be reckoned in camels, after which both parties may agree on a lesser amount or another form of payment.)

o4.2 وديةُ [الحرِّ] المسلمِ الذكرِ مائةٌ مِنَ الإبلِ.

(ح: قد قدّر العلماء - من زمن بعيد - الدية بالإبل بدنانير ذهبية، والاعتبار في الأحكام التالية بالوزن لا بالقيمة في السوق (ع: والراجح في المذهب تقدير الدية بالإبل، وبعده، فللطرفين أن يتفقا على أقل من المسمّى أو على غير الإبل)).

THE INDEMNITY FOR A PURELY INTENTIONAL KILLING

دية العمد المغلظة

o4.3 The indemnity for cases of purely intentional homicide (def: o2.4) is made severe in three ways:

o4.3 فإنْ كانَ عمداً فهي مغلَّظةٌ مِنْ ثلاثةِ أوجهٍ: كونُها حالَّةً وعلى الجاني

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(a) it must be paid immediately;

(b) it is due from the offender himself;

(c) and the amount paid is (N: 1,333.3 gold dinars (n: 5,646.6 grams of gold) or else:) 30 she-camels in their fourth year, 30 she-camels in their fifth year, and 40 pregnant she-camels.

ومثلثة: ثلاثين حقة وثلاثين جذعة وأربعين خلفة أي حوامل في بطونها أولادها.

THE INDEMNITY FOR DEATH BY MISTAKE IN A DELIBERATE INJURY

تغليظ دية عمد الخطأ

o4.4 When the killing is a mistake made in a deliberate injury (def: o2.3), the indemnity is only made severe in one respect, namely that the payment consists of the three types of camel mentioned above (n: or 5,646.6 grams of gold), while it is less severe in that:

(a) payment is deferred (def: o4.11);

(b) and is due (N: not from the offender, but) from those of the offender's extended family who are required to pay ('aqila, def: o4.10).

o4.4 وإن كان عمد خطإ فهي مغلظة من وجه واحد، كونها مثلثة؛ مخففة من وجهين كونها مؤجلة وعلى العاقلة.

THE INDEMNITY FOR A DEATH CAUSED BY AN HONEST MISTAKE

دية الخطأ المخففة

o4.5 When the killing occurred through an honest mistake (def: o2.2), the indemnity is less severe in three ways:

(a) payment is deferred;

(b) it is due from those of the offender's extended family who are required to pay (def: o4.10);

(c) and the amount paid is (N: 1,000 gold dinars (n: 4,235.0 grams of gold) or:) 20 she-camels in their second year, 20 she-camels and 20 he-camels in their third year, 20 she-camels in their fourth year, and 20 she-camels in their fifth year.

o4.5 وإن كان خطأ فهي مخففة من ثلاثة أوجه: كونها مؤجلة وعلى العاقلة ومخمسة عشرين بنت مخاض وعشرين بنت لبون وعشرين ابن لبون وعشرين حقة وعشرين جذعة.

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o4.6 But no matter whether the killing was a mistake or intentional, the three-types-of-camel-indemnity (def: o4.3(c)) must be paid if the person killed was: (1) an *unmarriageable kin by birth* relative of the killer (def: m6.1(1–8) and m6.2(1–6)); (2) slain in the Sacred Precinct in Mecca; (3) or killed during one of the sacrosanct months of Dhul Qa'da, Dhul Hijja, Muharram, or Rajab.	o4.6 اللهُمَّ إلاّ أنْ يَقْتُلَ ذا رحمٍ محرمٍ أوْ في الحرمِ أوْ في الأشهرِ الحُرُمِ وهيَ ذو القعدةِ وذو الحجةِ والمحرمُ ورجبٌ فإنَّها تَكُونُ مثلثةً خطأً كانَ أوْ عمداً.
o4.7 Defective animals may not constitute payment.	o4.7 ولا يُؤْخَذُ في الإبلِ معيبٌ.
o4.8 It is permissible for deserving recipients to accept payment other than camels if both parties agree.	o4.8 فإنْ تَرَاضَوا على العوضِ عنِ الإبلِ جَازَ.
o4.9 (A: For the rulings below, one multiplies the fraction named by the indemnity appropriate to the death or injury's type of intentionality and other relevant circumstances that determine the amount of a male Muslim's indemnity (def: o4.2–6 and o4.13).) The indemnity for the death or injury of a woman is one-half the indemnity paid for a man. The indemnity paid for a Jew or Christian is one-third of the indemnity paid for a Muslim. The indemnity paid for a Zoroastrian is one-fifteenth of that of a Muslim. When a miscarriage results from someone having struck the stomach of a pregnant woman (O: or other part of her, or when someone frightens her, resulting in a miscarriage), the indemnity for the fetus is a male or female slave worth one-twentieth of the indemnity payable for killing the fetus's father, or one-tenth that of its mother. (A: The indemnity is whatever they agree upon.)	o4.9 ودِيةُ المرأةِ في النفسِ وغيرِها نصفُ ديةِ الرجلِ. ودِيةُ اليهوديِّ والنصرانيِّ ثلثُ ديةِ المسلمِ. ودِيةُ المجوسيِّ ثلثا عُشْرِ ديةِ المسلمِ. [ودِيةُ العبدِ قيمتُهُ وأعضاؤُهُ وجراحاتُهُ ما نقصَ منْها]. وفيمَا إذَا ضَرَبَ بطْنَهَا (أو ضرب غيرها من أعضائها أو أخافها بلا ضَرب) فألْقَتْ جنيناً ميتاً غرةٌ وهيَ عبدٌ أوْ أمةٌ [سليمٌ] بقيمةِ نصفِ عُشْرِ ديةِ الأبِ أوْ عُشْرِ ديةِ الأمِّ.
o4.10 The members of the offender's extended family who are liable for certain kinds of in-	o4.10 والعاقلةُ هيَ العصباتُ ما عدا

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demnities consist of the offender's universal heirs, excluding his father, father's father (O: and on up), his son, son's son (O: and on down). (A: Meaning that they consist of those mentioned at L10.6(7–14).) Those of the extended family who are poor (A: *poor* meaning someone who has enough for himself but no more), prepubescent, or insane are not obliged to pay (N: anything in conjunction with the other members). If the offender is Muslim, then his non-Muslim relatives are not obliged to pay, as is also the case if the offender is non-Muslim and his relatives are Muslim.

الأبَ والجدَّ (وإن علا) والابنَ وابنَ الابنِ (وإن سفل) ولا يَعْقِلُ الفقيرُ (ح: أي لا يجب عليه دفع شيء من الدية مشاركةً للعاقلة) ولا صبيٌّ ولا مجنونٌ ولا كافرٌ عنْ مسلمٍ وعكسُهُ.

o4.11 When the extended family is obliged to, they must pay the entire indemnity of 100 camels (N: or the gold equivalents) within three years. Every required extended family member who is well-off is obliged to pay one-half dinar (n: 2.1175 grams of gold) at the end of each year, while every member who is between affluence and poverty is obliged to pay a quarter dinar (n: 1.05875 grams of gold). If any of the indemnity remains to be paid after three years (N: or if the offender has no family to pay it), it is paid by the Muslim common fund (bayt al-mal). If there is none, the offender himself must pay.

o4.11 فيجبُ عليهمْ ديةُ النفسِ الكاملةِ أعْني المائةَ منَ الإبلِ في ثلاثِ سنينَ. فيجبُ على كلِّ غنيٍّ عند الحولِ في كلِّ سنةٍ نصفُ دينارٍ وعلى كلِّ متوسطٍ ربعُ دينارٍ. فإذا بقي شيءٌ أُخِذَ منْ بيتِ المالِ. وإلاَّ فمنَ الجاني.

o4.12 When the indemnity due is less than a full indemnity (A: *full* meaning that which is due for a Muslim male (def: o4.2–6)), as when it is for a wound, miscarriage, female, or a Jewish or Christian subject of the Islamic state, then:

(1) if it consists of one-third or less of a full indemnity, it must be paid within one year;

(2) if it consists of two-thirds or less of a full indemnity, then one of the thirds must be paid in the first year, and the rest in the second year;

(3) and if it amounts to more than two-thirds of a full indemnity, then the two-thirds must be paid within two years and the rest in the third year.

o4.12 وإنْ كانَ الواجبُ أقلَّ منْ ديةِ النفسِ الكاملةِ كواجبِ الجراحاتِ وديةِ الجنينِ والمرأةِ والذميِّ فما كانَ قدرَ ثلثِ الكاملةِ أوْ أقلَّ ففي سنةٍ. وإنْ كانَ الثلثينِ أوْ أقلَّ فالثلثُ في سنةٍ والباقي في الثانيةِ. فإنْ زادَ على الثلثينِ فالثلثانِ في السنتينِ والباقي في الثالثةِ.

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THE INDEMNITY FOR BODILY INJURIES	دية الأعضاء
o4.13 If a nonpaired body part of aesthetic value and utility (A: a tongue, for example) is dissevered, then a full indemnity is paid, meaning the indemnity due if the member's owner were killed (def: o4.2–6, o4.9). The same is due for each pair of limbs: if both are cut off, a full indemnity is paid, while if only one is cut off, then half the full indemnity. The same is true for the faculties of sense (A: such as hearing): for each faculty the injury eliminates, there is a full indemnity. Thus, a full indemnity is paid for cutting off two ears, and a half indemnity for one. This also holds for a pair of eyes, lips, jaws, hands, feet, buttocks, testicles, eyelids, the nipples of a female, vulval labia, the soft part of the nose, the tongue, head of the penis, or whole penis. A full indemnity is also paid for injuries which paralyze these members, or for injuring the peritioneal wall between vagina and rectum so they become one aperture, or for flaying a person, breaking his back, or eliminating the use of his mind, hearing, vision, speech, sense of smell, or taste.	o4.13 وكلُّ عضوٍ مفردٍ فيه جمالٌ ومنفعةٌ إذا قُطِعَ وَجَبَتْ فيه ديةٌ كاملةٌ مثلُ ديةِ صاحبِ العضوِ لو قَتَلَهُ. وكذا كلُّ عضوينِ منْ جنسٍ: فإنْ قطعَهُما ففيهما الديةُ وفي أحدِهما نصفُها. وكذا المعاني واللطائفُ ففي كلِّ معنىً منْهُما الديةُ. ففي قطعِ الأذنينِ الديةُ وفي أحدِهما نصفُها. ومثلُهما العينانِ والشفتانِ واللحيانِ والكفانِ والقدمانِ بأصابعِهما والأليتانِ والأنثيانِ والأجفانِ وحلمتا المرأةِ وشفراها ومارنُ الأنفِ واللسانُ والحشفةُ وجميعُ الذكرِ. وكذا في شللِ هذهِ الأعضاءِ والإفضاءِ وسلخِ الجلدِ وكسرِ الصلبِ وإذهابِ العقلِ والسمعِ أو الضوءِ أو النطقِ أو الشمِّ أو الذوقِ.
o4.14 The indemnity for each finger is ten camels, and five for each tooth (N: or 10 and 5 percent respectively of the equivalent gold values (def: o4.3–5), depending on the relevant circumstances (dis: o4.9(A:))).	o4.14 وفي كلِّ أصبعٍ عشرٌ منَ الإبلِ وفي كلِّ سنٍ خمسٌ.
o4.15 As for wounds on the body, their indemnity consists of a fraction of the full indemnity proportionate (A: by the calculation of the Islamic magistrate) to the extent of the damage.	o4.15 وأمّا الجراحاتُ في البدنِ فالحكومةُ.
o4.16 The indemnity for wounds on the head or face, when not to the bone, is also such a proportionate fraction, though if such wounds are to the bone, as mentioned above (o3.13), the indemnity is five camels (dis: o4.14(N:)). There are other injuries which I prefer to omit for the sake of brevity.	o4.16 وفي الرأسِ والوجهِ فما دونَ الموضحةِ فيهِ الحكومةُ. وأمّا الموضحةُ [وهي ما أوْضَحتِ العظمَ] كما تقدَّمَ ففيها خمسٌ منَ الإبلِ. وبقيتْ جناياتٌ أخرُ آثرْتُ تركَها لئلاّ يطولَ الكلامُ.

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o4.17 There is no indemnity obligatory for killing a non-Muslim at war with Muslims (harbi), someone who has left Islam, someone sentenced to death by stoning (A: for adultery (def: o12)) by virtue of having been convicted in court, or those it is obligatory to kill by military action (N: such as a band of highwaymen).

o4.17 ولا تجبُ الديةُ بقتلِ الحربيِّ والمرتدِّ ومَنْ وَجَبَ رجمُهُ بالبينةِ أوْ تحتَّمَ قتلُهُ في المحاربةِ [ولا على السيدِ بقتلِ عبدِه].

*

o5.0 THE EXPIATION TO ALLAH FOR TAKING A HUMAN LIFE

o5.0 كفارة القتل لحق الله تعالى

o5.1 An expiation is due to Allah Most High from anyone who kills someone unlawful to kill, whether the killing is through a mistake or is intentional, and no matter whether retaliation (def: o3) or an indemnity (o4) is obligatory or not.

o5.1 تجبُ الكفارةُ على مَنْ قتلَ مَنْ يحرُمُ قتلُهُ لحقِّ اللهِ تعالى خطأً كانَ أوْ عمداً سواءٌ لزِمَهُ قصاصٌ أوْ ديةٌ أوْ لمْ يلزَمْهُ شيءٌ مِنْهُمَا.

o5.2 The expiation consists of freeing a slave (def: k32), or if one cannot, then two consecutive months of fasting. (O: There is no difference in this precedence order whether the killer is legally accountable or not, as when he is a child or insane, in which case the guardian must free a slave on his behalf. (A: Though if a child fasts, it fulfills the expiation.))

o5.2 وهوَ عتقُ رقبةٍ فإنْ لمْ يجدْ فصيامُ شهرينِ متتابعينِ (ولا فرقَ في الترتيبِ بينَ المكلفِ وغيرِه كالصبي والمجنونِ فيعتقُ عنهما وليهما) (ع: فإن صامَ الصبي أجزأه).

o5.3 [فلوْ قتلَ نساءَ أهلِ الحربِ وأولادَهُمْ فلا كفارةَ لأنَّهُمْ وإنْ حرُمَ قتلُهم لكنْ لحقِّ اللهِ تعالى بلْ لحقِّ الغانمينَ].

o5.4 (O: There is no expiation for killing someone who has left Islam, a highwayman (def: o15), or a convicted married adulterer, even when someone besides the caliph kills him.)

o5.4 (وكذا لا كفارةَ بقتلِ المرتدِّ وقاطعِ الطريقِ والزاني المحصنِ إذا قتلهم غيرُ الإمامِ).

*

o6.0 FIGHTING THOSE WHO REBEL AGAINST THE CALIPH

o6.0 قتال البغاة

o6.1 When a group of Muslims rebel against the caliph (khalifa, def: o25) and want to over-

o6.1 إذا خرجَ على الإمامِ طائفةٌ منَ المسلمينَ ورامُوا خلعَهُ أوْ منعُوا حقاً

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throw him, or refuse to fulfill an obligation imposed by Sacred Law such as zakat, and rise in armed insurrection, he sends someone to them and redresses their grievances if possible.

If they obdurately refuse to obey him (O: no matter whether he is just or unjust, as Nawawi mentions in his commentary on *Sahih Muslim*, citing the consensus of Muslims (ijma'. def: b7) that it is unlawful to revolt against caliphs and fight them, even if they are corrupt), he fights them with (O: military) weaponry that does not cause general destruction, as do fire and mangonel (O: for the aim is to suppress them, not destroy them), and does not pursue those who retreat, or kill the wounded.

شرعيا كالزكاة وامتنعوا بالحرب بعث إليهم وأزال عنهم إن أمكن.

فإن أبوا (عادلاً كان أو جائراً كما في شرح مسلم للنووي من حكاية إجماع المسلمين على حرمة الخروج عليهم وقتالهم وإن كانوا فسقة) قاتلهم بما لا يعم شره (من آلات الحرب) كالنار والمنجنيق (لأن المقصد كفهم لا إهلاكهم) ولا يتبع مدبرهم ولا يقتل جريحهم.

o6.2 There is no financial responsibility for what they destroy of ours nor what we destroy of theirs in such military action.

o6.2 وما أتلفوه علينا أو أتلفناه عليهم في الحرب لا ضمان فيه.

o6.3 They are subject to Islamic laws (O: because they have not committed an act that puts them outside of Islam that they should be considered non-Muslims. Nor are they considered morally corrupt, for *rebels* is not a pejorative term, but rather they merely have a mistaken understanding), and the decisions of their Islamic judge are considered legally effective (O: provided he does not declare the lives of upright Muslims (def: o24.4) to be justly forfeitable) if they are such as would be effective if made by our own judge.

o6.3 وأحكام الإسلام جارية عليهم (فإنهم لم يرتكبوا مكفراً حتى يحكم عليهم بالكفر وليسوا بفسقة بل البغي ليس باسم ذم لكنهم مخطئون في تأويلهم) وينفذ من حكم قاضيهم (إن لم يستحل دماء أهل العدل) ما ينفذ من حكم قاضينا.

o6.4 If they do not rebel by war, the caliph may not fight them.

o6.4 وإن لم يمتنعوا بالحرب لم يقاتلهم.

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o7.0 WARDING OFF AGGRESSORS

o7.0 الصيال

o7.1 Someone whom a Muslim is trying to kill is entitled to kill the Muslim, though it is not obligatory to. Someone whom a non-Muslim or animal is trying to kill is obliged to defend himself.

o7.1 ومن قصده مسلم يريد قتله جاز له قتله ولا يجب.

وإن قصده كافر أو بهيمة وجب دفعه.

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o7.2 If an aggressor is trying to take one's money or property, it is permissible to defend it but not obligatory. If the aggressor intends one's womenfolk (O: such as one's wife or son's wife), it is obligatory to defend them.

o7.2 وإنْ قَصَدَ مالَهُ جَازَ الدفعُ ولا يجبُ.
وإنْ قَصَدَ حريمَهُ (كزوجته وزوجة ولده) وَجَبَ الدفعُ.

o7.3 To *defend* means to use the minimum amount of force required. If one knows that shouting will repel the aggressor, one may not strike him. If a hand is enough, a stick may not be employed. If a stick will do, a sword may not be used. If cutting the other's hand will suffice, one may not kill him. (O: Mawardi states that this precedence order is for crimes that are not indecencies. As for when an aggressor is raping someone whom it is unlawful for him to have sexual intercourse with, it is permissible to kill him forthwith.) Someone who knows (O: i.e. believes) that an aggressor cannot be dissuaded by anything short of killing him may kill him and is not accountable for it.

o7.3 ويَدْفَعُ بالأسهلِ فالأسهلِ. فإنْ عرفَ أنهُ يَنْدَفِعُ بالصياحِ فلَيْسَ لهُ ضربُهُ. أوْ باليدِ فلَيْسَ لهُ بالعصا. أوْ بالعصا فلَيْسَ لهُ السيفُ. أوْ بقطعِ اليدِ فلَيْسَ له قتلُهُ. (وقال الماوردي هذا التدريج في غير الفاحشة أما من أولج في الفرج المحرم فيجوز أن يبدأ بالقتل) فإنْ تَحقَّقَ أنهُ لا يَنْدَفِعُ إلاَّ بقتلِهِ فلهُ قتلُهُ ولا شيءَ عليْهِ (والمراد بالتحقق غلبة الظن).

o7.4 When one has warded off an aggressor, it is unlawful to take further measures against him.

o7.4 وإذا انْدَفَعَ حَرُمَ التعرضُ لهُ.

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o8.0 APOSTASY FROM ISLAM (RIDDA)

(O: Leaving Islam is the ugliest form of unbelief (kufr) and the worst. It may come about through sarcasm, as when someone is told, "Trim your nails, it is sunna." and he replies, "I would not do it even if it were," as opposed to when some circumstance exists which exonerates him of having committed apostasy, such as when his tongue runs away with him, or when he is quoting someone, or says it out of fear.)

o8.0 الردة

(وهي أقبح أنواع الكفر وأغلظها. فقد يكون استهزاء كأن قيل له: قص أظفارك فإنه سنة؛ فقال: لا أفعله وإن كان سنة؛ بخلاف ما لو اقترن به ما يخرجه عن الردة كسبق اللسان أو حكاية أو خوف).

o8.1 When a person who has reached puberty and is sane voluntarily apostatizes from Islam, he deserves to be killed.

o8.1 مَنِ ارْتَدَّ عنِ الإسلامِ وهو بالغٌ عاقلٌ مختارٌ اسْتَحَقَّ القتلَ.

o8.2 In such a case, it is obligatory for the caliph (A: or his representative) to ask him to

o8.2 ويَجِبُ على الإمامِ استتابتُهُ

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repent and return to Islam. If he does, it is accepted from him, but if he refuses, he is immediately killed.

فإنْ رجَع إلى الإسلامِ قُبِلَ منهُ وإنْ أبَى قُتِلَ في الحال.

o8.3 If he is a freeman, no one besides the caliph or his representative may kill him. If someone else kills him, the killer is disciplined (def: o17) (O: for arrogating the caliph's prerogative and encroaching upon his rights, as this is one of his duties).

o8.3 فإنْ كانَ حراً لمْ يقْتُلْهُ إلاّ الإمامُ أوْ نائبُهُ. فإنْ قتَلَهُ غيرُهُ عُزِّرَ (لافتياته وتعديه على السلطان لأن هذا من وظيفته).

o8.4 There is no indemnity for killing an apostate (O: or any expiation, since it is killing someone who deserves to die).

o8.4 ولا ديةَ عليهِ (ولا كفارة أيضاً لأنه قتل مستحق) [وإنْ كانَ عبداً فللسيدِ قتلُهُ].

o8.5 If he apostatizes from Islam and returns several times, it (O: i.e. his return to Islam, which occurs when he states the two Testifications of Faith (def: o8.7(12))) is accepted from him, though he is disciplined (o17).

o8.5 وإنْ تكرَّرتْ ردَّتُهُ وإسلامُهُ قُبِلَ منهُ (الرجوع إلى الإسلام ويكون حاصلاً بالنطق بالشهادتين) ويُعزَّرُ.

o8.6 (A: If a spouse in a consummated marriage apostatizes from Islam, the couple are separated for a waiting period consisting of three intervals between menstruations. If the spouse returns to Islam before the waiting period ends, the marriage is not annulled but is considered to have continued the whole time (dis: m7.4).)

ACTS THAT ENTAIL LEAVING ISLAM

الأمور التي تحصل بها الردة

o8.7 (O: Among the things that entail apostasy from Islam (may Allah protect us from them) are:

(1) to prostrate to an idol, whether sarcastically, out of mere contrariness, or in actual conviction, like that of someone who believes the Creator to be something that has originated in time. Like idols in this respect are the sun or moon, and like prostration is bowing to other than Allah, if one intends reverence towards it like the reverence due to Allah;

(2) to intend to commit unbelief, even if in the future. And like this intention is hesitating

o8.7 ((تنبيه) في أمور تحصل بها الردة والعياذ بالله منها:) السجود لصنم سواء كان على جهة الاستهزاء أو العناد أو الاعتقاد كمن اعتقد حدوث الصانع. ومثل الصنم الشمس والقمر ومثل السجود الركوع لغير الله فيكفر به إن قصد تعظيمه كتعظيم الله. ومنها نية الكفر ولو في المستقبل ومثل نية الكفر

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whether to do so or not: one thereby immediately commits unbelief;

(3) to speak words that imply unbelief such as "Allah is the third of three," or "I am Allah"—unless one's tongue has run away with one, or one is quoting another, or is one of the friends of Allah Most High (wali, def: w33) in a spiritually intoxicated state of total oblivion (A: friend of Allah or not, someone totally oblivious is as if insane, and is not held legally responsible (dis: k13.1(O:))), for these latter do not entail unbelief;

(4) to revile Allah or His messenger (Allah bless him and give him peace);

(5) to deny the existence of Allah, His beginningless eternality, His endless eternality, or to deny any of His attributes which the consensus of Muslims ascribes to Him (dis: v1);

(6) to be sarcastic about Allah's name, His command, His interdiction, His promise, or His threat;

(7) to deny any verse of the Koran or anything which by scholarly consensus (def: b7) belongs to it, or to add a verse that does not belong to it;

(8) to mockingly say, "I don't know what faith is";

(9) to reply to someone who says, "There is no power or strength save through Allah": "Your saying 'There's no power or strength, etc.' won't save you from hunger";

(10) for a tyrant, after an oppressed person says, "This is through the decree of Allah," to reply, "I act without the decree of Allah";

(11) to say that a Muslim is an unbeliever (kafir) (dis: w47) in words that are uninterpretable as merely meaning he is an *ingrate* towards Allah for divinely given blessings (n: in Arabic, also "kafir");

التردد فيه فيكفر به أيضاً. ومنها القول المكفر بأن يقول الله ثالث الثلاثة أو يقول أنا الله ما لم يسبق إليه لسانه أو يقوله حكاية عن غيره أو يقوله الولي في غيبته، فلا يكفر. ومنها مسبة الله ورسوله. ومنها إنكار وجود الله أو قدمه أو بقائه؛ وكذلك إنكار الصفات المجمع عليها. ومنها الاستخفاف باسم الله أو أمره أو نهيه أو وعده أو وعيده أو جحد آية من القرآن ومجمعاً على ثبوتها أو زاد فيه آية ليست منه. ومنها ما لو قال لا أدري ما الإيمان احتقاراً؛ أو قال لمن حوقل لا حول لا تغني من جوع؛ أو قال الظالم بعد قول المظلوم هذا بتقدير الله: أنا أفعل بغير تقدير الله. ومنها ما لو كفّر مسلماً من غير تأويل بكفر النعمة. ومنها

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(12) when someone asks to be taught the Testification of Faith (Ar. Shahada, the words, "La ilaha ill Allahu Muhammadun rasulu Llah" (There is no god but Allah, Muhammad is the Messenger of Allah)), and a Muslim refuses to teach him it;

(13) to describe a Muslim or someone who wants to become a Muslim in terms of *unbelief* (kufr);

(14) to deny the obligatory character of something which by the consensus of Muslims (ijma', def: b7) is part of Islam, when it is well known as such, like the prayer (salat) or even one rak'a from one of the five obligatory prayers, if there is no excuse (def: u2.4);

(15) to hold that any of Allah's messengers or prophets are liars, or to deny their being sent;

(n: 'Ala' al-Din 'Abidin adds the following:

(16) to revile the religion of Islam;

(17) to believe that things in themselves or by their own nature have any causal influence independent of the will of Allah;

(18) to deny the existence of angels or jinn (def: w22), or the heavens;

(19) to be sarcastic about any ruling of the Sacred Law;

(20) or to deny that Allah intended the Prophet's message (Allah bless him and give him peace) to be the religion followed by the entire world (dis: w4.3–4) (*al-Hadiyya al-'Ala'iyya* (y4), 423–24).)

There are others, for the subject is nearly limitless. May Allah Most High save us and all Muslims from it.)

ما لو طلب شخص تلقين الشهادتين من شخص فلم يلقنه. ومنها ما لو أشار بالكفر على مسلم أو كافر أراد الإسلام. ومنها ما لو جحد مجمعاً عليه معلوماً من الدين بالضرورة بلا عذر كصلاة أو ركعة من الصلوات الخمس. ومنها ما لو كذّب رسولاً من رسل الله أو نبياً من أنبيائه أو أنكر رسالته بأن قال لم يرسله).

(ت: وقال الشيخ علاء الدين عابدين: «ومن الكفر ما إذا سب دين الإسلام؛ أو اعتقد بتأثير الأشياء بنفسها وطبعها بدون إرادة الله؛ أو أنكر ووجود الملائكة أو الجن أو السموات؛ أو استخف بحكم من أحكام الشريعة؛ أو أنكر عموم رسالته ﷺ) [نقل من الهدية العلائية: ٤٢٣ - ٤٢٤،] (ومنها غير ذلك وهذا باب لا ساحل له نجانا الله تعالى وجميع المسلمين منه).

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o9.0 JIHAD

(O: *Jihad* means to war against non-Muslims, and is etymologically derived from the word *mujahada,* signifying warfare to establish the religion. And it is the lesser jihad. As for the greater jihad, it is spiritual warfare against the lower self (nafs), which is why the Prophet (Allah bless him and give him peace) said as he was returning from jihad,

"We have returned from the lesser jihad to the greater jihad."

The scriptural basis for jihad, prior to scholarly consensus (def: b7) is such Koranic verses as:

(1) "Fighting is prescribed for you" (Koran 2:216);

(2) "Slay them wherever you find them" (Koran 4:89);

(3) "Fight the idolators utterly" (Koran 9:36);

and such hadiths as the one related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said:

"I have been commanded to fight people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, and perform the prayer, and pay zakat. If they say it, they have saved their blood and possessions from me, except for the rights of Islam over them. And their final reckoning is with Allah";

and the hadith reported by Muslim,

"To go forth in the morning or evening to fight in the path of Allah is better than the whole world and everything in it."

Details concerning jihad are found in the accounts of the military expeditions of the Prophet (Allah bless him and give him peace), including his own martial forays and those on which he dispatched others. The former consist of

o9.0 الجهاد

(وهو قتال الكفار. والجهاد مأخوذ من المجاهدة وهي المقاتلة لإقامة الدين وهذا هو الجهاد الأصغر وأما الجهاد الأكبر فهو مجاهدة النفس. فلذلك كان ﷺ يقول إذا رجع من الجهاد: «رجعنا من الجهاد الأصغر إلى الجهاد الأكبر».

والأصل فيه قبل الإجماع آيات كقوله تعالى: ﴿كُتِبَ عَلَيْكُمُ القِتَالُ﴾ وقوله تعالى: ﴿وَاقْتُلُوهُمْ حَيْثُ وَجَدْتُمُوهُمْ﴾ وقوله تعالى: ﴿قَاتِلُوا المُشْرِكِينَ كَافَّةً﴾.

وأخبار كخبر الصحيحين أنه ﷺ قال: «أُمِرْتُ أن أقاتل الناس حتى يشهدوا أن لا إله إلا الله وأن محمداً رسول الله ويقيموا الصلاة ويؤتوا الزكاة فإذا قالوها عصموا مني دماءهم وأموالهم إلا بحق الإسلام وحسابهم على الله».

وخبر مسلم «لغدوة أو روحة في سبيل الله خير من الدنيا وما فيها».

وتفصيله متلقى من سيره ﷺ في غزواته وبعوثه. فالأولى ما خرج فيها بنفسه الشريفة وكانت سبعاً وعشرين

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the ones he personally attended, some twenty-seven (others say twenty-nine) of them. He fought in eight of them, and killed only one person with his noble hand, Ubayy ibn Khalaf, at the battle of Uhud. On the latter expeditions he sent others to fight, himself remaining at Medina, and these were forty-seven in number.)

وقيل تسعاً وعشرين. ولم يقاتل بنفسه إلا في ثمانية. ولم يقتل بيده الكريمة إلا واحداً وهو أبي بن خلف في غزوة أحد. والثانية لم يخرج فيها بنفسه بل بعث من يقاتل مع بقائه في المدينة وكانت سبعاً وأربعين].

THE OBLIGATORY CHARACTER OF JIHAD

وجوب الجهاد

o9.1 Jihad is a communal obligation (def: c3.2). When enough people perform it to successfully accomplish it, it is no longer obligatory upon others (O: the evidence for which is the Prophet's saying (Allah bless him and give him peace),

"He who provides the equipment for a soldier in jihad has himself performed jihad,"

and Allah Most High having said:

"Those of the believers who are unhurt but sit behind are not equal to those who fight in Allah's path with their property and lives. Allah has preferred those who fight with their property and lives a whole degree above those who sit behind. And to each, Allah has promised great good" (Koran 4:95).

If none of those concerned perform jihad, and it does not happen at all, then everyone who is aware that it is obligatory is guilty of sin, if there was a possibility of having performed it. In the time of the Prophet (Allah bless him and give him peace) jihad was a communal obligation after his emigration (hijra) to Medina. As for subsequent times, there are two possible states in respect to non-Muslims.

The first is when they are in their own countries, in which case jihad (def: o9.8) is a communal obligation, and this is what our author is speaking of when he says, "Jihad is a communal obligation," meaning upon the Muslims each year.

The second state is when non-Muslims invade a Muslim country or near to one, in which case jihad is personally obligatory (def: c3.2) upon the inhabitants of that country, who must repel the non-Muslims with whatever they can).

o9.1 الجهادُ فرضُ كفاية: إذا قام به مَنْ فيه الكفايةُ سَقَطَ عن الباقين (لقوله ﷺ: «من جهز غازياً في سبيل الله فقد غزا». وقد قال الله تعالى: ﴿لَا يَسْتَوِي الْقَاعِدُونَ مِنَ الْمُؤْمِنِينَ غَيْرُ أُولِي الضَّرَرِ وَالْمُجَاهِدُونَ فِي سَبِيلِ اللَّهِ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فَضَّلَ اللَّهُ الْمُجَاهِدِينَ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ عَلَى الْقَاعِدِينَ دَرَجَةً وَكُلًّا وَعَدَ اللَّهُ الْحُسْنَى﴾ [النساء: ٩٤].

فإن لم يقم به من ذكر ولم يحصل أصلاً أثم كل من علم بفرضيته مع القدرة على القيام به. وكان الأمر به في عهد رسول الله ﷺ فرض كفاية بعد الهجرة. وأما بعده فللكفار حالان أحدهما أن يكونوا ببلادهم فالجهاد فرض كفاية وهذا هو المراد بقول المصنف سابقاً الجهاد فرض كفاية أي على المسلمين في كل سنة. والحال الثاني أن يدخل الكفار بلدة من بلاد المسلمين أو ينزلوا قريباً منها، فالجهاد حينئذ فرض عين عليهم فيلزم أهل ذلك البلد دفع الكفار بما يمكن منهم).

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o9.2 Jihad is personally obligatory upon all those present in the battle lines (A: and to flee is an enormity (dis: p11)) (O: provided one is able to fight. If unable, because of illness or the death of one's mount when not able to fight on foot, or because one no longer has a weapon, then one may leave. One may also leave if the opposing non-Muslim army is more than twice the size of the Muslim force).

o9.2 ويتعيَّنُ على مَنْ حَضَرَ الصفَّ (ومحل ذلك مع القدرة على القتال. فإن عجز عن القتال لمرض أو لموت فرسه ولا يستطيع القتال راجلاً أو لم يبق معه سلاح فله الانصراف. وأما إذا زاد الكفار على الضعف جاز الانصراف).

o9.3 Jihad is also (O: personally) obligatory for everyone (O: able to perform it, male or female, old or young) when the enemy has surrounded the Muslims (O: on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means. All of which is if conditions permit gathering (A: the above-mentioned) people, provisioning them, and readying them for war. If conditions do not permit this, as when the enemy has overrun the Muslims such that they are unable to provision or prepare themselves for war, then whoever is found by a non-Muslim and knows he will be killed if captured is obliged to defend himself in whatever way possible. But if not certain that he will be killed, meaning that he might or might not be, as when he might merely be taken captive, and he knows he will be killed if he does not surrender, then he may either surrender or fight. A woman too has a choice between fighting or surrendering if she is certain that she will not be subjected to an indecent act if captured. If uncertain that she will be safe from such an act, she is obliged to fight, and surrender is not permissible).

o9.3 وكذا (يتعين) على كلِّ أحدٍ (سواء كان الأحد ذكراً أو أنثى كبيراً أو صغيراً مطيقاً له) إذا أحاطَ بالمسلمين عدوٌ (من كل جانب وقد دخلوا أرضنا ولو كان خراباً أو بريةً أو جبلاً لأن دخول الكفار دار الإسلام أمر عظيم لا يمكن إهماله فلا بد من الجد والاجتهاد في دفعه بكل ما يمكن. هذا إذا احتمل الحال اجتماعهم وتأهبهم واستعدادهم للحرب. وإن لم يحتمل الحال ذلك بأن غشيهم العدو بحيث لم يتمكنوا من التأهب والاستعداد للحرب، فمن وقع عليه كافر وعلم أنه يقتل إن أخذه فعليه أن يمنع عن نفسه بما أمكن. وإن لم يعلم ما تقدم بأن كان يجوز أنه إن أخذ قتل ويجوز أنه لا يقتل بأن يؤسر وعلم أنه إن امتنع من الاستسلام قتل فله استسلام وقتل. وإن أمنت المرأة فاحشة إن أخذت فلها استسلام وقتل أيضاً. فإن لم تأمن المرأة فاحشة إن أخذت تعين الجهاد ولا يجوز الاستسلام).

WHO IS OBLIGED TO FIGHT IN JIHAD

المكلفون بالجهاد

o9.4 Those called upon (O: to perform jihad when it is a communal obligation) are every able-bodied man who has reached puberty and is sane.

o9.4 ويُخاطَبُ به (أي بالجهاد حيث كان فرض كفاية) كلُّ ذكرٍ حرٍّ بالغٍ عاقلٍ مستطيعٍ.

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o9.5 The following may not fight in jihad:

(1) someone in debt, unless his creditor gives him leave;

(2) or someone with at least one Muslim parent, until they give their permission:

unless the Muslims are surrounded by the enemy, in which case it is permissible for them to fight without permission.

o9.5 ولا يُجاهِدُ المديونُ إلاّ بإذنِ غريمِه [ولا العبدُ إلاّ بإذنِ سيدِه] ولا مَنْ أحدُ أبويْهِ مسلمٌ إلاّ بإذنِه إلاّ إذا أحاطَ العدوُّ فيَجُوزُ بلا إذنٍ.

o9.6 It is offensive to conduct a military expedition against hostile non-Muslims without the caliph's permission (A: though if there is no caliph (def: o25), no permission is required).

o9.6 وَيُكْرَهُ الغزوُ دونَ إذنِ الإمامِ.

o9.7 Muslims may not seek help from non-Muslim allies unless the Muslims are considerably outnumbered and the allies are of goodwill towards the Muslims.

o9.7 ولا يستعينُ بمشركٍ إلاّ أنْ يقلَّ المسلمونَ وتكونَ نيّتُه حسنةً للمسلمينَ.

THE OBJECTIVES OF JIHAD

غايات الجهاد

o9.8 The caliph (o25) makes war upon Jews, Christians, and Zoroastrians (N: provided he has first invited them to enter Islam in faith and practice, and if they will not, then invited them to enter the social *order* of Islam by paying the non-Muslim poll tax (jizya, def: o11.4)—which is the significance of their paying it, not the money itself—while remaining in their ancestral religions) (O: and the war continues) until they become Muslim or else pay the non Muslim poll tax (O: in accordance with the word of Allah Most High,

"Fight those who do not believe in Allah and the Last Day and who forbid not what Allah and His messenger have forbidden—who do not practice the religion of truth, being of those who have been given the Book—until they pay the poll tax out of hand and are humbled" (Koran 9:29),

the time and place for which is before the final descent of Jesus (upon whom be peace). After his

o9.8 ويُقاتِلُ (الإمامُ) اليهودَ والنصارى والمجوسَ (ويستمرّ ذلك) إلاّ أنْ يُسْلِمُوا أوْ يَبْذُلُوا الجزيةَ (عملاً بقوله تعالى: ﴿قاتِلُوا الّذينَ لا يُؤْمِنُونَ باللهِ ولا باليومِ الآخرِ ولا يُحَرِّمُونَ ما حَرَّمَ اللهُ ورَسُولُهُ ولا يَدِينُونَ دينَ الحقِّ مِنَ الّذينَ أوتُوا الكتابَ حتّى يُعْطُوا الجِزْيَةَ عَنْ يَدٍ وَهُمْ صاغِرُونَ﴾ ومحلّ هذا قبلَ نزولِ عيسى عليه السلام أما بعد فلا يقبل منهم

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final coming, nothing but Islam will be accepted from them, for taking the poll tax is only effective until Jesus' descent (upon him and our Prophet be peace), which is the divinely revealed law of Muhammad. The coming of Jesus does not entail a separate divinely revealed law, for he will rule by the law of Muhammad. As for the Prophet's saying (Allah bless him and give him peace).

"I am the last, there will be no prophet after me,"

this does not contradict the final coming of Jesus (upon whom be peace), since he will not rule according to the Evangel, but as a follower of our Prophet (Allah bless him and give him peace)).

إلا الإسلام لأن أخذ الجزية منهم مغيا إلى نزول عيسى عليه وعلى نبينا أفضل الصلاة والسلام وهذا هو شرعه ﷺ. فنزول عيسى عليه السلام ليس بشرع مستقل بل حاكم بشرعه ﷺ. وأما قوله ﷺ: «أنا العاقب لا نبي بعدي» فلا ينافي نزول عيسى عليه السلام لأنه لا يحكم بالإنجيل بل هو تابع له ﷺ).

o9.9 The caliph fights all other peoples until they become Muslim (O: because they are not a people with a Book, nor honored as such, and are not permited to settle with paying the poll tax (jizya)) (n: though according to the Hanafi school, peoples of all other religions, even idol worshippers, are permitted to live under the protection of the Islamic state if they either become Muslim or agree to pay the poll tax, the sole exceptions to which are apostates from Islam and idol worshippers who are Arabs, neither of whom has any choice but becoming Muslim (*al-Hidaya sharh Bidaya al-mubtadi'* (y21), 6.48-49)).

o9.9 ويُقاتَلُ مَنْ سِواهُمْ إلاّ أنْ يُسْلِمُوا (لعدم كتاب لهم فليسوا محترمين ولا يقروا بالجزية). (ت: وعند الحنفية يقر من سواهم بالجزية - حتى عبدة الأوثان من العجم، فلهم أن يسلموا أو أن يدفعوا الجزية، وعندئذ يعيشون تحت حفظ دولة الإسلام - بخلاف المرتدين وعبدة الأوثان من العرب، فلا يقبل منهم إلا الإسلام [الهداية ٦/ ٤٨ - ٤٩]).

THE RULES OF WARFARE

أحكام في القتال

o9.10 It is not permissible (A: in jihad) to kill women or children unless they are fighting against the Muslims. Nor is it permissible to kill animals, unless they are being ridden into battle against the Muslims, or if killing them will help defeat the enemy. It is permissible to kill old men (O: *old man* (shaykh) meaning someone more than forty years of age) and monks.

o9.10 ولا يَجُوزُ قتلُ النساء والصبيانِ إلاّ أنْ يُقاتِلُوا.

ولا الدوابّ إلاّ أنْ يُقاتِلُوا عليْها أوْ تُسْتَعينَ بقتلِها عليهِمْ. ويَجُوزُ قتلُ الشيوخ (وهو من جاوز الأربعين) والرهبانِ.

o9.11 It is unlawful to kill a non-Muslim to whom a Muslim has given his guarantee of protection (O: whether the non-Muslim is one or more

o9.11 ومَنْ أمَّنَهُ مِنَ الكفارِ مسلمٌ بالغٌ عاقلٌ مختارٌ (غيرَ أسيرٍ ونحو

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than one, provided the number is limited, and the Muslim's protecting them does not harm the Muslims, as when they are spies) provided the protecting Muslim has reached puberty, is sane, and does so voluntarily (O: and is not a prisoner of them or a spy).	جاسوس) [ولوْ عبداً] حرُم قتلُهُ (سواء كان واحداً أو أكثر بشرط أن يكون عدداً محصوراً وأن لا يكون في تأمينه ضرر على المسلمين كالجاسوس).
o9.12 Whoever enters Islam before being captured may not be killed or his property confiscated, or his young children taken captive.	o9.12 ومَنْ أسْلَمَ منْهُمْ قبلَ الأسرِ حقنَ دمُهُ ومالُهُ وصغارُ أولادِهِ عنِ السَّبْيِ.
o9.13 When a child or a woman is taken captive, they become slaves by the fact of capture, and the woman's previous marriage is immediately annulled.	o9.13 ومتى أُسِرَ منْهُمْ صبيٌ أو امرأةٌ أُرِقَّ بنفسِ الأسرِ وينْفسِخُ نكاحُها.
o9.14 When an adult male is taken captive, the caliph (def: o25) considers the interests (O: of Islam and the Muslims) and decides between the prisoner's death, slavery, release without paying anything, or ransoming himself in exchange for money or for a Muslim captive held by the enemy. If the prisoner becomes a Muslim (O: before the caliph chooses any of the four alternatives) then he may not be killed, and one of the other three alternatives is chosen.	o9.14 أوْ بالغٌ تخيَّرُ الإمامُ بالمصلحةِ (للإسلام والمسلمين) بينَ القتلِ والاسترقاقِ والمنِّ والفداءِ بمالٍ أوْ بأسيرٍ مسلمٍ. فإنْ أسْلَمَ (قبلَ أنْ يختارَ الإمامُ فيه شيئاً من الخصالِ المذكورةِ) سقطَ قتلُهُ ويُخيَّرُ بينَ الثلاثِ الباقيةِ.
o9.15 It is permissible in jihad to cut down the enemy's trees and destroy their dwellings.	o9.15 ويجُوزُ قطعُ أشجارِهِمْ وتخريبُ ديارِهِمْ.
TRUCES	الهدنة
o9.16 (O: As for truces, the author does not mention them. In Sacred Law *truce* means a peace treaty with those hostile to Islam, involving a cessation of fighting for a specified period, whether for payment or something else. The scriptural basis for them includes such Koranic verses as: (1) "An acquittal from Allah and His messenger..." (Koran 9:1); (2) "If they incline towards peace, then incline towards it also" (Koran 8:61);	o9.16 (وأما ما يتعلق بالهدنة فلم يذكره المصنف. وهي شرعاً مصالحة أهلِ الحربِ على ترك القتال مدة معينة بعوض أو غيره. والأصل فيها قوله تعالى: ﴿بَراءةٌ مِنَ اللهِ وَرَسُولِهِ﴾ الآية؛ وقوله: ﴿وَإِنْ جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا﴾؛

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as well as the truce which the Prophet (Allah bless him and give him peace) made with Quraysh in the year of Hudaybiya, as related by Bukhari and Muslim.

Truces are permissible, not obligatory. The only one who may effect a truce is the Muslim ruler of a region (or his representative) with a segment of the non-Muslims of the region, or the caliph (o25) (or his representative). When made with other than a *portion* of the non-Muslims, or when made with all of them, or with all in a particular region such as India or Asia Minor, then only the caliph (or his representative) may effect it, for it is a matter of the gravest consequence because it entails the nonperformance of jihad, whether globally or in a given locality, and our interests must be looked after therein, which is why it is best left to the caliph under any circumstances, or to someone he delegates to see to the interests of the various regions.

There must be some interest served in making a truce other than mere preservation of the status quo. Allah Most High says,

"So do not be fainthearted and call for peace, when it is you who are the uppermost" (Koran 47:35).

Interests that justify making a truce are such things as Muslim weakness because of lack of numbers or materiel, or the hope of an enemy becoming Muslim, for the Prophet (Allah bless him and give him peace) made a truce in the year Mecca was liberated with Safwan ibn Umayya for four months in hope that he would become Muslim, and he entered Islam before its time was up. If the Muslims are weak, a truce may be made for ten years if necessary, for the Prophet (Allah bless him and give him peace) made a truce with Quraysh for that long, as is related by Abu Dawud. It is not permissible to stipulate longer than that, save by means of new truces, each of which does not exceed ten years.

The rulings of such a truce are inferable from those of the non-Muslim poll tax (def: o11); namely, that when a valid truce has been effected, no harm may be done to non-Muslims until it expires.)

ومهادنته ﷺ قريشاً عام الحديبية كما رواه الشيخان. وهي جائزة لا واجبة. وإنما يعقدها لبعض كفار إقليم واليه ولو بنائبه، أو إمامٌ ولو بنائبه. ولغيره من الكفار كلهم وكفار إقليم كالهند والروم إمامٌ ولو بنائبه لأنها من الأمور العظام لما فيها من ترك الجهاد مطلقاً أو في جهة لأنه لا بد فيه من رعاية مصلحتنا فاللائق تفويضها للإمام مطلقاً أو من فوض إليه الإمام مصلحة الأقاليم. ولا بد من المصلحة في المهادنة فلا يكفي انتفاء المفسدة. قال تعالى: ﴿فَلَا تَهِنُوا وَتَدْعُوا إِلَى السَّلْمِ وَأَنْتُمُ الْأَعْلَوْنَ﴾. والمصلحة التي تكون سبباً في الهدنة كضعفنا بقلة عدد أو أهبة أو رجاء إسلام، لأنه ﷺ هادن صفوان بن أمية أربعة أشهر عام الفتح رجاء إسلامه فأسلم قبل مضيها. وإن كان بنا ضعف فإلى عشر سنين لحاجة، ولأنه ﷺ هادن قريشاً هذه المدة رواه أبو داود. فلا يجوز أكثر منها إلا في عقود متفرقة. وشرط في كل عقد أن لا يزيد على عشر. وحكمها معلوم من عقد الجزية، وهو أنه يلزمنا عند عقدها الصحيح الكف عنهم حتى تنقضي مدتها).

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o10.0 THE SPOILS OF BATTLE

o10.1 A free male Muslim who has reached puberty and is sane is entitled to the spoils of battle when he has participated in a battle to the end of it.

After personal booty (def: o10.2), the collective spoils of the battle are divided into five parts. The first fifth is set aside (dis: o10.3), and the remaining four are distributed, one share to each infantryman and three shares to each cavalryman. From these latter four fifths also, a token payment is given at the leader's discretion to women, children, and non-Muslim participants on the Muslim side.

A combatant only takes possession of his share of the spoils at the official division. (A: Or he may choose to waive his right to it.)

o10.2 As for personal booty, anyone who, despite resistance, kills one of the enemy or effectively incapacitates him, risking his own life thereby, is entitled to whatever he can take from the enemy, meaning as much as he can take away with him in the battle, such as a mount, clothes, weaponry, money, or other.

o10.3 As for the first fifth that is taken from the spoils, it is divided in turn into five parts, a share each going to:

(1) the Prophet (Allah bless him and give him peace), and after his death, to such Islamic interests as fortifying defenses on the frontiers, salaries for Islamic judges, muezzins, and the like;

(2) relatives of the Prophet (Allah bless him and give him peace) of the Bani Hashim and Bani Muttalib clans, each male receiving the share of two females;

(3) orphans who are poor;

(4) those short of money (def: h8.11);

(5) and travellers needing money (h8.18).

o10.0 الغنيمة

o10.1 الغنيمةُ لمَنْ حضرَ الوقعةَ إلى آخرِها. فتُقْسَمُ بينَهُمْ بَعْدَ إخراجِ السلبِ وخمسِها؛ للراجلِ سهمٌ وللفارسِ ثلاثةُ أسهمٍ إذا كانَ ذكراً حراً بالغاً مسلماً عاقلاً. ويُرْضَخُ للمرأةِ [والعبدِ] والصبيِّ والكافرِ إنْ حضَرُوا بإذنِ الإمامِ منْ أربعةِ أخماسِها.

وإنَّما تُمْلَكُ الغنيمةُ بالقسمةِ [أو اختيارِ التَّمَلُّكِ].

o10.2 وأما السلبُ فمَنْ قتَلَ قتيلاً أوْ كفَى شرَّهُ وكانَ المقتولُ ممتنعاً وغرَّرَ القاتلُ بنفسِهِ في قتلِهِ استحقَّ سلبَهُ. وهوَ ما احتَوَتْ يدُهُ عليهِ في الوقعةِ منْ فرسٍ وثيابٍ وسلاحٍ ونفقةٍ وغيرِ ذلكَ.

o10.3 فأمَّا الخمسُ فيُقْسَمُ على خمسةٍ أيضاً: سهمٌ للنبيِّ ﷺ فيُصْرَفُ بعدَهُ في المصالحِ منْ سدِّ الثغورِ وأرزاقِ القضاةِ والمؤذنينَ ونحوِهِمْ؛ وسهمٌ لذوي القربى منْ بني هاشمٍ وبني المطلبِ للذكرِ مثلُ حظِّ الأنثيينِ؛ وسهمٌ لليتامى الفقراءِ؛ وسهمٌ للمساكينِ؛ وسهمٌ لابنِ السبيلِ.

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o11.0 NON-MUSLIM SUBJECTS OF THE ISLAMIC STATE (AHL AL-DHIMMA)

o11.0 أهل الذمة

o11.1 A formal agreement of protection is made with citizens who are:

(1) Jews;

(2) Christians;

(3) Zoroastrians;

(4) Samarians and Sabians, if their religions do not respectively contradict the fundamental bases of Judaism and Christianity;

(5) and those who adhere to the religion of Abraham or one of the other prophets (upon whom be blessings and peace).

o11.1 تُعْقَدُ الذمةُ لليهود والنصارى والمجوس [ولمنْ دَخَلَ في دينِ اليهود والنصارى قبل النسخ والتبديل] والسامرة والصابئة إنْ وافقوهُمْ في أصلِ دينِهِمْ ولمنْ تَمَسَّكَ بدينِ إبراهيمَ أوْ غيرِه مِنَ الأنبياءِ عليهِمْ الصلاةُ والسلامُ.

o11.2 Such an agreement may not be effected with those who are idol worshippers (dis: o9.9(n:)), or those who do not have a Sacred Book or something that could have been a Book.

(A: *Something that could have been a Book* refers to those like the Zoroastrians, who have remnants resembling an ancient Book. As for the psuedoscriptures of cults that have appeared since Islam (n: such as the Sikhs, Baha'is, Mormons, Qadianis, etc.), they neither are nor could be a Book, since the Koran is the final revelation (dis: w4).)

o11.2 ولا يُعْقَدُ لوثنيٍّ ومنْ لا كتابَ لهُ ولا شبهةَ كتابٍ.

(ع: والمراد بشبهة كتاب من كان كالمجوس فلهم بقايا تشبه كتاباً قديماً. أما الكتب الباطلة لدى فرق ظهرت بعد الإسلام (ت: كالسيخ والبهائيين والمورمونيين والقاديانيين) فليست كتباً ولا شبهة كتب، لأن القرآن خاتمة الوحي).

o11.3 Such an agreement is only valid when the subject peoples:

(a) follow the rules of Islam (A: those mentioned below (o11.5) and those involving public behavior and dress, though in acts of worship and their private lives, the subject communities have their own laws, judges, and courts, enforcing the rules of their own religion among themselves);

(b) and pay the non-Muslim poll tax (jizya).

o11.3 ولا يَصِحُّ إلاَّ بشرطَيْنِ: التزامُ أحكامِ الإسلامِ وبذْلُ الجزيةِ.

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THE NON-MUSLIM POLL TAX

الجزية

o11.4 The minimum non-Muslim poll tax is one dinar (n: 4.235 grams of gold) per person (A: per year). The maximum is whatever both sides agree upon.

It is collected with leniency and politeness, as are all debts, and is not levied on women, children, or the insane.

o11.4 وأقلُّها دينارٌ مِنْ كلِّ شخصٍ وأكثرُها ما تَراضَوا عليه. وتُؤْخَذُ منهُمْ برفقٍ كسائرِ الديونِ ولا تُؤْخَذُ مِنْ امرأةٍ وصبيٍّ ومجنونٍ [وعبدٍ].

o11.5 Such non-Muslim subjects are obliged to comply with Islamic rules that pertain to the safety and indemnity of life, reputation, and property. In addition, they:

(1) are penalized for committing adultery or theft, though not for drunkenness;

(2) are distinguished from Muslims in dress, wearing a wide cloth belt (zunnar);

(3) are not greeted with "as-Salamu 'alaykum";

(4) must keep to the side of the street;

(5) may not build higher than or as high as the Muslims' buildings, though if they acquire a tall house, it is not razed;

(6) are forbidden to openly display wine or pork, (A: to ring church bells or display crosses,) recite the Torah or Evangel aloud, or make public display of their funerals and feastdays;

(7) and are forbidden to build new churches.

o11.5 ويُلْزَمُونَ بأحْكامِنا مِنْ ضمانِ النفسِ والعرضِ والمالِ ويُحَدُّونَ للزنا والسرقةِ لا للسكرِ. ويتَمَيَّزُونَ في اللباسِ والزنانيرِ [ويَكونُ في رقابِهِم جرسٌ في الحمامِ ولا يَرْكَبُونَ فرساً بلْ بغالاً أو حماراً عرضاً] ولا يُبْدَءُونَ بسلامٍ ويُلْجَؤُونَ إلى أضيقِ الطريقِ ولا يَعْلُونَ على المسلمينَ في البناءِ ولا يُساوُونَهُمْ فإنْ تَمَلَّكوا داراً عاليةً لمْ تُهدَمْ ويُمْنَعُونَ مِنْ إظهارِ خمرٍ وخنزيرٍ [وناقوسٍ] وجهرِ التوراةِ والإنجيلِ وجنائزِهِمْ وأعيادِهِمْ ومِنْ إحداثِ كنيسةٍ [فلَوْ صُولِحُوا في بلدانِهِم على الجزيةِ لمْ يُمْنَعُوا مِنْ ذلكَ].

o11.6 They are forbidden to reside in the Hijaz, meaning the area and towns around Mecca, Medina, and Yamama, for more than three days (when the caliph allows them to enter there for something they need).

o11.6 ويُمْنَعُونَ مِنَ المقامِ بالحجازِ وهي مكةُ والمدينةُ واليمامةُ وقراها أكثرَ مِنْ ثلاثةِ أيامٍ إذا أذِنَ لهُمُ الإمامُ في الدخولِ لحاجةٍ.

o11.7 A non-Muslim may not enter the Meccan Sacred Precinct (Haram) under any cir-

o11.7 ولا يُمَكَّنُ مشركٌ مِنَ الحرمِ

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cumstances, or enter any other mosque without permission (A: nor may Muslims enter churches without their permission).

بحال. ولا يدخلون مسجداً إلاّ بإذن.

o11.8 It is obligatory for the caliph (def: o25) to protect those of them who are in Muslim lands just as he would Muslims, and to seek the release of those of them who are captured.

o11.8 وعلى الإمام حفظ مَنْ كان منهم في دارنا كما يحفظ المسلمين واستنقاذ من أسر منهم.

o11.9 If non-Muslim subjects of the Islamic state refuse to conform to the rules of Islam, or to pay the non-Muslim poll tax, then their agreement with the state has been violated (dis: o11.11) (A: though if only one of them disobeys, it concerns him alone).

o11.9 فإن امتنعوا من التزام أحكام الملة وأداء الجزية انتقض عهدهم مطلقاً.

o11.10 The agreement is also violated (A: with respect to the offender alone) if the state has stipulated that any of the following things break it, and one of the subjects does so anyway, though if the state has not stipulated that these break the agreement, then they do not; namely, if one of the subject people:

(1) commits adultery with a Muslim woman or marries her;

(2) conceals spies of hostile forces;

(3) leads a Muslim away from Islam;

(4) kills a Muslim;

(5) or mentions something impermissible about Allah, the Prophet (Allah bless him and give him peace), or Islam.

o11.10 وإنْ زنى أحدٌ منهم بمسلمة أو أصابها بنكاح أو آوى عيناً أو فتن مسلماً عن دينه أو قتله أو ذكر الله أو رسوله أو دينه بما لا يجوز فإن شرط عليهم الانتقاض بذلك انتقض. وإلاّ فلا.

o11.11 When a subject's agreement with the state has been violated, the caliph chooses between the four alternatives mentioned above in connection with prisoners of war (o9.14).

o11.11 ومن انتقض عهده تخير الإمام فيه بين الخصال الأربع في الأسير.

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o12.0 THE PENALTY FOR FORNICATION OR SODOMY

o12.0 حد الزنا واللواط

o12.1 The legal penalty is obligatorily imposed upon anyone who fornicates or commits sodomy (A: provided it is legally established (def: n11.2(O:))) when they:

(a) have reached puberty;

(b) are sane;

(c) and commit the act voluntarily;

no matter whether the person is a Muslim, non-Muslim subject of the Islamic state, or someone who has left Islam.

o12.1 إذا زنى أو لاط البالغ العاقل المختار مسلماً كان أو ذمياً أو مرتداً [حراً كان أو عبداً] وجب عليه الحدُّ.

o12.2 If the offender is someone with the capacity to remain chaste, then he or she is stoned to death (def: o12.6), *someone with the capacity to remain chaste* meaning anyone who has had sexual intercourse (A: at least once) with their spouse in a valid marriage, and is free, of age, and sane. A person is not considered to have the capacity to remain chaste if he or she has only had intercourse in a marriage that is invalid, or is prepubescent at the time of marital intercourse, or is someone insane at the time of marital intercourse who subsequently regains their sanity prior to committing adultery.

If the offender is not someone with the capacity to remain chaste, then the penalty consists of being scourged (def: o12.5) one hundred stripes and banished to a distance of at least 81 km./50 mi. for one year.

o12.2 فإنْ كان محصناً رُجِمَ حتى يَمُوتَ. والمحصنُ مَنْ وَطِئَ في القبلِ في نكاحٍ صحيحٍ وهو حرٌّ بالغٌ عاقلٌ. فلَوْ وَطِئَ زوجتَهُ [في الدبر أو جاريتَهُ في القبل أو] في نكاحٍ فاسدٍ أو وَطِئَ زوجتَهُ وهو [عبدٌ ثمَّ عَتَقَ أو] صبيٌّ أو مجنونٌ ثمَّ أفاقَ وزنى فليس بمحصنٍ.

وغيرُ المحصنِ [إنْ كان حراً] جُلِدَ مائةَ جلدةٍ وغُرِّبَ سنةً إلى مسافةِ القصر [وإنْ كان عبداً جُلِدَ خمسينَ وغُرِّبَ نصفَ سنةٍ].

o12.3 [ومَنْ وَطِئَ بهيمةً أو امرأةً ميتةً أو حيةً فيما دونَ الفرجِ أو جاريةً يَمْلِكُ بعضَها أو أختَهُ المملوكةَ لَهُ أو وَطِئَ زوجتَهُ في الحيضِ أو الدبرِ أو استمنى بيدِه أو أتى المرأةَ المرأةَ لا حدَّ عليه ويُعَزَّرُ].

o12.4 Someone who commits fornication is not punished if he says that he did not know it was unlawful, provided he is a new Muslim or grew up in a remote (O: from Islamic scholars) wilderness.

o12.4 ومَنْ زنى وقال: لا أعلمُ تحريمَ الزنا وكان قريبَ عهدٍ بالإسلامِ أو نشأ ببادية بعيدةٍ (عن العلماء) لم يُحَدَّ.

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though if neither of these is the case, such a person is punished.

وإنْ لَمْ يَكُنْ كذلكَ حُدَّ.

o12.5 An offender is not scourged in intense heat or bitter cold, or when he is ill and recovery is expected (until he recovers), or in a mosque, or when the offender is a woman who is pregnant, until she gives birth and has recovered from childbed pains. The whip used should be neither new nor old and worn-out, but something in between. The offender is not stretched out when scourged, or bound (O: as his hands are left loose to fend off blows), or undressed (O: but rather an ankle-length shirt is left upon him or her), and the scourger does not lay the stripes on hard (O: by raising his arm, such that he draws blood). The scourger distributes the blows over various parts of the body, avoiding the vital points and the face. A man is scourged standing; a woman, sitting and covered (O: by a garment wrapped around her). If the offender is emaciated, or sick from an illness not expected to improve, then he or she is scourged with a single date palm frond (O: upon which there are a hundred strips, or fifty. If a hundred, such an offender is struck once with it, and if fifty, then twice), or with the edge of a garment.

o12.5 ولا يُجْلَدُ في حَرٍّ وبَرْدٍ شديدين ومرضٍ يُرْجَى برؤُهُ حتَّى يَبْرأَ ولا في المسجدِ ولا المرأةُ في الحبلِ حتَّى تضعَ ويزولَ ألمُ الولادةِ. ولا يُجْلَدُ بسوطٍ جديدٍ ولا بالٍ بلْ بسوطٍ بينَ السوطينِ. ولا يُمَدُّ (المجلود) ولا يُشَدُّ (بل تترك يداه مطلقتين يتقي بهما) ولا يُجَرَّدُ (من ثيابه بل يترك عليه قميصه رجلاً كان أو امرأة) ولا يُبَالِغُ في الضربِ (برفع يده بحيث ينهر الدم) ويُفَرِّقُهُ على أعضائِهِ ويَتَوَقَّى المقاتلَ والوجهَ ويُضْرَبُ الرجلُ قائماً والمرأةُ جالسةً مستورةً (بثوب ملفوف عليها) فإنْ كانَ نحيفاً أوْ مريضاً لا يُرْجَى بُرْؤُهُ جُلِدَ بعثكالِ النخلِ (أي عرجون عليه مائة غصن أو خمسون ففي المائة يضرب ضربة واحدة وفي الخمسين يضرب مرتين) وأطرافِ الثيابِ.

o12.6 If the penalty is stoning, the offender is stoned even in severe heat or cold, and even if he has an illness from which he is expected to recover. A pregnant woman is not stoned until she gives birth and the child can suffice with the milk of another.

o12.6 وإنْ كانَ الحدُّ رجماً رُجِمَ ولوْ في حَرٍّ أوْ بردٍ أوْ مرضٍ مرجوِّ الزوالِ ولا تُرْجَمُ الحاملُ حتَّى تضعَ ويَسْتَغْنِيَ الولدُ بلبنِ غيرِها [وللسيدِ أنْ يقيمَ الحدَّ على رقيقِه].

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o13.0 THE PENALTY FOR ACCUSING A PERSON OF ADULTERY WITHOUT PROOF

o13.0 حد القذف

o13.1 When a person (who has reached puberty and is sane) voluntarily:

(a) accuses another person of adultery or

o13.1 إذا قَذَفَ البالغُ العاقلُ المختارُ وهو مسلمٌ أوْ ذميٌّ أوْ مرتدٌ أوْ

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sodomy, whether the accusation is in plain words or allusive words intended as an accusation;

(b) and the accused is someone who could be chaste (def: o13.2) and is not the offspring of the accuser;

then the accuser is subject to the penalty for accusing a person of adultery without four witnesses (A: which, if it concerns his spouse, he may obviate by public imprecation (dis: n11.1)), no matter whether he is a Muslim, non-Muslim subject of the Islamic state, someone who has left Islam, or is of a group that has a truce with Muslims.

مستأمنٌ محصناً ليس بولدٍ له (أي للقاذف) بالزنا أو اللواط بالصريح أو بالكناية مع النية لزمه الحد.

o13.2 *Someone who could be chaste* in this context means someone who has reached puberty, is sane, free, Muslim, and has not committed an act of fornication (O: that is punishable) (A: meaning it has not been legally established (def: n11.2(O:))).

o13.2 والمحصنُ هنا هو البالغ العاقلُ الحرُّ المسلمُ العفيفُ (عن وطء يحد به).

o13.3 The penalty for making such an accusation without witnesses is to be scourged (def: o12.5) eighty lashes.

o13.3 فيُجلَدُ [الحرُّ] ثمانين [والعبدُ أربعين].

o13.4 Accusations in *plain words* include such expressions as "You have committed fornication," and the like, while *allusive words* means such expressions as "You lecher," or "You wretch." If the latter terms are accompanied by the intention to accuse, they amount to an accusation, though if not, they do not. The accuser is the one whose word is accepted (A: when there is no proof, if he swears an oath) as to what he intended by such allusive words.

o13.4 فالصريحُ: زنيتَ [أو لُطتَ أو: زنى فرجُك] ونحوه.
والكنايةُ نحوُ: يا فاجرُ يا خبيثُ. فإنْ نوى به القذفَ حُدَّ. وإلاّ فلا. والقولُ قولُ القاذفِ في النيةِ [وإنْ قالَ: أنتَ أزنى الناسِ أو أزنى من فلانٍ، فهو كنايةٌ. أو: فلانٌ زانٍ وأنتَ أزنى منه فصريحٌ].

o13.5 If someone accuses a whole group of people of adultery who could not possibly all be guilty, such as saying, "All the people in Egypt are adulterers," he is disciplined (def: o17). But when his accusation is not impossible, such as saying, "The So-and-so clan are adulterers," then he must bear a separate penalty for every single person in the group.

o13.5 وإنْ قذفَ جماعةً يمتنعُ أنْ يكونوا كلُّهم زناةً كقولِه: أهلُ مصرَ كلُّهم زناةٌ عُزَّرَ. وإنْ لم يمتنعْ كقولِه: بنو فلانٍ زناةٌ لزمه لكلِّ واحدٍ حدٌّ.

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o13.6 Someone who twice accuses someone of adultery without witnesses is punished only once. Someone who accuses a person of adultery and is punished for the accusation, but then again accuses the person of the same act of fornication is merely disciplined (def: o17).

o13.6 ولوْ قذَفَهُ بزنْيَتَيْنِ لَزِمَهُ حدٌّ واحدٌ.
وإنْ قَذَفَهُ فَحُدَّ ثمَّ قَذَفَهُ ثانياً بذلك الزنا أوْ بغيره عُزِّرَ فقطْ.

o13.7 When someone accuses a person who could possibly be chaste (def: o13.2) of adultery, but the accuser has not yet been punished at the time the accused subsequently commits an act of fornication, then the accuser is not punished.

o13.7 ولوْ قَذَفَ محصناً فلَمْ يُحَدَّ حتَّى زَنَى المحصنُ سَقَطَ الحدُّ.

o13.8 The penalty for accusing a person of adultery without witnesses is only carried out when the Islamic magistrate is present, and the accused requests that it be carried out. If the accused forgives the offender, there is no punishment.

o13.8 ولا يُسْتَوْفَى إلاَّ بحضرة الحاكم وبمطالبة المقذوف. فإنْ عَفا سَقَطَ.

o13.9 When an accusation has been made, if the accused dies (A: before the accuser has been punished), then his right (A: to demand that the punishment be carried out) is given to his heirs.

o13.9 وإنْ ماتَ (المقذوف) انْتَقَلَ حقُّهُ لوارثِه.

o13.10 [ولوْ قالَ لرجلٍ: اقْذِفْني، فقَذَفَهُ لمْ يُحَدَّ (كما لا يجب على الشخص قصاص إذا أمره شخص بقتل نفسه فقتله لأنه بأمره). ولوْ قَذَفَ عبداً ثَبَتَ لهُ التعزيرُ].

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o14.0 THE PENALTY FOR THEFT

o14.0 حد السرقة

o14.1 A person's right hand is amputated, whether he is a Muslim, non-Muslim subject of the Islamic state, or someone who has left Islam, when he:

(a) has reached puberty;

(b) is sane;

(c) is acting voluntarily;

o14.1 إذا سَرَقَ البالغُ العاقلُ المختار وهوَ مسلمٌ أوْ ذميٌّ أوْ مرتدٌّ نصاباً

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(d) and steals at least a quarter of a dinar (n: 1.058 grams of gold) or goods worth that much (A: at the market prices current) at the time of the theft;

(e) from a place meeting the security requirements normal (A: in that locality and time) for safeguarding similar articles (def: o14.3);

(f) provided there is no possible confusion (dis: o14.2(3)) as to whether he took it by way of theft or for some other reason.

If a person steals a second time, his left foot is amputated; if a third time, then his left hand; and if he steals again, then his right foot. If he steals a fifth time, he is disciplined (def: o17). If he does not have a right hand (N: at the first offense), then his left foot is amputated. If he has a right hand but loses it after the theft (O: by an act of God) but before he has been punished for it, then nothing is amputated. After amputation, the limb is cauterized with hot oil (A: which in previous times was the means to stop the bleeding and save the criminal's life).

مِنَ المالِ وهوَ رُبعُ دينارٍ أوْ ما قيمتُهُ رُبعُ دينارٍ حالَ السرقةِ مِنْ حرزٍ مثلِهِ ولا شبهةَ لهُ فيهِ قُطِعَتْ يدُهُ اليمنَى.

فإنْ سَرَقَ ثانياً قُطِعَتْ رجلُهُ اليسرَى.

فإنْ عَادَ قُطِعَتْ يدُهُ اليسرَى. فإنْ عَادَ قُطِعَتْ رجلُهُ اليمنَى فإنْ عَادَ عُزِّرَ.

فإنْ لمْ يكُنْ لهُ يمينٌ قُطِعَتْ رجلُهُ اليسرَى. وإنْ كانَتْ فلَمْ تُقْطَعْ حتَّى ذَهَبَتْ (بآفةٍ سماويةٍ) سقطَ القطعُ.

وإذا قُطِعَ غُمِسَ المقطَعُ بالزيتِ الحارِّ.

o14.2 A person's hand is not amputated when:

(1) (non-(d) above) he steals less than the equivalent of 1.058 grams of gold;

(2) (non-(e)) he steals the article from a place the does not meet normal requirements for safeguarding similar articles (dis: below);

(3) or (non-(f)) when there is a possible confusion as to why he took it, as when it was taken from the Muslim common fund (bayt al-mal) (O: provided the person is Muslim, since he might have intended to use it to build mosques, bridges, or hospices), or when it belongs to his son or father.

o14.2 فإنْ سَرَقَ دونَ النصابِ أوْ مِنْ غيرِ حرزٍ أوْ ما لهُ شبهةُ كمالِ بيتِ المالِ (إذا كانَ السارقُ له مسلماً، لأنه قد يصرفُ في عمارةِ المساجدِ والقناطيرِ والرباطاتِ) أوْ مالِ ابنِهِ أوْ أبيهِ [أوْ مالِ مالكِهِ] لمْ يُقْطَعْ.

o14.3 A *place that meets normal security requirements for safeguarding similar articles* means a place appropriate for keeping the thing, this varying with the type of article, the different countries,

o14.3 وحرزُ كلِّ شيءٍ بحسبِهِ ويختلِفُ باختلافِ المالِ والبلادِ وعدلِ

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and with the justness of the ruler or lack of it, as well as the ruler's relative strength or weakness. A suitable place for safeguarding fine clothes, money, jewels, and jewelry, for example, is a locked box; the place for trade goods, a locked warehouse with guards; the place for livestock, a stable; the place for pallets and bedding, a shelf in the house; and the place for a shroud, the grave.

السلطان وجوره وقوته وضعفه. فحرزُ الثياب والنقود والجواهر والحليّ الصندوقُ المقفلُ. وحرزُ الأمتعة الدكاكينُ المقفلةُ ثمَّ حارسٌ. والدوابُّ الاصطبلُ. والأثاثُ صفّةُ البيتِ [بحسب العادة]. وحرزُ الكفنِ القبرُ.

o14.4 If two persons jointly steal the equivalent of 1.058 grams of gold, then neither's hand is amputated.

o14.4 ولو اشْتَرَكَ اثنانِ في إخراجِ النصابِ فقطْ لمْ يُقْطَعْ واحدٌ منهما.

o14.5 A freeman's hand may not be amputated by anyone besides the caliph or his representative (def: o25).

o14.5 ولا يَقْطَعُ الحرَّ إلاّ الإمامُ أوْ نائبُهُ [ويَقْطَعُ العبدَ سيدُهُ].

o14.6 There is no amputation for forcible seizure (O: meaning someone relying on force (N: to take people's money, who has a gang nearby to abet him in this)), snatching (O: meaning someone who depends on running away and is unarmed), or betraying a trust (O: of something entrusted to him, such as a deposit for safekeeping), or appropriating something by disavowal (A: i.e. denying that the victim loaned or entrusted him with such and such a thing). (O: because of the Prophet's (Allah bless him and give him peace) saying,

"There is no amputation for someone who seizes by force, snatches and runs, or betrays a trust,"

a hadith Tirmidhi classified as rigorously authenticated (sahih)). (A: But if one of the abovementioned persons is a repeated offender whom it is in the interests of society to kill, the caliph may kill him.)

o14.6 ولا قطعَ على مَنِ انْتَهَبَ (وهو الذي يعتمد القوة (ح: في أخذ مال الناس وله جماعة قريبون يتقوى بهم على ذلك)) أوِ اخْتَلَسَ (والمختلس هو الذي يعتمد الهرب وليس له شوكة) أوْ خانَ (فيما استؤمن عليه من وديعة ونحوها كأن أكلها) أوْ جَحَدَ. (قال ﷺ «ليس على المنتهب والمختلس والخائن قطع» صححه الترمذي).

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o15.0 THE PENALTY FOR HIGHWAY ROBBERY

o15.0 حد قطع الطريق

o15.1 The caliph is obliged to summon whoever uses a weapon (O: though force suffices to be considered a *weapon,* or taking money by dint of one's fists) and makes people afraid to use the road (O: no matter whether in the wilderness, a village, or in the country; meaning he frightens those who pass along the way by means of his strength or weapons). If the highwayman responds to the summons before he has injured anyone, then he is only disciplined (def: o17).

If he steals the equivalent of 1.058 grams of gold under the previously mentioned conditions (o14.1), both his right hand and left foot are amputated.

(A: The difference between a highwayman and someone who takes by forcible seizure (dis: o14.6) is that the latter does so within earshot of help, while the offense of the highwayman is far greater because he menaces the lifeline of the community, its trade routes.)

o15.1 مَنْ شَهَرَ السلاحَ (ويكفي القهر وأخذ المال بالوكز والضرب بجمع الكف) وأخَافَ السبيلَ (سواء في برية أو في قرية أو بلد والمراد أخاف من يمر في الطريق لقوته وشوكته) وَجَبَ على الإمامِ طلبُهُ.

فإنْ وَقَعَ قبلَ جنايةٍ عُزِّرَ. وإنْ سَرَقَ نصاباً بشرطِهِ قُطِعَتْ يدُهُ اليمنى ورجلُهُ اليسرى.

o15.2 If a highwayman kills someone, he must be executed, even when the person entitled to retaliation (def: o3) agrees to forgo it. If the highwayman robs and kills, he is killed and then left crucified for three days. If he wounds or maims someone, retaliation is taken against him, though it may be waived by those entitled to take it.

o15.2 وإنْ قَتَلَ قُتِلَ حتماً وإنْ عَفَا وليُّ الدمِ. وإنْ سَرَقَ وقَتَلَ قُتِلَ ثمَّ صُلِبَ ثلاثةَ أيامٍ. وإنْ جَرَحَ أوْ قَطَعَ طرفاً اقْتُصَّ منهُ بنْ غيرِ تَحَتُّمٍ.

o15.3 (N: The penalty for highway robbery, such as mandatory execution, crucifixion, and amputating the hand and foot, is cancelled if the highwayman repents (A: desists, and gives himself up) before he has been apprehended, though he is still liable to retaliation (def: o3) by parties entitled to it (A: for injuries or deaths he caused to victims) and is financially responsible for restoring the money he has taken.)

o15.3 (ح: وتسقط بتوبته عن قطع الطريق قبل القدرة عليه العقوبة الخاصة بقطع الطريق كتحتم القتل والصلب وقطع اليد والرجل، ويكون أمر القصاص لولي الدم، ويضمن ما أخذ من مال).

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o16.0 THE PENALTY FOR DRINKING

o16.1 Any beverage that intoxicates when taken in large quantities is unlawful both in small and large quantities, whether it is wine, (A: fermented) raisin drink, or something else.

o16.2 The penalty for drinking is obligatorily enforced against anyone who:

(a) drinks;

(b) has reached puberty;

(c) is sane;

(d) is Muslim;

(e) does so voluntarily;

(f) and knows it is unlawful (A: the restrictions mentioned above (o12.4) about the ignorance of the prohibition of adultery also applying here).

o16.3 The penalty for drinking is to be scourged forty stripes, with hands, sandals, and ends of clothes. It may be administered with a whip, but if the offender dies, an indemnity (def: o4.4) is due (A: from the scourger) for his death. If the caliph (def: o25) increases the penalty to eighty stripes, it is legally valid, but if the offender dies from the increase, the caliph must pay an adjusted indemnity, such that if he is given forty-one stripes and dies, the caliph must pay 1/41 of a full indemnity.

o16.4 Someone who commits adultery several times (O: or drinks several times, or steals several times) before being punished is only punished once for each type of crime.

o16.5 The penalty for a crime is not obviated by the offender's having repented for it, with the sole

o16.0 حد الشرب

o16.1 كلُّ شرابٍ أَسْكَرَ كثيرُهُ حَرُمَ قليلُهُ وكثيرُهُ خمراً كانَ أوْ نبيذاً أوْ غيرَهُما.

o16.2 فَمَنْ شَرِبَ وهوَ بالغٌ عاقلٌ مسلمٌ مختارٌ عالمٌ بهِ وبتحريمِهِ لَزِمَهُ الحدُّ.

o16.3 وهوَ أربعونَ جلدةً [للحرِّ وعشرونَ للعبدِ] بالأيدي والنعالِ وأطرافِ الثيابِ. ويجُوزُ بالسوطِ لكنْ إنْ ماتَ بالسياطِ وَجَبَتْ ديتُهُ.

فإنْ رَأَى (الإمامُ) أنْ يَزيدَ [في الحرِّ] إلى ثمانينَ [وفي العبدِ إلى أربعينَ] جازَ لكنْ لَوْ ماتَ منَ الزيادةِ ضَمِنَ (الإمامُ ديتَه) بالقسطِ. فلوْ ضَرَبَهُ إحْدَى وأربعينَ فماتَ ضَمِنَ جزءاً منْ واحدٍ وأربعينَ جزءاً منْ ديتِهِ.

o16.4 ومَنْ زَنَى دفعاتٍ (أوشربَ دفعاتٍ أو سرقَ كذلكَ) ولمْ يُحَدَّ أجْزَأَهُ لكلِّ جنسٍ حدٌّ واحدٌ.

o16.5 ومَنْ وَجَبَ عليْهِ حدٌّ وتابَ منهُ

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exception of the highwayman, who is not penalized at all (dis: o15.3) if he repents before he is caught.

لم يَسْقُطْ إلاّ حدّ قاطع الطريق إذا تاب قبل القدرة (عليه) فيسقطُ جميعُ حدِّه.

o16.6 It is not permissible to drink an intoxicant under any circumstances, whether for medicine (O: or in bread, or to cook meat with it,) or out of extreme thirst, with the sole exception of when one is choking on a piece of food and there is no other means of clearing it from one's throat save by drinking the intoxicant, in which case it is obligatory. (O: Sheikh al-Islam (A: Zakariyya Ansari) states, "It may not be used for medicine or extreme thirst, though there is no prescribed penalty for doing so, even when something besides it is available." The prohibition of using it for medicine or extreme thirst refers to when it is unadmixed, as opposed to when it is compounded with something else that renders it completely indistinguishable, such that no taste, color, or odor of it remains, in which case it is permissible.)

o16.6 ولا يَجوزُ شربُ المسكر في حالٍ من الأحوال لا للتداوي (ولا أكله بالخبز وطبخ اللحم به) ولا للعطش إلاّ أنْ يَغصَّ بلقمةٍ ولا يَجدَ ما يُسيغُها به فيَجِبُ. (وعبارة شيخ الإسلام: «لا يتناوله لتداو وعطش ولا يحد به وإن وجد غيره». وما ذكر من منع التداوي أو الشرب للعطش محله في صرفها بخلاف ما إذا خلطت بغيرها واستهلكت بحيث لم يبق لها طعم ولا لون ولا ريح فإنها تجوز حينئذ).

NONALCOHOLIC INTOXICANTS

المخدرات

o16.7 (Muhammad Shirbini Khatib:) The term *beverage* (dis: o16.1) excludes plants, such as hashish, which hashish users eat. The two sheikhs (A: Rafi'i and Nawawi) report in their section on foods the position of Ruyani that eating it is unlawful, though no legal penalty is fixed for it (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 4.187).

(al-Mawsu'a al-fiqhiyya:) Just as any beverage that intoxicates when taken in large quantities is also unlawful in small quantities, so too it is absolutely unlawful to use any solid substance detrimental to mind or body which produces languor or has a narcotic effect, this prohibition applying to the amount that is deleterious of it, not to the minute, beneficial amounts prescribed to treat illnesses, for such substances are not unlawful in themselves, but unlawful because they are deleterious (*Mawdu' al-ashriba.* Tab'a tamhidiyya li mawdu'at al-Mawsu'a al-fiqhiyya, no. 1 (y134), 49).

o16.7 (محمد الشربيني الخطيب:) وخرج بالشراب النبات. [قال الدميري:] كالحشيشة التي تأكلها الخرافيش. ونقل الشيخان في باب الأطعمة عن الروياني أن أكله حرام ولا حد فيه [نقل من مغني المحتاج إلى معرفة ألفاظ المنهاج: ٤/ ١٨٧].

«كما أن ما أسكر كثيره حرم قليله من المائعات كذلك يحرم مطلقاً ما يُفَتِّرُ ويُخَدِّرُ من الأشياء الجامدة المضرة بالعقل أو غيره من أعضاء الجسد. وذلك إذا تناول قدراً مضراً منها دون القليل النافع من أجل التداوي لأن حرمتها ليست لعينها بل لضررها» [نقل من طبعة تمهيدية لموضوعات الموسوعة الفقهية].

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o17.0 DISCIPLINARY ACTION (TA'ZIR)

o17.1 Someone who commits an act of disobedience to Allah Most High that entails neither a prescribed legal penalty nor expiation, such as bearing false witness, is disciplined to the extent the caliph (def: o25) deems appropriate. (O: He exercises his own legal reasoning (ijtihad) and does what he thinks should be done, whether imprisonment and beating, either one separately, or mere verbal reprimand. He may not administer a more severe degree of punishment than what he feels is strictly necessary.)

o17.2 Disciplinary action may not reach the amount of the least prescribed legal penalty. For example, a freeman (O: if scourged) may not receive forty stripes.

o17.3 If the caliph sees fit not to take any disciplinary action, this is also permissible (O: when it concerns a right owed to Allah Most High, for the ruler is entrusted with using his own legal reasoning. But if it concerns a right owed to a fellow human being who has demanded that it be fulfilled (A: such as when someone has been cheated) it is impermissible to do nothing. If a person is entitled to have another disciplined, but instead forgives him, the ruler may nevertheless discipline him).

o17.4 (O: A father or grandfather (and on up) is entitled to discipline those under his care when they commit an act that is unbecoming. And so may a mother with her child. A husband is entitled to discipline his wife for not giving him his rights (def: m5.1). A teacher may discipline a student. (A: Spanking a student, for example, is permissible if there is a valid lawful purpose to be served thereby, and the student's guardian has given the teacher permission.))

o17.0 التعزير

o17.1 مَنْ أتى معصيةً لا حدَّ فيها ولا كفارةَ ومنهُ شهادةُ الزورِ عُزِّرَ على حسبِ ما يَراهُ الحاكمُ. (فيجتهد الإمام ويفعل ما يراه من الجمع بين الحبس والضرب أو اقتصر على أحدهما وله الاقتصار على أحدهما وله الاقتصار على التوبيخ باللسان. فلا يرقى إلى مرتبة وهو يرى ما دونه كافياً).

o17.2 ولا يَبْلُغُ بِهِ أدنَى الحدودِ. فلا يَبْلُغ بتعزيرِ الحرِّ (إذا جلده) إلى أربعينَ [ولا بتعزيرِ العبدِ عشرينَ].

o17.3 وإذا رَأى تركَهُ جازَ (إذا كان لحق الله تعالى فإنه موكول إلى اجتهاده. أما إذا كان لحق الآدمي وقد طلبه فلا يجوز له تركه. وإذا عفا المستحق للتعزير عنه جاز للحاكم أن يعزر).

o17.4 (وللأب وإن علا تعزير موليه بارتكابه ما لا يليق. ويشبه أن يكون كذلك للأم مع صبي. وللزوج تعزير زوجته لحقه. وللمعلم تعزير المتعلم منه).

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o18.0 OATHS (YAMIN)

(A: An oath is a solemn statement to do or refrain from something, or that something is true, such that if things turn out otherwise, the swearer must make an expiation (def: o20.2).)

o18.0 الأيمان

o18.1 An oath is only valid from a person (O: whether Muslim or non-Muslim) who:

(a) has reached puberty;

(b) is sane;

(c) makes the oath voluntarily;

(d) and intends an oath thereby.

o18.1 إنّما يصحُّ اليمينُ من بالغٍ عاقلٍ مختارٍ قاصدٍ إلى اليمينِ (مسلماً كان أو كافراً).

o18.2 The oath of someone whose tongue runs away with him and who unthinkingly swears an oath, or someone who intends a particular oath but unintentionally swears something else, does not count and is an *unintentional oath* (A: which is mentioned in the Holy Koran (n: at 5:89)).

o18.2 فمَنْ سَبَقَ لسانُهُ إليها أوْ قصدَ الحلفَ على شيءٍ فسَبَقَ لسانُهُ إلى غيرِه لمْ ينْعَقِدْ. وذلك مِنْ لغو اليمين.

o18.3 An oath is only validly effected if sworn by a name of Allah Most High, or an attribute of His entity (dhat).

(N: It is offensive to swear an oath by other than Allah if one merely intends it as an asseveration of one's statement, though it is unlawful to do so if one intends reverence to the thing sworn by.)

o18.3 ولا تنْعقدُ إلاَّ باسمٍ مِنْ أسماءِ اللهِ تعالى أوْ صفةٍ مِنْ صفاتِ ذاتِهِ.

(ح: ويكره الحلف بغير الله إن نوى مجرّد تأكيد لكلامه. ويحرم إن نوى تعظيماً لما يحلف به).

o18.4 There are some names of Allah Most High that are applied to no one but Him, such as *Allah, the All-merciful, the All-vigilant,* and *Knower of the Unseen.* An oath sworn by any of these is valid without restriction.

o18.4 ثمَّ مِنْ أسماءِ اللهِ تعالى ما لا يُسَمَّى به غيرُهُ كاللهِ والرحمنِ والمهيمنِ وعلاّمِ الغيوبِ. فينْعَقِدُ بها اليمينُ مطلقاً.

o18.5 Other names of Allah may be conditionally applied to other than Him, such as *Lord* (Rabb) (n: *rabb bayt* meaning, for example, *home owner*), *the All-compassionate* (al-Rahim) (n: *rahim al-qalb* meaning *softhearted*), or *the Omnipotent* (al-Qadir) (n: *qadir 'alayhi* meaning

o18.5 ومنها ما يُسَمَّى به غيرُهُ مع التقييدِ كالربِّ والرحيمِ والقادرِ. فتنْعقِدُ

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capable of it; the second term of each of these examples indicating that Allah is not meant). An oath sworn by such names is validly effected unless the swearer specifically intends something else.

بِهَا اليمينُ، إلاَّ أنْ يَنْوِيَ غيرَ اليمين.

o18.6 Other of Allah's names are applied to both Him and His creatures, such as *the Living* (al-Hayy), *the Existent* (al-Mawjud), or *the Seeing* (al-Basir). An oath sworn by such names is not validly effected unless the swearer specifically intends it as an oath.

o18.6 ومِنهـا ما هوَ مُشْتَرَكٌ كالحيِّ والمـوجـود والبصيـر. فلا تَنْعَقِدُ بِهَـا اليمينُ، إلاَّ أنْ يَنْوِيَ بِهَا اليمينَ.

o18.7 An oath sworn by the attributes of Allah that are inapplicable to creatures, such as *Allah's glory, His exaltedness, His endless eternality,* or *the Koran,* is validly effected without restriction.

o18.7 وصفـاتُهُ إنْ لمْ تُسْتَعْمَلْ في مخلوقٍ نحـوُ عزةِ اللهِ وكبريـائِه وبقـائِهِ والقرآنِ فَتَنْعقِدُ بِهَا اليمينُ مطلقاً.

o18.8 An oath sworn by divine attributes that are sometimes used to allude to creatures, such as *Allah's knowledge, His power,* or *His right,* is validly effected unless the swearer intends something else by them, such as meaning by *knowledge* the things known, by *power* the things under its sway, or by *right* (n: the) acts of worship (n: that are His right), in which cases an oath has not been validly effected.

o18.8 وإنْ كانت قدْ تُسْتَعْمَلُ في مخلوقٍ نحـوَ علمِ اللهِ وقـدرتِـه وحقِّـه فَيَنْعَقِـدُ بِهَـا اليمينُ، إلاَّ أنْ يَنْـوِيَ بالعلمِ المعلومَ وبـالقـدرة المقـدورَ وبـالحقِّ العبادةَ فَلا.

o18.9 An oath is validly effected when a person says, "I swear by Allah that...," or "I've sworn by Allah that...," unless the person merely intends to inform.

o18.9 ولوْ قَالَ: أُقْسِمُ باللهِ وأَقْسَمْتُ باللهِ انْعَقَدَتْ، إلاَّ أنْ يَنْوِيَ بِهَا الإخبارَ.

o18.10 Unless one particularly intends it as an oath, an oath is not validly effected when the following expressions are used: "I will not do such and such, by the life of Allah," or "I resolve by Allah," or "by the covenant of Allah," "His guarantee," "His trust," "His sufficiency," or "I ask you by Allah," or "I swear by Allah that you must do such and such."

o18.10 ولـوْ قَالَ: لعمـرُ اللهِ وأَشْهَـدُ باللهِ أوْ أَعْزِمُ باللهِ أوْ عليَّ عهدُ اللهِ أوْ ذمتُهُ أوْ أمـانتُـهُ أوْ كفايتُهُ لا أَفْعَلُ كذا أوْ أَسْأَلُكَ باللهِ أوْ أَقْسَمْتُ عليكَ باللهِ لمْ تَنْعَقِدْ، إلاَّ أنْ يَنْوِيَ بِهِ اليمينَ.

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o19.0 EXAMPLES OF BREAKING AND NOT BREAKING OATHS

o19.0 ما يقتضي الحنث

o19.1 If one swears, "I will not eat this wheat," but then makes it into flour or bread (A: and eats it), one has not broken one's oath.

If one swears, "I will not drink from this river," but then drinks its water from a jug, one has broken one's oath.

If one swears, "I will not eat meat," but then eats fat, kidneys, tripe, liver, heart, spleen, fish, or locusts, one has not broken one's oath.

o19.1 ومَن حَلَفَ [لا أدْخُلُ بيتاً فدَخَلَ بيتَ شعرٍ حَنِثَ وإنْ كانَ حضرياً وإنْ دَخَلَ مسجداً فلا أوْ] لا آكُلُ هذه الحنطةَ فجعَلَها دقيقاً أوْ خبزاً لمْ يَحْنَثْ [أوْ لا آكُلُ سمناً فأكلَهُ في عصيدةٍ ونحوِها وهوَ ظاهرٌ فيها] أوْ لا أشْرَبُ مِنْ هذا النهرِ فشربَ ماءَهُ في كوزٍ حَنِثَ. أوْ لا آكُلُ لحماً فأكلَ شحماً أوْ كليةً أوْ كرشاً أوْ كبداً أوْ قلباً أوْ طحالاً أوْ [أليةً أوْ] سمكاً أوْ جراداً فلا حنثَ.

o19.2 [أوْ لا ألْبَسُ لزيدٍ ثوباً فوَهَبَهُ لهُ أو اشْتَراهُ له فلا. أوْ لا أهَبُهُ فتَصَدَّقَ عليهِ حَنِثَ. أوْ أعارَهُ أوْ وهَبَهُ فلَمْ يَقْبَلْ، أوْ قبِلَ ولمْ يَقْبِضْ فلا. أوْ لا أتكلَّمُ فقرأَ القرآنَ، أوْ لا أكلِّمُ فلاناً فراسَلَهُ أوْ كاتَبَهُ أوْ أشارَ إليهِ، أوْ لا أسْتَخْدِمُهُ فخدَمَهُ وهوَ ساكتٌ أوْ لا أتَزوَّجُ أوْ لا أطلِّقُ أوْ لا أبيعُ فوَكَّلَ غيرَهُ ففَعَلَ، أوْ لا آكُلُ هذهِ التمرةَ فاخْتَلَطَتْ بتمرٍ كثيرٍ فأكلَ إلاَّ تمرةً لا يَعْلَمُها، أوْ لا أشْرَبُ ماءَ النهرِ فشَرِبَ بعضَهُ: لمْ يَحْنَثْ. أوْ لا آكُلُهُ زماناً أوْ حيناً برَّ بأدْنى زمنٍ].

o19.3 If one swears, "I will not enter the house," but then does so absentmindedly, in ignorance of its being the house, under compulsion, or by being carried in, then one's oath is not broken and is still in effect.

o19.3 أوْ لا أدْخُلُ الدارَ مثلاً فدَخَلَها ناسياً أوْ جاهلاً أوْ مكرهاً أوْ محمولاً لمْ يَحْنَثْ واليمينُ باقيةٌ لمْ تَنْحلّ.

o19.4 [أوْ لَيأكُلَنَّ هذا غداً فأكلَهُ في يومِهِ أوْ أتْلَفَهُ أوْ تَلِفَ مِنَ الغدِ بعدَ إمكانِ أكلِهِ حَنِثَ. وإنْ تَلِفَ في يومِهِ فلا. أوْ لا أسْكُنُ هذه الدارَ فخَرَجَ منها بنيةِ التحويلِ ثمَّ دخلَ لنقلِ القماشِ لمْ يَحْنَثْ. أوْ لا أُساكِنُ زيداً فسكَنَ كلٌّ واحدٍ منهما في بيتٍ منْ دارٍ كبيرةٍ وانْفَرَدَ بباب ومرافق لمْ يَحْنَثْ. أوْ لا ألْبَسُ هذا الثوبَ وهوَ لابِسُهُ، أوْ لا أرْكَبُ هذا وهوَ راكِبُهُ، أوْ لا أدْخُلُ هذهِ الدارَ وهوَ فيها فاسْتَدامَ حَنِثَ. أوْ لا أتزوَّجُ وهوَ متزوِّجٌ، أوْ لا أتطيَّبُ وهوَ متطيِّبٌ أوْ لا أتطهَّرُ وهوَ متطهِّرٌ فاسْتَدامَ فلا. أوْ لا أدْخُلُ هذهِ الدارَ فصَعِدَ سطحَها مِنْ خارجِها أوْ صارَتْ عرصةً فدخلَها لمْ يَحْنَثْ. أوْ لا أدْخُلُ دارَ زيدٍ فدَخَلَ مسْكَنَهُ بكراءٍ أوْ عاريةٍ لمْ يَحْنَثْ إلاَّ أنْ يَنْوِيَ ما يَسْكُنُهُ].

o19.5 When a person swearing an oath about something (O: in the future, affirming or denying that it will occur) includes the expression *in sha' Allah* ("if Allah wills") before finishing the oath, then the oath is not broken in any event if he thereby intends to provide for exceptions. But if he merely says it out of habit, not intending to make an exception to his oath, or if he says it after having finished swearing the oath, then the exception is not valid (O: because when an oath has

o19.5 وإذا حَلَفَ على شيءٍ (مستقبلٍ إثباتاً كانَ أوْ نفياً) فقالَ إنْ شاءَ اللهُ تعالى مُتَّصِلاً باليمينِ وكانَ قصدَ الاستثناءَ قبلَ فراغِهِ مِنَ اليمينِ لمْ يَحْنَثْ. وإنْ جَرى الاستثناءُ على لسانِهِ على عادتِهِ ولمْ يَقْصِدْ بِهِ رفعَ اليمينِ أوْ بَدا لهُ الاستثناءُ بعدَ الفراغِ مِن اليمينِ لمْ يَصِحَّ الاستثناءُ (لأن اليمين بعد تمامه

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been completed, its efficacy is established and not eradicable by a statement of exception).

يثبت حكمه فلا يرتفع بالاستثناء).

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o20.0 THE EXPIATION FOR A BROKEN OATH

o20.0 كفارة اليمين

o20.1 An expiation is obligatory for someone who swears and breaks an oath. If the swearer is entitled to expiate by the expenditure of property (def: o20.2(1–3)), it is permissible for him to do so before or after breaking the oath. But if it consists of fasting, then he may only do so after breaking the oath.

o20.1 إذا حَلَفَ وحَنِثَ لزمتْهُ الكفارةُ. فإنْ كانَ يُكَفِّرُ بالمالِ جازَ قبلَ الحنثِ وبعدَهُ. وإنْ كانَ بالصومِ لمْ يَجُزْ إلاَّ بعدَهُ.

o20.2 The expiation consists of (N: a choice of any) one of the following:

(1) to free a sound Muslim slave;

(2) to feed ten people who are (N: poor or) short of money (def: h8.8–11) each 0.51 liters of grain (O: though it is not a condition that it be grain, but rather the type of food payable for the zakat of 'Eid al-Fitr (def: h7.6), even if not grain (A: and the Hanafi school permits giving its value in money));

(3) or to provide clothing of any kind for ten such persons, even if it consists of a wraparound or clothing previously washed, though not if ragged.

If one is unable to do any of the above, one must fast for three days. It is better to fast them consecutively, though permissible to do so non-consecutively.

o20.2 وهيَ عتقُ رقبةٍ [صفتُها كرقبةِ الظهارِ]، أوْ إطعامُ عشرةِ مساكينَ كلَّ مسكينٍ رطلٌ وثلثُ رطلٍ بالبغداديِّ حباً (وهو ليس بقيدٍ بل المدارُ على ما يكفي في الفطرةِ ويجزىءُ فيها وإنْ لم يكنْ حباً) [من قوتِ البلدِ]، أوْ كسوتُهُمْ بما يَنْطَلِقُ عليهِ اسمُ الكسوةِ ولوْ مئزراً (وهو الإزارُ) ومغسولاً لا خلقاً. ويُخَيَّرُ بينَ الأنواعِ الثلاثةِ.

فإنْ عَجَزَ عنْ أحدِ الأنواعِ الثلاثةِ صامَ ثلاثةَ أيامٍ. والأفضلُ تواليها. ويجُوزُ متفرقةً.

o20.3 [والعبدُ لا يُكَفِّرُ بالمالِ. وإنْ أذنَ لهُ السيدُ، بلْ بالصومِ. ومَنْ بعضُهُ حرٌّ يُكَفِّرُ بالطعامِ والكسوةِ دونَ العتقِ].

o20.4 (O: Someone eligible to receive zakat funds or expiations because of being poor (def:

o20.4 (ومن كان له أن يأخذ من سهمِ الفقراءِ والمساكينِ في الزكاةِ

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h8.8) or short of money (def: h8.11) may expiate broken oaths by fasting.)

والكفارات فله أن يكفر بالصوم).

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o21.0 THE JUDGESHIP

o21.0 القضاء

o21.1 To undertake the Islamic judgeship is a communal obligation (def: c3.2) (O: for those capable of performing it in a particular area). If only one competent person exists who can perform it, then it is personally obligatory for him to do so. If he refuses, he is compelled to accept (O: though he is only obliged to accept the judgeship when it is in his own home area, not when it is elsewhere, for this would be like a punishment, involving as it does wholly leaving one's home). Such an individual person may not take a salary for it—(N: because in respect to him it has become personally obligatory, and it is not permissible to take a wage for something personally obligatory, as opposed to something that is a communal obligation (A: for which accepting a wage is permissible))—unless he is needy (O: in which case the Muslim common fund gives him enough to cover his expenses and those of his dependents, without wastefulness or penury. But if he agrees to judge without being paid (N: i.e. in expectation of the reward from Allah), it is better for him).

o21.1 ولايةُ القضاء فرضُ كفايةٍ (في حق الصالحين له في الناحية (ح: أي الإقليم)). فإنْ لمْ يكُنْ مَنْ يَصْلُحُ إلاّ واحدٌ تعيَّن عليه. فإن امْتَنَعَ أُجْبِر. (وإنما يلزمه القبول والطلب في ناحيته فلا يلزمانه في غيرها لأن ذلك تعذيب لما فيه من ترك الوطن بالكلية). وليس لهذا أنْ يأخُذَ عليه رزقاً (ح: لأنه صار في حقه فرض عين ولا يجوز أخذ الأجر على فروض العين بخلاف فرض الكفاية) إلاّ أنْ يكُونَ محتاجاً (فيجعل له بيت المال ما يكفيه لنفقته ونفقة عياله من غير إسراف ولا تقتير، وإن احتسب (ح: أي عمل احتساباً لوجه الله) فهو أفضل).

o21.2 It is permissible to have two or more judges in the same town.

o21.2 ويَجُوزُ في بلدٍ قاضيانِ فأكثرُ.

o21.3 It is not valid for anyone besides the caliph (def: o25) or his representative to appoint someone as judge.

o21.3 ولا يَصِحُّ إلاّ بتولية الإمامِ لهُ أوْ نائبِه.

o21.4 It is permissible for two parties to select a third party to judge between them if he is competent for the judgeship (def: o22.1) (O: provided the case does not concern Allah's prescribed penalties, (A: and they may select such a person) even when a judge exists). It is obligatory for them

o21.4 وإنْ حَكَّمَ الخصمانِ رجلاً يَصْلُحُ للقضاءِ جازَ (وهذا في غير حدود الله تعالى، ولو مع وجود قاضٍ) ولَزِمَ

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to accept his decision on their case, though if either litigant withdraws his nomination before the third party gives his judgement, the latter may not judge.

حكمَهُ [وإنْ لمْ يَتَراضيا به بعدَ الحكم]. لكنْ إنْ رَجَعَ فيه (أي في التحكيم) أحدُهُما قبلَ أنْ يَحْكُمَ امْتَنَعَ الحكمُ.

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o22.0 THE JUDGE AND THE COURT

o22.0 شروط القاضي وصفة المحكمة

o22.1 The necessary qualifications for being an Islamic judge (qadi) are:

(a) to be a male freeman;

(b) to have full capacity for moral answerability (taklif, def: o8.1);

(c) to be upright (o24.4);

(d) to possess knowledge (O: of the rulings of Sacred Law, meaning by way of personal legal reasoning (ijtihad) (A: from primary texts), not merely by following a particular qualified scholar (taqlid) (A: i.e. if he follows qualified scholarship, he must know and agree with how the rulings are derived, not merely report them). Being qualified to perform legal reasoning (ijtihad) requires knowledge of the rules and principles of the Koran, the sunna (A: in this context meaning the hadith, not the *sunna* as opposed to the *obligatory*), (N: as well as knowledge of scholarly consensus (ijma', def: b7)), and analogy (def: III below), together with knowing the types of each of these. (A: The knowledge of each "type" below implies familiarity with subtypes and kinds, but the commentator has deemed the mention of the category as a whole sufficient to give readers a general idea.)

(I) The types of Koranic rules include, for example:

(1) those ('amm) of general applicability to different types of legal rulings;

o22.1 ويُشْتَرَطُ في القاضي الذكورةُ والحريةُ والتكليفُ والعدالةُ والعلمُ (بالأحكام الشرعية بطريق الاجتهاد لا بالتقليد، وأهلية الاجتهاد تتوقف على معرفة أحكام القرآن والسنة (ح: والإجماع) والقياس مع معرفة أنواعها. فمن أنواع القرآن: العام، والخاص،

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(2) those (khass) applicable to only one particular ruling or type of ruling; (3) those (mujmal) which require details and explanation in order to be properly understood; (4) those (mubayyan) which are plain without added details; (5) those (mutlaq) applicable without restriction; (6) those (muqayyad) which have restrictions; (7) those (nass) which unequivocally decide a particular legal question; (8) those (zahir) with a probable legal signification, but which may also bear an alternative interpretation; (9) those (nasikh) which supersede previously revealed Koranic verses; (10) and those (mansukh) which are superseded by later verses. (II) The types of sunna (A: i.e. hadith) include: (1) hadiths (mutawatir) related by whole groups of individuals from whole groups, in multiple contiguous channels of transmission leading back to the Prophet himself (Allah bless him and give him peace), such that the sheer number of separate channels at each stage of transmission is too many for it to be possible for all to have conspired to fabricate the hadith (A: which is thereby obligatory to believe in, and denial of which is unbelief (kufr)); (2) hadiths (ahad) related by fewer than the above-mentioned group at one or more stages of the transmission, though traced through contiguous successive narrators back to the Prophet (Allah bless him and give him peace). (n: If a hadith is transmitted through just one individual at any point in the history of its transmission, the	والمجمل، والمبين، والمطلق، والمقيد، والنص، والظاهر، والناسخ، والمنسوخ. ومن أنواع السنة: المتواتر، والآحاد، [والمتصل]، وغيره. (ت: قال

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hadith is termed *singular* (gharib). If it is transmitted through just *two* people at any stage of its transmission, it is termed *rare* ('aziz). If its channels of transmission come through only three people at any point of its history, it is termed *well-known* (mashhur). These designations do not directly influence the authenticity rating of the hadith, since a *singular* hadith, for example, might be *rigorously authenticated* (sahih), well authenticated (hasan) (N: hadiths of both types being obligatory for a Muslim to believe in, though someone who denies them is merely considered corrupt (fasiq), not an unbeliever (kafir)), or *not well authenticated* (da'if), depending on the reliability ratings of the narrators and other factors weighed and judged by hadith specialists);

(3) and other kinds, (n: Yusuf Ardabili mentions the following in his list of qualifications for performing legal reasoning (ijtihad):)

(4) hadiths (mursal) from one of those (tabi'i) who had personally met (N: not only met, but actually studied under) one or more of the prophetic Companions (Sahaba) but not the Prophet himself (Allah bless him and give him peace) (n: hadiths reported in the form, "The Prophet said [or did] such and such," without mentioning the Companion who related it directly from the Prophet);

(5) hadiths (musnad) related through a contiguous series of transmitters back to the Prophet (Allah bless him and give him peace);

(6) hadiths (muttasil) related through a contiguous series of transmitters (n: either from the Prophet (Allah bless him and give him peace), such a hadith being termed *ascribed* (marfu'), or else only from one of the Companions, such a hadith being termed *arrested* (mawquf));

(7) hadiths (munqata') related through a chain of transmitters of whom one is unknown (n: though if two or more are unknown, it is not considered merely *incontiguous* (munqata'), but rather *problematic* (mu'dal));

(8) the positive and negative personal factors (jarh wa ta'dil) determining the reliability ratings

يوسف أردبيلي : والمرسل، والمسند، والمتصل، والمنقطع، وحال الرواة جرحاً وتعديلاً، [الثالث] أقاويل علماء

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of the individual narrators of a hadith's channel of transmission;

(9) the positions held by the most learned of the Companions (Sahaba) on legal questions, and those of the scholars who came after them;

(10) and on which of these positions there is scholarly consensus (def: b7), and which are differed upon (*Kitab al-anwar li a'mal al-abrar fi fiqh al-Imam al-Shafi'i* (y11), 2.391).

(n: The English glosses and remarks on the meanings of the above hadith terminology are from notes taken by the translator at a lesson with hadith specialist Sheikh Shu'ayb Arna'ut.)

(III) Types of analogical reasoning (qiyas) include:

(1) making an *a fortiori* analogy between acts p and q, where if p takes a ruling, q is even likelier to take the same ruling. For example, if saying "Uff!" to one's parents is unlawful (n: as at Koran 17:23), one may analogically infer that beating them must also be unlawful;

(2) making an analogy between acts p and q, where if p takes a ruling, one may infer that q is equally likely to take the same ruling. For example, if it is unlawful to wrongfully consume an orphan's property, then it must also be unlawful to destroy his property by burning it up;

(3) and making an analogy between acts p and q, where if p takes a ruling, one may infer that it is likely, though less certain, that q takes the same ruling (A: because of a common feature in the two acts which functions as the basis ('illa) for the analogy). For example, if usurious gain (riba) is unlawful in selling wheat (dis: k3.1), then it is also unlawful in selling apples, the basis for the analogy being that both are *food*.

The meaning of *knowledge* of the above matters is (A: for a judge) to know part of what is connected with the Koran, sunna (A: i.e. hadith), and

الصحابة فمن بعدهم إجماعاً واختلافاً [نقل من كتاب الأنوار لأعمال الأبرار في فقه الإمام الشافعي: ٢/ ٣٩١].

ومن أنواع القياس: الأولوي كقياس ضرب الوالدين على التأفيف، والمساوي كقياس إحراق مال اليتيم على أكله في التحريم فيهما، والأدون كقياس التفاح على البر في باب الربا بجامع الطعام.

والمراد بعض ما يتعلق بالقرآن والسنة

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analogy, not complete knowledge of the Book of Allah, total familiarity with the rules of the sunna, or comprehensive mastery of the rules of analogical reasoning, but rather that which is pertinent to giving judgements in court (A: though an *absolute* expert in Islamic legal reasoning (mujtahid mutlaq) such as Abu Hanifa, Malik, Shafi'i, or Ahmad, is obliged to know what relates to every subject matter in Sacred Law). He must know the reliability ratings of hadith narrators in strength and weakness. When two primary texts seem to contend, he gives precedence to:

(1) those of particular applicability (khass) over those of general applicability ('amm);

(2) those that take restrictions (muqayyad) over those that do not (mutlaq);

(3) those which unequivocally settle a particular question (nass) over those of merely probabilistic legal significance (zahir);

(4) those which are literal (muhkam) over those which are figurative (mutashabih);

(5) and those which supersede previous rulings, those with a contiguous channel of transmission, and those with a well-authenticated channel of transmission, over their respective opposites.

He must also have knowledge of the Arabic language, its lexicon, grammar, word morphology, and rhetoric.

He must likewise know the positions of the scholars of Sacred Law regarding their consensus and differences, and not contradict their consensus (A: which is unlawful (dis: b7.2)) with his own reasoning.

If no one possesses the above-mentioned qualifications, and a strong ruler appoints an unfit Muslim to the bench, such as someone who is immoral, or who (A: is incapable of independent legal reasoning (ijtihad) and) merely follows other qualified scholars (taqlid), or a child, or a woman, then the appointee's decisions are implemented because of necessity, so as not to vitiate people's concerns and interests (A: and this is what exists in our day, when the conditions for

والقياس لا جميع معرفة كتاب الله وجميع أحكام السنة وجميع أحكام القياس. بل ما يتعلق بالقضاء. ولا بد له من معرفة حال الرواة قوة وضعفاً فيقدم عند التعارض: الخاص على العام والمقيد على المطلق والنص على الظاهر والمحكم على المتشابه والناسخ والمتصل والقوي على مقابلها. ولا بد من معرفة لسان العرب لغة ونحواً وصرفاً وبلاغة، وأقوال العلماء إجماعاً واختلافاً فلا يخالفهم في اجتهاده. فإن فقد الشرط المذكور فولى سلطان ذو شوكة مسلماً غير أهل كفاسق ومقلد وصبي وامرأة نفذ حكمه وقضاؤه للضرورة لئلا تتعطل

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an Islamic judge are seldom met with));	مصالح الناس) والسمعُ والبصرُ والنطقُ (ولم ينبه المصنف على شرط الإسلام والظاهر أنه اكتفى بوصف العدالة عنه).
(e) sound hearing;	
(f) sound eyesight;	
(g) and the faculty of speech.	
(O: The author did not mention the necessary condition of being a Muslim, evidently feeling that *uprightness* ((c) above) was sufficient to imply it.)	
o22.2 It is recommended that the judge be stern without harshness, and flexible without weakness (O: so the litigants do not despise or disdain him, for otherwise, people entitled to rights would not be able to obtain them).	o22.2 ويُنْدَبُ أنْ يَكُونَ شديداً بلا عنفٍ ليناً بلا ضعفٍ (حتى لا تحتقره وتستخفه الخصوم. وإذا كان كذلك تضيع الحقوق على أربابها).
o22.3 If the judge needs to appoint another person to handle a part of his caseload because it is too heavy for him, then he may assign someone to deal with the extra cases if the person himself is qualified to be a judge. If the judge does not need to, he may not appoint such a person without special permission (A: from the regional ruler).	o22.3 وإنِ احْتاجَ أنْ يَسْتَخْلِفَ في (بعض) أعماله (وأحكامه) لكثرتها اسْتَخْلَفَ مَنْ يَصْلُحُ. وإنْ لمْ يَحْتَجْ فلا، إلاّ أنْ يُؤْذَنَ لهُ.
o22.4 If the judge needs a court secretary, he must be Muslim, upright (def: o24.4), sane, and learned (O: meaning familiar with writing up plaintiffs' cases, recording what is done in each case and the judge's decisions, and must be able to distinguish between writing it correctly and incorrectly. The above four conditions are obligatory, there only remaining to be mentioned that the secretary must be male and free).	o22.4 وإنِ احْتاجَ إلى كاتبٍ فَلْيَكُنْ مسلماً عدلاً عاقلاً فقيهاً (والمراد من كونه فقيهاً أن يكون عارفاً بكتابة محاضر وسجلات وكتب حكمية ليعلم صحة ما يكتبه من فساده وهذه الأربعة لا بد منها وبقي من شروط الكاتب كونه ذكراً حراً).
o22.5 The judge should not have a doorkeeper (O: if there is no crowd), though if he needs one, the doorkeeper must be sane, reliable, and unbribable.	o22.5 ولا يَتَّخِذُ حاجباً (إن لم يكن ثم زحمة) فإن احْتاجَ فَلْيَكُنْ عاقلاً أميناً بعيداً منَ الطمع.
o22.6 When not in the area of his jurisdiction, the judge may not give legal decisions, appoint others, or hear evidence (O: or claims).	o22.6 ولا يَحْكُمُ (القاضي) ولا يُوَلِّي ولا يَسْمَعُ البينةَ (بل ولا الدعوى) في غير عمله. [(ح: أي غير منطقة عمله)].

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o22.7 He may not accept gifts except from someone who customarily gave him gifts before he became judge, who is not a plaintiff, and whose gifts are not more lavish than those given before the judge's appointment. (O: The same is true for entertaining the judge as a guest, as well as lending articles to him which are of rentable value, such as lending him lodgings.) It is better for a judge not to accept any gifts. (O: And whenever gifts are not lawful to accept, he does not legally own them but must return them.)

o22.7 ولاَ يَقْبَلُ هديةً إلاَّ ممَّنْ كَانَ يُهَادِيهِ قبلَ الولايةِ ولمْ تكنْ لهُ خصومةٌ ولمْ تَزِدْ هديتُهُ بعدَ التوليةِ (على هديته قبلها ومثل الهدية في هذا الحكم الضيافة والعارية إن كانت لمنفعة تقابل بأجرة كسكنى دار). ومَعَ هذا فالأفضلُ أنْ لا يَقْبَلَهَا. (وحيث حرمت لا يملكها المهدى إليه فيجب ردها).

o22.8 A judge may not decide cases involving his son (O: son's son, and on down) or his father (O: father's father, and on up, or cases involving his partner in a shared enterprise).

o22.8 ولا يَحْكُمُ لولدِهِ (وإن سفل) ولا لوالدِهِ (وإن علا) [ولا لرفيقه] (ولا يقضي لشريكه في الأمر المشترك).

o22.9 He should not decide cases when angry, hungry, thirsty, overwrought, exultant, ill, tired, flatulent, annoyed, or when the weather is irritatingly hot or cold (O: it being offensive for a judge to decide a case in any state that affects his temperament for the worse), though if he does, his decision is implemented.

o22.9 ولا يَقْضِي وهوَ غضبانُ ولا جائعٌ ولا عطشانُ ولا مهمومٌ ولا فرحانُ ولا مريضٌ ولا نعسانُ ولا حاقنٌ ولا ضجرانُ ولا في حرٍّ مزعجٍ وبردٍ مؤلمٍ ([والضابط الجامع لما تقدم وغيره أنه] يكره للقاضي القضاء في كل حال يسوء فيه خلقه) فإنْ فَعَلَ نَفَذَ حكمُهُ.

o22.10 The judge should not sit in a mosque to decide cases (O: lest voices be raised therein, and because he might need to bring in the insane, children, a woman in her period, or non-Muslims; for which reasons sitting in a mosque to decide cases is offensive). But if his sitting in the mosque (O: in prayer, spiritual retreat (i'tikaf), or awaiting group prayer) happens to coincide with the coming of two litigants, then he may judge between them (O: without it being offensive).

o22.10 ولا يَجْلِسُ في المسجدِ للحكمِ (صوناً له عن ارتفاع الأصوات ولأنه قد يحتاج إلى إحضار المجانين والصبيان ومن كانت حائضة والكفار فالجلوس في المسجد لأجل الحكم مكروه). فإنِ اتَّفَقَ جلوسُهُ فيهِ (لصلاة واعتكاف وانتظار جماعة) وحَضَرَ خصمانِ حَكَمَ بينَهُمَا (من غير كراهة).

o22.11 The judge should sit with tranquility and gravity (O: as it creates greater respect for him and makes it likelier that he will be obeyed). He should have witnesses present and scholars of jurisprudence to consult with on points of difficulty. If a case is not clear, he should postpone giving a decision on it. He may not merely imitate another's decision on a case (A: but must be capable of expert legal reasoning (ijtihad) himself).

o22.11 ويَجْلِسُ بسكينةٍ ووقارٍ (لأنه أعظم لهيبته وأدعى لطاعته). ويُحْضِرُ الشهودَ والفقهاءَ ويُشَاوِرُهُمْ فيمَا يُشْكِلُ. وإنْ لمْ يَتَّضِحْ أخَّرَهُ. ولمْ يُقَلِّدْ غيرَهُ في الحكمِ.

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o22.12 The judge handles the cases on a first-come-first-served basis, one case per turn. If two arrive at the same time, they draw lots to see whose case will be heard first.

The judge (O: obligatorily) treats two litigants impartially, seating both in places of equal honor, attending to each, and so forth, unless one is a non-Muslim, in which case he gives the Muslim a better seat. He may not treat either litigant rudely, nor prompt one (O: as to how to state his case).

o22.12 ويَبْدَأُ بالخصوم بالأول فالأول في خصومةٍ (واحدة) فقط. فإن أسْتَووا (أي الخصوم في المجيء بأن جاؤوا معاً) أقْرَع.

ويُسَوِّي (القاضي وجوباً) بَيْنَهُما في المجلس والإقبال وغير ذلك إلاّ أنْ يَكُونَ أحدُهُما كافراً فيُقَدِّمُ المسلمَ عليه في المجلس. ولا يُعَنِّفُ أحدَهُما، ولا يُلَقِّنُهُ (حجة).

o22.13 The judge may intercede with one of them on behalf of the other (O: meaning to ask the two parties to settle their differences, which is what a judge's "intercession" is. It does not take place until after the truth has been established, which obviates his unfairly inclining to either one) and he may also pay one litigant what the other owes him.

o22.13 ولهُ أنْ يَشْفَعَ (إلى خصمه أي أن يطلب من الخصمين أن يصطلحا وهذا هو معنى شفاعة القاضي وهي لا تكون إلا بعد ثبوت الحق وحينئذ ينتفي الميل إليه) ويُؤَدِّي عنْ أحدِهِما ما لزِمَهُ.

o22.14 (N: When assigned to a new jurisdiction,) the judge first looks into the cases of the imprisoned, then orphans, and then of lost and found items.

o22.14 ويَنْظُرُ أولَ شيءٍ (ح: عند توليه القضاء في مركز عمله الجديد) في المحبوسين ثمَّ في الأيتام ثمَّ في اللقطة.

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o23.0 COURT CLAIMS

o23.0 أصول المحاكمات

o23.1 If a plaintiff makes a claim that is not true, the judge considers it as if he had not heard it (O: and need not ask the defendant about it).

When a claim is true, the judge asks the defendant, "What do you say?" If the defendant admits the claim is true, the judge does not give a decision on the case (A: there being no need to) unless the plaintiff asks him to. But if the defendant denies the claim, then if the plaintiff has no proof, the defendant's word is accepted if he swears an oath to that effect. (O: This is when the claim does not involve blood (A: i.e. retaliation (def: o3) or indemnity (o4)). If it does, then if there is obscurity in the matter, the plaintiff's

o23.1 إذا ادَّعَى الخصمُ دَعْوى غيرَ صحيحةٍ لمْ يَسْمَعْها (القاضي فلا يترتب عليه سؤال الخصم الذي هو المدعى عليه).

وإنْ كانَتْ صحيحةً قالَ للآخر: ما تقولُ؟ فإذا أقرَّ لمْ يحْكُمْ عليه إلاّ بطلب المدعي.

وإذا أنْكَرَ فإنْ لمْ يَكُنْ للمدَّعي بينةٌ فالقولُ قولُ المدَّعى عليه بيمينه (في غير دعوى الدم أما في الدم حيث ظهر لوث

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word is accepted (N: provided fifty separate oaths are sworn by and distributed over all those entitled to take retaliation).) The judge does not have the defendant swear an oath unless the plaintiff requests it. If the defendant refuses to swear, then the judge has the plaintiff swear (A: that his claim is true), and when he does, he is entitled (O: to what he has claimed) (A: from the defendant). But if the plaintiff also refuses to swear, the judge dismisses both of them (O: from his presence). If the defendant is silent (O: not responding to the claim against him) then the judge should say, "Would that you would answer, for unless you do, I'll give the plaintiff the opportunity to swear an oath." If the defendant does not, then the plaintiff may swear an oath, and if he does, he is entitled to his claim.

فالقول قول المدعي (ح: مع حلف خمسين يميناً توزع على أولياء الدم)). ولا يُحلِّفُهُ إلاَّ بطلب المدعي. فإنِ امْتنعَ مِنَ اليمين ردَّها على المدَّعي. فإنْ حلفَ اسْتحقَّ (المدعى به). وإنِ امْتنعَ صرفهُما (القاضي عن مجلسه). وإنْ سكتَ المدعىٰ عليه (عن جواب الدعوى) فَلْيَقُلْ لهُ: إنْ أجبْتَ وإلاَّ رددْتُ اليمينَ عليه. فإنْ لمْ يُجبْ ردَّتِ اليمينَ على المدعي فيَحْلِفُ ويَسْتَحِقُّ.

o23.2 If the judge knows the truth of the claim (O: against the defendant), and it concerns one of the prescribed penalties of Allah Most High, meaning for fornication, theft, rebellion, or drinking, then he may not sentence the defendant on that basis alone (O: on the basis of his knowledge of one of the above crimes. It is related of Abu Bakr Siddiq (Allah be well pleased with him) that he said,

"Were I to see someone who deserved a prescribed legal penalty, I would not punish him unless two witnesses attested to his deserving it in front of me.")

But when the judge knows the truth about something other than prescribed legal penalties, he must judge accordingly (O: the necessary condition for which is that he plainly state that he knows, such as by saying, "I know what he claims against you to be true, and have judged you according to my knowledge").

o23.2 وإنْ كانَ القاضي يَعْلَمُ وجوبَ الحقِّ (على المدعى عليه) فإنْ كانَ في حدودِ اللهِ تعالىٰ وهوَ الزنا والسرقةُ والمحاربةُ والشربُ لمْ يَحْكُمْ به (أي بعلمه بما ذكر وقد روي عن أبي بكر الصديق رضي الله عنه أنه قال: «لو رأيت رجلاً عليه حد لم أحده حتى يشهد عندي شاهدان») وإنْ كانَ غيرَ ذلك حكمَ به. (وشرط الحكم به أن يصرح بمستنده فيقول: علمتُ أن له عليك ما ادعاه وحكمت عليك بعلمي).

o23.3 When the judge does not know the language of the litigants, then he refers to upright (def: o24.4) persons familiar with it, provided they are a number (O: two or more) sufficient to substantiate the claim (def: o24.7–10).

o23.3 وإذا لمْ يَعْرِفْ لسانَ الخصمِ رجَعَ فيه إلى عدلٍ يَعْرِفُ بشرطِ أنْ يَكُونَ عدداً (اثنين فأكثر) يَثْبُتُ فيه ذلكَ الحقُّ.

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o23.4 If a judge gives a decision on a case but then learns of an unequivocal text relating to it (O: from the Koran or *mutawatir* hadith (def: o22.1(d(II)))), a consensus of scholars, or an *a fortiori* analogy (o22.1(d(III))), that controverts his decision, then he reverses it.

o23.4 وإذا حَكَمَ بشيء فوَجَدَ النصَّ (من الكتاب أو السنة المتواترة) أو الإجماعَ أو القياسَ الجليَّ بخلافِه نقضَهُ.

o23.5 A court claim is not valid except from a plaintiff possessing full right to deal with his own property.

o23.5 ولا تَصِحُّ الدَّعوى إلاَّ مِنْ مطلقِ التصرف.

o23.6 It is not valid to litigate over something that is not determinately known (def: k2.1(e)), though some exceptions to this exist, such as claiming a bequest.

If the plaintiff is claiming a financial obligation (dayn), he must mention its type, amount, and description.

If he is claiming some particular article (`ayn) (O: such as a house), he must identify it. If he is unable to (O: as when the article is portable, and out of town), then he must describe it (O: with a description that would be valid for buying in advance (def: k9.2(d,g))).

o23.6 ولا تَصِحُّ دعوَى المجهولِ إلاَّ في مسائلَ. منها الوصيةُ. فإن ادَّعى ديناً ذَكرَ الجنسَ والقدرَ والصفةَ أو عيناً يُمكِنُ تعيينُها (كأن كانت داراً) عيَّنَها. وإلاَّ (بأن تكون العين منقولة وهي غائبة عن البلد) ذَكرَ صفتَها (المعتبرة في باب السلم).

o23.7 If a defendant denies a claim against him (A: and the plaintiff has no proof) then his denial is accepted (A: provided he swears on oath), as also when he says, "I owe him nothing."

o23.7 فإنْ أنكرَ المدَّعى عليه ما ادَّعاهُ صحَّ الجوابُ. وكذا إنْ قال: لا يَستحقُّ عليَّ شيئاً.

o23.8 If the claim is for a particular article that is currently in the possession of one of the litigants, then the word of the person who *has* it is accepted when he swears an oath that it is his. If the article is in the possession of both litigants (O: together, and there is no proof as to whose it is; or when it is in the possession of neither, such as when a third party has it), then each swears an oath (O: that it does not belong to the other) and half the article is given to each of them.

o23.8 فإنْ كانَ المدَّعى به عيناً في يدِ أحدِهما فالقولُ قولُهُ (أي قول من هي بيده) بيمينه. فإنْ كانَ في يدِهما (معاً ولا بينة أو لم يكن في يد أحد منهما بأن كان في يد ثالث) حَلَفَا (أي حلف كل واحد يميناً على نفي كونه للآخر) وجُعِلَ بينَهُما نصفين.

o23.9 When another person owes one something, but denies it, then one may take it from his property without his leave (O: whether one has

o23.9 ومَن لهُ حقٌّ على منكرٍ فلَهُ أنْ يأخذَهُ مِنْ مالِه بغيرِ إذنِه (سواء كانت له

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proof of it or not). But if the person acknowledges that he owes it to one, one may not simply take it from him (O: because a debtor may pay back a debt from whatever part of his property he wishes).

بذلك الحق بينة أم لا). فإنْ كانَ (من عليه الحق) مقراً فلا (لأن للمديون أن يؤديه من حيث شاء).

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o24.0 WITNESSING AND TESTIFYING

o24.0 الشهادة

o24.1 It is a communal obligation (def: c3.2) to both witness (A: i.e. observe) legal events and to testify to having witnessed them. If there is only one person to do so, then it is personally obligatory upon him, in which case he may not accept payment for it, though if it is not personally obligatory, he may accept a fee.

o24.1 تحمُّلُها وأداؤُها فرضُ كفايةٍ. فإنْ لمْ يكُنْ إلاّ هو تَعيَّنَ عليه. ولا يَجوزُ أنْ يأخُذَ أجرةً حينئذٍ. فإنْ لمْ يتعيَّنْ فلهُ الأخذُ.

o24.2 Legal testimony is only acceptable from a witness who:

(a) is free;

(b) is fully legally responsible (mukallaf, def: c8.1) (O: as testimony is not accepted from a child or insane person, even when the child's testimony regards injuries among children that occurred at play);

(c) is able to speak;

(d) is mentally awake;

(e) is religious (O: meaning upright (o24.4) (A: and Muslim), for Allah Most High says,

"Let those of rectitude among you testify" (Koran 65:2),

and unbelief is the vilest form of corruption, as goes without saying);

(f) and who is outwardly respectable (O: *respectability* (muru'a) meaning to have the positive traits which one's peers possess in one's par-

o24.2 ولا تُقْبَلُ إلاّ مِنْ حرٍّ مكلفٍ (فلا تقبل من صبي ولا مجنون ولو في الجراحات الواقعة بين الصبيان في اللعب) ناطقٍ مستيقظٍ حسنِ الديانةِ (فإن المراد به العدل لقوله تعالى: ﴿وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ﴾ والكفر أشد أنواع الفسق فلا حاجة إلى التصريح به) ظاهرِ المروءةِ (والمروءة هي التخلق بخلق أمثاله في زمانه ومكانه وعبارة شيخ

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ticular time and place. Sheikh al-Islam (A: Zakariyya Ansari) says, "Respectability is refraining from conduct that is unseemly according to standards commonly acknowledged among those who observe the precepts and rules of the Sacred Law." It is according to *standards commonly acknowledged* (def: f4.5) because there are no absolute standards for it, but rather it varies with different persons, conditions, and places. Such things as eating and drinking (A: in the marketplace) or wearing nothing on one's head may vitiate it (A: though the latter is of no consequence in our times), as may a religious scholar's wearing a robe or cap in places where it is not customary for him to do so).

الإسلام «والمروءة توقي الأدناس عرفاً ممن يراعي مناهج الشرع وآدابه» وهي توقي الأدناس عرفاً لأنها لا تنضبط بل تختلف باختلاف الأشخاص والأحوال والأماكن فيسقطها أكل وشرب وكشف رأس ولبس فقيه قباء أو قلنسوة بمكان لا عادة له أن يفعلها فيه).

The testimony of an absentminded person (O: meaning someone who often makes mistakes and forgets) is not acceptable (O: because he is unreliable).

ولا تُقْبَلُ مِنْ مُغَفَّلٍ (وهو من كثر غلطه ونسيانه؛ لعدم الوثوق به).

o24.3 Nor is testimony acceptable from someone who:

(1) has committed an *enormity* (O: meaning something severely threatened against in an unequivocal text from the Koran or hadith (dis: book p) (N: though if someone who commits such an act then repents (def: p77) and is felt to be sincere in this, he regains his legal uprightness and his testimony is accepted, provided he is tested after his repentance long enough to believe in its genuineness);

(2) persists in a lesser sin (O: because it then becomes an enormity, as opposed to when one does not persist therein. A *lesser sin* is one that has not been severely threatened against in an unequivocal text);

(3) or is without respectability (def: o24.2(f)), such as a street-sweeper, bathhouse attendant, and the like.

(A: A legally *corrupt* or *immoral* person (fasiq) is someone guilty of (1) or (2) above.)

o24.3 ولا مِنْ صاحبِ كبيرةٍ (والكبيرة هي ما ورد فيها وعيد شديد بنص كتاب أو سنة) (ح: لكن إن تاب الفاسق توبة صادقة عادت إليه عدالته وتقبل شهادته بشرط اختباره بعد التوبة مدة يظن صدق توبته) ولا مِن مُدْمِنٍ على صغيرةٍ (لأنها صارت ملحقة بالكبيرة بخلاف ما إذا لم يصر عليها، والصغيرة هي التي لم يرد فيها وعيد شديد) ولا مِمَّنْ لا مروءة لَهُ ككناسٍ وقيِّمِ حمامٍ ونحوِ ذلك.

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o24.4 (A: Normal *uprightness* ('adala) for purposes other than giving testimony in court means that one avoids (1) and (2) above, while (3) concerns court testimony alone (N: i.e. *uprightness* for testimony in court means a person is none of the above).)

o24.5 The testimony of a blind person is accepted about events witnessed before he became blind, though not events witnessed after, unless they are public events that are discussed among people, or when someone says something the blind person hears (O: such as a divorce, for example), and he takes the speaker by the hand and conducts him to the judge and testifies as to what he has said.

o24.5 وتُقْبَلُ شهادةُ الأعمى فيما تَحمَّلَ قبلَ العمى. ولا تُقْبَلُ فيما تَحمَّلَ بعدَهُ إلاَّ بالاستفاضةِ أوْ أنْ يُقالَ في أذنِهِ شيءٌ (كطلاق) فيُمْسِكُ القائلَ ويَحْمِلُهُ إلى القاضي ويَشْهَدُ بِما قالَ هذا لهُ.

o24.6 The testimony of any of the following is unacceptable:

(1) a person testifying for his son (O: son's son, and on down) or his father (O: father's father, and on up);

(2) a person who stands to benefit (O: by his own testimony);

(3) a person who stands to avoid loss to himself through his testimony;

(4) a person testifying about his enemy;

(5) or a person testifying about his own act.

o24.6 ولا تُقْبَلُ شهادةُ الشخصِ لولدِهِ (وإن سفل) ووالدِهِ (وإن علا) ولا شهادةُ مَنْ يَجُرُّ لنفسِهِ (بشهادته) نفعاً ولا مَنْ يَدْفَعُ عنْها ضرراً ولا شهادةُ العدوِّ على عدوِّه ولا شهادةُ الشخصِ على فعلِ نفسِهِ.

o24.7 The testimony of the following is legally acceptable when it concerns cases involving property, or transactions dealing with property, such as sales:

(1) two men;

(2) two women and a man;

(3) or a male witness together with the oath of the plaintiff.

o24.7 فيُقْبَلُ في المالِ وما يُقْصَدُ منهُ المالُ كالبيعِ رجلانِ أوْ رجلٌ وامرأتانِ أوْ شاهدٌ مَعَ يمينِ المدَّعي.

o24.8 If testimony does not concern property, such as a marriage or prescribed legal penalties,

o24.8 وما لا يُقْصَدُ منهُ المالُ كالنكاحِ والحدودِ لمْ يُقْبَلْ فيهِ إلاَّ

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then only two male witnesses may testify (A: though the Hanafi school holds that two women and a man may testify for marriage).

شاهدان ذكران.

o24.9 If testimony concerns fornication or sodomy, then it requires four male witnesses (O: who testify, in the case of fornication, that they have seen the offender insert the head of his penis into her vagina).

o24.9 ولا يُقْبَلُ في الزنا واللواط [وإتيان البهيمة] إلا أربعةُ ذكورٍ (يشهدون أنهم رأوه أدخل حشفته في فرجها بالزنا).

o24.10 If testimony concerns things which men do not typically see (O: but women do), such as childbirth, then it is sufficient to have two male witnesses, a man and two women, or four women.

o24.10 ويُقْبَلُ فيما لا يَطَّلِعُ عليه الرجالُ (ويطلع عليه النساء) كالولادة رجلانِ أو رجلٌ وامرأتانِ أو أربعُ نسوةٍ.

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o25.0 THE CALIPHATE

o25.0 الخلافة

(n: This section has been added here by the translator because the caliphate is both obligatory in itself and the necessary precondition for hundreds of rulings (books k through o) established by Allah Most High to govern and guide Islamic community life. What follows has been edited from *al-Ahkam al-sultaniyya wa al-wilayat al-diniyya* by Imam Abul Hasan Mawardi, together with three principal commentaries on Imam Nawawi's *Minhaj al-talibin*, extracts from which are indicated by parentheses and the initial of the commentator, Ibn Hajar Haytami (H:), Muhammad Shirbini Khatib (K:), or 'Abd al-Hamid Sharwani (S:).)

THE OBLIGATORY CHARACTER OF THE CALIPHATE

وجوب الخلافة

o25.1 (Mawardi:) The reason the office of supreme leadership has been established in Sacred Law is to fulfill the caliphal successorship to prophethood in preserving the religion and managing this-worldly affairs. The investiture of someone from the Islamic Community (Umma) able to fulfill the duties of the caliphate is obligatory by scholarly consensus (def: b7), though scholars differ as to whether its obligatory character is established through reason or through Revealed Law. Some say that it is obligatory by human reason, because of the agreement of rational individuals to have a leader to prevent

o25.1 (الماوردي:) الإمامة موضوعة لخلافة النبوة في حراسة الدين وسياسة الدنيا. وعقدها لمن يقوم بها في الأمة واجب بالإجماع [وإن شذ عنهم الأصم]. واختلف في وجوبها هل وجبت بالعقل أو بالشرع؟ فقالت طائفة وجبت بالعقل لما في طباع العقلاء من التسليم لزعيم يمنعهم من التظالم ويفصل بينهم في التنازع والتخاصم. ولولا الولاة لكانوا فوضى مهملين وهمج مضاعين. وقالت طائفة أخرى: بل وجبت بالشرع

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them from wronging one another and to come between them when conflict and arguments arise. Without authorities, there would be a chaos of neglected people and a disorderly mob. Others hold that it is obligatory not through reason, but rather through Sacred Law, for the caliph performs functions that human reason might not otherwise deem ethically imperative, and which are not entailed by reason alone, for reason merely requires that rational beings refrain from reciprocal oppression and strife, such that each individual conform with the demands of fairness in behaving towards others with justice and social cohesion, each evaluating their course with their own mind, not anyone else's, whereas Sacred Law stipulates that human concerns be consigned to the person religiously responsible for them. Allah Mighty and Majestic says,

"You who believe, obey Allah and obey the Prophet and those of authority among you" (Koran 4:59),

thereby obliging us to obey those in command, namely the leader with authority over us. Abu Hurayra relates that the Prophet (Allah bless him and give him peace) said,

"Leaders shall rule you after me, the godfearing of them ruling you with godfearingness and the profligate ruling you with wickedness. So listen to them and obey them in everything that is right; for if they do well, it will count for you and for them, and if they do badly, it will count for you and against them."

(*al-Ahkam al-sultaniyya wa al-wilayat al-diniyya* (y87), 5–6)

o25.2 (H: The caliphate is a communal obligation (def: c3.2) just as the judgeship is (S: because the Islamic community needs a ruler to uphold the religion, defend the sunna, succor the oppressed from oppressors, fulfill rights, and restore them to whom they belong).)

دون العقل لأن الإمام يقوم بأمور شرعية قد كان مجوزاً في العقل أن لا يرد التعبد بها، فلم يكن العقل موجباً لها، وإنما أوجب العقل أن يمنع كل واحد نفسه من العقلاء عن التظالم والتقاطع، ويأخذ بمقتضى العدل في التناصف والتواصل، فيتدبر بعقله لا بعقل غيره. ولكن جاء الشرع بتفويض الأمور إلى وليه في الدين. قال الله عز وجل:

﴿يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولي الأمر منكم﴾ [سورة النساء: ٥٦]، ففرض علينا طاعة أولي الأمر فينا وهم الأئمة المتأمرين علينا وإروى هشام بن عروة عن أبي صالح] عن أبي هريرة أن رسول الله ﷺ قال:

«سيليكم بعدي ولاة فيليكم البر ببره ويليكم الفاجر بفجوره فاسمعوا لهم وأطيعوا في كل ما وافق الحق. فإن أحسنوا فلكم ولهم، وإن أساءوا فلكم وعليهم» [محرر من الأحكام السلطانية والولايات الدينية ٥ - ٦].

[ت: تنبيه: النص التالي منقول من منهاج الطالبين للإمام النووي، فصل شروط الإمام الأعظم. وأثبتنا في ثنايا المتن تعليقات من ثلاثة شروح مشهورة قد ميزناها من الأصل بوضعها بين القوسين وبكونها مشاراً إليها بحروف من أسماء أصحابها. فالتعليقات من كتاب تحفة المحتاج للإمام ابن حجر الهيتمي مشار إليها بالحرف «هـ»، والتعليقات للشيخ عبد الحميد الشرواني من حاشيته على التحفة قد أشرنا إليها بالحرف «ش» وأما التعليقات من كتاب مغني المحتاج للإمام محمد الشربيني الخطيب فمشار إليه بالحرف «ب». وبالله التوفيق].

o25.2 (هـ: الإمامة هي فرض كفاية كالقضاء (ش: إذ لا بد للأمة من إمام يقيم الدين وينصر السنة وينصف المظلوم من الظالم ويستوفي الحقوق ويضعها مواضعها)).

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THE QUALIFICATIONS OF A CALIPH

o25.3 (Nawawi:) Among the qualifications of the caliph are that he be:

(a) Muslim (H: so that he may see to the best interests of Islam and the Muslims (K: it being invalid to appoint a non-Muslim (kafir) to authority, even to rule non-Muslims.) (S: Qadi 'Iyad states that there is scholarly consensus (def: b7) that it is not legally valid to invest a non-Muslim as caliph, and that if a caliph becomes a non-Muslim (dis: o8.7) he is no longer caliph, as also when he does not maintain the prescribed prayers (A: meaning to both perform them himself and order Muslims to) and summon the people to them, and likewise (according to the majority of scholars) if he makes reprehensible innovations (bid'a, def: w29.3) (A: by imposing an innovation on people that is offensive or unlawful). If the caliph becomes a non-Muslim, alters the Sacred Law—(N: such alteration being of two types, one of which consists of his changing the Law by legislating something which contravenes it while believing in the validity of the provisions of the Sacred Law, this being an *injustice* that does not permit rebellion against him, while the other consists of imposing rules that contravene the provisions of the religion while believing in the validity of the rules he has imposed, this being unbelief (kufr) (A: it is questionable whether anyone would impose such rules without believing in their validity))—or imposes reprehensible innovations while in office, then he loses his authority and need no longer be obeyed, and it is obligatory for Muslims to rise against him if possible, remove him from office, and install an upright leader in his place. If only some are able, they are obliged to rise up and remove the unbeliever (A: whether they believe they will succeed or fail), though it is not obligatory to try to remove a leader who imposes reprehensible innovations unless they believe it possible. If they are certain that they are unable to (A: remove an innovator), they are not obliged to rise against him. Rather, a Muslim in such a case should emigrate from his country (N: if he can find a better one), fleeing with his religion (A: which is obligatory if he is prevented in

شروط الإمام الأعظم

o25.3 (النووي:) شرطُ الإمام كونُهُ مسلماً (هـ: ليراعي مصلحة الإسلام والمسلمين) (ب: فلا تصح تولية كافر ولو على كافر) (ش: قال القاضي عياض: أجمع العلماء على أن الإمامة لا تنعقد لكافر وعلى أنه لو طرأ عليه الكفر انعزل، وكذا لو ترك إقامة الصلوات والدعاء إليها. قال: وكذلك عند جمهورهم البدعة (ح: المكفرة) [...]. فلو طرأ عليه كفر وتغيير الشرع (ح: وتغيير الشرع على نوعين: تغيير الشرع بمعنى أن يأمر بما يخالف به الشرع معتقداً صحة ما ورد في الشرع، وهذا ظلم لا يبيح الخروج عليه. وأما إذا أتى بأحكام تخالف أحكام الدين معتقداً أن هذه هي الأحكام الصحيحة، فهذا كفر) أو بدعة خرج عن حكم الولاية وسقطت طاعته ووجب على المسلمين القيام عليه وخلعه ونصب إمام عدل إن أمكنهم ذلك. فإن لم يقع ذلك إلا لطائفة، وجب عليهم القيام بخلع الكافر ولا يجب في المبتدع إلا إذا ظنوا القدرة عليه فإن تحققوا العجز لم يجب القيام. ويهاجر المسلم عن أرضه إلى غيرها وينفر بدينه (ح: إن وجد بلداً أفضل)) مكلفاً

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his home country from openly performing acts of worship)));

(b) possessed of legal responsibility (def: c8.1) (K: so as to command the people, it being invalid for a child or insane person to lead);

(c) free (K: so that others may consider him competent and worthy of respect);

(d) male (K: to be able to devote himself full-time to the task, and to mix with men, the leadership of a woman being invalid because of the rigorously authenticated (sahih) hadith,

"A people that leaves its leadership to a woman will never succeed");

(e) of the Quraysh tribe (K: because of the (H: well-authenticated (hasan)) hadith related by Nasa'i,

"The Imams are of the Quraysh,"

a hadith adhered to by the Companions of the Prophet (Allah bless him and give him peace) and those after them, this qualification being obligatory when there is a member of Quraysh available who meets the other conditions) (H: though when there is not, then the next most eligible is a qualified member of the Kinana tribe, then of the Arabs, then of the non-Arabs);

(f) capable of expert legal reasoning (ijtihad) (H: as a judge must be (def: o22.1(d)) and with even greater need (K: so as to know the rulings of Sacred Law, teach people, and not need to seek the legal opinion of others concerning uprecedented events), scholarly consensus (def: b7) having been related concerning this condition, which is not contradicted by the statement of the Qadi (A: 'Iyad) that "an ignorant upright person is fitter than a knowledgeable corrupt one," since the former would be able to refer matters requiring expert legal reasoning to qualified scholars, and moreover the remark applies to when the available leaders are not capable of legal reasoning (S: while possessing the other qualifications for leadership));

(ب : ليلي أمر الناس ، فلا تصح إمامة صبي ومجنون [بإجماع]) حرا (ب : ليكمل ويهاب) ذكرا (ب : ليتفرغ ويتمكن من مخالطة الرجال . فلا تصح ولاية امرأة لما في الصحيح : «لن يفلح قوم ولوا أمرهم امرأة») قُرَشيا (ب : لخبر النسائي (هـ : إسناده جيد) : «الأئمة من قريش» وبه أخذ الصحابة فمن بعدهم . هذا عند تيسر قرشي جامع للشروط) (هـ : فإن فقد قرشي جامع للشروط فكناني فرجل من ولد إسماعيل [صلى الله على نبينا وعليه وسلم . ومر في ذلك كلام في الفيء والكفاءة] فعجمي) مجتهداً (هـ : كالقاضي بل أولى (ب : ليعرف الأحكام ويعلم الناس ولا يحتاج إلى استفتاء غيره في الحوادث) بل حكي فيه الإجماع ولا ينافيه قول القاضي «عدل جاهل أولى من فاسق عالم» لأن الأول يمكنه التفويض للعلماء فيما يفتقر للاجتهاد لأن محله عند فقد المجتهدين (ش : المتصفين ببقية شروط الإمامة))

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(g) courageous (K: meaning undaunted by danger, that he may stand alone, direct troops, and vanquish foes);

(h) possessed of discernment (H: in order to lead followers and see to their best interests, religious or this-worldly, *discernment* meaning at minimum to know the various capacities of people), sound hearing and eyesight, and the faculty of speech (K: so as to decisively arbitrate matters);

(i) (H: and be upright (def: o24.4) as a judge must be, and with even greater need. But it is valid, if forced to, to resort to the leadership of a corrupt person, which is why Ibn 'Abd al-Salam says, "If there are no upright leaders or rulers available, then the least corrupt is given precedence").

شجاعاً (ب: والشجاعة قوة القلب عند البأس، لينفرد بنفسه ويدبر الجيوش ويقهر الأعداء) ذا رأيٍ (هـ: يسوس به [(ش: أي يحكم به)] الرعية ويدبر مصالحهم الدينية والدنيوية [قال الهروي:] وأدناه أن يعرف أقدار الناس) وسمعٍ وبصرٍ ونطقٍ (ب: ليتأتى منه فصل الأمور) (هـ: وعدلاً كالقاضي بل أولى. فلو اضطر لولاية فاسق جاز. ومن ثم قال ابن عبد السلام: لو تعذرت العدالة في الأئمة والحكام قدمنا أقلهم فسقاً).

THE THREE WAYS A CALIPH MAY BE INVESTED WITH OFFICE

ثلاث طرق لانعقاد الإمامة

o25.4 The caliphate may legally be effected (K: through three means, the first of which is):

(1) by an oath of fealty (H: like the one sworn by the prophetic Companions to Abu Bakr (Allah be well pleased with them)) which, according to the soundest position, is (H: legally binding if it is) the oath of *those with discretionary power to enact or disolve a pact* (ahl al-hall wa al-'aqd) of the scholars, leaders, and notables able to attend (K: since the matter is accomplished through them, and all the people follow them. It is not a condition that all those with discretionary power to enact or dissolve a pact be present from every remote region, or that there be a particular number present, as the author's words seem to imply, but rather, if discretionary power to enact or dissolve a pact exists in a single individual who is obeyed, his oath of fealty is sufficient.) (H: As for an oath of fealty from common people without discretionary power to enact or dissolve a pact, it is of no consequence) and they (H: those pledging fealty) must possess the qualifications necessary to be a witness (K: such as uprightness and so forth

o25.4 وتَنْعَقِدُ الإمامةُ (ب: بثلاثة طرق أحدها:)

(١) بالبَيْعَةِ (هـ: كما بايع الصحابة أبا بكر رضي الله عنهم) والأصَحُّ (هـ: أن المعتبر هو) ببيعة أهل الحل والعقد من العلماء والرؤساء ووجوه الناس الذين يتيسر اجتماعهم (ب: لأن الأمر ينتظم بهم ويتبعهم سائر الناس. ولا يشترط اتفاق أهل الحل والعقد من سائر الأقطار البعيدة ولا يشترط عدد كما يوهمه كلامه، بل لو تعلق الحل والعقد بواحد مطاع كفت بيعته.) (هـ: وأما بيعة غير أهل الحل والعقد من العوام فلا عبرة بها) وشَرْطُهُمْ (هـ: أي المتبايعين) صفةُ الشهود (ب: من العدالة وغيرها) [محرّر

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(def: o24.2)) (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 4.129–31, and *Hawashi al-Shaykh 'Abd al-Hamid al-Sharwani wa al-Shaykh Ahmad ibn Qasim al-'Abbadi 'ala Tuhfa al-muhtaj bi sharh al-Minhaj* (y2), 9.74–76).

(Mawardi:) When those with power to enact or dissolve a pact meet to select the caliph, they examine the state of the available qualified candidates, giving precedence to the best of them and most fully qualified, whose leadership the public will readily accept and whose investiture people will not hesitate to recognise. When there is only one person whom the examiners' reasoning leads them to select, they offer him the position. If he accepts, they swear an oath of fealty to him and the supreme leadership is thereby invested in him, the entire Islamic Community (Umma) being compelled to acknowledge fealty to him and submit in obedience to him. But if he refuses the caliphal office, not responding to their offer, he is not forced to comply—as investiture comes of acceptance and free choice, not compulsion and constraint—and they turn to another qualified candidate (*al-Ahkam al-sultaniyya wa al-wilayat al-diniyya* (y87), 7–8);

(2) (Nawawi:) and (H: the second means (K: through which it may be effected is)) by the caliph appointing a successor (H: meaning someone after him, even if it be his descendant or ancestor, for Abu Bakr appointed 'Umar (Allah be well pleased with them) as his successor, and scholarly consensus (def: b7) was effected in recognizing its legal validity. This type of investiture consists of the caliph appointing a successor while still alive, to succeed him after death. Though actually his successor during his life, the successor's disposal of affairs is suspended until the caliph dies).

If the caliph appoints a group to select a successor from among themselves, it is as if he had appointed a successor (K: though the successor is not yet identified) (H: resembling an appointment in it being legally binding and obligatory to accept the outcome of their choice) and they choose one of their number (K: after the caliph's death, investing the person they select with the caliphate) (H: because 'Umar appointed a committee of six to choose his successor from among themselves: 'Ali, 'Uthman, Zubayr, 'Abd al-Rahman ibn 'Awf, Sa'd ibn Abi Waqqas, and Talha, and after

من مغني المحتاج إلى معرفة ألفاظ المنهاج: ٤/ ١٢٩ - ١٣١، ومن حواشي الشيخ عبد الحميد الشرواني والشيخ أحمد بن قاسم العبادي على تحفة المحتاج بشرح المنهاج: ٩/ ٧٤ - ٧٦].

(الماوردي:) فإذا اجتمع أهل العقد والحل للاختيار وتصفحوا أحوال أهل الإمامة الموجودة فيهم شروطها فقدموا للبيعة منهم أكثرهم فضلاً وأكملهم شروطاً ومن يسرع الناس إلى طاعته ولا يتوقفون عن بيعته. فإذا تعين لهم من أداهم الاجتهاد إلى اختياره عرضوها عليه. فإن أجاب إليها بايعوه عليها وانعقدت ببيعتهم له الإمامة فلزم كافة الأمة الدخول في بيعته والانقياد لطاعته. وإن امتنع من الإمامة ولم يُجِبْ إليها لم يجبر عليها لأنها عقد مراضاة واختيار ولا يدخله إكراه ولا إجبار، وعدل عنه إلى من سواه من مستحقيها [نقل من الأحكام السلطانية والولايات الدينية: ٧ - ٨].

(٢) وَ(هـ: ثانيها (ب: ينعقد)) بِٱسْتِخْلَافِ الإمام (هـ: واحداً بعده ولو فرعه أو أصله [ويعبر عنه بعهده إليه] كما عهد أبو بكر إلى عمر رضي الله عنهما، وانعقد الإجماع على الاعتداد بذلك. وصورته أن يعقد له الخلافة في حياته ليكون هو الخليفة بعده، فهو وإن كان خليفته في حياته لكن تصرفه موقوف على موته). فلوْ جَعَلَ (هـ: الإمام) الأمرَ شورى بين جمع فكاسْتِخْلَافٍ (هـ: في الاعتداد به ووجوب العمل بقضيته) (ب: إلا أن المستخلف غير معين) فَيَرْضَوْنَ أَحَدَهُمْ (ب: بعد موت الإمام فيعينونه للخلافة) (هـ: لأن عمر جعل الأمر شورى بين ستة: علي وعثمان والزبير وعبد الرحمن بن عوف وسعد بن أبي وقاص وطلحة، فاتفقوا بعد موته على

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his death they agreed upon 'Uthman, (Allah be well pleased with them));

(3) and (H: the third means is) through seizure of power by an individual possessing the qualifications of a caliph (H: meaning by force, since the interests of the whole might be realized through such a takeover, this being if the caliph has died, or has himself obtained office through seizure of power, i.e. when he lacks some of the necessary qualifications.) (S: As for when the office is wrested from a living caliph, then if he himself became caliph through seizure of power, the caliphate of his deposer is legally valid. But if he became caliph through an oath of fealty (def: o25.4(1)) or having been appointed as the previous caliph's successor (def: o25.4(2)), then the deposer's caliphate is not legally valid). A takeover is also legally valid, according to the soundest position, by someone lacking moral rectitude (dis: o25.3(i)) or knowledge of Sacred Law (o25.3(f)) (K: meaning the caliphate of a person lacking either condition is legally valid when the other conditions exist) (H: as is the takeover of someone lacking other qualifications, even if he does not possess any of them (S: besides Islam, for if a non-Muslim seizes the caliphate, it is not legally binding, and so too, according to most scholars, with someone who makes reprehensible innovations, as previously mentioned (dis: o25.3(a))). The caliphate of someone who seizes power is considered valid, even though his act of usurpation is disobedience, in view of the danger from the anarchy and strife that would otherwise ensue).

عثمان رضي الله عنهم).

(٣) وَ(هـ: ثالثها) بِٱسْتِيلَاءِ جامعِ الشروطِ (هـ: بالشوكة لانتظام الشمل به. هذا إن مات الإمام أو كان متغلباً، أي ولم يجمع الشروط). (ش: أما الاستيلاء على الحي فإن كان الحي متغلباً انعقدت إمامة المتغلب عليه، وإن كان إماماً ببيعة أو عهد لم تنعقد إمامة المتغلب عليه) وَكَذَا فاسقٌ جاهلٌ (ب: تنعقد إمامة كل منهما مع وجود بقية الشروط) (هـ: وغيرهما وإن اختلت فيه الشروط كلها (ش: أي إلا الإسلام. أما لو استولى كافر على الإمامة فلا تنعقد وتقدم [عن شرح صحيح مسلم] أن المبتدع كالكافر هنا عند الجمهور)) في الأَصَحِّ (هـ: وإن عصى بما فعل، حذراً من تشتت الأمر وثوران الفتن).

THE OBLIGATORY CHARACTER OF OBEDIENCE TO THE CALIPH

وجوب طاعة الإمام

o25.5 (K: It is obligatory to obey the commands and interdictions of the caliph (N: or his representative (def: o25.7–10)) in everything that is lawful (A: meaning it is obligatory to obey him in everything that is not unlawful, offensive, or merely in his own personal interests), even if he is unjust, because of the hadith,

"Hear and obey, even if the ruler placed over

o25.5 (ب: تجب طاعة الإمام (ح: ونائبه) وإن كان جائراً فيما يجوز من أمره ونهيه لخبر: «اسمعوا وأطيعوا وإن أمّر

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you is an Ethiopian slave with amputated extremities."

and because the purpose of his authority is Islamic unity, which could not be realized if obeying him were not obligatory. It is also obligatory for him to give sincere counsel to those under him to the extent that it is possible.)

عليكم عبد حبشي مجدع الأطراف» ولأن المقصود من نصبه اتحاد الكلمة، ولا يحصل ذلك إلا بوجوب الطاعة، وتجب نصيحته للرعية بحسب قدرته).

THE INVALIDITY OF A PLURALITY OF CALIPHS

عدم صحة عقد الإمامة لإثنين فأكثر

o25.6 (K: It is not permissible for two or more individuals to be invested with the caliphate (H: at one time), even when they are in different regions, or remote from one another, because of the disunity of purpose and political dissolution it entails. If two are simultaneously invested as caliph, neither's caliphate is valid. If invested serially, the caliphate of the first of them is legally valid and the second is disciplined (def: o17) for committing an unlawful act, together with those who swear fealty to him, if they are aware of the first's investiture as caliph) (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 4.132, and *Hawashi al-Shaykh 'Abd al-Hamid al-Sharwani wa al-Shaykh Ahmad ibn Qasim al-'Abbadi 'ala Tuhfa al-muhtaj bi sharh al-Minhaj* (y2), 9.77–78).

o25.6 (ب: ولا يجوز عقدها لإمامين (هـ: في وقت واحد) فأكثر ولو بأقاليم ولو تباعدت لما في ذلك من اختلال الرأي وتفرق الشمل. فإن عقدت لاثنين معاً بطلتا، أو مرتباً انعقدت للسابق [كما في النكاح على امرأة] ويعزر الثاني ومبايعوه إن علموا ببيعة السابق لارتكابهم محرماً) [محرّر من مغني المحتاج إلى معرفة معاني ألفاظ المنهاج: ٤/ ١٣٢؛ ومن حواشي الشيخ عبد الحميد الشرواني والشيخ أحمد بن قاسم العبادي على تحفة المحتاج بشرح المنهاج: ٩/ ٧٧ - ٧٨].

DELEGATING AUTHORITY TO THOSE UNDER THE CALIPH

تقليد الوزارة

o25.7 (Mawardi:) The authority delegated to a minister of state may be of two kinds, full or limitary.

(1) *Full* ministerial authority is when the caliph appoints as minister an individual who is entrusted with independently managing matters through his own judgement and implementing them according to his own personal reasoning (ijtihad).

Appointing such an individual is not legally invalid, for Allah Most High says, quoting His prophet Moses (Allah bless him and give him peace),

o25.7 (الماوردي:) الوزارة على ضربين: وزارة تفويض ووزارة تنفيذ.

(١) فأما وزارة التفويض فهو أن يستوزر الإمام من يفوض إليه تدبير الأمور برأيه وإمضاءها على اجتهاده. وليس يمتنع جواز هذه الوزارة. قال الله تعالى حكاية عن نبيه موسى عليه الصلاة والسلام:

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"And appoint for me a minister from my family, Aaron my brother; fortify me through him and have him share my task" (Koran 20:29–32),

﴿واجعل لي وزيراً من أهلي هارون أخي اشدد به أزري وأشركه في أمري﴾ [سورة طه: ٢٩].

and if valid respecting the task of prophethood, it is valid *a fortiori* regarding the function of the caliphate. Another reason is that the direction of the Islamic Community (Umma), which is the caliph's duty, cannot be fully conducted alone without delegating responsibility; for him to appoint a minister to participate therein is sounder than attempting to manage everything himself, a minister to help keep him from following mere personal caprice, that he may thus be further from error and safer from mistakes.

The conditions necessary for such a minister are the same as those for a caliph, excepting lineage alone (dis: o25.3(e)), for the minister must implement his views and execute his judgements, and must accordingly be capable of expert legal reasoning (ijtihad). He must also possess an additional qualification to those required for the caliphate, namely, by being specially qualified to perform the function he is appointed to.

فإذا جاز ذلك في النبوة كان في الإمامة أجوز، ولأن ما وُكل للإمام من تدبير الأمة لا يقدر على مباشرة جميعه إلا باستنابة، ونيابة الوزير المشارك له في تدبير أصح في تنفيذ الأمور من تفرده بها، ليستظهر به على نفسه، وبها يكون أبعد من الزلل وأمنع من الخلل.

ويعتبر في تقليد هذه الوزارة شروط الإمامة إلا النسب وحده لأنه ممضي الآراء ومنفذ الاجتهاد فاقتضى أن يكون على صفات المجتهدين. ويُحتاج فيها إلى شرط زائد على شروط الإمامة وهو أن يكون من أهل الكفاية فيما وكل إليه [. . .].

(2) *Limitary* ministerial authority is a lesser responsibility and has fewer conditions, since the role of personal judgement therein is confined to the views of the caliph and their implementation, this minister being, as it were, an intermediary between the caliph, his subjects, and their appointed rulers; delivering orders, performing directives, implementing judgements, informing of official appointments, mustering armies, and informing the caliph in turn of important events, that the minister may deal with them as the caliph orders. He is an assistant in carrying out matters and is not appointed to command them or have authority over them. Such a ministry does not require an appointment but only the caliph's permission.

(٢) وأما وزارة التنفيذ فحكمها أضعف وشروطها أقل؛ لأن النظر فيها مقصور على رأي الإمام وتدبيره، وهذا الوزير وسط بينه وبين الرعايا والولاة يؤدي عنه ما أمر وينفذ عنه ما ذكر ويمضي ما حكم ويخبر بتقليد الولاة وتجهيز الجيوش ويعرض عليه ما ورد من مهم وتجدد من حدث ملم ليعمل فيه ما يؤمر به. فهو معين في تنفيذ الأمور وليس بوال عليها ولا متقلداً لها [. . .] وليس تفتقر هذه الوزارة إلى تقليد، وإنما يراعى فيها مجرد الإذن.

o25.8 When the caliph appoints a ruler over a region or city, the ruler's authority may be of two kinds, general or specific. The general may in turn be of two types, authority in view of merit, which is invested voluntarily; and authority in view of siezure of power, invested out of necessity.

o25.8 وإذا قلد الخليفة أميراً على إقليم أو بلد كانت إمارته على ضربين عامة وخاصة. فأما العامة فعلى ضربين: إمارة استكفاء بعقد عن اختيار، وإمارة استيلاء بعقد عن اضطرار.

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o25.9 *Authority in view of merit* is that which is freely invested by the caliph through his own choice, and entails delegating a given limitary function and the use of judgement within a range of familiar alternatives. This investiture consists of the caliph appointing an individual to independently govern a city or region with authority over all its inhabitants and discretion in familiar affairs for all matters of government, including seven functions:

(1) raising and deploying armies on the frontiers and fixing their salaries, if the caliph has not already done so;

(2) reviewing laws and appointing judges and magistrates;

(3) collecting the annual rate (khiraj) from those allowed to remain on land taken by Islamic conquests, gathering zakat from those obliged to pay, appointing workers to handle it, and distributing it to eligible recipients;

(4) protecting the religion and the sacrosanct, preserving the religion from alteration and substitution;

(5) enforcing the prescribed legal meaures connected with the rights of Allah and men;

(6) leading Muslims at group and Friday prayers, whether personally or by representative;

(7) facilitating travel to the hajj for both pilgrims from the region itself and those passing through from elsewhere, that they may proceed to the pilgrimage with all necessary help;

(8) and if the area has a border adjacent to enemy lands, an eighth duty arises, namely to undertake jihad against enemies, dividing the spoils of battle among combatants, and setting aside a fifth (def: o10.3) for deserving recipients.

o25.9 فإمارة الاستكفاء التي تنعقد عن اختياره فتشتمل على عمل محدود ونظر معهود، والتقليد فيها أن يفوض إليه الخليفة إمارة بلد أو إقليم ولاية على جميع أهله ونظراً في المعهود من سائر أعماله [فيصير عام النظر فيما كان محدوداً من عمل ومعهوداً من نظر] فيشتمل نظره فيه على سبعة أمور: أحدها النظر في تدبير الجيوش وترتيبهم في النواحي وتقدير أرزاقهم إلا أن يكون الخليفة قدرها عليهم. . . والثاني النظر في الأحكام وتقليد القضاة والحكام. والثالث جباية الخراج وقبض الصدقات وتقليد العمال فيهما وتفريق ما استُحق منها. والرابع حماية الدين والذب عن الحريم ومراعاة الدين من تغيير أو تبديل. والخامس إقامة الحدود في حق الله وحقوق الآدميين. والسادس الإمامة في الجمع والجماعات حتى يؤم بها أو يستخلف عليها. والسابع تسيير الحجيج من عمله ومن سلكه من غير أهله حتى يتوجهوا معانين عليه. فإن كان هذا الإقليم ثغراً متاخماً للعدو اقترن بها ثامن وهو جهاد من يليه من الأعداء وقسم غنائمهم في المقاتلة وأخذ خمسها لأهل الخمس [. . .].

o25.10 *Authority in view of seizure of power*, invested out of necessity, is when a leader forcibly takes power in an area over which the caliph sub-

o25.10 وأما إمارة الاستيلاء التي تعقد عن اضطرار فهي أن يستولي الأمير بالقوة على بلاد يقلده الخليفة إمارتها ويتوض

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sequently confirms his authority and invests him with its management and rule. Such a leader attains political authority and management by takeover, while the caliph, by giving him authorization, is enabled to enforce the rules of the religion so that the matter may be brought from invalidity to validity and from unlawfulness to legitimacy. And if this process is beyond what is normally recognized as true investiture of authority with its conditions and rules, it yet preserves the ordinances of the Sacred Law and rules of the religion that may not be left vitiated and compromised (*al-Ahkam al-sultaniyya wa al-wilayat al-diniyya* (y87), 25–39).

إليه تدبيرها وسياستها، فيكون الأمير باستيلائه مستبداً بالسياسة والتدبير، والخليفة بإذنه منفذاً لأحكام الدين ليخرج من الفساد إلى الصحة ومن الحظر إلى الإباحة. وهذا وإن خرج عن عرف التقليد المطلق في شروطه وأحكامه ففيه من حفظ القوانين الشرعية وحراسة الأحكام الدينية ما لا يجوز أن يترك مختلاً مدخولاً . . . [محرر من الأحكام السلطانية والولايات الدينية ٢٥ - ٣٩].

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o26.0 THE CONCLUSION OF 'UMDAT AL-SALIK

o26.0 خاتمة كتاب عمدة السالك وعدة الناسك

o26.1 And Allah Most High and Glorious knows best what is correct (O: meaning that He knows best what actually corresponds to the truth, in word and deed, the author thereby denying the claim to know better. There is scholarly disagreement as to whether the truth (A: about the rule of Allah for a particular ruling) is really one or multiple (A: many scholars holding that *all* positions of qualified *mujtahid*s on a question are correct). In fact, it is one, the Imam who is right about it (Allah be well pleased with them all) receiving two rewards, one for his attempt and one for being correct, while the one who is not is mistaken, receiving a reward for his effort and being excused for his mistake. All of which applies to particular rulings of Sacred Law (furu'), as opposed to fundamentals of Islamic faith (usul, def: books u and v), in which the person wrong about them is guilty of serious sin, as is anyone who contradicts the tenets of the orthodox Sunni Community (Ahl al-Sunna wa al-Jama'a)).

o26.1 واللهُ سبحانهُ وتعالى أعلمُ بالصواب (أي بما يوافق الحق في الواقع من القول والفعل. وكان المصنف قصد بذلك التبري من دعوى الأعلمية. وهل الحق في الواقع واحد أو متعدد؟ فيه خلاف. والحق أنه واحد فمن وافقه من الأئمة رضي الله عنهم فهو المصيب وله أجران أجر على اجتهاده وأجر على إصابته. ومن لم يوافقه فهو مخطىء وله أجر على اجتهاده وهو معذور في خطئه وهذا في الفروع، وأما في الأصول فالمخطىء آثم كـ [المعتزلة و] كل من خالف أهل السنة والجماعة).

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BOOK P

ENORMITIES

كتاب الكبائر

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p0.0 THE AUTHOR'S INTRODUCTION | مقدمة المؤلف p0.0

(n: The first of the books translated as appendices to our basic text *'Umdat al-salik* concerns the *enormities* alluded to above in the context of court testimony

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(dis: o24.3), and has been edited from the *Kitab al-kaba'ir* [Book of enormities] of Imam Dhahabi, who defines an *enormity* as any sin entailing either a threat of punishment in the hereafter explicitly mentioned by the Koran or hadith, a prescribed legal penalty (hadd), or being accursed by Allah or His messenger (Allah bless him and give him peace).)

p0.1 In the name of Allah, Most Merciful and Compassionate.

O Lord, facilitate and help. The sheikh, Imam, and hadith master (hafiz, def: w48.2(end)) Shams al-Din Muhammad ibn Ahmad ibn 'Uthman Dhahabi (may Allah forgive him) said: Praise be to Allah for true faith in Him, His books, messengers, angels, and decrees. Allah bless our prophet Muhammad, his folk, and those who support him, with a lasting blessing that will grant us the Abode of Permanence near to Him.

This is a book useful in knowing the enormities, both in general and in detail. May Allah by His mercy enable us to avoid them. Allah Most High says,

"If you avoid the enormities of what you have been forbidden, We shall acquit you of your wrongdoings and admit you to a generous place to enter" (Koran 4:31).

In this text, Allah Most High promises whoever avoids the enormities to admit him to paradise. The Prophet (Allah bless him and give him peace) said,

"The five prescribed prayers, and from one Friday prayer to another entail forgiveness for what is between them as long as you do not commit the enormities."

So we are obliged to learn what they are, that the Muslim may avoid them.

p0.1 بسم الله الرحمن الرحيم.

رب يسر وأعن. قال الشيخ الإمام الحافظ شمس الدين محمد بن أحمد بن عثمان الذهبي غفر الله له:

الحمد لله على الإيمان به وبكتبه ورسله وملائكته وأقداره، وصلى الله على نبينا محمد وآله وأنصاره صلاة دائمة تحلنا دار القرار في جواره.

هذا كتاب نافع في معرفة الكبائر إجمالاً وتفصيلاً رزقنا الله اجتنابها برحمته.

قال الله تعالى: ﴿إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ وَنُدْخِلْكُمْ مُدْخَلًا كَرِيمًا﴾ [النساء: ٣١]. فقد تكفل الله تعالى بهذا النص لمن اجتنب الكبائر بأن يدخله الجنة.

وقال النبي ﷺ:

«الصلوات الخمس، والجمعة إلى الجمعة كفارة لما بينهن ما لم تغش الكبائر» [رواه مسلم].

فتعين علينا الفحص عن الكبائر ما هي لكي يجتنبها المسلم.

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p1.0 ASCRIBING ASSOCIATES TO ALLAH MOST HIGH (SHIRK)

p1.0 الشرك بالله تعالى

p1.1 *Ascribing associates to Allah Most High* means to hold that Allah has an equal, whereas

p1.1 وهو أن تجعل لله نداً وهو

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He has created you, and to worship another with Him, whether it be a stone, human, sun, moon, prophet, sheikh, jinn, star, angel, or other.

خلقك، وتعبد معه غيره من حجر أو بشر أو شمس أو قمر، أو نبي أو شيخ أو جني أو نجم أو ملك أو غير ذلك.

p1.2 Allah Most High says:

(1) "Allah does not forgive that any should be associated with Him, but forgives what is other than that to whomever He wills" (Koran 4:48).

(2) "Surely, whoever ascribes associates to Allah, Allah has forbidden him paradise, and his refuge is hell" (Koran 5:72).

(3) "Of a certainty, worshipping others with Allah is a tremendous injustice" (Koran 31:13).

p1.2 قال الله تعالى:

﴿إِنَّ اللَّهَ لا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ﴾ [النساء: ٤٧].

وقال: ﴿إِنَّهُ مَنْ يُشْرِكْ بِاللَّهِ فَقَدْ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَمَأْوَاهُ النَّارُ﴾ [المائدة: ٧٢].

وقال: ﴿إِنَّ الشِّرْكَ لَظُلْمٌ عَظِيمٌ﴾ [لقمان: ١٣].

p1.3 The Koranic verses concerning this are very numerous, it being absolutely certain that whoever ascribes associates to Allah and dies in such a state is one of hell's inhabitants, just as whoever believes in Allah and dies as a believer is one of the inhabitants of paradise, even if he should be punished first.

p1.3 والآيات في ذلك كثيرة فمن أشرك بالله ثم مات مشركاً فهو من أصحاب النار قطعاً، كما أن من آمن بالله ومات مؤمناً فهو من أصحاب الجنة وإن عذب.

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p2.0 KILLING A HUMAN BEING

p2.0 قتل النفس

p2.1 Allah Most High says:

(1) "Whoever intentionally kills a believer, his recompense shall be hell, abiding therein forever, and Allah shall be wroth with him, damn him, and ready for him a painful torment" (Koran 4:93).

(2) "Whoever takes a life other than to retaliate for a killing or for corruption in the land is as if he had slain all mankind" (Koran 5:32).

p2.1 قال الله تعالى: ﴿وَمَنْ يَقْتُلْ مُؤْمِناً مُتَعَمِّداً فَجَزَاؤُهُ جَهَنَّمُ خَالِداً فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَاباً عَظِيماً﴾ [النساء: ٩٣].

وقال تعالى: ﴿مَنْ قَتَلَ نَفْساً بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعاً﴾ [المائدة: ٣٢].

p2.2 The Prophet (Allah bless him and give him peace) said:

p2.2 وقال عليه الصلاة والسلام:

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"When two Muslims meet with drawn swords, both the slayer and the slain go to hell." Someone said, "O Messenger of Allah, that is for the slayer. But why the slain?" And he replied, "Because he meant to kill the other."

«إذا التقى المسلمانِ بسيفيْهما فالقاتلُ والمقتول في النار. قيل يا رسولَ اللهِ هذا للقاتل فما بال المقتول؟ قال: إنه كان حريصا على قتل صاحبه» [رواه البخاري].

*

p3.0 SORCERY

p3.0 السحر

p3.1 Sorcery is an enormity because the sorcerer must necessarily disbelieve (dis: x136), and the accursed Devil has no other motive for teaching a person witchcraft than that he might thereby ascribe associates to Allah (shirk).

p3.1 لأن الساحر لا بد وأن يكفر، وما للشيطان الملعون غرض في تعليمه الإنسان السحر إلا ليشرك به.

p3.2 Allah Most High says:

(1) "A sorcerer will never prosper wherever he goes" (Koran 20:69).

(2) "... But the devils disbelieved, teaching people sorcery" (Koran 2:102).

And Allah Most High says, concerning Harut and Marut,

(3) "The two do not teach anyone before telling them, 'We are only a temptation, so be not unbelievers,' but they learn from these two that which they use to separate a man from his wife" (Koran 2:102).

p3.2 قال الله تعالى:
﴿وَلَا يُفْلِحُ السَّاحِرُ حَيْثُ أَتَىٰ﴾ [طه: ٦٩].

وقال الله تعالى: ﴿وَلَٰكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ﴾ [البقرة: ١٠٢].

وقال الله تعالى عن هاروت وماروت:
﴿وَمَا يُعَلِّمَانِ مِنْ أَحَدٍ حَتَّىٰ يَقُولَا إِنَّمَا نَحْنُ فِتْنَةٌ فَلَا تَكْفُرْ فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بِهِ بَيْنَ الْمَرْءِ وَزَوْجِهِ...﴾ [البقرة: ١٠٢].

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p4.0 NOT PERFORMING THE PRAYER

p4.0 ترك الصلاة

p4.1 Allah Most High says:

(1) But a generation followed them who dissipated the prayer and pursued [their] lusts, and they shall find *Ghayy* [n: a "valley in hell" (*Tafsir*

p4.1 قال الله تعالى: ﴿فَخَلَفَ مِنْ بَعْدِهِمْ خَلْفٌ أَضَاعُوا الصَّلَاةَ وَاتَّبَعُوا الشَّهَوَاتِ فَسَوْفَ يَلْقَوْنَ غَيًّا. إِلَّا مَنْ

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al-Jalalayn (y77), 402], save he who repents..." (Koran 19:59–60).

(2) "Woe to those who pray, unmindful of their prayers" (Koran 107:4–5).

(3) " 'What has brought you to hell?' And they shall say, 'We were not of those who prayed' " (Koran 74:42–43).

p4.2 The Prophet (Allah bless him and give him peace) said,

"The agreement that is between us and them is the prayer: whoever leaves it has disbelieved [dis: w18.2–5]."

تاب. . . ﴾ [مريم: ٥٩ - ٦٠].

وقال تعالى: ﴿فَوَيْلٌ لِلْمُصَلِّينَ الَّذِينَ هُمْ عَنْ صَلاتِهِمْ سَاهُونَ﴾ [الماعون: ٤ - ٥].

وقال تعالى: ﴿مَا سَلَكَكُمْ فِي سَقَرَ. قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ. . . ﴾ [المدثر: ٤٢ - ٤٣].

p4.2 وقال عليه الصلاة والسلام: «العهدُ الذي بيننا وبينهم الصلاة فمن تركها فقد كفر» [رواه الترمذي والنسائي وأحمد وابن ماجه والحاكم].

*

p5.0 NOT PAYING ZAKAT

p5.1 Allah Most High says:

(1) "Woe unto polytheists, who do not pay zakat and are disbelievers in the hereafter" (Koran 41:6–7).

(2) "Those who hoard gold and silver, spending it not in the way of Allah, give them glad tidings of a painful torment, the day they are roasted upon it in the fire of hell" (Koran 9:34–35).

p5.0 منع الزكاة

p5.1 قال الله تعالى: ﴿وَوَيْلٌ لِلْمُشْرِكِينَ، الَّذِينَ لا يُؤْتُونَ الزَّكَاةَ وَهُمْ بِالآخِرَةِ هُمْ كَافِرُونَ﴾ [فصلت: ٦-٧].

وقال: ﴿وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالفِضَّةَ وَلا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ، يَوْمَ يُحْمَى عَلَيْهَا فِي نَارِ جَهَنَّمَ. . . ﴾ [التوبة: ٣٤-٣٥].

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p6.0 SHOWING DISRESPECT TO ONE'S PARENTS

p6.1 Allah Most High says:

(1) "Your Lord decrees that you shall worship none but Him and treat your parents well,

p6.0 عقوق الوالدين

p6.1 قال الله عز وجل: ﴿وَقَضَى رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ

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and if one or both of them reach old age with you, say not 'Uff!' to them nor upbraid them, but speak noble words and lower the wing of humility to them out of mercy" (Koran 17:23–24).

(2) "And We enjoin man to be good to his parents" (Koran 29:8).

إحسانًا. إمَّا يَبْلُغَنَّ عِنْدَكَ الكِبَرَ أَحَدُهُمَا أَوْ كِلاَهُمَا فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلاً كَرِيمًا. وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ. . . ﴾ [الإسراء: ٢٣ - ٢٤].

وقال تعالى: ﴿وَوَصَّيْنَا الإِنْسَانَ بِوَالِدَيْهِ حُسْنًا. . . ﴾ [العنكبوت: ٨].

p6.2 The Prophet (Allah bless him and give him peace) said,

"Shall I not tell you of the worst of the enormities? ..."

and one of those he mentioned was undutiful behavior to one's parents.

p6.2 وقال النبي ﷺ: «ألا أنبئكم بأكبر الكبائر؟. . .» فذكر منها عقوق الوالدين [متفق عليه].

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p7.0 ACCEPTING USURIOUS GAIN (RIBA) (def: k3)

p7.0 أكل الربا

p7.1 Allah Most High says:

"O you who believe: fear Allah and forgo what remains of usurious gain if you are believers. If you will not, then know of a declaration of war [against you] from Allah and His messenger" (Koran 2:278–79).

p7.1 قال الله تعالى: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنْ كُنْتُمْ مُؤْمِنِينَ فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ. . . ﴾ [البقرة: ٢٧٨ - ٢٧٩].

p7.2 The Prophet (Allah bless him and give him peace) said.

"May Allah curse him who eats of usurious gain (riba) or feeds it to another [A: *curse* (la'n) meaning to put someone far from the divine mercy]."

p7.2 وقال ﷺ: «لعن اللهُ آكلَ الرِّبا وموكلَهُ» [رواه مسلم].

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p8.0 WRONGFULLY CONSUMING AN ORPHAN'S PROPERTY

p8.0 أكل مال اليتيم ظلماً

p8.1 Allah Most High says:

(1) "Verily, those who wrongfully eat the property of orphans but fill their bellies with fire, and shall roast in a blaze" (Koran 4:10).

(2) "Approach not the orphan's property, save in exchange for that which is better" (Koran 6:152).

p8.1 قال الله تعالى: ﴿إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلَوْنَ سَعِيرًا﴾ [النساء: ١٠].

وقال تعالى: ﴿وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ...﴾ [الأنعام: ١٥٢].

p8.2 If the orphan's guardian is poor and consumes some of his charge's property without exceeding what is permissible, there is no harm in it (A: *no harm* (la ba's) being a technical term in Sacred Law meaning that it is better not to). What is in excess of the permissible is absolutely unlawful. (N: Scholars say that the guardian may lawfully only take whichever is less: the amount he needs, or else the wage typically received for work comparable to that performed for the orphan.) The criterion of the *permissible* is what is customary among people who are true believers free from base, ulterior motives.

p8.2 وكل وليّ ليتيم كان فقيراً فأكل بالمعروف فلا بأس عليه، وما زاد على المعروف فسحت حرام (ح: قال العلماء يأكل الأقل من حاجته وأجرة مثل ما عمل به لليتيم) والمعروف يُرجع فيه إلى عرف الناس المؤمنين الخالين من الأغراض الخبيثة.

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p9.0 LYING ABOUT THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE)

p9.0 الكذب على النبي ﷺ

p9.1 Some scholars hold that lying about the Prophet (Allah bless him and give him peace) is unbelief (kufr) that puts one beyond the pale of Islam. There is no doubt that a premeditated lie against Allah and His messenger that declares something which is unlawful to be permissible or something permissible to be unlawful is pure unbelief. The question (A: as to when it is an enormity rather than outright unbelief) only concerns lies about other than that.

p9.1 قد ذهب طائفة من العلماء إلى أن الكذب على رسول الله ﷺ كفر ينقل عن الملة، ولا ريب أن تعمد الكذب على الله ورسوله في تحليل حرام أو تحريم حلال كفر محض؛ وإنما الشأن في الكذب عليه في سوى ذلك.

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p9.2 The Prophet (Allah bless him and give him peace) said:

(1) "A lie about me is not the same as a lie about someone else: whoever intentionally lies about me shall take a place for himself in hell."

(2) "Whoever relates words purportedly from me, thinking it is a lie, is a liar."

p9.2 قال النبي ﷺ: «إنَّ كذباً عليَّ ليس ككذب على غيري: مَن كذب عليَّ عامداً فليتبوأ مقعدَهُ من النار» [رواه البخاري].

وقال: «مَن رَوَى عنّي حديثاً وهو يرى أنه كذبٌ فهو أحد الكاذبين» [رواه مسلم].

p9.3 It is clear from this that narrating a forged (mawdu') hadith is not permissible.

p9.3 فلاح بهذا أنّ رواية الموضوع لا تحلّ.

p9.4 (Ibn Kathir:) As for detecting forged hadiths, there are many signs that enable one to do so, such as internal evidence of forgery in wording or content, including poor grammar, corrupt meaning, the mention of incredible rewards for inconsiderable efforts, or inconsistency with what is established in the Koran and rigorously authenticated (sahih) hadith. It is not permissible for anyone to relate such a hadith except by way of condemning it, to warn one of the ignorant public or common people who might be deceived by it. There are many types of individuals who forge hadiths, including those with corrupt convictions about basic tenets of Islamic faith, as well as devotees who believe they are doing good by making up hadith-like stories that encourage others to do good, avoid bad, or perform meritorious acts, that such stories may be acted upon (*al-Bahith al-hathith sharh Ikhtisar 'ulum al-hadith* (y61), 78).

p9.4 (ابن كثير:) أما معرفة الموضوع المختلق المصنوع فعلى ذلك شواهد كثيرة: منها إقرار وضعه على نفسه، قالاً أو حالاً، ومن ذلك ركاكة ألفاظه، وفساد معناه، أو مجازفة فاحشة، أو مخالفة لما ثبت في الكتاب والسنة الصحيحة. فلا تجوز روايته لأحد من الناس، إلا على سبيل القدح فيه، ليحذره من يغترُّ به من الجهلة والعوام والرعاع. والواضعون أقسام كثيرة: منهم زنادقة، ومنهم متعبدون يحسبون أنهم يحسنون صنعاً، يضعون أحاديث فيها ترغيب وترهيب، وفي فضائل الأعمال ليُعْمَل بها [نقل من الباحث الحثيث شرح اختصار علوم الحديث: ٧٨].

p9.5 (n: Having discussed lies and forgeries, we must strictly distinguish them from the hadith category called *not well authenticated* (da'if, lit. "weak"), so-termed because of such factors as having a channel of transmission containing a narrator whose memory was poor, one who was unreliable, unidentified by name, or for other reasons. Such hadiths legally differ from forgeries in the permissibility of ascribing them to the Prophet (Allah bless him and give him peace) and in other ways discussed at w48 below.)

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p10.0 BREAKING ONE'S FAST DURING RAMADAN

p10.0 إفطار رمضان

p10.1 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever breaks a fast-day of Ramadan without an excuse or dispensation could not requite it by fasting a lifetime, were he to do so [A: meaning that making up that day, while obligatory, does not remove the sin, though repentance does]."

The above hadith is not well authenticated.

(2) "The five prescribed prayers, and from one Friday prayer to another or from Ramadan to Ramadan, expiate the sins between them as long as the enormities are avoided."

(3) "Islam is based on five things: testifying that there is no god but Allah and that Muhammad is the Messenger of Allah, performing the prayer, giving zakat, fasting Ramadan, and the pilgrimage to the House (Kaaba)."

p10.1 قال النبي ﷺ: «من أفطر يوماً من رمضان من غير عذر ولا رخصة لم يقضه صيامُ الدهر وإن صامَهُ» [رواه الترمذي].

هذا لم يثبت.

وقال عليه الصلاة والسلام: «الصلوات الخمس، والجمعة إلى الجمعة ورمضانُ إلى رمضان كفارات لما بينهن ما اجْتُنِبَت الكبائر» [رواه مسلم].

وقال عليه الصلاة والسلام: «بُنِيَ الإسلام على خمسٍ: شهادة أن لا إله إلا الله وأنَّ محمداً رسول الله، وإقام الصلاة وإيتاء الزكاة، وصوم رمضان وحج البيت» [متفق عليه].

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p11.0 FLEEING FROM COMBAT IN JIHAD

p11.0 الفرار من الزحف

p11.1 Allah Most High says,

"On that day, whoever turns his back to them, unless pretending flight in order to reattack, or separating to join another unit, will bear the wrath of Allah and his refuge will be hell, a terrible end" (Koran 8:16).

p11.1 قال الله تعالى: ﴿وَمَنْ يُوَلِّهِمْ يَوْمَئِذٍ دُبُرَهُ إِلَّا مُتَحَرِّفاً لِقِتَالٍ أَوْ مُتَحَيِّزاً إِلَى فِئَةٍ فَقَدْ بَاءَ بِغَضَبٍ مِنَ اللَّهِ وَمَأْوَاهُ جَهَنَّمُ وَبِئْسَ الْمَصِيرُ﴾ [الأنفال: ١٦].

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p12.0 FORNICATION

p12.1 Allah Most High says:

(1) "Approach not fornication, it is surely an indecency and evil as a way" (Koran 17:32).

(2) "The fornicator and fornicatress, scourge them each a hundred stripes and let not pity for them take you" (Koran 24:2).

(3) "The fornicator shall not wed other than a fornicatress or idolatress. The fornicatress, none shall wed her but a fornicator or idolator. That is unlawful for believers" (Koran 24:3).

(n: The latter verse "was revealed when some poor Muslim emigrants in Medina were considering marrying the polytheists' prostitutes, who were wealthy, so that the prostitutes could provide for them. One opinion is that the Koranic prohibition concerned these people alone. A second position is that it was a general prohibition, but was superseded by the revelation of the subsequent verse,

'And marry those of you who are without spouses' (Koran 24:32)."

(*Tafsir al-Jalalayn* (y77), 457))

p12.2 The Prophet (Allah bless him and give him peace) said,

"Whoever fornicates or drinks wine, Allah takes his faith from him as a man takes a shirt off over his head."

p12.0 الزنا

p12.1 قال الله تعالى: ﴿وَلَا تَقْرَبُوا الزِّنَا إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا﴾ [الإسراء: ٣٢].

وقال تعالى: ﴿الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ ...﴾ [النور: ٢]

وقال: ﴿الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ﴾ [النور: ٣]

«نزل ذلك لما همّ فقراء المهاجرين أن يتزوجوا بغايا المشركين وهن موسرات لينفقن عليهم. فقيل التحريم خاص بهم، وقيل عام ونُسخ بقوله تعالى: ﴿وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ﴾ [النور: ٣٢]» [نقل من تفسير الجلالين، ٤٥٧].

p12.2 وروي عن النبي ﷺ قال: «من زنى أو شرب الخمر نزع الله منه الإيمان كما يخلع الإنسان القميص من رأسه» [رواه الحاكم].

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p13.0 THE LEADER WHO MISLEADS HIS FOLLOWING, THE TYRANT AND OPPRESSOR

p13.1 Allah Most High says:

(1) "The dispute [lit. "way against"] is only

p13.0 الإمامُ الغاشُّ لرعيته الظالم الجبار

p13.1 قال الله تعالى: ﴿إِنَّمَا السَّبِيلُ

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with those who oppress people and wrongfully commit aggression in the land: these will have a painful torment" (Koran 42:42).

(2) "They did not forbid each other the evil that they did, and how wicked was what they would do" (Koran 5:79).

p13.2 The Prophet (Allah bless him and give him peace) said:

(1) "All of you are trustees, and each is responsible for those entrusted to his care."

(2) "Any superior who misrules his followers shall go to hell."

(3) "There will come corrupt, tyrannous rulers: whoever confirms their lies and assists them in their oppression is not of me, nor I of him, and shall not meet me at my watering place in paradise."

(4) "He who shows no mercy will not be shown any."

(5) "The worst of your rulers shall be those whom you detest and who detest you, whom you curse and who curse you." They said, "O Messenger of Allah, can we not throw them out?" And he replied, "No, not as long as they maintain the prescribed prayer [dis: o25.3(a(A:))] among you."

(6) "You'll be anxious to lead, and this will be a source of remorse to you on the Day of Judgement."

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p14.0 DRINKING

p14.1 Allah Most High says:

(1) "They will ask you about wine and gambling. Say: 'There is great sin therein' " (Koran 2:219).

عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ﴾ [الشورى: ٤٢].

وقال تعالى: ﴿كَانُوا لَا يَتَنَاهَوْنَ عَنْ مُنْكَرٍ فَعَلُوهُ لَبِئْسَ مَا كَانُوا يَفْعَلُونَ﴾ [المائدة: ٧٩].

p13.2 وقال النبي ﷺ: «كلكم راعٍ وكلكم مسؤولٌ عن رعيته...» [رواه البخاري].

وقال: «أيما راع غش رعيته فهو في النار» [رواه الطبراني].

وقال: سيكون أمراء فسقة جورة؛ فمن صدقهم بكذبهم، وأعانهم على ظلمهم فليس مني ولستُ منه ولن يرد عليّ الحوض» [رواه الحاكم].

وقال عليه الصلاة والسلام: «من لا يَرْحم لا يُرْحم» [رواه البخاري].

وقال: «شرار أئمتكم الذين تبغضونهم ويبغضونكم وتلعنونهم ويلعنونكم. قالوا يا رسول الله، أفلا ننابذهم؟ قال لا ما أقاموا فيكم الصلاة» [رواه مسلم].

وقال النبي ﷺ: «ستحرصون على الإمارة وستكون ندامةً يوم القيامة» [رواه البخاري].

p14.0 شرب الخمر

p14.1 قال الله تعالى: ﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ...﴾ [البقرة: ٢١٩].

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(2) " O you believe: wine, gambling, idols, and fortune-telling arrows are but filth of the Devil's handiwork, so shun them..." (Koran 5:90).

وقال: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ. . .﴾ [المائدة: ٩٠ - ٩١].

p14.2 The Prophet (Allah bless him and give him peace) said:

(1) "Scourge whoever drinks wine. If he drinks it again, scourge him again. If he drinks it again, scourge him again. If he drinks it a fourth time, kill him." (N: The ruling of this hadith was later superseded, for the Prophet (Allah bless him and give him peace) was brought a drunkard for a fourth time, but did not kill him, showing that execution had been superseded, though the hadith remains a proof that the crime of drunkenness is an enormity.)

(2) "Allah has cursed wine, and whoever drinks it, pours it, sells it, buys it, presses it for another, presses it for himself, carries it, accepts its delivery, or eats its price."

(3) "Whoever drinks wine in this world shall be forbidden it in the next."

p14.2 وقال ﷺ: «من شرب الخمر فاجلدوه، فإن عاد فاجلدوه، فإن شربها فاجلدوه، فإن شربها الرابعة فاقتلوه» [رواه الترمذي] (ح: وهذا الحديث منسوخ لأن النبي ﷺ أتي إليه بالسكير في المرة الرابعة فلم يقتله فدل على نسخ القتل، لكن الدلالة على عظم جريمة السكر باقية).

- «لعن الله الخمر وشاربها وساقيها وبائعها ومبتاعها وعاصرها ومعتصرها، وحاملها والمحمولة إليه وآكل ثمنها» [رواه أبو داود والحاكم؛ أضافه هنا المترجم من الجامع الصغير للسيوطي: حديث رقم ٧٢٥٣].

وقال عليه الصلاة والسلام: «من شرب الخمر في الدنيا حرمها في الآخرة» [متفق عليه].

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p15.0 ARROGANCE, PRIDE, CONCEIT, VANITY, AND HAUGHTINESS

p15.0 الكبر والفخر والخيلاء والعجب والتيه

p15.1 Allah Most High says:

(1) "Moses said, 'I surely seek refuge in my Lord and yours from every arrogant person who disbelieves in the Day of Reckoning' " (Koran 40:27).

(2) "Assuredly, Allah loves not those who hold aloof out of pride" (Koran 16:23).

(3) "Such is the Final Abode. We grant it to those who seek not exaltation in the land, nor corruption" (Koran 28:83).

p15.1 قال الله تعالى: ﴿وَقَالَ مُوسَى إِنِّي عُذْتُ بِرَبِّي وَرَبِّكُمْ مِنْ كُلِّ مُتَكَبِّرٍ لَا يُؤْمِنُ بِيَوْمِ الْحِسَابِ﴾ [غافر: ٢٧].

- وقال تعالى: ﴿إِنَّهُ لَا يُحِبُّ الْمُسْتَكْبِرِينَ﴾ [النحل: ٢٣].

- قال الله تعالى: ﴿تِلْكَ الدَّارُ الْآخِرَةُ نَجْعَلُهَا لِلَّذِينَ لَا يُرِيدُونَ عُلُوًّا فِي الْأَرْضِ وَلَا فَسَادًا﴾ [القصص: ٨٣].

(4) "Turn not your cheek from people out of pride, nor walk haughtily through the land, for Allah loves no one who is conceited and boastful" (Koran 31:18).

- وقال تعالى: ﴿وَلَا تُصَعِّرْ خَدَّكَ لِلنَّاسِ وَلَا تَمْشِ فِي الْأَرْضِ مَرَحًا إِنَّ اللَّهَ لَا يُحِبُّ كُلَّ مُخْتَالٍ فَخُورٍ﴾ [لقمان: ١٨].

p15.2 The Prophet (Allah bless him and give him peace) said:

(1) "Tyrants and the arrogant will be raised on the Last Day as grain strewn underfoot that people will walk upon."

(2) "No one with the slightest particle of arrogance in his heart will enter paradise." A man remarked, "But a man likes his clothes to be nice and his sandals good." The Prophet (Allah bless him and give him peace) said, "Verily, Allah is beautiful and loves beauty. Arrogance is refusing to acknowledge what is right and considering others beneath one."

(3) Allah Most High says, "Greatness is My garment and haughtiness My mantle: whoever vies with Me for them I will throw into hell."

(4) Salama ibn al-Akwa' recounts that a man was eating with his left hand in the presence of the Prophet (Allah bless him and give him peace). The Prophet told him, "Eat with your right," to which the man replied, "I cannot," though nothing stopped him but arrogance. The Prophet said, "May you not be able to." And the man could never lift his right hand to his mouth again.

p15.2 وقال ﷺ: «يُحشر الجبّارون والمتكبرون يوم القيامة أمثال الذر، يطؤهم الناس» [رواه الترمذي].

وقال: «لا يدخل الجنة من كان في قلبه مثقال ذرة من الكبر» فقال رجلٌ: «إن الرجل يحب أن يكون ثوبه حسناً ونعله حسنة» فقال: «إن الله جميل يحب الجمال، الكبر بطر الحق وغمط الناس» [رواه مسلم].

وقال ﷺ: «يقول الله تعالى: العظمة إزاري والكبرياء ردائي فمن نازعني فيهما ألقيته في النار» [رواه مسلم].

وقال سلمة بن الأكوع: أكل رجل عند النبي ﷺ بشماله فقال: كلْ بيمينك قال: لا أستطيعُ. ما منعه إلا الكبر. قال: «لا استطعت» فما رفعها إلى فيه بعد [رواه مسلم].

p15.3 The wickedest arrogance is that of someone who exalts himself over people because of his learning and gloats to himself about his superiority. The knowledge of such a person is of absolutely no benefit to him. Whoever learns Sacred Knowledge for the sake of the next world is unsettled by his learning, his heart is humbled and his ego lowered. Such a person lies in wait for his selfishness and never gives it free rein. He constantly takes his ego to task and corrects it. Were he to neglect it, it would diverge from the right path and destroy him. The person who seeks knowledge to take pride in it or to gain a position of leadership,

p15.3 [قلت:] وأشرُّ الكبر من تكبر على العباد بعلمه، وتعاظم في نفسه بفضيلته. فإن هذا لم ينفعه علمه، فإن من طلب العلم للآخرة كسره علمُهُ وخشع قلبه واستكانت نفسه، وكان على نفسه بالمرصاد، فلم يفتر عنها، بل يحاسبها كل وقت ويثقفها؛ فإن غفل عنها جمحت عن الطريق المستقيم وأهلكته. ومن طلب العلم للفخر والرياسة، ونظر إلى المسلمين شزراً

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looking disdainfully at other Muslims, thinking them fools and making light of them—all this is the most enormous arrogance, and "no one with the slightest particle of arrogance in his heart will enter paradise."

وتحامق عليهم، وازدرى بهم؛ فهذا من أكبر الكبر، ولا يدخل الجنة من في قلبه مثقال ذرة من كبر.

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p16.0 BEARING FALSE WITNESS

p16.0 شهادة الزور

p16.1 Allah Most High says,

"Shun the abomination of idols, and shun false testimony" (Koran 22:30).

p16.1 قال الله تعالى: ﴿فَاجْتَنِبُوا الرِّجْسَ مِنَ الأَوْثَانِ وَاجْتَنِبُوا قَوْلَ الزُّورِ﴾ [الحج: ٣٠].

p16.2 The Prophet (Allah bless him and give him peace) said:

(1) "On the Day of Judgement, the feet of the person who bore false witness will not stir from their place before their owner is condemned to hell."

(2) "Shall I tell you of the worst enormities?—worshipping others with Allah, showing disrespect to parents, giving a false statement, and testifying to the truth of a falsehood." And he kept repeating it until we were telling ourselves [N: out of sympathy for him because of the strain of repeating it], "If only he would be silent."

p16.2 وفي الحديث: «لا تزول قدما شاهد الزور يوم القيامة حتى تجب له النار» [رواه الحاكم].

وقال ﷺ: «ألا أنبئكم بأكبر الكبائر: الإشراك بالله، وعقوق الوالدين، وقول الزور، وشهادة الزور». فمازال يكرّرها حتى قلنا: ليته سكت رح: اشفاقاً عليه لما لحقه من التعب بتكرارها) [رواه البخاري ومسلم].

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p17.0 SODOMY AND LESBIANISM

p17.0 اللواط

p17.1 In more than one place in the Holy Koran, Allah recounts to us the story of Lot's people, and how He destroyed them for their wicked practice. There is consensus among both Muslims and the followers of all other religions that sodomy is an enormity. It is even viler and uglier than adultery.

p17.1 قد قصّ الله علينا قصة قوم لوط في غير ما موضع من كتابه العزيز وأنه أهلكهم بفعلهم الخبيث. وأجمع المسلمون وأهل الملل أن اللوط من الكبائر. واللواط أفحش من الزنا وأقبح.

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p17.2 Allah Most High says:

"Do you approach the males of humanity, leaving the wives Allah has created for you? But you are a people who transgress" (Koran 26:165–66).

p17.2 قال الله تعالى: ﴿أَتَأْتُونَ الذُّكْرَانَ مِنَ الْعَالَمِينَ وَتَذَرُونَ مَا خَلَقَ لَكُمْ رَبُّكُمْ مِنْ أَزْوَاجِكُمْ بَلْ أَنْتُمْ قَوْمٌ عَادُونَ﴾ [الشعراء: ١٦٥ - ١٦٦].

p17.3 The Prophet (Allah bless him and give him peace) said:

(1) "Kill the one who sodomizes and the one who lets it be done to him."

(2) "May Allah curse him who does what Lot's people did."

(3) "Lesbianism by women is adultery between them."

p17.3 قال النبي ﷺ: «اقتلوا الفاعلَ والمفعولَ به» [رواه الترمذي].

وعنه ﷺ قال: «لعن الله من عَمِلَ عملَ قوم لوطٍ» [رواه ابن حبان].

ويروى عن النبي ﷺ أنه قال: «سحاق النساء زناً بينهن» [رواه الطبراني].

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p18.0 CHARGING A WOMAN WHO COULD BE CHASTE (def: o13.2) WITH ADULTERY

p18.0 قذف المحصنات

p18.1 Allah Most High says:

(1) "Those who accuse believing women, unmindful though innocent, are cursed in this world and the next and shall receive a painful torment" (Koran 24:23).

(2) "Those who accuse innocent women without producing four witnesses, scourge them eighty stripes" (Koran 24:4).

p18.1 قال الله تعالى: ﴿إِنَّ الَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ لُعِنُوا فِي الدُّنْيَا وَالْآخِرَةِ وَلَهُمْ عَذَابٌ عَظِيمٌ﴾ [النور: ٢٣].

وقال: ﴿وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً...﴾ [النور: ٤].

p18.2 The Prophet (Allah bless him and give him peace) said,

"Avoid the seven heinous sins..."

and he mentioned charging believing women, unmindful though innocent, with adultery.

p18.2 وقال ﷺ: «اجتنبوا السبع الموبقات...» فذكر منها قذف المحصنات الغافلات المؤمنات.

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p18.3 As for someone who accuses the Mother of the Faithful 'A'isha of adultery after the revelation from heaven of her innocence (Koran 24:11–12), such a person is an unbeliever (kafir) denying the Koran and must be killed.

p18.3 أمـا من قذف أم المـؤمنين عائشـة رضي الله عنهـا بعد نزول براءتها من السماء فهو كافر مكذب للقرآن فيُقتَل.

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p19.0 MISAPPROPRIATING SPOILS OF WAR, MUSLIM FUNDS, OR ZAKAT

p19.0 الغلول من الغنيمـة ومن بيت المال والزكاة

p19.1 Allah Most High says:

"No prophet has been given to misappropriate wealth. Whoever does so shall bring what they have taken on the Day of Judgement" (Koran 3:161).

p19.1 قال الله تعـالى: ﴿وَمَـا كَانَ لِنَبِيٍّ أَنْ يَغُلَّ، وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ﴾ [آل عمران: ١٦١].

p19.2 The Prophet (Allah bless him and give him peace) said:

"... By Allah, none of you shall wrongfully take something save that he will meet Allah carrying it on Judgement Day, and I swear I will not recognize any of you who is carrying a grunting camel, lowing cow, or bleating sheep when you meet Allah." Then he lifted his hands and said, "O Allah, have I told them?"

p19.2 قال النبي ﷺ: «... والله لا يأخذ أحدٌ منكم شيئاً بغير حق إلاّ لقيَ اللهَ يحملُهُ يومَ القيـامةِ. [فلأعرفنَّ (ت: وفي روايـة مشهورة:] فلا أعرفنَّ) رجلاً منكم لقي اللهَ يحمل بعيراً له رغاء، أو بقرة لها خوار، أو شاة تيعـر». ثم رفع يديه فقال: «اللهم هل بلغت» [رواه البخاري].

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p20.0 TAKING PEOPLE'S PROPERTY THROUGH FALSEHOOD

p20.0 الظلم بأخـذ أموال الناس بالباطل

p20.1 Allah Most High says,

"Consume not one another's property through falsehood, nor proffer it to those who judge [between you]..." (Koran 2:188).

p20.1 قال الله تعـالى: ﴿وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ ...﴾ [البقرة: ١٨٨].

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p20.2 The category of taking other's property through falsehood includes such people as those who impose non-Islamic taxes (def: p32), the highwayman who blocks the road, the thief, the idler, the betrayer of a trust, the cheater or adulterator of trade goods, the borrower who denies having borrowed something, the person who stints when weighing or measuring out goods, the person who picks up lost and found property and does not give notice of having found it, the person who sells merchandise with a hidden defect, the gambler, and the merchant who tells the buyer that the merchandise cost more than it did.

p20.2 ويدخل في هذا الباب: المكاس وقاطع الطريق والسارق والبطّال والخائن والزغلي ومن استعار شيئاً فجحده، ومن طفّف الوزن والكيل، ومن التقط مالاً فلم يعرفه، ومن باع شيئاً فيه عيب فغطّاه، والمقامر، ومخبر المشتري بالزائد.

p20.3 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever appropriates a handsbreadth of land through falsehood shall be made to carry it, as thick as seven earths, around his neck on Judgement Day."

(2) "For someone to put off repayment of a debt when able to pay is an injustice."

(3) A man said, "O Messenger of Allah, will my mistakes be forgiven me if I am killed, in steadfastness and anticipating Allah's reward, advancing and not retreating?" He replied, "Yes, except for debts."

(4) "Flesh nurtured on ill-gotten wealth will not enter paradise. The hellfire has a better right to it."

(5) "There is a record that Allah will not ignore the slightest bit of. It is the oppression of Allah's servants."

p20.3 وقال ﷺ: «من ظلم شبراً من الأرض طُوِّقَهُ إلى سبع أرضين يوم القيامة» [رواه البخاري].

وقال عليه الصلاة والسلام: «مطلُ الغنيِّ ظلمٌ» [رواه البخاري].

وقال رجل: يا رسول الله إن قُتِلْتُ صابراً محتسباً مقبلاً غير مدبر، أتكفّرُ عني خطاياي؟ قال نعم، إلا الدين» [رواه مسلم].

[وعن جابر رضي الله عنه أن النبي قال لكعب بن عجرة:] «لا يدخل الجنة لحم نبت من سحتٍ، النار أولى به» [رواه الحاكم].

وفي الحديث: «وديوان لا يترك الله منه شيئاً وهو ظلم العباد» [رواه أحمد].

p20.4 Oppression is of three types. The first is consuming property through falsehood; the second, oppressing Allah's servants by killing, hitting, breaking bones or causing wounds; and the third, oppressing them through spoken abuse, cursing, reviling, or accusing them of adultery or sodomy without proof. The Prophet (Allah bless him and give him peace) said in an address to the people at Mina,

p20.4 والظلم على ثلاثة أقسام: أحدها: أكل المال بالباطل. وثانيها: ظلم العباد بالقتل والضرب والكسر والجراح. وثالثها: ظلم العباد بالشتم واللعن والسب والقذف. وقد خطب النبي ﷺ الناس بمنى فقال: «إن

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"Verily, your blood, property, and reputations are as inviolable to one another as the inviolability of this day, this month, and this city of yours."

دماءكم وأموالكم وأعراضكم عليكم حرام كحرمة يومكم هذا في شهركم هذا في بلدكم هذا» [متفق عليه].

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p21.0 THEFT

p21.0 السرقة

p21.1 Allah Most High says:

"Thieves, male or female—cut off their hands in retribution for what they have earned, as an exemplary punishment from Allah. Allah is Almighty and Wise" (Koran 5:38).

p21.1 قال الله تعالى: ﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالاً مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾ [المائدة: ٣٨].

p21.2 The Prophet (Allah bless him and give him peace) said:

(1) "Allah curse the thief whose hand is cut for stealing a rope."

(2) "If Muhammad's daughter Fatima stole, I would cut off her hand."

p21.2 وقال النبي ﷺ: «لعن الله السارق يسرق الحبل فتقطع يده» [رواه البخاري].

«لو أن فاطمة بنت محمد سرقت لقطعت يدها» [رواه البخاري].

p21.3 A thief's repentance is of no benefit to him until he returns whatever he stole (dis: p77.3). If moneyless, he must have the victim absolve him of financial responsibility.

p21.3 [قلت:] ولا تنفع السارق توبته إلا بأن يرد ما سرقه. فإن كان مفلساً تحلّل من صاحب المال.

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p22.0 HIGHWAYMEN WHO MENACE THE ROAD

(A: The amount of money they ask makes no difference, and like this, in being money taken through falsehood, are all measures imposed upon travellers without their free choice, such as tariffs, mandatory currency exchange, visa fees, and so forth.)

p22.0 قطع الطريق

p22.1 Allah Most High says:

"The recompense of those at war with Allah

p22.1 قال الله تعالى: ﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي

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and His messenger and who strive for corruption in the land is that they be killed or crucified, or a hand and foot cut off from opposite sides, or banished from the land. That is their humiliation in this world, and an immense torment awaits them in the next" (Koran 5:33).

الأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ أَوْ يُنْفَوْا مِنَ الأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الآخِرَةِ عَذَابٌ عَظِيمٌ﴾ [المائدة: ٣٣].

p22.2 Merely making people feel that the way is unsafe is to commit an enormity, so how then if such a person should take money?

p22.2 فمجرد إخافته السبيل هو مرتكب الكبيرة، فكيف إذا أخذ المال؟

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p23.0 THE ENGULFING OATH

p23.0 اليمين الغموس

p23.1 An engulfing oath is one in which there is premeditated lying. It is termed *engulfing* because it whelms its swearer in sin.

p23.1 واليمين الغموس: التي يتعمد فيها الكذب. سُميت غموساً لأنها تغمس الحالف في الإثم.

p23.2 The Prophet (Allah bless him and give him peace) said:

(1) "The enormities are worshipping others with Allah, showing disrespect to parents, killing a human being, and the engulfing oath."

(2) "A man once said, 'By Allah, Allah will not forgive So-and-so.' Allah said, 'Who is it that swears I must not forgive So-and-so? I forgive him and annul all your works.' "

p23.2 قال النبي ﷺ: «الكبائر الإشراك بالله، وعقوق الوالدين، وقتل النفس، واليمين الغموس» [رواه البخاري].

«قال رجل: والله لا يغفر اللهُ لفلانٍ. فقال الله تعالى: من ذا الذي يتألّى عليّ أني لا أغفر لفلانٍ، قد غفرتُ له وأحبطتُ عملك» [رواه مسلم].

*

p24.0 THE INVETERATE LIAR

p24.0 الكذّاب في غالب أقواله

p24.1 Allah Most High says:

(1) Allah guides not the profligate liar" (Koran 40:28).

(2) "May liars perish" (Koran 51:10).

p24.1 قال الله تعالى: ﴿إِنَّ اللَّهَ لا يَهْدِي مَنْ هُوَ مُسْرِفٌ كَذَّابٌ﴾ [غافر: ٢٨].

- وقال: ﴿قُتِلَ الْخَرَّاصُونَ﴾ [الذاريات: ١٠].

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p24.2 The Prophet (Allah bless him and give him peace) said:

(1) "Lying leads one to wickedness and wickedness leads one to hell. A man keeps lying until Allah records that he is an inveterate liar."

(2) "The marks of a hypocrite are three: when he speaks he lies, when he makes a promise he breaks it, and when entrusted with something he betrays the trust."

(3) "A believer's natural disposition might comprise any trait other than treachery and untruthfulness."

p24.2 قال النبي ﷺ: «إن الكذب يهدي إلى الفجور وإن الفجور يهدي إلى النار. ولا يزال الرجل يكذب حتى يكتب عند الله كذاباً» [رواه البخاري].

وقال ﷺ: «آية المنافق ثلاث: إذا حدث كذب، وإذا وعد أخلف، وإذا ائتمن خان» [رواه البخاري].

وعنه ﷺ: «يُطبع المؤمنُ على كل شيء ليس الخيانة والكذب» [رواه أحمد].

*

p25.0 SUICIDE

p25.1 Allah Most High says:

"Do not kill yourselves, for Allah is compassionate towards you. Whoever does so, in transgression and wrongfully, We shall roast in a fire, and that is an easy matter for Allah" (Koran 4:29-30).

p25.2 The Prophet (Allah bless him and give him peace) said:

(1) "Of those before you, there was once a wounded man who could not bear it, so he took a knife and cut his arm, and bled until he died. Allah Most High said, 'My slave has taken his life before I have, so I forbid him paradise.' "

(2) "Whoever kills himself with a knife will abide forever in the fire of hell, perpetually stabbing his belly with it. Whoever kills himself with poison will abide forever in the fire of hell, poison in hand, perpetually drinking of it."

p25.0 قاتل نفسه

p25.1 قال الله تعالى: ﴿وَلَا تَقْتُلُوا أَنفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا. وَمَن يَفْعَلْ ذَٰلِكَ عُدْوَانًا وَظُلْمًا فَسَوْفَ نُصْلِيهِ نَارًا وَكَانَ ذَٰلِكَ عَلَى اللَّهِ يَسِيرًا﴾ [النساء: ٢٩].

p25.2 وعن النبي ﷺ قال: «كان ممن كان قبلكم رجل به جرح فجزع، فأخذ سكيناً فحزّ بها يده فما رقأ الدمُ حتى مات. قال الله تعالى: بادرني عبدي بنفسه، حرمت عليه الجنة» [متفق عليه].

وقال رسول الله ﷺ من قتل نفسه بحديدةٍ فحديدته في يده يتوجأ بها في بطنه في نار جهنم خالداً مخلداً فيها أبداً ومن قتل نفسه بسُمٍّ فسُمُّه في يده يتحساه في نار جهنم خالداً مخلداً فيها أبداً» [متفق عليه].

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p26.0 THE BAD JUDGE

p26.1 Allah Most High says:

(1) "Whoso does not judge by what Allah has revealed, those are the unbelievers" (Koran 5:44).

(2) "Those who conceal the clear explanations and guidance We have revealed, after We have explained it in the Book to people, are cursed by Allah and those who curse" (Koran 2:159).

p26.2 The Prophet (Allah bless him and give him peace) said:

(1) "One judge shall go to paradise, and two to hell. The judge who knows what is right and judges accordingly shall be in paradise. The one who knows what is right but intentionally judges unjustly will go to hell, and so will the judge who judges without knowledge."

Anyone who judges without knowledge or evidence from Allah and His messenger regarding the matter he gives an opinion on is subject to this threat.

(2) "Whoever is appointed to judge between people is as though slaughtered without a knife."

p26.3 It is unlawful for a judge to rule on a case when angry, especially at a litigant. When a judge's qualities combine an insufficiency of Sacred Knowledge, unworthy intention, bad disposition, and lack of godfearingness, then his destruction is complete and he must resign and hasten to save himself from hell.

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p26.0 القاضي السوء

p26.1 قال الله تعالى: ﴿وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ﴾ [المائدة: ٤٤].

وقال تعالى: ﴿إِنَّ الَّذِينَ يَكْتُمُونَ مَا أَنْزَلْنَا مِنَ الْبَيِّنَاتِ وَالْهُدَىٰ مِنْ بَعْدِ مَا بَيَّنَّاهُ لِلنَّاسِ فِي الْكِتَابِ أُولَئِكَ يَلْعَنُهُمُ اللَّهُ وَيَلْعَنُهُمُ اللَّاعِنُونَ﴾ [البقرة: ١٥٩].

p26.2 وعن النبي ﷺ قال: «قاضٍ في الجنة وقاضيان في النار؛ قاضٍ عرف الحق فقضى به فهو في الجنة، وقاضٍ عرف الحق فجار متعمداً فهو في النار، وقاضٍ قضى بغير علمٍ فهو في النار» [رواه الحاكم]. [قلت:] فكل من قضى بغير علم ولا بينة من الله ورسوله على ما يقضي فهو داخل في هذا الوعيد.

وعن النبي ﷺ أنه قال: «من جُعِلَ قاضياً بين الناس فكأنما ذُبِحَ بغير سكين» [رواه أبو داود].

p26.3 ويحرم على القاضي أن يحكم وهو غضبان، لا سيما من الخصم. وإذا اجتمع في القاضي قلة علم، وسوء قصد، وأخلاق زعرة، وقلة الورع؛ فقد تمت خسارته ووجب عليه أن يعزل نفسه ويبادر بالخلاص من النار.

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p27.0 PERMITTING ONE'S WIFE TO FORNICATE

p27.0 القــواد المستحسن على أهله

p27.1 Allah Most High says:

"None shall wed a fornicatress but a fornicator or idolator. That is unlawful for believers" (Koran 24:3).

p27.1 قال الله تعالى:
﴿وَالزَّانِيَةُ لا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ﴾ [النور: ٣].

p27.2 The Prophet (Allah bless him and give him peace) said,

"Three will not enter paradise: he who is disrespectful to his parents, he who lets his wife fornicate with another, and women who affect masculinity."

p27.2 وعن النبي ﷺ أنه قال: «ثلاثة لا يدخلون الجنة العاق لوالديه والدَّيُّوثُ ورجلةُ النساء» [رواه الحاكم].

p27.3 Someone who suspects his wife of indecency but pretends not to know because he loves her is not as bad as someone who actually pimps for her. There is no good in a man without jealousy for his rights.

p27.3 فمن كان يظن بأهله الفاحشة ويتغافل لمحبته فيها فهو دون من يعرِّس عليها. ولا خير فيمن لا غيرة له.

*

p28.0 MASCULINE WOMEN AND EFFEMINATE MEN

p28.0 الــرجلة من النســاء والمخنث من الرجال

p28.1 The Prophet (Allah bless him and give him peace) said,

(1) "Men are already destroyed when they obey women."

(2) The Prophet (Allah bless him and give him peace) cursed effeminate men and masculine women.

(3) The Prophet (Allah bless him and give him peace) cursed men who wear women's clothing and women who wear men's.

p28.1 قال ﷺ: «الآن هلك الرجال حين أطاعوا النساء» [رواه أحمد].
[قال ابن عباس:] «لَعَنَ رسول الله ﷺ المخنثين من الرجال والمترجلات من النساء» [رواه البخاري]. [وقال أبو هريرة:] «لَعَنَ رسول الله ﷺ الرجل يلبس لبسة المرأة والمرأة تلبس لبسة الرجل» [رواه أبو داود].

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p29.0 MARRYING SOLELY TO RETURN TO THE PREVIOUS HUSBAND

p29.0 المحلِّل والمحلَّل له

p29.1 The Prophet (Allah bless him and give him peace) cursed the man who marries a woman after her divorce solely to permit her first husband to remarry her (dis: n7.7) and cursed the first husband.

p29.1 [صح من حديث ابن مسعود رضي الله عنه أن] رسول الله ﷺ لعن المحلِّل والمحلَّل له» [رواه النسائي].

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p30.0 EATING UNSLAUGHTERED MEAT, BLOOD, OR PORK

p30.0 أكل الميتة والدم ولحم الخنزير

p30.1 Allah Most High says,

"Say: 'I find nothing in what has been revealed to me that is unlawful for a person to eat except unslaughtered meat, blood outpoured, or the flesh of swine, for all this is filth' " (Koran 6:145).

p30.1 قال الله تعالى:
﴿قُلْ لَا أَجِدُ فِيمَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَىٰ طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنْزِيرٍ فَإِنَّهُ رِجْسٌ . . .﴾ [الأنعام: ١٤٥].

p30.2 Whoever premeditatedly eats these when not forced by necessity is a criminal.

p30.2 فمن تعمد أكل ذلك لغير ضرورة فهو من المجرمين.

*

p31.0 NOT FREEING ONESELF OF ALL TRACES OF URINE

p31.0 عدم التنزه من البول

p31.1 Allah Most High says,

"And your raiment purify" (Koran 74:4).

p31.1 قال الله تعالى:
﴿وَثِيَابَكَ فَطَهِّرْ﴾ [المدثر: ٤].

p31.2 The Prophet (Allah bless him and give him peace):

(1) passed by two graves and said, "The two are being tormented, and not for anything excessive: one of them did not free himself of traces of urine, while the other was a talebearer [def: r3]."

p31.2 وقال النبي ﷺ، ومرَّ بقبرين: «إنهما يُعذَّبان وما يعذَّبان في كبير، أما أحدهما فكان لا يستنزه من بوله، وأما الآخرُ فكان يمشي بالنميمة» [متفق عليه].

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(2) And he said, "Take care to remove all vestiges of urine from your persons, because it is the main reason for torment in one's grave."

Moreover, the prayer of someone who does not protect his person and clothing from urine is not acceptable (A: which is how scholars interpret the above hadiths, as applying to those who are negligent in removing all traces of urine before they pray).

وعن النبي ﷺ أنه قال: «تنزهوا من البول فإن عامة عذاب القبر منه» [رواه الدارقطني].

ثم إن من لم يحترز من البول في بدنه وثيابه فصلاته غير مقبولة.

*

p32.0 COLLECTING TAXES

(A: Meaning to take revenues other than those which are countenanced by Sacred Law such as zakat or the non-Muslim poll tax (jizya) (N: though the state may take taxes to the extent necessary to prevent the general detriment).)

p32.0 المكّاس

(ع: والمراد جباية غير ما ورد أخذه بالشرع كالزكاة والجزية [والخمس] (ح: ويجوز للدولة فرض الضرائب بقدر ما يندفع به الضرر العام)).

p32.1 Such people are among those meant by the words of Allah Most High,

"The dispute is only with those who oppress people, and wrongfully exceed proper bounds in the land: these will have a painful torment" (Koran 42:42).

p32.1 وهو داخل في قوله تعالى: ﴿إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أُولَٰئِكَ لَهُمْ عَذَابٌ أَلِيمٌ﴾ [الشورى: ٤٢].

p32.2 And in the hadith of the adulteress who purified herself by voluntarily being stoned to death, there is the Prophet's remark (Allah bless him and give him peace),

"She has made a repentance so sincere that if even a tax taker repented with the like of it, he would be forgiven."

p32.2 وفي الحديث في الزانية التي طهّرت نفسها بالرجم: «لقد تابت توبة لو تابها صاحب مكس لغفر له» [رواه مسلم].

p32.3 He who imposes taxes resembles a highwayman, and is worse than a thief. But one who burdens the people, imposing over new levies on them, is more tyrannous and oppressive than someone more equitable therein who treats those under him more kindly. Those who gather taxes, who do the clerical work, or who accept the proceeds, such as a soldier, sheikh, or head of a Sufi

p32.3 والمكّاس فيه شبه من قاطع الطريق، وهو شر من اللص. فإن من عسف الناس وجدد عليهم ضرائب، فهو أظلم وأغشم ممن أنصف في مكسه ورفق برعيته. وجابي المكس وكاتبه وآخذه من جندي وشيخ وصاحب زاوية

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center (zawiya) —all bear the sin, and are eating of ill-gotten wealth (dis: w49).

شركاء في الوزر، أكالون للسحت.

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p33.0 SHOWING OFF IN GOOD WORKS

p33.0 الرياء

p33.1 Allah Most High says:

(1) "The hypocrites are trying to fool Allah, while it is He who is outwitting them. And when they stand to pray they do so lazily, showing off to people, remembering Allah but little" (Koran 4:142).

(2) "O you who believe: do not nullify your charity by reminding recipients of having given it and by offending them, like someone who spends his money as a show for people" (Koran 2:264).

p33.1 قال الله تعالى:

﴿إِنَّ الْمُنَافِقِينَ يُخَادِعُونَ اللَّهَ وَهُوَ خَادِعُهُمْ وَإِذَا قَامُوا إِلَى الصَّلَاةِ قَامُوا كُسَالَى يُرَاؤُونَ النَّاسَ وَلَا يَذْكُرُونَ اللَّهَ إِلَّا قَلِيلًا﴾ [النساء: ١٤٢].

وقال تعالى: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالْأَذَى كَالَّذِي يُنْفِقُ مَالَهُ رِئَاءَ النَّاسِ﴾ [البقرة: ٢٦٤].

p33.2 The Prophet (Allah bless him and give him peace) said:

(1) "The first person judged on Resurrection Day will be a man martyred in battle.

"He will be brought forth, Allah will reacquaint him with His blessings upon him and the man will acknowledge them, whereupon Allah will say, 'What have you done with them?' to which the man will respond, 'I fought to the death for You.'

"Allah will reply, 'You lie. You fought in order to be called a hero, and it has already been said.' Then he will be sentenced and dragged away on his face to be flung into the fire.

"Then a man will be brought forward who learned Sacred Knowledge, taught it to others, and who recited the Koran. Allah will remind him of His gifts to him and the man will acknowledge them, and then Allah will say, 'What have you done with them?' The man will answer, 'I acquired Sacred Knowledge, taught it, and recited the Koran, for Your sake.'

"Allah will say, 'You lie. You learned so as to be called a scholar, and read the Koran so as to be

p33.2 قال النبي ﷺ: «أول الناس يُقضى عليه يوم القيامة رجل استشهد فأُتي به فعرّفه اللهُ نعمَهُ فعرفها، فقال: ما عملت فيها؟ قال: قاتلتُ فيك حتى استشهدت. قال: كذبتَ ولكنك قاتلت ليقال جريءٌ: فقد قيل. ثم أُمر به فسُحب على وجهه حتى أُلقي في النار. ورجل تعلّم العلم وعلّمهُ وقرأ القرآن فأُتي به فعرّفه اللهُ نعمَهُ فعرفها، قال: فما عملتَ فيها؟ قال: تعلّمتُ العلم وعلّمتُه وقرأتُ فيك القرآن. قال كذبتَ ولكنك تعلّمتَ ليُقالَ عالمٌ وقرأتَ القرآن ليقال

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called a reiter, and it has already been said.' Then the man will be sentenced and dragged away on his face to be flung into the fire.

"Then a man will be brought forward whom Allah expansively provided for, lavishing varieties of property upon him, and Allah will recall to him the benefits bestowed, and the man will acknowledge them, to which Allah will say, 'And what have you done with them?' The man will answer, 'I have not left a single kind of expenditure You love to see made in Your cause, save that I have spent on it for Your sake.'

"Allah will say, 'You lie. You did it so as to be called generous, and it has already been said.' Then he will be sentenced and dragged away on his face to be flung into the fire."

(2) "The slightest bit of showing off in good works is as if worshipping others with Allah."

قارىءٌ، فقد قيل. ثم أمر به فسُحب على وجهه حتى أُلقي في النار. ورجل وسّع اللهُ عليه وأعطاهُ من أصناف المال فأُتي به فعرّفه نعمَه فعرفها، فقال: ما عملتَ فيها؟ قال: ما تركتُ من سبيل تحب أن يُنفَق فيه إلا أنفقتُ فيه لك. قال: كذبتَ ولكنك فعلتَ ليقالَ هو جوادٌ فقد قيل. ثمّ أُمر به فسُحب على وجهه حتى أُلقي في النار» [رواه مسلم].

وقال: «اليسير من الرياء شركٌ» [رواه الحاكم].

p33.3 (A: When there is an act of obedience the servant intends to conceal but Allah reveals, then it is merely gratitude for His blessings to admit it to others and thank Him for it. When asked if one is fasting, for example, and one is, then one should say "Praise be to Allah" (al-Hamdu lillah).)

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p34.0 BREACH OF FAITH

p34.0 الخيانة

p34.1 Allah Most High says,

"Do not betray Allah and His messenger, nor knowingly betray your trusts" (Koran 8:27).

p34.1 قال الله تعالى:
﴿لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ﴾ [الأنفال: ٢٧].

p34.2 The Prophet (Allah bless him and give him peace) said:

"Someone who cannot keep a trust is devoid of faith. Someone who cannot keep an agreement is devoid of religion."

p34.2 وقال النبي ﷺ: «لا إيمان لمن لا أمانة له، ولا دين لمن لا عهد له» [رواه أحمد].

p34.3 A breach of faith in anything is very ugly, but in some matters is worse than others. A person

p34.3 والخيانة في كل شيء قبيحة وبعضها شرّ من بعض. وليس من خانك

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who cheats one for a pittance is not like a person who betrays one concerning one's wife and money, perpetrating outrages.

في فلس كمن خانك في أهلك ومالك وارتكب العظائم.

*

p35.0 LEARNING SACRED KNOWLEDGE FOR THE SAKE OF THIS WORLD, OR CONCEALING IT

(A: Learning Sacred Knowledge for the sake of this world means that if not for this-worldly reasons, a person would not have bothered to learn (dis: a3.1).)

p35.0 التعلم للدنيا وكتمان العلم

(ع: والتعلم للدنيا معناه: لولا أسباب دنيوية لما تعلّم [(ح: العلم الشرعي)].

p35.1 Allah Most High says:

(1) "Only the knowledgeable of His slaves fear Allah" (Koran 35:28).

(2) "Those who conceal what Allah has revealed of the Book and purchase a trifling price thereby, these but fill their bellies with hellfire" (Koran 2:174).

(3) "And Allah made a covenant with those given the Book to explain it to people and not keep it from them. But they flung it behind their backs" (Koran 3:187).

p35.1 قال الله تعالى:

﴿إِنَّمَا يَخْشَى اللَّهَ مِنْ عِبَادِهِ الْعُلَمَاءُ﴾ [فاطر: ٢٨].

وقال تعالى: ﴿إِنَّ الَّذِينَ يَكْتُمُونَ مَا أَنْزَلَ اللَّهُ مِنَ الْكِتَابِ وَيَشْتَرُونَ بِهِ ثَمَنًا قَلِيلًا أُولَئِكَ مَا يَأْكُلُونَ فِي بُطُونِهِمْ إِلَّا النَّارَ﴾ [البقرة: ١٧٤].

وقال: ﴿وَإِذْ أَخَذَ اللَّهُ مِيثَاقَ الَّذِينَ أُوتُوا الْكِتَابَ لَتُبَيِّنُنَّهُ لِلنَّاسِ وَلَا تَكْتُمُونَهُ فَنَبَذُوهُ وَرَاءَ ظُهُورِهِمْ[...]﴾ [آل عمران: ١٨٧].

p35.2 The Prophet (Allah bless him and give him peace) said,

"Anyone who seeks Sacred Knowledge to vie with scholars, argue with fools, or win people's hearts will go to hell."

p35.2 وقال النبي ﷺ: «من ابتغى العلم ليباهي به العلماء أو يماري به السفهاء أو تقبل أفئدة الناس إليه فإلى النار» [رواه الترمذي].

p35.3 Hilal ibn al-'Ala' said, "Seeking Sacred Knowledge is arduous, learning it is harder than seeking it, applying it is harder than learning it, and remaining safe from it is even harder than applying it."

p35.3 وقال هلال بن العلاء: طلب العلم شديد وحفظه أشدُّ من طلبه والعمل به أشد من حفظه، والسلامة منه أشد من العمل به.

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p36.0 REMINDING RECIPIENTS OF ONE'S CHARITY TO THEM

p36.1 Allah Most High says,

"O you believe: do not nullify your charity by reminding recipients of having given it and by offending them" (Koran 2:264).

p36.2 The Prophet (Allah bless him and give him peace) said,

"There are three people whom Allah will not speak to, look at, or exonerate on the Day of Judgement, and who will have a painful torment: he who wears the hem of his garment low [A: out of pride], he who reminds recipients of his charity to them, and he who sells merchandise swearing that he paid more for it than he actually did."

p36.0 المنّان

p36.1 قال الله تعالى:
﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالْأَذَىٰ﴾ [البقرة: ٢٦٤].

p36.2 وفي الحديث الصحيح: «ثلاثةٌ لا يكلمهم اللهُ ولا ينظر إليهم يوم القيامة ولا يزكّيهم ولهم عذابٌ أليمٌ: المسبل إزاره، والمنان، والمنفق سلعته بالحلف الكاذب».

*

p37.0 DISBELIEVING IN DESTINY (QADR)

p37.1 Allah Most High says:

(1) "Verily, We have created everything in a determined measure" (Koran 54:49).

(2) "Allah has created you and what you do" (Koran 37:96).

(3) "Whomever Allah leads astray has no guide" (Koran 7:186).

(4) "And Allah knowingly led him astray" (Koran 45:23).

(5) "But you will not want to unless Allah wants" (Koran 76:30).

(6) "And He inspired it [A: the human soul] its evil and its godfearingness" (Koran 91:8).

p37.0 المكذِّبُ بالقدر

p37.1 قال الله تعالى:
﴿إِنَّا كُلَّ شَيْءٍ خَلَقْنَاهُ بِقَدَرٍ﴾ [القمر: ٤٩].
وقال تعالى: ﴿وَاللَّهُ خَلَقَكُمْ وَمَا تَعْمَلُونَ﴾ [الصافات: ٩٦].
وقال تعالى: ﴿وَمَنْ يُضْلِلِ اللَّهُ فَلَا هَادِيَ لَهُ﴾ [الأعراف: ١٨٦].
وقال: ﴿وَأَضَلَّهُ اللَّهُ عَلَىٰ عِلْمٍ﴾ [الجاثية: ٢٣].
وقال: ﴿وَمَا تَشَاءُونَ إِلَّا أَنْ يَشَاءَ اللَّهُ﴾ [الإنسان: ٣٠].
وقال: ﴿فَأَلْهَمَهَا فُجُورَهَا وَتَقْوَاهَا﴾ [الشمس: ٨].

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p37.2 The Prophet (Allah bless him and give him peace):

(1) "O Messenger of Allah, what is faith?" And he replied, "To believe in Allah, His angels, His messengers, the resurrection after death, and in destiny (qadr, def: u3.7–8), its good and evil."

(2) "There are six whom I curse, Allah curses, and who are cursed by every prophet whose supplications are answered: he who denies Allah's destiny, he who adds anything to Allah's book, he who rules arrogantly, he who considers what Allah has prohibited to be lawful, he who deems it permissible to treat my family in ways Allah has forbidden [A: such as insulting or reviling them], and he who abandons my sunna [A: out of disdain for it]."

p37.2 «يا رسول الله، ما الإيمانُ؟» قال: «أن تؤمن بالله وملائكته وكتبه ورسله والبعث بعد الموت والقدر خيره وشرّه» [رواه البخاري].

قال رسول الله ﷺ: «ستة لعنتُهم، ولعنهم اللهُ، وكلُّ نبيٍّ مجاب: المكذب بقدر الله، والزائد في كتاب الله، والمتسلط بالجبروت، والمستحل حرم الله، والمستحل من عترتي ما حرّم الله، والتارك لسنتي» [رواه الترمذي].

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p38.0 LISTENING TO PEOPLE'S PRIVATE CONVERSATIONS

p38.0 المستمع على الناس ما يسرون

p38.1 Allah Most High says,

"Do not spy" (Koran 49:12).

p38.1 قال الله تعالى:

﴿وَلَا تَجَسَّسُوا﴾ [الحجرات: ١٢].

p38.2 The Prophet (Allah bless him and give him peace) said,

"Whoever listens to people who are averse to his listening shall have molten lead poured into his ears on the Day of Judgement."

p38.2 وقال النبي ﷺ: «مَن استمع إلى حديث قوم وهم له كارهون صُبَّ في أذنيه الآنُكُ يوم القيامة[...] [رواه البخاري].

p38.3 This may not be an enormity (A: in some cases (dis: r6.4)).

p38.3 ولعلها ليست بكبيرة.

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p39.0 CURSING OTHERS (dis: r38)

p39.0 اللّعان

p39.1 The Prophet (Allah bless him and give him peace) said:

p39.1 قال النبي ﷺ: «لعن المؤمن

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(1) "Cursing a believer is like killing him."

(2) "When a servant curses something, the curse rises up to the sky, where the doors of the sky shut it out, and then it falls back to earth, where the doors of the earth shut it out. Then it searches right and left and when it does not find anywhere to go it comes back to the thing which was cursed, should it deserve it. If not, it returns upon the person who uttered it."

(3) While the Prophet (Allah bless him and give him peace) was on a journey, there was a woman of the Medinan Helpers (Ansar) riding a camel which annoyed her, whereupon she cursed it. The Prophet heard this and said, "Take off what is on its back and release it, for it has been cursed." And it is as if I can still see it now, walking along among the people, no one stopping it.

كقتله» [رواه البخاري].

وعنه ﷺ أنه قال: «إن العبد إذا لعن شيئاً صَعِدَتْ اللعنة إلى السماء، فتُغْلَقُ أبواب السماء دونها، ثم تهبط إلى الأرض فتغلق أبوابها دونها، ثم تأخذ يميناً وشمالاً، فإذا لم تجد مساغاً رجعت إلى الذي لُعِنَ إن كان أهلاً لذلك، وإلا رجعت إلى قائلها» [رواه أبو داود].

«بينما رسول الله ﷺ في بعض أسفاره، وامرأةٌ من الأنصار على ناقةٍ، فضَجِرَتْ فلعنتها، فسمع ذلك رسول الله ﷺ، فقال: «خذوا ما عليها ودَعُوها فإنها ملعونةٌ» [قال عمرانُ] فكأني أنظر إليها الآن تمشي في الناس ما يعرضُ لها أحدٌ» [رواه مسلم].

*

p40.0 LEAVING ONE'S LEADER

p40.0 الغادر بأميره

p40.1 Allah Most High says,

"Fulfill covenants, for surely covenants will be asked about" (Koran 17:34).

p40.1 قال الله تعالى:

﴿وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْؤُولاً﴾ [الإسراء: ٣٤].

p40.2 The Prophet (Allah bless him and give him peace) said:

"He who obeys me obeys Allah, and he who disobeys me disobeys Allah. He who obeys the leader obeys me, and he who disobeys the leader disobeys me."

(A: The *leader* referred to in the hadith is the caliph of the Muslims or his authorized representative (dis: o25.5). Whenever there is a group of three or more Muslims, it is sunna for a leader (amir) to be chosen. It is sunna to obey such a leader, and leaving him or not obeying him contravenes what is recommended, but is not unlawful.)

p40.2 وقال ﷺ: «من أطاعني فقد أطاع الله، ومن عصاني فقد عصى الله ومن يُطِعِ الأميرَ فقد أطاعني، ومن يَعْصِ الأمير فقد عصاني» [رواه البخاري].

(ع: الأمير المذكور في الحديث هو خليفة المسلمين أو نائبه. وأما إذا اجتمع ثلاثة مسلمين فأكثر فالسنة أن يختاروا أميراً لهم، ويسن طاعته. ومغادرته أو عدم إطاعته تخالف المسنون لكن لا يحرم).

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p41.0 BELIEVING IN FORTUNE-TELLERS OR ASTROLOGERS

p41.1 Allah Most High says:

(1) "Pursue not that which you have no knowledge of" (Koran 17:36).

(2) "[He is] the Knower of the Unseen, and discloses not His unseen to anyone [dis: w60.1], except to a messenger with whom He is pleased" (Koran 72:26–27).

p41.2 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever goes to a 'psychic' ('arraf) or fortune-teller and believes what he says has disbelieved in what has been revealed to Muhammad."

(2) "Allah Most High says, 'One of My servants reaches daybreak a believer, another an unbeliever. He who says, "We have received rain by Allah's grace," is a believer in Me and a disbeliever in the planets. But he who says, "We have received rain by the effects of such and such a mansion of the moon," is an unbeliever in Me and a believer in planets [A: if he thinks they have a causal influence independent of the will of Allah (dis: o8.7(17))].'"

(3) "Whoever goes to a 'psychic,' asks him about something, and believes him, will not have his prayer accepted for forty days."

p41.0 تصديق الكاهن والمنجم

p41.1 قال الله تعالى:
﴿وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ[...]﴾ [الإسراء: ٣٦].
وقال تعالى: ﴿عَالِمِ الْغَيْبِ فَلَا يُظْهِرُ عَلَىٰ غَيْبِهِ أَحَدًا إِلَّا مَنِ ارْتَضَىٰ مِن رَّسُولٍ﴾ [الجن: ٢٦ ـ ٢٧].

p41.2 وقال ﷺ: «من أتى عرافاً أو كاهناً فصدقه بما يقول فقد كفر بما أنزل على محمد ﷺ» [رواه أبو داود].
وقال ﷺ [صبيحة ليلة مطيرة]: «يقول الله تعالى: أصبح من عبادي مؤمنٌ وكافرٌ، فمن قال مُطرنا بفضل الله فذلك مؤمنٌ بي كافرٌ بالكوكب. ومن قال مُطرنا بنوء كذا فذلك كافرٌ بي مؤمنٌ بالكوكب» [رواه البخاري ومسلم].
وقال ﷺ: «من أتى عرّافاً فسأله عن شيء فَصَدَّقَهُ لم تُقبل له صلاةٌ أربعين يوماً» [رواه مسلم].

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p42.0 A WIFE'S REBELLING AGAINST HER HUSBAND (def: m10.12)

p42.1 Allah Most High says:

"Men are the guardians of women, since Allah has been more generous to one than the

p42.0 نشوز المرأة

p42.1 قال الله تعالى: ﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ

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other, and because of what they [men] spend from their wealth. So righteous women will be obedient, and in absence watchful, for Allah is watchful. And if you fear their intractability, warn them, send them from bed, or hit them. But if they obey you, seek no way to blame them" (Koran 4:34).

عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ. وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا﴾ [النساء: ٣٤].

p42.2 The Prophet (Allah bless him and give him peace) said:

(1) "Allah will not look at a woman who is ungrateful to her husband, while unable to do without him."

(2) "When a man calls his wife to his bed and she will not come, and he spends the night angry with her, the angels curse her until morning."

(3) "It is not lawful for a woman to fast when her husband is present, save by his leave. Nor to permit anyone into his house except with his permission."

(4) "Whoever leaves her husband's house [A: without his permission], the angels curse her until she returns or repents."

(Khalil Nahlawi:) It is a condition for the permissibility of her going out(dis: m10.3–4) that she take no measures to enhance her beauty, and that her figure is concealed or altered to a form unlikely to draw looks from men or attract them. Allah Most High says,

"Remain in your homes and do not display your beauty as women did in the pre-Islamic period of ignorance" (Koran 33:33).

(*al-Durar al-mubaha* (y99), 160)

p42.2 قال رسول الله ﷺ: «لا ينظر الله إلى امرأة لا تشكر لزوجها وهي لا تستغني عنه» [رواه النسائي].

وقال النبي ﷺ: «إذا دعا الرجلُ امرأته إلى فراشه فلم تأت فبات غضبان عليها لعنتها الملائكة حتى تصبح» [رواه البخاري].

وقال ﷺ: «لا يحل لامرأة أن تصوم وزوجها شاهدٌ إلا بإذنه، ولا تأذن في بيته إلا بإذنه» [رواه البخاري].

ويُروى عن النبي ﷺ أنه قال: «من خرجتْ من بيت زوجها لعنتها الملائكة حتى ترجع أو تتوب» [رواه الطبراني].

(خليل النحلاوي:) وحيث أبحنا الخروج فإنما يباح بشرط عدم الزينة وتغيير الهيئة إلى ما لا يكون داعية لنظر الرجال والاستمالة. قال الله تعالى: ﴿وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى﴾ [الأحزاب: ٣٣]. [نقل من الدرر المباحة في الحظر والإباحة: ١٧٢ - ١٧٣].

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p43.0 SEVERING TIES OF KINSHIP

(A: The opposite, *maintaining the bonds of kinship* (silat al-rahim), means politeness, kind

p43.0 قاطع الرحم

(ع: وعكس قطع الرحم هو صلة الرحم ومعناها معاملتهم بالأدب

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treament, and concern for all one's relatives, even if distantly related, corrupt, non-Muslim, or unappreciative.)

والمعروف والاعتناء بجميعهم، بُعداء كانوا أو فساقاً أو كفاراً أو غير شاكرين).

p43.1 Allah Most High says:

"If you turn back, would you then cause corruption in the land, severing your family ties? Those are the ones whom Allah has cursed and deafened, and blinded their sight" (Koran 47:22–23).

p43.1 قال الله تعالى:
﴿فَهَلْ عَسَيْتُمْ إِنْ تَوَلَّيْتُمْ أَنْ تُفْسِدُوا فِي الْأَرْضِ وَتُقَطِّعُوا أَرْحَامَكُمْ. أُولَئِكَ الَّذِينَ لَعَنَهُمُ اللَّهُ فَأَصَمَّهُمْ وَأَعْمَى أَبْصَارَهُمْ﴾ [محمد: ٢٢ - ٢٤].

p43.2 The Prophet (Allah bless him and give him peace) said:

(1) "He who severs his family ties will not enter paradise."

(2) "Whoever believes in Allah and the Last Day, let him maintain the bonds of kinship."

p43.2 قال النبي ﷺ: «لا يدخل الجنة قاطعُ رحمٍ» [رواه البخاري].
وقال ﷺ: «من كان يؤمن بالله واليوم الآخر فليصل رحمه» [رواه البخاري].

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p44.0 MAKING PICTURES

p44.0 المصور

p44.1 The Prophet (Allah bless him and give him peace) said:

(1) "Every maker of pictures will go to the fire, where a being will be set upon him for each picture he made, to torment him in hell."

(2) "Whoever makes an image shall be required [on the Last Day] to breathe a spirit into it, but will never be able to do so."

(n: Other hadith evidence appears at w50, which discusses legal questions relating to the artistic, photographic, and televisual depiction of animate life.)

p44.1 قال النبي ﷺ: «كلُّ مصورٍ في النار يجعل له بكل صورةٍ صوّرها نفساً فيعذبه في جهنم» [رواه البخاري].
وقال النبي ﷺ: «من صوّر صورةً كُلِّف أن ينفخ فيها الروح (يوم القيامة) وليس بنافخٍ» [رواه البخاري].

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p45.0 THE TALEBEARER WHO STIRS UP ENMITY BETWEEN PEOPLE (dis: r3)

p45.0 النمام

p45.1 Allah Most High says,

"Obey not every wretched swearer; slanderer, going about with tales" (Koran 68:10–11).

p45.1 قال الله تعالى:
﴿ولا تُطِعْ كُلَّ حَلَّافٍ مَهِينٍ هَمَّازٍ مَشَّاءٍ بِنَمِيمٍ﴾ [القلم: ١٠ - ١١].

p45.2 The Prophet (Allah bless him and give him peace) said:

(1) "He who stirs up enmity among people by quoting their words to each other will not enter paradise."

(2) "You find that among the worst people is someone who is two-faced, showing one face to some and another face to others."

(3) "Do not tell me anything about my Companions, for I want to meet them without disquiet in my heart."

p45.2 وقال النبي ﷺ: «لا يدخل الجنة نَمَّام» [رواه البخاري].
وقال النبي ﷺ: «تجد من شرار الناس ذا الوجهين: هو الذي يأتي هؤلاء بوجه وهؤلاء بوجه» [رواه البخاري].
وعن النبي ﷺ قال: «لا يُبلغني أحدٌ عن أصحابي شيئاً فإني أحب أن أخرج إليهم وأنا سليم الصدر» [رواه أبو داود].

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p46.0 LOUDLY LAMENTING THE DEAD

p46.0 النياحة واللطم

p46.1 The Prophet (Allah bless him and give him peace) said,

"He who slaps his cheeks, rips his pockets, or calls out the cries of the pre-Islamic period of ignorance is not of us."

p46.1 قال ﷺ: «ليس منا من ضرب الخدود وشق الجيوب ودعا بدعوى الجاهلية» [رواه البخاري].

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p47.0 ATTACKING ANOTHER'S ANCESTRY

p47.0 الطعن في الأنساب

p47.1 The Prophet (Allah bless him and give him peace) said,

p47.1 قال النبي ﷺ: «اثنتان هما

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"Two qualities in people are unbelief: attacking another's ancestry, and wailing over the dead."

(N: The hadith does not mean that these things put one beyond the pale of Islam, but that they are the actions of the unbelievers.)

بالناس كفرٌ: الطعن في النسب، والنياحة على الميت» [رواه مسلم].

(ح: وليس معنى الحديث أنهما يخرجان عن الملة، ولكنهما من أفعال الكفار).

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p48.0 EXCESSES AGAINST OTHERS

p48.0 البغي

p48.1 Allah Most High says,

"The dispute is only with those who oppress people and wrongfully commit aggression in the land: these will have a painful torment" (Koran 42:42).

p48.1 قال الله تعالى:

﴿إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أُولَٰئِكَ لَهُمْ عَذَابٌ أَلِيمٌ﴾ [الشورى: ٤٢].

p48.2 The Prophet (Allah bless him and give him peace) said,

(1) "Allah has inspired to me that you are all to be humble towards each other, such that no one transgresses against or exalts himself above another."

(2) Malik Rahawi said: "O Messenger of Allah, I have been given of beauty that which you see, and I do not like anyone to wear better sandals than I. Is this of presumptuous pride?" He answered, "This is not of presumptuousness, which rather consists of refusing to admit the truth and considering people inferior."

(3) "A woman was tortured for a cat she imprisoned until it died. She went to hell because of it, having neither fed nor watered it, for she confined it; nor yet having let it go to forage on the small creatures of the earth."

(4) "Allah will certainly torture those who torture people in this world."

p48.2 قال النبي ﷺ: «إن الله أوحى إليّ أن تواضعوا حتى لا يبغي أحد على أحد ولا يفخر أحد على أحد» [رواه مسلم].

قال مالك الرهاوي: «يا رسول الله، قد أعطيتُ من الجمال ما ترى، وما أحبُّ أنْ أحداً يفوقني بشراك (نعلي)، أفذاك من البغي؟» - قال: «ليس ذلك من البغي، ولكن البغيَ بطر الحق [أو قال سفهُ الحق] وغمط الناس» [رواه الحاكم].

وقال النبي ﷺ: «عُذِّبت امرأةٌ في هرة سجنتها حتى ماتت، فدخلت فيها النار، لا هي أطعمتها وسقتها، إذ حبستها؛ ولا هي تركتها تأكل من خشاش الأرض» [رواه البخاري].

وقال النبي ﷺ: «إن الله يعذّب الذين يعذبون الناس في الدنيا» [رواه مسلم].

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p49.0 ARMED INSURRECTION AND CONSIDERING MUSLIMS UNBELIEVERS

(A: The early *Kharijite* sect committed these transgressions.)

p49.1 Allah Most High says:

(1) "Do not commit transgressions; surely Allah loves not the transgressors" (Koran 2:190).

(2) "Whoever disobeys Allah and His messenger has gone manifestly astray" (Koran 33:36).

p49.2 The Prophet (Allah bless him and give him peace) said,

"If someone says to his Muslim brother, 'You unbeliever,' one of them deserves the name."

p49.0 الخروج بالسيف والتكفير بالكبائر

(ع: ارتكبهما فرقة الخوارج قديماً).

p49.1 قال الله تعالى:

﴿وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ﴾ [البقرة: ١٩٠].

وقال تعالى:

﴿وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُبِينًا﴾ [الأحزاب: ٣٦].

p49.2 وقال النبي ﷺ: «من قال لأخيه المسلم يا كافر فقد باء بها أحدهما» [رواه البخاري].

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p50.0 HURTING OR REVILING MUSLIMS

p50.1 Allah Most High says:

(1) "Those who hurt believing men and women who have done nothing to deserve it shall bear the burden of calumny and open sin" (Koran 33:58).

(2) "Do not spy and do not slander one another" (Koran 49:12).

(3) "Woe to whoever disparages others behind their back or to their face" (Koran: 104:1).

(4) "Those who love that scandal should be spread concerning the believers shall have a painful torment in this world and the next" (Koran 24:19).

p50.2 The Prophet (Allah bless him and give him peace) said:

p50.0 أذية المسلمين وشتمهم

p50.1 قال الله تعالى:

﴿وَالَّذِينَ يُؤْذُونَ الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ بِغَيْرِ مَا اكْتَسَبُوا فَقَدِ احْتَمَلُوا بُهْتَانًا وَإِثْمًا مُبِينًا﴾ [الأحزاب: ٥٨].

وقال تعالى: ﴿وَلَا تَجَسَّسُوا وَلَا يَغْتَبْ بَعْضُكُمْ بَعْضًا﴾ [الحجرات: ١٢].

وقال تعالى: ﴿وَيْلٌ لِكُلِّ هُمَزَةٍ لُمَزَةٍ﴾ [الهمزة: ١].

وقال الله تعالى: ﴿إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ فِي الدُّنْيَا وَالْآخِرَةِ﴾ [النور: ١٩].

p50.2 قال ﷺ: «المسلم أخو

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(1) "The Muslim is the brother of the Muslim. He does not oppress him, hang back from coming to his aid, or belittle him. It is sufficiently wicked for someone to demean his fellow Muslim."

المسلم، لا يظلمه ولا يخذله ولا يحقره، بحسب امرىءٍ من الشرِّ أن يحقر أخاه المسلم» [رواه مسلم].

(2) "By Allah, he does not believe. By Allah, he does not believe. By Allah, he does not believe." Someone asked, "Who, O Messenger of Allah?" And he said, "He whose neighbor is not safe from his evil conduct."

وقال: «واللهِ لا يؤمن، واللهِ لا يؤمن، واللهِ لا يؤمن! قيل مَن يا رسول الله؟ قال: الذي لا يأمن جاره بوائقه» [رواه البخاري].

(3) Someone said, "O Messenger of Allah, So-and-so spends her nights praying and her days fasting, but there is something in her tongue that maliciously injures her neighbors." He replied, "There is no good in her, she will go to hell."

قيل: «يا رسول الله، إن فلانة تصلي الليل وتصوم النهار، وفي لسانها شيءٌ يؤذي جيرانها، سليطةٌ». فقال: «لا خير فيها هي في النار» [رواه الحاكم].

(4) "When I was taken up in the Ascent (Mi'raj), I passed by people with fingernails of copper who were raking their faces and chests with them. I asked, 'Who are they, Gabriel?' and he said, 'They are those who slandered others [lit. "ate people's flesh"] and attacked their reputations.' "

قال رسول الله ﷺ: «لما عُرِجَ بي مررتُ بقومٍ لهم أظفارٌ من نحاسٍ يخمشون وجوههم وصدورهم. فقلتُ: مَن هؤلاء يا جبريلُ؟ فقال: الذين يأكلون لحوم الناس ويقعون في أعراضهم» [رواه أبو داود].

(5) "No man charges another with corruption or unbelief, save that the charge returns against himself if the other is not as he said."

وقال ﷺ: «لا يرمي رجلٌ رجلاً بالفسوق والكفر إلا ارتدَّ عليه إن لم يكن صاحبه كذلك» [رواه البخاري].

(6) "Do not revile the dead, for they have gone on to what they have sent ahead."

وقال ﷺ: «لا تسبوا الأموات فإنهم قد أفضَوْا إلى ما قدَّموا» [رواه البخاري].

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p51.0 HARMING THE FRIENDS (AWLIYA') OF ALLAH MOST HIGH

p51.0 أذية أولياء الله تعالى

p51.1 Allah Most High says,

"Verily, those who offend Allah and His messenger are cursed by Allah in this world and the next, and He has prepared for them a humiliating torment" (Koran 33:57).

p51.1 قال الله تعالى:

﴿إِنَّ الَّذِينَ يُؤْذُونَ اللَّهَ وَرَسُولَهُ لَعَنَهُمُ اللَّهُ فِي الدُّنْيَا وَالآخِرَةِ وَأَعَدَّ لَهُمْ عَذَابًا مُهِينًا﴾ [الأحزاب: ٥٧].

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p51.2 The Prophet (Allah bless him and give him peace) said:

(1) "Abu Bakr, if you anger them [some of the poorer Emigrants], you anger your Lord."

(2) "Allah Most High says: 'He who is hostile to a friend (wali) of Mine I declare war against. My slave approaches Me with nothing more beloved to Me than what I have made obligatory for him, and My slave keeps drawing nearer to Me with voluntary works until I love him. And when I love him, I am his hearing with which he hears, his sight with which he sees, his hand with which he seizes, and his foot with which he walks. If he asks Me, I will surely give to him, and if he seeks refuge in Me, I will surely protect him.' "

(n: This hadith is explained in detail at w33, which discusses the friends (awliya') of Allah Most High.)

p51.2 وفي الحديث: «يا أبا بكر! إن كنت أغضبتهم لقد أغضبت ربك» (يعني بعض فقراء المهاجرين) [رواه مسلم].

قال رسول الله ﷺ: «إن الله تعالى قال: مَن عادَى لي وليا فقد آذنتُه بالحرب. وما تقرب إليّ عبدي بشيء أحبَّ إليّ مما افترضتُ عليه وما يزال عبدي يتقرب إليّ بالنوافل حتى أحبه، فإذا أحببتُه كنتُ سمعَهُ الذي يسمَعُ به وبصرَهُ الذي يُبصِرُ به ويدَهُ التي يبطش بها ورجلَهُ التي يمشي بها، وإنْ سألني أعطيتُه ولئنْ استعاذني لأعيذنَّه» [رواه البخاري].

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p52.0 DRAGGING THE HEM OF ONE'S GARMENT OUT OF CONCEIT

p52.0 إسبال الإزار تعززاً

p52.1 Allah Most High says,

"... Nor walk haughtily through the land" (Koran 31:18).

p52.1 قال الله تعالى: ﴿ولا تمش في الأرض مرحاً﴾ [لقمان: ١٨].

p52.2 The Prophet (Allah bless him and give him peace) said:

(1) "The caftan of the Muslim comes down to midcalf, there being no harm in what is between this and the anklebones, though any of it below the anklebones is in hell. Whoever lets the hem of his garment drag on the ground out of pride, Allah will not look at him."

(2) "While a man was walking along in a new set of clothes, with a swagger to his step, pleased with himself, and his hair combed down, Allah

p52.2 قال النبي ﷺ: «أزرة المسلم إلى نصف الساق ولا حرج [أو لا جناح] فيما بينه وبين الكعبين؛ وما كان أسفل من الكعبين فهو في النار. ومن جر إزاره بطراً لم ينظر الله إليه» [رواه أبو داود].

وقال النبي ﷺ: «بينما رجلٌ يمشي في حلة تعجبه نفسه، مرجّلٌ رأسه يختال في مشيته؛ إذ خسف الله به الأرض فهو

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caused the earth to swallow him, and he will keep sinking until the Last Day."

يتجلجل فيها إلى يوم القيامة» [رواه البخاري].

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p53.0 MEN WEARING SILK OR GOLD

p53.0 لباس الحرير والذهب للرجل

p53.1 Allah Most High says,

"And the raiment of godfearingness is better" (Koran 7:26).

p53.1 قال الله تعالى: ﴿وَلِبَاسُ التَّقْوَىٰ ذَٰلِكَ خَيْرٌ﴾ [الأعراف: ٢٦].

p53.2 The Prophet (Allah bless him and give him peace) said:

(1) "Only those with no share in the next world wear silk in this one."

(2) "Wearing gold and silk has been made unlawful for the men of my Community but permissible for its women."

p53.2 وقال ﷺ: «إنما يلبس الحرير (في الدنيا) من لا خلاق له في الآخرة» [رواه البخاري].

وقال ﷺ: «حُرِّم لباس الذهب والحرير على ذكور أمتي وأحل لإناثهم» [رواه الترمذي].

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p54.0 SLAUGHTERING IN OTHER THAN ALLAH'S NAME

p54.0 من ذبح لغير الله

p54.1 Allah Most High says,

"Eat not of what the name of Allah has not been mentioned over; verily it is disobedience" (Koran 6:121).

p54.1 قال الله تعالى: ﴿وَلَا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ...﴾ [الأنعام: ١٢١].

p54.2 The Prophet (Allah bless him and give him peace) said,

"May Allah curse whoever slaughters in other than Allah's name."

p54.2 وقال ﷺ: «لعن الله من ذبح لغير الله» [رواه أحمد].

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p55.0 SURREPTITIOUSLY CHANGING PROPERTY-LINE MARKERS

p55.0 من غيّر منار الأرض

p55.1 The Prophet (Allah bless him and give him peace) said,

"May Allah curse whoever changes the land's property-line markers."

p55.1 قال رسول الله ﷺ: «... لعن الله من غيّر تخوم الأرض ...» [رواه أحمد].

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p56.0 DISPARAGING THE PROPHETIC COMPANIONS (SAHABA)

p56.0 سب الصحابة رضي الله عنهم أجمعين

p56.1 The Prophet (Allah bless him and give him peace) said,

"The curse of Allah is upon whoever reviles my Companions."

p56.1 عن النبي ﷺ: «من سبّ أصحابي فعليه لعنة الله» [رواه ابن أبي عاصم].

p56.2 'Ali ibn Abi Talib (Allah be well pleased with him) said,

"By Him who cleaves the seed and creates the soul, it is the solemn word of the Illiterate Prophet to me that none shall love me except a believer, and none hate me except a hypocrite."

p56.2 وقال علي رضي الله عنه: «والذي فلق الحبة وبرأ النسمة، إنه لعهدُ النبي الأمي إليّ: لا يحبني إلا مؤمن ولا يبغضني إلا منافقٌ» [رواه مسلم].

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p57.0 DISPARAGING THE MEDINAN HELPERS (ANSAR)

p57.0 سبّ الأنصار

p57.1 The Prophet (Allah bless him and give him peace) said,

"The sign of faith is love of the Helpers (Ansar), and the sign of hypocrisy is hatred of the Helpers."

p57.1 قال النبي ﷺ: «آية الإيمان حب الأنصار وآية النفاق بغض الأنصار» [رواه البخاري].

p58.0 HE WHO INAUGURATES A REPREHENSIBLE INNOVATION (BID'A) (def: w29.3)

p58.0 من [دعا إلى ضلالة أو] سنَّ سنة سيئة

p58.1 The Prophet (Allah bless him and give him peace) said:

(1) "He who calls others to misguidance is guilty of a sin equal to the sins of all who follow him therein without this diminishing their own sins in the slightest."

(2) "He who inaugurates a good sunna [custom] in Islam earns the reward of it and of all who perform it after him without diminishing their own rewards in the slightest. And he who introduces a bad sunna is guilty of the sin of it and of all who perform it after him without diminishing their own sins in the slightest."

p58.1 قال النبي ﷺ: «من دعا إلى ضلالة كان عليه من الإثم مثلُ آثام من تبعه لا ينقص ذلك من آثامهم شيئاً» [رواه مسلم].

قال رسول الله ﷺ: «من سنَّ في الإسلام سنّةً حسنةً فله أجرها وأجر من عمل بها من بعده من غير أن ينقص من أجورهم شيئاً ومن سنَّ سنّةً سيئةً كان عليه وزرُها ووزرُ من عمل بها من بعده من غير أن ينقص من أوزارهم شيئاً» [رواه مسلم].

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p59.0 WOMEN WEARING FALSE HAIR AND THE LIKE

p59.0 الواصلة في شعرها [والمتفلجة والواشمة]

p59.1 The Prophet (Allah bless him and give him peace) said,

"Allah curse women who wear false hair or arrange it for others, who tattoo or have themselves tattooed, who pluck facial hair or eyebrows or have them plucked, and women who separate their front teeth for beauty, altering what Allah has created."

(n: w51 discusses women removing facial hair.)

p59.1 قال النبي ﷺ: «لعن اللهُ الواصلة والمستوصلة، والواشمة والمستوشمة، والنامصة والمتنمصة، والمتفلجات للحسن المغيرات خلق الله» [رواه البخاري].

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p60.0 POINTING A BLADE AT ONE'S BROTHER

p60.0 من أشار إلى أخيه بحديدة

p60.1 The Prophet (Allah bless him and give him peace) said:

p60.1 قال النبي ﷺ: «من أشار إلى

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"The angels curse whoever points a blade [A: or other weapon] at his brother [until he ceases], even if it be his brother from his mother and father."

أخيه بحديدة، فإن الملائكة تلعنه (حتى ينتهي) وإن كان أخاه من أمه وأبيه» [رواه مسلم].

*

p61.0 FALSELY CLAIMING SOMEONE IS ONE'S FATHER

p61.0 من ادعى إلى غير أبيه

p61.1 The Prophet (Allah bless him and give him peace) said:

(1) "Paradise is forbidden to whoever falsely claims someone is his father, knowing he is not."

(2) "Do not wish for fathers other than your own. For someone to wish for a different father is unbelief."

p61.1 قال رسول الله ﷺ: «من ادعى إلى غير أبيه وهو يعلم أنه غيرُ أبيه فالجنة عليه حرامٌ» [رواه البخاري].

وعن النبي ﷺ قال: «لا ترغبوا عن آبائكم، فمن رَغِبَ عن أبيه فهو كفرٌ» [رواه البخاري].

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p62.0 BELIEVING THAT SOMETHING PORTENDS BAD LUCK

p62.0 الطيرة

p62.1 The Prophet (Allah bless him and give him peace) said,

"Belief in a bad omen is polytheism (shirk)."

p62.1 قال رسول الله ﷺ: «الطِّيَرَةُ شركٌ» [رواه الترمذي].

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p63.0 DRINKING FROM GOLD OR SILVER VESSELS

p63.0 الشرب في الذهب والفضة

p63.1 The Prophet (Allah bless him and give him peace) said:

(1) "Do not wear silk or brocade. Do not drink from vessels of gold or silver or eat from

p63.1 قال النبي ﷺ: «لا تلبسوا الحرير ولا الديباج، ولا تشربوا في آنية الذهب والفضة ولا تأكلوا في صحافها

dishes made of them: these are for others [A: i.e. non-Muslims] in this world, and for you in the next."

(2) "He who eats or drinks from vessels of gold or silver but swallows hellfire into his belly."

فإنها لهم في الدنيا ولكم في الآخرة» [رواه البخاري].

وقال ﷺ: «إن الذي يأكل أو يشرب في إناء الذهب والفضة إنما يجرجر في بطنه نار جهنم» [رواه مسلم].

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p64.0 ARGUING, PICKING APART ANOTHER'S WORDS, AND QUARRELLING

p64.0 الجدال والمراء واللدد

p64.1 Allah Most High says:

(1) "They did not mention him [Jesus] to you as an example except for argument. Rather, they are quarrelsome people" (Koran 43:58).

(2) "Those who argue about the signs of Allah without authority having been given to them have nothing in their hearts but pride, to which they will never attain" (Koran 40:56).

p64.1 قال الله تعالى:

﴿ما ضَرَبُوهُ لَكَ إِلَّا جَدَلًا. بَلْ هُمْ قَوْمٌ خَصِمُونَ﴾ [الزخرف: ٥٨].

وقال تعالى: ﴿إِنَّ الَّذِينَ يُجَادِلُونَ فِي آيَاتِ اللَّهِ بِغَيْرِ سُلْطَانٍ أَتَاهُمْ إِنْ فِي صُدُورِهِمْ إِلَّا كِبْرٌ مَا هُمْ بِبَالِغِيهِ﴾ [غافر: ٥٦].

p64.2 The Prophet (Allah bless him and give him peace) said:

(1) "The man most hated by Allah is the obstinate arguer."

(2) "No people went astray after having been guided save that they were afflicted with arguing."

(3) "Arguing over the Koran is unbelief."

(4) "He who presses for something he knows is false remains under the hatred of Allah until he gives it up."

(5) "The thing I fear most for my Community is the eloquent hypocrite."

(6) "Modesty and being at a loss for words are two components of true faith, while vulgarity

p64.2 وقال النبي ﷺ: «إنَّ أبغض الرجال إلى الله تعالى الألدُّ الخَصِمُ» [رواه البخاري].

وقال: «ما ضلَّ قومٌ بعد هدىً كانوا عليه إلا أوتوا الجدلَ...» [رواه الترمذي].

وقال: «المراء في القرآن كفرٌ» [رواه أبو داود].

وقال: «من خاصم في باطل - وهو يعلم - لم يزل في سخط الله حتى ينزع» [رواه أبو داود].

وقال: «أخوفُ ما أخافُ على أمتي كل منافق عليم اللسان» [رواه أحمد].

وقال: «الحياءُ والعِيُّ شعبتان من

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and long-windedness are two components of hypocrisy."

الإيمان والبذاءُ والبيانُ شعبتان من النفاق» [رواه الترمذي].

*

p65.0 STINTING WHEN WEIGHING OR MEASURING OUT GOODS

p65.0 المطفِّف في وزنه وكيله

p65.1 Allah Most High says:

"Woe to stinters who take their full share when measuring goods from people but skimp when measuring or weighing out for them. Do these not believe they will be raised to a momentous day, a day when people will stand before the Lord of the Worlds?" (Koran 83:1–6).

p65.1 قال الله تعالى:

﴿وَيْلٌ لِلْمُطَفِّفِينَ الَّذِينَ إِذَا اكْتَالُوا عَلَى النَّاسِ يَسْتَوْفُونَ. وَإِذَا كَالُوهُمْ أَوْ وَزَنُوهُمْ يُخْسِرُونَ. أَلَا يَظُنُّ أُولَئِكَ أَنَّهُمْ مَبْعُوثُونَ لِيَوْمٍ عَظِيمٍ. يَوْمَ يَقُومُ النَّاسُ لِرَبِّ الْعَالَمِينَ﴾ [المطففين: ١ - ٦].

p65.2 This is a type of theft, a breach of faith, and consuming others' property through falsehood.

p65.2 وذلك ضرب من السرقة والخيانة، وأكل المال بالباطل.

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p66.0 FEELING SECURE FROM ALLAH'S DEVISING

p66.0 الأمن من مكر الله تعالى

p66.1 Allah Most High says:

(1) "None feels safe from Allah's devising except people who are ruined" (Koran 7:99).

(2) "... until, when they were exulting in what they had been given, We suddenly seized them" (Koran 6:44).

(3) "Verily, those who do not hope to meet Us, who enjoy this world and feel at ease with it, and those who are oblivious to Our signs: their refuge is hell for what they have earned" (Koran 10:7–8).

p66.1 قال الله تعالى:

﴿فَلَا يَأْمَنُ مَكْرَ اللَّهِ إِلَّا الْقَوْمُ الْخَاسِرُونَ﴾ [الأعراف: ٩٩].

وقال تعالى: ﴿حَتَّى إِذَا فَرِحُوا بِمَا أُوتُوا أَخَذْنَاهُمْ بَغْتَةً﴾ [الأنعام: ٤٤].

وقال تعالى: ﴿إِنَّ الَّذِينَ لَا يَرْجُونَ لِقَاءَنَا وَرَضُوا بِالْحَيَاةِ الدُّنْيَا وَاطْمَأَنُّوا بِهَا وَالَّذِينَ هُمْ عَنْ آيَاتِنَا غَافِلُونَ أُولَئِكَ مَأْوَاهُمُ النَّارُ بِمَا كَانُوا يَكْسِبُونَ﴾ [يونس: ٧ - ٨].

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p67.0 DESPAIRING OF THE MERCY OF ALLAH AND LOSS OF HOPE

p67.0 الإياس من رَوْح الله [تعالى] والقنوط

p67.1 Allah Most High says:

(1) "None despairs of the mercy of Allah except people who disbelieve" (Koran 12:87).

(2) "It is He who sends down the rain after they have lost hope" (Koran 42:28).

(3) "Say: 'O My slaves who have been prodigal against yourselves, do not despair of the mercy of Allah' " (Koran 39:53).

p67.1 قال الله تعالى:
﴿إِنَّهُ لَا يَيْأَسُ مِنْ رَوْحِ اللَّهِ إِلَّا الْقَوْمُ الْكَافِرُونَ﴾ [يوسف: ٨٧].
وقال تعالى: ﴿وَهُوَ الَّذِي يُنَزِّلُ الْغَيْثَ مِنْ بَعْدِ مَا قَنَطُوا﴾ [الشورى: ٢٨].
وقال تعالى: ﴿قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَى أَنْفُسِهِمْ لَا تَقْنَطُوا مِنْ رَحْمَةِ اللَّهِ﴾ [الزمر: ٥٣].

p67.2 The Prophet (Allah bless him and give him peace) said,

"Let none of you die except thinking the best of Allah."

p67.2 وقال النبي ﷺ: «لا يموتنَّ أحدُكم إلا وهو حَسَنُ الظن بالله» [رواه مسلم].

*

p68.0 INGRATITUDE TO SOMEONE WHO DOES ONE A KINDNESS

p68.0 كفران نعمة المحسن

p68.1 Allah Most High says:

"... to show thanks to Me, and to your parents ..." (Koran 31:14).

p68.1 قال الله تعالى:
﴿... أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ ...﴾ [لقمان: ١٤].

p68.2 The Prophet (Allah bless him and give him peace) said,

"He who does not thank people is unthankful to Allah."

p68.2 قال النبي ﷺ: «لا يشكر الله من لا يشكر الناس» [رواه أبو داود].

p68.3 One of the early Muslims said: "Ingratitude for a kindness is one of the enormities. *Gratitude* consists of reciprocating it or supplicating for the person."

p68.3 وقال بعض السلف «كفران النعمة من الكبائر، وشكرها بالمجازاة أو بالدعاء».

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p69.0 WITHHOLDING EXCESS WATER FROM OTHERS

p69.0 منع فضل الماء

p69.1 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever denies others his surplus water or pasturage, Allah shall deny him His blessing on the Day of Judgement."

(2) "Do not sell surplus water."

p69.1 عن النبي ﷺ قال: «مَن منع فضل الماء أو فضل كلئه منعه الله فضله يوم القيامة» [رواه أحمد].

وقال ﷺ: «لا تبيعوا فضل الماء» [رواه البخاري].

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p70.0 BRANDING AN ANIMAL'S FACE

p70.0 مَن وسم دابة في الوجه

p70.1 The Prophet (Allah bless him and give him peace) passed by a donkey whose face had been branded and said,

"Haven't you heard that I have cursed whoever brands or strikes the faces of livestock?"

—and he forbade it.

p70.1 [عن جابر رضي الله عنه] أن النبي ﷺ مرّ بحمار قد وسم في وجهه فقال: «أما بلغكم أني لعنتُ مَن وسم البهيمة في وجهها، أو ضربها في وجهها؟» ونهى عن ذلك [رواه أبو داود].

p70.2 The words of the Prophet (Allah bless him and give him peace) "Haven't you heard that I have cursed..." imply that he who has not heard the warning against an act is not guilty of sin by committing it, though whoever has heard and knows is included in the curse. We hold that it is likewise with all these enormities, except those which are necessarily known as being of the religion (def: f1.3(N:)).

p70.2 فقوله ﷺ: «أما بلغكم أني لعنتُ» يفهم منه أن مَن لم يبلغه الزجر غير آثم، وأن مَن بلغه وعرف فهو داخل في اللعنة، وكذا نقول في عامة هذه الكبائر إلا ما علم منها بالاضطرار من الدين.

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p71.0 GAMBLING

p71.0 القمار

p71.1 Allah Most High says:

"Wine, gambling, idols, and fortune-telling

p71.1 قال الله تعالى:

﴿إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ

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arrows are but filth of the Devil's handiwork, so shun it, that you may succeed. The Devil only wants to create enmity and hatred between you over wine and gambling, and to prevent you from remembering Allah and from prayer. Will you not then desist?" (Koran 5:90–91).

وَالأَزْلاَمُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ. إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ العَدَاوَةَ وَالبَغْضَاءَ فِي الخَمْرِ وَالمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ﴾. [المائدة: ٩٠ - ٩١].

p71.2 The Prophet (Allah bless him and give him peace) said,

"Whoever says to his companion, 'Come, I will play you for stakes,' must expiate by giving charity,"

If merely saying this is a sin that calls for charity in expiation, what must one suppose about actually doing it? It is a form of consuming others' wealth through falsehood.

p71.2 وقال النبي ﷺ: «من قال لصاحبه تعال أقامرك فليتصدق» [رواه البخاري ومسلم].

فإذا كان مجرد القول معصية موجبة للصدقة المكفرة، فما ظنك بالفعل؟ وهو داخل في أكل المال بالباطل.

*

p72.0 VIOLATING THE MECCAN SACRED PRECINCT (HARAM)

p72.0 الإلحاد في الحرم

p72.1 Allah Most High says:

"... and al-Masjid al-Haram which We have appointed equally for all people, he who stays therein as well as the desert dweller. Whoever intends to violate it out of wrongdoing, We shall make him taste a painful torment" (Koran 22:25).

(n: The words *out of wrongdoing* in the above verse mean "by reason of doing wrong through committing an act that is forbidden therein, even if it merely consists of reviling one of the caretakers" (*Tafsir al-Jalalayn* (y77), 436).)

p72.1 قال الله تعالى:

﴿... وَالمَسْجِدِ الحَرَامِ الَّذِي جَعَلْنَاهُ لِلنَّاسِ سَوَاءً العَاكِفُ فِيهِ وَالبَادِ، وَمَنْ يُرِدْ فِيهِ بِإِلْحَادٍ بِظُلْمٍ نُذِقْهُ مِنْ عَذَابٍ أَلِيمٍ﴾ [الحج: ٢٥].

(ت: أما معنى كلمة «بظلم» في الآية الكريمة، فقد قال في تفسير الجلالين: «أي بسببه بأن ارتكب منهياً ولو شتم الخادم». [نقل من تفسير الجلالين: ٤٣٦]).

p72.2 The Prophet (Allah bless him and give him peace) said,

"Of all people, the greatest in outrage against Allah is he who kills in the Meccan Sacred Precinct, who kills someone who is not trying to kill

p72.2 وعن النبي ﷺ قال: «إنَّ أعتى النَّاس على الله من قتل في الحرم، أو

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him, or who kills because of the feuds of pre-Islamic times."

قتل غير قاتله، أو قتل بذ حول الجاهلية» [رواه أحمد].

*

p73.0 FORGOING THE FRIDAY PRAYER TO PRAY ALONE

p73.0 تارك الجمعة ليصلي وحده

p73.1 The Prophet (Allah bless him and give him peace) said:

(1) "I've considered having a man lead people at prayer and going myself to those who hang back from attending the Friday prayer to burn their houses down upon them."

(2) "Going to the Friday prayer is obligatory for every male who has reached puberty."

p73.1 عن النبي ﷺ: «لقد هممتُ أنْ آمر رجلاً يصلي بالناس، ثم أحرّق على رجال يتخلّفون عن الجمعة بيوتَهم» [رواه مسلم].

وعن النبي ﷺ قال: «رواحُ الجمعة واجبٌ على كل محتلم» [رواه النسائي].

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p74.0 SPYING ON THE MUSLIMS AND REVEALING THEIR WEAKNESSES

p74.0 من جسَّ على المسلمين ودل على عوراتهم

p74.1 Included in this subject is the hadith of Hatib ibn Abi Balta'a (A: who sent a secret letter telling of the Muslims' military plans to his relatives in Mecca in hopes that they would not get hurt) whom 'Umar (Allah be well pleased with him) wanted to kill for what he had done, but the Prophet (Allah bless him and give him peace) forbade 'Umar to, as Hatib had fought at Badr (A: and by accepting Hatib's excuse, left nothing for any Muslim to criticize (dis: p75.3)).

If someone's spying entails undermining Islam and its people, or the killing, captivity, enslavement, or plundering of the Muslims, or anything of the like, then he is one of those who strive for corruption in the land, destroying tillage and offspring, and he is subject to death, and deserves the torment (A: of hellfire), may Allah save us from it. Anyone who spies necessarily

p74.1 في الباب حديث حاطب بن أبي بلتعة وأن عمر رضي الله عنه أراد قتله بما فعل، فمنعه النبي ﷺ من قتله لكونه شهد بدراً.

فإن ترتب على جسِّه وهن على الإسلام وأهله، وقتل المسلمين وسبي وأسر ونهب، أو شيء من ذلك؛ فهذا ممن سعى في الأرض فساداً وأهلك الحرث والنسل، وتعين قتله، وحق عليه العذاب، نسأل الله العافية.

وبالضرورة يدري كل ذي جسٍّ أن

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knows that if ordinary talebearing is an enormity (dis: p45), a spy's carrying information is far more abominable and heinous.

النميمة إذا كانت من الكبائر، فنميمة الجاسوس أكبر وأعظم بكثير.

*

p75.0 PROBABLE ENORMITIES

(n: Commentaries by Imam Nawawi and 'Abd al-Ra'uf Munawi have been added by the translator to some of the following hadiths.)

p75.0 ما يحتمل أنه من الكبائر

ENVY

الحسد

p75.1 The Prophet (Allah bless him and give him peace) said:

(1) "Beware of envy, for envy consumes good works as fire consumes wood."

(2) "None of you believes until he loves for his brother what he loves for himself."

(Nawawi:) It is fitter to interpret this hadith as referring to universal brotherhood, including both Muslims and non-Muslims, such that one loves for one's non-Muslim brother what one loves for oneself, i.e. to enter Islam, just as one loves one's Muslim brother to remain in Islam, this being why it is desirable (mustahabb) to pray for the guidance of non-Muslims. The hadith is understood as denying that someone who does not love for his brother what he loves for himself has perfect faith, *love* meaning to want what is good and advantageous for him, referring to religious love, not individual human love. For one's human nature might well dislike another's attaining the good, or surpassing oneself therein, though it is obligatory for one to resist this human tendency and pray for one's brother and desire for him what one desires for oneself. Someone who does not love for his brother what he loves for himself is *envious*, and envy, as Ghazali notes, is of three types (A: all of them unlawful). The first is to wish that another person cease to have something good in order to obtain it oneself. The second is to wish that

p75.1 قال النبي ﷺ: «إياكم والحسد، فإن الحسد يأكل الحسنات كما تأكل النار الحطب» [رواه أبو داود].

وقال ﷺ: «لا يؤمن أحدكم حتى يحب لأخيه ما يحب لنفسه» [رواه البخاري].

(النووي:) الأولى أن يحمل ذلك على عموم الأخوة حتى يشمل الكافر والمسلم، فيحب لأخيه الكافر ما يحب لنفسه من دخوله في الإسلام، كما يحب لأخيه المسلم دوامه على الإسلام. ولهذا كان الدعاء بالهداية للكافر مستحباً.

والحديث محمول على نفي الإيمان الكامل عمن لم يحب لأخيه ما يحب لنفسه. والمراد بالمحبة إرادة الخير والمنفعة، ثم المراد المحبة الدينية لا المحبة البشرية. فإن الطباع البشرية قد تكره حصول الخير وتميز غيرها عليها، والإنسان يجب عليه أن يخالف الطباع البشرية ويدعو لأخيه ويتمنى له ما يحب لنفسه. والشخص متى لم يحب لأخيه ما يحب لنفسه كان حسوداً، والحسد - كما قال الغزالي - ينقسم إلى ثلاثة أقسام: الأول أن يتمنى زوال نعمة الغير وحصولها لنفسه. الثاني أن يتمنى زوال

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another lose something good, even if one does not obtain it, as when one already has another like it, or does not want it, this being worse than the previous type. The third is when one does not wish that the other cease to have something good, but resents his having surpassed one in attainment or position, accepting his parity with one but not his superiority. And this is unlawful as well, because one thereby objects to Allah's division of His favor among His servants. Allah Most High says:

"Are they the ones who apportion the mercy of your Lord? It is We who have divided their livelihoods between them in this life, and raised some of them in degrees above others" (Koran 43:32).

So whoever does not accept this division opposes Allah Most High in His apportionment and His wisdom. One must remedy one's human nature, make it accept destiny, and resist it by praying that one's enemy be given what one's self-interest might prefer him not to have (*al-Arba'un al-Nawawiyya wa sharhuha* (y103), 40).

نعمة الغير وإنْ لم تحصل له، كما إذا كان عنده مثلها أو لم يكن يحبها وهذا شرّ من الأول.

والثالث أن لا يتمنى زوال النعمة عن الغير لكن يكره ارتفاعه عليه في الحظ والمنزلة ويرضى بالمساواة ولا يرضى بالزيادة. وهذا أيضاً محرّم، لأنه لم يرض بقسمة الله تعالى. قال الله تعالى:

﴿أَهُمْ يَقْسِمُونَ رَحْمَةَ رَبِّكَ؟ نَحْنُ قَسَمْنَا بَيْنَهُمْ مَعِيشَتَهُمْ فِي الْحَيَاةِ الدُّنْيَا وَرَفَعْنَا بَعْضَهُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ﴾ [الزخرف: ٣٢].

فمن لم يرض بالقسمة فقد عارض الله تعالى في قسمته وحكمته. وعلى الإنسان أن يعالج نفسه ويحملها على الرضا بالقضاء، ويخالفها بالدعاء لعدوه بما يخالف النفس [نقل من الأربعين النووية وشرحها: ٤٠].

NOT LOVING THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE) MORE THAN ALL PEOPLE

أن يحب المرء أحداً أكثر من رسول الله ﷺ

p75.2 The Prophet (Allah bless him and give him peace) said,

"None of you believes until I am more beloved to him than his wife, child, self, and all people."

(Munawi:) Kirmani says, "*Love of the Prophet* (Allah bless him and give him peace) means the will to obey him and not disobey him, this being one of the obligations of Islam" (*Fayd al-Qadir sharh al-Jami' al-saghir* (y91), 6.441).

p75.2 قال النبي ﷺ: «لا يؤمنُ أحدكم حتى أكون أحبَّ إليه من أهله وولده ونفسه والناس أجمعين» [رواه البخاري].

(المناوي:) قال الكرماني: «ومحبة الرسول ﷺ إرادة طاعته وترك مخالفته وهو من واجبات الإسلام» [نقل من فيض القدير شرح الجامع الصغير: ٦/ ٤٤١].

CONTENDING WITH WHAT THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE) HAS BROUGHT

عدم التسليم بما جاء به الرسول ﷺ

p75.3 The Prophet (Allah bless him and give

p75.3 قال النبي ﷺ: «لا يؤمن

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him peace) said,

"None of you believes until his inclinations conform to what I have brought."

(Nawawi:) This means a person must examine his acts in light of the Koran and sunna, suspending his own inclinations and following what the Prophet (Allah bless him and give him peace) has brought. The hadith resembles the word of Allah Most High,

"When Allah and His messenger have decided a matter, no believer, male or female, has a choice in their affair" (Koran 33:36).

(*al-Arba'un al-Nawawiyya wa sharhuha* (y103), 74)

أحدُكم حتى يكون هواه تبعاً لما جئت به» [رواه الديلمي].

(النووي:) يعني الشخص يجب عليه أن يعرض عمله على الكتاب والسنة ويخالف هواه ويتبع ما جاء به ﷺ. وهذا نظير قوله تعالى: ﴿وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ﴾ [الأحزاب: ٣٦]

[نقل من الأربعين النووية وشرحها: ٧٤].

ACQUIESCING TO DISOBEDIENCE

الرضى بمنكر

p75.4 The Prophet (Allah bless him and give him peace) said:

(1) "Whoever of you sees something wrong, let him change it with his hand (dis: book q). If unable, then let him change it with his tongue. If unable, then with his heart. And that is the weakest degree of faith."

And in the hadith related by Muslim concerning oppressors:

(2) "Whoever fights them with his hand is a believer, whoever fights them with his tongue is a believer, whoever fights them in his heart is a believer. Beyond that, there is not a mustard grain of faith."

This hadith proves that whoever does not condemn acts of disobedience in his heart or wish they would cease is devoid of faith. Fighting with the heart includes asking Allah Most High to annihilate the falsehood and its perpetrators, or improve them.

(3) "Leaders will be placed over you that some of you will accept and some of you condemn.

p75.4 قال النبي ﷺ: «من رأى منكم منكراً فليغيره بيده، فإن لم يستطع فبلسانه، فإن لم يستطع فبقلبه وذلك أضعف الإيمان» [رواه مسلم].

وفي حديث لمسلم في الظلمة: «فمن جاهدهم بيده فهو مؤمنٌ، ومن جاهدهم بلسانه فهو مؤمنٌ، ومن جاهدهم بقلبه فهو مؤمنٌ، ليس وراء ذلك من الإيمان حبة خردل» [رواه مسلم].

وفيه دليل على أن من لم ينكر المعاصي بقلبه ولا يود زوالها فإنه عديم الإيمان. ومن جهاد القلب التوجه إلى الله تعالى أن يمحق الباطل وأهله أو أن يصلحهم.

وقال ﷺ: «إنه يُستعمل عليكم أمراء فتعرفون وتنكرون: فمن كره فقد بَرِئَ،

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Whoever dislikes what they do is innocent. Whoever condemns what they do is secure. But not whoever accepts and follows them." Someone said, "Shouldn't we fight them?" And he replied, "No, not as long as they maintain the prayer [dis: o25.3(a(A:))] among you."	ومن أنكر فقد سَلِمَ، ولكن مَن رضي وتابع». قيل: أفلا نقاتلهم؟ قال: «لا ما أقاموا فيكم الصلاة». [رواه مسلم].
HELPING ANOTHER TO WRONGFULLY DISPUTE	الإعانة على خصومة بغير حق
p75.5 The Prophet (Allah bless him and give him peace) said, "He who helps another to argue without right remains under the hatred of Allah until he gives up."	p75.5 قال النبي ﷺ: «مَن أعان على خصومةٍ بغير حقٍ كان في سخط الله حتى ينزعَ» [رواه الحاكم].
UNDERHANDEDNESS	الخديعة [في غير الجهاد]
p75.6 The Prophet (Allah bless him and give him peace) said, "Plotting and duplicity are in the hellfire."	p75.6 قال النبي ﷺ: «المكر والخديعة في النار» [رواه البيهقي].
DISAFFECTING A PERSON'S SPOUSE OR SERVANT FROM HIM	من خبب على امرىء زوجته أو مملوكه
p75.7 The Prophet (Allah bless him and give him peace) said, "He who disaffects a person's wife or servant from him is not of us."	p75.7 قال النبي ﷺ: «مَن خَبَّبَ على امرىءٍ زوجته أو مملوكه فليس منا» [رواه أبو داود].
VULGARITY	البذاء في القول
p75.8 The Prophet (Allah bless him and give him peace) said: (1) "Modesty is of faith, and faith is in paradise. Vulgarity is of rudeness, and rudeness is in hell."	p75.8 قال النبي ﷺ: «الحياءُ من الإيمان والإيمان في الجنة، والبذاءُ من الجفاء والجفاءُ في النار» [رواه الحاكم].

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(2) "Allah detests the foulmouthed, vulgar person."

وقال ﷺ: «إن الله يبغض الفاحش البذيء» [رواه أبو داود].

BEING LEADERLESS

من خرج على الإمام الحق

p75.9 The Prophet (Allah bless him and give him peace) said,

"The death of someone who dies without the leader of a group over him is as if he had died in the pre-Islamic period of ignorance [A: *leader* meaning the caliph (def: o25) or his representative, if they exist (dis: p40.2(A:)]."

p75.9 قال النبي ﷺ: «مَن مات وليس عليه إمامُ جماعة فإنّ موتته موتةٌ جاهليةٌ» [رواه الحاكم].

BENEFITING AT A MUSLIM'S EXPENSE

من أراد حظاً دنيوياً بالطعن في مسلم بغير حق

p75.10 The Prophet (Allah bless him and give him peace) said:

"Whoever eats food obtained at the expense of a Muslim, Allah will feed him hellfire on Judgement Day. He who gains a prestigious reputation at the expense of a Muslim, Allah will reduce him to the position of the show-offs and boasters (def: p33.2) on Judgement Day. He who wears a garment acquired at the expense of a Muslim, Allah will dress him in a garment of fire on Judgement Day."

p75.10 قال النبي ﷺ: «من أكل بمسلمٍ أكلة أطعمه الله بها أكلةً من النار يوم القيامة، ومن أقام بمسلمٍ مقام سمعةٍ، أقامه الله يوم القيامة مقام رياءٍ وسمعةٍ، ومن اكتسى بمسلمٍ ثوباً كساه الله ثوباً من نارٍ يوم القيامة» [رواه الحاكم].

SHUNNING A MUSLIM WITHOUT RIGHT

هجر المسلم بغير حق

p75.11 The Prophet (Allah bless him and give him peace) said,

"Whoever shuns his brother for a year is as though he had spilled his blood."

(Munawi:) This means that avoiding him for a year deserves punishment in the hereafter just as spilling his blood does, and that both the person who shuns someone and he who kills someone are involved in sin, though not on the same level, for the use of a simile does not imply the parity of the

p75.11 قال النبي ﷺ: «من هجر أخاه سنةً فهو كسفك دمه» [رواه الحاكم].

(المناوي:) [«من هجر أخاه» (في الإسلام) «سنة» (أي بغير عذر شرعي) «فهو كسفك دمه» (] أي مهاجرته سنة توجب العقوبة كما أن سفك دمه يوجبها. والمراد اشتراك الهاجر والقاتل في الإثم، لا في قدره، ولا يلزم التساوي بين المشبه

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simile's subject to the thing with which it has been compared. Shafi'i holds it is unlawful to shun a Muslim for three days unless there is a valid reason such as the religious improvement of the person avoiding the other or person being avoided, or when the latter is morally corrupt or involved in reprehensible innovation (bid'a, def: w29.3) (*Fayd al-Qadir sharh al-Jami' al-saghir* (y91), 6.234).

والمشبه به.

ومذهب الشافعي أن هجر المسلم فوق ثلاث حرام إلا لمصلحة كإصلاح دين الهاجر أو المهجور أو لنحو فسقه أو بدعته [نقل من فيض القدير شرح الجامع الصغير: ٦/ ٢٣٤].

INTERCEDING FOR THE GUILTY

الشفاعة في الحدود

p75.12 The Prophet (Allah bless him and give him peace) said,

"He whose intercession comes between a criminal and one of Allah's prescribed penalties has defied Allah in His command."

p75.12 قال النبي ﷺ: «مَن حالت شفاعته دون حدٍ من حدود الله فقد ضادَّ اللهَ في أمره» [رواه أبو داود].

SAYING SOMETHING THAT ALLAH DETESTS

التكلم بما يسخط الله

p75.13 The Prophet (Allah bless him and give him peace) said:

(1) "A man says something Allah detests that he does not think twice about, for which he plunges into hell [dis: r1]."

(2) "A man says something pleasing to Allah, not imagining it amounts to what it does, for which Allah records His pleasure in him until Judgement Day. And a man says something that angers Allah, not imagining it amounts to what it does, for which Allah records His wrath against him until the day he meets Him."

p75.13 قال النبي ﷺ: «إنَّ الرجل ليتكلم بالكلمة من سخط الله لا يلقي لها بالاً يهوي بها في جهنم» [رواه البخاري].

وقال ﷺ: «إن الرجل ليتكلم بالكلمة من رضوان الله ما (كان) يظن أن تبلغ ما بلغت يكتب الله له بها رضوانه إلى يوم القيامة. وإن الرجل ليتكلم بالكلمة من سخط الله ما كان يظن أن تبلغ ما بلغت يكتب الله له بها سخطه إلى يوم يلقاه» [رواه الترمذي].

SAYING "MASTER" (SAYYID) TO A HYPOCRITE

أن يقول لمنافق يا سيد

p75.14 The Prophet (Allah bless him and give him peace) said,

"Do not say "master" to a hypocrite, for if he is a master, you have angered your Lord Mighty and Majestic."

p75.14 قال النبي ﷺ: «لا تقولوا للمنافق سيدٌ، فإنه إنْ يَكُ سيداً فقد أسخطتم ربَّكم عز وجل» [رواه أبو داود].

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BREAKING A PROMISE

إخلاف الوعد

p75.15 The Prophet (Allah bless him and give him peace) said,

"The signs of a hypocrite are three: when he speaks he lies, when he promises he breaks it, and when entrusted he betrays his trust."

p75.15 قال النبي ﷺ: «آية المنافق ثلاث: إذا حدّث كذب، وإذا وعد أخلف، وإذا ائتمن خان» [متفق عليه].

(A: If one makes an ordinary promise to another person, it is sunna to keep the promise, though it is strictly unlawful to make a promise that one has no intention to keep, this being how scholars interpret the above hadith.)

Lying and betraying a trust have been mentioned before, while here we are discussing promise breaking. Allah Most High says,

"Of them, there is one who promised Allah, 'If He bestows of His generosity on us, we shall certainly give charity and be of the righteous' " (Koran 9:75).

(n: Suyuti notes that the person referred to above "is Tha'laba ibn Hatib, who asked the Prophet (Allah bless him and give him peace) to pray that Allah would enrich him, so that he might give everyone their just due. So the Prophet supplicated for him and he became wealthy, but then he stopped coming to the Friday prayer, withdrew from the community, and refused to pay zakat, as Allah Most High says:

"'But when He gave to them of His generosity, they hoarded it and turned away in aversion. So He punished them by putting hypocrisy into their hearts until the day they meet Him, because they broke their promise to Allah and lied' (Koran 9:76–77).

Some time after this, he brought the Prophet (Allah bless him and give him peace) his zakat, but the Prophet told him, 'Allah forbids me to accept it from you,' at which Tha'laba threw handfuls of dust upon his own head. He later [A: in the time of the subsequent caliphate] took his zakat to Abu Bakr, but he would not accept it. Then to 'Umar, but he would not accept it. Then he took it to 'Uthman, but he would not accept it either, and he died in the reign of 'Uthman" (*Tafsir al-Jalalayn* (y77), 253).)

فأما الكذب والخيانة فقد مرّا وأما خلف الوعد فهو المقصود بالذكر هنا، وقد قال الله تعالى:

﴿وَمِنْهُم مَّنْ عَاهَدَ اللَّهَ لَئِنْ آتَانَا مِن فَضْلِهِ لَنَصَّدَّقَنَّ وَلَنَكُونَنَّ مِنَ الصَّالِحِينَ﴾ [التوبة: ٧٥]. (ت: قال السيوطي: وهو ثعلبة بن حاطب سأل النبي ﷺ أن يدعو له أن يرزقه الله مالاً ويؤدي منه كل ذي حق حقه فدعا له فوسع عليه فانقطع عن الجمعة والجماعة ومنع الزكاة كما قال تعالى:)

﴿فَلَمَّا آتَاهُم مِّن فَضْلِهِ بَخِلُوا بِهِ وَتَوَلَّوا وَهُم مُّعْرِضُونَ. فَأَعْقَبَهُمْ نِفَاقًا فِي قُلُوبِهِمْ إِلَىٰ يَوْمِ يَلْقَوْنَهُ بِمَا أَخْلَفُوا اللَّهَ مَا وَعَدُوهُ وَبِمَا كَانُوا يَكْذِبُونَ﴾ [التوبة: ٧٦ - ٧٧].

فجاء بعد ذلك إلى النبي ﷺ بزكاته فقال: «إن الله منعني أن أقبل منك»؛ فجعل يحثو التراب على رأسه ثم جاء بها إلى أبي بكر فلم يقبلها ثم إلى عمر فلم يقبلها ثم إلى عثمان فلم يقبلها ومات في زمانه [نقل من تفسير الجلالين: ٢٥٣].

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NOT TRIMMING ONE'S MUSTACHE

عدم قص الشـــارب إذا كان يغطي الشفة العليا

p75.16 The Prophet (Allah bless him and give him peace) said:

(1) "He who does not trim his mustache [def: e4.1(2)] is not one of us."

(2) "Be different from the Zoroastrians: grow your beards and trim your mustaches."

p75.16 قال النبي ﷺ: «من لم يأخذ (من) شاربه فليس منا» [رواه الترمذي].

وقال ﷺ: «خالفوا المجوس: وفروا اللحى وأحفوا الشوارب» [رواه البخاري].

NOT PERFORMING THE HAJJ WHEN ABLE TO

عدم الحج مع الاستطاعة

p75.17 'Umar ibn Khattab (Allah be well pleased with him) said:

"I've considered sending men to these cities to see who has not made the pilgrimage, and collect the non-Muslim poll tax (jizya, def: o11.4) from everyone possessing the means who has not performed it [def: j1.5–10]. They are not Muslims. They are not Muslims."

p75.17 قال عمر بن الخطاب رضي الله عنه: «لقد هممت أن أبعث رجالاً إلى هذه الأمصار فينظروا كل من لم يحج: فمن كانت له جدة ولم يحج فيضربوا عليهم الجزية، ما هم بمسلمين. ما هم بمسلمين» [رواه سعيد ابن منصور].

KEEPING AN INHERITANCE FROM AN HEIR

من احتال فحرم وارثه من الميراث

p75.18 The Prophet (Allah bless him and give him peace) said,

"Whoever prevents his heirs from receiving their inheritance [dis: w52.1(234–36)], Allah will prevent his inheriting paradise."

p75.18 قال النبي ﷺ: «من فرّ من ميراث وارثه قطع اللهُ ميراثه من الجنة» [رواه ابن ماجه].

TALKING ABOUT HOW ONE'S WIFE MAKES LOVE

إفشاء سر ما يجري بين الرجل وزوجته في الجماع

p75.19 The Prophet (Allah bless him and give him peace) said,

"Among the worst people in Allah's sight on Judgement Day will be the man who makes love to his wife and she to him, and he divulges her secret."

p75.19 قال النبي ﷺ: «إنَّ من شرّ الناس عند الله منزلةً يوم القيامة رجلٌ يُفضي إلى امرأته وتُفضي إليه، ثم ينشر سرَّها» [رواه مسلم].

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SODOMIZING ONE'S WIFE

p75.20 The Prophet (Allah Bless him and give him peace) said,

"He who sodomizes a woman is accursed."

INTERCOURSE WITH ONE'S WIFE DURING MENSTRUATION

p75.21 The Prophet (Allah bless him and give him peace) said,

"Whoever has intercourse with a woman during her period, or sodomizes a woman, or who goes to a fortune-teller and believes him, has committed unbelief [A: if he considers any of these permissible]."

LOOKING INTO ANOTHER'S HOUSE WITHOUT LEAVE

p75.22 The Prophet (Allah bless him and give him peace) said:

(1) "Were a man to look at you without permission and you threw a rock at him and knocked out his eye, you would not have committed any offense."

(2) "Whoever peeps into a house without its people's leave, they may put out his eye."

EXCESSIVENESS IN RELIGION

p75.23 Allah Most High says,

"Say: 'O people of the Book, do not be excessive in your religion' " (Koran 4:171).

(Qurtubi:) According to exegetes, this refers to the extremism of the Jews concerning

اتيان المرأة في دبرها

p75.20 قال رسول الله ﷺ: «ملعونٌ من أتى امرأةً في دبرها» [رواه أحمد].

مجامعة الحائض

p75.21 وعن النبي ﷺ: «مَن أتى حائضاً (في فرجها) أو امرأةً في دبرها، أو كاهناً فصدّقه فقد كَفَرَ» [رواه أبو داود].

النظر في بيت الغير بغير إذنه

p75.22 قال النبي ﷺ: «لو أن رجلاً اطلع عليك بغير إذن فحذفته بحصاة ففقأت عينه، ما كان عليك جناح» [رواه البخاري ومسلم].

وقال ﷺ: «مَن اطّلع في بيت قومٍ بغير إذنهم فقد حل لهم أنْ يفقؤوا عينَهُ» [أخرجه مسلم].

الغلو في الدين

p75.23 قال الله تعالى: ﴿قُلْ يَا أَهْلَ الكِتَابِ لَا تَغْلُوا فِي دِينِكُم . . .﴾ [النساء: ١٧١].

(القرطبي:) يعني بذلك فيما ذكره المفسرون غلوّ اليهود في عيسى حتى

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Jesus in accusing Mary of fornication, and the extremism of the Christians in considering him a god. For both excessiveness and remissness are evil, and both may be unbelief (*al-Jami' li ahkam al-Qur'an* (y117), 6.21).

The Prophet (Allah bless him and give him peace) said,

"Beware of going to extremes [in religion], for those before you were only destroyed through excessiveness."

(Munawi:) Ibn Taymiya says, "His saying 'Beware of going to extremes in religion' is a general prohibition applying to all types of extremes, whether in beliefs or works" (*Fayd al-Qadir sharh al-Jami' al-saghir* (y91), 3.126).

قذفوا مريم وغلو النصارى فيه حتى جعلوه رباً. فالإفراط والتفريط كله سيئة وكفرٌ [نقل من الجامع لأحكام القرآن: ٦/ ٢١].

قال رسول الله ﷺ: «إياكم والغلوّ (في الدين): فإنما هلك من كان قبلكم بالغلوّ (في الدين)» [رواه النسائي].

(المناوي:) قال ابن تيمية: «قوله إياكم والغلّو في الدين عامٌ في جميع أنواع الغلوّ في الاعتقادات والأعمال» [نقل من فيض القدير شرح الجامع الصغير: ٣/ ١٢٦].

NOT ACCEPTING A SWORN STATEMENT

عدم الرضا بيمين المسلم الصالح

p75.24 The Prophet (Allah bless him and give him peace) said,

"Whoever is sworn to in Allah's name, let him accept it, for whoever does not has nothing to do with Allah in anything."

p75.24 عن النبي ﷺ قال: «مَن حُلِفَ له بالله فليرضَ ومن لم يرض فليس من الله في شيء» [رواه ابن ماجه].

STINGINESS

الشح

p75.25 Allah Most High says:

(1) "Whoever is watchful against the stinginess of his own soul, those are the successful" (Koran 59:9).

(2) "Here you are, called upon to spend in the Way of Allah, and some of you are being stingy, while whoever is stingy is only ungenerous towards himself. It is Allah who is rich and you who are the poor" (Koran 47:38).

The Prophet (Allah bless him and give him peace) said:

p75.25 قال تعالى:

﴿وَمَن يُوقَ شُحَّ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ﴾ [الحشر: ٩].

وقال تعالى: ﴿هَا أَنتُمْ هَؤُلَاءِ تُدْعَوْنَ لِتُنفِقُوا فِي سَبِيلِ اللَّهِ فَمِنكُم مَّن يَبْخَلُ ۖ وَمَن يَبْخَلْ فَإِنَّمَا يَبْخَلُ عَن نَّفْسِهِ ۚ وَاللَّهُ الْغَنِيُّ وَأَنتُمُ الْفُقَرَاءُ﴾ [محمد: ٣٨].

وقال ﷺ: «وأيُّ داءٍ أدوى من البخل»

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(1) "What disease is worse than stinginess?"

(2) "Three things are deadly: avarice obeyed, caprice yielded to, and opinionated people's pride in their opinions."

[رواه البخاري].

وفي الحديث: «ثلاثٌ مهلكات: شحٌ مطاع، وهوىً متبع، وإعجابُ كل ذي رأي برأيه» [رواه البزار والبيهقي وغيرهما].

SITTING IN THE CENTER OF A CIRCLE

الجلوس في وسط الحلقة

p75.26 The Prophet (Allah bless him and give him peace) cursed whoever sits in the middle of a circle of people (A: because such a person sees himself as better than they are).

p75.26 [وصحح الترمذي أن] النبي ﷺ لعن الجالس وسط الحلقة.

PASSING IN FRONT OF SOMEONE PERFORMING THE PRAYER

المرور بين يدي المصلي

p75.27 The Prophet (Allah bless him and give him peace) said,

"If someone passing in front of a person performing the prayer knew of the penalty for it, it would be better for him to wait for forty [n: a variant has, "a hundred years"]."

(A: *In front* means within the length of the person's prostration, or the distance to the barrier he is using (def; f7) if it is not far.)

(Munawi:) Ibn Daqiq al-'Eid says: "A Maliki scholar has distinguished four situations respecting the sin of the person praying and the person who passes in front of him [n: given P, the person praying, and Q, the person passing in front of him]:

(1) Q sins but not P when P is praying behind a barrier in a place that is not a commonly used walkway and Q passes in front of him when there is another alternative (A: meaning another route, since to stop and wait is not considered an alternative, though it is superior);

(2) P sins but not Q when P is praying in a commonly used walkway without a barrier, or at a considerable distance from one, and Q has no other alternative but to pass in front of him;

p75.27 وقال ﷺ: «لو يعلم المارُّ بين يدي المصلي ماذا عليه لكان أن يقف أربعين (ت: وفي رواية: «مائة عام») خيراً له» [رواه البخاري].

(المناوي:) قال ابن دقيق العيد: قسم بعض المالكية أحوال المارّ والمصلّي في الإثم وعدمه أربعة أقسام:

[يأثم المار دون المصلي وعكسه ويأثمان معاً وعكسه].

والأولى: أن يصلي إلى سترة في غير مشرع وللمار مندوحة فيأثم المار دون المصلي.

والثانية أن يصلي في مشرع مسلوك بغير سترة أو مباعداً عنها ولا يجد المار مندوحة فيأثم المصلّي دون المارّ.

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(3) both P and Q sin when P is praying in circumstances like (2) above, if Q has an alternative route but passes in front of P anyway;

(4) and neither P nor Q sin when P is praying in circumstances like (1) above, if Q has no alternative and passes in front of P."

(*Fayd al-Qadir sharh al-Jami' al-saghir* (y91), 5.338)

والثالثة كالثانية لكن يجد المار مندوحة، فيأثمان.

والرابعة كالأولى لكن لا يجد المار مندوحة فلا يأثمان [نقل من فيض القدير شرح الجامع الصغير: ٥/ ٣٣٨].

NOT LOVING ONE'S FELLOW MUSLIMS

عدم محبة المسلمين

p75.28 The Prophet (Allah bless him and give him peace) said:

"By Him in whose hand is my soul, none of you will enter paradise until you believe, and none of you will believe until you love each other. Shall I not tell you of something which if you do it will create love among you? Increase the custom of greeting each other with 'as-Salamu 'alaykum.' "

(*Kitab al-kaba'ir wa tabyin al-maharim* (y36), 35–181)

p75.28 قال رسول الله ﷺ: «والذي نفسي بيده لا تدخلون الجنة حتى تؤمنوا ولا تؤمنوا حتى تحابّوا، ألا أدلكم على شيء إذا فعلتموه تحاببتم؟ أفشوا السلام بينكم» [رواه مسلم].

[محرّر من كتاب الكبائر وتبيين المحارم: ٣٥ - ١٨١].

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p76.0 (n: Most of the above enormities are agreed upon by all four schools of jurisprudence. A more comprehensive list by Ibn Hajar Haytami is given below at w52.)

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p77.0 THE CONDITIONS OF A VALID REPENTANCE

p77.0 شروط التوبة

p77.1 (Nawawi: (n: with commentary by Muhammad ibn 'Allan Bakri (B:))) Scholars state that repentance is obligatory for every sin (B: there being scholarly consensus (def: b7) that it is obligatory for both lesser sins and enormities, and for both outward acts and inward ones such as malice or envy).

p77.1 (النووي (ت: بشرح محمد بن علان البكري (ب:)):) قال العلماء: التوبة واجبة من كل ذنب (ب: ووجوبها مجمع عليه، لا فرق بين الصغائر والكبائر، الظاهرة والباطنة كالحقد والحسد).

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p77.2 When a person's disobedience is solely between him and Allah Most High, unconnected with another human being's rights, his repentance has three conditions:

(a) to desist from the sin;

(b) to regret having done it (B: because of its being disobedience, since regretting it for some other reason is of no consequence);

(c) and to resolve never to commit it again.

(B: Some hold that after having repented of it, it is also a condition that one abandon the company of whoever committed the act with one, and also that one's repentance be purely for the sake of Allah, a restriction that Ibn Hajar Haytami embeds in the first condition above by saying, "to desist from the sin solely for the sake of Allah, since abandoning it out of fear, ostentation, or other motive besides Allah Most High is not considered desisting.") If any of these conditions is lacking, one's repentance is not valid.

p77.2 فإن كانت المعصية بين العبد وبين الله تعالى لا تتعلق بحق ادمي فلها ثلاثة شروط : أحدها أن يقلع عن المعصية ، والثاني أن يندم على فعلها (ب : من حيث أنها معصية ، فلو ندم عليها لا من هذه الحيثية لم يعتد بندمه) ، والثالث أن يعزم أن لا يعود إليها [(ب : أي إلى مثلها)] أبداً (هذا وزاد بعضهم اشتراط عدم صحبة من ارتكب معه المعصية بعد التوبة وأن تكون التوبة لله تعالى خاصة . وأدرج ابن حجر الهيتمي هذا القيد في الشرط الأول [وهو الإقلاع] فقال : ترك الذنب لله تعالى فلو تركه لخوف أو رياء أو غير ذلك من الأغراض التي لغير الله تعالى لم يعتد بتركه .) فإن فقد أحد هذه الثلاثة ، لم تصح توبته .

p77.3 If the act of disobedience is connected with the rights of another human being, repentance for it has four conditions: the three mentioned above, plus clearing oneself of the obligation owed to the other person. If this obligation is property or the like, one must return it (A: by any means, secretly or openly, even as an ostensible gift) to him (B: i.e. to its owner, meaning to return the article itself if it still exists, or if it does not, then a substitute, whether this be its value or an equal amount of it). (N: Becoming a Muslim eliminates all previous sins except those involving rights or property owed to other people. Allah does not pardon these until they are restored or forgiven.)

If the right in question is the penalty for charging someone with adultery when there are not four witnesses (def: o13) or the like (B: such as a victim's right to retaliate (o3) for a homicide or injury) then one must give oneself up to him (B: to permit him to inflict the penalty due) or else ask him to forgive it. (B: The author's words seem to imply that the validity of repentance depends on

p77.3 وإن كانت المعصية تتعلق بآدمي فشروطها أربعة : هذه الثلاثة وأن يبرأ من حق صاحبها . فإن كانت مالاً أو نحوه رده إليه (ب : أي إلى صاحبه بعينه إن كان موجوداً أو بدله عند تلفه من قيمة أو مثل) وإن كان حد القذف ونحوه (ب : أي نحو القذف كالقتل والقطع قصاصاً) مكّنه (ب : أي صاحب الحق) منه (ب : أي من الحد أي استيفائه منه) أو طلب عفوه (ب : وظاهر كلامه توقف صحة التوبة على ما ذكر من الرد والتمكين أي

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performing the above, of returning the property or giving oneself up—i.e. when possible, for otherwise one intends to do so when possible, or asks the victim for amnesty—but the position of the Imam (A: Juwayni), which 'Izz ibn 'Abd al-Salam and our author (n: Nawawi) also follow, is that one's repentance is valid regarding the rights of Allah Most High (N: through merely repenting), while the other person's right is an obligation that remains upon one (dis: w53), as does the sin of not discharging it).

If the wrong done to another consists of slander (def: r2), then one must have him pardon it (B: by informing him so he can forgive one, though informing him is only a necessary condition when doing so will not cause even greater harm, though if it will, as when one fears the other will kill one, informing him is not obligatory. Both asking for the person's forgiveness and informing him of what one said are only obligatory when he has heard that he has been slandered. If he has not, then asking Allah's forgiveness is sufficient) (*Riyad al-salihin* (y107), 10–11, and *Dalil al-falihin li turuq Riyad al-salihin* (y25), 1.88–91).

إن أمكنه ذلك وإلا نوى ذلك إذا قدر أو طلب العفو، لكن ذهب الإمام - وتبعه العز بن عبد السلام وأقره المصنف - إلى صحة توبته وإنْ لم يسلم نفسه بالنسبة لحق الله تعالى ويبقى عليه حق الآدمي وإثم الامتناع).

وإن كانت غيبة استحله منها (ب: أي بأن يخبره بما قاله حتى يصح تحليله لكن محل تعين الإخبار ما لم يترتب عليه ضرر أعظم، وإلا كأن يخشى قتله بذلك مثلاً فلا، ومحل تعين الإخبار والاستحلال إن بلغه الاغتياب، وإلا كفى الاستغفار) [نقل من رياض الصالحين: ١٠ - ١١؛ ومحرر من كتاب دليل الفالحين لطرق رياض الصالحين: ١/ ٨٨ - ٩٠].

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BOOK Q

COMMANDING THE RIGHT AND FORBIDDING THE WRONG

كتاب الأمر بالمعروف والنهي عن المنكر

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q0.0 INTRODUCTION

q0.0 المقدمة

q0.1 (n: The discussion and analysis that follow are Imam Ghazali's, edited by the Hanbali scholar Ibn Qudama Maqdisi from an earlier abridgement of Ghazali's *Ihya' 'ulum al-din* by 'Abd al-Rahman ibn Jawzi, which Maqdisi shortened to a single volume whose conciseness, if less vivid than the *Ihya'*, better lends itself to the purpose of the present section, which is to discuss the practical implications of an important aspect of Sacred Law.)

q0.2 (Ibn Qudama Maqdisi:) One should know that commanding the right and forbidding the wrong is the most important fundamental of the religion, and is the mission that Allah sent the prophets to fulfill. If it were folded up and put away, religion itself would vanish, dissolution appear, and whole lands come to ruin.

q0.2 (ابن قدامة المقدسي:) اعلم أن الأمر بالمعروف والنهي عن المنكر هو القطب الأعظم في الدين، وهو المهم الذي بعث الله به النبيين، ولو طوي بساطه، لاضمحلت الديانة وظهر الفساد، وخربت البلاد.

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q1.0 THE OBLIGATION TO COMMAND THE RIGHT

q1.0 وجوب الأمر بالمعروف

q1.1 Allah Most High says,

"Let there be a group of you who call to good, commanding the right and forbidding the wrong, for those are the successful" (Koran 3:104).

This verse explains that commanding the right and forbidding the wrong are a *communal* rather than a personal obligation (dis: c3.2), for He says, "Let there be a group of you..." and not, "All of you command the right." So if enough people do it (A: meaning that whenever a wrong is seen, one of those who see it corrects it), the responsibility is lifted from the rest, those who perform it being expressly mentioned as the successful. There are many verses in the Holy Koran about commanding the right and forbidding the wrong.

q1.1 قال الله تعالى:

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ﴾ [آل عمران: ١٠٤].

وفي هذه الآية بيان أنه فرض على الكفاية لا فرض عين لأنه قال: ﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ﴾ ولم يقل: كونوا كلكم آمرين بالمعروف؛ فإذا قام به من يكفي سقط عن الباقين، واختص الفلاح بالقائمين المباشرين له. وفي القرآن العظيم آيات كثيرة في الأمر بالمعروف والنهي عن المنكر

q1.2 The Prophet (Allah bless him and give him peace) said:

q1.2 [وعن النعمان بن بشير رضي الله عنه قال: سمعت] رسول الله ﷺ

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(1) "Those who keep within Allah's limits and those who transgress them or allow them to be compromised may be compared to people on a ship, some of whom must stay below deck in the hardest and worst place, while others get passage above. When those below need water, they pass through those on the upper deck, injuring and annoying them until those below reflect, 'If we were to stave a hole in the hull we could get water without troubling those above.' Were those above deck to leave those below to themselves, all would be destroyed, while if they were to help them, all would be saved."

(2) "Whoever of you sees something wrong, let him change it with his hand. If unable to, then let him change it with his tongue. If unable, then with his heart. And that is the weakest degree of faith."

(3) "The best jihad is speaking the truth to an unjust ruler."

(4) "When you see my Community too intimidated by an oppressor to tell him, 'You are a tyrant,' then you may as well say goodbye to them."

(5) "Command the right and forbid the wrong, or Allah will put the worst of you in charge of the best of you, and the best will supplicate Allah and be left unanswered."

q1.3 Abu Bakr (Allah be well pleased with him) rose from his place, and after having praised Allah Most High, said, "O people: you recite the verse,

" 'O you who believe: you are responsible for yourselves; those who go astray will not harm you if you are guided' (Koran 5:105),

"while we have heard the Messenger of Allah (Allah bless him and give him peace) say,

" 'People who do not change something wrong when they see it are on the verge of a sweeping punishment from Allah.' "

يقول: «مثل القائم على حدود الله والواقع فيها والمداهن فيها، مثل قوم ركبوا سفينة فأصاب بعضهم أسفلها وأوعرها وشرها، وأصاب بعضهم أعلاها، فكان الذين في أسفلها إذا استقوا الماء مروا على من فوقهم فآذوهم، فقالوا: لو خرقنا في نصيبنا خرقاً فاستقينا منه ولم نؤذ من فوقنا، فإن تركوهم وأمرهم هلكوا جميعاً، وإن أخذوا على أيديهم نجوا جميعاً» [رواه البخاري] [. . . .].

فقد جاء في الحديث [المشهور من رواية مسلم] أن النبي ﷺ قال: «من رأى منكم منكراً فليغيره بيده، فإن لم يستطع فبلسانه، فإن لم يستطع فبقلبه، وذلك أضعف الإيمان».

وفي حديث آخر: «أفضل الجهاد كلمة حق عند سلطان جائر» [رواه أحمد].

وفي حديث آخر: «إذا رأيت أمتي تهاب الظالم أن تقول له: أنت ظالم، فقد تودّع منهم» [. . . .].

وعنه ﷺ أنه قال: «لتأمرن بالمعروف ولتنهون عن المنكر أو ليسلطن الله شراركم على خياركم فيدعو خياركم فلا يستجاب لهم».

q1.3 وقام أبو بكر رضي الله عنه، فحمد الله تعالى وأثنى عليه، ثم قال: أيها الناس إنكم تقرؤون هذه الآية: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا عَلَيْكُمْ أَنْفُسَكُمْ لَا يَضُرُّكُمْ مَنْ ضَلَّ إِذَا اهْتَدَيْتُمْ﴾ [المائدة: ١٠٥].

وإنّا سمعنا رسول الله ﷺ يقول: «إن الناس إذا رأوا المنكر فلم يغيروه أوشك أن يعمهم الله بعذاب».

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q2.0 WHO MAY COMMAND THE RIGHT AND FORBID THE WRONG

LEGAL RESPONSIBILITY

q2.1 There are four integrals (def: q2-5) in commanding the right and forbidding the wrong, the first of which is that the person doing so be legally responsible (def: c8.1), Muslim, and able to, these being the conditions for it to be obligatory, though a child of the age of discrimination (def: f1.2) who condemns something dishonorable is rewarded for doing so, even if it is not obligatory for him to.

MORAL RECTITUDE IS NOT A CONDITION

q2.2 As for requirements of moral rectitude in the person giving the reprimand, some scholars take this into consideration and say that a corrupt person is not entitled to censure, a position for which they adduce the word of Allah Most High,

"Do you enjoin piety to others and forget yourselves?" (Koran 2:44),

but there are no grounds in the verse for such an inference.

HAVING THE CALIPH'S PERMISSION

q2.3 Some scholars stipulate that the person delivering the censure must have permission to do so from the caliph (def: o25) or his regional appointee, and do not grant that private individuals may censure others. This is untrue, for the Koranic verses and hadiths all indicate that whoever sees something wrong and does nothing has sinned. Stipulating that there must be permission from the caliph is mere arbitrary opinion. One should realize that there are five levels of censure: explaining the wrong nature of the act, admonish-

q2.0 شروط الآمر بالمعروف والناهي عن المنكر

التكليف

q2.1 [اعلم أن] أركان الأمر بالمعروف والنهي عن المنكر أربعة: أحدها أن يكون المنكر مكلفاً مسلماً قادراً، وهذا شرط لوجوب الإنكار. فإن الصبي المميز له إنكار المنكر، ويثاب على ذلك لكن لا يجب عليه.

لا تشترط العدالة

q2.2 وأما عدالة المنكر فاعتبرها قوم وقالوا: ليس للفاسق أن يحتسب، وإنما استدلوا بقوله تعالى: ﴿أَتَأْمُرُونَ النَّاسَ بِالْبِرِّ وَتَنسَوْنَ أَنفُسَكُمْ﴾ [البقرة: ٤٤] وليس لهم في ذلك حجة.

حكم إذن الإمام

q2.3 واشترط قوم كون المنكر مأذوناً فيه من جهة الإمام أو الوالي، ولم يجيزوا لآحاد الرعية الحسبة وهذا فاسد، لأن الآيات والأخبار عامة تدل على أن كل من رأى منكراً فسكت عنه عصى، فالتخصيص بإذن الإمام تحكم. [...و] اعلم أن الحسبة لها خمس مراتب: التعريف، والوعظ بالكلام اللطيف، و[الثالثة:] السب والتعنيف،

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ing the person politely, reviling him and harshness, forcibly stopping the act (such as by breaking musical instruments or pouring out wine), and finally, intimidation and threatening to strike the person or actually hitting him to stop what he is doing. It is the latter level, not the first four, that requires the caliph, because it may lead to civil disorder. The early Muslims' invariable practice of reprimanding those in authority decisively proves by their consensus (def: b7) that there is no need for a superior's authorization. If it be wondered whether a child is entitled to reprove his father, or a wife her husband, or for private citizens to reprove their ruler, the answer is that *all* are fundamentally entitled to. We have distinguished the five levels: the child is entitled to explain the nature of the act, to admonish and advise his parents politely, and finally may censure at the fourth level by such things as breaking a lute, pouring out wine, and so forth. This is also the sequence that should be observed by a wife. As for private citizens with their ruler, the matter is much graver than a child's reproving his father, and citizens are only entitled to explain the matter and advise.

و[الرابعة :] المنع والقهر ككسر الملاهي وإراقة الخمر و[الخامس :] التخويف والتهديد بالضرب، أو مباشرة الضرب له حتى يمتنع عما هو عليه، فهذه المرتبة تحتاج إلى الإمام دون ما قبلها لأنه ربما جر إلى فتنة.

واستمرار عادات السلف على الحسبة على الولاة قاطع بإجماعهم على الاستغناء عن التفويض.

فإن قيل : هل تثبت الحسبة للولد [...] والزوجة على الزوج، والرعية على الوالي؟ قلنا: أصل الولاية ثابت للكل.

وقد رتبنا للحسبة خمس مراتب: فللولد من ذلك الحسبة بالتعريف، ثم بالوعظ والنصح باللطف، وله من الرتبة الرابعة أن يكسر العود، ويريق الخمر، ونحو ذلك وهذا الترتيب ينبغي أن يجري في [العبد] والزوجة. وأما الرعية مع السلطان، فالأمر فيه أشد من الولد، فليس معه إلا التعريف والنصح.

BEING ABLE TO CENSURE

القدرة على الإنكار

q2.4 It is a necessary condition that the person condemning something wrong be *able* to do so. Someone who is unable is not obliged to condemn it except in his heart. The obligation is not only lifted when physically unable, but also when one fears that problems (def: q2.7) will result for one, which also comes under the heading of inability. The obligation to censure the wrong is likewise lifted when one knows that the reproach will be ineffective. Four situations may be distinguished with respect to this.

(1) When one knows (def: q2.6) the wrong will be eliminated by speaking or acting without this entailing problems for oneself, one is obliged to censure it.

(2) When one knows that speaking will be ineffective and one will be beaten if one does, one is not obliged to.

q2.4 ويشترط كون المنكر قادراً على الإنكار، فأما العاجز فليس عليه إنكار إلا بقلبه، ولا يقف سقوط الوجوب على العجز الحسّي، بل يلتحق به خوف مكروه يناله، فذلك في معنى العجز.

وكذلك إذا علم أن إنكاره لا ينفع، فينقسم إلى أربعة أحوال:

أحدها أن يعلم أن المنكر يزول بقوله أو فعله من غير مكروه يلحقه فيجب عليه الإنكار.

الحالة الثانية أن يعلم أن كلامه لا ينفع وأنه إن تكلم ضرب، فيرتفع الوجوب.

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(3) When one knows that one's censure will be ineffective but it does not entail problems for one, it is not obligatory, because of its ineffectiveness, though one is still recommended to censure the act is order to manifest the standards of Islam and remind people of their religion.

(A: Hadiths that seem to show the nonobligatoriness of commanding the right and forbidding the wrong are understood by Islamic scholars as referring to specific situations in which censure is ineffectual, and are not global statements about this obligation's inapplicability to a certain era of history, such as our own or some future time. Commanding the right and forbidding the wrong will be obligatory until the Day of Judgement.)

(4) And when one knows that it will cause problems for one but the wrong will be eliminated by censuring it, such as with breaking a lute or dumping out wine when one knows one will be beaten for it, then one is not obliged but rather *recommended* to, as is evident from the hadith,

"The best jihad is speaking the truth to an unjust ruler."

There is no disagreement among scholars that it is permissible for a single Muslim to attack battlelines of unbelievers headlong and fight them even if he knows he will be killed. But if one knows it will not hurt them at all, such as if a blind man were to hurl himself against them, then it is unlawful. Likewise, if someone who is alone sees a corrupt person with a bottle of wine beside him and a sword in his hand, and he knows that the person will chop his neck if he censures him for drinking, it is not permissible for him to do so, as it would not entail any religious advantage worth giving one's life for. Such censure is only praiseworthy when one is able to eliminate the wrong and one's action will produce some benefit.

q2.5 If one wants to censure something but knows it will result in one's companions also being beaten with one, it is not permissible for one to do so, because one is incapable of removing one blameworthy thing without its leading to another.

الحالة الثالثة أن يعلم أن إنكاره لا يفيد لكنه لا يخاف مكروهاً، فلا يجب عليه الأمر لعدم الفائدة، لكن يستحب لإظهار شعائر الإسلام والتذكير بالدين.

الحالة الرابعة أن يعلم أنه يصاب بمكروه ولكن يبطل المنكر بفعله مثل أن يكسر العود ويريق الخمر ويعلم أنه يضرب عقيب ذلك، فيرتفع الوجوب عنه ويبقى مستحباً لقوله في الحديث: «أفضل الجهاد كلمة حق عند سلطان جائر».

ولا خلاف أنه يجوز للمسلم الواحد أن يهجم على صفوف الكفار ويقاتل، وإن علم أنه يقتل.

لكن إن علم أنه لا نكاية له في الكفار، كالأعمى يطرح نفسه على الصف، حرم ذلك.

وكذلك لو رأى فاسقاً وحده وعنده قدح خمر وبيده سيف، وعلم أنه لو أنكر عليه لشرب الخمر لضرب عنقه، لم يجز له الإقدام على ذلك لأن هذا لا يؤثر في الدين أثراً يفديه بنفسه، وإنما يستحب له الإنكار إذا قدر على إبطال المنكر وظهر لفعله فائدة [كمن يحمل في صف الكفار ونحوه].

q2.5 وإن علم المنكر أنه يضرب معه غيره من أصحابه لم تجز له الحسبة لأنه عجز عن دفع المنكر إلا بإفضائه إلى منكر آخر [...].

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(N: It is not lawful to censure anything reprehensible when doing so will lead to a thing or state that is *more* reprehensible.)

(ح: ولا يجوز النهي عن المنكر إذا أدى ذلك إلى منكر أعظم).

q2.6 *Know* only means what one believes will probably result. Someone who thinks that it will create problems for him is not obligated to censure, though someone who does not believe that problems will result is obliged to.

Cowardice does not enter into consideration here, nor foolhardy courage, but rather the normal temperament of someone with a sound disposition.

q2.6 ولسنا نعني بالعلم في هذه المواضيع إلا غلبة الظن فمن غلب على ظنه أنه يصيبه مكروه، لم يجب عليه الإنكار، وإن غلب على ظنه أنه لا يصيبه وَجَبَ.

ولا اعتبار بحالة الجبان، ولا بالشجاع المتهور، بل الاعتبار بالمعتدل الطبع، السليم المزاج.

q2.7 *Problems* means being beaten, killed, robbed, or acquiring a bad name in town. As for being reviled and disparaged, it is not an excuse to remain silent, for someone who commands what is right generally meets with it.

q2.7 ونعني بالمكروه الضرب أو القتل، وكذلك نهب المال والإشهار في البلد مع تسويد الوجه. فأما السب والشتم فليس بعذر في السكوت، لأن الآمر بالمعروف يلقى ذلك في الغالب.

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q3.0 WHAT MAY BE CENSURED

q3.0 ما فيه الحسبة

q3.1 The second integral of commanding the right and forbidding the wrong is that the thing censured is something blameworthy that exists at present and is apparent.

Blameworthy means that its occurrence is prohibited by Sacred Law, this being of wider scope than mere disobedience, for someone who sees a child or insane person drinking wine (A: which is not a sin in relation to them) is obliged to pour it out and forbid them.

That exists at present excludes someone who has drunk wine and is now finished, and so forth. It also excludes something which will take place later, as when there is evidence that a person intends to go drinking that night. There is no censure in such cases other than to appeal to the person's conscience.

Apparent excludes someone who conceals his disobedience at home and locks his door. It is not permissible to spy on him. An exception is if

q3.1 الركن الثاني أن يكون ما فيه الحسبة منكراً موجوداً في الحال ظاهراً.

فمعنى كونه منكراً أن يكون محظور الوقوع في الشرع.

والمنكر أعم من المعصية إذ من رأى صبياً أو مجنوناً يشرب الخمر، فعليه أن يريق خمره ويمنعه.

وقولنا موجوداً في الحال احتراز ممن شرب الخمر وفرغ من شربها، ونحو ذلك [...].

وفيه أيضاً احتراز عما سيوجد في ثاني الحال، كمن يعلم بقرينة حاله أنه عازم على الشرب الليلة، فلا حسبة عليه إلا بالوعظ.

وقولنا ظاهراً احتراز ممن تستر بالمعصية في داره وأغلق بابه فإنه لا يجوز أن يتجسس عليه إلا أن يظهر ما يعرفه من

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something is manifest to another outside the house, such as the sound of pipes and lutes. Someone who hears them may enter and break the instruments. If one smells the odor of wine outside the house, the sounder opinion is that it is permissible to enter and condemn it.

هو خارج الدار، كأصوات المزامير والعيدان، فلمن سمع ذلك أن يدخل ويكسر الملاهي، فإن فاحت رائحة الخمر فالأظهر جواز الإنكار.

ONE MAY NOT CONDEMN ANOTHER FOR QUESTIONS INVOLVING DIFFERENCES AMONG SCHOOLS OF JURISPRUDENCE

لا يجوز الإنكار فيما يتعلق بالمسائل الخلافية بين المذاهب

q3.2 It is a necessary condition that the thing censured be something whose blameworthiness is not merely established by *ijtihad* (n: the independent legal reasoning of a particular Imam). Any question in which there is *ijtihad* may not be a cause for censure. A Hanafi, for example, may not condemn a Shafi'i for eating something slaughtered without the Basmala (dis: j17.5(4)), nor a Shafi'i condemn a Hanafi for drinking some nonintoxicating raisin drink (N: nor a Muslim condemn a non-Muslim for drinking wine (dis: o11.5(1))). (A: But if two individuals follow the same school of Sacred Law and one commits an act that is unlawful or offensive in that school or in each of the two's respective schools, it is obligatory for the other person to condemn the act even when it involves the *ijtihad* of their Imam. And the Shafi'i must condemn the Hanafi for eating something slaughtered without the Basmala, as the Hanafi is doing something he believes to be wrong.)

q3.2 ويشترط في إنكار المنكر أن يكون معلوماً كونه منكراً بغير اجتهاد. فكل ما هو في محل الاجتهاد فلا حسبة فيه. فليس للحنفي أن ينكر على الشافعي أكله متروك التسمية، ولا للشافعي أن ينكر على الحنفي شربه يسير النبيذ الذي ليس بمسكر.

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q4.0 THE PERSON DOING THE WRONG

q4.0 المنكر عليه

q4.1 The third integral of commanding the right and forbidding the wrong is the person being reprimanded. It is sufficient that he be a person, and is not necessary that he be legally responsible, as we have previously mentioned (q3.1) in respect to censuring a child or insane person.

q4.1 الركن الثالث في المنكر عليه ويكفي في صفته أن يكون إنساناً ولا يشترط كونه مكلفاً كما بينا قبله من أنه ينكر على الصبي والمجنون.

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q5.0 THE ACT OF CENSURING

q5.1 The fourth integral is the censure itself, which has various degrees of severity and has rules.

KNOWLEDGE OF THE WRONG ACT

q5.2 The first degree consists of knowing the wrong act. One should not eavesdrop at another's house in order to hear the sounds of musical instruments, or try to catch the scent of wine, or feel for an object concealed beneath someone's shirt to see if it is a flute, or ask a person's neighbors to see what he is doing. But if two upright witnesses (def: o24.4) come and inform one that someone is drinking, one may enter his house and take him to task.

EXPLAINING THAT SOMETHING IS WRONG

q5.3 The second degree consists of explaining that an act is wrong, since an ignorant person will often do something he does not know is blameworthy, but will stop when he finds out. So one must explain it politely, saying, for example: "People are not born scholars; we were unfamiliar with many things in Sacred Law until scholars mentioned them to us. Perhaps there are not many in your hometown," and thus lead up to it diplomatically so the person understands without being offended. To avoid the evil of remaining silent when there is something wrong, only to commit the evil of offending a Muslim when able not to, is like washing away blood with urine.

FORBIDDING THE ACT VERBALLY

q5.4 The third degree of severity is to prohibit the act by admonition, advice, and making the other fear Allah, mentioning the hadiths of divine

q5.0 الاحتساب

q5.1 الركن الرابع نفس الاحتساب، وله درجات وآداب.

الاطلاع على المنكر

q5.2 الدرجة الأولى أن يعرف المنكر.

فلا ينبغي له أن يستـرق السمع على دار غيره ليسمع صوت الأوتار، ولا يتعرض للشم ليدرك رائحة الخمر، ولا أن يمس ما قد ستر بثوب ليعرف شكل المزمار، ولا أن يستخبر جيرانه ليخبروه بما يجري، بل لو أخبره عدلان ابتداءً أن فلاناً يشرب الخمر، فله إذ ذاك أن يدخل وينكر.

بيان الحكم لمرتكب المنكر

q5.3 الدرجة الثانية التعريف، فإن الجاهل يقدم على الشيء لا يظنه منكراً فإذا عرف أقلع عنه.

فيجب تعريفه باللطف فيقال له إن الإنسان لا يولد عالماً ولقد كنا جاهلين بأمور الشرع حتى علمنا العلماء، فلعل قريتك خالية من أهل العلم، فهكذا يتلطف به ليحصل التعريف من غير إيذاء. ومن اجتنب محظور السكوت عن المنكر واستبدل عنه محظور الإيذاء للمسلم مع الاستغناء عنه، فقد غسل الدم بالبول.

النهي بالوعظ والنصح

q5.4 الدرجة الثالثة النهي بالوعظ والنصح والتخويف بالله، ويورد عليه الأخبار الواردة بالوعيد ويحكي له سيرة

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punishment for it and reminding the person how the early Muslims behaved, all of which should be done with sympathy and kindness, not harshness or anger. The great danger here which one must beware of is that a learned person explaining that something is wrong may be proud of his knowledge and gloat over the lowliness of the other's ignorance, which is like saving someone from a fire by casting oneself into it. It is ignorant in the extreme, a deep disgrace, and a delusion from the Devil. The touchstone and test for this is to ask oneself whether one would prefer the censured person to stop at his own or another's behest, or whether one would prefer to forbid him oneself. If reproving him is difficult and weighs upon one, and one would prefer that someone else do it, then one should proceed, for religion is the motive. But if it is otherwise, then one is following mere personal caprice and using the censuring of others as a means to display one's merit, and one should fear Allah and censure oneself first.

السلف ويكون ذلك بشفقة ولطف من غير عنف وغضب. وها هنا آفة عظيمة ينبغي أن يتوقاها، وهو أن العالم يرى عند التعريف عز نفسه بالعلم وذل غيره بالجهل، ومثال ذلك مثال من يخلص غيره من النار بإحراق نفسه، وهو غاية الجهل ومذلة عظيمة وغرور من الشيطان. ولذلك محك ومعيار فينبغي أن يمتحن به المحتسب نفسه، وهو أن يكون امتناع ذلك الإنسان عن المنكر بنفسه أو باحتساب غيره عليه أحب إليه من امتناعه عنه باحتسابه فإن كانت الحسبة شاقة عليه ثقيلة على نفسه، وهو يود أن يكفى بغيره فليحتسب فإنّ باعثه هو الدين. وإن كان الأمر بالعكس فهو متبع هوى نفسه، متوسل إلى إظهار جاهه بواسطة إنكاره فليتق الله وليحتسب أولاً على نفسه [...].

CENSURING WITH HARSH WORDS

التغيير باللسان

q5.5 The fourth degree of severity consists of reviling the person and bearing down on him with sharp, harsh words. One does not resort to this degree unless one is unable to prevent the person by politeness, and he shows he wants to persist or mocks one's admonitions and advice. *Reviling him* does not mean vulgarity and lies, but rather saying "You degenerate," "You idiot," "You ignoramus," "Do you not fear Allah?" and so forth. Allah Most High quotes Ibrahim (upon whom be peace) saying:

"Fie on you and what you worship apart from Allah! Can you not think?" (Koran 21:67).

q5.5 الدرجة الرابعة السب والتعنيف بالقول الغليظ الخشن. وإنما يعدل إلى هذا عند العجز عن المنع باللطف وظهور مبادىء الإصرار والاستهزاء بالوعظ والنصح.

ولسنا نعني بالسب الفحش والكذب، بل نقول له: يا فاسق، يا أحمق، يا جاهل، ألا تخاف الله؟ قال الله تعالى حكاية عن إبراهيم عليه السلام:

﴿أُفٍّ لَكُمْ وَلِمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ أَفَلَا تَعْقِلُونَ﴾ [الأنبياء: ٦٧].

RIGHTING THE WRONG BY HAND

التغيير باليد

q5.6 The fifth degree consists of changing the blameworthy thing with one's hand, such as by breaking musical instruments, pouring out wine,

q5.6 الدرجة الخامسة التغيير باليد، ككسر الملاهي، وإراقة الخمر،

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or turning someone out of a house wrongfully appropriated. There are two rules for this degree:

(1) not to do so when one can get the person to do it himself, i.e. if one can get someone to leave the land he has unjustly taken, one should not drag or push him from it;

(2) and to break the instruments, for example, just enough to obviate their being used for disobedience and no more, or to be careful not to break the bottles when pouring out wine. If one cannot manage except by throwing rocks at the bottles or the like, then one may do so and is not obliged to cover the damages.

If it be wondered whether one may break the bottles or drag someone by the foot out of a wrongfully appropriated house to create fear, as an object lesson to others, the answer is that this is for leaders alone and is not permissible for private individuals because of the obscurity of the decision-making criteria in the matter.

وإخراجه من الدار المغصوبة

وفي هذه الدرجة أدبان :

أحدهما أن لا يباشر التغيير ما لم يعجز عن تكليف المنكر عليه ذلك . فإذا أمكنه أن يكلفه الخروج عن الأرض المغصوبة فلا ينبغي أن يجره ولا يدفعه .

والثاني أن يكسر الملاهي كسراً يبطل صلاحيتها للفساد ، ولا يزيد على ذلك ويتوقى في إراقة الخمور كسر الأواني إن وجد إليه سبيلاً . وإن لم يقدر إلا بأن يرمي ظروفها بحجر أو نحوه ، فله ذلك ، وتسقط قيمة الظروف .

فإن قيل هلا يجوز الكسر زجراً ، وكذلك الجر بالرجل في الإخراج من الدار المغصوبة زجراً؟ قلنا : إنما يجوز مثل ذلك للولاة ، ولا يجوز لآحاد الرعية ، لخفاء وجه الاجتهاد فيه .

INTIMIDATION

q5.7 The sixth degree is threatening and intimidation, such as by saying, "Stop this or I'll—"; and when possible this should precede actually hitting the person. The rule for this level is not to make a threat that one cannot carry out, such as saying "or I'll seize your house," or "take your wife hostage," because if one says this seriously, it is unlawful, and if not serious, then one is lying.

التهديد والتخويف

q5.7 الدرجة السادسة التهديد والتخويف كقوله : دع عنك هذا وإلا فعلت بك كذا وكذا ؛ وينبغي أن يقدم هذا على تحقيق الضرب إذا أمكن تقديمه .

والأدب في هذه الرتبة أن لا يهدد بوعيد لا يجوز تحقيقه كقوله : لأنهبن دارك ؛ ولأسبين زوجتك ؛ لأنه إن قال ذلك عن عزم فهو حرام ، وإن قاله عن غير عزم فهو كذب .

ASSAULT

q5.8 The seventh degree is to directly hit or kick the person, or similar measures that do not involve weapons. This is permissible for private individuals provided it is necessary, and that one confines oneself to the minimum needed to stop the reprehensible action and nothing more. When

مباشرة الضرب

q5.8 الدرجة السابعة مباشرة الضرب باليد والرجل وغير ذلك مما ليس فيه إشهار سلاح .

وذلك جائز للآحاد بشرط الضرورة والاقتصار على قدر الحاجة . فإذا اندفع

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the action has been stopped, one refrains from doing anything further.

المنكر فينبغي أن يكف.

FORCE OF ARMS

شهر السلاح

q5.9 The eighth degree is when one is unable to censure the act by oneself and requires the armed assistance of others. Sometimes the person being reproved may also get people to assist him, and a skirmish may ensue, so the soundest legal opinion is that this degree requires authorization from the caliph (def: o25), since it leads to strife and the outbreak of civil discord. Another view is that there is no need for the caliph's permission.

q5.9 الدرجة الثامنة أن لا يقدر على الإنكار بنفسه ويحتاج إلى أعوان يشهرون السلاح. فإنه ربما يستمد الفاسق أيضاً بأعوانه ويؤدي إلى القتال، فالصحيح أن ذلك يحتاج إلى إذن الإمام لأنه يؤدي إلى الفتن وهيجان الفساد. وقيل لا يشترط في ذلك إذن الإمام.

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q6.0 THE ATTRIBUTES OF THE PERSON CENSURING

q6.0 صفات المحتسب

q6.1 Having presented in detail the rules for someone condemning the wrong, they may be summarized in three traits needed by the person giving the reprimand:

(1) knowledge of the (A: above-mentioned) appropriate circumstances for censure and their definitions, so as to keep within lawful bounds;

(2) godfearingness, without which one might know something but not apply it because of some personal interest;

(3) and good character, the prime prerequisite for being able to control oneself, for when anger is aroused, mere knowledge and piousness are seldom sufficient to suppress it if character is lacking.

q6.1 وقد ذكرنا آداب المحتسب مفصلة، وجملتها ثلاث صفات في المحتسب:

- العلم بمواقع الحسبة وحدودها [...] ليقتصر على حد الشرع.
- والثاني: الورع فإنه قد يعلم شيئاً ولا يعمل به لغرض من الأغراض.
- والثالث: حسن الخلق وهو أصل ليتمكن من الكف فإن الغضب إذا هاج لم يكف مجرد العلم والورع في قمعه ما لم يكن في الطبع خلق حسن.

REDUCING ONE'S DEPENDENCE ON OTHERS

تقليل العلائق وقطع الطمع عن الخلق

q6.2 Among the rules for commanding the right and forbidding the wrong is to depend less on

q6.2 ومن الآداب تقليل العلائق.

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others and eliminate desire for what they have, so as not to have to compromise one's principles. A story is told about one of the early Muslims who used to get offal each day from the neighborhood butcher for his cat. He noticed something blameworthy about the butcher, so he returned home and turned out the cat before returning to reprimand the man, who retorted, "From now on, I'm not giving you a thing for your cat," to which he replied, "I did not censure you till I gave up both the cat and any desire for what you have." And this is the fact of the matter. One cannot reprimand others as long as one is anxious for two things: the things people give one, and their approval and praise of one.

وقطع الطمع عن الخلق لنزول المداهنة.

فقد حُكي عن بعض السلف أنه كان له سنور وكان يأخذ لسنوره في كل يوم من قصاب في جواره شيئاً من الغدد. فرأى على القصاب منكراً، فدخل الدار فأخرج السنور، ثم جاءه فأنكر على القصاب، فقال: لا أعطيك بعد هذا شيئاً لسنورك، فقال: ما أنكرت عليك إلا بعد إخراج السنور وقطع الطمع منك. وهذا صحيح. فإن لم يقطع الطمع من الناس من شيئين لم يقدر على الإنكار عليهم: أحدهما من لطف ينالونه به، والثاني من رضاهم عنه وثنائهم عليه.

q6.3 As for politeness in commanding the right and forbidding the wrong, it is obligatory. Allah Most High says,

"Speak unto him gentle words" (Koran 20:44)

(A: this being to Pharaoh, the enemy of Allah, so how then with one's fellow Muslims?) (*Mukhtasar Minhaj al-qasidin* (y62), 123–30).

q6.3 وأما الرفق في الأمر بالمعروف والنهي عن المنكر فمتعيّن. قال الله تعالى:

﴿فَقُولَا لَهُ قَوْلًا لَيِّنًا﴾ [طه: ٤٤].

(ع: هذا في فرعون عدو الله، فكيف بالمسلم في أخيه المسلم؟).

[محرّر من مختصر منهاج القاصدين: ١٢٣ - ١٣٠].

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BOOK R

HOLDING ONE'S TONGUE

كتاب حفظ اللسان

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r0.0 INTRODUCTION

r0.0 المقدمة

r0.1 (n: Book r has been edited from Nawawi's *al-Adhkar al-muntakhaba min kalam Sayyid al-Abrar* and from *al-Durar al-mubaha fi al-hazr wa al-ibaha*, a work on the lawful and unlawful by the Hanafi scholar Khalil Nahlawi.)

r0.2 (Nawawi:) Having previously discussed what Allah Most Glorious and Exalted has facilitated of recommended invocation (dhikr) and the like, I wish to add here the expressions which are offensive or unlawful, that the book might fully encompass the rulings on words and explain their categories, mentioning the objects thereof that every religious person needs to know (*al-Adhkar* (y102), 450).

r0.2 (النووي:) وقد ذكرت ما يسر الله سبحانه وتعالى من الأذكار المستحبة ونحوها فيما سبق، وأردت أن أضم إليها ما يكره أو يحرم من الألفاظ ليكون الكتاب جامعاً لأحكام الألفاظ، ومبيناً أقسامها، فأذكر من ذلك مقاصد يحتاج إلى معرفتها كلّ متدين [نقل من الأذكار المنتخبة من كلام سيد الأبرار: ٤٥٠].

r1.0 THE IMPORTANCE OF HOLDING ONE'S TONGUE

r1.1 (Nawawi:) Every legally responsible person should refrain from saying anything except when there is a clear advantage to speaking. Whenever speaking and not speaking are of equal benefit, it is sunna to remain silent, for permissible speech easily leads to that which is unlawful or offensive, as actually happens much or even most of the time—and there is no substitute for safety. The Prophet (Allah) bless him and give him peace) said,

"Whoever believes in Allah and the Last Day, let him say what is good or remain silent."

This hadith, whose authenticity Bukhari and Muslim concur upon, is an explicit legal text indicating that a person should not speak unless what he intends to say is good, meaning that the benefit of it is apparent to him. Whenever one doubts that there is a clear advantage, one should not speak. Imam Shafi'i (Allah have mercy on him) said, "When one wishes to speak, one must first reflect, and if there is a clear interest to be served by speaking, one speaks, while if one doubts it, one remains silent until the advantage becomes apparent."

r1.2 The Prophet (Allah bless him and give him peace):

(1) "O Messenger of Allah, which of the Muslims is best?" And he said, "He who the Muslims are safe from his tongue and his hand."

(2) "A servant unthinkingly says something pleasing to Allah Most High for which Allah raises him whole degrees. And a servant unthinkingly says something detested by Allah Most High for which he plunges into hell."

(3) "The excellence of a person's Islam includes leaving what does not concern him [def: w54]."

r1.0 أهمية حفظ اللسان

r1.1 (النووي:) [اعلم أنه] ينبغي لكل مكلف أن يحفظ لسانه عن جميع الكلام إلا كلاماً تظهر المصلحة فيه.

ومتى استوى الكلام وتركه في المصلحة فالسنة الإمساك عنه، لأنه قد يجرّ الكلام المباح إلى حرام أو مكروه، بل هذا كثير أو غالب في العادة، والسلامة لا يعدلها شيء. [روينا في صحيحي البخاري ومسلم عن أبي هريرة رضي الله عنه] عن النبي ﷺ قال: «من كان يؤمن بالله واليوم الآخر فليقل خيراً أو ليصمت».

قلت: فهذا الحديث المتفق على صحته نص صريح في أنه لا ينبغي أن يتكلم إلا إذا كان الكلام خيراً، وهو الذي ظهرت له مصلحته.

ومتى شك في ظهور المصلحة فلا يتكلم. وقد قال الإمام الشافعي رحمه الله: إذا أراد الكلام فعليه أن يفكر قبل كلامه، فإن ظهرت المصلحة تكلم. وإن شك لم يتكلم حتى تظهر.

r1.2 [وروينا في صحيحيهما عن أبي موسى الأشعري قال: قلت] يا رسول الله أي المسلمين أفضل؟ قال: «من سلم المسلمون من لسانه ويده».

- [وروينا في صحيح البخاري عن أبي هريرة عن النبي ﷺ قال:] «إن العبد ليتكلم بالكلمة من رضوان الله تعالى ما يُلقي لها بالاً يرفع اللهُ تعالى بها درجاتٍ. وإن العبد ليتكلم بالكلمة من سخط الله تعالى لا يُلقي لها بالاً يهوي بها في جهنم».

- [وروينا في كتاب الترمذي وابن ماجه عن أبي هريرة عن النبي ﷺ قال:] «من حسن إسلام المرء تركه ما لا يعنيه». [حديث حسن].

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(4) "Do not speak much without mentioning Allah (dhikr), for too much speech without mentioning Allah hardens the heart, and the hard-hearted are the farthest of all people from Allah Most High."

(5) "All of a human being's words count against him and not for him, except commanding the right, forbidding the wrong, and the mention of Allah Most High (dhikr)."

r1.3 The Master Abul Qasim Qushayri (Allah have mercy on him) said, "Safety lies in remaining silent, which should be one's basis. Silence at the appropriate time is the mark of men, just as speech at the appropriate time is one of the finest qualities. I have heard Abu 'Ali Daqqaq (Allah be well pleased with him) say, 'He who is silent when something should be said is a tongueless villain' " (ibid., 450–55).

- [وروينا في كتاب الترمذي عن ابن عمر رضي الله عنهما قال: قال رسول الله ﷺ:] «لا تُكْثِرُوا الكلام بغير ذكر الله فإن كثرة الكلام بغير ذكر الله تعالى قسوةٌ للقلب وإن أبعد الناس من الله تعالى القلب القاسي».

- [وروينا في كتاب الترمذي وابن ماجه عن أم حبيبة رضي الله عنها عن النبي ﷺ:] «كل كلام ابن آدم عليه لا له إلا أمراً بمعروف ونهياً عن منكر أو ذكراً لله تعالى».

r1.3 [وروينا] عن الأستاذ أبي القاسم القشيري رحمه الله [في رسالته المشهورة]: قال: الصمت السلامة وهو الأصل، والسكوت في وقته صفة الرجال كما أن النطق في موضعه أشرف الخصال. قال: سمعت أبا علي الدقاق رضي الله عنه يقول: من سكت عن الحق فهو شيطان أخرس [محرر من المرجع المذكور: ٤٥٠ - ٤٥٥].

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r2.0 SLANDER (GHIBA)

r2.1 (Nawawi:) Slander and talebearing are two of the ugliest and most frequently met with qualities among men, few people being safe from them. I have begun with them because of the widespread need to warn people of them.

SLANDER

r2.2 *Slander* (ghiba) means to mention anything concerning a person that he would dislike, whether about his body, religion, everyday life, self, disposition, property, son, father, wife, servant, turban, garment, gait, movements, smiling, dissoluteness, frowning, cheerfulness, or anything else connected with him.

r2.0 الغيبة [والنميمة]

r2.1 (النووي:) [اعلم أن] هاتين الخصلتين من أقبح القبائح وأكثرها انتشاراً في الناس، حتى ما يسلم منهما إلا القليل من الناس. فلعموم الحاجة إلى التحذير منهما بدأت بهما.

الغيبة

r2.2 فأمّا الغيبة فهي ذكرك الإنسان بما فيه مما يكره، سواء كان في بدنه أو دينه أو دنياه أو نفسه أو خُلقه أو ماله أو ولده أو والده أو زوجه أو خادمه [. . .] أو عمامته أو ثوبه أو مشيته وحركته وبشاشته وخلاعته وعبوسه وطلاقته أو غير ذلك مما

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Mention means by word, writing, sign, or indicating him with one's eye, hand, head, and so forth.

Body refers to saying such things as that someone is blind, lame, bleary-eyed, bald, short, tall, dark, or pale.

Religion includes saying that he is corrupt, a thief, cannot be trusted, is a tyrant, does not care about the prayer, does not watch to avoid filth, does not honor his father, does not spend zakat on what it should be spent on, or does not avoid slandering others.

Everyday life includes saying that his manners are poor; he does not care about others; does not think he owes anyone anything; that he talks, eats, or sleeps too much; or sleeps or sits when he should not.

Father refers to saying such things as that his father is corrupt, his father is an Indian, Nabatean, African, cobbler, draper, carpenter, blacksmith, or weaver (N: if mentioned derogatorily).

Disposition includes saying that he has bad character, is arrogant, a show-off, overhasty, domineering, incapable, fainthearted, irresponsible, gloomy, dissolute, and so forth.

Clothing means saying such things as that his sleeves are too loose, his garment hangs too low, is dirty, or the like. Other remarks can be judged by the above examples. The determining factor is mentioning about a person what he would not like.

يتعلق به، سواء ذكرته بلفظك أو كتابك، أو رمزت أو أشرت إليه بعينك أو يدك أو رأسك أو نحو ذلك.

أما البدن فكقولك: أعمى أعرج أعمش أقرع قصير طويل أسود أصفر.

وأما الدين فكقولك: فاسق سارق خائن ظالم متهاون بالصلاة، متساهل في النجاسات، ليس باراً بوالده، لا يضع الزكاة مواضعها، لا يجتنب الغيبة.

وأما الدنيا: فقليل الأدب يتهاون بالناس، لا يرى لأحد عليه حقاً، كثير الكلام كثير الأكل أو النوم، ينام في غير وقته، يجلس في غير موضعه.

وأما المتعلق بوالده فكقوله: أبوه فاسق أو هندي أو نبطي أو زنجي، إسكاف بزاز [. . .] نجار حداد حائك.

وأما الخلق فكقوله: سيء الخلق، متكبر مراء عجول جبار عاجز، ضعيف القلب، متهور عبوس خليع ونحوه.

وأما الثوب: فواسع الكمّ، طويل الذيل، وسخ الثوب ونحو ذلك.

ويقاس الباقي بما ذكرناه. وضابطه ذكره بما يكره.

r2.3 As for talebearing (namima), it consists of quoting someone's words to another in a way that worsens relations between them.

r2.3 وأما النميمة فهي نقل كلام الناس بعضهم إلى بعض على جهة الإفساد.

THE EVIDENCE THAT SLANDER AND TALEBEARING ARE UNLAWFUL

الأدلة على تحريم الغيبة والنميمة

r2.4 The above define slander and talebearing. As for the ruling on them, it is that they are unlawful, by the consensus (def: b7) of Muslims. There is much explicit and intersubstantiative evidence that they are unlawful from the Koran, sunna, and consensus of the Muslim Community.

r2.4 هذا بيانهما. وأما حكمهما فهما حرام بإجماع المسلمين. وقد تظاهرت على تحريمها الدلائل الصريحة من الكتاب والسنة وإجماع المسلمين.

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r2.5 Allah Most High says:

(1) "Do not slander one another" (Koran 49:12).

(2) "Woe to whomever disparages others behind their back or to their face" (Koran 104:1).

(3) "... slanderer, going about with tales" (Koran 68:11).

r2.6 The Prophet (Allah bless him and give him peace) said:

(1) "The talebearer will not enter paradise."

(2) "Do you know what slander is?" They answered, "Allah and His messenger know best." He said, "It is to mention of your brother that which he would dislike." Someone asked, "What if he is as I say?" And he replied, "If he is as you say, you have slandered him, and if not, you have calumniated him."

(3) "The Muslim is the brother of the Muslim. He does not betray him, lie to him, or hang back from coming to his aid. All of the Muslim is inviolable to his fellow Muslim: his reputation, his property, his blood. Godfearingness is here [N: pointing to his heart]. It is sufficiently wicked for someone to belittle his fellow Muslim."

MIMICKING ANOTHER'S IDIOSYNCRACIES

r2.7 We have mentioned above that slander is saying anything about a person that he would dislike, whether aloud, in writing, by a sign, or a gesture. Anything by which one conveys a Muslim's (A: or non-Muslim's) shortcomings to another is slander, and unlawful. It includes doing imitations of someone, such as by walking with a limp, with

r2.5 قال الله تعالى:

﴿ولا يَغْتَبْ بَعْضُكُمْ بَعْضًا﴾ [الحجرات: ١٢].

وقال تعالى:

﴿وَيْلٌ لِكُلِّ هُمَزَةٍ لُمَزَةٍ﴾ [الهمزة: ١].

وقال تعالى:

﴿هَمَّازٍ مَشَّاءٍ بِنَمِيمٍ﴾ [القلم: ١١].

r2.6 [وروينا في صحيحي البخاري ومسلم عن حذيفة رضي الله عنه عن] النبي ﷺ قال: «لا يدخل الجنة نمامٌ».

- [وروينا في صحيح مسلم وسنن أبي داود والترمذي والنسائي عن أبي هريرة رضي الله عنه أن رسول الله ﷺ قال:] «أتدرون ما الغيبة؟ قالوا: الله ورسوله أعلم. قال: ذكرك أخاك بما يكرهُ، قيل أفرأيت إن كان في أخي ما أقول؟ قال: إن كان فيه ما تقول فقد اغتبته، وإن لم يكن فيه ما تقول فقد بهتَّهُ» [قال الترمذي حديث حسن صحيح].

- [وروينا في كتاب الترمذي عن أبي هريرة رضي الله عنه قال: قال رسول الله ﷺ:] «المسلم أخو المسلم لا يخونهُ ولا يكذبهُ ولا يخذُلُه. كل المسلم على المسلم حرامٌ: عرضه وماله ودمه، التقوى ههنا. بحسب امرئ من الشر أن يحقر أخاه المسلم» [قال الترمذي: حديث حسن].

المحاكاة

r2.7 قد ذكرنا في الباب السابق أن الغيبة ذكرك الإنسان بما يكره، سواء ذكرته بلفظك أو في كتابك، أو رمزت أو أشرت إليه [بعينك أو يدك أو رأسك] وضابطه: كل ما أفهمت به غيرك نقصان مسلم فهو غيبة محرمة. ومن ذلك المحاكاة بأن يمشي متعرجاً أو متطأطئاً أو

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a stoop, or similar posture, intending to mimic the person with such a deficiency. Anything of this sort is unquestionably unlawful.

على غير ذلك من الهيئات مريداً حكاية هيئة من يتنقصه بذلك، فكل ذلك حرام بلا خلاف.

SLANDER IN PUBLISHED WORKS

الغيبة في المؤلفات

r2.8 Slander also includes the author of a book mentioning a specific person in his work by saying, "So-and-so says such and such," which is unlawful if he thereby intends to demean him. But if he wants to clarify the person's mistake so that others will not follow him, or expose the weakness of his scholarship so others will not be deceived and accept what he says, it is not slander, but rather advice that is obligatory, and is rewarded by Allah for the person who intends it as such.

Nor is it slander for a writer or other person to say, "There are those [or "a certain group"] who say such and such, which is a mistake, error, ignorance, and folly," and so forth, which is not slander because slander entails mentioning a particular person or a group of specific individuals.

r2.8 ومن ذلك إذا ذكر مصنف كتاب شخصاً بعينه في كتابه قائلاً: قال فلان كذا؛ مريداً تنقصه [والشناعة عليه] فهو حرام.

فإن أراد بيان غلطه لئلا يقلد أو بيان ضعفه في العلم لئلا يغترّ به ويقبل قوله، فهذا ليس غيبة بل نصيحة واجبة يثاب عليه إذا أراد ذلك.

وكذا إذا قال المصنف أو غيره: قال قوم أو جماعة كذا، وهذا غلط أو خطأ أو جهالة وغفلة ونحو ذلك؛ فليس غيبة، إنما الغيبة ذكر الإنسان بعينه أو جماعة معينين.

SLANDER BY ALLUSION AND INNUENDO

الغيبة بالتعريض

r2.9 When the person being spoken to understands whom one is referring to, it is slander and unlawful to say, for example, "A certain person did such and such," or "A certain scholar," "Someone with pretensions to knowledge," "A certain mufti," "A certain person regarded as good," "Someone who claims to be an ascetic," "One of those who passed by us today," or "One of the people we saw." This includes the slander of some would-be scholars and devotees, who make slanderous innuendoes that are as clearly understood as if they were plainly stated. When one of them is asked, for example, how So-and-so is, he replies, "May Allah improve us," "May Allah forgive us," "May Allah improve him," "We ask Allah's forbearance," "Praise be to Allah who has not afflicted us with visiting oppressors," "We take refuge in Allah from evil," "May Allah forgive us for lack of modesty," "May Allah relent towards us," and the like, from which the listener

r2.9 ومن الغيبة المحرمة قولك: فعل كذا بعض الناس أو بعض الفقهاء، أو بعض من يدّعي العلم، أو بعض المفتين، أو بعض من ينسب إلى الصلاح أو يدّعي الزهد، أو بعض من مرّ بنا اليوم، أو بعض من رأيناه، أو نحو ذلك؛ إذا كان المخاطب يفهمه بعينه لحصول التفهيم. ومن ذلك غيبة المتفقهين والمتعبدين، فإنهم يعرضون بالغيبة تعريضاً يفهم به كما يفهم بالصريح. فيقال لأحدهم: كيف حال فلان؟ فيقول: الله يصلحنا، الله يغفر لنا، الله يصلحه، نسأل الله العافية، نحمد الله الذي لم يبتلنا بالدخول على الظلمة، نعوذ بالله من الشرّ، الله يعافينا من قلة الحياء، الله يتوب علينا، وما أشبه ذلك مما يفهم منه

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understands the person's shortcomings. All of this is slander and is unlawful, just as when one says, "So-and-so is afflicted with what we all are," or "There's no way he can manage this," or "We all do it."

تنقصه؛ فكل ذلك غيبة محرمة.
وكذلك إذا قال فلان يبتلى بما ابتلينا به كلنا، أو ماله حيلة في هذا، كلنا نفعله.

r2.10 The above are but examples. Otherwise, as previously mentioned, the criterion for slander is that one gives the person being addressed to understand another's faults.

r2.10 وهذه أمثلة وإلا فضابط الغيبة: تفهيمك المخاطب نقص إنسان.

LISTENING TO SLANDER

حرمة استماع الغيبة

r2.11 Just as slander is unlawful for the one who says it, it is also unlawful for the person hearing it to listen and acquiesce to. It is obligatory whenever one hears someone begin to slander another to tell him to stop if this does not entail manifest harm to one. If it does, then one is obliged to condemn it in one's heart and to leave the company if able. When the person who hears it is able to condemn it in words or change the subject, then he must. It is a sin for him not to. But if the hearer tells the slanderer to be silent while desiring him in his heart to continue, this, as Ghazali notes, is hypocrisy that does not lift the sin from him, for one must dislike it in one's heart.

r2.11 [اعلم أن] الغيبة كما يحرم على المغتاب ذكرها يحرم على السامع استماعها وإقرارها. فيجب على من سمع إنساناً يبتدىء بغيبة محرمة أن ينهاه إن لم يخف ضرراً ظاهراً، فإن خافه وجب عليه الإنكار بقلبه ومفارقة ذلك المجلس إن تمكن من مفارقته. فإن قدر على الإنكار بلسانه أو على قطع الغيبة بكلام آخر لزمه ذلك، فإن لم يفعل عصى. فإن قال بلسانه: اسكت؛ وهو يشتهي بقلبه استمراره فقال [أبو حامد] الغزالي: ذلك نفاق لا يخرجه عن الإثم، ولا بدّ من كراهته بقلبه.

r2.12 Whenever one is forced to remain at a gathering where there is slander and one is unable to condemn it, or one's condemnation goes unheeded and one cannot leave, it is nevertheless unlawful to listen or pay attention to. What one should do is invoke Allah (dhikr) with the tongue and heart, or heart alone, or think about something else to distract one from listening to it. When this is done, whatever one hears under such circumstances does not harm one as long as one does not listen to or heed the conversation. And if afterwards one is able to leave the assembly and the people are persisting in slander and the like, then one must leave. Allah Most High says:

"When you see those engaged in idle discussion about Our signs, keep apart from them until

r2.12 ومتى اضطرّ إلى المقام في ذلك المجلس الذي فيه الغيبة وعجز عن الإنكار أو أنكر فلم يقبل منه ولم يمكنه المفارقة بطريق، حرم عليه الاستماع والإصغاء للغيبة.
بل طريقه أن يذكر الله تعالى بلسانه وقلبه، أو بقلبه، أو يفكر في أمر آخر ليشتغل عن استماعها. ولا يضره بعد ذلك السماع من غير استماع وإصغاء في هذه الحالة المذكورة. فإن تمكن بعد ذلك من المفارقة وهم مستمرون في الغيبة ونحوها وجب عليه المفارقة. قال الله تعالى:
﴿وَإِذَا رَأَيْتَ الَّذِينَ يَخُوضُونَ فِي آيَاتِنَا

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they speak of other things. And if the Devil makes you forget, then do not sit with wrong-doing people after being reminded" (Koran 6:68).

فَأَعْرِضْ عَنْهُمْ حَتَّىٰ يَخُوضُوا فِي حَدِيثٍ غَيْرِهِ وَإِمَّا يُنسِيَنَّكَ الشَّيْطَانُ فَلَا تَقْعُدْ بَعْدَ الذِّكْرَىٰ مَعَ الْقَوْمِ الظَّالِمِينَ﴾ [الأنعام: ٦٨].

r2.13 Ibrahim ibn Adham (Allah be well pleased with him) answered an invitation to come to a wedding feast, where some of those present mentioned that a certain person who did not attend was "unpleasant." Ibrahim said, "I myself have done this by coming to a place where others are slandered," and he left and would not eat for three days.

r2.13 [وروينا عن] إبراهيم بن أدهم رضي الله عنه [أنه] دعي إلى وليمة، فحضر، فذكروا رجلاً لم يأتهم، فقالوا إنه ثقيل.

فقال إبراهيم: أنا فعلت هذا بنفسي حيث حضرت موضعاً يغتاب فيه الناس، فخرج ولم يأكل ثلاثة أيام.

SLANDERING ANOTHER IN ONE'S HEART

الغيبة بالقلب

r2.14 Entertaining bad thoughts about others (su' al-zann) is as unlawful as expressing them. Just as it is unlawful to tell another of the failings of a person, so too it is unlawful to speak to oneself of them and think badly of him. Allah Most High says,

"Shun much of surmise" (Koran 49:12).

The Prophet (Allah bless him and give him peace) said,

"Beware of suspicions, for they are the most lying of words."

There are many hadiths which say the same, and they refer to an established conviction or judgement in the heart that another is bad. As for passing thoughts and fancies that do not last, when the person having them does not persist in them, scholars concur that they are excusable, since their occurrence is involuntary and there is no way to avoid them. The Prophet (Allah bless him and give him peace) said,

"For those of my Community, Allah overlooks the thoughts that come to mind as long as they are not uttered or acted upon."

Scholars say this refers to passing thoughts that do not abide, whether of slander, unbelief (kufr), or

r2.14 [اعلم أن] سوء الظن حرام مثل القول. فكما يحرم أن تحدث غيرك بمساوي إنسان يحرم أن تحدث نفسك بذلك وتسيء الظن به. قال الله تعالى: ﴿اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ﴾ [الحجرات: ١٢].

[وروينا في صحيحي البخاري ومسلم عن أبي هريرة رضي الله عنه أن] رسول الله ﷺ قال: «إياكم والظن فإن الظن أكذب الحديث».

والأحاديث بمعنى ما ذكرته كثيرة والمراد بذلك عقد القلب وحكمه على غيرك بالسوء. فأما الخواطر وحديث النفس إذا لم يستقر ويستمر عليه صاحبه فمعفو عنه باتفاق العلماء، لأنه لا اختيار له في وقوعه، ولا طريق له إلى الانفكاك عنه. و[في الصحيح عن] رسول الله ﷺ [أنه] قال: إنّ الله تجاوز لأمتي ما حدثت به أنفسها ما لم تتكلم به أو تعمل».

قال العلماء المراد به الخواطر التي لا تستقر. قالوا وسواء كان ذلك الخاطر غيبة أو كفراً أو غيرهما. فمن خطر له الكفر

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something else. Whoever entertains a passing notion of unbelief that is a mere fancy whose occurrence is unintentional and immediately dismissed is not an unbeliever and is not to blame. The reason such things are excusable is that there is no way to take precaution against them. One can only avoid continuing therein, which is why persistence in them and the established conviction of them in one's heart is unlawful.

Whenever one has a passing thought of slander, one is obliged to reject it and summon to mind extenuating circumstances which explain away the appearances that seem to imply the bad opinion. Imam Abu Hamid Ghazali says in the *Ihya'*: "A bad thought about someone that occurs in one's heart is a notion suggested by the Devil, and one should dismiss it, for the Devil is the most corrupt of the corrupt, and Allah Most High says,

" 'If a corrupt person brings you news, verify it, lest you hurt others out of ignorance and then regret what you have done' (Koran 49:6).

It is not permissible to believe Satan, and if the appearance of wrongdoing can possibly be interpreted otherwise, it is not lawful to think badly of another. The Devil may enter the heart at the slightest impression of others' mistakes, suggesting that one only noticed it because of one's superior intelligence and discernment, and that "the believer sees with the light of Allah," which upon examination often amounts to nothing more than repeating the Devil's deceit and obscurities. If a reliable witness informs one of something bad about another, one should neither believe it nor disbelieve it, in order to avoid thinking badly of either of them. And whenever one has a bad thought about a Muslim one should increase one's concern and respect for him, as this will madden the Devil and put him off, and he will not suggest the like of it to one again for fear that one will occupy oneself with prayer for the person.

"If one learns of a Muslim's mistake by undeniable proof, one should advise him about it in private and not let the Devil delude one into slandering him. And when admonishing him, one should not gloat over his shortcoming and the fact that he is regarding one with respect while one is regarding him with disdain, but one's intention should

مجرد خطران من غير تعمد لتحصيله ثم صرفه في الحال فليس بكافر ولا شيء عليه. وسبب العفو ما ذكرناه من تعذر اجتنابه. وإنما الممكن اجتناب الاستمرار عليه فلهذا كان الاستمرار وعقد القلب حراماً.

ومهما عرض لك هذا الخاطر بالغيبة [وغيرها من المعاصي] وجب عليك دفعه بالإعراض عنه وذكر التأويلات الصارفة له عن ظاهره. قال الإمام أبو حامد الغزالي في الإحياء: إذا وقع في قلبك ظن السوء فهو من وسوسة الشيطان يلقيه إليك فينبغي أن تكذبه فإنه أفسق الفساق، وقد قال الله تعالى:

﴿إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَنْ تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْبِحُوا عَلَىٰ مَا فَعَلْتُمْ نَادِمِينَ﴾ [الحجرات: ٧].

فلا يجوز تصديق إبليس. فإن كان هناك قرينة تدل على فساد واحتمل خلافه لم تجز إساءة الظن. [...] فإن الشيطان قد يقرب إلى القلب بأدنى خيال مساوىء الناس، ويلقي إليه أن هذا من فطنتك وذكائك وسرعة تنبهك، وأن المؤمن ينظر بنور الله؛ وإنما هو على التحقيق ناطق بغرور الشيطان وظلمته.

وإن أخبرك عدل بذلك فلا تصدقه ولا تكذبه لئلا تسيء الظن بأحدهما.

ومهما خطر لك سوء في مسلم فزد في مراعاته وإكرامه. فإن ذلك يغيظ الشيطان ويدفعه عنك فلا يلقي إليك مثله خيفة من اشتغالك بالدعاء له.

ومهما عرفت هفوة مسلم بحجة لا شك فيها فانصحه في السر ولا يخدعنك الشيطان فيدعوك إلى اغتيابه. وإذا وعظته فلا تعظه وأنت مسرور باطلاعك على نقصه فينظر إليك بعين التعظيم وتنظر إليه بالاستصغار، ولكن اقصد تخليصه من

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rather be to help him disengage from the act of disobedience, over which one is as sad as if one had committed it oneself. One should be happier if he desists from it without being admonished than if he desists because of one's admonishment." These are Ghazali's words.

الإثم وأنت حزين كما تحزن على نفسك إذا دخلك نقص.

وينبغي أن يكون تركه لذلك النقص بغير وعظك أحب إليك من تركه بوعظك. ـ هذا كلام الغزالي ـ.

r2.15 We have mentioned that it is obligatory for a person with a passing ill thought of another to dispell it, this being when no interest recongnised by Sacred Law conduces one to reflect upon it, for if there is such an interest, it is permissible to weigh and consider the individual's deficiency and warn others of it, as when evaluating the reliability of court witnesses or hadith transmitters, and in other cases we will mention below in the section on permissible slander.

r2.15 قد ذكرنا أنه يجب عليه إذا عرض له خاطر بسوء الظن أن يقطعه. وهذا إذا لم تدع إلى الفكر في ذلك مصلحة شرعية، فإن دعت جاز الفكر في نقيصته والترغيب عنها كما في جرح الشهود والرواة وغير ذلك مما ذكرنا في باب ما يباح من الغيبة.

PERMISSIBLE SLANDER

ما يباح من الغيبة

r2.16 Slander, though unlawful, is sometimes permissible for a lawful purpose, the legitimating factor being that there is some aim countenanced by Sacred Law that is unattainable by other means. This may be for one of six reasons.

r2.16 [اعلم أن] الغيبة وإن كانت محرمة فإنها تباح في أحوال للمصلحة.

والمجوز لهذا غرض صحيح شرعي لا يمكن الوصول إليه إلا بها، وهو أحد ستة أسباب.

REDRESSING GRIEVANCES

التظلم

r2.17 The first is the redress of grievances. Someone wronged may seek redress from the Islamic ruler, judge, or others with the authority or power to help one against the person who has wronged one. One may say, "So-and-so has wronged me," "done such and such to me," "took such and such of mine," and similar remarks.

r2.17 الأول التظلم. فيجوز للمظلوم أن يتظلم إلى السلطان والقاضي وغيرهما ممن له ولاية أو له قدرة على إنصافه من ظالمه. فيذكر أن: فلاناً ظلمني، وفعل بي كذا، وأخذ لي كذا، ونحو ذلك.

ELIMINATING WRONGDOING

إزالة المنكر

r2.18 The second is seeking aid in righting a wrong or correcting a wrongdoer, such as by saying to someone expected to be able to set things

r2.18 الثاني الاستعانة على تغيير المنكر ورد العاصي إلى الصواب. فيقول لمن يرجو قدرته على إزالة المنكر: فلان

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right, "So-and-so is doing such and such, so warn him not to continue," and the like. The intention in such a case must be to take the measures necessary to eliminate the wrong, for if this is not one's purpose, it is unlawful.

يعمل كذا فازجره عنه ونحو ذلك.
ويكون مقصوده التوسل إلى إزالة المنكر. فإن لم يقصد ذلك كان حراماً.

ASKING FOR A LEGAL OPINION

الاستفتاء

r2.19 The third is asking for a legal opinion, such as by saying to the mufti, "My father [or "brother," or "So-and-so,"] has wronged me by doing such and such. May he do so or not?" "How can I be rid of him," "get what is coming to me," "stop the injustice," and so forth. Or such as saying, "My wife does such and such to me," "My husband does such and such," and the like. This is permissible when necessary, but to be on the safe side it is best to say, "What do you think of a man whose case is such and such," or "a husband [or "wife"] who does such and such," and so on, since this accomplishes one's aim without referring to particular people. But it is nevertheless permissible to identify a particular person, as is attested to by the hadith in which Hind said,

"O Messenger of Allah, Abu Sufyan is a stingy man..."

and the Prophet (Allah bless him and give him peace) did not forbid her.

r2.19 الثالث الاستفتاء بأن يقول للمفتي: ظلمني أبي أو أخي أو فلان بكذا، فهل له ذلك أم لا؟ وما طريقي في الخلاص منه وتحصيل حقي ودفع الظلم عني؟ ونحو ذلك. وكذلك قوله: زوجتي تفعل معي كذا، أو زوجي يفعل كذا، ونحو ذلك. فهذا جائز للحاجة. ولكن الأحوط أن يقول: ما تقول في رجل كان من أمره كذا، أو في زوج أو زوجة تفعل كذا، ونحو ذلك، فإنه يحصل به الغرض من غير تعيين. ومع ذلك فالتعيين جائز لحديث هند [الذي سنذكره إن شاء الله تعالى وقولها] «يا رسول الله إن أبا سفيان رجل شحيح» الحديث. ولم ينهها رسول الله ﷺ.

WARNING MUSLIMS OF EVIL

تحذير المسلمين من الشر

r2.20 The fourth reason is to warn Muslims of evil and advise them, which may take several forms, including:

(1) Impugning unreliable hadith transmitters or court witnesses, which is permissible by consensus of all Muslims, even obligatory, because of the need for it.

(2) When a person seeks one's advice about marrying into a certain family, entering into a partnership with someone, depositing something

r2.20 الرابع تحذير المسلمين من الشر ونصيحتهم وذلك من وجوه:
منها جرح المجروحين من الرواة للحديث والشهود. وذلك جائز بإجماع المسلمين، بل واجب للحاجة.
ومنها إذا استشارك إنسان في مصاهرته أو مشاركته أو إيداعه أو الإيداع عنده أو

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for safekeeping with him, accepting such a deposit, or some other transaction with him, it is obligatory for one to tell the person asking what one knows about the other by way of advising him. If one can accomplish this by merely saying, "Dealing with him is of no advantage to you," "Marrying into the family is not in your interests," "Do not do it," and similar expressions, then one may not elaborate on the individual's shortcomings. But if it cannot be accomplished without explicitly mentioning the individual, one may do so.

معـاملته بغير ذلك، وجب عليك أن تذكر له ما تعلمـه منـه على جهة النصيحة. فإن حصـل الغـرض بمجرد قولك: لا تصلح لك معاملته أو مصاهرته أو لا تفعل هذا أو نحو ذلك، لم تجز الزيادة بذكر المساوي.

وإن لم يحصـل الغرض إلا بالتصريح بعينه فاذكره بصريحه.

(3) When one notices a student of Sacred Law going to learn from a teacher who is guilty of reprehensible innovations in religious matters (bid'a, def: w29.3) or who is corrupt, and one apprehends harm to the student thereby, one must advise him and explain how the teacher really is. It is necessary in such a case that one intend to give sincere counsel. Mistakes are sometimes made in this, as the person warning another may be motivated by envy, which the Devil has duped him into believing is heartfelt advice and compassion, so one must beware of this.

ومنها إذا رأيت متفقهاً يتردد إلى مبتدع أو فاسق يأخذ عنه العلم خفت أن يتضرر المتفقه بذلـك، فعليـك نصيحتـه ببيـان حاله. ويشترط أن تقصد النصيحة. وهذا مما يغلط فيه. وقد يحمل المتكلم بذلك الحســد، ويلبس الشيطــان عليه ذلـك ويخيل إليه أنه نصيحة وشفقة، فليتفطن لذلك.

(4) And when there is someone in a position of responsibility who is not doing the job as it should be done, because of being unfit for it, corrupt, inattentive, or the like, one must mention this to the person with authority over him so he can remove him and find another to do the job properly, or be aware of how he is so as to deal with him as he should be dealt with and not be deluded by him, to urge him to either improve or else be replaced.

ومنهـا أن يكـون له ولايـة لا يقـوم بها على وجههـا، إمـا بأن لا يكـون صالحـاً لها، وإما بأن يكون فاسقاً أو مغفلاً ونحو ذلك.

فيجب ذكـر ذلـك لمن له عليـه ولايـة عامـة ليـزيله ويـولي من يصلح، أو يعلم ذلك منه ليعامله بمقتضى حاله ولا يغتر به وأن يسعى في أن يحثه على الاستقامة أو يستبدل به.

SOMEONE UNCONCERNED WITH CONCEALING THEIR DISOBEDIENCE

المجاهرة بالفسق

r2.21 A fifth reason that permits slander is when the person is making no effort to conceal his corruption or involvement in reprehensible innovation (bid'a), such as someone who openly drinks wine, confiscates others' property, gathers taxes uncountenanced by Sacred Law, collects money wrongfully, or perpetrates other falsehoods, in

r2.21 الخـامس أن يكـون مجـاهـراً بفسقـه أو بدعتـه كالمجاهر بشرب الخمر أو مصـادرة النـاس وأخـذ المكس وجباية الأموال ظلماً وتولي الأمور الباطلة.

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which cases it is permissible to speak about what he is unconcerned to conceal, but unlawful to mention his other faults unless there is some other valid reason that permits it, of those we have discussed.

فيجوز ذكره بما يجاهر به ويحرم ذكره بغيره من العيوب إلا أن يكون لجوازه سبب آخر مما ذكرناه.

IDENTIFICATION

التعريف

r2.22 The sixth reason is to identify someone. When a person is known by a nickname such as "the Bleary-eyed," "the Lame," "the Deaf," "the Blind," "the Cross-eyed," or similar, it is permissible to refer to him by that name if one's intention is to identify him. It is unlawful to do so by way of pointing out his deficiencies. And if one can identify him by some other means, it is better.

r2.22 السادس التعريف فإذا كان الإنسان معروفاً بلقب كالأعمش والأعرج والأصم والأعمى والأحول وغيرهم جاز تعريفه بذلك بنية التعريف، ويحرم إطلاقه على جهة النقص. ولو أمكن التعريف بغيره كان أولى.

r2.23 These then, are six reasons Islamic scholars mention that permit slander in the above cases (*al-Adhkar* (y102), 455–69).

r2.23 فهذه ستة أسباب ذكرها العلماء مما تباح بها الغيبة على ما ذكرناه. [محرر من الأذكار: ٤٥٥ - ٤٦٩ بتقديم وتأخير].

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r3.0 TALEBEARING (NAMIMA)

r3.0 تحريم النميمة

r3.1 (Nawawi:) Having summarily mentioned that talebearing (namima) is unlawful, with the evidence for this and a description of its nature, we now want to add a fuller explanation of it. Imam Abu Hamid Ghazali says, "Talebearing is a term that is usually applied only to someone who conveys to a person what another has said about him, such as by saying, 'So-and-so says such and such about you.' In fact, talebearing is not limited to that, but rather consists of revealing anything whose disclosure is resented, whether resented by the person who originally said it, the person to whom it is disclosed, or by a third party. It makes no difference whether the disclosure is in word, writing, a sign, nodding, or other; whether it concerns word or deed; or whether it concerns something bad or otherwise. The reality of talebearing

r3.1 (النووي:) قد ذكرنا تحريمها ودلائلها وما جاء في الوعيد عليها وذكرنا بيان حقيقتها ولكنه مختصر، ونزيد الآن في شرحه. قال الإمام أبو حامد الغزالي [رحمه الله]: النميمة إنما تطلق في الغالب على من ينم قول الغير إلى المقول فيه كقوله: فلان يقول فيك كذا.

وليست النميمة مخصوصة بذلك؛ بل حدها كشف ما يكره كشفه سواء كرهه المنقول عنه أو المنقول إليه، أو ثالث، وسواء كان الكشف بالقول أو الكتابة أو الرمز أو الإيماء أو نحوها؛ وسواء كان المنقول من الأقوال أو الأعمال؛ وسواء كان عيباً أو غيره. فحقيقة النميمة إفشاء

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lies in divulging a secret, in revealing something confidential whose disclosure is resented. A person should not speak of anything he notices about people besides that which benefits a Muslim to relate or prevents disobedience. Anyone approached with a story, who is told, 'So-and-so says such and such about you,' must do six things:

(1) disbelieve it, for talebearers are corrupt, and their information unacceptable;

(2) tell the talebearer to stop, admonish him about it, and condemn the shamefulness of what he has done;

(3) hate him for the sake of Allah Most High, for he is detestable in Allah's sight, and hating for the sake of Allah Most High is obligatory;

(4) not think badly of the person whom the words are supposedly from, for Allah Most High says,

'Shun much of surmise' (Koran 49:12);

(5) not let what has been said prompt him to spy or investigate whether it is true, for Allah Most High says,

'Do not spy' (Koran 49:12);

(6) and not to do himself what he has forbidden the talebearer to do, by relating it to others."

(Ibid., 471–72)

السر وهتك الستر عما يكره كشفه.

وينبغي للإنسان أن يسكت عن كل ما رآه من أحوال الناس إلا ما في حكايته فائدة لمسلم أو دفع معصية.

وكل من حُملت إليه نميمة وقيل له: قال فيك فلان كذا؛ لزمه ستة أمور:

- الأول أن لا يصدقه لأن النمام فاسق وهو مردود الخبر.
- الثاني أن ينهاه عن ذلك ويتصحه ويقبح فعله.
- الثالث أن يبغضه في الله تعالى فإنه بغيض عند الله تعالى والبغض في الله تعالى واجب.
- الرابع أن لا يظن بالمنقول عنه السوء لقول الله تعالى:

﴿اجْتَنِبُوا كَثِيراً مِنَ الظَّنِّ﴾.

- الخامس أن لا يحملك ما حكي لك على التجسس والبحث عن تحقيق ذلك، قال الله تعالى:

﴿وَلَا تَجَسَّسُوا﴾.

- السادس أن لا يرضى لنفسه ما نهى النمام عنه فلا يحكي نميمته [نقل من المرجع المذكور: ٤٧١ - ٤٧٢].

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r4.0 SAYING "THE PEOPLE HAVE GONE TO RUIN"

r4.1 The Prophet (Allah bless him and give him peace) said,

"When a man says, 'The people have gone to ruin,' he is the most ruined of all."

r4.0 النهي عن قول «هلك الناس»

r4.1 [عن أبي هريرة أن] رسول الله ﷺ قال: «إذا قال الرجلُ: هلك الناسُ، فهو أهلكُهُمْ» [قال أبو إسحاق لا أدري أهلكَهُمْ بالنصب أو أهلكُهُمْ بالرفع]. [رواه مسلم].

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r4.2 (Nawawi:) Khattabi says the hadith means that a person who continually finds fault with people and mentions their failings is the most ruined of all, i.e. he becomes worse than they are because of the sin he commits in disparaging and attacking them, which may also lead to conceitedness and seeing himself as better than they.

Scholars concur that the condemnation only applies to someone who says the like of this out of contempt for people, considering them inferior and himself superior, despising the way they are because of his ignorance of the divine wisdom in Allah's creating them. But if one says it out of sadness at seeing one's own religious failings and those of others, there is no harm in it, just as there is no blame in saying, "For all I know, every one of the Prophet's Community (Allah bless him and give him peace) performs the prayer." This is how Imam Malik explained the hadith, and others have followed him therein (*Sahih Muslim bi Sharh al-Nawawi* (y93), 16.175–76).

r4.2 وقال الخطابي معناه لا يزال الرجل يعيب الناس ويذكر مساويهم ويقول فسد الناس وهلكوا ونحو ذلك فإذا فعل ذلك فهو أهلكهم أي أسوأ حالاً منهم بما يلحقه من الإثم في عيبهم والوقيعة فيهم وربما أداه ذلك إلى العجب بنفسه ورؤيته أنه خير منهم [. . .].

واتفق العلماء على أن هذا الذم إنما هو فيمن قاله على سبيل الإزراء على الناس واحتقارهم وتفضيل نفسه عليهم وتقبيح أحوالهم لأنه لا يعلم سرّ الله في خلقه.

قالوا فأما من قال ذلك تحزناً لما يرى في نفسه وفي الناس من النقص في أمر الدين فلا بأس عليه كما إذا قال: لا أعرف من أمة النبي ﷺ إلا أنهم يصلون جميعاً. هكذا فسره الإمام مالك وتابعه الناس عليه [محرّر من صحيح مسلم بشرح النووي: ١٦/ ١٧٥ - ١٧٦ بتقديم وتأخير].

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r5.0 INFORMING ON ANOTHER

r5.1 The Prophet (Allah bless him and give him peace) said,

"Let none of my Companions inform me of anything another of them has said, for I wish to come out to you without disquiet in my heart."

(*al-Adhkar* (y102), 473)

r5.0 النهي عن نقل الحديث إلى ولاة الأمور

r5.1 [روينا في كتابي أبي داود والترمذي عن ابن مسعود رضي الله عنه قال:] قال رسول الله ﷺ: «لا يبلّغني أحدٌ من أصحابي عن أحد شيئاً، فإني أحب أن أخرج إليكم وأنا سليم الصدر» [نقل من الأذكار: ٤٧٣].

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r6.0 TWO PEOPLE CONVERSING SO A THIRD CANNOT HEAR

r6.1 The Prophet (Allah bless him and give him peace) said,

r6.0 تناجي اثنين عند ثالث

r6.1 [عن ابن مسعود رضي الله عنه أن] رسول الله ﷺ قال: «إذا كنتم

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"When there are only three of you, two of you may not speak together apart from the third unless you join a group of others, lest your doing so sadden him."

ثلاثة فلا يتناجى رجلان دون الآخر حتى تختلطوا بالناس، فإن ذلك يحزنه» [رواه أحمد].

r6.2 (Nahlawi:) Nawawi (Allah have mercy on him) says this hadith prohibits two individuals conversing privately when a third is present, and likewise prohibits three or more people from doing so when there is a single person apart from them. The prohibition indicates its unlawfulness, it being impermissible for a group to converse apart from a single individual unless he gives his permission. Imam Malik (Allah have mercy on him), our colleagues, and the majority of scholars hold that the prohibition is applicable at all times, whether one is at home or travelling, though some (A: Hanafi) scholars say that such converse is forbidden only while travelling, not when at home, for when travelling it may portend danger.

r6.2 (النحلاوي:) قال النووي رحمه الله تعالى: وفي الحديث النهي عن تناجي اثنين بحضرة ثالث وكذا ثلاثة وأكثر بحضرة واحد، وهو نهي تحريم.

فيحرم على الجماعة المناجاة دون واحد منهم إلا أن يأذن.

ومذهب مالك رحمه الله تعالى وأصحابنا وجماهير العلماء أن النهي عامٌ في كل الأزمان وفي الحضر والسفر.

وقال بعض العلماء إنما المنهي عنه المناجاة في السفر دون الحضر لأن السفر مظنة الخوف.

r6.3 As for when there are four people and two of them speak privately in low tones apart from the other two, scholars agree that there is no harm in this.

r6.3 وأما إذا كانوا أربعة فتناجى اثنان دون اثنين فلا بأس بالإجماع.

r6.4 The prohibition of listening to the conversation of people who are averse to one's listening likewise means it is unlawful, though only when the conversation does not entail harm to the listener, for if it does, one may listen to protect oneself from them (*al-Durar al-mubaha* (y99), 159).

r6.4 وكذا النهي عن استماع حديث قوم يكرهون استماعه له، إلا أن يكون ذلك الحديث منهم في قصد إضرار المستمع فيستمع ليحترز منهم [نقل من الدرر المباحة في الحظر والإباحة: ١٥٩].

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r7.0 GIVING DIRECTIONS TO SOMEONE WHO WANTS TO DO WRONG

r7.0 الدلالة على الطريق لمن يريد المعصية

r7.1 (Nahlawi:) It is not permissible to give directions and the like to someone intending to perpetrate a sin, because it is helping another to commit disobedience. Allah Most High says.

r7.1 (النحلاوي:) وأما الدلالة على الطريق ونحوه لمن يريد المعصية، فإنها لا تجوز، لأنها إعانة على المعصية. قال الله تعالى:

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"Do not assist one another in sin and aggression" (Koran 5:2).

Giving directions to wrongdoers includes:

(1) showing the way to policemen and tyrants when they are going to commit injustice and corruption;

(2) teaching questions of Sacred Law to those learning it in bad faith (N: i.e. who do not want the knowledge to apply it in their lives, but for some unworthy purpose);

(3) teaching positions in Sacred Law that are rejected (A: meaning those that are not accepted by any of the four schools of jurisprudence (dis: b7.6)) or weak (dis: w12.2), or anything else that informs people of how to commit disobedience to Allah Most High;

(4) and permitting or authorizing a person to do something that entails disobedience, for acceptance of disobedience is disobedience.

(Ibid., 159–60)

﴿ولا تعاونوا على الإثم والعدوان﴾.
ومنها الدلالة للشرطي والظلمة إذا ذهبوا إلى الظلم والفسق. ومنها تعليم المسائل للمبطل (ح: وهو الذي لا يريد العلم للعمل به بل يريده لمقصد فاسد) وتعليم الأقوال المهجورة والضعيفة ونحو ذلك من كل ما فيه دلالة على معصية من معاصي الله تعالى. ومنها الإذن والإجازة فيما هو معصية، فإن الرضا بالمعصية معصية. [محرر من المرجع المذكور: ١٥٩].

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r8.0 LYING

r8.1 (Nawawi:) Primary texts from the Koran and sunna that it is unlawful to lie (dis: p24) are both numerous and intersubstantiative, it being among the ugliest sins and most disgusting faults. Because of the scholarly consensus of the Community (Umma) that it is prohibited and the unanimity and amount of the primary textual evidence, there is little need to cite particular examples thereof, our only concern here being to explain the exceptions to what is considered lying, and apprise of the details.

PERMISSIBLE LYING

r8.2 The Prophet (Allah bless him and give

r8.0 الكذب

r8.1 (النووي:) قد تظاهرت نصوص الكتاب والسنة على تحريم الكذب [في الجملة]، وهو من قبائح الذنوب وفواحش العيوب.
وإجماع الأمة منعقد على تحريمه مع النصوص المتظاهرة فلا ضرورة إلى نقل أفرادها.
وإنما المهم بيان ما يستثنى منه والتنبيه على دقائقه.

ما يباح من الكذب

r8.2 [وعن أم كلثوم رضي الله عنها

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him peace) said,

"He who settles disagreements between people to bring about good or says something commendable is not a liar."

This much is related by both Bukhari and Muslim, with Muslim's version recording that Umm Kulthum added,

"I did not hear him permit untruth in anything people say, except for three things: war, settling disagreements, and a man talking with his wife or she with him (A: in smoothing over differences)."

This is an explicit statement that lying is sometimes permissible for a given interest, scholars having established criteria defining what types of it are lawful. The best analysis of it I have seen is by Imam Abu Hamid Ghazali, who says: "Speaking is a means to achieve objectives. If a praiseworthy aim is attainable through both telling the truth and lying, it is unlawful to accomplish through lying because there is no need for it. When it is possible to achieve such an aim by lying but not by telling the truth, it is permissible to lie if attaining the goal is permissible (N: i.e. when the purpose of lying is to circumvent someone who is preventing one from doing something permissible), and obligatory to lie if the goal is obligatory. When, for example, one is concealing a Muslim from an oppressor who asks where he is, it is obligatory to lie about his being hidden. Or when a person deposits an article with one for safekeeping and an oppressor wanting to appropriate it inquires about it, it is obligatory to lie about having concealed it, for if one informs him about the article and he then siezes it, one is financially liable (A: to the owner) to cover the article's cost. Whether the purpose is war, settling a disagreement, or gaining the sympathy of a victim legally entitled to retaliate against one so that he will forbear to do so; it is not unlawful to lie when any of these aims can only be attained through lying. But it is religiously more precautionary (def: c6.5) in all such cases to employ words that give a misleading impression, meaning to intend by one's words something that is literally true, in respect to

أنهما سمعت] رسول الله ﷺ يقول: «ليس الكذاب الذي يُصْلِحُ بين الناس فينمي خيراً أو يقولُ خيراً». هذا القدر في صحيحهما. وزاد مسلم في رواية له: «قالت أم كلثوم: ولم أسمعه يرخص في شيء مما يقول الناس إلا في ثلاث: يعني الحرب والإصلاح بين الناس وحديث الرجل امرأته والمرأة زوجها».

فهذا حديث صريح في إباحة بعض الكذب للمصلحة وقد ضبط العلماء ما يباح منه. وأحسن ما رأيته في ضبطه، ما ذكره الإمام أبو حامد الغزالي فقال: الكلام وسيلة إلى المقاصد، فكل مقصود محمود يمكن التوصل إليه بالصدق والكذب جميعاً، فالكذب فيه حرام لعدم الحاجة إليه، وإن أمكن التوصل إليه بالكذب ولم يمكن بالصدق فالكذب فيه مباح إن كان تحصيل ذلك المقصود مباحاً (ح: أي إن كان الكذب لدفع من يريد منعه من فعل مباح) وواجب إن كان المقصود واجباً.

فإذا اختفى مسلم من ظالم وسأل عنه وجب الكذب بإخفائه.

وكذا لو كان عنده [أو عند غيره] وديعة وسأل عنها ظالم يريد أخذها وجب عليه الكذب بإخفائها، حتى لو أخبره بوديعة عنده فأخذها الظالم قهراً، وجب ضمانها على المودع المخبر.

وكذلك لو كان مقصود حرب أو إصلاح ذات البين أو استمالة قلب المجني عليه في العفو عن الجناية لا يحصل إلا بالكذب، فالكذب ليس بحرام، وهذا إذا لم يحصل الغرض إلا بالكذب.

والاحتياط في هذا كله أن يورّي؛ ومعنى التورية أن يقصد بعبارته مقصوداً صحيحاً ليس هو كاذباً بالنسبة إليه، وإن

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which one is not lying (def: r10.2), while the outward purport of the words deceives the hearer, though even if one does not have such an intention and merely lies without intending anything else, it is not unlawful in the above circumstances.

"This is true of every expression connected with a legitimating desired end, whether one's own or another's. An example of a legitimating end of one's own is when an oppressor intending to appropriate one's property inquires about it, in which case one may deny it. Or if a ruler asks one about a wicked act one has committed that is solely between oneself and Allah Most High (N: i.e. it does not concern the rights of another), in which case one is entitled to disclaim it, such as by saying, 'I did not commit fornication,' or 'I did not drink.' There are many well known hadiths in which those who admitted they deserved punishment were given prompting (A: by the Prophet (Allah bless him and give him peace)) to retract their confessions. An example of a legitimating desired end of another is when one is asked about another's secret and one disacknowledges it. And so on. One should compare the bad consequences entailed by lying to those entailed by telling the truth, and if the consequences of telling the truth are more damaging, one is entitled to lie, though if the reverse is true or if one does not know which entails more damage, then lying is unlawful. Whenever lying is permissible, if the factor which permits it is a desired end of one's own, it is recommended not to lie, but when the factor that permits it is the desired end of another, it is not lawful to infringe upon his rights. Strictness (A: as opposed to the above dispensations (rukhsa, def: c6.2)) is to forgo lying in every case where it is not legally obligatory."

كان كاذباً في ظاهر اللفظ.

ولو لم يقصد هذا بل أطلق عبارة الكذب فليس بحرام في هذا الموضع.

[قال أبو حامد الغزالي:] وكذلك كل ما ارتبط به غرض مقصود صحيح له أو لغيره.

فالذي له مثل أن يأخذه ظالم ويسأله عن ماله ليأخذه فله أن ينكره، أو يسأله السلطان عن فاحشة بينه وبين الله تعالى ارتكبها، فله أن ينكرها ويقول: ما زنيت، أو ما شربت مثلاً. وقد اشتهرت الأحاديث بتلقين الذين أقروا بالحدود الرجوع عن الإقرار.

وأما غرض غيره فمثل أن يسأل عن سرّ أخيه فينكره ونحو ذلك.

وينبغي أن يقابل بين مفسدة الكذب والمفسدة المترتبة على الصدق، فإن كانت المفسدة في الصدق أشد ضرراً فله الكذب، وإن كان عكسه، أو شك حرم عليه الكذب.

ومتى جاز الكذب فإن كان المبيح غرضاً يتعلق بنفسه فيستحب أن لا يكذب. ومتى كان متعلقاً بغيره لم تجز المسامحة بحق غيره.

والحزم تركه في كل موضع أبيح إلا إذا كان واجباً.

r8.3 The position of Ahl al-Sunna is that *lying* means to inform another that something is otherwise than it really is, whether intentionally or out of ignorance. One is not culpable if ignorant of it, but only if one lies intentionally, the evidence for which is that the Prophet (Allah bless him and give him peace) made intentionality a condition when he said,

"Whoever lies about me intentionally shall

r8.3 [واعلم أن] مذهب أهل السنة أن الكذب هو الإخبار عن الشيء بخلاف ما هو، سواء تعمدت ذلك أم جهلته لكن لا يأثم في الجهل وإنما يأثم في العمد.

ودليل أصحابنا تقييد النبي ﷺ: «من كذب عليّ متعمداً فليتبوأ مقعده من

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take a place for himself in hell."

(*al-Adhkar* (y102), 510–12)

النار». [محرّر من الأذكار المنتخبة من كلام سيد الأبرار: ٥١٠ - ٥١٢].

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r9.0 EXAGGERATION

r9.0 المبالغة في الكلام

r9.1 (Nawawi:) Ghazali says: "Among the forms of lying that are unlawful but not serious enough to stigmatize their perpetrator as legally corrupt (dis: o24.3) is the customary exaggeration of saying, 'I've told you a hundred times,' or 'asked after you a hundred times,' and so forth, since one does not thereby intend to inform the other how many times it has been, but only to indicate that it has been too many. In such cases, if the speaker in fact has only asked after the other but once, he is lying, though if he has asked after him a number of times considerably more than what is generally accepted, he is not committing a sin by saying it, even if it has not been 'a hundred times.' There are intermediate degrees between these two at which the exaggerator becomes a liar."

r9.1 (النووي:) قال الغزالي: ومن الكذب المحرم الذي لا يوجب الفسق ما جرت به العادة في المبالغة كقوله: قلت لك مائة مرة، وطلبتك مائة مرة ونحوه فإنه لا يراد به تفهيم المرات بل تفهيم المبالغة، فإن لم يكن طلبه إلا مرة واحدة كان كاذباً. وإن طلبه مرات لا يعتاد مثلها في الكثرة لم يأثم، وإن لم يبلغ مائة مرة.

وبينهما درجات يتعرض المبالغ للكذب فيها.

r9.2 The proof that exaggeration is sometimes permissible and not considered lying is the hadith related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said,

"... As for Abul Jahm, his stick never leaves his shoulder, while Mu'awiya does not own a thing,"

it being understood that the latter owned the garment he was wearing, and the former set his stick aside when he slept and at other times. And Allah alone gives success (ibid., 515–16).

r9.2 [قلت:] دليل جواز المبالغة وأنه لا يعد كذباً ما [رويناه] في الصحيحين أن النبي ﷺ قال: «أما أبو الجهم فلا يضع العصا عن عاتقه، وأما معاوية فلا مال له» ومعلوم أنه كان له ثوبٌ يلبسه، وأنه كان يضع العصا في وقت النوم وغيره. وبالله التوفيق [نقل من المرجع المذكور: ٥١٥ - ٥١٦].

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r10.0 GIVING A MISLEADING IMPRESSION

r10.1 (Nawawi:) Giving a misleading impression is among the most important topics, being frequently met with and often abused. It befits us to examine the matter closely, and whoever learns of it should reflect upon it and apply it. Having previously mentioned that lying is severely prohibited, and the danger that exists in saying something without any particular intention, what follows below shows a safe alternative to these.

r10.2 *Giving a misleading impression* means to utter an expression that ostensibly implies one meaning, while intending a different meaning the expression may also have, one that contradicts the ostensive purport. It is a kind of deception.

(A: It often takes the form of the speaker intending a specific referent while the hearer understands a more general one, as when a person asks a householder, "Is So-and-so here?" to which the householder, intending the space between himself and the questioner rather than the space inside the house, replies, "He is not here.")

r10.3 Scholars say that there is no harm (def: p8.2(A:)) in giving a misleading impression if required by an interest countenanced by Sacred Law that is more important than *not* misleading the person being addressed, or if there is a pressing need which could not otherwise be fulfilled except through lying. When neither of these is the case, giving a misleading impression is offensive though not unlawful unless used as a means for wrongful gain or suppressing another's right, in which case it becomes unlawful. The above determine its permissibility. As for the hadith evidence, some of which permits it and some of which does not, it is to be interpreted in the light of the above criteria (*al-Adhkar* (y102), 514).

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r10.0 التعريض والتورية

r10.1 (النووي:) [اعلم أن] هذا الباب من أهم الأبواب، فإنه مما يكثر استعماله وتعمّ به البلوى. فينبغي لنا أن نعتني بتحقيقه، وينبغي للواقف عليه أن يتأمله ويعمل به. وقد قدمنا ما في الكذب من التحريم الغليظ، وما في إطلاق اللسان من الخطر، وهذا الباب طريق إلى السلامة من ذلك.

r10.2 [واعلم أن] التورية والتعريض معناهما: أن تطلق لفظا هو ظاهر في معنى وتريد به معنى آخر يتناوله ذلك اللفظ، لكنه خلاف ظاهره، وهذا ضرب من التغرير والخداع.

r10.3 قال العلماء: فإن دعت إلى ذلك مصلحة شرعية راجحة على خداع المخاطب أو حاجة لا مندوحة عنها إلا بالكذب فلا بأس بالتعريض. وإن لم يكن شيء من ذلك فهو مكروه وليس بحرام إلا أن يتوصل به إلى أخذ باطل أو دفع حقّ فيصير حينئذ حراماً. هذا ضابط الباب. فأما الآثار الواردة فيه فقد جاء من الآثار ما يبيحه وما لا يبيحه وهي محمولة على هذا التفصيل الذي ذكرناه [نقل من الأذكار: ٥١٤].

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r11.0 VERIFYING ONE'S WORDS BEFORE SPEAKING

r11.1 Allah Most High says:

(1) "Pursue not that of which you have no knowledge. The hearing, the eyesight, the heart: all will be asked about" (Koran 17:36).

(2) "He utters not a word save that an observer is present beside him" (Koran 50:18).

r11.2 The Prophet (Allah bless him and give him peace) said,

"It is lying enough for a man to repeat everything he hears."

(Ibid., 512–13)

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r11.0 الحث على التثبت فيما يحكيه الإنسان

r11.1 قال الله تعالى:

﴿ولا تقف ما ليس لك به علم إن السمع والبصر والفؤاد كل أولئك كان عنه مسؤولاً﴾ [الإسراء: ٣٦].

وقال تعالى:

﴿ما يلفظ من قول إلا لديه رقيب عتيد﴾ [ق: ١٨].

r11.2 [وروينا في صحيح مسلم عن حفص بن عاصم التابعي الجليل عن أبي هريرة رضي الله عنه أن] النبي ﷺ قال: «كفى بالمرء كذباً أن يحدث بكل ما سمع». [نقل من المرجع المذكور: ٥١٢ - ٥١٣].

r12.0 SPEAKING OF TAXES AS "THE RULER'S RIGHT"

r12.1 (Nawawi:) One of the things most sternly prohibited and needful to warn people against is what the common people say about sales tax and the like (dis: p32), namely that "this is the ruler's right," or "you have to pay the ruler's due," and so forth, of references to "right," "obligation," and so on. This is one of the most objectionable practices and ugliest of reprehensible innovations. Some scholars even hold that anyone who calls these taxes a right thereby becomes an unbeliever, beyond the pale of Islam. But in fact, such a person does not become an unbeliever unless he actually considers it right while knowing it is unjust. The proper way to mention these is to say "the ruler's tax," "revenue," or similar words. And Allah alone gives success (ibid., 499–500).

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r12.0 تسمية المكوس حقاً

r12.1 (النووي:) مما يتأكد النهي عنه والتحذير منه ما يقوله العوام وأشباههم في هذه المكوس التي تؤخذ ممن يبيع ويشتري ونحوهما، فإنهم يقولون: هذا حق السلطان؛ أو: عليك حق السلطان ونحو ذلك من العبارات المشتملة على تسميته حقاً أو لازماً ونحو ذلك، وهذا من أشد المنكرات وأشنع المستحدثات. حتى قال بعض العلماء: من سمى هذا حقاً فهو كافر خارج عن ملة الإسلام. والصحيح أنه لا يكفر إلا إذا اعتقده حقاً مع علمه بأنه ظلم. فالصواب أن يقال فيه: المكس أو ضريبة السلطان أو نحو ذلك من العبارات. وبالله التوفيق [نقل من المرجع المذكور: ٤٩٩ - ٥٠٠].

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r13.0 CONVERSING ABOUT WHAT IS USELESS OR IMMORAL

r13.1 (Nahlawi:) Conversing about what is useless or immoral means discussing acts of disobedience, such as stories about drinking sessions and fornicators when there is no legitimate purpose connected with the conversation, which is unlawful because it manifests one's own disobedience or another's without there being any need to. Ibn Mas'ud (Allah be well pleased with him) said,

"The greatest in sins on the Judgement Day will be the one most given to speaking about the useless and immoral."

SPEAKING ABOUT WHAT DOES NOT CONCERN ONE

r13.2 As for speaking about what does not concern one, such as the story of one's travels, and the mountains, rivers, food, and clothes one saw while on them; when it does not contain lies, slander, ostentation, or other things that are unlawful, it is not in itself prohibited. Rather, it may be recommended, as when inspired by a good intention such as preventing others of accusing one of being arrogant or proud of not speaking, allaying another's timorousness, cheering up someone sad or ill, amusing or getting along well with the womenfolk, showing kindness to children, or similar motives. With these intentions it is not considered to be what does not concern one.

r13.3 It is recommended and praiseworthy to leave anything that does not concern one (def: w54) because one squanders one's life by involvement in it and in mere amusement. The Prophet (Allah bless him and give him peace) said,

"The excellence of a person's Islam includes leaving what does not concern him,"

including excess verbiage, meaning to elaborate more than necessary about matters which do con-

r13.0 الخوض في الباطل

r13.1 (النحلاوي:) الخوض في الباطل هو الكلام في المعاصي كحكايات مجالس الخمر، والزناة، والزواني من غير أن يتعلق بها غرض صحيح، وهذا حرام، لأنه إظهار لمعصية نفسه أو غيره من غير حاجة داعية إلى ذلك. وعن ابن مسعود رضي الله عنه موقوفاً أنه قال: «أعظم الناس خطايا يوم القيامة أكثرهم خوضاً في الباطل» [رواه ابن أبي الدنيا].

الخوض فيما لا يعني

r13.2 وأما الكلام فيما لا يعني مثل حكاية أسفارك وما رأيت فيها من جبال وأنهار وأطعمة وثياب، فهذا - إذا خلا عن الكذب والغيبة والرياء ونحوها من المحرمات - لا يحرم، بل قد يُستحب إذا قارنه نية صالحة مثلُ دفع التهمة بالكبر والعجب بعدم التكلم، أو دفع المهابة، أو دفع الحزن عن المحزون والمصاب، وتسلية النساء، وحسن المعاشرة معهن، أو التلطف بالصبيان، وبهذه النيات يخرج عن حد ما لا يعني.

r13.3 فكل ما لا يعني يستحب تركه، لتضييع العمر فيه واللهو. قال ﷺ: «من حسن إسلام المرء: تركه ما لا يعنيه». ومنه فضول الكلام وهو الزيادة فيما يعني على قدر الحاجة. ومنه السؤال

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cern one, or to ask about things which are of no importance; though it does not include clarifying the details of difficult legal questions, especially to those of limited understanding, or the need to repeat an exhortation, reminder, instruction, or the like, since it might be necessary. But when it is unnecessary to add details, one should express oneself succinctly and with brevity. The Prophet (Allah bless him and give him peace) said,

"Good tidings to him who avoids the excess in his speech and spends the excess of his money."

'Ali (Allah ennoble his countenance) said,

"The best discourse is expressive, great, brief, and interesting."

(*al-Durar al-mubaha* (y99), 135–36)

عما لا يهم، وليس منه التفصيل في المسائل المشكلة، خصوصاً للأفهام القاصرة، والتكرار في العظة والتذكير والتعليم ونحوها، لأنه للحاجة. وفيما لا حاجة فيه يستحب الإيجاز والاختصار. قال ﷺ: «طوبى لمن أمسك الفضل من كلامه وأنفق الفضل من ماله».

وقال علي كرم الله وجهه: خير الكلام ما دلَّ وجلَّ وقلَّ ولم يُملّ [محرر من الدرر المباحة في الحظر والإباحة: ١٣٥ - ١٣٦].

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r14.0 EXPLAINING THE KORAN BY PERSONAL OPINION

r14.0 تفسير القرآن بالرأي

r14.1 The Prophet (Allah bless him and give him peace) said,

"Whoever speaks of the Book of Allah from his own opinion is in error."

r14.1 [عن جندب رضي الله عنه أنه قال:] قال رسول الله ﷺ: «من قال في كتاب الله برأيه فقد أخطأ» [رواه أبو داود والترمذي].

r14.2 (Nahlawi:) The jurist Abul Layth says in *Bustan al-'arifin*, "The [above] prohibition only applies to the allegorical parts of it (dis: w6), not to all of it, since Allah Most High says,

" 'As for those with deviance in their hearts, they pursue the allegorical of it' (Koran 3:7).

"The Koran came as a proof of moral answerability against all mankind and jinn, while if interpreting it were not permissible, it could not be a decisive proof. Since it is decisive, it is permissible for someone acquainted with the dialects of the Arabs and the circumstances under which various verses were revealed to interpret it. As for

r14.2 (النحلاوي:) قال الفقيه أبو الليث في بستان العارفين: النهي إنما ورد في المتشابه منه، لا في جميعه، كما قال تعالى:

﴿فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ﴾ [آل عمران: ٧]، إن القرآن إنما أُنزل حجةً على الخلق، فلو لم يجز التفسير، لا يكون حجةً بالغةً، فإذا كان كذلك جاز - لمن يعرف لغات العرب، وعرف شأن النزول - أن يفسره. وأما من كان من المتكلفين، ولم يعرف

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would-be exegetes who do not know the dimensions of Arabic, the figurative, literal, and the types of metaphor, it is not permissible for them to explain it beyond what they have heard, by way of reporting and not actual interpretation."

The generality of the prohibition also entails that whoever does not know which verses abrogate others and which are abrogated, the points upon which there is scholarly consensus (def: b7), and the tenets of faith of Ahl al-Sunna, is not safe from error if he interprets the Koran with nothing beyond the implications of the Arabic. Mere linguistic familiarity with the language is insufficient, and one must also know what we have just mentioned. When one knows both, one may interpret the Koran, and is not doing so by mere opinion (ibid., 158).

وجوه العربية ـ من المجاز والحقيقة، وأنواع الاستعارات ـ فلا يجوز له أن يفسّره، إلا مقدار ما سمع، فيكون ذلك على وجه الحكاية لا على سبيل التفسير. اهـ.

ومن جملة محمل النهي: مَنْ لا يعرف الناسخ والمنسوخ ومواضع الإجماع وعقائد أهل السنة، فيفسر على مقتضى العربية فلا يأمن من الخطأ. فلا يفيد مجرد معرفة وجوه اللغة، بل لا بد معها من معرفة ما ذكرناه. فإذا حصل له هاتان المعرفتان، فله أن يفسر، ولا يكون تفسيره بالرأي [...] [نقل من المرجع المذكور: ١٥٨].

r14.3 (A: The above is equally true of hadith. Koran and hadith commentaries are of tremendous importance to teachers, speakers, writers, and translators who are preparing materials to present to Muslim audiences. The dictionary is not enough.)

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r15.0 ASKING ABOUT THE NATURE OF ALLAH MOST HIGH

r15.0 السؤال عن كنه ذات الله تعالى

r15.1 The Prophet (Allah bless him and give him peace) said:

"People will keep wondering and asking each other until it is said, 'This is Allah's creation, but who created Allah?' Whoever finds anything like this, let him say, 'I believe in Allah and His messengers.' "

(Ibid., 140)

r15.1 قال رسول الله ﷺ: «لا يزال الناس يتساءلون، حتى يقال: هذا خلق الله فمن خلق الله؟ فمن وجد من ذلك شيئاً فليقل: آمنت بالله ورسله» [متفق عليه] [نقل من المرجع المذكور: ١٤٠].

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r16.0 HYPOCRISY

r16.1 (Nahlawi:) Hypocrisy is when a person's outward does not correspond to his inward, or his words to his deeds. It is of two kinds, hypocrisy in belief and hypocrisy in acts. Hypocrisy in belief is another name for concealed unbelief while outwardly professing Islam. It is the very worst form of unbelief. Allah Mighty and Majestic says,

"Verily the hypocrites shall be in the lowest abyss of hell" (Koran 4:145).

And this type consigns its perpetrator to hell forever. As for hypocrisy in act, it is that which does not concern one's faith. It is also termed spoken hypocrisy, and consists of saying what contradicts one's true state. It is one of the greatest of sins. It includes being two-faced, like the person who, when two people are at odds, speaks words to each that confirm their respective sides, or tells each what the other has said, or endorses the enmity of each, praises each, and promises each to help against the other. This is hypocrisy and more. But its blameworthiness applies only to worsening relations between people, for if done to settle their differences, it is praiseworthy.

It is seldom that a person who visits leaders and important people is free of spoken hypocrisy. Someone told Ibn 'Umar (Allah be well pleased with father and son), "We visit our leaders and speak, but when we leave, we say something else." He replied, "In the days of the Messenger of Allah (Allah bless him and give him peace) we considered this hypocrisy."

r16.2 As for assuaging those from whom one apprehends harm (mudara), it is permissible, being done to obviate the damage and evil anticipated from certain people, whether it be a ruler or someone else one has reason to fear (*al-Durar al-mubaha* (y99), 116–18).

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r16.0 النفاق

r16.1 (النحلاوي:) النفاق هو عدم موافقة الظاهر للباطن والقول للفعل. وهو على قسمين: اعتقادي وعملي. أما النفاق الاعتقادي فهو عبارة عن إبطان الكفر وإظهار الإسلام، وهو أشد أنواع الكفر ولذلك قال الله عز وجل:

﴿إِنَّ الْمُنَافِقِينَ فِي الدَّرْكِ الْأَسْفَلِ مِنَ النَّارِ﴾ [النساء: ١٤٥].

وهذا يخلد صاحبه في النار. [...]

وأما النفاق العملي فهو ما لا يكون في الاعتقاد ويقال له النفاق القولي وهو مخالفة القول الباطن، وهو من أكبر الذنوب. ومنه كلام ذي اللسانين وهو الذي يتكلم بين المتعاديين عند كل واحد منهما بكلام يوافقه، أو ينقل كلام كل واحد إلى الآخر، أو كان يحسّن لكل واحد منهما ما هو عليه من المعاداة ويثني عليه أو يعدُ كل واحد منهما أن ينصره، وهو يتضمن النفاق ويزيد عليه. وهذا كله إذا كان على وجه الإفساد. وأما إذا كان على وجه الإصلاح فمحمود.

وقلما يخلو عن هذا النفاق القولي المذكور من يدخل على الأمراء والكبراء.

قيل لابن عمر رضي الله عنهما: إنا ندخل على أمرائنا فنقول القول فإذا خرجنا قلنا غيره. قال: كنا نعدّ ذلك نفاقاً على عهد رسول الله ﷺ [رواه الطبراني].

r16.2 وأما المداراة فتجوز وهي ما يكون لدرء الضرر والشر المتوقع من بعض الناس حاكماً كان أو غيره ممن يخاف منه [محرر من الدرر المباحة: ١١٦ - ١١٨].

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r17.0 COMPROMISING ONE'S PRINCIPLES

r17.1 (Nahlawi:) *Compromising one's principles* means religious lassitude and weakness, such as by saying nothing upon seeing acts of disobedience or unlawful things when able to change them without suffering harm. Such silence is unlawful. Its opposite is firmness in religion. Allah Most High says.

"They fight in the path of Allah and fear not the blame of whoever may blame them" (Koran 5:54).

And the Prophet (Allah bless him and give him peace) said,

"Speak the truth, even if bitter."

But when one's silence is to prevent damage to oneself or others, it is a permissible form of assuaging those from whom one apprehends harm (mudara), and even recommended in some cases, as when it results in being saved from injustice, or is a means to fulfill a right recognized by Sacred Law (ibid., 112–13).

r17.0 المداهنة

r17.1 (النحلاوي:) المداهنة هي الفتور والضعف في أمر الدين كالسكوت عند مشاهدة المعاصي والمناهي، مع القدرة على التغيير بلا ضرر فهذا السكوت حرام. وضده الصلابة في الدين. قال الله تعالى:

﴿يُجَاهِدُونَ فِي سَبِيلِ اللَّهِ وَلَا يَخَافُونَ لَوْمَةَ لَائِمٍ﴾ [المائدة: ٥٤].

وقال النبي ﷺ:

«قل الحق وإن كان مُرّاً».

فإن كان سكوته لدرء ضرر عن نفسه أو غيره فهو مداراة جائزة، بل مستحبة في بعض المواضع، إذا توصل بها إلى إنقاذ أحد من ظلم أو إيصال إلى استيفاء حق شرعي [محرر من المرجع المذكور: ١١٢ - ١١٣].

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r18.0 RIDICULE AND SARCASM

r18.1 (Nahlawi:) Ridicule entails showing disdain, sarcasm, or contempt for another in a way that causes laughter, whether by mimicking another's words or actions, by a gesture or by allusion. It is unlawful. Allah Most High says:

(1) "Those who demean believers who voluntarily give charity— ridiculing those who find nothing to give but their own effort—it is Allah who is ridiculing them, and they shall suffer a painful torment" (Koran 9:79).

(2) "O you who believe: let not some men deride others who might well be better than they;

r18.0 السخرية والاستخفاف

r18.1 (النحلاوي:) السخرية تتضمن الاستصغار والاستخفاف بالغير والاستهانة به على وجه يضحك منه.

وقد يكون ذلك بالمحاكاة في القول، والفعل، وقد يكون بالإشارة والإيماء، وهي حرام. قال الله تعالى:

﴿الَّذِينَ يَلْمِزُونَ الْمُطَّوِّعِينَ مِنَ الْمُؤْمِنِينَ فِي الصَّدَقَاتِ وَالَّذِينَ لَا يَجِدُونَ إِلَّا جُهْدَهُمْ فَيَسْخَرُونَ مِنْهُمْ سَخِرَ اللَّهُ مِنْهُمْ وَلَهُمْ عَذَابٌ أَلِيمٌ﴾ [التوبة: ٧٩].

وقال تعالى:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرْ قَوْمٌ مِنْ

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and let not some women ridicule others who might well be better than they. Do not belittle one another or insult one another with nicknames" (Koran 49:11).

قَوْمٍ عَسَى أَنْ يَكُونُوا خَيْرًا مِنْهُمْ وَلَا نِسَاءٌ مِنْ نِسَاءٍ عَسَى أَنْ يَكُنَّ خَيْرًا مِنْهُنَّ وَلَا تَلْمِزُوا أَنْفُسَكُمْ وَلَا تَنَابَزُوا بِالْأَلْقَابِ﴾ [الحجرات: ١١].

The Prophet (Allah bless him and give him peace) said:

[وعن الحسن رضي الله عنه:] أن النبي ﷺ قال: «إن المستهزئين بالناس يفتح لأحدهم باب في الجنة فيقال: هلم، هلم، فيجيء بكربه وغمه فإذا جاء أغلق دونه فمايزال كذلك حتى إن الرجل ليفتح له الباب فيقال: هلم، هلم، فما يأتيه، لعلمه أنه يغلق دونه» [رواه ابن أبي الدنيا].

"A gate in paradise will open to one of those who mock people and a cry will be heard, 'Come here, come here,' and he will come forward in concern and anxiety, but when he reaches it, it will close in front of him. And this will happen again and again, until the gate will open and the cry 'Come here, come here' will be heard as before, but he will not approach because he knows it will only close in front of him."

r18.2 Ridicule is only unlawful when it hurts others' feelings. As for someone who purposely makes himself a laughingstock, perhaps such a person enjoys it, and jokes about him are considered mere humor. What is unlawful is the sarcasm that offends the person ridiculed, because of the insult and disdain involved, such as by laughing at his way of speaking, what he does, how he looks, or his physique because of a defect therein. To laugh at any of these is to commit ridicule that is unlawful (ibid., 126–27).

r18.2 وهذا إنما يحرم في حق من يتأذى به، فأما من جعل نفسه مسخرة فربما فرح بأن يسخر منه، وكانت السخرية في حقه من جملة المزاح، وإنما المحرم استصغار يتأذى به المستهزىء به لما فيه من التحقير والتهاون، وذلك بأن يضحك على كلامه، أو على صنعته أو على صورته وخلقته لعيب فيه، فالضحك في جميع ذلك داخل في السخرية المنهي عنها [نقل من المرجع المذكور: ١٢٦ - ١٢٧].

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r19.0 JOKING

r19.0 المزاح

r19.1 (Nahlawi:) The necessary condition for the permissibility of joking is that it does not contain lies or occasion fright to a Muslim or a non-Muslim citizen, because this hurts others, and we are forbidden to do so.

r19.1 (النحلاوي:) وأما المزاح فشرط جوازه أن لا يكون فيه كذب، ولا روع مسلم أو مسلمة، ومثله الذمي [والمستأمن] لأنه أذية وقد نهينا عنها

r19.2 Excessive joking is blameworthy and forbidden, since it eliminates one's dignity and

r19.2 وإكثاره مذموم منهي عنه، ووجهه أن كثرته تسقط المهابة والوقار،

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reserve, and creates resentment in certain situations and people. It also causes immoderate laughter, which kills the heart. The Prophet (Allah bless him and give him peace) said to his Companions,

"Who will take these words and apply them, or knows someone who will?" Abu Hurayra answered, "I will, O Messenger of Allah," whereupon the Prophet (Allah bless him and give him peace) took his hand and enumerated five things, saying:

"Avoid the unlawful and you will be the most religious of people."

"Be satisfied with what Allah has alotted you and you will be the richest of people."

"Treat your neighbor well and you will be a believer."

"Love for others what you love for yourself and you will be a Muslim."

"Avoid excessive laughter, for too much laughter kills the heart."

(*al-Durar al-mubaha* (y99), 127–28)

وتورث الضغينة في بعض الأحوال والأشخاص، وتورث أيضاً كثرة الضحك المميت للقلب. روى الترمذي عن أبي هريرة رضي الله عنه أنه قال: قال رسول الله ﷺ لأصحابه: «من يأخذ هؤلاء الكلمات فيعمل بهن أو يعلم من يعمل بهن؟» قال أبو هريرة: أنا يا رسول الله، فأخذ بيدي فعدّ خمساً فقال:

«اتق المحارم تكن أعبد الناس.

وارض بما قسم الله لك تكن أغنى الناس.

وأحسن إلى جارك تكن مؤمناً.

وأحب للناس ما تحب لنفسك تكن مسلماً.

ولا تكثر الضحك فإن كثرة الضحك تميت القلب» [رواه أحمد] [نقل من الدرر المباحة: ١٢٧ - ١٢٨].

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r20.0 PICKING APART ANOTHER'S WORDS

r20.1 (Nahlawi:) *Picking apart another's words* consists of attacking another's speech by revealing the mistakes in it, whether its weak Arabic, meaning, or the intention of the speaker, as when one says, "This is true, but you do not intend the truth by it," when such an attack involves no other motive than contempt for the other and displaying one's cleverness. It is unlawful. The Prophet (Allah bless him and give him peace) said:

"Whoever forgoes to cavil when he is in the wrong will have a home built for him on the edge

r20.0 المراء

r20.1 (النحلاوي:) المراء هو طعن في كلام الغير بإظهار خلل فيه، إما باللفظ من جهة العربية، أو في المعنى، أو في قصد المتكلم بأن يقول: هذا الكلام حق، ولكن ليس قصدك منه الحق؛ من غير أن يرتبط به غرض سوى تحقير الغير، وإظهار مزية الكياسة، وهذا حرام. [عن أبي أمامة رضي الله عنه، أنه قال:] قال رسول الله ﷺ: «من ترك المراء - وهو مُبْطل - بني له بيت في ربض

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of paradise. Whoever forgoes it when in the right will have a home built for him in the middle of paradise. And whoever improves his own character, a home will be built for him in the highest part of paradise."

الجنة، ومن تركه - وهو محق - بني له في وسطها ومن حسّن خلقه، بُني له في أعلاها» [رواه الترمذي].

When a believer hears something true, it befits him to accept it. If it is not true, but is unconnected with religious matters, he should remain silent, though if connected with religious matters, he is obliged to show that it is false and to condemn it if there is a chance that anyone will believe him, because this is forbidding the wrong.

والذي ينبغي للمؤمن إذا سمع كلاماً، إن كان حقاً أن يصدقه، وإن كان باطلاً، ولم يكن متعلقاً بأمور الدين أن يسكت عنه، وإن كان متعلقاً بها يجب إظهار البطلان، والإنكار إن رجا القبول، لأنه نهي عن المنكر.

GIVING A POSITIVE INTERPRETATION TO OTHERS' SEEMING MISTAKES

وجوب حمل كلام الغير على المحامل الحسنة

r20.2 Nawawi (Allah Most High have mercy on him) mentions, in the section of the introduction of *Sharh al-Muhadhdhab* about the behavior of teacher and student, that "it is obligatory for a student to give a positive interpretation to every utterance of his brothers that seems to be wrong until he has exhausted seventy excuses. No one is incapable of this except a failure."

r20.2 وذكر النووي رحمه الله تعالى في أدب العالم والمتعلم من مقدمة شرح المهذب، أنه يجب على الطالب أن يحمل إخوانه على المحامل الحسنة، في كل كلام يفهم منه نقص، إلى سبعين محملاً، ثم قال: ولا يعجز عن ذلك إلا كل قليل التوفيق.

READING WORKS THAT ARE BEYOND ONE'S UNDERSTANDING OR CAPACITY

عدم الاعتراض بغير علم

r20.3 The Sheikh al-Akbar (A: Muhyiddin ibn al-'Arabi), Allah Most High sanctify his inmost being, writes in his letter about the spiritual station of annihilation in gnostic vision: "When a book falls into a person's hands concerning a subject he knows nothing about [A: *knows* meaning through having studied it with sheikhs who are masters of it] and has not learned by engaging in it at first hand, he should do absolutely nothing with the book, but rather return it to those whom it concerns. He should not believe, disbelieve, or discuss it at all" (ibid., 131–32).

r20.3 وقال الشيخ الأكبر - قدس الله تعالى سره - في رسالته التي صنفها في تحقيق مقام الفناء في الشهود: فينبغي لمن وقع في يده كتاب في علم لا يعرفه ولا سلك طريقه، أن لا يبدىء ولا يعيد، وأن يرده على أهله ولا يؤمن به، ولا يكفر، ولا يخوض فيه البتة» [نقل من المرجع المذكور: ١٣١ - ١٣٢].

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r21.0 LEARNED DISPUTATION

r21.1 (Nahlawi:) Disputation is what relates to clarifying various legal positions and making a case for them. When the intention behind this is to embarrass one's opponent or display one's superiority, it is unlawful or even unbelief according to some scholars. But when disputation is intended to reveal the truth, as is rare, then it is permissible or even recommended. Allah Most High says,

"Dispute with them with that which is better" (Koran 16:125),

meaning, as Baydawi notes, by the best means of disputation, gently and affably, using the simplest approach and most familiar premises, since this more effectively cools opponents' vehemence and exposes their contentiousness (ibid., 132).

r21.0 الجدال

r21.1 (النحلاوي:) الجدال هو ما يتعلق بإظهار المذاهب، وتقريرها.

فإن قصد تخجيل الخصم وإظهار فضله فحرام، بل كفر عند بعض العلماء. وإن قصد إظهار الحق، وهو نادر، فجائزٌ بل مندوب إليه. قال الله تعالى:

﴿وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ﴾ [النحل: ١٢٥]، أي بالطريقة التي هي أحسن طرق المجادلة من الرفق واللين وإيثار الوجه الأيسر والمقدمات التي هي أشهر، فإن ذلك أنفع في تسكين لهبهم وتبيين شغبهم. ذكره البيضاوي [محرر من المرجع المذكور: ١٣٢].

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r22.0 ARGUING

r22.1 (Nawawi:) Arguing is importunateness in speech to gain one's end, whether monetary or other. It may be intitiated by oneself or in response to another. If one objects that a person must argue to obtain his rights, the reply is that the stern condemnation of it applies to those who argue without right or knowledge, or someone who adds abuse to his speech that is not necessary to secure his rights, or is motivated to argue by nothing besides an obstinate desire to win and to finish his opponent. As for someone who has been wronged and makes his case in a way compatible with the Sacred Law, without belligerence, excessiveness, or importunateness, and not intending mere obstinacy and abuse, it is not unlawful, though it is better to avoid it if there is any way to do so, for keeping one's tongue within the limits of fair play during the course of an argument is virtually impossible. Moreover, arguing produces rancor in hearts and causes animosity that can lead to

r22.0 الخصومة

r22.1 (النووي:) [قال الغزالي:] أما الخصومة فلجاج في الكلام ليستوفي به مقصوده من مال أو غيره. وتارة يكون ابتداء وتارة يكون اعتراضاً. فإن قلت: لا بد للإنسان من الخصومة لاستيفاء حقوقه؛ فالجواب [ما أجاب به الإمام الغزالي] أن الذم المتأكد إنما هو لمن خاصم بالباطل أو بغير علم [...] وكذلك من خلط بالخصومة كلمات تؤذي وليس له إليها حاجة في تحصيل حقه، وكذلك من يحمله على الخصومة محض العناد لقهر الخصم وكسره [فهذا هو المذموم]. وأما المظلوم الذي ينصر حجته بطريق الشرع من غير لدد وإسراف وزيادة لجاج [على الحاجة] من غير قصد عناد ولا إيذاء، ففعلهُ هذا ليس حراماً ولكن الأولى تركه ما وجد إليه سبيلاً لأن

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actual hatred between two people, until each comes to be pleased when harm befalls the other and to be displeased at the good, and unleashes his tongue against the other's reputation. Whoever argues runs the risk of these calamities. At minimum, a quarrel comes to preoccupy one's heart so that during the prayer one's thoughts turn to debating and arguing, and one does not remain as one should.

ضبط اللسان في الخصومة على حد الاعتدال متعذر، والخصومة توغر الصدور وتهيج الغضب، وإذا هاج الغضب حصل الحقد بينهما حتى يفرح كل واحد بمساءة الآخر ويحزن بمسرته ويطلق اللسان في عرضه. فمن خاصم فقد تعرض لهذه الآفات. وأقل ما فيه اشتغال القلب حتى أنه يكون في صلاته وخاطره معلق بالمحاجة والخصومة فلا يبقى حاله على الاستقامة.

r22.2 A certain person remarked, "I have not seen anything that impairs one's religion, diminishes one's respectability, ends one's happiness, or preoccupies one's heart like arguing" (*al-Adhkar* (y102), 502–3).

r22.2 قال بعضهم: ما رأيت شيئاً أذهب للدين ولا أنقص للمروءة ولا أضيع للذة ولا أشغل للقلب من الخصومة [محرر من الأذكار: ٥٠٢ - ٥٠٣؛ بتقديم وتأخير].

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r23.0 ASKING ABOUT ANOTHER'S MISTAKES

r23.0 السؤال عن المشكلات

r23.1 (Nahlawi:) It is forbidden to ask about another's errors and blunders in order to tell them they have made a mistake or to embarrass them, being unlawful because it entails injury to another and belittling him in front of people. But when one's asking about mistakes is to learn or teach, or to test or sharpen students' minds or make them reflect, then it is recommended and desirable, because it facilitates the comprehension of religious knowledge (*al-Durar al-mubaha* (y99), 140).

r23.1 يحرم السؤال عن المشكلات ومواضع الغلط للتغليط والتخجيل، وهو حرام لأنه يترتب عليه إيذاء الغير واحتقاره بين الناس [. . .] بخلاف السؤال عنها للتعلم أو التعليم واختبار أذهان الطلبة أو تشحيذها أو حثهم على التأمل فإنه مستحب لما فيه من الإعانة على فهم العلم [محرر من الدرر المباحة: ١٤٠].

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r24.0 SEARCHING OUT A PERSON'S FAULTS

r24.0 التفتيش عن عيوب الناس

r24.1 (Nahlawi:) Asking about and searching out the faults of others is spying, which Allah Most High has forbidden by saying,

r24.1 (النحلاوي:) السؤال والتفتيش عن عيوب الناس هو التجسس الذي نهى الله تعالى عنه بقوله سبحانه:

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"Do not spy" (Koran 49:12),

meaning to look for the shameful points of Muslims. The Prophet (Allah bless him and give him peace) said:

(1) "If you search for people's shameful points, you corrupt them..."

(2) "O you who have entered Islam with your tongues but whose hearts faith has not entered: do not slander people, and do not ferret out people's shameful points. Whoever searches out the shameful points of his brother, Allah will search out his own shameful points, and if Allah searches out a person's shameful points, be sure that He will disgrace him even if he should remain in the middle of his house."

(Ibid., 145)

﴿وَلَا تَجَسَّسُوا﴾ [الحجرات: ١٢].

ومعناه تتبع عورات المسلمين. وجاء في الحديث الصحيح: «إنك إن تتبعت عورات الناس أفسدتهم...».

- [وعن أبي برزة رضي الله عنه أنه قال:] قال رسول الله ﷺ: «يا معشر من أسلم بلسانه، ولم يدخل الإيمان في قلبه، لا تغتابوا الناس ولا تتبعوا عوراتهم، فإنه من تتبع عورة أخيه، تتبع الله عورته، ومن تتبع الله عورته يفضحه ولو كان في جوف بيته» [رواه أبو داود] [نقل من المرجع المذكور: ١٤٥].

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r25.0 DISPLAYING SATISFACTION AT A MUSLIM'S TROUBLES

r25.1 The Prophet (Allah bless him and give him peace) said,

"Do not show joy at the misfortune of your brother, lest Allah have mercy on him and afflict you with misfortune."

(*al-Adhkar* (y102), 474)

r25.0 إظهار الشماتة بالمسلم

r25.1 [روينا في كتاب الترمذي عن واثلة بن الأسقع رضي الله عنه قال:] قال رسول الله ﷺ: «لا تظهر الشماتة لأخيك فيرحمه الله ويبتليك» [قال الترمذي: حديث حسن] [نقل من الأذكار: ٤٧٤].

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r26.0 OBSCENITY

r26.1 The Prophet (Allah bless him and give him peace) said:

(1) "A believer is not given to reviling, cursing, obscenity, or vulgarity."

r26.0 الفحش في القول

r26.1 [روينا في كتاب الترمذي عن عبد الله بن مسعود رضي الله عنه قال:] قال رسول الله ﷺ: «ليس المؤمن بالطعان ولا اللعان ولا الفاحش ولا

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(2) "Whatever contains vulgarity is made ugly by it, and whatever contains modesty is made beautiful by it."

r26.2 (Nawawi:) Obscenity and vulgarity are forbidden, as is attested to by many well-known and rigorously authenticated (sahih) hadiths, *obscenity* meaning to express ugly or vulgar matters in plain words, even if they are true and the speaker is being honest. One should instead express such things by alluding to them in a polite way that nevertheless conveys what is meant, as is done by the Holy Koran and authentic noble hadiths. Allah Most High says:

(1) "It is permitted to you on the nights of the fast to enter unto your wives" (Koran 2:187).

(2) "How can you take it [the marriage payment] back when you have entered unto one another?" (Koran 4:21).

(3) "But if you divorce them before you have touched them..." (Koran 2:237).

There are many Koranic verses and authentic hadiths that employ similar words. Scholars say that comprehensible allusions should be used for these and other matters one is hesitant to mention by name. One alludes, for example, to sexual intercourse with a woman as "going unto," "lovemaking," "sleeping with," and so forth, and does not use explicit words such as *copulate* or the like; and similarly alludes to urinating and voiding excrement as "answering the call of nature," or "going to the bathroom," and does not simply say "defecate," "urinate," and so forth. The same is true of mentioning personal blemishes such as leprosy, halitosis, underarm odor, and the like, which one should refer to by polite words that indicate what is meant. Other matters should be dealt with as in the above-mentioned examples—all of which applies to cases in which there is no need to plainly refer to these things by name. When the need arises to explain or teach, and one

البذيء: [قال الترمذي: حديث حسن. وروينا في كتاب الترمذي وابن ماجه عن أنس رضي الله عنه قال: قال رسول الله ﷺ:] «ما كان الفحش في شيء إلا شانه، وما كان الحياء في شيء إلا زانه» [قال الترمذي: حديث حسن].

r26.2 (النووي:) ومما ينهى عنه الفحش وبذاءة اللسان، والأحاديث الصحيحة فيه كثيرة معروفة، ومعناه التعبير عن الأمور المستقبحة بعبارة صريحة، وإن كانت صحيحة والمتكلم بها صادق. وينبغي أن يستعمل في ذلك الكنايات ويعبر عنها بعبارة جميلة يفهم بها الغرض، وبهذا جاء القرآن العزيز والسنن الصحيحة المكرمة.

قال الله تعالى:

﴿أُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ﴾ [البقرة: ١٨٧].

وقال تعالى:

﴿وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ﴾ [النساء: ٢١].

وقال تعالى:

﴿وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ﴾ [البقرة: ٢٣٧].

والآيات والأحاديث الصحيحة في ذلك كثيرة.

قال العلماء: فينبغي أن يستعمل في هذا وما أشبهه من العبارات التي يستحيى من ذكرها بصريح اسمها الكنايات المفهمة.

فيكنى عن جماع المرأة بالإفضاء والدخول والمعاشرة والوقاع ونحوها ولا يصرّح بالنيك والجماع ونحوهما.

وكذلك يكنى عن البول والتغوط بقضاء الحاجة والذهاب إلى الخلاء، ولا يصرّح بالخراءة والبول ونحوهما.

وكذلك ذكر العيوب كالبرص والبخر والصنان وغيرها يعبر عنها بعبارات جميلة يفهم منها الغرض.

ويلحق بما ذكرنا من الأمثلة ما سواه.

و[اعلم أن] هذا كله إذا لم تدع

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fears that the listener may not grasp one's allusion or may misunderstand the meaning, one should plainly say the thing's name so that the real meaning is understood. And this is how one should interpret the badiths that have reached us which contain such straightforward expressions, as arising from the needs we have mentioned, for communicating clearly is more important than mere decorum. And Allah alone gives success (ibid., (y102), 508–9).

الحاجة إلى التصريح بصريح اسمه، فإن دعت حاجة لغرض البيان والتعليم وخيف أن المخاطب لا يفهم المجاز، أو يفهم غير المراد صرّح حينئذ باسمه الصريح ليحصل الإفهام الحقيقي.

وعلى هذا يحمل ما جاء في الأحاديث من التصريح بمثل هذا، فإن ذلك محمول على الحاجة كما ذكرنا، فإن تحصيل الإفهام في هذا أولى من مراعاة مجرد الأدب، وبالله التوفيق [محرر من المرجع المذكور: ٥٠٨ ـ ٥٠٩ بتقديم وتأخير].

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r27.0 SEVERITY IN SPEECH AND HARSHNESS

r27.0 غلظة الكلام والعنف

r27.1 (Nahlawi:) Severity in speech and harshness are blameworthy when out of place, their proper place being in forbidding the wrong, if gentleness and affability prove ineffective (dis: q5.5), as well as in imposing prescribed legal penalties, and in reprimanding or disciplining those who require it. Allah Most High says:

(1) "... And be harsh with them" (Koran 9:73).

(2) "Let them find severity in you" (Koran 9:123).

(3) "Let not pity for them seize you concerning the religion of Allah" (Koran 24:2).

r27.1 (النحلاوي:) غلظة الكلام والعنف مذمومان، وهذا إذا كان في غير محله، ومحلُه النهي عن المنكر إذا لم ينجع الرفق واللين.

ومحلُه أيضاً إقامة الحدود والتعزير والتأديب لمن يستوجب ذلك. قال الله تعالى:

﴿وَاغْلُظْ عَلَيْهِمْ﴾ [التوبة: ٧٣].

وقال تعالى:

﴿وَلْيَجِدُوا فِيكُمْ غِلْظَةً﴾ [التوبة: ١٢٣].

وقال تعالى:

﴿وَلَا تَأْخُذْكُم بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ﴾ [النور: ٢].

r27.2 Other than in the above-mentioned cases, it is praiseworthy for one to use amiable words, have a cheerful expression, and to smile. The Prophet (Allah bless him and give him peace) said:

"There is a dwelling in paradise whose outside can be seen from inside [A: from its lucidness

r27.2 وفيما عداها يُستحب للإنسان طيب الكلام، وطلاقة الوجه والتبسم. [عن عبد الله بن عمر رضي الله عنهما، أن] النبي ﷺ قال: «في الجنة غرفةٌ يُرى ظاهرها من باطنها». فقال أبو مالك

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and purity]." Abu Malik Ash'ari asked, "Whose shall it be, O Messenger of Allah?" And he said, "He whose speech is fair, who feeds others, and who spends the night standing in prayer when people sleep."

(*al-Durar al-mubaha* (y99), 144–45)

الأشعري: لمن هي يا رسول الله؟ قال: لمن أطاب الكلام وأطعم الطعام وبات قائماً والناس نيام» [رواه الطبراني في الكبير] [نقل من الدرر المباحة: ١٤٤ - ١٤٥].

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r28.0 FRIGHTENING OR COERCING A BELIEVER

r28.0 إخافة المؤمن [من غير ذنب] وإكراهه [على ما لا يريده]

r28.1 (Nahlawi:) To make a believer fear other than disobedience or coerce him to do something he is averse to, such as giving a gift, marrying, or selling something—all this is hurting him, and hurting a believer is unlawful. The Prophet (Allah bless him and give him peace) said,

"Whoever frightens a believer, it is incumbent that Allah not protect him from the terrors of Judgement Day as a fitting recompense."

Najm al-Ghazzi says in *Husn al-tanabbuh,* "Among the works of the Devil is frightening, annoying, or alarming a believer, all of which is unlawful" (ibid., 157–58).

r28.1 (النحلاوي:) إخافة المؤمن من غير ذنب، وإكراهه على ما لا يريده - كالهبة والنكاح والبيع - فإن ذلك إيذاء له وإيذاء المؤمن حرام. [عن عمر رضي الله عنه أنه قال: سمعت] رسول الله ﷺ يقول: «من أخاف مؤمناً، كان حقاً على الله تعالى أن لا يؤمنه من الأفزاع يوم القيامة، جزاءً وفاقاً» [رواه الطبراني في الكبير بإسناد ضعيف]. وفي حسن التنبه للنجم الغزي: ومن أعمال الشيطان تخويف المؤمن وإزعاجه، وترويعه، وكل ذلك حرام [نقل من المرجع المذكور: ١٥٧ - ١٥٨].

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r29.0 REJECTING A BROTHER'S EXCUSE

r29.0 رد عذر أخيه

r29.1 The Prophet (Allah bless him and give him) said,

"When someone offers an excuse to his fellow Muslim and the latter does not accept it, his sin is like the crime of imposing taxes [dis: p32]."

(Ibid., 157)

r29.1 [عن جودان رضي الله عنه أنه قال:] قال رسول الله ﷺ: «من اعتذر إلى أخيه المسلم فلم يقبل منه، كان عليه مثل خطيئة مكس» [رواه ابن ماجه] [نقل من المرجع المذكور: ١٥٧].

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r30.0 DRIVING AWAY THE POOR, THE WEAK, THE ORPHAN, OR THE BEGGAR

r30.1 Allah Most High says:

(1) "As for the orphan, do not oppress him; and as for the beggar [dis: r39], turn him not away" (Koran 93:9–10).

(2) "Do not drive away those who call upon their Lord morning and evening, seeking His countenance: you are not responsible for anything of their account, nor they for anything of yours, that you should drive them away and thus become of the wrongdoers" (Koran 6:52).

(3) "Lower your wing unto the believers" (Koran 15:88).

(*al-Adhkar* (y102), 481–82)

r30.0 طرد الفقير والضعيف واليتيم والسائل

r30.1 قال الله تعالى:

﴿فَأَمَّا الْيَتِيمَ فَلَا تَقْهَرْ، وَأَمَّا السَّائِلَ فَلَا تَنْهَرْ﴾ [الضحى: ٩ - ١٠].

وقال: ﴿وَلَا تَطْرُدِ الَّذِينَ يَدْعُونَ رَبَّهُمْ بِالْغَدَاةِ وَالْعَشِيِّ يُرِيدُونَ وَجْهَهُ مَا عَلَيْكَ مِنْ حِسَابِهِمْ مِنْ شَيْءٍ وَمَا مِنْ حِسَابِكَ عَلَيْهِمْ مِنْ شَيْءٍ فَتَطْرُدَهُمْ فَتَكُونَ مِنَ الظَّالِمِينَ﴾ [الأنعام: ٥٢].

وقال تعالى:

﴿وَاخْفِضْ جَنَاحَكَ لِلْمُؤْمِنِينَ﴾ [الحجر: ٨٨]. [محرر من الأذكار: ٤٨١ - ٤٨٢].

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r31.0 PUTTING OFF ONE'S FATHER OR MOTHER

r31.1 (Nawawi:) It is very sternly prohibited to put off one's father or mother. Allah Most High says:

"Your Lord decrees that you shall worship none but Him and treat your parents well. If one or both of them reach old age while with you, do not say 'Uff' to them or put them off, but speak respectfully to them. Lower for them the wing of humbleness, out of mercy, and say, 'O Lord, have mercy on them, as they raised me when I was young' " (Koran 17.24–25).

(Ibid., 509)

r31.0 انتهار الوالد والوالدة

r31.1 (النووي:) يحرم انتهار الوالد والوالدة [وشبههما] تحريماً غليظاً. قال الله تعالى:

﴿وَقَضَى رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَاناً إِمَّا يَبْلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا تَقُلْ لَهُمَا أُفٍّ وَلَا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلاً كَرِيماً. وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ وَقُلْ رَبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيراً﴾ [الإسراء: ٢٤ - ٢٥]. [محرر من المرجع المذكور: ٥٠٩].

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r32.0 CIRCUMSTANCES IN WHICH CONVERSATION IS OFFENSIVE

(N: *Offensive*, when used without further qualification by Hanafis (A: in their books on the lawful and unlawful (al-hazr wa al-ibaha)) means *unlawfully offensive* (makruh tahriman), and its ruling is the same as the unlawful (A: is in the Shafi'i school).)

r32.0 المواضع التي يكره فيها الكلام

(ح: والكراهة إذا أطلقت (ع: في باب الحظر والإباحة) عند الحنفية فالمراد كراهة التحريم وحكمه حكم الحرام).

INTERRUPTING ONESELF OR OTHERS

قطع كلام غيره أو نفسه

r32.1 (Nahlawi:) It is offensive to interrupt someone else's words with one's own when the former consist of teaching Sacred Knowledge. Some scholars hold that to greet a group with "as-Salamu 'alaykum" when they are learning religious knowledge is a sin. It is also offensive to interrupt one's own words with speech of a different kind when reciting Koran, supplicating, explaining the Koran, teaching hadith, or addressing people, and while doing this, for example, one turns to someone and tells him to go buy some things needed at home.

Conversation is offensive for anyone seated listening to a pious exhortation, or instruction, or in the presence of someone above his own level. It is also offensive for such a person merely to turn to look at something else, or to stir when there is no need, all of which is poor manners, levity, precipitateness, and thoughtlessness. Rather, the one speaking should set forth what he means to say without irrelevant asides until finished, and the person addressed should heed the speaker, paying attention to him and listening until he finishes, without looking around, stirring, or talking; especially if the speaker is explaining the words of Allah Most High or His messenger (Allah bless him and give him peace). But one is excused if a pressing physical or religious need arises that there is no alternative but to fulfill, since necessity excuses one from any rule whatever (A: but only to the degree demanded by necessity).

r32.1 (النحلاوي: منها قطع كلام الغير وحديثه بكلامه من غير ضرورة، خصوصاً إذا كان في مذاكرة العلم، وقد قالوا إن السلام على الجالس لمذاكرة العلم إثم. وكذا قطع كلام نفسه بخلاف جنسه كمن يقرأ أو يدعو أو يفسر أو يحدث أو يخطب للناس، ويلتفت في أثنائه إلى شخص فيأمره ببعض حوائج بيته أو نحوه.

وكذا تكلُّم من هو في مجلس عِظة أو تدريس أو في مجلس من هو فوقه، وكذا مجرد التفاته وتحركه من غير حاجة، وكل هذا سوء أدب، وخفة، وعجلة، وسفه. بل على المتكلم أن يسرد كلامه إلى أن ينتهي من غير تخلل كلام أجنبي، وعلى المخاطب التوجُّه إليه والإنصات والاستماع إلى أن ينتهي كلامه بلا التفات ولا تحرك ولا تكلم، خصوصاً إذا كان المتكلم في تفسير كلام الله تعالى، أو كلام رسول الله ﷺ؛ إلا أن تبدو حاجة داعية طبعاً أو شرعاً، فلا يجد بداً من بعد ما ذكر. فإن الضرورة مستثناة من الأحكام المطلقة.

DISRESPECT TO THOSE WITH AUTHORITY OVER ONE

رد التابع كلام متبوعه

r32.2 It is offensive to contend against the words of anyone with authority over one (A: counte-

r32.2 ومنها رد التابع كلام متبوعه،

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nanced by Sacred Law), or talk back, oppose, rebut, or disobey such a person in anything lawful (A: meaning not unlawful or offensive), the prohibition applying to such people as a follower with his leader, son with his parents, student with his teacher, wife with her husband, or unlearned person with a scholar. All of this is very ugly behavior and deserves disciplinary action (def: o17), since each of these is obliged to obey the one over them.

ومقابلته، ومخالفته وعدم قبوله، وعدم إطاعته في أمر مشروع - كالرعية للأمير، والولد لوالديه، والتلميذ لأستاذه، والمرأة لزوجها، والجاهل للعالم - وهذا قبيح جداً يستحق به التعزير، لأن طاعة هؤلاء واجبة عليهم.

THIS-WORLDLY WORDS IN A MOSQUE

كلام الدنيا في المسجد

r32.3 It is offensive to speak about this-worldly matters, meaning words that would otherwise be permissible, in a mosque when there is no excuse (A: if one makes a habit of it). (N: The more reliable position is that it is not offensive, but merely better not to (khilaf al-awla).)

r32.3 ومنها كلام الدنيا في المساجد، أي الكلام المباح، بلا عذر؛ فإنه مكروه.

SPEAKING DURING THE SERMON OF THE FRIDAY PRAYER

الكلام في حال الخطبة

r32.4 It is offensive to speak during the sermon on Friday, whether it be to say "Subhan Allah," the Blessings on the Prophet (Allah bless him and give him peace), or to command the right or forbid the wrong, the reason for the prohibition being that listening to the Friday prayer sermon is obligatory, as it takes the place of two of the rak'as of the noon prayer, so that things offensive during the prayer are offensive while listening to the sermon. The Prophet (Allah bless him and give him peace) said,

"When the imam is giving the sermon on Friday, and you tell your companion 'Listen,' you have made an impertinent remark."

r32.4 ومنها: الكلامُ في حال الخطبة - ولو تسبيحاً، أو تصلية أو أمراً بالمعروف، ونهياً عن المنكر - وأصله أن استماع الخطبة - في الجمعة - فرضٌ لتنزيلها منزلة ركعتي الظهر، فيكره لمستمع الخطبة ما يكره في الصلاة. قال ﷺ: «إذا قلت لصاحبك يوم الجمعة: أنصت - والإمام يخطب - فقد لغوت» [رواه البخاري ومسلم].

SPEAKING WHEN THE KORAN IS BEING RECITED

الكلام عند قراءة القرآن

r32.5 It is offensive to speak when the Koran is being recited, for listening to it and heeding it are

r32.5 ومنها: الكلام عند قراءة القرآن. والإنصاتُ عند قراءته واستماعُهُ

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absolutely obligatory, whether one is performing the prayer or not, and whether one comprehends it or not (A: but only if its words are distinctly audible to one). Allah Most High says,

"When the Koran is recited, listen and pay heed to it" (Koran 7:204).

واجبٌ مطلقاً سواء كان في الصلاة أو خارجها، فاهماً للمعاني أو غير فاهم. قال الله تعالى:

﴿وإذا قُرِئَ القُرآنُ فاستَمِعُوا لَهُ وأَنصِتُوا﴾ [الأعراف: ٢٠٤].

SPEAKING WITHOUT NEED TO A MEMBER OF THE OPPOSITE SEX

الكلام مع غير محرم بلا حاجة

r32.6 It is offensive for a male to speak without need to a young woman who is not a member of his unmarriageable kin (def: m6.1). He should not say "Arhamkum Allah" (Allah have mercy on you) if she sneezes, greet her with "as-Salamu 'alaykum" (A: which is unlawful in the Shafi'i school) nor return her Salams if she says them (A: which is offensive for Shafi'is). He should not say these aloud, but to himself, all of which likewise holds for a young woman's speaking to a man who is not a member of her unmarriageable kin (m6.2). The prohibition of these is due to the Prophet's having said (Allah bless him and give him peace),

"The adultery of the tongue is speech."

r32.6 ومنها: الكلام مع الشابة الأجنبية بلا حاجة حتى لا يشمتها إذا عطست، ولا يسلّم عليها، ولا يرد سلامها جهراً بل في نفسه، وكذا العكس لقوله ﷺ: «واللسان زناه الكلام» [ت: من حديث رواه مسلم].

SPEAKING WHEN LOVEMAKING OR IN THE LAVATORY

الكلام عند الجماع وعند قضاء الحاجة

r32.7 It is offensive to speak while lovemaking, or when in the lavatory or relieving oneself.

It is offensive to laugh in circumstances in which speaking is offensive.

r32.7 ومنها الكلام عند الجماع، ومنها الكلام في الخلاء وعند قضاء الحاجة.

وكذا يكره الضحك في المواضع التي يكره فيها الكلام.

SPEAKING AFTER THE COMING OF DAWN BEFORE PERFORMING THE DAWN PRAYER

الكلام بعد طلوع الفجر إلى الصلاة

r32.8 It is offensive to speak of this-worldly things between dawn and performing the dawn prayer (subh). Some hold this extends until sunrise (*al-Durar al-mubaha* (y99), 145–49).

r32.8 ومنها كلام الدنيا بعد طلوع الفجر إلى الصلاة، وقيل إلى طلوع الشمس [محرر من الدرر المباحة: ١٤٥ - ١٤٩؛ بتقديم وتأخير].

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CONVERSATION AFTER PERFORMING THE NIGHTFALL PRAYER ('ISHA)

الكلام بعد صلاة العشاء

r32.9 (Nawawi:) It is offensive for someone who has prayed the nightfall prayer ('isha) to converse about things permitted at other times, meaning permissible words which would otherwise be the same to say or not to. Discourse that is unlawful or offensive at other times is even more sternly prohibited or offensive at this time. As for conversation about what is good, such as teaching Sacred Knowledge, relating the words of the pious, describing noble qualities, or speaking to one's guest, none of these is offensive, but rather they are commendable (*al-Adhkar* (y102), 504).

r32.9 (النووي:) ويكره لمن صلى العشاء الآخرة أن يتحدث بالحديث المباح في غير هذا الوقت وأعني بالمباح الذي استوى فعله وتركه. فأما الحديث المحرم في غير هذا الوقت أو المكروه فهو في هذا الوقت أشد تحريماً وكراهةً. وأما الحديث في الخير كمذاكرة العلم وحكايات الصالحين ومكارم الأخلاق والحديث مع الضيف فلا كراهة فيه بل هو مستحب [نقل من الأذكار المنتخبة من كلام سيد الأبرار: ٥٠٤].

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r33.0 PEOPLE OFFENSIVE TO GREET WITH SALAMS

r33.0 المواضع التي يكره فيها السلام

r33.1 (Nahlawi:) It is offensive (def: r32.0) to greet with "as-Salamu 'alaykum" anyone who is:

(1) performing the prayer, reciting the Koran, invoking Allah (dhikr), reading hadith to others, giving the Friday prayer sermon (khutba), or listening to any of these;

(2) a student of jurisprudence repeating a lesson over to himself to facilitate memorizing it, someone informing ordinary people of legal rulings, or anyone engaged in a lesson of Sacred Knowledge;

(3) giving the call to prayer or call to commence (iqama);

(4) teaching;

(5) seated waiting for the prayer, or saying "Subhan Allah";

(6) eating;

r33.1 (النحلاوي:) من المواضع التي يكره فيها السلام: السلام على مصلٍ، وقارئٍ، وذاكرٍ، ومحدِّثٍ، وخطيبٍ ومن يصغي إليهم، ومكرر فقه، ومن يفصل الأحكام بين الناس، ومن هو في حال مذاكرة العلم الشرعي، ومؤذن، ومقيم، ومدرِّس، ومن جلس للصلاة، والتسبيح، والمشغول بالأكل، والفاسق

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(7) a corrupt person who does not conceal his acts of disobedience;

(8) a young lady who is not a member of one's unmarriageable kin (dis: r32.6);

(9) someone who plays games that are not permissible (dis: k29.5), slanders others, sings, is an old wag, a chronic liar, addicted to profitless conversation, reviles others, or looks at women's faces, all of whom are offensive to greet unless their repentance from these things is known;

(10) someone who is enjoying his wife, whose nakedness is exposed, who is relieving himself, drowsy, asleep, or someone who is in a bathhouse.

لو معلنا، والأجنبيات الفتيات، وعلى من يلعب لعباً غير مباح، ومن يغتاب الناس، وعلى من يغني، وعلى الشيخ الممازح، والكذاب، واللاغي، وعلى من يسب الناس، أو ينظر وجوه الأجنبيات، ما لم تعرف توبتهم، وعلى من يتمتع مع أهله، ومكشوف عورة، ومن هو في حال التغوط، أو البول، أو ناعس أو نائم، أو في الحمام.

RESPONDING TO SALAMS

r33.2 It is not obligatory to respond to someone's Salams in circumstances where greeting him is uncalled-for, except for a corrupt person ((7) above), whose Salams it is obligatory to return. It is not obligatory to answer the Salams of someone who is a child, intoxicated, or insane. Nawawi (Allah Most High have mercy on him) says in his commentary on *Sahih Muslim,* "Scholars disagree about greeting non-Muslims with 'as-Salamu 'alaykum' or returning their Salams. We hold that it is unlawful to say it to them first, though is obligatory to return their greetings by saying 'Wa 'alaykum' (and upon you), or simply, "Alaykum.' Other scholars hold it is permissible to greet them first with 'as-Salamu 'alaykum' " (*al-Durar al-mubaha* (y99), 150–51).

رد السلام

r33.2 لا يجب الرد في كل محلٍّ لا يُشرع فيه السلام، إلا في الفاسق، فينبغي وجوب الرد عليه. ولا يجب رد سلام الطفل، والسكران والمجنون [ولا من يقول: سلامٌ عليكم؛ بسكون الميم]. وقال النووي رحمه الله تعالى في شرح مسلم اختلف العلماء في رد السلام على الكفار وابتدائهم به فمذهبنا تحريم ابتدائه ووجوب رده عليهم بأن يقول: وعليكم؛ أو: عليكم؛ فقط. وذهب طائفة إلى جواز ابتدائنا لهم بالسلام [محرر من الدرر المباحة: ١٥٠ - ١٥١؛ بتقديم وتأخير].

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r34.0 BOASTING

r34.1 Allah Most High says,

"Do not praise yourselves: He knows best who is godfearing" (Koran 53:32).

r34.0 الافتخار

r34.1 قال الله تعالى:

﴿فَلَا تُزَكُّوا أَنفُسَكُمْ هُوَ أَعْلَمُ بِمَنِ اتَّقَىٰ﴾ [النجم: ٣٢].

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r34.2 The Prophet (Allah bless him and give him peace) said,

"Allah has inspired to me that you are all to be humble towards each other such that no one transgresses against or exalts himself above another."

(*al-Adhkar* (y102), 473–74)

r34.2 [وروينا في صحيح مسلم وسنن أبي داود وغيرهما عن عياض بن حمار الصحابي رضي الله عنه قال:] قال رسول الله ﷺ: «إنّ الله تعالى أوحى إليّ أن تواضعوا حتى لا يبغي أحدٌ على أحد ولا يفخر أحد على أحد» [نقل من الأذكار: ٤٧٣ - ٤٧٤].

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r35.0 REVEALING ONE'S SINS TO OTHERS

r35.0 إخبار الإنسان غيره بمعصية نفسه

r35.1 The Prophet (Allah bless him and give him peace) said:

"All of my Community shall be pardoned, save those who commit sins openly. Committing them *openly* includes a man who does something shameful at night, and when morning comes, Allah having hidden his act, he says, 'O So-and-so, last night I did such and such'; his Lord having concealed it for him at night, while in the morning he pulls away the cover with which Allah had concealed it for him."

r35.1 [روينا في صحيحي البخاري ومسلم عن أبي هريرة رضي الله عنه قال: سمعت] رسول الله ﷺ يقول: «كل أمتي معافى إلا المجاهرين، وإنّ من المجاهرة أن يعمل الرجل بالليل عملاً ثم يصبح وقد ستره الله تعالى عليه فيقول: يا فلان عملتُ البارحة كذا وكذا، وقد بات يستره ربه، ويُصبح يكشف ستر الله عليه».

r35.2 (Nawawi:) It is offensive for a person who has been afflicted with an act of disobedience or the like to inform another of it. Rather, one should repent to Allah Most High by desisting from it at once, regretting what one has done, and firmly resolving never to do the like of it again. These three things are the integrals of repentance, which is not valid without them. There is no harm in telling about a sin to one's sheikh or other person who may be expected to teach one how to desist from the act or refrain from similar acts, or apprise one of the causes that led to it, or pray for one, and so forth. If such is the case, informing him is commendable. It is only offensive to do so when no such interest can be served (ibid., 498).

r35.2 (النووي:) يكره للإنسان إذا ابتلي بمعصية أو نحوها أن يخبر غيره بذلك. بل ينبغي أن يتوب إلى الله تعالى فيقلع عنها في الحال ويندم على ما فعل ويعزم أن لا يعود إلى مثلها أبداً؛ فهذه الثلاثة هي أركان التوبة لا تصح إلا باجتماعها. فإن أخبر بمعصيته شيخه أو شبهه ممن يرجو بإخباره أن يعلمه مخرجاً من معصيته، أو ليعلمه ما يسلم به من الوقوع في مثلها. أو يعرفه السبب الذي أوقعه فيها، أو يدعو له أو نحو ذلك فلا بأس به، بل هو حسن. وإنما يكره إذا انتفت هذه المصلحة [محرر من المرجع المذكور: ٤٩٨، بتقديم وتأخير].

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r36.0 REVEALING A SECRET

r36.1 The Prophet (Allah bless him and give him peace) said,

"When a man says something, then glances left or right, his words are a confidence to be kept."

(Ibid., 507)

r36.2 (Nahlawi:) *Telling a secret* means to inform others of a remark, action, or state which one learns of from someone who wants it to remain hidden, whether it be good or bad. This is hurting him, and hurting others is unlawful.

Whenever people meet, it is obligatory to keep secret any act that occurs, any word spoken, or any state attributable to someone, when these concern something one would normally wish to remain confidential, while not being unlawful. If unlawful, then:

(1) If it is against Allah Most High alone and does not involve legal measures such as prescribed legal penalties or disciplinary action (def: o17), then it must be kept secret.

(2) If it involves legal measures, as do fornication (dis: o12) and drinking (o16), then one has a choice between revealing it or not, though it is superior to conceal it.

(3) If it involves another person's rights, then if concealing it entails harm to anyone, or if it concerns prescribed legal measures such as retaliation for an injury or death (def: o3), or covering the cost of an article destroyed through negligence, then if the person whose rights have been infringed is ignorant of it, one is obliged to make the matter known, and must testify to it if asked to.

(4) If it involves another's rights, but concealing it does not entail harm to anyone and it does not concern prescribed legal measures, or it entails one of these two, but the person concerned

r36.0 إفشاء السر

r36.1 [وروينا في سنن أبي داود والترمذي عن جابر رضي الله عنه قال:] قال رسول الله ﷺ: «إذا حدّث الرجل بالحديث ثم التفت فهي أمانة» [(قال الترمذي: حديث حسن) نقل من المرجع المذكور: ٥٠٧].

r36.2 (النحلاوي:) إفشاء السر هو نشرُ [وإظهارُ] القول أو الفعل أو الحال الذي يعلمه الإنسان من غيره، عند الناس، حيث لا يريد ذلك الغير اطلاع أحد عليه، من خير أو شر. فإن فيه إيذاء ذلك الغير، والإيذاء حرام.

[واعلم أن] كل ما وقع من الأعمال، أو قيل من الكلام، أو اتصف به متصف من الأحوال في مجلس من المجالس، مما يكره إفشاؤه: إن لم يخالف الشرع، يلزم كتمانه. وإن خالف الشرع:

- فإن كان حق الله تعالى ولم يتعلق به حكم شرعي كالحد والتعزير فكذلك.
- وإن تعلق به حكم شرعي فلك الخيار، والستر أفضل كالزنى وشرب الخمر.
- وإن كان حق العبد: فإن تعلق به ضررٌ لأحدٍ، أو حكم شرعي كالقصاص والتضمين. فعليك الإعلامُ إن جهل ذلك الأمر، والشهادةُ إن طُلب منك.
- وإلا، بأن كان لم يتعلق به ضررٌ لأحد، ولا تعلق به حكمٌ شرعي، أو تعلق به حكمٌ شرعي. أو تعلق به ذلك ولكنه

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already knows of it through another and one has not been asked to testify about it, then one is obliged to conceal the matter.

(*al-Durar al-mubaha* (y99), 134)

عُلِمَ من غيرك ولم يجهل ولم تطلب منك الشهادة به ، فالكتم واجب عليك حينئذٍ [محرّر من الدرر المباحة : ١٣٤].

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r37.0 DISAFFECTING A PERSON'S FAMILY FROM HIM

r37.0 إفساد أهل الإنسان عليه

r37.1 (Nawawi:) It is unlawful for a person to mention anything to another's servant, wife, son, and so forth that could disaffect them from him, unless one is commanding the right or forbidding the wrong. The Prophet (Allah bless him and give him peace) said,

"He who disaffects a person's wife or servant from him is not of us."

(*al-Adhkar* (y102), 498)

r37.1 (النووي:) يحرم على المكلف أن يحدّث عبد الإنسان أو زوجته أو ابنه ونحوهم بما يفسدهم به عليه إذا لم يكن ما يحدثهم به أمراً بالمعروف أو نهياً عن منكر. [وروينا في كتابي أبي داود والنسائي عن أبي هريرة رضي الله عنه قال:] قال رسول الله ﷺ: «مَن خَبَّبَ زوجةَ امرىء أو مملوكَهُ فليس منا» [محرر من الأذكار: ٤٩٨].

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r38.0 CURSING

r38.0 اللعن

THE PROHIBITON OF CURSING OTHERS

النهي عن لعن الغير

r38.1 (Nawawi:) Cursing an upright Muslim is unlawful by unanimous consensus of all Muslims. The Prophet (Allah bless him and give him peace) said,

"Cursing a believer is like killing him."

r38.1 (النووي:) [...] لعن المسلم المصون حرام بإجماع المسلمين [...] روينا في صحيحي البخاري ومسلم عن ثابت بن الضحاك رضي الله عنه وكان من أصحاب الشجرة قال:] قال رسول الله ﷺ: «لعن المؤمن كقتله».

THE PERMISSIBILITY OF CURSING THOSE WHO COMMIT DISOBEDIENCE WHEN THEY ARE NOT PERSONALLY IDENTIFIED OR KNOWN

جواز لعن أصحاب المعاصي غير المعينين أو المعروفين

r38.2 It is permissible (A: but not rewarded by Allah) to curse those who possess blameworthy

r38.2 ويجوز لعن أصحاب الأوصاف المذمومة كقولك: لعن الله

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characteristics, such as by saying, "Allah curse oppressors," "Allah curse the corrupt," "Allah curse picture makers," and so forth. Well-known and rigorously authenticated (sahih) hadiths verify that the Prophet (Allah bless him and give him peace) said:

(1) "Allah curse her who wears false hair and her who arranges it for another";

(2) "Allah curse him who eats usurious gain (riba)";

(3) "Allah curse those who make pictures";

(4) "Allah curse him who surreptitiously changes property-line markers";

all of these being found in Bukhari, Muslim, or both.

As for cursing a particular person who commits some act of disobedience, such as an oppressor, adulterer, maker of pictures, thief, or one who consumes usurious gain; the hadith evidence seems to suggest it is not unlawful, though Ghazali indicates (A: and it is the most reliable opinion) that it *is* unlawful unless the person cursed is someone we know has died in a state of unbelief, such as Abu Lahab, Abu Jahl, Pharaoh, Haman, and their likes. This, as Ghazali notes, is "because *to curse* means to distance another from the mercy of Allah Most High, while we do not know how the particular corrupt person or non-Muslim will end his life. As for those the Prophet (Allah bless him and give him peace) personally cursed, perhaps it was because he knew they would die in unbelief. Praying that evil befalls a person is similar to cursing, even when against a tyrant, such as saying, 'May Allah not heal him,' 'May Allah not keep him safe,' and similar remarks, all of which are blameworthy [A: being unlawful, if of a Muslim]. And likewise for cursing any animals or inanimate objects whatever- all this is objectionable [A: meaning offensive]" (*al-Adhkar* (y102), 476–80).

الظالمين [. . .] لعن الله الفاسقين، لعن الله المصورين، ونحو ذلك [كما تقدم في الفصل السابق . . .]. وثبت في الأحاديث الصحيحة المشهورة أن رسول الله ﷺ قال: «لعن الله الواصلة والمستوصلة» [الحديث، وأنه قال:] «لعن الله آكل الربا» [الحديث]، [وأنه قال:] «لعن الله المصورين»، [وأنه قال:] «لعن الله مَن غَيَّرَ منار الأرض»، وجميع هذه الألفاظ في صحيحي البخاري ومسلم بعضها فيهما وبعضها في أحدهما.

وأما لعن الإنسان بعينه ممن اتصف بشيء من المعاصي كـ[. . .] ظالم أو زان أو مصوّر أو سارق أو آكل ربا فظواهر الأحاديث أنه ليس بحرام.

وأشار الغزالي إلى تحريمه إلا في حق مَن علمنا أنه مات على الكفر كأبي لهب وأبي جهل وفرعون وهامان وأشباههم. قال: لأن اللعن هو الإبعاد عن رحمة الله تعالى، وما ندري ما يختم به لهذا الفاسق أو الكافر. [قال:] وأما الذين لعنهم رسول الله ﷺ بأعيانهم فيجوز أنه ﷺ علم موتهم على الكفر. [قال:] ويقرب من اللعن الدعاء على الإنسان بالشر حتى الدعاء على الظالم كقول الإنسان: لا أصح الله جسمه ولا سلمه الله، وما جرى مجراه، وكل ذلك مذموم، وكذلك لعن جميع الحيوانات والجماد فكله مذموم [محرر من الأذكار: ٤٧٦ - ٤٨٠، بتقديم وتأخير].

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r39.0 BEGGING

r39.1 (Nahlawi:) It is unlawful to ask for money or other worldly advantage from someone one has no right to ask, unless there is a necessity to. The Prophet (Allah bless him and give him peace) said,

"One of you keeps begging until when he meets Allah Most High, there is not a piece of flesh left on his face,"

which is interpreted as referring to anyone who asks when it is not permissible to do so. The degree of necessity that permits begging is when one is unable to earn a living due to illness or weakness and does not have enough food to last one day (*al-Durar al-mubaha* (y99), 139).

r39.0 التسول

r39.1 (النحلاوي:) سؤال المال والمنفعة الدنيوية ممن لا حق له فيه حرام، إلا عند الضرورة الداعية إليه. [عن ابن عمر رضي الله عنهما أن] النبي ﷺ قال: «لا تزال المسألة بأحدكم حتى يلقى الله تعالى وليس في وجهه مزعة لحم» [رواه البخاري]. وهذا محمول على كل من سأل سؤالاً لا يجوز له. [. . .] والضرورة التي تبيح السؤال: أن لا يقدر على الكسب للمرض أو الضعف وأن لا يكون عنده قوت يوم [محرر من الدرر المباحة: ١٣٩].

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r40.0 MUSIC, SONG, AND DANCE

MUSICAL INSTRUMENTS

r40.1 (Ibn Hajar Haytami:) As for the condemnation of musical instruments, flutes, strings, and the like by the Truthful and Trustworthy (Allah bless him and give him peace), who

"does not speak from personal caprice: it is nothing besides a revelation inspired" (Koran 53:3–4),

let those who refuse to obey him beware lest calamity strike them, or a painful torment. The Prophet (Allah bless him and give him peace) said:

(1) "Allah Mighty and Majestic sent me as a guidance and mercy to believers and commanded me to do away with musical instruments, flutes, strings, crucifixes, and the affair of the pre-Islamic period of ignorance."

r40.0 الملاهي والغناء والرقص

الملاهي

r40.1 (ابن حجر الهيتمي:) أما ذم المعازف والمزامير والأوتار ونحوها مما جاء عن الصادق المصدوق الذي لا ﴿ينطق عن الهوى إن هو إلا وحي يوحى﴾ فليحذر الذين يخالفون عن أمره أن تصيبهم فتنة أو يصيبهم عذاب أليم.

- [عن أبي أمامة رضي الله عنه قال:] قال رسول الله ﷺ: «إن الله عز وجل بعثني هدىً ورحمةً للمؤمنين وأمرني بمحق المعازف والمزامير والأوتار والصليب وأمر الجاهلية. . .» [رواه أبو داود].

- [وعن أنس رضي الله عنه أن رسول الله ﷺ قال:] «من قعد إلى قينة يستمع منها صب الله في أذنيه الآنك يوم القيامة»

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(2) "On the Day of Resurrection, Allah will pour molten lead into the ears of whoever sits listening to a songstress."

(3) "Song makes hypocrisy grow in the heart as water does herbage."

(4) "This Community will experience the swallowing up of some people by the earth, metamorphosis of some into animals, and being rained upon with stones." Someone asked, "When will this be, O Messenger of Allah?" and he said, "When songstresses and musical instruments appear and wine is held to be lawful."

(5) "There will be peoples of my Community who will hold fornication, silk, wine, and musical instruments to be lawful...."

All of this is explicit and compelling textual evidence that musical instruments of all types are unlawful (*Kaff al-ra'a' 'an muharramat al-lahw wa al-sama'* (y49), 2.269–70).

[رواه ابن صصرى في أماليه وابن عساكر في تاريخه].

- [وعن ابن مسعود رضي الله عنه أن النبي ﷺ قال:] «الغناء ينبت النفاق في القلب كما ينبت الماء البقل» [رواه البيهقي وابن أبي الدنيا].

- [وعن سهل بن سعد قال: قال رسول الله ﷺ:] «يكون في هذه الأمة خسف ومسخ وقذف. قيل: ومتى ذلك يا رسول الله؟ قال: إذا ظهرت القينات والمعازف واستحلت الخمر» [رواه عبد بن حميد واللفظ له وابن ماجه مختصراً، ومدار مسانيدها على عبد الرحمن بن زيد بن أسلم وهو ضعيف. وصح من طرق خلافاً لما وهم فيه ابن حزم فقد علقه البخاري ووصله الإسماعيلي وأحمد وابن ماجه وأبو نعيم وأبو داود بأسانيد صحيحة لا مطعن فيها، وصححه جماعة آخرون من الأئمة كما قاله بعض الحفاظ أنه ﷺ قال:] «ليكونن في أمتي أقوام يستحلون الحر والحرير والخمر والمعازف».

وهذا صريح ظاهر في تحريم جميع آلات اللهو المطربة [محرر من كف الرعاع عن محرمات اللهو والسماع: ٢/ ٢٦٩ - ٢٧٠].

r40.2 (Nawawi:) It is unlawful to use musical instruments—such as those which drinkers are known for, like the mandolin, lute, cymbals, and flute—or to listen to them. It is permissible to play the tambourine at weddings, circumcisions, and other times, even if it has bells on its sides. Beating the kuba, a long drum with a narrow middle, is unlawful (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 4.429–30).

r40.2 (النووي:) ويحرم استعمال آلة من شعار الشربة كطنبور وعود وصنج ومزمار [عراقي] واستماعها. ويجوز دف لعرس وختان، وكذا غيرهما [في الأصح] وإن كان فيه جلاجل. ويحرم ضرب الكوبة وهي طبل طويل ضيق الوسط [نقل من مغني المحتاج إلى معرفة معاني ألفاظ المنهاج: ٤/ ٤٢٩ - ٤٣٠].

SINGING UNACCOMPANIED BY MUSICAL INSTRUMENTS

حكم الغناء من غير آلة

r40.3 (Ibn Hajar Haytami:) As for listening to singing that is not accompanied by instruments,

r40.3 (ابن حجر الهيتمي:) (أما) سماع مجرد الغناء من غير آلة: اعلم [أن

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one should know that singing or listening to singing is offensive except under the circumstances to be mentioned in what follows. Some scholars hold that singing is sunna at weddings and the like, and of our Imams, Ghazali and 'Izz ibn 'Abd al-Salam say that it is sunna if it moves one to a noble state of mind that makes one remember the hereafter. It is clear from this that all poetry which encourages good deeds, wisdom, noble qualities, abstinence from this-worldly things, or similar pious traits such as urging one to obey Allah, follow the sunna, or shun disobedience, is sunna to write, sing, or listen to, as more than one of our Imams have stated is obvious, since using a means to do good is itself doing good (*Kaff al-ra'a' 'an muharramat al-lahw wa al-sama'* (y49), 2.273).

مذهبنا] أنه يكره الغناء وسماعه إلا أن يقترن به ما يأتي. وقال بعض العلماء أنه سنة في العرس ونحوه. وقال الغزالي وابن عبد السلام من أئمتنا أنه سنة إن حرك لحال سني مذكر للآخرة اهـ. وبه يعلم أن كل شعر فيه الأمر بالطاعة أو كان حكمة أو كان في مكارم الأخلاق أو الزهد ونحو ذلك من خصال البر كحث على طاعة أو سنة أو اجتناب معصية يكون كل من إنشائه وإنشاده وسماعه سنة كما صرح به غير واحد من أئمتنا هو ظاهر، إذ وسيلة الطاعة طاعة [نقل من كف الرعاع عن محرمات اللهو والسماع: ٢/ ٢٧٣].

DANCING

الرقص

r40.4 (Nawawi: (n: with commentary by Muhammad Shirbini Khatib)) It is not prohibited to dance ((Shirbini:) which is not unlawful because it is only motions made while standing or bowing. Furani and others have expressly stated that neither is it offensive, but rather is permissible, as is attested to by the hadith related in the *Sahih*s of Bukhari and Muslim that the Prophet (Allah bless him and give him peace) stood before 'A'isha (Allah be well pleased with her) to screen her from view so that she could observe the Abyssinians sporting and dancing)—unless it is languid, like the movements of the effeminate (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 4.430).

r40.4 (النووي (ت: بشرح محمد الشربيني الخطيب):) [ويَحْرُمُ ضربُ الكوبة] لا الرقصُ (فلا يحرم لأنه مجرد حركات على استقامة أو اعوجاج ولا يكره كما صرّح به الفوراني وغيره بل يباح لخبر الصحيحين: «أنه ﷺ وقف لعائشة رضي الله عنها يسترها حتى تنظر إلى الحبشة وهم يلعبون ويزفنون») إلاّ أنْ يكُونَ فيه تكسُّرٌ كفعلِ المخنث [محرر من مغني المحتاج إلى معرفة معاني ألفاظ المنهاج: ٤/ ٤٣٠].

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BOOK S

DELUSIONS

كتاب الغرور

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s1.0 THOSE DELUDED BY THIS WORLD, ALLAH'S FORGIVENESS, OR THEIR OWN WORKS

s1.1 (Ibn Qudama Maqdisi (dis: q0.1):) There are people misled by this world, saying, "Cash is better than credit: this world is cash while the next world is credit." And it is a point of deception, for cash cannot be better than credit unless the amount of each is equal. Now a person's life, when compared to the hereafter, obviously does not amount to even a thousandth part before he breathes his last, while someone who says that "cash is better than credit" means "provided the credit equals the cash." And this is the delusion of unbelievers. As for those immersed by sin while their faith in eternal truths remains sound, they share this delusion with unbelievers, by preferring the present life to the hereafter, but their lot is easier than the unbelievers' in that their basic faith will keep them from unending punishment.

THOSE DELUDED BY ALLAH'S FORGIVENESS

s1.2 Other sinners delude themselves by saying, "Allah is generous, we but rely on His forgiveness," while the learned tell us that if one longs for something one pursues it, and if one fears something one shuns it. Whoever hopes for forgiveness while persisting in wrongdoing is

s1.0 من يغتر بالدنيا أو بعفو الله أو بالعمل الصالح

s1.1 (ابن قدامة:) من الناس من غرته الدنيا فقال: النقد خير من النسيئة والدنيا نقد والآخرة نسيئة. وهذا محل التلبيس. فإن النقد لا يكون خير من النسيئة إلا إذا كان مثل النسيئة. ومعلوم أن عمر الإنسان بالإضافة إلى مدة الآخرة ليس بجزء من ألف جزء إلى أن ينقطع النفس. وإنما أراد من قال النقد خير من النسيئة إذا كانت النسيئة مثل النقد. وهذا غرور الكفار. فأما ملابسو المعاصي مع سلامة عقائدهم، فإنهم قد شاركوا الكفار في هذا الغرور، لأنهم آثروا الدنيا على الآخرة، إلا أن أمرهم أسهل من أمر الكفار، من جهة أن أصل الإيمان يمنعهم من عقاب الأبد.

من يغتر بعفو الله

s1.2 ومن العصاة من يغتر فيقول: إن الله كريم، وإنما نتكل على عفوه [وربما اغتروا بصلاح آبائهم] وقد قال العلماء: من رجا شيئاً طلبه، ومن خاف شيئاً هرب منه، ومن رجا الغفران مع

deluded. One must know that Allah Most High, with His vast mercy, is terrible in retribution, having decreed that unbelievers shall abide in hell forever (dis: w55) even though their unbelief does not hurt Him in the slightest. He has made some of His servants prey to infirmities and trials in this world, though He, Glorious and Exalted, is quite able to eliminate them. Moreover, He has made us fear His punishment. How can we not be afraid? Fear and hope drive and arouse one to action. That which does not spur one to works is deception, as is clear from the fact that the "hope" of most people makes them do nothing at all or prefer disobedience. It is odd that early Muslims both worked and feared, while nowadays, though falling far short, people feel secure and tranquil as though they knew more about the generosity of Allah Most High than the prophets and the righteous. If it could be had by wishing, why did the latter fatigue themselves and weep so much? Does Allah condemn the Jews and Christians for anything besides being this way when He says,

"They grasp at the paltry things of this low life and say, 'We shall be forgiven' " (Koran 7:169).

This delusion resembles that of people who do both good and evil, but more of evil, while imagining their good to be greater. One might see them give a dirham as charity while having wrongfully appropriated many times that amount, or maybe even giving as charity something wrongfully acquired, relying on such a donation, which is like someone putting a dirham in one scalepan, a thousand in the other, and hoping the scale will balance. Or another of them who thinks his good acts are more than his evil ones, the reason for which is that he keeps track of the number of good deeds, but does not take himself to task for the bad ones, nor consider his sins. For example, he says, "Astaghfir Allah" (May Allah forgive me) and "Subhan Allah" (Glory be to Allah) a hundred times a day, but then spends the rest of his day slandering Muslims and making ugly remarks, seeing the virtue of saying "Subhan Allah" and "Astighfir Allah," but not the punishment for slander and forbidden speech.

الإصرار فهو مغرور. وليعلم أن الله تعالى مع سعة رحمته شديد العقاب، وقد قضى بتخليد الكفار في النار، مع أنه لا يضره كفرهم، وقد سلط الأمراض والمحن على خلق من عباده في الدنيا، وهو سبحانه قادر على إزالتها، ثم خوفنا من عقابه فكيف لا نخاف؟ فالخوف والرجاء سائقان يبعثان على العمل، وما لا يبعث على العمل فهو غرور. يوضح هذا أن رجاء أكثر الخلق يحملهم على البطالة وإيثار المعاصي. والعجب أن القرن الأول عملوا وخافوا، ثم أهل هذا الزمان أمنوا مع التقصير واطمأنوا، أتراهم عرفوا من كرم الله ما لم يعرف الأنبياء والصالحون؟ ولو كان هذا الأمر يدرك بالتمني، فلِمَ تعب أولئك وكثر بكاؤهم؟ وهل ذم أهل الكتاب بقوله:

﴿يَأْخُذُونَ عَرَضَ هَذَا الْأَدْنَىٰ وَيَقُولُونَ سَيُغْفَرُ لَنَا﴾ [الأعراف: ١٦٩] إلا لمثل هذا الحال؟

[...] ويقرب من هذا الغرور غرور أقوام لهم طاعات ومعاصي، إلا أن معاصيهم أكثر، وهم يظنون أن حسناتهم ترجح، فترى الواحد منهم يتصدق بدرهم ويكون قد تناول من الغصب أضعاف ذلك، ولعل الذي تصدق به من المغصوب، ويتكل على تلك الصدقة، وما هو إلا كمن وضع درهماً في كفة وألفاً في أخرى، ثم رجا أن يرجح الدرهم بألف. ومنهم من يظن أن طاعاته أكثر من معاصيه وسبب ذلك أنه يحفظ عدد حسناته ولا يحاسب نفسه على سيئاته، ولا يتفقد ذنوبه، كالذي يستغفر الله ويسبحه مائة مرة في اليوم ثم يظل طول نهاره يغتاب المسلمين، ويتكلم بما لا يُرْضي، فهو ينظر في فضائل التسبيح والاستغفار، ولا ينظر في عقوبة الغيبة والكلام المنهي عنه.

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s1.3 Delusions generally occur among four kinds of people: Islamic scholars, devotees, would-be Sufis, and the wealthy.

s1.3 ويقع الاغترار في الأغلب في حق أربعة أصناف: العلماء، والعبّاد والمتصوفة، والأغنياء.

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s2.0 THE DELUSIONS OF ISLAMIC SCHOLARS

s2.0 غرور أهل العلم

THOSE REMISS IN OUTWARD CONDUCT

من أهمل الطاعة الظاهرة

s2.1 As for religious scholars, some master the legal and rational sciences but neglect to examine their outward habits and practices, not keeping their external self from sin or making it faithful in obedience. They are deluded by their learning and feel sure they rate high with Allah. If they were to look with the eye of insight, they would see that the whole point of knowing about religious practice is to apply it. Without works, it is useless. Allah Most High says,

"He who purifies it [the soul] has succeeded" (Koran 91:9),

not, "He who knows how to purify it has succeeded." If the Devil reminds such a person of the virtues of learned people, let the person for his part remember what has reached us about corrupt scholars, such as Allah's saying,

"... like a donkey laden with books" (Koran 62:5).

s2.1 فأما أهل العلم [...] منهم فرق أحكموا العلوم الشرعية والعقلية، وأهملوا تفقد الجوارح وحفظها عن المعاصي، وإلزامها الطاعات، واغتروا بعلمهم، وظنوا أنهم من الله بمكان. ولو نظر هؤلاء بعين البصيرة علموا أن علم المعاملة لا يراد به إلا العمل، ولولا العمل لم يكن له قدر. قال الله تعالى:

﴿قَدْ أَفْلَحَ مَنْ زَكَّاهَا﴾ [الشمس: ٩]

ولم يقل قد أفلح من تعلم كيف يزكيها. فإن تلا عليه الشيطان فضائل أهل العلم فليذكر ما ورد في العالم الفاجر [...] كقوله تعالى:

﴿كَمَثَلِ الْحِمَارِ يَحْمِلُ أَسْفَارًا﴾ [الجمعة: ٥].

THOSE WHO NEGLECT THEIR INWARD FAULTS

من أهمل العيوب الباطنة

s2.2 Others master religious learning and its outward performance, but do not examine their hearts to eliminate the blameworthy traits therein such as pride, envy, ostentation, and seeking exaltation or fame. These have made their exterior seemly while neglecting their interior, forgetting the words of the Prophet (Allah bless him and give him peace),

s2.2 ومنهم فرقة أخرى أحكموا العلم والعمل الظاهر، ولم يتفقدوا قلوبهم ليمحوا الصفات المذمومة منها، كالكبر والحسد والرياء وطلب العلو وطلب الشهرة. فهؤلاء زينوا ظاهرهم وأهملوا بواطنهم، ونسوا قوله ﷺ:

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"Allah does not look at your appearance or property, but only at your hearts and works."

Such people apply themselves to works but do not apply themselves to hearts, though the heart is the real foundation, since no one is saved

"except he who comes to Allah with a pure heart" (Koran 26:89).

They resemble someone who sows grain that comes up with weeds choking it out, but when ordered to weed it, merely trims away the weeds' twigs and stems, neglecting the roots, which take stronger hold.

Another segment of scholars know that these inner qualities are condemnable, but out of self-satisfaction feel they are above them, and that they are too good as far as Allah is concerned for Him to afflict them with such traits, that only common people have them and not people at their own level of learning. When symptoms of arrogance or avidness for leadership appear in such people, one of them may say, "This is not arrogance, but only seeking to exalt Islam, display the nobility of religious learning, and to spite those given to reprehensible innovations. Were I to wear clothes less fine or sit with a lower class of people, the enemies of religion would smirk, and gloat at my humiliation, which amounts to humiliating Islam." And he forgets about delusion, and that it is Satan who has seduced him with this, which is plain from the fact that the Prophet (Allah bless him and give him peace) and his Companions were humble in manner and preferred the way of poverty and lowliness.

Still other scholars have acquired religious knowledge, purified their exterior actions, making them seemly with obedience, and examined their hearts, purifying them of ostentation, envy, pride, and the like, and yet there remain snares of the Devil and tricks of the ego hidden in the recesses of their hearts which they have failed to notice and thus neglected. You might see one of them spending the night and day in learning various religious sciences, organizing them, and polishing up their terminology, such a person thinking his motive is the desire to manifest the religion of Allah Most High, while the real motive

«إن الله لا ينظر إلى صوركم وأموالكم، وإنما ينظر إلى قلوبكم وأعمالكم».

فتعاهدوا الأعمال، ولم يتعاهدوا القلوب، والقلب هو الأصل، إذ لا ينجو ﴿إِلَّا مَنْ أَتَى اللَّهَ بِقَلْبٍ سَلِيمٍ﴾ [الشعراء: ٨٩].

ومثال هؤلاء كمثل رجل زرع زرعاً فنبت ونبت معه حشيش يفسده، فأمر بقلعه، فأخذ يجز رؤوسه وأطرافه ويترك أصوله، فلم تزل أصوله تقوى.

وفرقة أخرى علموا أن هذه الأخلاق الباطنة مذمومة إلا أنهم بعجبهم بأنفسهم يظنون أنهم منفكون عنها، وأنهم أرفع عند الله من أن يبتليهم بذلك، وإنما يبتلي بذلك العوام دون من بلغ مبلغهم من العلم، فإذا ظهر عليهم مخايل الكبر والرياسة قال أحدهم: ما هذا بكبر، وإنما هو طلب عز الدين، وإظهار شرف العلم، وإرغام المبتدعين، فإني لو لبست الدون من الثياب، وجلست في الدون من المجالس شمت بي أعداء الدين وفرحوا بذلّي، وفي ذلي ذل الإسلام، وينسى الغرور وأن إبليس هو الذي سول له هذا بدليل أن النبي ﷺ وأصحابه كانوا يتواضعون ويؤثرون الفقر والمسكنة [...].

وفرقة أخرى أحكموا العلم، وطهروا جوارحهم وزيّنوها بالطاعات، وتفقدوا قلوبهم بتصفيتها من الرياء والحسد والكبر ونحو ذلك ولكن بقيت في زوايا القلب خفايا من مكائد الشيطان وخدع النفس لم يفطنوا لها وأهملوها، فترى أحدهم يسهر ليله ويُنصب نهاره في جمع العلوم وترتيبها وتحسين ألفاظها، ويرى أن باعثه على ذلك الحرص على إظهار دين الله تعالى، وربما كان الباعث لذلك

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might be to make a name for himself and enhance his prestige. Perhaps too, his published work is not entirely free of self-praise, whether overtly, by wide, sweeping claims, or covertly, by attacks on others, to show by attacking them that he is better than they are and more knowledgeable. Such kinds of behavior and similar ones are hidden faults which few discern but the wisest and strongest. Those as weak as we are have little hope of doing so, but at least a person should be aware of his own defects and wish they were corrected. There is hope for someone whose good acts make him happy and wicked ones make him sad, unlike someone who applauds himself and thinks himself the best of men.

طلب الذكر وانتشار الصيت. ولعله لا يخلو في تصنيفه من الثناء على نفسه إما صريحاً بالدعاوي الطويلة العريضة، وإما ضمناً بالطعن في غيره ليبين في طعنه في غيره أنه أفضل من ذلك الغير وأعظم منه علماً. فهذا وأمثاله من خفايا العيوب التي لا يفطن لها إلا الأكياس الأقوياء ولا مطمع فيه لأمثالنا من الضعفاء، إلا أن أقل الدرجات أن يعرف الإنسان عيوب نفسه ويحرص على صلاحها. ومن سرته حسنته وساءته سيئته، فهو مرجو أمره، بخلاف من يزكي نفسه ويظن أنه من خيار الخلق.

s2.3 The above are the delusions of those who master important branches of Sacred Knowledge. How then for those who content themselves with studying fields not essential to them, neglecting the important ones?

s2.3 فهذا غرور الذين حصلوا العلوم المهمة، فكيف بالذين قنعوا من العلوم بما لا يهمهم وتركوا المهم.

THEOLOGICAL POLEMICISTS

غرور أهل الكلام والمجادلة

s2.4 Among them are those who busy themselves with theological polemics against heretical beliefs, and refuting the unorthodox. Scholars engaged in this are of two types, those in the wrong and those in the right, the former advocating something other than the sunna, the latter advocating the sunna. Both are deluded. The misguidedness of those in the wrong is obvious (A: since they have left the Koran and sunna which are divinely protected). As for those in the right, their delusion is in believing that arguing is the most important activity and greatest spiritual work in the religion of Allah Most High. They maintain that one's religion is not complete until one has made lengthy investigations into one's beliefs, and that someone who simply believes in Allah and His messenger without preparing a case for it is deficient in faith. Because of this mistaken presumption, they spend their lives learning how to dispute, conducting in-depth studies of statements of theological controversies until their spiritual insight eventually goes blind. They do not pause

s2.4 فمنهم [. . .] فرقة [. . .] اشتغلوا بعلم الكلام والمجادلة في الأهواء والرد على المخالفين. ثم هؤلاء طائفتان: ضالة ومحقة، فالضالة التي تدعو إلى غير السنة، والمحقة التي تدعو إلى السنة، والغرور شامل لجميعهم. أما الضالة فاغترارها ظاهر. وأما المحقة فاغترارها من حيث أنها ظنت أن الجدال أهم الأمور، وأفضل القربات في دين الله تعالى، وزعمت أنه لا يتم لأحد دينه ما لم يبحث، وأن من صدق الله ورسوله من غير تحرير دليل، فليس بكامل الإيمان، فلهذا الظن الفاسد قطعوا أعمارهم في تعلم الجدل والبحث عن المقالات، وعميت بصائرهم فلم يلتفتوا

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to consider that the early Muslims, whom the Prophet (Allah bless him and give him peace) testified were the very best of mankind, and who lived to see many a reprehensible innovation (bid'a) and deviant belief, did not expose themselves and their religion to quarrels and disputation, or busy themselves therein at the expense of their hearts and works. They did not talk about it at all, except under necessity to refute misguidance. And if they saw someone persisting in blameworthy innovation, they had nothing more to do with him, without further debate or argument. The hadith has reached us,

"No people went astray after having been guided save that they were afflicted with arguing."

إلى القرن الأول، وأن النبي ﷺ شهد لهم بأنهم خير الخلق، وأنهم قد أدركوا كثيراً من البدع والهوى، فلم يجعلوا أعمارهم ودينهم غرضاً للخصومات والمجادلات، ولم يشتغلوا بذلك عن تفقد قلوبهم وجوارحهم. بل لم يتكلموا فيه إلا لضرورة رد الضلال. فإن رأوا مصراً على بدعته هجروه من غير مماراة ولا جدل. وقد روي في الحديث: «ما ضل قوم بعد هُدىً إلا أوتوا الجدل».

SERMONIZERS

غرور الوعاظ

s2.5 Others spend their time in homilies to people, the highest class of whom speak about traits of the self and qualities of the heart such as fear, hope, patience, gratitude, reliance on Allah, abstinence, certainty, and sincerity; thinking that by merely speaking of them, even if they do not have them, they acquire them. Such people call to Allah while they themselves flee from Him. They are among the most deluded. And some of them turn from the proper way of exhorting others to relating baseless tales, adding words that are neither acceptable to Sacred Law nor to human intelligence, in an attempt to say something novel.

s2.5 وفرقة أخرى اشتغلوا بالوعظ وأعلاهم رتبة من يتكلم في أخلاق النفس وصفات القلب من الخوف والرجاء والصبر والشكر والتوكل والزهد واليقين والإخلاص، وهم يظنون أنهم إذا تكلموا بهذه الصفات وهم متفكون عنها أنهم من أهلها، فهؤلاء يدعون إلى الله وهم هاربون منه، فهم أعظم الناس غرة. ومن هؤلاء من يعدل عن المنهاج الواجب في الوعظ إلى الشطح وتلفيق كلام خارج عن قانون الشرع والعقل طلباً للإغراب.

LEARNING HADITH FOR THE SAKE OF MAKING A REPUTATION

غرور أهل الحديث

s2.6 Others spend their time in listening to hadiths, gathering variants and rare chains of transmission or chains remarkable for having come through but few transmitters of advanced years. The concern of one of them is to go from city to city, seeing sheikhs in order to drop names, saying, "I relate from So-and-so," "I've met So-and-so," or "I know chains of transmission no one else does."

s2.6 [. . .] ومنهم فرقة استغرقوا أوقاتهم في سماع الحديث، وجمع رواياته، وأسانيده الغريبة والعالية. فهمّ أحدهم أن يدور البلاد، ويرى الشيوخ ليقول: أنا أروي عن فلان، ولقيت فلاناً، ولي من الأسناد ما ليس لغيري

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ARABISTS	غرور علماء اللغة
s2.7 Others devote their time to advanced studies in Arabic grammar, lexicography, and poetry, claiming they are the scholars of the Islamic Community, dissipating their lives in subtleties of grammar and diction. If they stopped to think, they would realize that someone who wastes his lifetime in the knowledge of the language of the Arabs is like someone who wastes it in knowledge of the language of the Turks. Arabic is only distinguished above the latter in that the Sacred Law has come in it. As for lexicology, there are only two areas in which it is necessary for one to gain an understanding of rare words: those of the Koran, and those of the hadith. As for grammar, one but needs enough to use the language properly.	s2.7 ومنهم فرقة اشتغلوا بعلم النحو واللغة والشعر، وزعموا أنهم علماء الأمة، وأذهبوا أعمارهم في دقائق النحو واللغة. ولو عقلوا لعلموا أن مضيّع عمره في معرفة لغة العرب كالمضيّع عمره في معرفة لغة الترك. وإنما فارقتها لغة العرب لأجل ورود الشريعة بها، فيكفي من اللغة علم الغريبين: غريب القرآن، والحديث. ومن النحو ما يقوّم به اللسان [. . .].
s2.8 The really fortunate person is he who takes of each thing the amount that is critical to him and then goes on to apply it, putting his effort behind it and purifying it of imperfection. And this is the real aim.	s2.8 والسعيد من أخذ من كل شيء من هذا حاجته المهمة لا غير، وتجاوز إلى العمل، واجتهد فيه وفي تصفيته من الشوائب فهذا هو المقصود [. . .].

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s3.0 THE DELUSIONS OF DEVOTEES	s3.0 غرور أرباب التعبد
s3.1 Devotees are of various types, including those remiss about obligatory acts while engaging in extra devotions and supererogatory works.	s3.1 وهم فرق. فرقة أهملوا الفرائض واشتغلوا بالنوافل والفضائل.
s3.2 Sometimes they are so worried about using water for purification that it reaches the level of obsessive doubt (waswasa) about the validity of their ablution. You might see one of them unsatisfied with water the Sacred Law deems fit for ablution, imagining remote possibilities that it could be affected with something unclean, while not having such concern for the lawfulness of the source of the food he eats. Were he to reverse these two, applying the care he takes for the water	s3.2 وربما تعمقوا في استعمال الماء حتى خرجوا إلى الوسوسة في الوضوء، فترى أحدهم لا يرضى بالماء المحكوم له بالطهارة شرعاً، بل يقدر له الاحتمالات البعيدة في التنجس، ولا يقدر ذلك في مطعمه. فلو انقلب هذا الاحتياط من الماء إلى المطعم لكان أشبه

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instead to his food, he would be closer to the practice of the early Muslims. 'Umar (Allah be well pleased with him) performed ablution from the water jar of a Christian despite signs that it might well be unclean, while he used to refrain from many kinds of permissible things for fear of falling into the unlawful.

بسيـر السلف. فإن عمر رضي الله عنه توضأ من جرة نصرانية مع ظهور احتمال النجاسة. وكان مع هذا يدع أنواعاً من الحلال خوفاً من الوقوع في الحرام [...].

s3.3 Others are so bedeviled by inner misgivings at their initial Allahu Akbar in the prayer that they may miss a rak'a with the imam. And like them are those with obsessive doubts about the proper pronunciation of the letters of the Fatiha and other spoken elements of the prayer. One of them may take precaution upon precaution in doubling the doubled letters, distinguishing ض from ظ, and so forth, beyond the necessary, until he is finally so concerned about it that he does not think about anything else, neglecting the meaning of the Koran and the lessons he should be taking from it. And this is among the ugliest forms of delusion, for people are not required to pronounce the letters when reciting the Koran with more precision than that with which classical Arabic is normally spoken. Such people are as if delivering a message to a ruler, the messenger fastidiously pronouncing each letter and repeating those he is unsatisfied with, having quite forgotten the purpose of the message and the dignity of the assembly before whom he is delivering it. How richly such a person deserves to be thrown out and taught a lesson.

s3.3 ومنهم من غلبت عليه الوسوسة في تكبيرة الإحرام في الصلاة، حتى ربما فاتته ركعة مع الإمام. ومنهم من يتوسوس في إخراج حروف الفاتحة وسائر الأذكار من مخارجها، فلا يزال يحتاط في التشديدات والفرق بين الضاد والظاء فوق الحاجة. ونحو ذلك بحيث يهتم بذلك حتى لا يتفكر فيما سواه، ويذهل عن معنى القرآن والاتعاظ به. وهذا من أقبح أنواع الغرور فإن الخلق لم يتكلفوا من تحقيق مخارج الحروف في تلاوة القرآن إلا ما جرت به العادة في الكلام.

ومثال هؤلاء مثال من حمل رسالة إلى سلطان. فأخذ يؤدي الرسالة بالتأنق في مخارج الحروف وتكراره، وهو غافل عن مقصود الرسالة ومراعاة حرمة المجلس، فما أحراه بالطرد والتأديب.

s3.4 A third group is deluded by reciting the Koran, which they rush through, perhaps finishing twice a day, the tongue of one of them being occupied therein while his heart is wandering through the valleys of daydream, not reflecting on its meanings, heeding its exhortations, or obeying its ordinances and prohibitions. Such a person is misled, believing the Koran is only intended for reciting. He is like someone to whom his master has written a letter charging him with certain matters and forbidding him others, while the servant does not bother the understand it or carry it out but simply memorizes it and repeats it, thinking that this is the purport of it, while violating the

s3.4 وفرقة أخرى اغتروا بقراءة القرآن، فهم يهذّونه هذّاً. وربما ختموا في اليوم مرتين. فلسان أحدهم يجري به وقلبه يتردد في أودية الأماني. ولا يتفكر في معاني القرآن ولا يتعظ بمواعظه، ولا يقف عند أوامره ونواهيه فهذا مغرور يظن أن المقصود من القرآن التلاوة فقط. ومثال ذلك. مثال عبد كتب إليه مولاه كتاباً يأمره فيه وينهاه، فلم يصرف عنايته إلى فهمه والعمل به، بل اقتصر على حفظه وتكراره، ظاناً أن ذلك هو المراد منه، مع مخالفته أمر مولاه ونهيه. ومنهم

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master's commands and prohibitions. Others relish the sound of their own voice in reciting the Koran, disregarding its significance. One should examine one's heart as to whether one is enjoying the meter, the sound, or the meaning (A: though it is not blameworthy to enjoy the meter or sound, unless one is unconcerned with the meaning).

من يلتذ بصوته بالقرآن، معرضاً عن معانيه، فينبغي أن يتفقد قلبه فيعرف هل التذاذه بالنظم، أو بالصوت، أو بالمعاني.

s3.5 Others are deceived by fasting, and frequently practice it, but do not restrain their tongue from slander and useless words, keep their belly from ill-gotten or unlawful food with which to break their fast, or free their heart from ostentation.

s3.5 وفرقة أخرى اغتروا بالصوم وأكثروا منه، وهم لا يحفظون ألسنتهم عن الغيبة والفضول، ولا بطونهم من الحرام عند الإفطار، ولا خواطرهم عن الرياء.

s3.6 Others are deluded by going on pilgrimage, departing for it without restoring the rights of people they have wronged (dis: p77.3), meeting their financial obligations, asking the permission of their parents, or obtaining lawfully gotten provision. And this may be after having fulfilled the obligatory hajj, while they neglect obligatory acts of worship enroute, are unable to purify their garments and person, and do not refrain from unpermitted sex or getting into arguments, despite which they think all is well with them, being self-deceived.

s3.6 ومنهم من اغتر بالحج، فيخرج إليه من غير خروج عن المظالم، وقضاء الديون واسترضاء الوالدين، وطلب الزاد الحلال. وقد يفعلون ذلك بعد سقوط فرض الحج ويضيعون في الطريق [العبادة و] الفرائض ويعجزون عن طهارة الثوب والبدن، ولا يحترزون من الرفث والخصام، وهم مع ذلك يظنون أنهم على خير وهم مغرورون.

s3.7 Others command the right and forbid the wrong, while forgetting themselves.

s3.7 وفرقة أخرى أخذوا في الأمر بالمعروف والنهي عن المنكر، ونسوا أنفسهم.

s3.8 Others include the imam who leads the group prayer at the mosque, but when someone more godfearing or knowledgeable is allowed to lead in his stead, it weighs heavily on him. Or the muezzin who calls to the prayer, believing he is doing it for the sake of Allah, but when someone else gives the call in his absence, it annoys him and he says, "He has infringed on my position."

s3.8 ومنهم من يؤم في مسجد ولو تقدم عليه أورع منه وأعلم ثقل عليه.
ومنهم من يؤذن ويظن أن ذلك لله، ولو أذن غيره في غيبته، اشتد عليه ذلك وقال: قد زاحمني في مرتبتي [...].

s3.9 Others eschew material possessions, content with poor clothes and food and with living in mosques, thinking that they have reached the rank of the abstinent (zuhhad), while they are avid

s3.9 وفرقة أخرى زهدت في المال، وقنعت بالدون من اللباس والطعام، وقنعت من المسكن

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for leadership and prestige. In fact, they have given up the lesser of two matters while getting involved in the more deadly.

بالمساجد، فظنت أنها أدركت رتبة الزهاد، وهم مع هذا شديدو الرغبة في الرياسة والجاه، فقد تركوا أهون الأمرين وباؤوا بأعظم المهلكين.

s3.10 Still others enthusiastically perform supererogatory acts while not being concerned for the obligatory ones. You may see one of them savoring the midmorning or night vigil prayer, but finding no satisfaction in the prescribed prayer, nor hastening to pray it at the first of its time. Such a person has forgotten the Prophet's words (Allah bless him and give him peace) relating that Allah Mighty and Majestic said,

"Those near to Me do not approach Me with anything like that which I have made obligatory upon them."

s3.10 وفرقة أخرى حرصت على النوافل ولم تعتن بالفرائض، فترى أحدهم يفرح بصلاة الضحى وصلاة الليل، ولا يجد للفريضة لذة ولا يحرص على المبادرة إليها في أول الوقت، وينسى قوله ﷺ فيما يرويه عن ربه عز وجل:

«ما تقرب المتقربون إليّ بمثل أداء ما افترضت عليهم» [...].

s3.11 There is no spiritual labor without its dangers, and those who do not know them fall prey to them. Whoever wishes to learn them should study the dangers of ostentation that exist in acts of worship, from fasting and prayer to all the rest, in the chapters set forth in this book (A: i.e. Ibn Qudama's source here, Ghazali's *Ihya' 'ulum al-din*).

s3.11 وما من عمل إلا وفيه آفات فمن لم يعرفها وقع فيها، ومن أراد أن يعرفها، [فليَنظر في كتابنا هذا]، فينظر في آفات الرياء الحاصل في العبادات من الصوم والصلاة وفي جميع القربات في الأبواب المرتبة في هذا الكتاب.

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s4.0 THE DELUSIONS OF WOULD-BE SUFIS

s4.0 غرور المتصوفة

s4.1 The deluded among them are of various types. Some are deluded by the dress, terminology, or demeanor of the Sufis. They imitate the sincere Sufis (dis: w9) externally, but do not tax themselves with spiritual struggle or self-discipline. Rather, they pounce upon and quarrel over wealth that is unlawful, doubtful, or from rulers (dis: p32.3), rending each other's honor whenever they are at cross-purposes. The delusion of these is obvious. They are like an old woman who hears that the names of courageous, valiant soldiers are

s4.1 والمغرورون منهم فرق. فرقة منهم اغتروا بالزي والنطق والهيئة، فتشبهوا بالصادقين من الصوفية بالظاهر، ولم يتعبوا أنفسهم في المجاهدة والرياضة. ثم هم يتكالبون على الحرام والشبهات وأموال السلاطين ويمزق بعضهم أعراض بعض إذا اختلفوا في غرض، وهؤلاء غرورهم ظاهر. ومثالهم مثال عجوز سمعت أن الشجعان

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inscribed in the official roster and they are ceded whole tracts of land. Feeling a longing within herself, she dons hauberk and helmet, learns a few heroic stanzas and the details of their apparel and characteristics, and then sets out for the camp. Her name is duly entered in the lists, but when she reports for inspection, she is ordered to take off the helmet and armor to see what is underneath, and to be tried in combat. When she complies, it turns out that she is a feeble old crone, and she is told, "You only came to mock the king and his court!—Take her away and throw her under the elephant's feet." And she is flung under it to be trampled.

Thus will be the state of pretenders to Sufism on the Day of Judgement, when they stand revealed and are brought before the Supreme Judge, who looks at hearts, not patched clothes or Sufi dress.

والأبطال من المقاتلين تثبت أسماؤهم في الديوان، ويقطع كل واحد منهم قطراً من أقطار الأرض. فاشتاقت نفسها إلى ذلك فلبست درعاً ووضعت على رأسها مغفراً، وتعلمت من رَجَز الأبطال أبياتاً، وتعلمت زيهم وجمع شمائلهم، ثم توجهت إلى العسكر، فكتب اسمها في ديوان الشجعان. فلما حضرت في ديوان العرض، أمرت بتجريد المغفر والدرع لينظر ما تحته وتمتحن بالمبارزة. فلما جردت إذا هي عجوز ضعيفة زمنة، فقيل لها: جئت تستهزئين بالملك وأهل حضرته. خذوها وألقوها بين يدي الفيل، فألقيت إليه.

فهكذا يكون حال المدعين التصوف في القيامة إذا كشف عنهم الغطاء، وعرضوا على الحاكم الأكبر الذي ينظر إلى القلب لا إلى المرقعات والزي.

s4.2 Others claim to have attained to gnosis and contemplative knowledge of the Divine, to have passed through spiritual stations and states, and to have reached nearness to Allah, while they know nothing of any of this except the words. You might see one of them reiterating these terms, thinking it above the combined learning of the first and last, and looking with condescension upon the scholars of Sacred Law, hadith, and other disciplines, to say nothing of ordinary Muslims. Sometimes a common person will keep their company for many days, picking up these artificial phrases and parroting them as if he were speaking divine revelation, with sneering contempt for scholars and worshippers, saying that they are veiled from Allah (A: which could be true, though saying it by way of self-praise is very wrong) while he has attained to the Truth, and that he is one of those brought near to Allah—while Allah considers him a debauched hypocrite, and the transformed ones know him to be an ignorant fool who has not acquired sound knowledge, perfected his character, or kept watch over his heart, but merely pursued his own fancy and memorized a lot of gibberish.

s4.2 وفرقة أخرى ادعت علم المعرفة، ومشاهدة الحق، ومجاوزة المقامات والأحوال، والوصول إلى القرب، ولا يعرفون من تلك الأمور إلا الأسماء. فترى أحدهم يرددها ويظن أن ذلك أعلى من علم الأولين والآخرين، فهو ينظر إلى الفقهاء والمحدثين وأصناف العلماء بعين الازدراء، فضلاً عن العوام. حتى إن بعض العامة يلازمهم الأيام الكثيرة، ويتلقف منهم تلك الكلمات المزيفة، ويرددها كأنه يتكلم عن الوحي، ويحتقر في ذلك جميع العلماء والعباد، ويقول: إنهم محجوبون عن الله وإنه هو الواصل إلى الحق، وإنه من المقربين، وهو عند الله من الفجار المنافقين، وعند أرباب القلوب من الحمقى الجاهلين. لم يُحكم علماً ولم يهذّب خلقاً، ولم يراقب قلباً سوى اتباع الهوى وحفظ الهذيان.

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s4.3 Others roll up and put away the carpet of the Sacred Law, rejecting its rulings and considering the unlawful and the lawful to be equal, saying, "Allah does not need my works, so why should I bother?" One of them may say, "Outward devotions have no value, only hearts mean anything. Our hearts are aflame with the love of Allah Most High, and we have attained to gnosis of Him. If we are bodily immersed in this world, yet our hearts are in worshipful seclusion in the presence of the Divine. Outwardly we may give in to our desires, but not in our hearts." They claim to have surpassed the rank of the common people, beyond the need to school the lower self with physical devotions, and that gratifying bodily lusts does not divert them from the path of Allah Most High because of their firmness therein. They exalt themselves above the level of the prophets (upon whom be peace) who used to weep for years over a single mistake.

s4.3 وفرقة منهم طووا بساط الشرع، ورفضوا الأحكام، وسووا بين الحلال والحرام، وبعضهم يقول: إن الله مستغن عن عملي فلمَ أتعب نفسي؟ وبعضهم يقول: لا قدر للأعمال بالجوارح، وإنما النظر إلى القلوب، وقلوبنا والهة بحب الله تعالى، وواصلة إلى معرفته، وإنما نخوض في الدنيا بأبداننا، وقلوبنا عاكفة في الحضرة الربانية، فنحن مع الشهوات بالظواهر لا بالقلوب، ويزعمون أنهم قد ترقوا عن رتبة العوام، واستغنوا عن تهذيب النفس بالأعمال البدنية، وأن الشهوات لا تصدهم عن طريق الله تعالى لقوتهم فيها ويرفعون أنفسهم عن درجة الأنبياء، لأن الأنبياء عليهم السلام كانوا يبكون على خطيئة واحدة سنين.

s4.4 (n: As no age is without pretenders to Sufism, the following texts will hopefully be useful in letting some principal Sufis describe in their own words the delusions of those who consider themselves "above the Sacred Law.")

s4.5 (Ibn 'Ajiba:) Someone said to Junayd, "There is a group who claim they arrive to a state in which legal responsibility no longer applies to them." "They have arrived," he replied, "but to hell" (*Iqaz al-himam fi sharh al-Hikam* (y54), 210).

s4.5 (ابن عجيبة:) الجنيد [رضي الله عنه . . .] قيل له إن جماعة يزعمون أنهم يصلون إلى حالة يسقط عنهم التكليف. قال: وصلوا ولكن إلى سقر [محرر من إيقاظ الهمم في شرح الحكم: ٢١٠].

s4.6 (Ghazali:) When anyone claims there is a state between him and Allah relieving him of the need to obey the Sacred Law such that the prayer, fasting, and so forth are not obligatory for him, or that drinking wine and taking other people's money are permissible for him—as some pretenders to Sufism, namely those "above the Sacred Law" (ibahiyyun) have claimed—there is no doubt that the imam of the Muslims or his representative is obliged to kill him. Some hold that executing such a person is better in Allah's sight than killing a hundred unbelievers in the path of Allah Most High (*Hashiya al-Shaykh Ibrahim al-Bajuri* (y5), 2.267).

s4.6 (الإمام الغزالي:) لو زعم زاعم أن بينه وبين الله حالة أسقطت عنه التكليف بحيث لا يجب عليه الصلاة ولا الصوم ونحوهما وأحلت له شرب الخمر وأكل أموال الناس، كما زعمه بعض من يدعي التصوف وهم الإباحيون فلا شك في وجوب قتله على الإمام أو نائبه بل قال بعضهم قتل واحد منهم أفضل عند الله من قتل مائة حربي في سبيل الله تعالى [نقل من حاشية الباجوري على ابن قاسم: ٢/ ٢٦٧].

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s4.7 (Muhyiddin ibn al-'Arabi:) When we see someone in this Community who claims to be able to guide others to Allah, but is remiss in but one rule of the Sacred Law—even if he manifests miracles that stagger the mind—asserting that his shortcoming is a special dispensation for him, we do not even turn to look at him, for such a person is not a sheikh, nor is he speaking the truth, for no one is entrusted with the secrets of Allah Most High save one in whom the ordinances of the Sacred Law are preserved (*Jami' karamat al-awliya'* (y95), 1.3).

s4.7 (محيي الدين بن العربي:) إذا رأينا مَن يدعي في هذه الأمة مقام الدعاء إلى الله تعالى على بصيرة ويخل بأدب من آداب الشريعة ولو ظهر عليه من خرق العوائد ما يبهر العقول ويقوّل إن ذلك أدب يخصه لا نلتفت إليه وليس بشيخ ولا محق فإنه لا يؤمن على أسرار الله تعالى إلا من يحفظ عليه آداب الشريعة [نقل من جامع كرامات الأولياء: ١/ ٣].

s4.8 (Sheikh Ahmad al-'Alawi:) The friend of Allah (wali) is not divinely protected from error, for which reason he is to be feared for and his word is not to be relied upon when it exceeds what has been conveyed by the sunna concerning matters of the afterlife, because he is suspended from making any new provisions in the Sacred Law, and in respect to the prophets (upon whom be peace) he is not a guide. He is only entitled to believe what the Lawgiver has informed of.

"Today I have perfected your religion for you and completed My favor upon you, and I please that Islam be your religion" (Koran 5:3).

The gnostic in the first of his states is strongly affected by the initial impact, and will sometimes try to take on a discussion of the affairs of the afterlife, as opposed to the final state, in which he may be so quiescent that an unknowing observer might assume its strength had waned, though this is rather the result of his perfection and firmness in his station. It has been said that the way begins in madness, proceeds to arts, and ends in quietude. So one is obliged, whenever one's rapture subsides, to return to what the Lawgiver has stated, without personal figurative interpretations. This is why our author says, "Faith is incisive," meaning that one cuts the self short whenever it wants eminence and elevation. The gnostic's spiritual will, exalted above all else, must carry him beyond what we have just mentioned. For he is outside our phenomenal frame of reference and all it contains, and whenever he wants to speak about things of the afterlife his words are high, unintel-

s4.8 (الشيخ أحمد العلوي:) والولي ليس بمعصوم فلهذا يخاف عليه ولا يعمل بمقاله أي فيما زاد على السنة من أحوال الآخرة لأنه محجور عليه في التشريع فهو غير مرشد بالنسبة للمرسلين عليهم السلام وليس له إلا الإيمان بما أخبر به الشارع.

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا﴾.

لأن العارف في ابتداء حاله تطرأ عليه قوة الابتداء حتى ربما يمد يده في أمور الآخرة بخلاف حالة الانتهاء فقد يسكن سكوناً تاماً حتى يظن الجاهل أنه نقص من حاله وكل ذلك من كماله ورسوخه في مقامه قد قيل إن الطريقة أولها جنون ووسطها فنون وآخرها سكون وعليه كلما سكنت روعته وجب عليه الرجوع فيما أخبر به الشارع بدون تأويل منه ولهذا قال الناظم الإيمان جزم أي يقطع نفسه كلما أرادت العلو والارتفاع لأن العارف يحمله عما ذكرنا علو همته عن الكل إذ هو خارج عن المظهر وما فيه وكلما أراد أن يتكلم بأحوال الآخرة يتكلم بكلام عال

ligible, and a source of trouble to both those who believe him and those who do not, which is why he is forbidden speech about it, and as much as he increasingly forgoes it, he increases in nearness to Allah and in safety. Sufis call this station *subsistence* (baqa'). Before a disciple is firmly established therein, it is to be feared that he will be overtaken by misfortune because of his lack of a foothold in the state of subsistence, a juncture that has been called "from annihilation to subsistence, or annihilation to perdition" (*al-Minah al-quddusiyya fi sharh al-Murshid al-mu'in bi tariq al-Sufiyya* (y8), 67–68).

غير معقول فيكون فتنة على من صدقه وعلى من لم يصدقه فلهذا منع من الكلام وكلما تنازل وازداد في التنازل ازداد قرباً من الله وأماناً وهذا المقام هو المسمى عند القوم بمقام البقاء ويخاف على المريد قبل رسوخه فيه أن يغلب عليه الشقاء لعدم تمكنه من البقاء ولهذا يقال من الفناء للبقاء أو من الفناء للشقاء [نقل من المنح القدوسية في شرح المرشد المعين بطريق الصوفية: ٦٧ - ٦٨].

s4.9 ('Abd al-Karim Jili:) My brother, Allah have mercy on you, I have travelled to the remotest cities and dealt with all types of people, but never has my eye seen, nor ear heard of, nor is there any uglier or farther from the presence of Allah Most High than a certain group who pretend they are accomplished Sufis, claiming for themselves a lineal spiritual tradition from the perfected ones and appearing in their guise, while they do not believe in Allah, His messengers, or the Last Day, and do not comply with the responsibilities of the Sacred Law, depicting the states of the prophets and their messages in a manner that no one with a particle of faith in his heart can accept, let alone someone who has reached the level of those to whom the unseen is disclosed and who have gnostic insight. We have seen a great number of their luminaries in cities in Azerbaijan, Shirwan, Jilan, and Khurasan, may Allah curse them all (*Idah al-maqsud min wahdat al-wujud* (y98), 17–18).

s4.9 (عبد الكريم الجيلي:) يا أخي رحمك الله قد سافرت إلى أقصى البلاد، وعاشرت أصناف العباد، فما رأت عيني ولا سمعت أذني، ولا أقبح ولا أبعد عن جناب الله تعالى من طائفة تدعي أنها من كُمّل الصوفية وتنسب نفسها إلى الكُمّل وتظهر بصورتهم، ومع هذا لا تؤمن بالله ورسله ولا باليوم الآخر، ولا تتقيد بالتكاليف الشرعية وتقرر أحوال الرسل وما جاءوا به بوجه لا يرتضيه من في قلبه مثقال ذرة من الإيمان، فكيف من وصل إلى مراتب أهل الكشف والعيان، ورأينا منهم جماعة كثيرة من أكابرهم في بلاد أذربيجان وشيروان وجيلان وخراسان، لعن الله جميعهم [نقل من إيضاح المقصود من وحدة الوجود: ١٧ - ١٨].

s4.10 The delusions of those "above the Sacred Law" are beyond number, all of it mistakes and inner suggestions with which the Devil has tricked them because of their having taken up spiritual struggle before they mastered the rules of the Sacred Law, and they did not connect themselves with a sheikh of learning and religion worthy of being followed (dis: w9.5–9).

s4.10 وأصناف غرور أهل الإباحة لا تحصى، وكل ذلك أغاليط ووساوس خدعهم الشيطان بها لاشتغالهم بالمجاهدة قبل إحكام العلم، من غير اقتداء بشيخ صاحب علم ودين صالح للاقتداء به.

s4.11 Other students of Sufism proceed on the right path, engage in spiritual struggle, begin to

s4.11 ومنهم فرقة أخرى جاوزوا هذه الطريق، واشتغلوا بالمجاهدة

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actually travel in the way, and the door of gnosis, contemplative knowledge of the Divine, opens to them. But when they sniff the first traces of this knowledge, it surprises them and they exult in it and are pleased by the strangeness of it, until their hearts become fettered with turning to it and thinking about it, and how it was disclosed to them but not others. And all of this is delusion, for the wonders met with in the path of Allah Glorious and Exalted are endless. If one stops with a particular marvel and becomes enamored with it, one's progress falters and one fails to reach the goal. Such a person is like someone going to see a king, who notices a garden at the palace gate with flowers in it, the like of which he has never seen, and who stops to look at them until there is no longer time to meet the king.

وابتدؤوا بسلوك الطريق وانفتح لهم باب المعرفة، فلما استنشقوا مبادىء ريح المعرفة، تعجبوا منها وفرحوا بها وأعجبهم غريبها، فتقيدت قلوبهم بالالتفات إليها والتفكر فيها، وكيفية انفتاح بابها عليهم وانسدادها عن غيرهم، وكل ذلك غرور لأن عجائب طريق الله سبحانه وتعالى، ليس لها نهاية. ولو وقف مع كل أعجوبة وتقيد بها، قصرت خطاه وأخرّه عن الوصول إلى القصد وكان مثاله مثال من قصد ملكاً، فرأى على بابه روضة فيها أزهار لم يكن رأى مثلها، فوقف ينظر إليها حتى فاته الوقت الذي يمكن فيه لقاء الملك.

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s5.0 THE DELUSIONS OF THE WEALTHY

s5.0 غرور أرباب الأموال

s5.1 The deluded among the wealthy are of various types. Some of them eagerly build mosques, schools, hospices, aqueducts, whatever people can see, and write their names upon them to perpetuate their memory and keep it alive after their death, while if one of them were called upon to spend a single dinar on something that did not have his name on it, it would be a burden for him. If not for the fact that his aim is other people and not Allah Himself, this would not be so hard for him, as Allah is looking at him whether he writes his name or not.

Others spend money embellishing mosques with ornamentation and bas-reliefs, which are prohibited by Sacred Law and distracting to the people praying in them. The aim in prayer is humble awe and an attentive heart, while this ornamentation spoils the hearts of those praying. And if the money spent on such things is from an unlawful source to begin with, so much greater the delusion. Malik ibn Dinar (Allah have mercy on him) said, "A man came to a mosque, stopped at the entrance, and said, 'Someone like me does not

s5.1 وهم فرق. ففرقة منهم يحرصون على بناء المساجد والمدارس والرباطات والقناطر وما يظهر للناس ويكتبون أسماءهم عليها ليتخلد ذكرهم، ويبقى بعد الموت أثرهم، ولو كلف أحدهم أن ينفق ديناراً ولا يكتب اسمه في الموضع الذي أنفق عليه لشق عليه. ولولا أنه يريد وجه الناس لا وجه الله لما شق عليه ذلك، فإن الله يطلع عليه، سواء كتب اسمه أو لم يكتبه.

وبعضهم يصرف المال في زخرفة المسجد وتزيينه بالنقوش التي هي منهي عنها وشاغلة للمصلين، فإن المقصود من الصلاة الخشوع وحضور القلب، وذلك يفسد قلوب المصلين. فأمّا إن كان المال الذي صرفه في ذلك حراماً كان أشد في الغرور. قال مالك بن دينار رحمه الله: أتى رجل مسجداً فوقف على الباب وقال، مثلي لا يدخل بيت الله، فكتب

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enter a house of Allah'—for which he was accorded the rank of those with perfect faith (siddiq)." And this is how we should revere mosques, by seeing them as defiled by our entering them with our self as bad as it is, an affront to them; not by seeing to their defilement with the unlawful and with this-worldly embellishment, trying to outdo Allah Most High. The delusion of someone who does this is in thinking the wrong to be right.

في مكانه صديقاً. فبهذا ينبغي أن تعظم المساجد، وهو أن يرى تلويث المسجد بدخوله فيه بنفسه جناية على المسجد، لا أن يرى تلويث المسجد بالحرام، أو بزخرف الدنيا منه على الله تعالى، فغرور هذا من حيث أنه يرى المنكر معروفاً.

s5.2 Others protect their money, holding fast to it with the tight fist of greed, and then occupy themselves with bodily works of worship that do not cost much, like fasting, prayer, or reciting the whole Koran. They are deluded, for stinginess is deadly (dis: p75.25) and has taken over their heart. They need to rid themselves of it by spending of their wealth, but are too busy with supererogatory works to do so. They are like someone who, when a snake has entered his clothes, sets about cooking up a syrup of vinegar and honey to reduce his bile.

s5.2 وفرقة أخرى يحفظون الأموال ويمسكونها بخلاً، ثم يشتغلون بالعبادات البدنية التي لا تحتاج إلى نفقة المال، كالصيام والصلاة وختم القرآن وهم مغرورون لأن البخل مهلك، وقد استولى على قلوبهم، فهم محتاجون إلى قمعه بإخراج المال، فقد اشتغلوا عنه بفضائل لا تجب عليهم. ومثالهم مثال من دخلت في ثوبه حيّة، فاشتغل عنها بطبخ السكنجبين لتسكن به الصفراء.

s5.3 There are others whose selfishness will not let them give anything but zakat. One of them may pay out the worst property he has, or give it to those of the poor who are useful to him, vacillating between which of his ulterior motives can best be served, or as to whom he may have use for in the future or is "good for something" in particular. Another may deliver his zakat to a prominent public figure so he will consider him to be someone and later fulfill his needs. And all of this invalidates the intention, the person who does it being deluded by wanting recompense from others for worshipping Allah Most High.

s5.3 ومنهم من لا تسمح نفسه إلا بأداء الزكاة فقط، فيخرج الرديء من المال، أو يعطي من الفقراء من يخدمه، ويتردد في حاجاته، أو من يحتاج إليه في المستقبل أو من له فيه غرض. ومنهم من يسلم من ذلك إلى بعض الأكابر ليفرقه، لينال بذلك عنده منزلة ويقوم بحوائجه، وكل ذلك مفسد للنية وصاحبه مغرور لأنه يطلب بعبادة الله تعالى عوضاً عن غيره.

s5.4 Some wealthy people and others are deluded by frequenting circles of *dhikr* (remembrance of Allah), thinking that merely attending them will take the place of works and of a sober look at the afterlife, though it is not so, for circles of *dhikr* are only commendable in that they motivate one to do good. And anything that is a means to something else is pointless if it does not achieve

s5.4 وفرقة أخرى من أرباب الأموال وغيرهم، اغتروا بحضور مجالس الذكر، وظنوا أن نفس الحضور يغنيهم عن العمل والاتعاظ، وليس كذلك لأن مجلس الذكر إنما فضل لكونه مرغباً في الخير، وكل ما يراد لغيره إذا لم

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it. When one of them hears something that creates fear of divine punishment, he says nothing more than, "O Protector, keep us safe," or "I take refuge in Allah," thinking he has done all that is necessary. He is like a sick person who comes to a group of doctors to hear what is happening. Or a hungry person who visits someone who can describe delicious food to him, and then leaves. It does not do him much good. And likewise with hearing acts of obedience described without applying them: every admonition that does not change something within one that affects one's actions is a case against one.

يوصل إلى ذلك الغير فلا وقع له. وربما سمع أحدهم التخويف، فلا يزيد على قوله: يا سلام سلم، أو: أعوذ بالله: ويظن أنه قد أتى بالمقصود. ومثال هذا كمثل مريض يحضر عند الأطباء فيسمع ما يجري، أو الجائع يحضر عند من يصف له الأطعمة اللذيذة ثم ينصرف فلا يغني ذلك عنه. فكذلك سماع وصف الطاعات دون العمل بها، فكل وعظ لم يغير منك صفة تتغير بها أفعالك فهو حجة عليك.

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s6.0 REMEDYING DELUSIONS

s6.0 معالجة الغرور

s6.1 If it be objected that I have not mentioned a single action which is free of delusion, the reply is that the matter of the afterlife hinges upon one thing alone: straightening out one's heart. And no one is incapable of it except someone whose intention is insincere. If a person were as concerned about the next world as this one, he would certainly achieve it. The early Muslims did so, and so have those who have followed them in excellence.

Three things can be used to help rid oneself of delusions:

(1) intelligence, the real light by which a person sees things as they are;

(2) knowledge, through which a person knows himself, his Lord, his this-worldly life, and the life to come;

(3) and learning, by which we mean learning how to travel the way to Allah Most High, the pitfalls therein, and learning what will bring one nearer and guide one, all of which may be found in this book (dis: s3.11(A:)).

When a person has done all this, he should be wary lest the Devil beguile him and make him desirous for leadership, or lest he feel secure from

s6.1 فإن قيل: فما ذكرت من مداخل الغرور أمراً لا يكاد يخلص منه؛ فالجواب: أن مدار أمر الآخرة على معنى واحد، وهو تقويم القلب، ولا يعجز عن ذلك إلا من لم تصدق نيته. فإن الإنسان لو اهتم بأمر الآخرة كما اهتم بأمر الدنيا لنالها. وقد فعل ذلك السلف الصالح ومن تبعهم بإحسان.

ويستعان على التخلص من الغرور بثلاثة أشياء:

- العقل وهو النور الأصلي الذي يدرك به الإنسان حقائق الأشياء.
- المعرفة التي يعرف بها الإنسان نفسه وربه ودنياه وآخرته.

[...] - والعلم، نعني به العلم بكيفية سلوك الطريق إلى الله تعالى وآفاتها، والعلم بما يقربه منه ويهديه، وجميع ذلك في كتابنا هذا.

[...] وإذا فعل جميع ذلك ينبغي أن يكون خائفاً أن يخدعه الشيطان، ويدعوه إلى الرياسة ويخاف عليه أيضاً من الأمن

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Allah's devising (def: p66). Fear should never be absent from the hearts of the friends (awliya') of Allah. We ask Allah to protect us from delusion and that we may end our lives well. Truly, He is near and answers supplications (*Mukhtasar Minhaj al-qasidin* (y62), 237–50).

من مكر الله تعالى. [. . .] فلا ينبغي أن يفارق الخوف قلوب الأولياء أبداً. نسأل الله تعالى السلامة من الغرور، وحسن الخاتمة، إنه قريب مجيب [محرر من مختصر منهاج القاصدين: ٢٣٧ - ٢٥٠].

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BOOK T

A PURE HEART

كتاب القلب السليم

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t1.0 INTENTION, SINCERITY, AND BEING TRUE

INTENTION

t1.1 (Nawawi:) Allah Most High says,

"Whoever leaves home to emigrate to Allah and His messenger but whom death overtakes: paying his recompense falls to Allah" (Koran 4:100).

The Prophet (Allah bless him and give him peace) said:

t1.0 النية والإخلاص والصدق

النية

t1.1 (النووي:) قال الله تعالى:

﴿وَمَنْ يَخْرُجْ مِنْ بَيْتِهِ مُهَاجِرًا إِلَى اللَّهِ وَرَسُولِهِ ثُمَّ يُدْرِكْهُ الْمَوْتُ فَقَدْ وَقَعَ أَجْرُهُ عَلَى اللَّهِ﴾ [النساء: ١٠٠].

[وروينا عن أمير المؤمنين عمر بن الخطاب رضي الله عنه قال: سمعت] رسول الله ﷺ يقول: «إنما الأعمال

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"Works are only according to intentions, and a man only receives what he intends. Whoever's emigration was to Allah and His messenger has truly emigrated to Allah and His messenger; and whoever's emigration was for worldly gain or to wed a woman, his is for that to which he emigrated."

This is a hadith whose authenticity Bukhari and Muslim agree upon, and there is complete scholarly consensus on the greatness of its rank and majesty. It is one of the cornerstones, fundamental supports, and most important integrals of faith. Imam Shafi'i (Allah have mercy on him) said it enters into seventy chapters of jurisprudence. He also said it constitutes one-third of Sacred Knowledge.

بالنيّات وإنّما لكلّ امرىء ما نوى فمن كانت هجرته إلى الله ورسوله فهجرته إلى الله ورسوله ومن كانت هجرته لدنيا يُصيبها أو امرأة ينكحها فهجرته إلى ما هاجر إليه».

وهو حديث صحيح متفق على صحته مجمع على عظم موقعه وجلالته وهو إحدى قواعد الإيمان وأول دعائمه وآكد الأركان. قال الشافعي رحمه الله يدخل هذا الحديث في سبعين باباً من الفقه: وقال أيضاً هو ثلث العلم.

SINCERITY (IKHLAS)

الإخلاص

t1.2 Allah Most High says:

(1) "Nor were they commanded save to worship Him, sincere to Him in their religion" (Koran 98:5).

(2) "So worship Allah with sincerity" (Koran 39:2).

t1.2 قال الله تعالى:

﴿وَمَا أُمِرُوا إِلَّا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ﴾ [البينة: ٥].

وقال تعالى:

﴿فَاعْبُدِ اللَّهَ مُخْلِصًا﴾ [الزمر: ٢].

[...].

t1.3 The Master Abul Qasim Qushayri (Allah have mercy on him) said: "Sincerity is to make Allah one's sole aim in acts of obedience, meaning to intend by one's obedience to draw nearer to Allah Most High and nothing else, whether hypocrisy before others, acquiring esteem in their eyes, love of their praise, or anything besides drawing nearer to Allah. One could say that sincerity is purifying the mind from paying attention to one's fellow creatures."

t1.3 وعن الأستاذ أبي القاسم القشيري رحمه الله [في رسالته المشهورة] قال: الإخلاص إفراد الحق في الطاعة بالقصد وهو أن يريد بطاعته التقرب إلى الله تعالى دون شيء آخر من تصنع لمخلوق أو اكتساب محمدة عند الناس أو محبة مدح من الخلق أو شيء سوى التقرب إلى الله تعالى قال ويصح أن يقال الإخلاص تصفية العقل عن ملاحظة المخلوقين. [...].

t1.4 Abu 'Uthman (Allah have mercy on him) said, "Sincerity it to forget to regard men by continuously regarding their Maker." He also said, "The sincerity of ordinary people is that which is

t1.4 وعن أبي عثمان رحمه الله قال: الإخلاص نسيان رؤية الخلق بدوام النظر إلى الخالق. [...] وعن أبي

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free of self-interest, while the sincerity of the elect is that which comes over them, not from them, for acts of worship appear in them from which they are at a remove, and neither observe nor consider" (*al-Majmu'* (y108), 1.16–17).

عثمان قال: إخلاص العوام ما لا يكون للنفس فيه حظ وإخلاص الخواص ما يجري عليهم لا بهم فتبدو منهم الطاعات وهم عنها بمعزل ولا يقع لهم عليها روية ولا بها اعتداد [محرر من المجموع: ١/ ١٦ - ١٧؛ بتقديم وتأخير].

t1.5 (Nawawi:) Abu Yazid (Allah Most High be well pleased with him) said:

"For twelve years I was the blacksmith of my soul; for five, the mirror of my heart; for one year I observed what was between them, and lo, around my waist I found the girdle of unbelief (zunnar) in plain view. So I worked for five years at cutting it, seeking a way to dissever it, until at length this was revealed to me and looking at mankind, I saw them as dead and prayed a fourfold Allahu Akbar over them."

Sufficient to show the subtlety of the hiddenness of ostentation is the difficulty with which this master recognized it, who had few equals in this path. As for his remark "I saw them as dead," it is of the greatest worth and excellence, words that express this meaning being seldom met with outside those of the Prophet (Allah bless him and give him peace). What it signifies is that when he underwent this spiritual struggle and his lower self became trained and his heart enlightened, when he had mastered the self, subdued it, taken full possession of it, and made it submit in everything, he looked at all creatures and found them as if dead, without discoverable trait. They could not harm or benefit, bestow or keep back, give life or death, join or separate, bring close or make far, save or damn, give sustenance or withhold it; they possessed neither benefit nor harm to themselves, neither life nor death, nor resurrection. Now, the dead are dealt with, regarding these things, as deceased, and they are not feared, nor are hopes placed in them, nor does desire arise for what they have. We do not do anything for their sake, refrain from anything for their sake, or forgo any act of obedience to Allah for their sake, any more than we would to win the praise of the dead. They are not shown-off in front of, their favor is not

t1.5 (النووي:) قال أبو يزيد رضي الله تعالى عنه: كنت ثنتي عشرة سنة حداد نفسي، وخمس سنين كنت مرآة قلبي، وسنةً أنظر فيما بينهما فإذا في وسطي زنار ظاهر. فعملت في قطعه خمس سنين أنظر كيف أقطع، فكُشِفَ لي فنظرت إلى الخلق فرأيتهم موتى، فكبرت عليهم أربع تكبيرات [...].

[قلت:] يكفي في شدة خفاء الرياء اشتباهه هذا الاشتباه على هذا السيد الذي عز نظيره في هذا الطريق. وأما قوله: فرأيتهم موتى؛ فهو في غاية من النفاسة والحسن قل أن يوجد في غير كلام النبي ﷺ كلام يحصل معناه [...]. فمعناه أنه لما جاهد هذه المجاهدة، وتهذبت نفسه، واستنار قلبه، واستولى على نفسه وقهرها، وملكها ملكاً تاماً، وانقادت له انقياداً خالصاً، نظر إلى جميع المخلوقين لوجدهم موتى لا حكمَ لهم. فلا يضرون ولا ينفعون، ولا يعطون ولا يمنعون، ولا يحيون ولا يميتون، ولا يَصِلون ولا يقطعون، ولا يقربون ولا يبعدون، ولا يسعدون ولا يشقون، ولا يرزقون ولا يحرمون، ولا يملكون لأنفسهم نفعاً ولا ضراً، ولا يملكون موتاً ولا حياة ولا نشوراً. وهذا صفة الأموات أن يعاملوا معاملة الموتى في هذه الأمور المذكورة، وأن لا يُخافوا ولا يُرجَوا ولا يطمع فيما عندهم [...]، ولا نفعل شيئاً لهم، أو نتركه لهم، ولا نمتنع من القيام بشيء من طاعات الله بسببهم ولا نمتنع من ذلك بسبب الميت فنكترث بمدحهم [...]. ولا يراءوا ولا يداهنوا، أو يُشتغل بهم،

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sought through flattery or compromise of principles, and they do not occupy one's attention. They are not held in contempt or disparaged; their defects are unmentioned, their shameful points unsought out, their mistakes uncriticized; though if penalties prescribed by Sacred Law are incurred, we enforce them. In short, they are as though nonexistent in everything we have mentioned, the decisions of Allah Most High holding sway over them. Whoever deals with them accordingly has attained to the good of this world and the next. May Allah Most Generous give us success in realizing it (*Bustan al-'arifin* (y104), 131–34).

ولا يحتقروا ولا ينتقصوا، ولا تُذكر عيوبهم. ولا تُتبع عثراتهم، ولا ينقب عن زلاتهم [. . .] مع أنّا نقيم عليهم ما جاء الشرع به من الحدود [. . .] فالحاصل أنهم كالعدم في جميع ما ذكرناه [فهم مدبّرون] تجري فيهم أحكام الله تعالى. فمن عاملهم هذه المعاملة جمع خير الآخرة والدنيا. نسأل الله الكريم التوفيق لذلك [محرّر من بستان العارفين: ١٣١ - ١٣٤؛ بتقديم وتأخير].

BEING TRUE (SIDQ)

الصدق

t1.6 (Nawawi:) As for being true, Allah Most High says,

"O you who believe, fear Allah, and be with those who are true" (Koran 9:119).

t1.6 (النووي:) وأما الصدق فقال الله تعالى:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَكُونُوا مَعَ الصَّادِقِينَ﴾ [التوبة: ١١٩].

t1.7 Sahl ibn 'Abdullah Tustari said, "The servant who compromises his principles, for himself or another, will never catch even a scent of being true."

t1.7 [وروينا عن] سهل بن عبد الله التستري قال: لا يشم رائحة الصدق عبد داهن نفسه أو غيره. [. . .].

t1.8 It is related that Harith al-Muhasibi (Allah have mercy on him) said: "A person who is true would not care if his whole value vanished from the hearts of men for the sake of bettering his heart. He does not like people seeing the smallest bit of his good acts, and does not mind their noticing the worst of them, for to be otherwise would show he wants to be more in their eyes, and this is out of character for those of great faith (siddiqin)."

t1.8 وعن الحارث [بن أسد] المحاسبي [بضم الميم] رحمه الله قال: الصادق هو الذي لا يبالي لو خرج كل قدر له في قلوب الخلق من أجل صلاح قلبه ولا يحب اطلاع الناس على مثاقيل الذر من حسن عمله ولا يكره اطلاعهم على السيء من عمله لأن كراهته ذلك دليل على أنه يحب الزيادة عندهم وليس هذا من أخلاق الصديقين. [. . .].

t1.9 Dhul Nun al-Misri (Allah have mercy on him) said: "Truth is the sword of Allah. Whatever it is put to, it cuts" (*al-Majmu'* (y108), 1.17).

t1.9 وعن ذي النون رحمه الله قال: الصدق سيف الله ما وضع على شيء إلا قطعه [محرر من المجموع: ١/ ١٧؛ بتقديم وتأخير].

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t2.0 A LETTER TO ONE OF THE BRETHREN

t2.1 (Ibn 'Ata' Illah:) I know of nothing more useful to you than four matters: surrender to Allah, to humbly entreat Him, to think the best of Him, and to perpetually renew your repentance to Him, even if you should repeat a sin seventy times in a day.

SURRENDER TO ALLAH

t2.2 Surrender to Him gives you relief in the present life from having to plan while He does, triumph in the next life through the supreme favor, and safety from the idolatry of contention, for how should you contend with Him for something you do not own with Him? Cast yourself amidst His kingdom, meager in its plentitude and insignificant in its vastness, and He will plan for you as He does for it. Do not leave the slavehood that is yours for claims to a lordship that you have no claim to. To plan and choose for oneself are enormities with respect to hearts and inmost souls, as you find it the Book of Allah Most High where Allah says:

"Your Lord creates whatever He wills and chooses, and they do not have a choice. Glory be to Allah above what they associate with Him" (Koran 28:68).

EARNESTLY ENTREATING ALLAH

t2.3 As for earnestly entreating Allah, in it lies the coming of increase, lifting of hardships, enwrapment in mantles of divine gifts, and safety from affliction. One is repaid for it in times of hardship by the Master's undertaking one's protection, and in times of ease by His seeing to one's gain. It is the greatest threshold and straightest way. It is effectual despite unbelief, so how could it be ineffectual with faith? Have you not heard the words of Allah Most High:

t2.0 كتاب لبعض الإخوان

t2.1 (ابن عطاء الله:) وبعد، فلا أرى شيئاً أنفع لك من أمور أربعة: الاستسلام إلى الله، والتضرع إليه، وحسن الظن به، وتجديد التوبة إليه ولو عدتَ إلى الذنب في اليوم سبعين مرة.

الاستسلام لله تعالى

t2.2 ففي الاستسلام إليه الراحةُ من التدبير معه عاجلاً والظفر بالمنة العظمى آجلاً، والسلامةُ من الشرك بالمنازعة، ومن أين لك أن تنازعه فيما لا تملك معه، وألقِ نفسك في مملكته فإنك قليل في كثيرها، وصغير في كبيرها، يدبّرك كما يدبّرها. فلا تخرج عما هو لك من العبودية إلى ما ليس لك من ادّعاء وصف الربوبية. فإن التدبير والاختيار من كبائر القلوب والأسرار وتجد ذلك في كتاب الله تعالى، قال الله تعالى:

﴿وَرَبُّكَ يَخْلُقُ مَا يَشَاءُ وَيَخْتَارُ مَا كَانَ لَهُمُ الْخِيَرَةُ سُبْحَانَهُ وَتَعَالَى عَمَّا يُشْرِكُونَ﴾ [القصص: ٦٨].

التضرع إلى الله تعالى

t2.3 وأما التضرع إلى الله تعالى ففيه نزولُ الزوائد، ورفعُ الشدائد، والانطواءُ في أردية المنن والسلامة من المحن، فتُعوَّضُ جزاء ذلك أن يتولّى مولاك الدفع عن نفسك في المضار والجلب لك في المسار. وهو الباب لك في المسار. وهو الباب الأعظم، والسبيل الأقوم، تؤثر مع الكفران، فكيف لا يؤثر مع الإيمان؟ ألم تسمع قوله تعالى:

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"And when you are touched by affliction at sea, those to whom you pray besides Him are lost, but when He delivers you to shore, you turn away. Surely man is an ingrate" (Koran 17:67)

—meaning that He answers you. Earnest entreaty is the door Allah Most High has placed between Himself and His servants. Gifts come to whomever betakes himself to it, and spiritual favors unceasingly reach whoever stands before it. Whoever enters unto Him by it attains to the reality of divine assistance. And whenever He releases unto you through it, He bestows of every good thing in the most lavish gift giving, as is found in the Book of Allah Most High where Allah says,

"If only they had earnestly entreated Us when Our vengeance reached them" (Koran 6:43).

﴿وَإِذَا مَسَّكُمُ الضُّرُّ فِي الْبَحْرِ ضَلَّ مَنْ تَدْعُونَ إِلَّا إِيَّاهُ فَلَمَّا نَجَّاكُمْ إِلَى الْبَرِّ أَعْرَضْتُمْ وَكَانَ الْإِنْسَانُ كَفُورًا﴾ [الإسراء: ٦٧].

أي فأجابكم. وهو الباب الذي جعله الله تعالى بينه وبين عباده. تَرِدُ واردات الألطاف على من توجّه إليه، وتتوالى المنن على من وقف به عليه. ويصل إلى حقيقة العناية من دخل منه إليه. ومتى فتح عليك به فتح عليك من كل خيراته وأوسع هباته. وتجد ذلك في كتاب الله تعالى قال الله تعالى:

﴿فَلَوْلَا إِذْ جَاءَهُمْ بَأْسُنَا تَضَرَّعُوا﴾ [الأنعام: ٤٣].

THINKING THE BEST OF ALLAH

حسن الظن بالله عز وجل

t2.4 As for thinking the best of Allah, how tremendous it is for whomever Allah has blessed with it. Whoever has it does not lack the slightest bit of good, and whoever lacks it will never find any. You will never have a better excuse to Allah than it, or one more profitable. Nor anything that better leads you to Allah or is more guidance giving. It informs one what Allah will make of one and gives good tidings the like of whose words no eye has ever read nor tongue given utterance to. This is found in the sunna of the Prophet (Allah bless him and give him peace), where he says, quoting Allah,

"I am nigh to what My servant expects of Me."

t2.4 وأما حسنُ الظن بالله فيخ بخٍ لمن منّ اللهُ عليه بها. فمن وجدها لم يفقد من الخير شيئاً، ومن فقدها لم يجد منه شيئاً. لا تجد لك عذراً عند الله أنفع لك منها ولا أجدى. ولا تجدُ أدلَّ على الله منها ولا أهدى. تُعلمك عن الله بما يريد أن يصنعه معك، وتبشّرك ببشائرَ لا تقرأ سطورها العينان، ولا يترجم عنها اللسان. وتجد ذلك في سنة رسول الله ﷺ حاكياً عن الله: «أنا عند ظن عبدي بي».

CONTINUALLY RENEWED REPENTANCE

تجديد التوبة

t2.5 As for continually renewing one's repentance to Allah, it is the wellspring of every spiritual rank and station from first to last, inwardly and outwardly. There is no excellence in

t2.5 وأما تجديد التوبة إليه فهي عين كل رتبةٍ ومقامٍ أوله وآخره، باطنه وظاهره، لا مزية لمن فقدها، ولا فقدَ

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one who lacks it, and nothing lacking in one who has it. It is the key to every good, outwardly and inwardly, the very soul of stations of wisdom, and the reason men are made friends of Allah (awliya'). If the repentance of the Axis of the World (Qutb) were like that of the ordinary righteous person because of equality in station, the higher of them would not surpass the other for his exaltedness of rank and tremendousness of spiritual certainty. Allah Most Glorious and Exalted has not made any rank below it except that of wrongdoing, as Allah Most High says,

"Whoever does not repent, they are the wrongdoers" (Koran 49:11),

it being required from every messenger and prophet, every great-faithed one (siddiq) and friend of Allah (wali), every godfearing pious person, misguided profligate, and every doomed unbeliever. You may find this in the Book of Allah Most High where Allah Glorious and Exalted says,

"O people: fear your Lord" (Koran 4:1),

godfearingness being through repentance to Him and regret before Him. The repentance of those who do evil lies in abandoning it, while the repentance of those who do good lies in not halting with their good, whether it consists of spiritual effort or its rewards. The repentance of both is the same: not to stop at it.

"... the faith of your father Ibrahim. He has named you Muslims" (Koran 22:78).

It was of Ibrahim's faith not to halt with what passes away, or fix his regard on existent things. In quoting him to us, Allah Most High says,

"I love not things which pass away" (Koran 6:76).

t2.6 In general, someone who cannot benefit from a little will not benefit from a lot (A: since a lot of work does not avail without sincerity), and someone who cannot profit from a hint will not

لمن وجدها، مفتاح كل خير ظاهر وباطن، روح المقامات وسبب الولايات. ولو استوت توبة القطب والصالح لاستواء مقامهما لم يرتفع عند رفيع المقام لرفعة شأنه ولعظيم إيقانه. لم يجعل الحق سبحانه وتعالى رتبة دونها إلا الظلم فقال سبحانه وتعالى:

﴿وَمَنْ لَمْ يَتُبْ فَأُولَئِكَ هُمُ الظَّالِمُونَ﴾ [الحجرات: ١١].

فهي مطلوبة من كل رسول ونبي وصدّيق وولي وبارّ تقيّ، وفاجر غويّ، وكافر شقيّ، وتجد ذلك في كتاب الله تعالى، قال الله سبحانه وتعالى:

﴿يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمْ﴾ [النساء: ١].

فتقواه بالتوبة إليه والندم بين يديه. فأهل الشرور توبتهم بالخروج من شرورهم، وأهل الخيور توبتهم بعدم الوقوف مع خيورهم وِرْداً كانت أو وارداً. كلاهما مع عدم الوقوف معهما واحدٌ.

﴿مِلَّةَ أَبِيكُمْ إِبْرَاهِيمَ هُوَ سَمَّاكُمُ الْمُسْلِمِينَ﴾ [الحج: ٧٨].

وإن من ملة إبراهيم عدم الوقوف مع الفانيات والانقطاع عن نظر الكائنات، قال الله سبحانه وتعالى مخبراً عنه:

﴿لَا أُحِبُّ الْآفِلِينَ﴾ [الأنعام: ٧٦].

t2.6 وبالجملة من لم ينفعه القليل لم ينفعه الكثير ومن لم تنفعه الإشارة لم

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profit from a plain remark. When Allah gives you understanding, your hearing will not cease nor your benefiting be restricted to a certain time. May Allah give us and you to understand Him, give us and you to hear Him, dissever us from everything besides Him, enter us into His shade and protection, and make us of those to whom He has given spiritual insight, guidance, and a yearning for His nearness. May He not scatter the intention of our hearts but rather center our purpose on Him, and remove our cares by bringing us to our destination. Ameen.

May there be safety for the whole group, and blessings and peace upon the Best of Messengers (*al-Hikam al-'Ata'iyya wa al-munajat al-ilahiyya* (y56), 103–9).

تنفع فيه العبارة. وإذا أفهمك الله لم ينقطع سماعك ولم يتحيّن انتفاعك. فهّمنا اللهُ وإيّاك عنه وأسمعنا وإيّاك منه وقطّعنا عن كل شيء سواه، وأدخلنا في كنفه وحماه، وجعلنا ممن بَصّرهُ وهداه، وإلى كنفه آواه، ولا شتّت قلوبنا، وجمع عليه همومنا، وأزال بالوصول كروبنا آمين. والسلامة على الجماعة أجمعين والصلاة والسلام على سيد المرسلين [نقل من الحكم العطائية والمناجاة الإلهية: ١٠٣ - ١٠٩].

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t3.0 COUNSELS AND MAXIMS

t3.0 النصائح والوصايا

t3.1 (Muhammad Sa'id Burhani:) Do not limit yourself to deep words and profound spiritual allusions but make provision for the afterlife before death comes, when fine words will be lost and the rak'as you prayed by night or day will remain.

t3.1 (محمد سعيد البرهاني:) لا تقتصر على العبارات ولا على الإشارات بل تزوّد لآخرتك قبل حلول المنون، حيث تذهب العبارات والإشارات ولا يبقى إلا ركعات ركعتها في ليل أو نهار.

t3.2 Give voluntary charity as much as possible, for you owe more than merely the zakat obligatory. Make provision for the afterlife by giving while you have health and want to cling to your money out of fear of poverty, seeing life before you. Allah Most High says.

"Whoever is watchful against the stinginess of his own soul, those shall be the successful" (Koran 59:9),

meaning they shall be saved.

t3.2 عليك بالإكثار من الصدقة النافلة فإنّ عليك في مالك حقاً زائداً على الزكاة المفروضة. فتزود لآخرتك وتصدق وأنت صحيح شحيح تخاف الفقر وتأمل الحياة. قال تعالى:

﴿وَمَنْ يُوقَ شُحَّ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ﴾.

أي الناجون.

t3.3 Never obey anyone of Allah's servants, even father or mother, in an act of disobedience to Allah, for there is no obedience to a creature in disobedience to the Creator.

t3.3 لا تطع أحداً من عباد الله ولو كان أباً أو أماً في معصية الله إذ لا طاعة لمخلوق في معصية الخالق.

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t3.4 Do not wrong another person, for wrongs done to others are clouds of darkness on the Day of Judgement. Wronging others includes not doing what Allah has obliged you to do for them.

t3.4 إيـاك والظـلم فإن الظـلم ظلمـات يوم القيـامة . ومن ظلم العباد أن تمنعهم حقوقا أوجب الله عليك أداءها إليهم .

t3.5 Beware of enmity against anyone who has said, "La ilaha ill Allah" (There is no god but Allah), for Allah has honored them with faith, and particularly the righteous of them, for Allah Most High says in a rigorously authenticated (sahih) hadith,

"He who makes an enemy of a friend of Mine, I declare war against."

t3.5 إيـاك ومعـاداة أهـل لا إلـه إلا الله ، فإن الله أكـرمهم بنعمـة الإيمـان خصـوصـا الصـالحين منهم . يقـول الله تعالى في الحديث الصحيح :

«من عادى لي وليا فقد آذنته بالحرب» .

t3.6 Tell the truth when you speak. It is one of the worst betrayals to tell your brother something he thinks you are being honest about when the matter is otherwise.

t3.6 عليـك بصـدق الكـلام إذ من أعظم الخيانة أن تحدّث أخاك حديثاً يرى أنك صادق فيه وأنت على غير ذلك .

t3.7 Be honest in your clothes and dress. It is an outrage against Allah to appear to His servants in the guise of the righteous while secretly contradicting it with the works of the wicked.

t3.7 عليـك بالصدق في قيـافتـك ولباسك لأنه من شدة الجراءة على الله أن تظهـر أمـام عبـاد الله بثيـاب الصـالحين وتبارزه سراً بأعمال الفاسقين .

t3.8 Recite the Koran and contemplate its meanings. Reflect while reading it on the qualities Allah has praised, with which He describes the people He loves. Acquire these qualities yourself and shun those Allah has condemned. Do your utmost to memorize the Holy Koran by acts as you do by words.

t3.8 عليـك بتـلاوة القرآن وتدبّره . وانظـر أثنـاء تلاوتـك إلى ما حمد الله من الصفـات التي وصف بهـا أحبابه فاتصف أنت بهـا ومـا ذمّ من الصفـات فاجتنبهـا . واجتهـد أن تحفظ القرآن الكريم بالعمل كما تحفظه بالتلاوة .

t3.9 Never explain a verse of the Holy Koran by your own opinion, but check as to how it has been understood by the scholars of Sacred Law and men of wisdom who came before you. If you comprehend something else by it and what you have understood contradicts the Sacred Law, forsake your wretched opinion and fling it against the wall.

t3.9 لا تفسّر آية من القرآن الكريم برأيـك بل ارجـع إلى ما فهم منهـا سلفك من علمـاء شرعيين وعـارفين وإن فهمت خلاف ذلـك وصـادم ما فهمت الشـرع المطهّر فاترك فهمك السـقيم واضرب به عرض الحائط .

t3.10 Beware lest you ever say anything that does not conform to the Sacred Law. Know that

t3.10 الله الله أن تنطق بلسـانك إلا بمـا يوافق الشـرع المطهّر . واعلم بأن

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the highest stage of the perfected ones (rijal) is the Sacred Law of Muhammad (Allah bless him and give him peace). And know that the esoteric that contravenes the exoteric is a fraud.

نهاية سير الرجال الشرع المحمدي. وكل باطن خالف الظاهر فهو باطل.

t3.11 Take care to eat lawful food bought with a lawful income, for the entire body of someone who eats what is lawful, his hearing, eyesight, hands, and feet, are disposed to obey Allah whether he wishes to or not; while the whole body of someone who eats the unlawful is disposed to do wrong whether he wants to or not.

t3.11 عليك بأكل الحلال، لأن من أكل الحلال انصرفت أعضاؤه - من سمع وبصر ويد ورجل - إلى طاعة الله شاء أو أبى. ومن أكل الحرام انصرفت أعضاؤه إلى المعاصي شاء أو أبى.

t3.12 Keep the thought of Allah Mighty and Majestic ever before you with respect to what He takes from you and what He gives. He takes away nothing except that you may show patience and win His love, for He loves the patient, and when He loves you, He will treat you as a lover does his beloved. And so too, when He gives to you, He bestows blessings upon you that you may give thanks, for He loves the thankful.

t3.12 عليك بمراقبة الله عز وجل فيما أخذ منك وفيما أعطاك. فإنه تعالى ما أخذ منك إلا لتصبر فيحبك لأنه يحب الصابرين، وإذا أحبك عاملك معاملة المحب لمحبوبه. وكذلك إذا أعطاك فإنه أنعم عليك لتشكر وإنه تعالى يحب الشاكرين.

t3.13 Do not walk a step, take a bite, or make a move without intending thereby to draw nearer to Allah.

t3.13 إياك أن تخطو خطوة أو تأكل لقمة أو تتحرك حركة إلا وأنت تنوي بها قربة إلى الله.

t3.14 Perform the remembrance of Allah (dhikr) silently and aloud, in a group and when alone, for Allah Most High says,

"Remember Me: I will remember you" (Koran 2:152).

It is sufficient as to its worth that Allah is remembering you as long as you are remembering Him.

t3.14 عليك بذكر الله في السر والعلن وفي الملأ وفي نفسك فإن الله تعالى يقول:
﴿فَاذْكُرُونِي أَذْكُرْكُمْ﴾ فكفى بك قدراً إذا كان الله لك ذاكراً ما دمت له ذاكراً.

t3.15 Give frequent utterance to the axiom of Islam "La ilaha ill Allah" (There is no god but Allah), for it is the greatest invocation (dhikr), as is mentioned in the hadith,

"The best thing I or any of the prophets before me have said is 'La ilaha ill Allah.'"

t3.15 أكثر من ذكر كلمة الإسلام «لا إله إلا الله» فإنها أفضل الأذكار لحديث: «أفضل ما قلته أنا والنبيون من قبلي: لا إله إلا الله»، وفي الحديث القدسي:

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BOOK U

THE GABRIEL HADITH

كتاب حديث جبريل

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u1.0 THE HADITH TEXT

u1.1 'Umar ibn Khattab (Allah be well pleased with him) said:

"As we sat one day with the Messenger of Allah (Allah bless him and give him peace), a man with pure white clothing and jet black hair came to

u1.0 متن الحديث

u1.1 [. . . حدثني أبي] عمر بن الخطاب قال: بينما نحن عند رسول الله ﷺ ذات يوم إذ طلع علينا رجلٌ شديد بياض الثياب شديد سواد الشعر لا يُرى

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us, without a trace of travelling upon him, though none of us knew him. He sat down before the Prophet (Allah bless him and give him peace) bracing his knees against his, and resting his hands on his legs, said: 'Muhammad, tell me about Islam.' The Messenger of Allah (Allah bless him and give him peace) said: 'Islam is to testify there is no god but Allah and that Muhammad is the Messenger of Allah, and to perform the prayer, give zakat, fast in Ramadan, and perform the pilgrimage to the House if you can find a way.' He said: 'You have spoken the truth,' and we were surprised that he should ask and then confirm the answer. Then he said: 'Tell me about true faith (iman),' and the Prophet (Allah bless him and give him peace) answered: 'It is to believe in Allah, His angels, His inspired Books, His messengers, the Last Day, and in destiny, its good and evil.' 'You have spoken the truth,' he said. 'Now tell me about the perfection of faith (ihsan),' and the Prophet (Allah bless him and give him peace) answered: 'It is to adore Allah as if you see Him, and if you see Him not, He nevertheless sees you.' 'Tell me of the Hour,' said the visitor, and he was told: 'The one questioned knows no more about it than the questioner.' 'Then tell me of its portents,' he said, and the Prophet (Allah bless him and give him peace) replied: 'That the slave woman shall give birth to her mistress, and that you shall see barefoot, naked, penniless shepherds vying in constructing high buildings.' Then the visitor left. I waited a while, and the Prophet (Allah bless him and give him peace) said to me, 'Do you know, 'Umar, who was the questioner?' and I replied, 'Allah and His messenger know best.' He said, 'It was Gabriel, who came to you to teach you your religion' " (*Sahih Muslim* (y92), 1.37–38).

عليه أثر السفر ولا يعرفه منا أحدٌ حتى جلس إلى النبي ﷺ فأسند ركبتيه إلى ركبتيه ووضع كفيه على فخذيه وقال: يا محمد أخبرني عن الإسلام فقال رسول الله ﷺ: «الإسلام أن تشهد أن لا إله إلا الله وأنّ محمداً رسول الله وتقيم الصلاة وتؤتي الزكاة وتصوم رمضان وتحج البيت إن استطعت إليه سبيلاً». قال: صدقت؛ قال: فعجبنا له يسأله ويصدقه. قال: فأخبرني عن الإيمان. قال: «أن تؤمن بالله وملائكته وكتبه ورسله واليوم الآخر وتؤمن بالقدر خيره وشره». قال: صدقت؛ قال: فأخبرني عن الإحسان. قال: «أن تعبد الله كأنك تراه فإن لم تكن تراه فإنه يراك». قال: فأخبرني عن الساعة. قال: «ما المسؤول عنها بأعلم من السائل». قال: فأخبرني عن أمارتها. قال: «أن تلد الأمة ربتها وأن ترى الحفاة العراة العالة رعاء الشاء يتطاولون في البنيان». قال: ثم انطلق فلبثتُ ملياً ثم قال لي: «يا عمر أتدري من السائل؟» قلت: الله ورسوله أعلم قال: «فإنه جبريل أتاكم يعلّمكم دينكم» [نقل من صحيح مسلم: ١/ ٣٧ - ٣٨].

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u2.0 ISLAM

u2.1 "Islam is to testify there is no god but Allah and that Muhammad is the Messenger of Allah, and to perform the prayer, give zakat, fast in Ramadan, and perform the pilgrimage to the House if you can find a way."

u2.0 الإسلام

u2.1 «الإسلام أن تشهد أن لا إله إلا الله وأنّ محمداً رسول الله وتقيم الصلاة وتؤتي الزكاة وتصوم رمضان وتحج البيت إن استطعت إليه سبيلاً».

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u2.2 (Nawawi:) The sheikh and Imam Ibn Salah (Allah have mercy on him) said: "Being a Muslim is outwardly established by one's saying the two Testifications of Faith (Shahadatayn) (N: even if they are not spoken in Arabic). The Prophet (Allah bless him and give him peace) only added the prayer, zakat, the pilgrimage, and the fast because they are the most patent and greatest of Islamic observances. One's submission (istislam) is perfected through performing them, and neglecting them suggests that one has dissolved or vitiated the terms of one's compliance. Moreover the term *faith* (iman) encompasses all of the things by which Islam is explained in this hadith, and indeed, all acts of obedience, for they are the fruits of the inner conviction that is the underlying basis of faith, and are what strengthen, complete, and preserve it."

u2.2 (النووي:) قال الشيخ الإمام [أبو عمرو] بن الصلاح رحمه الله: [. . .] وحكم الإسلام في الظاهر ثبت بالشهادتين وإنما أضاف إليهما الصلاة والزكاة والحج والصوم لكونها أظهر شعائر الإسلام وأعظمها وبقيامه بها يتم استسلامه وتركه لها يشعر بانحلال قيد انقياده أو اختلاله. ثم أن اسم الإيمان يتناول ما فسّر به الإسلام في هذا الحديث وسائر الطاعات لكونها ثمرات للتصديق الباطن الذي هو أصل الإيمان ومقويات ومتممات وحافظات له. [. . .].

u2.3 The position of Muslim orthodoxy is that no Muslim becomes a non-Muslim through sin. Muslims of heretical sectarian groups and those of reprehensible innovations (bid'a) are not thereby non-Muslims (dis: w47.2).

u2.3 [(النووي:) واعلم أن] مذهب أهل الحق أنه لا يكفر أحد من أهل القبلة بذنب ولا يكفر أهل الأهواء والبدع.

u2.4 Any Muslim who denies something that is necessarily known (def: f1.3(N:)) to be of the religion of Islam is adjudged a renegade and an unbeliever unless he is a recent convert or was born and raised in the wilderness or for some similar reason has been unable to learn his religion properly. Muslims in such a condition should be informed about the truth, and if they then continue as before, they are adjudged non-Muslims, as is also the case with any Muslim who believes it permissible to commit adultery, drink wine, kill without right, or do other acts that are necessarily known to be unlawful (*Sahih Muslim bi sharh al-Nawawi* (y93), 1.147–50).

u2.4 وأن من جحد ما يعلم من دين الإسلام ضرورة حكم بردته وكفره إلا أن يكون قريب عهد بالإسلام أو نشأ ببادية بعيدة ونحوه ممن يخفى عليه. فيعرف ذلك فإن استمر حكم بكفره وكذا حكم من استحل الزنا أو الخمر أو القتل أو غير ذلك من المحرمات التي يعلم تحريمها ضرورة [محرر من صحيح مسلم بشرح النووي: ١/ ١٤٧ - ١٥٠].

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u3.0 TRUE FAITH (IMAN)

u3.0 الإيمان

u3.1 "[True faith] is to believe in Allah, His

u3.1 [قال]: «أن تؤمن بالله

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angels, His inspired Books, His messengers, the Last Day, and in destiny, its good and evil."

وملائكته وكتبه ورسله واليوم الآخر وتؤمن بالقدر خيره وشره».

BELIEF IN ALLAH

الإيمان بالله

u3.2 (Muhammad Jurdani:) To believe in *Allah* means in His existence, His sole godhood (rububiyya, that no one else participates in His attribute of divinity or in the rights He has over His creatures), His oneness and uniqueness (wahdaniyya), and that He is characterized by every perfection and exalted above any imperfection or impossibility (dis: v1).

u3.2 (محمد الجردانى:) «الإيمان هو أن تؤمن» (أي تصدق) «بالله» (أي بوجوده وربوبيته ووحدانيته وأنه متصف بكل كمال ومنزه عن كل نقص ومحال).

BELIEF IN ANGELS

الإيمان بالملائكة

u3.3 To believe in *His angels* means in beings with bodies of light who are capable of changing form to assume various appearances. *Believe* means to be convinced that they exist, and are honored servants who do not disobey what Allah orders them to do, but do whatever they are commanded. Only Allah Most High knows how many there are, but a hadith relates that there is not a foot of space in the seven heavens that does not contain an angel standing in prayer, bowing, or prostrating. We are obliged to know ten individual angels:

(1) Jibril (Gabriel);

(2) Mika'il;

(3) Israfil;

(4) 'Azra'il;

(5) Munkar;

(6) Nakir;

(7) Ridwan;

(8) Malik;

u3.3 «وملائكته» (أي أن تؤمن بملائكته وهم أجسام نورانية قادرون على التشكل بأشكال مختلفة. ومعنى الإيمان بهم التصديق بوجودهم وأنهم عباد مكرمون لا يعصون الله ما أمرهم ويفعلون ما يؤمرون. وهم بالغون في الكثرة ما لا يعلمه إلا الله تعالى وقد ورد مرفوعاً: «ما في السموات السبع موضع قدم [ولا شبر ولا كف] إلا وفيه ملك قائم أو راكع أو ساجد

يجب علينا معرفة عشرة من الملائكة تفصيلاً وهم جبريل وميكائيل وإسرافيل وعزرائيل ومنكر ونكير ورضوان ومالك

(9 and 10) and the two scribes who record one's good and bad deeds, each of whom is called a "present observer."

وكاتبا الحسنات والسيئات ويسمى كل منهما رقيباً عتيداً).

BELIEF IN ALLAH'S INSPIRED BOOKS

الإيمان بكتب الله المنزلة

u3.4 To believe in *His inspired Books* means those which He revealed to His messengers, *believe* meaning to be convinced that they are the word of Allah Most High, and all they contain is the truth.

(A: The obligation of belief applies to the original revelations, not the various scriptures in the hands of non-Muslims, which are textually corrupt in their present form.)

Scholars differ as to how many Books there are. Some hold they number 104, and some say otherwise. One is obliged to know four particular Books:

(1) the Tawrah (Torah), revealed to our liegelord Musa (Moses);

(2) the Injil (Evangel), revealed to our liegelord 'Isa (Jesus);

(3) the Zabur (Psalms), revealed to our liegelord Dawud (David);

(4) and the Qur'an (Koran), revealed to our liegelord Muhammad (Allah bless them all and give them peace).

u3.4 «وكتبه» (أي وأن تؤمن بكتبه التي أنزلها على رسله. ومعنى الإيمان بها التصديق بأنها كلام الله تعالى وأن جميع ما تضمنته حق.

واختلف في عددها فقيل إنها مائة وأربعة وقيل غير ذلك. ويجب معرفة أربعة منها تفصيلاً وهي التوراة لسيدنا موسى والإنجيل لسيدنا عيسى والزبور لسيدنا داود والقرآن لسيدنا محمد ﷺ وعليهم أجمعين).

BELIEF IN ALLAH'S MESSENGERS

الإيمان برسل الله

u3.5 To believe in *His messengers* means to be convinced that Allah Most High sent them to men and jinn (khalq) to guide them to the path of the Truth, and that they have told the truth about everything they have conveyed from Allah Most High. It is obligatory to know twenty-five particular messengers:

(1) Adam;

u3.5 «ورسله» أي وأن تؤمن برسله بأن تصدق بأن الله تعالى أرسلهم إلى الخلق لهدايتهم إلى طريق الحق وأنهم صادقون في جميع ما جاؤوا به عن الله تعالى. و[تقدم أنه] يجب معرفة خمسة وعشرين وهم آدم وإدريس، ونوح،

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(2) Idris (Enoch); (3) Nuh (Noah); (4) Hud; (5) Salih; (6) Lut (Lot); (7) Ibrahim (Abraham); (8) Isma'il (Ishmael); (9) Ishaq (Isaac); (10) Ya'qub (Jacob); (11) Yusuf (Joseph); (12) Shu'ayb; (13) Harun (Aaron); (14) Musa (Moses); (15) Dawud (David); (16) Sulayman (Soloman); (17) Ayyub (Job); (18) Dhul Kifl (Ezekiel); (19) Yunus (Jonah); (20) Ilyas (Elias); (21) al-Yasa' (Elisha); (22) Zakariyya (Zacharias); (23) Yahya (John); (24) 'Isa (Jesus); (25) and Muhammad (Allah bless them all and give them peace).	وهود، وصالح، ولوط، وإبراهيم، وإسماعيل، وإسحاق، ويعقوب، ويوسف، وشعيب، وهارون، وموسى، وداود، وسليمان، وأيوب، وذو الكفل، ويونس، وإلياس واليسع، وزكريا، ويحيى وعيسى ومحمد ﷺ وعليهم أجمعين).

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BELIEF IN THE LAST DAY

u3.6 To believe in *the Last Day* means the Day of Resurrection, called the *last* because it is not followed by night. *Believe* means to be convinced that it will come to pass with all it implies, including the resurrection of the dead, their reckoning, the weighing of their good deeds against their bad ones, their passing over the high, narrow bridge that spans the hellfire (sirat), and that some will be put in hell out of justice, and some in paradise out of Allah's pure generosity. (n: The eternality of paradise and hell is discussed at w55.)

BELIEF IN DESTINY, ITS GOOD AND EVIL

u3.7 To believe in *destiny, its good and evil* means to be convinced that Allah Most High has ordained both good and evil before creating creation, and that all that has been and all that will be only exists through Allah's decree, foreordinance, and will. Early Muslims used to answer whoever asked about destiny by saying, "It is knowing that what hits you was not going to miss, and what misses you was not going to hit" (*al-Jawahir al-lu'lu'iyya fi sharh al-Arba'in al-Nawawiyya* (y68), 35–37).

u3.8 (N:) As for Allah's creating acts, we believe that the real doer of everything is Allah. He is the one who burns, not the fire or the person who lighted the fire: He is the one who cuts, not the knife or the person holding the knife; He is the one who drowns a man, not the water or the person who threw him in, and so forth. Here, people always raise the question that if Allah Most High is the real doer, why are people held responsible? The answer is that Allah Most High does not hold people responsible for creating the act, but rather for choosing the act. One proof of this is that a person who cannot choose is not held responsible, such as someone asleep, insane, a child, forced, unremembering, or someone who makes an honest mistake. The legal responsibility of such people is lifted because they lack full voluntary

الإيمان باليوم الآخر

u3.6 «واليوم الآخر» (أي وأن تؤمن باليوم الآخر وهو يوم القيامة وسمي آخر لأنه لا ليل بعده. ومعنى الإيمان به التصديق بوجوده وبجميع ما اشتمل عليه من بعث المخلوقات وحسابهم ووزن أعمالهم ومرورهم على الصراط وإدخال بعضهم النار بالعدل وبعضهم الجنة بالفضل).

الإيمان بالقدر خيره وشره

u3.7 «وتؤمن بالقدر خيره وشره» (أي بأن تعتقد وتصدق بأن الله تعالى قدر الخير والشر قبل خلق الخلق وأن جميع ما كان وما يكون بقضاء الله تعالى وقدره وإرادته [. . .] كان السلف الصالح يجيبون من سألهم عن القضاء والقدر بقولهم: أن تعلم أن ما أصابك لم يكن ليخطئك وما أخطأك لم يكن ليصيبك [محرر من الجواهر اللؤلؤية في شرح الأربعين النووية: ٣٥ ـ ٣٧].

u3.8 (ح: [. . .و] أما خلق الأفعال فنحن نعتقد بأن الفاعل الحقيقي لكل شيء هو الله فهو الذي يحرق وليس النار ولا من أشعل النار، وهو الذي يقطع وليس السكين ولا من حمل السكين، وهو الذي يغرق وليس الماء ولا من ألقى في الماء وهكذا.

وهنا يثور سؤال عند الناس دائماً: إذا كان الله تعالى هو الفاعل الحقيقي فلماذا يحاسب العباد؟

والجواب أن الله تعالى لا يحاسبهم على خلق الفعل بل على اختيار الفعل. ودليل ذلك أن من ليس له اختيار ليس عليه حساب كالنائم، والمجنون،

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choice. Another proof is that Nimrod sinned for choosing to burn Ibrahim (upon whom be peace) even though Ibrahim did not burn (Koran 21:69); and that Ibrahim (upon whom be peace) became the Friend of the All-merciful for choosing to sacrifice his son out of obedience to Allah, even though his knife did not cut and his son was not sacrificed (Koran 37:105), all of this showing that the servant is held responsible for his choice, which scholars of the divine unity (tawhid) term the servant's *acquisition* (kasb).

As for Allah's eternally preexistent knowledge, we believe that Allah knows everything before, during, and after it is, and knows how it is when it occurs. But does the servant have access to this knowledge? Not at all. So the servant chooses to do acts on the basis of a desire within himself, not because he knows Allah's knowledge, and he is held responsible for his choice even though it corresponds with Allah's eternally preexistent knowledge.

It is clear from the above that *belief in destiny* means that Muslims believe Allah has destined and ordained matters in past eternity, and that nothing in existence lies outside of His eternal will, and He is the Creator of everything, while the servant is only held responsible for his own choices (*Mudhakkirat fi al-tawhid* (y113), 41–42).

والصبي، والمكره، والناسي، والمخطيء. فهؤلاء لما سلب اختيارهم الكامل سقط عنهم التكليف. وبدليل أن النمرود آثم لأنه اختار حرق إبراهيم عليه السلام وإن لم يحترق إبراهيم. وإبراهيم عليه السلام صار خليل الرحمن لأنه اختار ذبح ولده طاعة لله وإن كانت سكينه لم تقطع وولده لم يذبح. فدل هذا كله على أن العبد يحاسب على اختياره وهذا ما يسميه علماء التوحيد «الكسب» [...].

وأما علم الله القديم: فنحن نعتقد أن الله تعالى يعلم كل شيء قبل أن يكون وعندما يكون وبعد أن يكون وكيف يكون إذا كان. لكن هل يطلع العبد على هذا العلم؟ اللهم لا.

إذن فالعبد يختار الأفعال لهوى في نفسه لا بسبب اطلاعه على علم الله، ولذا كان محاسباً على اختياره وإن كان هذا الاختيار قد وافق ما في علم الله القديم. [...].

فتبين من هذا أن الإيمان بالقضاء والقدر معناه أن يعتقد المسلم بأن الله تعالى قد قضى الأمور وقدرها في سابق الأزل وأنه عز وجل لا يخرج عن إرادته شيء في الوجود وهو الخالق لكل شيء وأن العبد إنما يحاسب على اختياره فقط [محور من مذكرات في التوحيد: ٤١ - ٤٢].

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u4.0 THE PERFECTION OF FAITH (IHSAN)

u4.1 "[The perfection of faith] is to adore Allah as if you see Him, and if you see Him not, He nevertheless sees you."

u4.2 (Muhammad Jurdani:) *To adore Allah as if you see Him* means to obey Him while sincere in

u4.0 الإحسان

u4.1 «أن تعبد الله كأنك تراه فإن لم تكن تراه فإنه يراك».

u4.2 (محمد الجرداني:) «أن تعبد الله كأنك تراه» (أي أن تطيعه وأنت

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worship, humble, lowly, and fearful, as though one beholds Him. *And if you see Him not, He nevertheless sees you* means that if one is not as if beholding Him in worship, but oblivious to this contemplation, one should nevertheless persist in excellence of performance and imagine oneself before Allah Most High and that He is looking at one's inmost being and outward self, to thereby attain to the basis of perfection. Scholars mention that there are three spiritual stations a servant may have in his worship:

(1) to worship in a way that fulfills its obligations, by observing all its conditions and integrals;

(2) to do this while immersed in the sea of gnostic inspiration (mukashafa) until it is as if the worshipper actually beholds Allah Most High, this being the station of contemplative spiritual vision (mushahada);

(3) and to worship as mentioned above, though mainly aware that Allah sees one, this being the station of vigilance (muraqaba).

All three of these are of the perfection of faith (ihsan), but the perfection required for the validity of worship is only the first, while perfection in the latter senses is the mark of the elect, and not possible for many (*al-Jawahir al-lu'lu'iyya fi sharh al-Arba'in al-Nawawiyya* (y68), 37–38).

مخلص له في العبادة خاضع ذليل خاشع كأنك تعاينه).

«فإن لم تكن تراه فإنه يراك» (أي فإن لم تكن في عبادته كأنك تراه بأن غفلت عن تلك المشاهدة فاستمر على إحسان العبادة واستحضر أنك بين يدي الله تعالى وأنه مطلع على سرك وعلانيتك ليحصل لك أصل الكمال.

وقد ذكر العلماء أن للعبد في عبادته ثلاثة مقامات:

- الأول أن يفعلها على الوجه الذي يسقط معه الطلب بأن تكون مستوفية للشروط والأركان.
- الثاني أن يفعلها كذلك وقد استغرق في بحر المكاشفة حتى كأنه يرى الله تعالى وهذا مقام المشاهدة.
- الثالث أن يفعلها كذلك وقد غلب عليه أن الله تعالى يشاهده وهذا مقام المراقبة.

وكل من المقامات الثلاثة إحسان إلا أن الإحسان المشروط في صحة العبادة إنما هو الأول وأما الإحسان بالمعنيين الأخيرين فهو من صفة الخواص ومتعذر من كثيرين [نقل من الجواهر اللؤلؤية في شرح الأربعين النووية: ٣٧ - ٣٨].

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BOOK V

ALLAH AND HIS MESSENGER

كتاب الاعتقاد في الله ورسوله

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- His Oneness v1.2
- His Transcendence v1.3
- His Life and Almighty Power v1.4
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v1.0 ALLAH

v1.0 الله

v1.1 (Ghazali:) Praise be to Allah, who originates all and returns it, who does as He wills, He

v1.1 (الغزالي:) الحمد لله المبدىء المعيد الفعال لما يريد ذي

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of the noble Throne and overwhelming force, the Guide of His elect servants to the wisest path and straightest way, who has blessed them, after having had them attest to His oneness, by preserving the tenets of their religion from the darknesses of doubt and misgivings, bringing them through His providence and guidance to follow His chosen Messenger and the example of his noble and honored Companions; He who manifests Himself and His acts to His servants through His sublime attributes, of which none possess knowledge save those who give heed with a present mind.

العرش المجيد والبطش الشديد الهادي صفوة العبيد إلى المنهج الرشيد والمسلك السديد، المنعم عليهم بعد شهادة التوحيد بحراسة عقائدهم عن ظلمات التشكيك والترديد، السالك بهم إلى اتباع رسوله المصطفى واقتفاء آثار صحبه الأكرمين المكرمين بالتأييد والتسديد، المتجلي لهم في ذاته وأفعاله بمحاسن أوصافه التي لا يدركها إلا من ألقى السمع وهو شهيد [المعرف إياهم:].

HIS ONENESS

الوحدانية

v1.2 He is one in being without partner, unique without peer, ultimate without opposite, alone without equal. He is one, preeternal, beginninglessly uncreate, everlastingly abiding, unceasingly existent, eternally limitless, the ever self-subsisting through whom all else subsists, ever enduring, without end. He is, was, and ever will be possessed of all attributes of majesty, unannihilated by dissolution or separation through the passage of eons or terminus of interims. He is the First and Last, the Outward and Inward, and He has knowledge of everything.

v1.2 أنه في ذاته واحد لا شريك له، فرد لا مثل له، صمد لا ضد له، منفرد لا ند له، وأنه واحد قديم لا أول له، أزلي لا بداية له، مستمر الوجود لا آخر له، أبدي لا نهاية له، قيوم لا انقطاع له، دائم لا انصرام له، لم يزل ولا يزال موصوفاً بنعوت الجلال لا يقضى عليه بالانقضاء والانفصال بتصرم الآباد وانقراض الآجال، بل هو الأول والآخر والظاهر والباطن وهو بكل شيء عليم.

HIS TRANSCENDENCE

التنزيه

v1.3 He is not a body with a form, or a limitary, quantitative substance, not resembling bodies in quantifiability or divisibility, or in being a substance or qualified by substance, or being an accident or qualified by accidents. He does not resemble anything that exists, nor anything that exists resemble Him. There is nothing whatsoever like unto Him, nor is He like unto anything. He is not delimited by magnitude, contained by places, encompassed by directions, or bounded by heavens or earth. He is 'established on the Throne' (mustawin, Koran 20:5) in the way He says and the meaning He intends, 'established' in a manner transcending contact, settledness, fixity, indwelling, or movement. The Throne does not

v1.3 وأنه ليس بجسم مصور ولا جوهر محدود مقدر، وأنه لا يماثل الأجسام لا في التقدير ولا في قبول الانقسام، وأنه ليس بجوهر ولا تحله الجواهر ولا بعرض ولا تحله الأعراض، بل لا يماثل موجوداً ولا يماثله موجود، ليس كمثله شيء ولا هو مثل شيء، وأنه لا يحده المقدار ولا تحويه الأقطار ولا تحيط به الجهات ولا تكتنفه الأرضون ولا السموات، وأنه مستو على العرش على الوجه الذي قاله وبالمعنى الذي أراده استواء منزهاً عن المماسة والاستقرار والتمكن والحلول والانتقال، لا يحمله

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bear Him up, but is borne up by the subtlety of His infinite power, as are the angels who carry it, and all are powerless in His grasp. He is above the Throne, the heavens, and all else to the farthest reaches of the stars, with an aboveness that does not increase His nearness to the Throne or heavens, or His distance from the earth and what lies beneath it. He is as exalted in degree above the Throne and the heavens as He is above the earth and its depths, though He is near to everything in existence, nearer to a servant than his own jugular vein, and is witness to everything. His nearness no more resembles the nearness of objects to one another than His entity resembles the entities of objects. He does not indwell in anything, nor anything indwell in Him. He is as exalted above containment in space as He is above confinement in time. He was, before creating time and space, and is now even as He was. He is distinguished from His creation by His attributes. There is nothing in His entity other than Him, nor is His entity in what is other than Him. He is beyond change and motion: events neither occur within Him nor changes befall Him. He remains in His attributes of majesty exalted above change, and in the attributes of His perfection beyond needing any increase in perfection. The existence of His entity is known by human reason, and in the afterlife is beheld by the eyesight of the righteous as a beatitude and favor, to consummate their perfect joy with the sight of His Noble Countenance.

العرش بل العرش وحملته محمولون بلطف قدرته ومقهورون في قبضته وهو فوق العرش والسماء وفوق كل شيء إلى تخوم الثرى فوقية لا تزيده قرباً إلى العرش والسماء كما لا تزيده بعداً عن الأرض والثرى؛ بل هو رفيع الدرجات عن العرش والسماء كما أنه رفيع الدرجات عن الأرض والثرى، وهو مع ذلك قريب من كل موجود وهو أقرب إلى العبد من حبل الوريد، وهو على كل شيء شهيد، إذ لا يماثل قربه قرب الأجسام كما لا تماثل ذاته ذات الأجسام؛ وأنه لا يحل في شيء ولا يحل فيه شيء؛ تعالى عن أن يحويه مكان كما تقدس أن يحده زمان؛ بل كان قبل أن خلق الزمان والمكان وهو الآن على ما عليه كان؛ وأنه بائن عن خلقه بصفاته، ليس في ذاته سواه ولا في سواه ذاته؛ وأنه مقدس عن التغير والانتقال ولا تحله الحوادث ولا تعتريه العوارض، بل لا يزال في نعوت جلاله منزهاً عن الزوال وفي صفات كماله مستغنياً عن زيادة الاستكمال وأنه في ذاته معلوم الوجود بالعقول مرئيّ الذات بالأبصار نعمة منه ولطفاً بالأبرار في دار القرار وإتماماً منه للنعيم بالنظر إلى وجهه الكريم.

HIS LIFE AND ALMIGHTY POWER

الحياة والقدرة

v1.4 He Most High is living, almighty, overmastering, triumphant, unaffected by inability or weakness; unsusceptible to drowsiness, sleep, annihilation, or death; possessed of absolute sovereignty and might, of irresistible power and force. His is the majesty and sway, the creation and command. The heavens are enfolded in His right hand and all beings are powerless in His grasp. He alone creates, begins, gives existence, and originates. He creates all beings and their acts, ordains their sustenance and terms. Nothing possible is out of His grasp, the disposal of no matter is beyond His power. The number of things

v1.4 وأنه تعالى حي قادر جبار قاهر لا يعتريه قصور ولا عجز ولا تأخذه سنة ولا نوم ولا يعارضه فناء ولا موت وأنه ذو الملك والملكوت والعزة والجبروت، له السلطان والقهر والخلق والأمر؛ والسموات مطويات بيمينه والخلائق مقهورون في قبضته؛ وأنه المنفرد بالخلق والاختراع المتوحد بالإيجاد والإبداع. خلق الخلق وأعمالهم وقدر أرزاقهم وآجالهم. لا يشذ عن قبضته مقدور ولا يعزب عن قدرته تصاريف

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He can do is limitless, the amount He knows is infinite.

الأمور. لا تحصى مقدوراته ولا تتناهى معلوماته.

HIS KNOWLEDGE

العلم

v1.5 He knows all things knowable, encompassing all that takes place from the depths of the earth to the highest heaven. He knows without an atom's weight in the earth or heavens escaping His knowledge. He knows the creeping of a black ant across a great stone on a lightless night, and the motion in the air of a particle of dust on a windy day. He knows the concealed and the yet more hidden, the buried recesses of hearts, the movement of thought, and the opacities of the inmost soul; with preeternal, beginningless knowledge that He has always possessed from the limitless reaches of past eternity, not with awareness originating within Him through being imparted or conveyed.

v1.5 وأنه عالم بجميع المعلومات محيط بما يجري من تخوم الأرضين إلى أعلى السموات. وأنه عالم لا يعزب عن علمه مثقال ذرة في الأرض ولا في السماء. بل يعلم دبيب النملة السوداء على الصخرة الصماء في الليلة الظلماء ويدرك حركة الذر في جو الهواء. ويعلم السر وأخفى ويطلع على هواجس الضمائر وحركات الخواطر وخفيات السرائر، بعلم قديم أزلي لم يزل موصوفاً به في أزل الآزال، لا بعلم متجدد حاصل في ذاته بالحلول والانتقال.

HIS WILL

الإرادة

v1.6 He Most High wills all that exists and directs all events. Nothing occurs in the physical or spiritual world, be it meager or much, little or great, good or evil, of benefit or detriment, faith or unbelief, knowledge or ignorance, triumph or ruin, increase or decrease, obedience or sin; save through His ordinance, apportionment, wisdom, and decision. What He wills is, and what He does not will is not. Neither sidelong glance nor passing thought is beyond His design. He originates all and returns it, does what He wills, and none can repulse His command. There is no rescinding His destiny, no flight for a servant from disobeying Him except through divinely given success therein and mercy, and no strength to obey Him save through His choice and decree. If all mankind, jinn, angels, and devils combined their efforts to move or to still a single particle of the universe without His will and choice, they would be unable to. His will, like His other attributes, exists in His entity and He ever possesses it. He has willed from preeternity the existence of all things at the times

v1.6 وأنه تعالى مريد للكائنات مدبر للحادثات. فلا يجري في الملك والملكوت قليل أو كثير، صغير أو كبير، خير أو شر، نفع أو ضر، إيمان أو كفر، عرفان أو نكر، فوز أو خسران، زيادة أو نقصان، طاعة أو عصيان، إلا بقضائه وقدره وحكمته ومشيئته. فما شاء كان وما لم يشأ لم يكن. لا يخرج عن مشيئته لفتة ناظر ولا فلتة خاطر. بل هو المبدىء المعيد الفعال لما يريد لا رادّ لأمره، ولا معقب لقضائه ولا مهرب لعبد عن معصيته إلا بتوفيقه ورحمته، ولا قوة على طاعته إلا بمشيئته وإرادته. فلو اجتمع الإنس والجن والملائكة والشياطين على أن يحركوا في العالم ذرة أو يسكنوها دون إرادته ومشيئته لعجزوا عن ذلك. وأن إرادته قائمة بذاته في جملة صفاته لم يزل كذلك موصوفاً بها مريداً في أزله لوجود الأشياء في أوقاتها التي قدرها فوجدت في

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He has chosen. They occur at the times which He has destined from beginningless eternity, occurring neither before nor after, but taking place in accordance with His knowledge and will, without substitution or alteration. He directs events without successive thoughts or waiting for time to elapse, which is why nothing diverts Him from anything else.

أوقاتها كما أراده في أزله من غير تقدم ولا تأخر بل وقعت على وفق علمه وإرادته من غير تبدل ولا تغير. دبر الأمور لا بترتيب أفكار ولا تربص زمان فلذلك لم يشغله شأن عن شأن.

HIS HEARING AND SIGHT

السمع والبصر

v1.7 He Most High is all-hearing and all-seeing. He hears and sees, no sound however slight eluding His hearing, and no sight however minute escaping His vision. Distance does not obscure His hearing nor darkness hinder His vision. He sees without pupil or eyelids, and hears without ear canal or ears, just as He knows without a heart, seizes without limb, and creates without implement. His attributes no more resemble the attributes of His creatures than His entity resembles the entity of His creatures.

v1.7 وأنه تعالى سميع بصير. يسمع ويرى لا يعزب عن سمعه مسموع وإن خفي ولا يغب عن رؤيته مرئي وإن دق. ولا يحجب سمعه بعد ولا يدفع رؤيته ظلام. يرى من غير حدقة وأجفان ويسمع من غير أصمخة وآذان، كما يعلم بغير قلب ويبطش بغير جارحة ويخلق بغير آلة. إذ لا تشبه صفاته صفات الخلق كما لا تشبه ذاته ذوات الخلق.

HIS SPEECH

الكلام

v1.8 He Most High speaks, commands, forbids, promises, and warns, with beginninglessly eternal speech that is an attribute of His entity, not resembling the speech of creatures in being a sound generated by the passage of air or impact of bodies, nor in letters articulated by compressing the lips or moving the tongue. The Koran, Torah, Evangel, and Psalms are His Books, revealed to His messengers (upon whom be peace). The Koran is recited with tongues, written in books, and memorized in hearts despite being beginninglessly eternal, an attribute of the entity of Allah Most High, unsubject to disseverance and separation by conveyance to hearts or pages. Moses (Allah bless him and give him peace) heard the speech of Allah without sound or letter, just as the righteous see the entity of Allah Most High in the afterlife without substance or accident.

Since Allah possesses all of the above attributes, He is living, knowing, omnipotent, willing,

v1.8 وأنه تعالى متكلم آمر ناه واعد متوعد بكلام أزلي قديم قائم بذاته فليس بصوت يحدث من إنسلال هواء أو اصطكاك أجرام، ولا بحرف ينقطع بإطباق شفة أو تحريك لسان. وأن القرآن والتوراة والإنجيل والزبور كتبه المنزلة على رسله عليهم السلام. وأن القرآن مقروء بالألسنة مكتوب في المصاحف محفوظ في القلوب وأنه مع ذلك قديم قائم بذات الله تعالى لا يقبل الانفصال والافتراق بالانتقال إلى القلوب والأوراق. وأن موسى ﷺ سمع كلام الله بغير صوت ولا حرف كما يرى الأبرار ذات الله تعالى في الآخرة من غير جوهر ولا عرض.

وإذا كانت له هذه الصفات، كان حياً عالماً قادراً مريداً سميعاً بصيراً متكلماً

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hearing, seeing, and speaking by virtue of His life, power, knowledge, will, hearing, sight, and speech, not merely by virtue of His entity.

بالحياة والقدرة والعلم والإرادة والسمع والبصر والكلام لا بمجرد الذات.

HIS ACTS

الأفعال

v1.9 Everything besides Him Glorious and Exalted exists through His action, proceeding from His justice in the best, fullest, most perfect and equitable way. He is wise in His acts and just in His decrees. His justice is not comparable to the justice of His servants, since injustice may only be imagined from a servant through his disposal of what belongs to another, while this is inconceivable from Allah Most High, since nothing belongs to anyone besides Him that He should unjustly dispose of it. Everything besides Him, be it human, jinn, angel, devil, heaven, earth, animal, vegetable, mineral, substance, accident, intelligible, or sensory, is contingent, and was brought into existence through His power after not being, created by Him after it was nothing. He alone existed in preeternity, and nothing else. He then originated creation, that His omnipotence might be manifest, His prior decree effected, and His eternal word realized; not from needing or requiring anything in creation. Our origination, beginning, and responsibility are of Allah's generosity, not because of their being obligatory for Him, and His blessings and benefaction exist because of His favor, not because of being due from Him. Everything that exists is indebted to Him for His generosity and goodness, His blessings and benevolence; for He is well able to pour all manner of torments upon His servants and try them with every variety of suffering and illness, and were He to do so, it would be just on His part and not wicked or unfair. He Mighty and Majestic rewards His servants, the believers, for their acts of obedience because of His generosity and in fulfillment of His word, not because of their deserving it or His owing it to them. He is not obliged to anyone to do anything, nor is injustice on His part conceivable, for He does not owe any rights to anyone. The obligation of men and jinn to perform acts of obedience is established by His having informed them of it upon the tongues of the

v1.9 وأنه سبحانه وتعالى لا موجود سواه إلا وهو حادث بفعله وفائض من عدله على أحسن الوجوه وأكملها وأتمها وأعدلها. وأنه حكيم في أفعاله عادل في أقضيته. لا يقاس عدله بعدل العباد إذ العبد يتصور منه الظلم بتصرفه في ملك غيره ولا يتصور الظلم من الله تعالى فإنه لا يصادف لغيره ملكاً حتى يكون تصرفه فيه ظلماً فكل ما سواه من إنس وجن وملك وشيطان وسماء وأرض وحيوان ونبات وجماد وجوهر وعرض ومدرك ومحسوس حادث اخترعه بقدرته بعد العدم اختراعاً وأنشأه انشاءً بعد أن لم يكن شيئاً. إذ كان في الأزل موجوداً وحده ولم يكن معه غيره. فأحدث الخلق بعد ذلك إظهاراً لقدرته وتحقيقاً لما سبق من إرادته ولما حق في الأزل من كلمته، لا لافتقاره إليه وحاجته. وأنه متفضل بالخلق والاختراع والتكليف لا عن وجوب ومتطول بالإنعام والإصلاح لا عن لزوم. فله الفضل والإحسان والنعمة والامتنان إذ كان قادراً على أن يصب على عباده أنواع العذاب ويبتليهم بضروب الآلام والأوصاب، ولو فعل ذلك لكان منه عدلاً ولم يكن منه قبيحاً ولا ظلماً. وأنه عز وجل يثيب عباده المؤمنين على الطاعات بحكم الكرم والوعد لا بحكم الاستحقاق واللزوم له. إذ لا يجب عليه لأحد فعل ولا يتصور منه ظلم ولا يجب لأحد عليه حق. وأن حقه في الطاعات وجب على الخلق بإيجابه على ألسنة

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prophets (upon whom be peace), and not by unaided human reason. He sent the prophets and manifested the truth of their messages by unmistakable, inimitable miracles. They have communicated His commands, prohibitions, promises, and warnings, and it is obligatory for mankind and jinn to believe in what they have conveyed.

أنبيائه عليهم السلام، لا بمجرد العقل. ولكنه بعث الرسل وأظهر صدقهم بالمعجزات الظاهرة فبلّغوا أمره ونهيه ووعده ووعيده، فوجب على الخلق تصديقهم فيما جاؤوا به.

*

v2.0 HIS MESSENGER

v2.0 الرسول

v2.1 Allah Most High sent Muhammad (Allah bless him and give him peace), the Qurayshite unlettered prophet, to deliver His inspired message to the entire world, Arabs and non-Arabs, jinn and mankind, superseding and abrogating all previous religious systems with the Prophet's Sacred Law, except for the provisions of them that the new revelation explicitly reconfirmed. Allah has favored him above all the other prophets and made him the highest of mankind, rejecting anyone's attesting to the divine oneness by saying "There is no god but Allah," unless they also attest to the Prophet by saying "Muhammad is the Messenger of Allah." He has obliged men and jinn to believe everything the Prophet (Allah bless him and give him peace) has informed us concerning this world and the next, and does not accept anyone's faith unless they believe in what he has told us will happen after death.

v2.1 [معنى الكلمة الثانية وهي الشهادة للرسل بالرسالة و] أنه بعث النبي الأمي القرشي محمداً ﷺ برسالته إلى كافة العرب والعجم والجن والإنس فنسخ بشريعته الشرائع إلا ما قرره منها. وفضّله على سائر الأنبياء وجعله سيد البشر ومنع كمال الإيمان بشهادة التوحيد وهو قول لا إله إلا الله ما لم تقترن بها شهادة الرسول وهو قولك محمد رسول الله. وألزم الخلق تصديقه في جميع ما أخبر عنه من أمور الدنيا والآخرة. وأنه لا يتقبل إيمان عبد حتى يؤمن بما أخبر به بعد الموت.

THE TRIAL OF THE GRAVE

فتنة القبر

v2.2 The first of these matters is the questioning of Munkar and Nakir, two tremendous, awe-inspiring personages who sit a servant upright in his grave, body and soul, and ask him about the unity of Allah and the messengerhood of the Prophet (Allah bless him and give him peace), saying, "Who is your Lord, what is your religion, and who is your prophet?" It is they who try people in the grave, their questioning being the

v2.2 وأوله سؤال منكر ونكير وهما ملكان مهيبان هائلان يقعدان العبد في قبره سوياً ذا روح وجسد فيسألانه عن التوحيد والرسالة ويقولان له: من ربك وما دينك ومن نبيك؟ وهما فتانا القبر وسؤالهما أول فتنة بعد الموت. وأن يؤمن

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first ordeal after death. It is also obligatory to believe in the torment of the grave, that it is a fact, is just, and affects both body and soul, in the way Allah wills.

بعذاب القبر وأنه حق وحكمه عدل على الجسم والروح على ما شاء الله.

THE SCALE

الميزان

v2.3 It is obligatory to believe in the scale, which consists of two scalepans and a balance indicator between them and is as great in size as the thickness of the heavens and earth. It weighs a servant's deeds through the power of Allah Most High, and the weights placed on it are as fine as an atom or mustard seed, that justice may be perfectly done. The pages recording one's good deeds will be placed in a form pleasing to behold on the side of the scale for Light, weighing it down according to their rank with Allah, through His generosity, while the pages recording one's bad deeds will be placed in an ugly form on the side of Darkness, diminishing the weight of the opposite side through Allah's justice.

v2.3 وأن يؤمن بالميزان ذي الكفتين واللسان وصفته في العظم أنه مثل طبقات السموات والأرض. توزن فيه الأعمال بقدرة الله تعالى. والصنج يومئذ مثاقيل الذر والخردل تحقيقاً لتمام العدل. وتوضع صحائف الحسنات في صورة حسنة في كفة النور فيثقل بها الميزان على قدر درجاتها عند الله بفضل الله، وتطرح صحائف السيئات في صورة قبيحة في كفة الظلمة فيخف بها الميزان بعدل الله.

THE BRIDGE OVER HELL

الصراط

v2.4 It is obligatory to believe in the bridge over hell (sirat), a bridge spanning the breadth of hell, sharper than a sword and finer than a hair, which unbelievers' feet shall slip from by Allah's decree and plunge them into hell, and the feet of believers shall be made fast upon by Allah's generosity, and from thence they shall be conducted to the Final Abode.

v2.4 وأن يؤمن بأن الصراط حق، وهو جسر ممدود على متن جهنم أحدّ من السيف وأدق من الشعرة تزل عليه أقدام الكافرين بحكم الله سبحانه فتهوي بهم إلى النار وتثبت عليه أقدام المؤمنين بفضل الله فيسافون إلى دار القرار.

THE WATERING PLACE

الحوض

v2.5 It is obligatory to believe in a watering place people will come to, the watering place of Muhammad (Allah bless him and give him peace), which believers will drink from before entering paradise, after having crossed the bridge over hell. Whoever drinks from it will never thirst again. Its width is a month's journey across, its

v2.5 وأن يؤمن بالحوض المورود حوض محمد ﷺ يشرب منه المؤمنون قبل دخول الجنة وبعد جواز الصراط. من شرب منه شربة لم يظمأ بعدها أبداً. عرضه مسيرة شهر ماؤه أشد بياضاً من

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water whiter than milk and sweeter than honey, and there are as many pitchers around it as stars in the sky. Two aqueducts pour into it from Kawthar, a spring in paradise.

اللبن وأحلى من العسل حوله أباريق عددها بعدد نجوم السماء. فيه ميزابان يصبان فيه من الكوثر.

THE FINAL RECKONING

الحساب

v2.6 It is obligatory to believe in the Final Reckoning and the disparity in the way various people are dealt with therein, some made to answer, others pardoned, and some admitted to paradise without reckoning, being the intimates of Allah (muqarrabun). Allah Most High shall ask whomever He wills of the prophets if they have conveyed their message, ask unbelievers why they denied the messengers, ask those of reprehensible innovation (bid'a) about the sunna, and ask Muslims about their works.

v2.6 وأن يؤمن بالحساب وتفاوت الناس فيه إلى مناقش في الحساب وإلى مسامح فيه وإلى من يدخل الجنة بغير حساب وهم المقربون. فيسأل الله تعالى من شاء من الأنبياء عن تبليغ الرسالة ومن شاء من الكفار عن تكذيب المرسلين ويسأل المبتدعة عن السنة ويسأل المسلمين عن الأعمال.

BELIEVERS SHALL DEPART FROM HELL

خروج الموحدين من النار

v2.7 It is obligatory to hold that true believers in the oneness of Allah (N: who follow the prophet of their age (dis: w4.4)) will be taken out of hell after having paid for their sins, through the generosity of Allah Mighty and Majestic. No one who is a true monotheist will abide in the fire forever.

v2.7 وأن يؤمن بإخراج الموحدين من النار بعد الانتقام [حتى لا يبقى في جهنم موحد] بفضل الله تعالى فلا يخلد في النار موحد.

THE INTERCESSION OF THE PROPHETS AND RIGHTEOUS

شفاعة الأنبياء والصالحين

v2.8 It is obligatory to believe in the intercession of first the prophets, then religious scholars, then martyrs, then other believers, the intercession of each one commensurate with his rank and position with Allah Most High. Any believer remaining in hell without intercessor shall be taken out of it by the favor of Allah, no one who believes remaining in it forever, and anyone with an atom's weight of faith in his heart will eventually depart from it.

v2.8 وأن يؤمن بشفاعة الأنبياء ثم العلماء ثم الشهداء ثم سائر المؤمنين على حسب جاهه ومنزلته عند الله تعالى. ومن بقي من المؤمنين ولم يكن له شفيع أخرج بفضل الله عز وجل فلا يخلد في النار مؤمن بل يخرج منها من كان في قلبه مثقال ذرة من الإيمان.

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THE EXCELLENCE OF THE PROPHETIC COMPANIONS (SAHABA)

v2.9 It is obligatory to believe in the excellence (dis: w56) of the prophetic Companions (Allah be well pleased with them). One must think the best of all of the Companions of the Prophet (Allah bless him and give him peace), and praise them just as Allah Mighty and Majestic (n: e.g., at Koran 3:110) and His messenger have praised them (Allah bless them all and give them peace).

فضل الصحابة

v2.9 وأن يعتقد فضل الصحابة رضي الله عنهم [. . .] وأن يحسن الظن بجميع الصحابة ويثني عليهم كما أثنى الله عز وجل عليهم ورسوله ﷺ وعليهم أجمعين.

*

v3.0 CONCLUSION

v3.1 All of the foregoing has been conveyed by prophetic hadith and attested to by the words of the early Muslims. Whoever believes it with deep conviction belongs to those of the truth, who follow the sunna, and distinguishes himself from the faction who have strayed, the sect adhering to reprehensible innovation (bid'a). We ask Allah through His mercy for perfect certainty and steadfastness in religion, for ourselves and all Muslims; He is the Most Merciful of the Merciful. May Allah bless our liegelord Muhammad, and every chosen servant (*Ihya' 'ulum al-din* (y39), 1.79–83).

v3.0 الخاتمة

v3.1 فكل ذلك مما وردت به الأخبار وشهدت به الآثار. فمن اعتقد جميع ذلك موقناً به كان من أهل الحق وعصابة السنة، وفارق رهط الضلال وحزب البدعة. فنسأل الله كمال اليقين وحسن الثبات في الدين لنا ولكافة المسلمين برحمته، إنه أرحم الراحمين. وصلى الله على سيدنا محمد وعلى كل عبد مصطفى [نقل من إحياء علوم الدين ١/ ٧٩ - ٨٣].

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BOOK W

NOTES AND APPENDICES

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w1.0 TRANSLITERATION OF *DHIKR* AND SUPPLICATIONS

w1.0 الأذكـــار والأدعـيـــة حسب نطقها بالعربية

w1.1 (n:) This section uses a system of transliteration like that of Martin Lings's *Muhammad*, with a few changes such as symbolizing the letter ظ as ḏh instead of ẓ, to better represent the classical pronunciation, and the use of parentheses at the end of words for letters not pronounced when one pauses after them, and at the beginning of words for letters not pronounced when the final vowel of the previous word is elided with what follows it. The letters are:

Arabic	English	Arabic	English	Arabic	English
ء	'	ز	z	ق	q
ب	b	س	s	ك	k
ت	t	ش	sh	ل	l
ث	th	ص	ṣ	م	m
ج	j	ض	ḍ	ن	n
ح	ḥ	ط	ṭ	و	w
خ	kh	ظ	ḏh	ه	h
د	d	ع	'	ة	t
ذ	dh	غ	gh	ي	y
ر	r	ف	f		

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(short vowels)		(long vowels)		(dipthongs)	
ـَ	a	ا	ā	ـَوْ	aw
ـُ	u	و	ū	ـَيْ	ay
ـِ	i	ي	ī	ـِيْ	iyy
				ـُوْ	uww

w1.2 (Martin Lings:) The Arabs sometimes call themselves "the people of Ḍād" because they claim that they alone possess the letter *ḍād,* which sounds like a heavy "d" pronounced far back in the mouth. It is normally transcribed, as here, by *ḍ*. Analogously, *ṣ, ṭ,* and *ẓ* (n: *ḍh* below) stand for other characteristic heavy back consonants, whereas *d, s, t,* and *z* stand for the corresponding front consonants, which are pronounced more or less as in English. The letter *ḥ* is a tensely breathed *h* sound; *q* is a guttural k sound; *th* is to be pronounced as these letters in *think, dh* as they are in *this, gh* like a French *r, kh* like *ch* in Scottish *loch.* The asper ' denotes the letter *'ayn,* which is produced by narrowing the passage in the depth of the throat and then forcing the breath through it. The apostrophe ' denotes the "*hamzah* of discontinuity," which means a slight catch in the breath. Since in English initial vowel sounds are regularly preceded by this catch, the initial *hamzah* has not been transcribed here, e.g. *Aḥmad,* not *'Aḥmad.* The "*hamzah* of continuity" indicates the running of two words into one by the elision, at the beginning of the second word, of the first letter of the definite article *al-*, the *a* of which is always elided except at the beginning of a sentence. This elision is shown here simply by the omission of the letter in question, e.g. *Abu l-'Āṣ,* not *Abu al-'Āṣ;* the continuity has the effect of shortening any long vowel which immediately precedes this *hamzah.* The first letter of the Divine Name *Allāh* is also elided except except at the beginning of a sentence or when it stands alone, e.g. *bismi Llāh ...*

The short vowels *a, i, u* are like the vowel sounds of *sat* [n: like the vowel sound of *set* in American pronunciation], *sit, soot; ā* ... is like the vowel sound of *bare* [n: like that of *flat* for Americans], but back consonants next to it attract it to that of *bar; ī* and *ū* are like the vowel sounds of *seen* and *soon; ay* is between those of *sign* and *sane; aw* is like that of *cow* (*Muhammad* (y75), 348).

PURIFICATION

w1.3 (c5.5) Before ablution (wudu): "Bismi Llāh(i)," or optimally, "Bismi Llāhi r-Raḥmāni r-Raḥīm.

Prior to this, it is sunna to say, "A'ūdhu bi Llāhi mina sh-shayṭāni r-Rajīm," and to add, after the Basmala, "Al-ḥamdu li Llāhi 'ala l-Islāmi wa ni'matih(i), al-ḥamdu li Llāhi lladhī ja'ala l-mā'a ṭahūran wa l-Islāma nūra(n). Rabbī a'ūdhu bika min hamazāti ah-shayāṭīna wa a'ūdhu bika Rabbī an yaḥḍurūn."

If one neglects to say the Basmala at the first of ablution, one pronounces it during ablution, saying, "Bismi Llāhi awwalahu wa ākhirah."

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w1.4 (e5.18) After ablution (wudu): "Ash-hadu an lā ilāha illa Llāhu waḥdahu lā sharīka lah(u), wa ash-hadu anna Muḥammadan 'abduhu wa rasūluh(u); Allāhumma j'alnī mina t-tawwābīn(a), wa j'alnī mina l-mutaṭahhirīn(a), wa j'alnī min 'ibādika ṣ-ṣāliḥīn(a); subḥānaka Llāhumma wa bi ḥamdik(a), ash-hadu an lā ilāha illā ant(a), astaghfiruka wa atūbu ilayk."

w1.5 (e9.1(5)) Before entering the lavatory: "Bismi Llāh(i), Allāhumma innī a'ūdhu bika mina l-khubuthi wa l-khabā'ith"; and after leaving: "Ghufrānak(a), al-ḥamdu li Llāhi lladhī adh-haba 'anniya l-adha wa 'āfānī."

w1.6 (e11.1(1)) Before the purificatory bath (ghusl): "Bismi Llāhi r-Raḥmāni r-Raḥīm."

w1.7 (e12.17(1)) Before dry ablution (tayammum): "Bismi Llāhi r-Raḥmāni r-Raḥīm."

THE CALL TO PRAYER

w1.8 (f3.6) The call to prayer (adhan) is: "Allāhu akbaru Llāhu akbar, Allāhu akbaru Llāhu akbar, ash-hadu an lā ilāha illa Llāh, ash-hadu an lā ilāha illa Llāh, ash-hadu anna Muḥammadan rasūlu Llāh, ash-hadu anna Muḥammadan rasūlu Llāh; ḥayya 'ala ṣ-ṣalāh; ḥayya 'ala ṣ-ṣalāh; ḥayya 'ala l-falāḥ, ḥayya 'ala l-falāḥ; [and here, before the dawn prayer only: "Aṣ-ṣalātu khayrun mina n-nawm, aṣ-ṣalātu khayrun mina n-nawm";] Allāhu akbaru Llāhu akbar, lā ilāha illa Llāh." (See note f3.9(3(A:)) about the pauses between the sentences.)

w1.9 (f3.6) The call to commence (iqama) is: "Allāhu akbaru Llāhu akbar, ash-hadu an lā ilāha illa Llāh, ash-hadu anna Muḥammadan rasūlu Llāh, ḥayya 'ala ṣ-ṣalā(ti) ḥayya 'ala l-falāḥ, qadi qāmati ṣ-ṣalā(tu) qadi qāmati ṣ-ṣalāh, Allāhu akbaru Llāhu akbar, lā ilāha illa Llāh."

w1.10 (f3.11, second par.) The reply to "Come to the prayer" (ḥayya 'ala ṣ-ṣalāh) and "Come to success" (ḥayya 'ala l-falāḥ) is: "Lā ḥawla wa lā quwwata illā bi Llāh."

w1.11 (f3.11, second par.) The reply to "The prayer is better than sleep" (aṣ-ṣalātu khayrun mina n-nawm) in the call to the dawn prayer is: "Ṣadaqt(a) wa barirt."

w1.12 (f3.11, third par.) The reply to "The prayer is commencing" (qadi qāmati

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ṣ-ṣalāh) is: "Aqāmaha Llāhu wa adāmahā mā dāmati s-samāwātu wa l-arḍ(u) wa ja'alanī min ṣāliḥī ahlihā."

w1.13 (f3.12) After blessing the Prophet (Allah bless him and give him peace) subsequently to the call to prayer or call to commence, one adds: "Allāhumma Rabba hādhihi d-da'wati t-tāmmati wa ṣ-ṣalāti l-qā'ima(ti), āti Sayyidanā Muḥammadani l-wasīlata wa l-faḍīlata wa d-darajata r-rafī'a(ta), wa b'ath-hu maqāman maḥmūdani lladhī wa'adtah."

DESCRIPTION OF THE PRAYER

w1.14 (f8.13) The Opening Supplication (Istiftah): "Wajjahtu wajhī li lladhī faṭara s-samāwāti wa l-arḍa ḥanīfan Musliman wa mā ana mina l-mushrikīn; inna ṣalātī wa nusukī wa maḥyāya wa mamātī li Llāhi Rabbi l-'Ālamīna lā sharīka lah(u), wa bi dhālika umirtu wa ana mina l-Muslimīn."

w1.15 (f8.16) Saying, "I take refuge, etc." (ta'awwudh): "A'ūdhu bi Llāhi mina sh-Shayṭāni r-rajīm."

w1.16 (f8.17) The Fatiha:

"In the name of Allah, Most Merciful and Compassionate. All praise be to Allah, Lord of the Worlds, Most Merciful and Compassionate, Master of the Day of Reckoning. You alone we worship, in You alone we seek help. Guide us in the straight way, the way of those You have blessed, not of those whom wrath is upon or those who are lost" (Koran 1:1–7).

الفاتحة w1.16

بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ ، الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ ، الرَّحْمَٰنِ الرَّحِيمِ ، مَالِكِ يَوْمِ الدِّينِ ، إِيَّاكَ نَعْبُدُ وَإِيَّاكَ نَسْتَعِينُ اهْدِنَا الصِّرَاطَ الْمُسْتَقِيمَ ، صِرَاطَ الَّذِينَ أَنْعَمْتَ عَلَيْهِمْ غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ وَلَا الضَّالِّينَ .

w1.17 (f8.19) After the Fatiha: "Āmīn."

w1.18 (f8.30, fourth par.) The minimal *dhikr* when bowing: "Subḥāna Rabbiya l-'Aḍhīm."

(f8.30, fifth par.) The optimal *dhikr* when bowing, after having said the above: "Allāhumma laka raka'tu wa bika āmantu wa laka aslamt(u); khasha'a laka sam'ī wa baṣarī wa mukhkhī wa 'adhamī wa ma staqallat bihi qadamī."

w1.19 (f8.32) The minimal *dhikr* when straightening back up from bowing: "Sami'a Llāhu li man ḥamidah," and when one reaches the upright position, "Rabbanā laka l-ḥamd(u), mil'a s-samāwāti wa mil'a l-arḍi wa mil'a mā shi'ta min shay'in ba'd."

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(f8.32) It is optimal, after having said the above, to add: "Ahla th-thanā'i wa l-majd(i), aḥaqqu mā qāla l-'abd(u), wa kullunā laka 'abd(un), lā māni'a li mā a'ṭayta wa lā mu'ṭiya li mā mana't(a), wa lā yanfa'u dha l-jaddi minka l-jadd."

w1.20 (f8.35(5)) The minimal *dhikr* when prostrating: "Subḥāna Rabbiya l-A'lā."

(f8.35(5), second par.) It is optimal, after having said the above, to add: "Allāhumma laka sajadtu wa bika āmantu wa laka aslamt(u), sajada wajhī li lladhī khalaqahu wa ṣawwarahu wa shaqqa sam'ahu wa baṣarahu bi ḥawlihi wa quwwatih(i), tabāraka Llāhu Aḥsanu l-Khāliqīn."

w1.21 (f8.37(4)) When sitting back between prostrations: "Allāhumma ghfir lī wa rḥamnī wa 'āfinī wa jburnī wa hdinī wa rzuqnī."

w1.22 (f8.45) The minimal Testification of Faith (Tashahhud): "At-taḥiyyātu li Llāh(i), salāmun 'alayka ayyuha n-Nabiyyu wa raḥmatu Llāhi wa barakātuh, salāmun 'alaynā wa 'alā 'ibādi Llāhi ṣ-ṣāliḥīn, ash-hadu an lā ilāha illa Llāhu wa anna Muḥammadan rasūlu Llāh."

(f8.45, second par.) The optimal Testification of Faith: "At-taḥiyyātu l-mubārakātu ṣ-ṣalawātu ṭ-ṭayyibātu li Llāh, as-salāmu 'alayka ayyuha n-Nabiyyu wa raḥmatu Llāhi wa barakātuh, as-salāmu 'alaynā wa 'alā 'ibādi Llāhi ṣ-ṣāliḥīn, ash-hadu an lā ilāha illa Llāh(u), wa ash-hadu anna Muḥammadan rasūlu Llāh."

w1.23 (f8.45, fifth par.) The minimal Blessings on the Prophet (Allah bless him and give him peace) in the Testification of Faith (Tashahhud): "Allāhumma ṣalli 'alā Muḥammad."

(f8.45, sixth par.) The optimal Blessings on the Prophet (Allah bless him and give him peace) in the Testification of Faith (Tashahhud): "Allāhumma ṣalli 'alā Muḥammadin wa 'alā āli Muḥammadin kamā ṣallayta 'alā Ibrāhīma wa 'alā āli Ibrāhīm(a), wa bārik 'alā Muḥammadin wa 'alā āli Muḥammadin kamā bārakta 'alā Ibrāhīma wa 'alā āli Ibrāhīm(a), fi l-'ālamīna innaka ḥamīdun majīd." It is desirable to add the word *sayyidinā* (our liegelord) before each mention of the names *Muhammad* and *Ibrahim*, saying, "Allāhumma ṣalli 'alā Sayyidinā Muḥammadin wa 'alā āli Sayyidinā Muḥammadin kamā ṣallayta 'alā Sayyidinā Ibrāhīma ..." etc.

w1.24 (f8.46) The supplication after the Testification of Faith (Tashahhud): "Allāhumma ghfir lī mā qaddamtu wa mā akhkhartu wa mā asrartu wa mā a'lantu wa mā asraftu wa mā anta a'lamu bihi minnī, anta l-Muqaddimu wa anta l-Mu'akhkhir(u), lā ilāha illā ant."

w1.25 (f8.47) The minimal Salams to close the prayer: "As-Salāmu 'alaykum."

(f8.47, second par.) The optimal Salams to close the prayer: "As-salāmu 'alaykum wa raḥmatu Llāh."

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w1.26 (f8.50) Post-prayer *dhikr:*

(1) ﴿اللهُ لا إِلَهَ إِلاَّ هُوَ الحَيُّ القَيُّومُ لا تَأْخُذُهُ سِنَةٌ ولا نَوْمٌ لَهُ ما في السَّمٰواتِ وما في الأَرْضِ مَنْ ذا الَّذي يَشْفَعُ عِنْدَهُ إِلاَّ بِإِذْنِهِ يَعْلَمُ ما بَيْنَ أَيْدِيهِمْ وما خَلْفَهُمْ ولا يُحيطُونَ بِشَيْءٍ مِنْ عِلْمِهِ إِلاَّ بِما شاءَ وَسِعَ كُرْسِيُّهُ السَّمٰواتِ والأَرْضَ ولا يَؤُودُهُ حِفْظُهُما وهُوَ العَلِيُّ العَظِيمُ﴾.

(2) ﴿بِسْمِ اللَّهِ الرَّحْمٰنِ الرَّحِيمِ قُلْ هُوَ اللَّهُ أَحَدٌ اللَّهُ الصَّمَدُ لَمْ يَلِدْ ولَمْ يُولَدْ ولَمْ يَكُنْ لَهُ كُفُواً أَحَدٌ﴾.

(3) ﴿بِسْمِ اللَّهِ الرَّحْمٰنِ الرَّحِيمِ قُلْ أَعُوذُ بِرَبِّ الفَلَقِ مِنْ شَرِّ ما خَلَقَ ومِنْ شَرِّ غاسِقٍ إِذا وَقَبَ ومِنْ شَرِّ النَّفَّاثاتِ فِي العُقَدِ ومِنْ شَرِّ حاسِدٍ إِذا حَسَدَ﴾.

(4) ﴿بِسْمِ اللَّهِ الرَّحْمٰنِ الرَّحِيمِ قُلْ أَعُوذُ بِرَبِّ النَّاسِ مَلِكِ النَّاسِ إِلٰهِ النَّاسِ مِنْ شَرِّ الوَسْوَاسِ الخَنَّاسِ الَّذِي يُوَسْوِسُ فِي صُدُورِ النَّاسِ مِنَ الجِنَّةِ والنَّاسِ﴾.

(5) "Astaghfiru Llāh(a)."

(6) "Allāhumma anta s-Salāmu wa minka s-salām(u), tabārakta yā Dha l-Jalāli wa l-Ikrām."

(7) "Allāhumma lā māni'a li mā a'ṭayt(a), wa lā mu'ṭiya li mā mana't(a), wa lā yanfa'u dha l-jaddi minka l-jadd."

(8) "Subḥāna Llāh(i)."

(9) "Al-ḥamdu li Llāh(i)."

(10) "Allāhu akbar(u)."

(11) "Lā ilāha illa Llāhu waḥdahu lā sharīka lah(u), lahu l-mulku wa lahu l-ḥamdu wa huwa 'alā kulli shay'in qadīr."

w1.27 (f8.53) The supplication (qunut) in the dawn prayer after straightening up from bowing in the second rak'a, where, if praying alone, one uses the *ī* wherever it is italicized below, while if leading a group, one substitutes *ā* for each italicized *ī*: "Allāhumma hdin*ī* fī man hadayt(a), wa 'āfin*ī* fī man 'āfayt(a), wa tawallan*ī* fī man tawallayt(a), wa bārik *lī* [*lanā* if leading a group] fī mā a'ṭayt(a), wa qin*ī* sharra mā qaḍayt(a), fa innaka taqḍī wa lā yuqḍā 'alayk(a), wa innahu lā yaḍillu man wālayt(a), tabārakta Rabbanā wa ta'ālayt." It is commendable to add "wa lā ya'izzu man 'ādayt(a)," before the word *tabārakta* in the last sentence.

SUPEREROGATORY PRAYERS

w1.28 (f10.5, second par.) When praying *witr* after *tarawih,* one adds the following to the above supplication (qunut): "Allāhumma innā nasta'īnuka wa nas-

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taghfiruka wa nastahdīka wa nu'minu bika wa natawakkalu 'alayka wa nuthnī 'alayka l-khayra kullah(u), nashkuruka a lā nakfiruk(a), wa nakhla'u wa natruku man yafjuruk(a), Allāhumma iyyāka na'budu wa laka nusallī wa nasjudu illayka wa nas'ā wa naḥfid(u), narjū raḥmataka wa nakhshā 'adhābaka inna 'adhābaka l-jidda bi l-kuffāri mulḥiq."

w1.29 (f10.10, second par.) A substitute for two rak'as of greeting the mosque: "Subḥāna Llāhi wa l-ḥamdu li Llāhi wa lā ilāha illa Llāhu, wa Llāhu akbar."

w1.30 (f10.12, third par.) The supplication of the prayer for guidance (istikhara): "Allāhumma innī astakhīruka bi 'ilmika wa staqdiruka bi qudratika wa as'aluka min faḍlika l-'aḍhīm, fa'innaka taqdiru wa lā aqdir(u), wa ta'lamu wa lā a'lam(u), wa anta 'Allāmu l-Ghuyūb(i), Allāhumma in kunta ta'lamu anna hādha l-amra khayrun lī fī *dīnī wa ma'āshī wa 'āqibati amrī* [a variant has " 'ājili amrī wa ājilih(i)" in place of the italicized] fa qdurhu lī wa yassirhu lī thumma bārik lī fīh(i), wa in kunta ta'lamu anna hādha l-amra sharrun lī fī *dīni wa ma'āshī wa 'āqibati amrī* [the variant has " 'ājili amrī wa ājilih(i)" as before] fa ṣrifhu 'annī wa ṣrifnī 'anhu wa qdur liya l-khayra haythu kāna thumma raḍḍinī bih(i)," then one mentions the matter at hand.

THE FRIDAY PRAYER

w1.31 (f18.9(c) third par.) Minimal sermon (khutba) for the Friday prayer: "Inna l-ḥamda li Llāh, naḥmaduhu wa nasta'īnuhu wa nastaghfiruh(u), na'ūdhu bi Llāhi min shurūri anfusinā wa min sayyi'āti a'mālinā, man yahdi Llāhu fa lā muḍilla lah(u), wa man yuḍlil fa lā hādiya lah(u), wa ash-hadu an lā ilāha illa Llāhu waḥdahu lā sharīka lah(u), wa ash-hadu anna Muḥammadan 'abduhu wa rasūluh(u), ṣalla Llāhu 'alayhi wa sallama wa 'alā ālihi wa aṣ-ḥābih(i). yā ayyuha lladhīna āmanu ttaqu Llāha ḥaqqa tuqātih(i), wa lā tamutunna illā wa antum Muslimūn(a). 'Yā ayyuha n-nāsu ttaqū Rabbakumu lladhī khalaqakum min nafsin wāḥidatin wa khalaqa minhā zawjahā wa baththa minhumā rijālan kathīran wa nisā'a(n), wa ttaqu Llāha lladhī tasā'alūna bihi wa l-arḥām(a), inna Llāha kāna 'alaykum raqība(n).' "

THE PRAYER ON THE TWO 'EIDS

w1.32 (f19.8, last par.) The Allahu Akbars and additional *dhikr* of 'Eid al-Adha: "Allahu akbaru Llāhu akbaru Llāhu akbar, lā ilāha illa Llāh, Allāhu akbaru Llāhu akbar(u), wa li Llāhi l-ḥamd." It is commendable to add to this: "Allāhu akbaru kabīra(n), wa l-ḥamdu li Llāhi kathīra(n), wa subḥāna Llāhi bukratan wa aṣīla(n), lā ilāha illa Llāhu wa lā na'budu illā iyyāh(u), mukhliṣīna lahu d-dīn(a), wa law kariha l-kāfirūn. Lā ilāha illa Llāhu waḥdah(u), ṣadaqa wa'dah(u), wa naṣara 'abdah(u), wa a'azza jundah(u), wa hazama l-aḥzāba waḥdah(u), lā ilāha illa Llāhu wa Llāhu akbar."

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THE DROUGHT PRAYER

w1.33 (f21.3, second par.) In the drought prayer, the imam says the following nine times before the first sermon (khutba) and seven times before the second: "Astaghfiru Llāha l-'Aḍhīma lladhī lā ilāha illā huwa l-Ḥayya l-Qayyūma wa atūbu ilayh."

(f21.3, fourth par.) He frequently says "Astaghfiru Llāh," the Blessings on the Prophet (Allah bless him and give him peace), and supplicates Allah with the following Koranic verses: "Istaghfirū Rabbakum innahu kāna ghaffāra(n), yursili s-samā'a 'alaykum midrāra(n), wa yumdidkum bi amwālin wa banīna wa yaj'al lakum jannātin wa yaj'al lakum anhāra."

(f21.3, seventh par.) The drought prayer supplication: "Allāhumma sqinā ghaythan mughīthan hanī'an marī'an saḥḥan 'āmman ghadaqan ṭabaqan mujallilan dā'iman ilā yawmi d-dīn. Allāhumma inna bi l-'ibādi wa l-bilādi min al-jahdi wa l-jū'i wa ḍ-ḍanki mā lā nashkū illā ilayk(a), Allāhumma anbit lanā z-zar'a wa adirra lana ḍ-ḍar'a wa anzil 'alaynā min barakāti s-samā'(i), wa anbit lanā min barakāti l-arḍi wa kshif 'annā mina l-balā'i mā lā yakshifuhu ghayruk."

w1.34 (f21.6) When thunder is heard: "Subḥāna lladhī yusabbiḥu r-ra'du bi ḥamdihi wa l-malā'ikatu min khīfatih."

When lightning is seen: "Subḥana man yurīkumu l-barqa khawfan wa ṭama'a(n)."

w1.35 (f21.7) Supplication against too much rain: "Allāhuma hawalaynā wa lā 'alaynā; Allāhumma 'ala ḍh-ḍhirābi wa l-ākāmi wa buṭūni l-awdiyati wa manābiti sh-shajar."

VISITING THE SICK

w1.36 (g1.4) Supplication for Allah to heal a sick person: "Allāhumma Rabba n-Nāsi adh-hibi l-ba'sa wa shfi wa anta sh-Shāfi lā shāfiya illā anta shifā'an lā yughādiru alaman wa lā saqama(n)."

THE FUNERAL PRAYER (JANAZA)

w1.37 (g4.10) Supplication after the third Allahu Akbar of the funeral prayer: "Allāhumma hādhā 'abduka wa bnu 'abdik(a), kharaja min rawḥi d-dunyā wa sa'atihā, wa maḥbubūhu wa aḥibbā'uhu fihā, ilā ḍhulmati l-qabri wa mā huwa lāqīh(i), kāna yash-hadu an lā ilāha illā anta waḥdaka lā sharīka lak(a), wa anna Muḥammadan 'abduka wa rasūluk(a), wa anta a'lamu bihi minnā. Allāhumma innahu nazala bika wa anta ghaniyyun 'an 'adhābihi wa qad ji'nāka rāghibīna ilayka shufa'ā'a lah(u). Allāhumma, in kāna muḥsinan fa zid fī iḥsānih(i), wa in

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kāna musī'an fa tajāwaz 'anhu wa laqqihi bi raḥmatika riḍāk(a), wa qihi fitnata l-qabri wa 'adhabāhu wa fsaḥ lahu fī qabrihi wa jāfi l-arḍa 'an janbayhi wa laqqihi bi raḥmatika l-amna min 'adhābika ḥattā tab'athahu āminan ilā jannatika yā Arḥama r-Rāḥimīn."

(g4.11) One may add the following, before the above supplication: "Allāhumma ghfir li ḥayyinā wa mayyitinā wa shāhidinā wa ghā'ibinā wa saghīrinā wa kabīrinā wa dhakarinā wa unthānā. Allāhumma man aḥyaytahu minnā fa ḥyihi 'ala l-Islām, wa man tawaffaytahu minnā fa tawaffihi 'ala l-Īmān."

(g4.11, second par.) If the deceased is a child, one may say, with the above addition: "Allāhumma j'alhu faraṭan li abuwayhi wa salafan wa dhukhran wa 'iḍhatan wa 'tibāran wa shāfi'a(n), wa thaqqil bihi mawāzīnahumā wa frighi ṣ-ṣabra 'alā qulūbihimā."

w1.38 (g4.12) After the fourth Allahu Akbar of the funeral prayer: "Allāhumma lā taḥrimnā ajrahu wa lā taftinnā ba'dahu wa ghfir lanā wa lah(u)."

w1.39 (g4.13(f)) The minimal supplication after the third Allahu Akbar of the funeral prayer: "Allāhumma ghfir li hādha l-mayyit."

BURIAL

w1.40 (g5.4(1) When putting the deceased in the grave: "Bismi Llāhi wa 'alā millati rasūli Llāhi ṣalla Llāhu 'alayhi wa sallam."

w1.41 (g5.6) With the first handfuls of earth in burying the dead:
First handful: "Minhā khalaqnākum."
Second handful: "Wa fīhā nu'īdukum."
Third handful: "Wa minhā nukhrijukum tāratan ukhrā."

w1.42 (g5.6(2) Supplication for the person buried: "Allāhumma thabbit-hu, Allāhumma laqqinhu ḥujjatah(u)."

w1.43 (g5.8, second par.) Greeting to buried believers: "Salāmun 'alaykum dāra qawmin mu'minīn(a), wa innā in shā' Allāhu bikum lāḥiqūn."

w1.44 (g6.2(1–3)) Condolences:
To a Muslim who's lost a Muslim: "A'ḍhama Llāhu ajraka wa aḥsana 'azā'aka wa ghafara li mayyitik(a)."
To a Muslim who's lost a non-Muslim: "A'ḍhama Llāhu ajraka wa aḥsana 'azā'ak(a)."
To a non-Muslim who's lost a Muslim: "Aḥsana Llāhu 'azā'aka wa ghafara li mayyitik(a)."

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ZAKAT

w1.45 (h8.4) Supplication by the zakat recipient for the zakat giver: "Ājaraka Llāhu fīmā a'ṭayt(a), wa bāraka laka fīmā abqayt(a), wa ja'alahu laka ṭahūra(n)."

FASTING RAMADAN

w1.46 (i1.25) *Dhikr* upon breaking one's fast: "Allāhumma laka ṣumtu wa 'alā rizqika afṭart."

w1.47 (i3.2, last par.) Supplication for Laylat al-Qadr: "Allāhumma innaka 'afuwwun tuḥibbu l-'afwa fa 'fu 'annī."

THE PILGRIMAGE.

w1.48 (j3.4) The pilgrim chant of "Labbayk": "Labbayka Llāhumma labbayk, labbayka lā sharīka laka labbayk, inna l-ḥamda wa n-ni'mata laka wa l-mulk, lā sharīka lak." (Thrice.)

Then one says the Blessings on the Prophet (Allah bless him and give him peace), and then asks Allah for paradise and seeks refuge in Him from hell by saying: "Allāhumma innī as'aluka l-jannata wa na'īmahā wa riḍwānak(a), wa a'ūdhu bika min sakhaṭika wa n-nār."

(j3.4, last par.) If one sees something pleasing (or offensive) while in ihram, one says: "Labbayka inna l-'aysha 'ayshu l-ākhira."

w1.49 (j4.2) Supplication upon first seeing the Kaaba: "Allāhumma zid hādha l-bayta tashrīfan wa takrīman wa ta'ḍhīman wa muhāba(tan), wa zid man sharrafahu wa 'aḍhḍhamahu mimman hajjahu wa 'tamarahu tashrīfan wa takrīman wa ta'ḍhīman wa birra(n), Allāhumma anta s-Salāmu wa minka s-salāmu fa ḥayyinā Rabbanā bi s-salām."

w1.50 (j5.3(2–3)) When kissing the Black Stone: "Allāhu akbaru Llāhu akbaru Llāhu akbar(u), Allāhumma īmānan bika wa taṣdīqan bi kitābika wa wafā'an bi 'ahdika wa ttibā'an li sunnati nabiyyika ṣalla Llāhu 'alayhi wa sallam."

(j5.5) When passing the Kaaba's door in circumambulation: "Allāhumma inna hādha l-bayta baytuka wa l-ḥarama ḥaramuka wa l-amna amnuk(a), wa hādhā maqāmu l-'ā'idhi bika mina n-nār."

(j5.6) When passing the corner by Hijr Isma'il: "Allāhumma innī a'ūdhu bika mina sh-shakki wa sh-shirki wa sh-shiqāqi wa n-nifāqi wa sū'i l-akhlāq(i), wa sū'i l-munqalabi fi l-māli wa l-ahli wa l-walad."

(j5.7) When passing the rainspout at the top of the Kaaba (Mizab al-Rahma):

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"Allāhumma adḥillanī fī dḥillika yawma lā dḥilla illā dḥilluk(a), wa sqinī bi ka'si nabiyyika Muḥammadin ṣalla Llāhu 'alayhi wa sallama mashraban hanī'an lā adhma'u ba'dahu abada(n)."

(j5.8) When between the third corner and the Yamani corner: "Allāhumma j'alhu ḥajjan mabrūran wa sa'yan mashkūran wa 'amalan maqbūlan wa tijāratan lan tabūr(a), yā 'Azīzu yā Ghafūr."

w1.51 (j5.13, fourth par.) When trotting in first three rounds of circumambulation: "Allāhumma j'alhu ḥajjan mabrūran wa sa'yan mashkūran wa dhanban maghfūra(n)."

(j5.13, fifth par.) When performing the last four rounds of circumambulation: "Rabbi ghfir wa rḥam wa 'fu 'ammā ta'lam(u), innaka anta l-A'azzu l-Akram(u), Rabbanā ātinā fi d-dunyā ḥasanatan wa fi l-ākhirati ḥasanatan wa qinā 'adhāba n-nār."

w1.52 (j5.18, second par.) Supplication after two rak'as at the Station of Ibrahim: "Allāhumma hādhā baladuka wa l-masjidu l-ḥarāmu wa baytuka l-ḥaram(u), wa ana 'abduka bnu 'abdika wa bnu amatik(a), ataytuka bi dhūnubin kathīratin wa khaṭāyā jammatin wa a'mālin sayyi'a(tin), wa hādhā maqāmu l-'ā'idhi bika mina n-nār; fa ghfir lī, innaka anta l-Ghafūru r-Raḥīm. Allāhumma innaka da'awta 'ibādaka ilā baytika l-ḥarām wa qad ji'tu ṭāliban raḥmataka mutabi'an marḍātika wa anta muthīb(un), fa ghfir lī wa rḥamnī, innaka 'alā kulli shay'in qadīr."

w1.53 (j6.2(2)) *Dhikr* on Safa: "Lā ilāha illa Llāhu waḥdahu lā sharīka lah(u), lahu l-mulku wa lahu l-ḥamdu yuḥyī wa yumīt(u), bi yadihi l-khayru wa huwa 'alā kulli shay'in qadīr. Lā ilāha illa Llāhu waḥdahu lā sharīka lah(u), anjaza wa'dah(u), wa naṣara 'abdah(u), wa hazama l-aḥzāba waḥdah(u), lā ilāha illa Llāhu wa lā na'budu illā iyyāhu mukhliṣīna lahu d-dīna wa law kariha l-kāfirūn."

w1.54 (j6.5) Supplication between Safa and Marwa: "Rabbi ghfir wa rḥam wa tajāwaz 'ammā ta'lamu innaka anta l-A'azzu l-Akram(u), Allāhumma Rabbanā ātinā fi d-dunyā ḥasanatan wa fi l-ākhirati ḥasanatan wa qinā 'adhāba n-nār."

w1.55 (j7.3) On the way to 'Arafa: "Allāhumma ilayka tawajjaht(u), wa li wajhika l-karīmi aradt(u), fa j'al dhanbī maghfūran wa ḥajjī mabrūran wa rḥamnī wa lā tukhayyibnī."

w1.56 (j8.2, second par.) When standing at 'Arafa: "Lā ilāha illa Llāhu waḥdahu lā sharīka lah(u), lahu l-mulku wa lahu l-ḥamdu wa huwa 'alā kulli shay'in qadīr."

w1.57 (j9.2) When standing at al-Mash'ar al-Haram: "Allāhumma kamā awqaftanā fīhi wa araytanā iyyāh(u), fa waffiqnā li dhikrika kamā hadaytanā, wa ghfir

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lanā wa rḥamnā kamā wa'adtanā bi qawlika wa qawluka l-ḥaqq(u): Fa idhā afaḍ-tum min 'Arafātin fa dhkuru Llāha 'inda l-Mash'ari l-Ḥarām(i), wa dhkurūhu kamā hādākum wa in kuntum min qablihi la mina ḍ-ḍāllīn(a), thumma afīḍū min ḥaythu afāḍa n-nās(u), wa staghfiru Llāha inna Llāha ghafūrun raḥīm. Rabbanā ātinā fi d-dunyā ḥasantan wa fi l-ākhirati ḥasanatan wa qinā 'adhāba n-nār."

w1.58 (j9.8(2)) Supplication after cutting one's hair: "Allāhu akbaru Llāhu akbaru Llāhu akbar(u), wa li Llāhi l-ḥamd."

w1.59 (j11.3) Supplication after farewell circumambulation: "Allāhumma inna l-bayta baytuka wa l-'abda 'abduka wa bnu 'abdayk(a), ḥamaltanī 'alā mā sakhkharta lī min khalqika ḥattā ṣayyartanī fī bilādika wa ballaghtanī bi ni'matika ḥatta a'antanī 'alā qadā'i manāsikik(a), fa in kunta raḍīta 'annī fa zdad 'annī riḍā(a), wa illā fa munna l-'āna qabla an tan'ā 'an baytika dārī wa yab'uda 'anhu mazārī, hādhā awānu nṣirāfī in adhinta lī, ghayra mustabdilin bika wa lā bi baytika wa lā rāghibin 'anka wa lā 'an baytik(a). Allāhumma fa aṣ-ḥibniya l-'āfiyata fī badanī wa l-'iṣmata fī dīnī wa aḥsin munqalabī wa rzuqni l-'amal bi ṭā'atika mā abqaytanī wa jma' lī khayrayi d-dunyā wa l-ākhira(ti), innaka 'alā kulli shay'in qadīr." Then one blesses the Prophet (Allah bless him and give him peace).

w1.60 (j13.1) Supplication when entering a mosque: "Bismi Llāhi wa l-ḥamdu li Llāh(i). Allāhumma ṣalli 'alā Sayyidinā Muḥammadin wa 'alā ālihi wa aṣ-ḥābihi wa sallim. Allāhumma ftaḥ lī abwāba raḥmatik."

w1.61 (j13.2) Greeting the Prophet (Allah bless him and give him peace): "As-salāmu 'alayka yā Rasūla Llāh(i), as-salāmu 'alayka yā Nabiyya Llāh(i), as-salāmu 'alayka yā Khīrata Llāh(i), as-salāmu 'alayka yā Khayra Khalqi Llāh(i), as-salāmu 'alayka yā Ḥabība Llāh."

MARRIAGE

w1.62 (m2.17) Sunna address (khutba) before making a marriage proposal: "Al-ḥamdu li Llāh(i), wa ṣ-ṣalātu wa s-salāmu 'alā rasūli Llāh(i) ṣalla Llāhu 'alayhi wa sallam(a), ūṣīkum bi taqwa Llāh(i), ji'tukum khāṭiban karīmatakum [and here one mentions her name]."

(m2.17, second par.) Sunna address before marrying: "Uzawwijuka 'alā mā amara Llāhu Ta'āla bihi min imsākin bi ma'rūf(in), aw tasrīḥin bi iḥsān(in)."

w1.63 (m3.2(a)) Words that effect a marriage: "Zawwajtuka," or "Ankaḥtuka."

(m3.2(b)) The spoken acceptance: "Tazawwajtuhā," or "Qabiltu nikāḥahā."

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w1.64 (m5.3) Supplication for the wedding night: "Bāraka Llāhu li kullin minnā fī ṣāḥibih."

AMULETS AND PROTECTIVE WORDS

w1.65 (w17.2, second par.) Supplication for fearful situations: "A'ūdhu bi kalimāti Llāhi t-tāmmati min ghaḍabihi wa min hamazāti sh-shayāṭīna an yaḥḍūrun."

SUPPLICATING ALLAH (TAWASSUL) THROUGH THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE) IN THE PRAYER OF NEED

w1.66 (w40.3, second par.) Supplicating Allah through the Prophet (Allah bless him and give him peace): "Allāhumma innī as'aluka wa atawajjahu ilayka bi nabiyyī Muḥammad(in), Nabiyyi r-Raḥma(ti), yā Muḥammadu innī astashfa'u bika 'alā Rabbī fī ḥājatī li tuqḍā lī, Allāhumma shaffi'hu fiyya."

(w40.4, second par.) Another form: "Allāhumma innī as'aluka wa atawajjahu ilayka bi nabiyyinā Muḥammad(in), Nabiyyi r-Raḥma(ti), yā Muḥammadu innī atawajjahu bika ilā Rabbī fa yaqḍiya ḥājatī," and one mentions one's need.

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w2.0 INDEX FOR TAPE-RECORDING *DHIKR* AND SUPPLICATIONS

w2.0 دليل مواضع الأذكار والأدعية

w2.1 (n:) Those who want to tape-record a native speaker of Arabic reciting the *dhikr* of this volume—an easier way to learn than using only the transliterations provided above—may wish to use the following index as a taping sequence:

(e5.5) Before ablution (wudu)
(e5.18) After ablution
(e9.1(5)) Before and after using the lavatory
(e11.1(1)) Before the purificatory bath (ghusl)
(e12.17(1)) Before dry ablution (tayammum)
(f3.6) The call to prayer (adhan)
(f3.6) The call to commence (iqama)
(f3.11, second par.) Replies to "Come to the prayer" and "Come to success" in the call to prayer
(f3.11, second par.) Reply to "Prayer is better than sleep" in the call to the dawn prayer
(f3.11, third par.) Reply to "The prayer is commencing" in the call to commence
(f3.12) After blessing the Prophet (Allah bless him and give him peace) sub-

sequent to the call to prayer
(f8.13) The Opening Supplication of the prayer (Istiftah)
(f8.16) "I take refuge, etc." (ta'awwudh)
(f8.17) The Fatiha
(f8.19) After the Fatiha
(f8.30, fourth par.) The minimal *dhikr* when when bowing
(f8.30, fifth par.) The optimal *dhikr* when bowing
(f8.32) The minimal *dhikr* when straightening up
(f8.32) The optimal *dhikr* when straightening up
(f8.35(5)) Minimal *dhikr* when prostrating
(f8.35(5), second par.) Optimal addition to this
(f8.37(4)) When sitting back between prostrations
(f8.45) Minimal Testification of Faith (Tashahhud)
(f8.45, second par.) Optimal Testification of Faith
(f8.45, fifth par.) Minimal Blessings on the Prophet (Allah bless him and give him peace) after the Testification of Faith
(f8.45, sixth par.) Optimal Blessings on the Prophet (Allah bless him and give him peace) after the Testification of Faith
(f8.46) Supplication after the Testification of Faith
(f8.47) Minimal Salams to close the prayer
(f8.47, second par.) Optimal Salams to close the prayer
(f8.50) Post-prayer *dhikr*
(f8.53) Supplication (qunut) in the dawn prayer after straightening up from bowing in the second rak'a
(f10.5, second par.) Addition to the above supplication (qunut) when praying *witr* after *tarawih*
(f10.10, second par.) Substitute for two rak'as of greeting the mosque
(f10.12, third par.) Supplication of the prayer for guidance (istikhara)
(f18.9(e)) Minimal sermon (khutba) for the Friday prayer
(f19.8, last par.) The Allahu Akbars and additional *dhikr* of 'Eid al-Adha
(f21.3, second par.) *Dhikr* said by the imam in drought prayer before sermon (khutba)
(f21.3, fourth par.) Koranic supplication used during the drought prayer
(f21.3, seventh par.) The drought prayer supplication
(f21.6) *Dhikr* for thunder and lightning
(f21.7) Supplication against too much rain
(g1.4) Supplication for Allah to heal a sick person
(g4.10) Supplication after the third Allahu Akbar of the funeral prayer
(g4.11) Addition said prior to the above supplication
(g4.11, second par.) Supplication said with the latter addition if the deceased is a child
(g4.12) After the fourth Allahu Akbar of the funeral prayer
(g4.13(f)) Minimal supplication after the third Allahu Akbar of the funeral prayer
(g5.4(1) When putting the deceased in the grave
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(j5.13, fifth par.) When performing the last four rounds
(j5.18, second par.) Supplication after two rak'as at the Station of Ibrahim
(j6.2(2)) *Dhikr* at Safa
(j6.5) Supplication between Safa and Marwa
(j7.3) On the way to 'Arafa
(j8.2, second par.) When standing at 'Arafa
(j9.2) When standing at al-Mash'ar al-Haram
(j9.8(2)) Supplication after cutting one's hair
(j11.3) Supplication after the farewell circumambulation
(j13.1) Supplication when entering a mosque
(j13.2) Greeting the Prophet (Allah bless him and give him peace)
(m2.17) Address (khutba) before making a marriage proposal
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(m3.2(b)) The spoken acceptance
(m5.3) Supplication for the wedding night
(w17.2, second par.) Supplication for fearful situations
(w40.3, second par.) Supplicating Allah (tawassul) through the Prophet

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w3.0 REASON AND SACRED LAW (from a1.4)

w3.1 (Ghazali:) The way that the medicines of acts of worship work, their limits and amounts being specified and determined by the prophets, cannot be comprehended by the apparatus of intellectuals' "intelligence." Rather, it is necessary to follow the example of the prophets, to whom these properties are perceived through prophetic light, not the apparatus of the mind.

If a philosopher denies the possibility of such properties, in the numbers of the rak'as of the prayer, stoning the pillars at Mina, the number of hajj integrals, or any of the acts of worship in Sac-

w3.0 العقل والشرع

w3.1 (الغزالي:) [. . .] وأدوية العبادات بحدودها ومقاديرها المحدودة المقدرة من جهة الأنبياء، لا يدرك وجه تأثيرها ببضاعة عقل العقلاء، بل يجب فيها تقليد الأنبياء الذين أدركوا تلك الخواص بنور النبوة لا ببضاعة العقل.

[. . .] فإن أنكر فلسفي إمكان هذه الخواص في أعداد الركعات ورمي الجمار وعدد أركان الحج وسائر تعبدات

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red Law, he will not find any difference in principle between such properties and those of the various medicines, for example, or the stars. If he says, "I have tested something of both astronomy and medicine, and found them to be correct, so that my heart has accepted them and I no longer think them farfetched or reject them; while I have not tried this, so how can I know it exists, or investigate it, should I acknowledge its possibility?"—I would answer, "But you do not always confine your acceptance to what you have personally tried. Rather, you accept information from others who have, and you follow them. Let us imagine a man who reaches physical and mental maturity without ever experiencing a disease, but who then falls ill. He has a concerned father with skill in medicine, whose claims to medical knowledge he has heard as long as he can remember, and his father now compounds some medicine and says, 'This is appropriate for your disease and will cure it.' How much will the patient's intellect demand, even if the medicine is bitter and tastes unpleasant? Will he take it, or will he call the doctor a liar, saying, 'I do not see the suitability of this medicine for effecting a cure, since I've never tried it.' You would doubtless consider him a fool for this. And just so do the knowledgeable who possess spiritual insight consider your reservations."

If such a person says: "But how can I be certain of the sincerity of the Prophet's concern (Allah bless him and give him peace), and his knowledge of this medicine?" I reply, "How did you learn of your father's concern when it was not something physically perceptible? You acquired incontestably certain knowledge of it by the evidence of how he has always behaved and by observing his actions, their causes and results. So too, whoever examines what the Prophet said (Allah bless him and give him peace) and the accounts in hadiths of his concern for guiding others and his kindly way of urging them with graciousness and tact to improve their character and forget their differences –in a word, urging them to accept the only means capable of improving their religious and this-worldly concerns—whoever examines these will gain complete certainty that the Prophet's concern towards his Community was greater than a father's for his son. When one considers the wondrous deeds that appeared

الشرع، لم يجد بينها وبين خواص الأدوية والنجوم فرقاً أصلاً. فإن قال قد جربت شيئاً من النجوم وشيئاً من الطب، فوجدت بعضه صادقاً، فانقدح في نفسي تصديقه وسقط من قلبي استبعاده ونفرته؛ وهذا لم أجربه، فبم أعلم وجوده وتحقيقه إن أقررت بإمكانه؛ فأقول: إنك لا تقتصر على تصديق ما جربته، بل سمعت أخبار المجربين وقلدتهم [...] فإنا لو فرضنا رجلاً بلغ وعقل ولم يجرب المرض فمرض وله والد مشفق حاذق بالطب يسمع دعواه في معرفة الطب منذ عقل فعجن له والده دواء فقال هذا يصلح لمرضك، ويشفيك من سقمك فماذا يقتضيه عقله، وإن كان الدواء مراً كريه المذاق، أيتناول أو يكذّب ويقول: أنا لا أعقل مناسبة هذا الدواء لتحصيل الشفاء، ولم أجربه. فلا شك أنك تستحمقه إن فعل ذلك، وكذلك يستحمقك أهل البصائر في توقفك. فإن قلت فبم أعرف شفقة النبي عليه السلام ومعرفته بهذا الطب؟ فأقول: وبم عرفت شفقة أبيك وليس ذلك أمراً محسوساً، بل عرفتها بقرائن أحواله وشواهد أعماله في مصادره وموارده علماً ضرورياً لا تماري فيه، ومن نظر في أقوال رسول الله عليه الصلاة والسلام وما ورد من الأخبار في اهتمامه بإرشاد الخلق وتلطفه في جر الناس بأنواع الرفق واللطف إلى تحسين الأخلاق وإصلاح ذات البين، وبالجملة إلى ما لا يصلح إلا به دينهم ودنياهم، حصل له علم ضروري بأن شفقته على أمته أعظم من شفقة الوالد على ولده. وإذا نظر إلى عجائب ما ظهر عليه من

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at his hands (Allah bless him and give him peace), the wonders of the unseen imparted by the Koran through his tongue and conveyed by prophetic hadith, when one looks at what he said about the latter days which has come to pass as he foretold; one gains absolute certainty that he reached the sphere which lies above and beyond the mind, and that the eye which opens onto the unseen that none but the elect know, of matters unfathomable to intellects, was opened for him (*al-Munqidh min al-dalal* (y41), 58, 67–69).

الأفعال، وإلى عجائب الغيب الذي أخبر عنه القرآن على لسانه وفي الأخبار، وإلى ما ذكره في آخر الزمان فظهر ذلك كما ذكره، علم علماً ضرورياً أنه بلغ الطور الذي وراء العقل وانفتحت له العين التي يتكشف منها الغيب، الذي لا يدركه إلا الخواص والأمور التي لا تدركها العقول [محرر من المنقذ من الضلال: ٥٨، ٦٧ - ٦٩].

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w4.0 THE FINALITY OF THE PROPHET'S MESSAGE (from a1.5)

w4.0 اكتمال الإسلام

w4.1 (n:) This section has been translated to clarify some possible confusions among Muslims as to Islam's place among world religions. The discussion centers on three points:

(1) Muhammad (Allah bless him and give him peace) is the last prophet and messenger. Anyone claiming to be a prophet or messenger of Allah after him or to found a new religion is a fraud, misled and misleading.

(2) Previously revealed religions were valid in their own eras, as is attested to by many verses of the Holy Koran, but were abrogated by the universal message of Islam, as is equally attested to by many verses of the Koran. Both points are worthy of attention from English-speaking Muslims, who are occasionally exposed to erroneous theories advanced by some teachers and Koran translators affirming these religions' validity but denying or not mentioning their abrogation, or that it is unbelief (kufr) to hold that the remnant cults now bearing the names of formerly valid religions, such as "Christianity" or "Judaism," are acceptable to Allah Most High after He has sent the final Messenger (Allah bless him give him peace) to the entire world (dis: o8.7(20)). This is a matter over which there is no disagreement among Islamic scholars, and if English-speaking Muslims at times discuss it as if there were some question about it, the only reason can be that no one has yet offered them a translation of a scholarly Koranic exegesis (tafsir) to explain the accord between the various Koranic verses, and their agreement with the sunna. The few passages translated below will hopefully be of use until this has been done.

(3) Islam is the final religion that Allah Most High will never lessen or abrogate until the Last Day. A hadith that seems to imply that "a tenth of Islam" will be enough for Muslims in the latter days is discussed at the end of the section.

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MUHAMMAD IS THE LAST PROPHET AND MESSENGER (ALLAH BLESS HIM AND GIVE HIM PEACE)

w4.2 (Ibn Kathir:) Allah Most High says:

"Muhammad is not the father of any man among you, but the Messenger of Allah and the Last of the Prophets. And Allah has knowledge of everything" (Koran 33:40).

This Koranic verse is an unequivocally decisive primary text establishing that there will be no prophet after him. And since there will be no prophet (nabi), it follows *a fortiori* that there will be no prophetic messenger (rasul). The Prophet (Allah bless him and give him peace) said:

(1) "Messengerhood and prophethood have ceased. There will be no messenger or prophet after me."

(2) "My likeness among the prophets is as a man who, having built a house and put the finishing touches on it and made it seemly, yet left one place without a brick. When anyone entered it and saw this, he would exclaim, 'How excellent it is, but for the place of this brick.' Now, I am the place of that brick: through me the line of the prophets (Allah bless them and give them peace) has been brought to completion."

(3) "I have been favored above the prophets in six things: I have been endowed with consummate succinctness of speech, made triumphant through dread, war booty has been made lawful for me, the whole earth has been made a purified place of worship for me, I have been sent to all created beings, and the succession of prophets has been completed in me."

Allah Most Blessed and Exalted has stated in His Book, as has His messenger (Allah bless him and give him peace) in hadiths of numerous channels of transmission (mutawatir, def: o22.1(d(II))) that there will be no prophet after him, so that everyone may know that whoever

لا رسول بعد محمد ﷺ، ولا نبي

w4.2 (ابن كثير:) قال الله تعالى:

﴿مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِنْ رِجَالِكُمْ وَلَكِنْ رَسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ وَكَانَ اللَّهُ بِكُلِّ شَيْءٍ عَلِيمًا﴾ [الأحزاب: ٤٠].

فهذه الآية نص في أنه لا نبي بعده وإذا كان لا نبي بعده فلا رسول بالطريق الأولى والأحرى. قال رسول الله ﷺ:

- «إن الرسالة والنبوة قد انقطعت فلا رسول بعدي ولا نبي» [...] [رواه أحمد].

- [قال رسول الله ﷺ:] «مثلي ومثل الأنبياء كمثل رجل بنى داراً فأكملها وأحسنها إلا موضع لبنة، فكان من دخلها فنظر إليها قال: ما أحسنها إلا موضع هذه اللبنة فأنا موضع اللبنة، ختم بي الأنبياء عليهم الصلاة والسلام» [رواه البخاري].

[عن أبي هريرة رضي الله عنه أن رسول الله ﷺ قال:] «فُضِّلتُ على الأنبياء بست: أعطيت جوامع الكلم، ونصرت بالرعب، وأحلت لي الغنائم، وجعلت لي الأرض مسجداً وطهوراً، وأرسلت إلى الخلق كافة، وختم بي النبيون» [رواه الترمذي وابن ماجه].

[...] وقد أخبر الله تبارك وتعالى في كتابه ورسوله ﷺ في السنة المتواترة عنه أنه لا نبي بعده ليعلموا أن كل من ادعى هذا المقام بعده فهو كذاب أفاك دجال

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claims this rank thereafter is a lying pretender, misled and misleading, even if he should stage miracles and exhibit all kinds of magic, talismans, and spells (*Tafsir al-Qur'an al-'Azim* (y60), 3.493-94).

ضال مضل، ولو تخرق [وشعبذ] وأتى بأنواع السحر والطلاسم والنيرنجيات [محرر من تفسير القرآن العظيم: ٣/٤٩٣ - ٤٩٤].

THE ABROGATION OF PREVIOUSLY REVEALED RELIGIONS

نسخ الأديان التي سبقت الإسلام

w4.3 (Imam Baghawi:) The Prophet (Allah bless him and give him peace) said:

"By Him in whose hand is the soul of Muhammad, any person of this Community, any Jew, or any Christian who hears of me and dies without believing in what I have been sent with will be an inhabitant of hell."

This is a rigorously authenticated (sahih) hadith that was recorded by Muslim (*Sharh al-sunna* (y22), 1.104–5).

w4.3 (الإمام البغوي:) [...] قال:] قال رسول الله ﷺ: «والذي نفس محمد في يده لا يسمع بي أحدٌ من هذه الأمة، ولا يهوديٌ، ولا نصرانيٌ، ومات ولم يؤمن بالذي أرسلتُ به إلا كان من أصحاب النار».

هذا حديث صحيح [ت: من رواية عبد الرزاق] أخرجه مسلم [(ت: بخلاف يسير في اللفظ) من وجه آخر عن أبي هريرة] [نقل من شرح السنة: ١/١٠٤ - ١٠٥].

w4.4 (Ibn Kathir:) Allah Most High says:

"Surely those who believe, those of Jewry, the Christians, and the Sabaeans—whoever has faith in Allah and the Last Day, and works righteousness, their wage awaits them with their Lord, and no fear shall be upon them, and neither shall they sorrow" (Koran 2:62).

Suddi states that the verse "Surely those who believe, etc." was revealed about the former companions of Salman the Persian when he mentioned them to the Prophet (Allah bless him and give him peace), relating how they had been, saying, "They used to pray, fast, and believe in you, and testify that you would be sent as a prophet." When he had finished praising them, the Prophet (Allah bless him and give him peace) replied, "Salman, they are the denizens of hell," which came to discomfit Salman greatly, and so Allah revealed this verse.

The *faith* of the Jews was that of whoever adhered to the Torah and the sunna of Moses (upon whom be peace) until the coming of Jesus.

w4.4 (ابن كثير:) قال الله تعالى: ﴿إِنَّ الَّذِينَ آمَنُوا وَالَّذِينَ هَادُوا وَالنَّصَارَىٰ وَالصَّابِئِينَ، مَنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَعَمِلَ صَالِحاً فَلَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ﴾ [البقرة: ٦٢].

قال السدي: ﴿إن الذين آمنوا [والذين هادوا والنصارى والصابئين من آمن بالله واليوم الآخر وعمل صالحاً]﴾ الآية نزلت في أصحاب سلمان الفارسي بينا هو يحدث النبي ﷺ إذ ذكر أصحابه فأخبره خبرهم فقال كانوا يصلون ويصومون ويؤمنون بك ويشهدون أنك ستبعث نبياً فلما فرغ سلمان من ثنائه عليهم قال له نبي الله ﷺ «يا سلمان هم من أهل النار» فاشتد ذلك على سلمان فأنزل الله هذه الآية. فكان إيمان اليهود أنه من تمسك بالتوراة وسنة موسى عليه السلام حتى جاء عيسى فلما جاء عيسى كان من

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When Jesus came, whoever held fast to the Torah and the sunna of Moses without giving them up and following Jesus was lost.

The *faith* of the Christians was that whoever adhered to the Evangel and precepts of Jesus, their faith was valid and acceptable until the coming of Muhammad (Allah bless him and give him peace). Those of them who did not then follow Muhammad (Allah bless him and give him peace) and give up the sunna of Jesus and the Evangel were lost.

The foregoing is not contradicted by the hadith relating that the verse,

"Surely those who believe, those of Jewry, the Christians, and the Sabaeans—whoever has faith in Allah and the Last Day..."

was followed by Allah revealing,

"Whoever seeks a religion other than Islam will never have it accepted of him, and he will be of those who have truly failed in the hereafter" (Koran 3:85),

for the hadith merely confirms that no one's way or spiritual works are acceptable unless they conform to the Sacred Law of Muhammad (Allah bless him and give him peace) now that he has been sent with it. As for people prior to this, anyone who followed the messenger of his own time was guided, on the right path, and was saved (*Tafsir al-Qur'an al-'Azim* (y60), 1.103).

تمسك بالتوراة وأخذ بسنة موسى فلم يدعها ولم يتبع عيسى كان هالكاً. وإيمان النصارى أن من كان تمسك بالإنجيل منهم وشرائع عيسى كان مؤمناً مقبولاً منه حتى جاء محمد ﷺ فمن لم يتبع محمداً ﷺ منهم ويدع ما كان عليه من سنة عيسى والإنجيل كان هالكاً. [قلت:] هذا لا ينافي ما روى [علي بن أبي طلحة عن ابن عباس]: إن الذين آمنوا والذين هادوا والنصارى والصابئين من آمن بالله واليوم الآخر [قال:] فأنزل الله بعد ذلك ﴿وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِيناً فَلَنْ يُقْبَلَ مِنْهُ وَهُوَ فِي الآخِرَةِ مِنَ الخاسِرِينَ﴾. فإن هذا [الذي قاله ابن عباس] إخبار عن أنه لا يقبل من أحد طريقة ولا عمل إلا ما كان موافقاً لشريعة محمد ﷺ بعد أن بعثه به. فأما قبل ذلك فكل من اتبع الرسول في زمانه فهو على هدى وسبيل ونجاة [محرر من تفسير القرآن العظيم: ١/١٠٣].

ISLAM IS THE FINAL RELIGION THAT ALLAH WILL NEVER ABROGATE UNTIL THE LAST DAY

الإسلام خاتم الأديان الذي لا ينسخه شيء

w4.5 (Ibn Kathir:) Allah Most High says,

"Today I have perfected your religion for you and completed My favor upon you, and I please that your religion be Islam" (Koran 5:3),

meaning, "So accept it for yourselves, for it is the religion Allah loves and accepts, with which He

w4.5 (ابن كثير:) قال الله تعالى:
﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الإِسْلامَ دِيناً﴾ [المائدة: ٣].
أي: فارضوه أنتم لأنفسكم فإنه الدين الذي أحبه الله ورضيه وبعث به أفضل الرسل الكرام، وأنزل به أشرف كتبه.

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has sent the best of noble messengers and has revealed in the most sublime of His Books." 'Ali ibn Abi Talha relates from Ibn 'Abbas that

"Today I have perfected your religion for you...

means Islam, Allah thereby informing His prophet (Allah bless him and give him peace) and the believers that He has perfected their faith for them, so they will never require anything more. He has completed it and will never diminish it, is pleased with it and will never detest it (ibid., 2.12).

وقال علي بن أبي طلحة عن ابن عباس قوله: ﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ﴾ وهو الإسلام، أخبر الله نبيه ﷺ والمؤمنين أنه أكمل لهم الإيمان فلا يحتاجون إلى زيادة أبداً، وقد أتمه الله فلا ينقصه أبداً، وقد رضيه الله فلا يسخطه أبداً [نقل من تفسير القرآن الكريم: ٢/١٢].

w4.6 (Qurtubi:) It is likely that by

"... I please that your religion be Islam" (Koran 5:3),

Allah means, "I am pleased with your Islam that you follow today as a religion that will endure in its perfection until the end of time, and I will cause nothing of it to be abrogated" (*al-Jami' li ahkam al-Qur'an* (y117), 6.63).

w4.6 (القرطبي:) ويحتمل أن يريد ﴿رَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا﴾ أي رضيت إسلامكم الذي أنتم عليه اليوم ديناً باقياً بكماله إلى آخر الأبد لا أنسخ منه شيئاً [نقل من الجامع لأحكام القرآن: ٦/٦٣].

w4.7 (n: The following hadith has been represented by some contemporary Muslims as meaning that a tenth of Islam will be enough for Muslims in the latter days, a misunderstanding felt to merit the explanation provided by the commentary below.)

The Prophet (Allah bless him and give him peace) said:

"Verily you are in a time when whoever of you abandons a tenth of what he has been commanded shall be lost. There will come a time when whoever practices a tenth of what he has been commanded will find salvation."

Verily you

('Abd al-Ra'uf Munawi:) O Companions of the Prophet

are in a time

characterized by safety, and the glory of Islam

when whoever of you abandons a tenth of

w4.7 قال النبي ﷺ: «إنكم في زمان من ترك منكم عُشرَ ما أُمر به هلك، ثم يأتي زمان من عمل منهم بعُشر ما أُمر به نجا» [رواه الترمذي].

(عبد الرؤوف المناوي:) «إنكم» (أيها الصحب).

«في زمان» (متصف بالأمن وعزة الإسلام).

«من ترك منكم» (فيه)

«عشر ما أمر به» (من الأمر بالمعروف

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what he has been commanded

meaning of the obligation to command the right and forbid the wrong (def: q1), for it is not permissible to interpret this utterance as applicable to all that has been commanded, it being understood that a Muslim has no excuse for neglecting things which are personally obligatory

will be lost

to destruction, since the religion of Islam is now strong and there are many who aid it, so that your abandoning it is a shortcoming for which no one is excused under such circumstances.

There will come a time

in which Islam will weaken, tyrants multiply, corruption spread, lying pretenders grow numerous, and those helping the religion grow few, so that Muslims will be excused for leaving some things out of sheer incapacity, without being guilty of remissness

when whoever

of the people of that time which contains trials and afflictions

practices a tenth of what he has been commanded will find salvation

because he is under duress, and Allah charges no soul with more than it is capable of, as He says,

"Fear Allah as much as you are able to" (Koran 64:16).

Tirmidhi recorded this hadith, which he termed *singular* (gharib), while Ibn Jawzi listed it in his work on hadith forgeries, mentioning that Nasa'i said it was unacknowledgeable, having been conveyed through Nu'aym ibn Hammad, an unreliable transmitter (*Fayd al-Qadir sharh al-Jami' al-saghir* (y91), 2.556).

والنهي عن المنكر [إذ لا يجوز صرف هذا القول إلى عموم المأمورات لما عرف أن المسلم لا يعذر فيما يهمل من فرض عيني].

«هلك» (أي في ورطات الهلاك لأن الدين عزيز وفي أنصاره كثرة فالترك تقصير منكم فلا عذر لأحد في التهاون حالتئذ).

«ثم يأتي زمان» (يضعف فيه الإسلام وتكثر الظلمة ويعم الفسق ويكثر الدجالون وتقل أنصار الدين فيعذر المسلمون في الترك إذ ذاك لعدم القدرة وفقد التقصير وحينئذ:)

«من عمل منهم» (أي من أهل ذلك الزمن المحتوي على المحن والفتن).

«بعُشر ما أمر به نجا» (لأنه مقدور ولا يكلف الله نفساً إلا وسعها:

﴿فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ﴾ [التغابن: ١٦].

رواه الترمذي [في آخر الفتن عن أبي هريرة] وقال غريب. وأورده ابن الجوزي في الواهيات وقال: قال النسائي: حديث منكر، رواه نعيم بن حماد وليس بثقة [محرر من فيض القدير شرح الجامع الصغير: ٢/ ٥٥٦].

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w5.0 IN WHAT SENSE "THIS WORLD IS ACCURSED" (from a2.2(8))

w5.0 معنى «الدنيا ملعونة»

w5.1 The Prophet (Allah bless him and give him peace) said:

w5.1 [عن أبي هريرة رضي الله عنه قال: سمعت] رسول الله ﷺ يقول:

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"This world and all it contains are accursed, except for the remembrance of Allah Most High, that which He loves, someone with Sacred Knowledge, or someone learning it."

This world and all it contains are accursed (Muhammad Ibn 'Allan Bakri:) meaning remote from Allah,

except for the remembrance of Allah Most High, that which He loves, someone with Sacred Knowledge, or someone learning it.

Acts of obedience are not of *this world*, nor are the purified ones, of the prophets and friends of Allah (awliya', def: w33). The agreement between the primary texts that condemn this world and those that praise it lies in understanding the former as referring to what distances one from Allah Most High, while the latter refer to what brings one closer to Him (*Dalil al-falihin li turuq Riyad al-salihin* (y25), 7.197).

«الدنيا ملعونة ملعون ما فيها إلا ذكر الله تعالى وما والاه وعالماً ومتعلماً» [رواه الترمذي وقال حديث حسن].

«محمد بن علان البكري:) «الدنيا ملعونة» (أي بعيدة عن الله) «ملعون» (أي بعيد) «ما فيها» (. . .] «إلا ذكر الله وما والاه وعالماً ومتعلماً» (وليس من الدنيا الطاعات ولا الأصفياء من الأنبياء والأولياء. و[تقدم] الجمع بين الوارد في ذم الدنيا والوارد في مدحها يحمل الأول على ما يبعد عن الله تعالى والثاني على ما يقرب إليه [. . .] [محرر من كتاب دليل الفالحين لطرق رياض الصالحين: ٧/ ١٩٧].

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w6.0 FIGURATIVE INTERPRETATION (TA'WIL) OF THE KORAN AND HADITH (from a4.3)

w6.0 درجات التأويل

w6.1 (Ghazali:) Those who are profligate in disregarding the literal meaning of texts go so far as to alter most or all scriptural evidences and proofs, metaphorically interpreting even the words of Allah Most High,

"Their hands shall speak to us and their feet shall testify" (Koran 36:65),

and,

"They will say to their skins, 'Why have you testified against us,' and they will reply, 'Allah has made us speak, as He has made all to speak' " (Koran 41:21),

likewise explaining away the questions of Munkar and Nakir (def: v2.2), the scale (v2.3), the bridge over hell (v2.4), the final reckoning (v2.6), and

w6.1 (الغزالي:) [. . .] فمن مسرف في رفع الظواهر انتهى إلى تغيير جميع الظواهر والبراهين أو أكثرها حتى حملوا قوله تعالى: ﴿وَتُكَلِّمُنَا أَيْدِيهِمْ وَتَشْهَدُ أَرْجُلُهُمْ﴾ وقوله تعالى: ﴿وَقَالُوا لِجُلُودِهِمْ لِمَ شَهِدْتُمْ عَلَيْنَا قَالُوا أَنْطَقَنَا اللَّهُ الَّذِي أَنْطَقَ كُلَّ شَيْءٍ﴾ وكذلك المخاطبات التي تجري من منكر ونكير وفي الميزان والصراط والحساب

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the words of the people of hell to the people of paradise,

"Pour water upon us, or of that which Allah has provided you" (Koran 7:50),

claiming that all this is "what their state would say if it could speak."

ومناظرات أهل النار وأهل الجنة في قولهم: ﴿أَفِيضُوا عَلَيْنَا مِنَ الْمَاءِ أَوْ مِمَّا رَزَقَكُمُ اللَّهُ﴾ زعموا أن ذلك كله بلسان الحال.

w6.2 Others have gone to the opposite extreme of barring *all* figurative interpretation, among them Ahmad ibn Hanbal (Allah be well pleased with him), who even forbade metaphorical interpretation of Allah's words,

"'Be!' and it is" (Koran 36:82),

some of his school claiming that this is an actual utterance of articulated letters and a voice, proceeding from Allah Most High at every moment, commensurate in number with every existent being. I have heard some members of his school say that he forbade metaphorical interpretation of all but three expressions, namely the Prophet's having said (Allah bless him and give him peace):

(1) "The Black Stone is the right hand of Allah in His earth";

(2) "The heart of the believer is between two of the fingers of the All-merciful";

and,

(3) "Verily, I find the breath of the All-merciful from the direction of Yemen."

Literalists have shown an inclination towards prohibiting all figurative interpretation, while what one should believe of Ahmad ibn Hanbal (Allah be well pleased with him) is that he knew that Allah's 'establishment on the Throne' did not consist of being at rest, any more than His 'coming down' consisted of physical motion, but rather he forbade figurative interpretation in order to close the discussion in the interests of the people, for once the door is opened, the rift widens and the matter gets out of control, exceeding the bounds

w6.2 وغلا آخرون في حسم الباب منهم أحمد بن حنبل رضي الله عنه حتى منع تأويل قوله: ﴿كُنْ فَيَكُونُ﴾ وزعموا أن ذلك خطاب بحرف وصوت يوجد من الله تعالى في كل لحظة بعدد كون كل مكوّن. حتى سمعت بعض أصحابه يقول إنه حسم باب التأويل إلا لثلاثة ألفاظ، قوله ﷺ:

«الحجر الأسود يمين الله في أرضه» [(ت: رواه الحاكم وصححه من حديث عبد الله بن عمرو)]؛ وقوله ﷺ: «قلب المؤمن بين إصبعين من أصابع الرحمن» [(ت: رواه أحمد)] وقوله ﷺ: «إني أجد نفَس الرحمن من جانب اليمن».

ومال إلى حسم الباب أرباب الظواهر.

والظن بأحمد بن حنبل رضي الله عنه أنه علم أن الاستواء ليس هو الاستقرار والنزول ليس هو الانتقال ولكنه منع التأويل حسماً للباب ورعاية لصالح الخلق. فإنه إذا فتح الباب اتسع الخرق وخرج الأمر عن الضبط وجاوز حد

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of moderation. And since what is beyond the moderate is without limits, there is no harm in sternly warning against figurative interpretation, a position that is attested to by the behavior of the early Muslims, who used to say, "Accept such things as they have come." When asked about Allah's 'establishment on the Throne', Imam Malik (Allah have mercy on him) said, " 'Establishment' is known, the how of it is unknown, belief in it is obligatory, and questions about it are reprehensible innovation (bid'a)."

الاقتصاد، إذ حد ما جاوز الاقتصاد لا ينضبط؛ فلا بأس بهذا الزجر ويشهد له سيرة السلف، فإنهم كانوا يقولون: أمرّوها كما جاءت. حتى قال مالك رحمه الله لما سئل عن الاستواء: الاستواء معلوم والكيفية مجهولة والإيمان به واجب والسؤال عنه بدعة.

w6.3 Another group of scholars have taken a moderate position, admitting figurative interpretation of all matters connected with the attributes of Allah Most Glorious (n: i.e. by explaining anthropomorphic words in a way befitting the divine attributes (def: v1), interpreting His 'hand', for example, as an allusion to His omnipotence), while leaving all matters connected with the afterlife to their outward literal purport, prohibiting any metaphorical interpretation of them. These are the Ash'aris (dis: w57).

w6.3 وذهبت طائفة إلى الاقتصاد وفتحوا باب التأويل في كل ما يتعلق بصفات الله سبحانه، وتركوا ما يتعلق بالآخرة على ظواهرها ومنعوا التأويل فيه وهم الأشعرية.

w6.4 The Mu'tazilites (N: a philosophical school that subjected the fundamentals of Islam to rationalistic theories) went further, metaphorically explaining the inhabitants of paradise's seeing of Allah Most High (v1.3, end), His hearing, His sight, and the nocturnal ascent (mi'raj) of the Prophet (Allah bless him and give him peace), claiming that it was not in the body. They also explained away the torment of the grave, the scale, the bridge over hell, and a number of the matters of the afterlife, though they acknowledged the bodily resurrection and judgement, the reality of paradise with the physical pleasures its inhabitants will enjoy of foods, scents, and lovemaking; and the reality of the hellfire as something that incinerates skin and melts fat.

The philosophers went even further than the extremes reached by the Mu'tazilites, explaining *everything* that has reached us about the afterlife as being metaphorical, reducing it to intellectual or spiritual states of pain and mental enjoyments, denying the bodily resurrection and judgement, saying that souls subsist forever and will be

w6.4 وزاد المعتزلة عليهم حتى أولوا من صفاته تعالى الرؤية وأوّلوا كونه سميعاً بصيراً وأوّلوا المعراج وزعموا أنه لم يكن بالجسد وأوّلوا عذاب القبر والميزان والصراط وجملة من أحكام الآخرة ولكن أقروا بحشر الأجساد وبالجنة واشتمالها على المأكولات والمشمومات والمنكوحات والملاذ المحسوسة وبالنار واشتمالها على جسم محسوس محرق يحرق الجلود ويذيب الشحوم.

ومن ترقيهم إلى هذا الحد زاد الفلاسفة فأوّلوا كل ما ورد في الآخرة وردوه إلى آلام عقلية وروحانية ولذات عقلية وأنكروا حشر الأجساد وقالوا ببقاء النفوس وأنها تكون إما معذبة وإما منعمة

punished or rewarded with torment and pleasure undetectable by the senses. It is these who are the real profligates.

بعذاب ونعيم لا يدرك بالحس. وهؤلاء هم المسرفون.

w6.5 The way of moderation between all this dissolution on the one hand, and the rigidity of the Hanbalis on the other, is a very fine line and difficult to perceive, one which few people know except the successful. (n: Sections v1–v2 describe Ghazali's "way of moderation" in detail.) (*Ihya' 'ulum al-din* (y39), 1.92)

w6.5 وحد الاقتصاد بين هذا الانحلال كله وبين جمود الحنابلة دقيق غامض لا يطلع عليه إلا الموفقون [...] [نقل من إحياء علوم الدين: ١/٩٢].

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w7.0 ON DIVINE INDWELLING (HULUL) AND "UNION WITH GOD" (ITTIHAD) (from a4.3)

w7.0 استحالة الحلول والاتحاد

DIVINE INDWELLING (HULUL)

الحلول

w7.1 (Ghazali:) The concept of divine indwelling (n: e.g. "God incarnate" in a human being) may mean one of only two things:

(1) The first is the relation between an object and the place it occupies, which can only exist between two spatially extended things, and is clearly impossible for the One who is beyond all corporeality (dis: v1.3).

(2) The second is the relation between a substance and accident, for an accident exists *by means of* a substance (n: the accident of 'redness', for example, being incapable of subsisting independently of particular red things), a relation which can be expressed as its subsisting *through* the substance. But this is impossible for anything that is already self-subsistent, and one cannot mention Allah Most High in such a connection, for it is impossible that something *self-subsistent* should subsist through *another* self-subsistent; there remaining only the mode of corporeal bodies physically adjacent, where 'indwelling' cannot even be conceived between two servants,

w7.1 (الغزالي:) المفهوم من الحلول أمران أحدهما النسبة التي بين الجسم وبين مكانه الذي يكون فيه وذلك لا يكون إلا بين جسمين فالبريء عن معنى الجسمية يستحيل في حقه ذلك، والثاني النسبة التي بين العرض والجوهر فإن العرض يكون قوامه بالجوهر فقد يعبر عنه بأنه حال فيه وذلك محال على كل ما قوامه بنفسه فدع عنك ذكر الرب تعالى في هذا المعرض فإن كل ما قوامه بنفسه يستحيل أن يحل فيما قوامه بنفسه، إلا بطريق المجاورة الواقعة بين الأجسام فلا يتصور الحلول بين عبدين فكيف يتصور

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let alone between the servant and the Lord Most High.

بين العبد والرب تعالى.

"UNION WITH GOD" (ITTIHAD)

الاتحاد

w7.2 "Union with God" is even more patently false, since saying "The slave has become the Lord" is self-contradictory, it befitting the Lord Most Glorious to be held above speaking absurdities of Him, while it can be categorically affirmed that any statement claiming that one thing has become another concurrently existing thing is impossible, for if the existence of *both* Zayd and 'Amr, for example, is acknowledged, and someone asserts that Zayd has *become* 'Amr and united with him, then this unification must entail one of four things, beyond which there is no other possibility:

(1) that both exist;

(2) that neither exists;

(3) that Zayd exists but 'Amr does not;

(4) or that 'Amr exists but Zayd does not.

Now if both exist, neither has become the other, but rather each exists. At the very most, they might occupy the same locus, which does not necessarily entail unification, since qualities such as knowledge, will, and power, for example, might exist together in one individual without each requiring a separate locus, while it is plain that power is not knowledge or will, and they have not "unified."

If neither exists ((2) above), they have not unified but have both ceased to exist, with the result perhaps of a third thing.

And if one of them exists but the other does not, then they cannot have unified, for an existent thing cannot "be one" with a nonexistent thing.

So union between two concurrent things is absolutely impossible, even if they are alike, let alone if they are different.

w7.2 وأما الاتحاد فذلك أيضاً أظهر بطلاناً لأن قول القائل إن العبد صار هو الرب كلام متناقض في نفسه، بل ينبغي أن ينزه الرب سبحانه عن أن يجري اللسان في حقه بأمثال هذه المحاولات ويقول قولاً مطلقاً، إن قول القائل إن شيئاً صار شيئاً آخر محال على الإطلاق لأنا نقول إذا عقل زيد وحده وعمرو وحده ثم قيل إن زيداً صار عمرواً واتحد به فلا يخلو عند الاتحاد إما أن يكون كلاهما موجودين أو كلاهما معدومين أو زيد موجوداً وعمرو معدوماً أو بالعكس ولا يمكن قسم وراء هذه الأربعة.

فإن كانا موجودين فلم يصر أحدهما عين الآخر. بل عين كل واحد منهما موجود وإنما الغاية أن يتحد مكانهما وذلك لا يوجب الاتحاد، فإن العلم والإرادة والقدرة قد تجتمع في ذات واحدة ولا يتباين محلها ولا تكون القدرة هي العلم ولا الإرادة، ولا يكون قد اتحد البعض بالبعض. وإن كانا معدومين فما اتحدا بل عدما ولعل الحادث شيء ثالث. وإن كان أحدهما معدوماً والآخر موجوداً فلا اتحاد إذ لا يتحد موجود بمعدوم فالاتحاد بين الشيئين مطلقاً محال وهذا جار في الذوات المتماثلة فضلاً عن المختلفة.

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"UNION" IN POETIC LICENSE

w7.3 Whenever *union* is mentioned and it is said that "he is *him*," it is only by way of figurative extension and poetic license, conformable with the usage of Sufis and poets, who employ metaphorical means to enhance their words' effect upon listeners' understanding, as when a poet says, "I am my beloved and my beloved is me," which is a metaphor on the part of the poet, who does not mean that in fact he *is* him, but only that it is as though he were him, for his concern is now wholly absorbed in him, just as his concern *was* absorbed in himself, and so he expresses this condition as *union*, by way of poetic license. And this is how one should interpret the words of Abu Yazid, "I sloughed off my ego as a snake sheds its skin, and looked, and I was Him," meaning that whoever sloughs off the desires, caprices, and concerns of their ego no longer has any capacity or concern save for Allah Most High, and when nothing enters a servant's heart besides the Majesty and Beauty of Allah and he becomes wholly immersed therein, he is "as though he were Him," not that he actually *is* Him. There is a difference between saying "as though he were him" and saying "he is him," though "as though he were him" may be expressed by saying "he is him," just as poets sometimes say, "It is as though I were my beloved," and at other times, "I am my beloved."

And this can occasion a misstep, for someone without a firm footing in rational knowledge might not distinguish between one sense and the other, and looking at his own perfection, embellished with the dazzling raiment of the Truth, think that he is Him, saying, "I am the Truth," while he has made the mistake of the Christians who saw this in the person of Jesus (on whom be peace) and said that he was the Divinity. For that matter, the person errors who looks in a mirror reflecting a colored image and thinks it is the image of the mirror and the color is the color of the mirror, while this can never be, for the mirror is colorless in itself, and its nature is to reflect colored images in a way that makes those observing mere appearances think they are the appearance of the mirror itself, just as a child, when he sees

إطلاق الاتحاد بطريق الاستعارة

w7.3 وحيث يطلق الاتحاد ويقال هو هو لا يكون إلا بطريق التوسع والتجوز اللائق بعادة الصوفية والشعراء فإنهم لأجل تحسين موقع الكلام من الأفهام يسلكون سبيل الاستعارة كما يقول الشاعر: أنا من أهوى ومن أهوى أنا، وذلك مؤول عند الشاعر فإنه لا يعني به أنه هو تحقيقاً بل كأنه هو، فإنه مستغرق الهم به كما يكون هو مستغرق الهم بنفسه فيعبر عن هذه الحالة بالاتحاد على سبيل التجوز. وعليه ينبغي أن يحمل قول أبي يزيد حيث قال: انسلخت من نفسي كما تنسلخ الحية من جلدها فنظرت فإذا أنا هو. ويكون معناه أن من ينسلخ من شهوات نفسه وهواها وهمها فلا يبقى فيه متسع لغير الله ولا يكون له هم سوى الله تعالى فإذا لم يحل في القلب إلا جلال الله وجماله حتى صار مستغرقاً به يصير كأنه هو لا أنه هو تحقيقاً. وفرق بين قولنا كأنه هو وبين قولنا هو هو لكن قد يعبر بقولنا هو هو عن قولنا كأنه هو كما أن الشاعر تارة يقول كأني من أهوى وتارة يقول أنا من أهوى. وهذه مزلة قدم فإن من ليس له قدم راسخ في المعقولات ربما لم يتميز له أحدهما عن الآخر فينظر إلى كمال ذاته وقد تزين بما تلألأ فيه من حلية الحق فيظن أنه هو فيقول أنا الحق وهو غالط غلط النصارى حيث رأوا ذلك في ذات عيسى عليه السلام فقالوا هو الإله. بل غلط من ينظر إلى مرآة قد انطبع فيها صورة متلونة فيظن أن تلك الصورة هي صورة المرآة وإن ذلك اللون لون المرآة وهيهات بل المرآة في ذاتها لا لون لها وشأنها قبول صور الألوان على وجه يتخايل إلى الناظرين إلى ظاهر الأمور أن ذلك هي صورة المرآة، حتى أن الصبي إذ رأى إنساناً في

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someone in a mirror, may think the person is actually *in* the mirror. So too, the heart in itself is without form or configuration, and its own structure is merely to conform to intellectual impressions of figures, forms and realities, such that whatever enters it is as if in union with it, not that it is in actual fact truly united with it. When someone who does not know of glasses or wine sees a glass of wine, he may not realize the difference between them, and will sometimes say there is no wine, and sometimes that there is no glass.

The words "I am the Truth" either mean the same as the poet's saying "I am my beloved and my beloved is me," or else the speaker has made the same mistake as the Christians in believing in the union of divinity and humanity. If it is true he actually said it, Abu Yazid's utterance, "Glory be to me, how great is my state" either passed his lips by way of quoting Allah Most High, just as, if he had heard and repeated,

"There is no god but Me, so worship Me" (Koran 20:14),

it would be interpreted as a quote—or else he was attesting to the fullness of the share of inner purity he beheld within himself, and spoke of the purity of his soul by saying "Glory be to me," seeing the greatness of his state in relation to the state of most of humanity, and saying, "How great is my state," while knowing his purity and the magnitude of his state were in comparison to other *people,* not the sacred purity of the Lord Most High or His greatness, this utterance passing his lips while in a state of spiritual intoxication and being overcome by a state, since the return to sobriety obliges one to hold one's tongue from words that mislead, and while intoxicated perhaps he was unable to do this. If one goes beyond both these two interpretations to actual "union with God," it is manifestly absurd, and one should not so esteem people's rank that one accepts the absurd. One should know men by their having spoken the truth, not that it is the truth by certain men having spoken it (*al-Maqsad al-asna sharh asma' Allah al-husna* (y40), 146–50).

المـرآة ظن أن الإنســان في المـرآة. فكذلك القلب خال عن الصورة في نفسه وعن الهيئات، وإنما هيئته قبول معاني الهيئـات والصـور والحقـائق فما يحله يكون كالمتحد به لا أنه متحد به تحقيقاً. ومن لا يعرف الزجاج والخمر إذا رأى زجاجة فيها الخمر لم يدرك تباينهما فتارة يقول لا خمر وتارة يقول لا زجاجة [...].

وقـول من قال منهم أنا الحق فإمـا أن يكـون معنـاه معنى قول الشـاعـر: أنا من أهـوى ومن أهـوى أنا، وإما أن يكون قد غلط في ذلـك كمـا غلطت النصـارى في ظنهم اتحاد اللاهوت بالناسوت.

وقول أبي يزيد إن صح عنه: سبحاني ما أعظم شأني: إمـا أن يكون ذلك جارياً على لسـانـه في معـرض الحكاية عن الله تعـالى كمـا لو سمع وهو يقول: لا إله إلا أنا فاعبدني، لكان يحمل على الحكاية؛ وإمـا أن يكـون قد شاهـد كمال حظه من صفـة القـدس [على ما ذكـرنـا في الترقي بالمعـرفة عن الموهومات والمحسوسات وبـالهمـة عن الحظوظ والشهوات] فأخبر عن قدس نفســه فقـال: سبحـاني، ورأى عظم شأنــه بالإضــافــة إلى شأن عمـوم الخلق فقـال: ما أعظم شأني، وهـو مع ذلك يعلم أن قدسه وعظم شأنه بالإضافة إلى الخلق لا نسبة إلى قدس الرب تعالى وعظم شأنـه ويكـون قد جرى هذا اللفظ على لســانـه في سكـر وغلبـة حال، فإن الـرجـوع إلى الصحـو واعتـدال الحـال يوجب حفظ اللسان عن الألفاظ الموهمة وحـال الـسكـر ربما لا يحتمل ذلك. فإن جاوزت هذين التأويلين إلى الاتحـاد فذلـك محـال قطعاً فلا تنظر إلى مناصب الرجال حتى تصدق بالمحال بل ينبغي أن تعـرف الـرجـال بالحق لا الحق بالـرجال [محـرر من المقصـد الأسنى في شرح أسماء الله الحسنى: ١٤٦ - ١٥٠].

w7.4 (n:) Among the disservices done to Islam by some Western scholars is their tireless insistence that the Sufi term *wusul* ("to arrive") be translated as if it

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meant *ittihad* ("to unify") with the result that their translations of Sufi works are filled with talk of "union with God," a rendering that has come to be traditional and authoritative among them, while it is a fallacious conception that the masters of Sufism from every age have taken pains to dissociate themselves, their method, and their students from. So it is perhaps fitting to conclude this section with two of the aphorisms of the great Shadhili master Ibn 'Ata' Illah, who said:

"Your reaching Allah is your reaching the *knowledge* of Him, for other than that, Our Lord is too exalted for anything to be joined with Him or for Him to be joined with anything";

and said,

"The affirmation of electhood does not necessitate a negation of the fact of being human. Election is merely like the rise of the daylight's sun: it appears on the horizon without being part of it. Sometimes He takes it from you and returns you to your own bounds. For daylight is not from you to yourself. It comes over you."

(*al-Hikam al-'Ata'iyya wa al-munajat al-ilahiyya* (y56), 59, 66, aphorisms 213 and 249)

- وصولُكَ إلى الله وصولُكَ إلى العلم به، وإلا فجلَّ ربُّنا أن يتصل به شيء أو يتصل هو بشيء.

- لا يَلْزَمُ من ثبوت الخصوصية عدمُ وصف البشرية، إنما مَثَلُ الخصوصية كإشراق شمس النهار: ظهرت في الأفق وليست منه. تارة يَقْبِضُ ذلك عنك فيردك إلى حدودك. فالنهار ليس منك وإليك، ولكنه واردٌ عليك [نقل من الحكم العطائية والمناجاة الإلهية: ٥٩، ٦٦].

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w8.0 ALLAH IS EXALTED ABOVE NEEDING SPACE OR TIME (from a4.3)

w8.0 تنزيه الله تعالى عن المكان والزمان

w8.1 (Muhammad Hamid:) What is obligatory for a human being to know is that Allah the Creator, glory be to Him, is absolutely free of need (al-Ghani) of anything He has created, and free of need for the heavens or the earth. He is transcendently beyond "being in the sky" or "being on earth" in the manner that things are in things, created beings in created beings, or things in circumstances are encompassed by their circumstances, for it is He who

"There is nothing whatsoever like unto Him, and He is the All-hearing, the All-seeing" (Koran 42:11),

w8.1 (محمد الحامد:) الذي يجب على الإنسان أن يعلمه أن الله الخالق سبحانه له الغنى المطلق عن كل ما خلق، وعن السماء والأرض أيضاً، سبحان الله أن يكون في السماء أو في الأرض كما يكون الحادث في الحادث، والمخلوق في المخلوق، والمظروف في الظرف، وهو الذي:

﴿لَيْسَ كَمِثْلِهِ شَيْءٌ وَهُوَ السَّمِيعُ البَصِيرُ﴾.

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and,

"He did not give birth, nor was He born, and there is none who is His equal" (Koran 112:3–4).

Aside from all the proofs from the Koran and sunna, the rational evidence is decisive that Allah Most High is absolutely beyond any resemblance to created things, in His entity, attributes, and acts. The noble Koranic verse,

"He is Allah in the heavens and the earth; He knows your secrets and what you reveal, and knows what you are earning" (Koran 6:3),

means that He Most Glorious is the one who is rightfully worshipped in both the heavens and earth, who alone possesses the attribute of divinity in both; and the inhabitants of the heavens know He is the True God, just as the inhabitants of the earth know it, and the former worship him just as the latter do (*Rudud 'ala abatil wa rasa'il al-Shaykh Muhammad al-Hamid* (y44), 2.20–21).

﴿لَمْ يَلِدْ وَلَمْ يُولَدْ وَلَمْ يَكُنْ لَهُ كُفُواً أَحَدٌ﴾.

وإن البرهان العقلي - إلى جانب البرهان النقلي - جازم بتنزهه تعالى عن مشابهة المخلوقات مطلقاً، ذاتاً ووصفاً وفعلاً، والآية الكريمة:

﴿وَهُوَ اللَّهُ فِي السَّمَوَاتِ وَفِي الأَرْضِ يَعْلَمُ سِرَّكُمْ وَجَهْرَكُمْ وَيَعْلَمُ مَا تَكْسِبُونَ﴾ تعني أنه سبحانه المعبود بحق فيهما، والموصوف بالألوهية فيهما، ويعرفه أهل السماء بأنه الإله الحق كما يعرفه أهل الأرض ويعبدونه كما يعبدونه [نقل من ردود على أباطيل ورسائل الشيخ محمد الحامد: ٢/ ٢٠ - ٢١].

w8.2 (Qurtubi:) Allah Most High says,

"Do you feel secure that He who is in the heavens will not make the earth swallow you while it quakes?" (Koran 67:16),

which may mean, "Do you feel secure that He who is the Creator of whomever is in the heavens will not make the earth swallow you, as He did Korah?" The more exacting hold that it (n: i.e. *in* the heavens) signifies, "Do you feel secure from Him who is *over* the heavens," just as Allah says,

"Journey *in* the earth" (Koran 9:2),

meaning *over* it; not over it by way of physical contact or spatialization, but by way of omnipotent power and control. Another position is that it means, "Do you feel secure from Him who is *over* ('ala) the heavens," i.e. just as it is said, "So-and-so is over Iraq and the Hijaz," meaning that he is the governor and commander of them. The hadiths on this subject are numerous, rigorously authenticated (sahih), and widely known, and

w8.2 (القرطبي:) قوله تعالى:

﴿أَأَمِنْتُمْ مَنْ فِي السَّمَاءِ أَنْ يَخْسِفَ بِكُمُ الأَرْضَ فَإِذَا هِيَ تَمُورُ﴾ [الملك: ١٦].

[... قلت:] ويحتمل أن يكون المعنى: أأمنتم خالق من في السماء أن يخسف بكم الأرض كما خسفها بقارون [...].

وقال المحققون: أمنتم من فوق السماء؛ كقوله: ﴿فَسِيحُوا فِي الأَرْضِ﴾ أي فوقها لا بالمماسّة والتحيز لكن بالقهر والتدبير. وقيل: معناه أمنتم من على السماء؛ [كقوله تعالى: ﴿وَلأُصَلِّبَنَّكُمْ فِي جُذُوعِ النَّخْلِ﴾ أي عليها. ومعناه أنه مدبرها ومالكها؛] كما يقال: فلان على العراق والحجاز؛ أي واليها وأميرها. والأخبار في هذا الباب كثيرة صحيحة

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indicate the exaltedness of Allah, being undeniable by anyone save an atheist or obstinate ignoramus. Their meaning is to dignify Allah and exalt Him above what is base and low, to characterize Him by exaltedness and grandeur, not by being in places, particular directions, or within limits, for these are the qualities of physical bodies. The hands are only raised skyward when one supplicates because the sky is from whence divine revelation descends and rains fall, the place of purity and the wellspring of the purified ones of the angels, and that servants' works are raised to it and over it are the Throne and His paradise—just as Allah has made the Kaaba the direction of supplication and the prayer. He created all places and has no need of them. He was without space or time in His beginningless eternality before creating space and time, and is now as He ever has been (*al-Jami' li ahkam al-Qur'an* (y117), 18.216).

منتشرة، مشيرة إلى العلو، لا يدفعها إلا ملحدٌ أو جاهل معاند. والمراد بها توقيره وتنزيهه عن السفل والتحت. ووصفه بالعلو والعظمة لا بالأماكن والجهات والحدود لأنها صفات الأجسام.

وإنما ترفع الأيدي بالدعاء إلى السماء لأن السماء مهبط الوحي، ومنزل القطر، ومحل القُدس، ومعدن المطهرين من الملائكة وإليها ترفع أعمال العباد، وفوقها عرشه وجنته؛ كما جعل الله الكعبة قبلةً للدعاء والصلاة، ولأنه خلق الأمكنة وهو غير محتاج إليها.

وكان في أزله قبل خلق المكان والزمان ولا مكان له ولا زمان. وهو الآن على ما عليه كان [محرر من الجامع لأحكام القرآن: ١٨/ ٢١٦].

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w9.0 SUFISM (from a4.7)

w9.0 التصوف

w9.1 (Muhammad Amin Kurdi:) *Sufism* is a knowledge through which one knows the states of the human soul, praiseworthy or blameworthy, how to purify it from the blameworthy and ennoble it by acquiring the praiseworthy, and to journey and proceed to Allah Most High, fleeing unto Him. Its fruits are the heart's development, knowledge of God through direct experience and ecstasy, salvation in the next world, triumph through gaining Allah's pleasure, the attainment of eternal happiness, and illuminating and purifying the heart so that noble matters disclose themselves, extraordinary states are revealed, and one perceives what the insight of others is blind to (*Tanwir al-qulub fi mu'amala 'Allam al-Ghuyub* (y74), 406).

w9.1 (محمد أمين الكردي:) [فحد] التصوف هو علم يعرف به أحوال النفس محمودها ومذمومها وكيفية تطهيرها من المذموم منها وتحليتها بالاتصاف بمحمودها وكيفية السلوك والسير إلى الله تعالى والفرار إليه [...] وثمرته تهذيب القلوب ومعرفة علام الغيوب ذوقاً ووجداناً، والنجاة في الآخرة، والفوز برضا الله تعالى، ونيل السعادة الأبدية، وتنوير القلب وصفاؤه بحيث ينكشف له أمور جليلة ويشهد أحوالاً عجيبة ويعاين ما عميت عنه بصيرة غيره [محرر من تنوير القلوب في معاملة علام الغيوب: ٤٠٦].

w9.2 (Nawawi:) The way of Sufism is based on five principles: having godfearingness privately and publicly, living according to the sunna in word and deed, indifference to whether others accept or reject one, satisfaction with Allah Most High in

w9.2 (النووي:) [المقصد السابع في] أصول طريق التصوف هي خمسة: تقوى الله في السر والعلانية، واتباع السنة في الأقوال والأفعال، والإعراض عن الخلق في الإقبال والإدبار، والرضا

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dearth and plenty, and returning to Allah in happiness or affliction. The principles of treating the illnesses of the soul are also five: lightening the stomach by diminishing one's food and drink, taking refuge in Allah Most High from the unforeseen when it befalls, shunning situations involving what one fears to fall victim to, continually asking for Allah's forgiveness and His blessings upon the Prophet (Allah bless him and give him peace) night and day with full presence of mind..and keeping the company of him who guides one to Allah (*al-Maqasid fi bayan ma yajibu ma'rifatuhu min al-din* (y106), 83–84, 87).

عن الله تعالى في القليل والكثير، والرجوع إلى الله في السراء والضراء. . . وأصول ما تداوى به علل النفس خمسة: تخفيف المعدة بقلة الطعام والشراب، والالتجاء إلى الله تعالى مما يعرض عند عروضه، والفرار من مواقف ما يُخشى الوقوع فيه، ودوام الاستغفار مع الصلاة على النبي ﷺ آناء الليل وأطراف النهار باجتماع الخاطر، وصحبة من يدلك على الله [محرّر من المقاصد في بيان ما يجب معرفته من الدين: ٨٣ - ٨٤، ٨٧].

w9.3 (Ahmad Zarruq:) Aspects of Sufism, defined, delineated, and explained, amount to nearly two thousand, all of them reducible to sincerity in turning to Allah Most High, something of which they are only facets, and Allah knows best. The necessary condition of sincerity of approach is that it be what the Truth Most High accepts, and by the means He accepts. Now, something lacking its necessary condition cannot exist,

"And He does not accept unbelief for His servants" (Koran 39:7),

so one must realize true faith (iman),

"and if you show gratitude, He will accept it of you" (Koran 39:7),

which entails applying Islam. So there is no Sufism except through comprehension of Sacred Law, for the outward rules of Allah Most High are not known save through it, and there is no comprehension of Sacred Law without Sufism, for works are nothing without sincerity of approach, as expressed by the words of Imam Malik (Allah have mercy on him):

"He who practices Sufism without learning Sacred Law corrupts his faith, while he who learns Sacred Law without practicing Sufism corrupts himself. Only he who combines the two proves true."

(*Iqaz al-himam fi sharh al-Hikam* (y54), 5–6)

w9.3 (أحمد زروق:) قد حد التصوف ورسم وفسر بوجوه تبلغ نحو ألفين ترجع كلها لصدق التوجه إلى الله تعالى، وإنما هي وجوه فيه والله أعلم [. . .] و[. . .] صدق التوجه مشروط بكونه من حيث يرضاه الحق تعالى، ولا يصح مشروط بدون شرطه ـ﴿ولا يرضى لعباده الكفر﴾ـ فلزم تحقيق الإيمان، ـ﴿وإن تشكروا يرضه لكم﴾ـ فلزم العمل بالإسلام فلا تصوف إلا بفقه، إذ لا تُعرف أحكام الله تعالى الظاهرة إلا منه، ولا فقه إلا بتصوف، إذ لا عمل إلا بصدق توجه [. . .] ومنه قول مالك رحمه الله:

«من تصوف ولم يتفقه فقد تزندق، ومن تفقه ولم يتصوف فقد تفسق، ومن جمع بينهما فقد تحقق» [محرر من إيقاظ الهمم في شرح الحكم: ٥ - ٦].

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w9.4 (n:) As for the meaning of *proving true*, its sheikhs say that Sufism is not a fixity on a particular type of worship, but rather the attachment of the heart to Allah Most High, mere honesty therein demanding that whenever something is preferred by the standards of the Sacred Law for someone in one's circumstances, one does it. This is why we find that Sufis have served Islam in a wide variety of capacities. Many of the scholars cited throughout the present volume, for example, also had the higher education of Sufism, among them Imam Muhammad Amin Ibn 'Abidin, Sheikh al-Islam Zakariyya Ansari, Muhammad Abul Mawahib, Sheikh Ibrahim Bajuri, Muhammad Sa'id Burhani, 'Abd al-Wakil Durubi, Imam Ghazali, Muhammad Hamid, Imam Abu Hanifa, Sheikh Muhammad Hashimi, Imam Ibn Hajar Haytami, Ibn 'Ajiba, Ibn 'Ata' Illah, Imam 'Izz ibn 'Abd al-Salam, the author of our basic text Ahmad ibn Naqib al-Misri, Muhammad 'Abdullah Jurdani, Muhammad Amin Kurdi, Imam Malik, 'Abd al-Ra'uf Munawi, Zayn al-Din Mallibari, Yusuf Nabahani, 'Abd al-Ghani Nabulsi, Khalil Nahlawi, Imam Nawawi, 'Abd al-Wahhab Sha'rani, Imam Taqi al-Din Subki, Jalal al-Din Suyuti, Hakim Tirmidhi, and others.

Among the Sufis who aided Islam with sword as well as pen, according to B.G. Martin's *Muslim Brotherhoods in Nineteenth Century Africa* (y86), are such men as the Naqshbandi sheikh Shamil Daghestani, who fought a prolonged war against the Russians in the Caucasus in the nineteenth century; Sayyid Muhammad 'Abdullah al-Somali, a sheikh of the Salihiyya order who led Muslims against the British and Italians in Somalia from 1899 to 1920; the Qadiri sheikh 'Uthman ibn Fodi, who led jihad in Northern Nigeria from 1804 to 1808 to establish Islamic rule; the Qadiri sheikh 'Abd al-Qadir al-Jaza'iri, who led the Algerians against the French from 1832 to 1847; the Darqawi faqir al-Hajj Muhammad al-Ahrash, who fought the French in Egypt in 1799; the Tijani sheikh al-Hajj 'Umar Tal, who led Islamic jihad in Guinea, Senegal, and Mali from 1852 to 1864; and the Qadiri sheikh Ma' al-'Aynayn al-Qalqami, who helped marshal Muslim resistance to the French in northern Mauritania and southern Morocco from 1905 to 1909.

Among the Sufis whose missionary work Islamized entire regions are such men as the founder of the Sanusiyya order, Muhammad 'Ali Sanusi, whose efforts and jihad from 1807 to 1859 consolidated Islam as the religion of peoples from the Libyan Desert to sub-Saharan Africa; the Shadhili sheikh Muhammad Ma'ruf and Qadiri sheikh Uways al-Barawi, whose efforts spread Islam westward and inland from the East African Coast; and the hundreds of anonymous Naqshbandi sheikhs who taught and preserved Islam among the peoples of what is now the southern Soviet Union and who still serve the religion there despite official pressure. It is plain from the example of these and similar men that the attachment of the heart to Allah, which is the main emphasis of Sufism, does not hinder spiritual works of any kind, but may rather provide a real basis for them. And Allah alone gives success.

w9.5 ('Abd al-Wahhab Sha'rani:) The path of the Sufis is built of the Koran and sunna, and is based upon living according to the morals of the prophets and purified ones. It may not be blamed unless it violates an explicit statement from the

w9.5 (عبد الوهاب الشعراني:) إن طريق القوم مشيدة بالكتاب والسنة، ومبنية على سلوك أخلاق الأنبياء والأصفياء، وهي لا تكون مذمومة إلا إن

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Koran, sunna, or scholarly consensus (def: b7), exclusively. If it does not contravene one of these, the very most that one may say of it is that it is an understanding a Muslim man has been given, so let whoever wishes act upon it, and whoever does not refrain, this being as true of works as of understanding. So no pretext remains for condemning it except one's own low opinion of others (dis: r2.14), or interpreting what they do as ostentation, which is unlawful.

Whoever carefully examines the branches of knowledge of the Folk of Allah Most High will find that none of them are beyond the pale of the Sacred Law. How should they lie beyond the pale of the Sacred Law when it is the law that connects the Sufis to Allah at every moment? Rather, the reason for the doubts of someone unfamiliar with the way of the Sufis that it is of the very essence of the Sacred Law is the fact that such a person has not thoroughly mastered the knowledge of the law. This is why Junayd (Allah Most High have mercy on him) said, "This knowledge of ours is built of the Koran and sunna," in reply to those of his time or any other who imagine that it is beyond the pale of the Koran and sunna.

The Folk unanimously concur that none is fit to teach in the path of Allah Mighty and Majestic save someone with comprehensive mastery of the Sacred Law, who knows its explicit and implicit rulings, which of them are of general applicability and which are particular, which supersede others and which are superseded. He must also have a thorough grounding in Arabic, be familiar with its figurative modes and similes, and so forth. So every true Sufi is a scholar is Sacred Law, though the reverse is not necessarily true.

To summarize, no one denies the states of the Sufis except someone ignorant of the way they are. Qushayri says, "No era of the Islamic period has had a true sheikh of this group, save that the Imams of the scholars of that time deferred to him, showed humility towards him, and visited him for the benefit of his spiritual grace (baraka). If the Folk had no superiority or election, the matter would have been the other way around" (*al-Tabaqat al-kubra al-musamma bi Lawaqih al-anwar fi tabaqat al-akhyar* (y124), 1.4).

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خالفت صريح القرآن أو السنة أو الإجماع لا غير، وأما إذا لم تخالف فغاية الكلام أنه فهم أوتيه رجل مسلم فمن شاء فليعمل به ومن شاء تركه، ونظير الفهم في ذلك الأفعال وما بقي باب للإنكار إلا سوء الظن بهم وحملهم على الرياء وذلك لا يجوز شرعاً. [. . .] فمن دقق النظر علم أنه لا يخرج شيء من علوم أهل الله تعالى عن الشريعة وكيف نخرج علومهم عن الشريعة والشريعة هي وصلتهم إلى الله عز وجل في كل لحظة ولكن أصل استغراب من لا إلمام له بأهل الطريق أن علم التصوف من عين الشريعة كونه لم يتبحر في علم الشريعة ولذلك قال الجنيد رحمه الله تعالى علمنا هذا مشيد بالكتاب والسنة رداً على من توهم خروجه عنهما في ذلك الزمان أو غيره. وقد أجمع القوم على أنه لا يصلح للتصدر في طريق الله عز وجل إلا من تبحر في علم الشريعة وعلم منطوقها ومفهومها وخاصها وعامها وناسخها ومنسوخها وتبحر في لغة العرب حتى عرف مجازاتها واستعاراتها وغير ذلك فكل صوفي فقيه ولا عكس.

وبالجملة فما أنكر أحوال الصوفية إلا من جهل حالهم. وقال القشيري: لم يكن عصر في مدة الإسلام وفيه شيخ من هذه الطائفة إلا وأئمة ذلك الوقت من العلماء قد استسلموا لذلك الشيخ وتواضعوا له وتبركوا به. ولولا مزية وخصوصية للقوم لكان الأمر بالعكس [انتهى] [محرر من الطبقات الكبرى المسماة بلواقح الأنوار في طبقات الأخيار: ١/ ٤].

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SUFI SHEIKHS

الشيخ الصوفي

w9.6 (Ahmad Zarruq:) The conditions of a sheikh to whom a disciple may entrust himself are five:

(a) sound religious knowledge;

(b) true experience of the Divine;

(c) exalted purpose and will;

(d) a praiseworthy nature;

(e) and penetrating insight.

Someone with all five of the following is not fit to be a sheikh:

(1) ignorance of the religion;

(2) disparaging the honor of the Muslims;

(3) involvement in what does not concern him;

(4) following caprice in everything;

(5) and showing bad character without a second thought.

If there is no sheikh who is a true guide (murshid, def: w9.7), or there is one, but he lacks one of the five conditions, then the disciple should rely on those of his qualities that are perfected in him, and deal with him as a brother (A: meaning the sheikh and disciple advise one another) regarding the rest (*Kitab qawanin hukm al-ishraq ila kaffa al-Sufiyya fi jami' al-afaq* (y121), 119).

w9.6 (أحمد زروق:) [. . .] وشروط الشيخ الذي يلقي إليه المريد نفسه خمسة: علم صحيح، وذوق صريح، وهمة عالية، وحالة مرضية، وبصيرة نافذة.

ومن فيه خمس لا تصح مشيخته: الجهل بالدين، وإسقاط حرمة المسلمين، ودخول فيما لا يعني، واتباع الهوى في كل شيء، وسوء الخلق من غير مبالاة [. . .].

وإن لم يكن شيخ مرشد وإن وجد ناقصاً عن شروطه الخمس، اعتمد على ما كمل فيه وعومل بالأخوة في الباقي [محرر من كتاب قوانين حكم الإشراق إلى كافة الصوفية في جميع الآفاق: ١١٩].

THE PURPOSE OF TAKING A SHEIKH AND A PATH

المقصود من اتخاذ شيخ وطريق

w9.7 (Muhammad Hashimi:) As for when the path is merely "for the blessing of it" and the sheikh lacks some of the conditions of a true

w9.7 (محمد الهاشمي:) [. . .] وأما إذا كانت الطريق طريق تبرُّك والشيخ ينقصه بعض شروط الإرشاد، أو تعدد

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guide, or when the disciple is seeking several different aims from it at once, or the disciple's intention is contrary to the spiritual will of the sheikh, or the time required is unduly prolonged, or he is separated from his sheikh by the latter's death or the exigencies of the times and has not yet completed his journey to Allah on the path or attained his goal from it—then it is obligatory for him to go and associate with someone who can complete his journey for him and convey him to what he seeks from the path, as it is not permissible for him to remain bound to the first sheikh his whole life if it is only to die in ignorance of his Lord, claiming that this is the purpose of the path. By no means is this the purpose. The purpose of the path is to reach the goal, and a path that does not reach it is a means without an end. The path was made for travel on it with the intention of reaching one's goal, not for remaining and residing in even if this leads to dying in ignorance of one's Lord. The meaning of a true disciple is one who forthrightly submits himself to a living sheikh who is a guide (murshid) during the days of his journey to Allah Most High so that the sheikh may put him through the stages of the journey until he can say to him, "Here you are, and here is your Lord" (*al-Hall al-sadid li ma astashkalahu al-murid* (y46), 7).

مطلوب المريد أو خالفت نيةُ المريد همة الشيخ وتعدد الزمان، أو فارق شيخه بموت أو غيره من حوادث الزمان وكان لم يتمم سيره إلى الله في الطريق ولم يحصّل مقصوده من الطريق على يده فيجب عليه صحبة من يتمم له سلوكه ويوصله إلى مطلوبه من الطريق، ولا يجوز أن يبقى مربوطاً بالأول طول عمره ولو أدّى ذلك إلى موته جاهلاً بربه ويزعم أن ذلك هو المقصود من الطريق. كلاّ. فإن المقصود من الطريق الوصول إلى المطلوب، فطريق بلا وصول وسيلة بلا غاية. والطريق جعلت للسير فيها بقصد الوصول إلى مطلوبه لا للمكث والإقامة فيها ولو أدى ذلك إلى موته جاهلاً بربه. والمراد بالمريد الحقيقي هو الذي سلم نفسه مباشرة بالفعل للشيخ المرشد الحي في أيام السير إلى الله تعالى ليسلك به الطريق إلى أن يقول له: ها أنت وربك [نقل من الحل السديد لما استشكله المريد: ٦ - ٧].

w9.8 (n:) Muhammad Hashimi's above words about submitting oneself to a living sheikh refer to matters within the range of the *permissible* or *recommended*, not what contradicts the Sacred Law or beliefs of Islam (def: v1–v2), for no true sheikh would ever countenance such a contravention (dis: s4.7), let alone have a disciple do so, a fact that furnishes the subject of the remaining articles of this section.

w9.9 ('Izz ibn 'Abd al-Salam:) The Sacred Law is the scale upon which men are weighed and profit is distinguished from loss. He who weighs heavily on the scales of the Sacred Law is of the friends (awliya') of Allah, among whom there is disparity of degree. And he who comes up short in the scales of the Sacred Law is of the people of ruin, among whom there is also disparity of degree. If one sees someone who can fly through the air, walk on water, or inform one of the unseen, but who contravenes the Sacred Law by committing

w9.9 (العز بن عبد السلام:) إن الشرع ميزان يوزن به الرجال وبه يتبين الربح من الخسران. فمن رجح في ميزان الشرع كان من أولياء الله، وتختلف مراتب الرجحان. ومن نقص في ميزان الشرع فأولئك أهل الخسران، وتتفاوت خفتهم في الميزان [...] فإذا رأيت إنساناً يطير في الهواء ويمشي على الماء، أو يخبر بالمغيبات، ويخالف الشرع

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an unlawful act without an extenuating circumstance that legally excuses it, or who neglects an obligatory act without lawful reason, one may know that such a person is a devil Allah has placed there as a temptation to the ignorant. Nor is it far-fetched that such a person should be one of the means by which Allah chooses to lead men astray, for the Antichrist will bring the dead to life and make the living die, all as a temptation and affliction to those who would be misled (*al-Imam al-'Izz ibn 'Abd al-Salam wa atharuhu fi al-fiqh al-Islami* (y38), 1.137).

بارتكاب المحرمات بغير سبب محلل، أو يترك الواجبات بغير سبب مجوز، فاعلم أنه شيطان نصبه الله فتنة للجهلة، وليس ذلك ببعيد من الأسباب التي وضعها الله للضلال فإن الدجال يحيي ويميت، فتنة لأهل الضلال [محرّر من الإمام العز بن عبد السلام وأثره في الفقه الإسلامي: ١/ ١٣٧].

THE STORY OF KHIDR AND MOSES

قصة الخضر وموسى عليهما السلام

w9.10 (A:) There is sometimes discussion as to whether the story of Khidr and Moses (Koran 18:65–82) does not show that exceptions to Islamic Law are possible. In fact, the verses give no grounds for such an inference, for two reasons. The first is that the context of the story is the age of Moses, not the age of Muhammad (Allah bless him and give him peace), whose Sacred Law is distinguished above that of any of the previous prophets by being final and inabrogable (dis: w4.2–7). The second reason is that Khidr, as the vast majority of scholars affirm, was himself a prophet and his actions were given to him to perform by divine revelation (wahy), this invalidating any comparison between Khidr's exceptionality to the law of Moses and that of any individual born in our own times, for there is no prophet born after the time of Muhammad (Allah bless him and give him peace).

It might be wondered why Allah Most High mentions the story of Khidr and Moses in the Koran at all, if the exceptionality of Khidr was restricted to the time of Moses. The answer is that there is much wisdom in the story, such as that some particular excellence not found in the superior of two things or people may well be found in the inferior of them, for Moses was a prophetic messenger (rasul) while Khidr was only a prophet (nabi); that there are secrets given to certain of Allah's servants which not everyone in the Community (Umma) is responsible to know; that one should learn wisdom wherever one can; and that no matter how much one knows, one should not claim to have knowledge. And Allah knows best.

SUFISM AND ORTHODOXY

براءة التصوف من أهل الأهواء

w9.11 ('Abd al-Qahir Baghdadi:) The book *Tarikh al-Sufiyya* [The history of the Sufis] by Abu 'Abd al-Rahman Sulami, comprises the biographies of nearly a thousand sheikhs of the Sufis, none of whom belonged to heretical sects and all

w9.11 (عبد القاهر البغدادي:) وقد اشتمل كتاب تاريخ الصوفية لأبي عبد الرحمن السلمي على زهاء ألف شيخ من الصوفية ما فيهم واحد من أهل الأهواء.

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of whom were of the Sunni community, with the exception of only three of them: Abu Hilman of Damascus, who pretended to be of the Sufis but actually believed in incarnationism (hulul, def: w7.1); Husayn ibn Mansur al-Hallaj, whose case remains problematic, though Ibn 'Ata', Ibn Khafif, and Abul Qasim al-Nasrabadhi approved of him; and al-Qannad, whom the Sufis accused of being a Mu'tazilite (def: w6.4) and rejected, for the good does not accept the wicked (*Usul al-din* (y23), 315–16).

بل كلهم من أهل السنة سوى ثلاثة منهم: أحدهم أبو حلمان الدمشقي فإنه تستر بالصوفية وكان من الحلولية. والثاني الحسين بن منصور الحلاج وشأنه مشكل. وقد رضيه ابن عطاء وابن خفيف وأبو القاسم النصرآباذي. والثالث القناد اتهمته الصوفية بالاعتزال فطردوه لأن الطيب لا يقبل الخبيث [نقل من أصول الدين: ٣١٥ - ٣١٦].

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w10.0 IN WHAT SENSE PHILOSOPHY IS UNLAWFUL (from a7.2(2))

w10.0 معنى القول بحرمة الفلسفة

w10.1 (n:) Anyone who has made a serious study of "philosophy" must acknowledge that the term has been applied to a great many widely varying procedures and styles of thought throughout its long history, and that there is little substantial agreement among philosophers as to what philosophy is or should be. What Nawawi and other Islamic scholars seem to have in mind when they speak of the unlawful character of philosophy is not the efforts at a logical critique of the methodology of the sciences which have been seen particularly in this century, but rather cosmological theories and all-too-human attempts to solve ultimate questions about man, God, life after death, and so forth, without the divinely revealed guidance of the Koran and sunna: Any opinion that contradicts a well-known tenet of Islamic belief that there is scholarly consensus upon (ijma', def: b7) is unbelief (kufr), and is unlawful to learn or teach, except by way of explaining that it is unlawful. And Allah knows best.

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w11.0 THE UNLAWFULNESS OF THE SCIENCES OF THE MATERIALISTS (from a7.2(5))

w11.0 معنى القول بحرمة علوم الطبائعيين

w11.1 (N:) The unlawfulness of the "sciences of the materialists" refers to the conviction of materialists that things *in themselves* or *by their own nature* have a causal influence independent of the will of Allah. To believe this is unbelief (dis: o8.7(17)) that puts one beyond the pale of Islam. Muslims working in the sciences must remember that they are dealing with figurative causes (asbab majaziyya), not real ones, for Allah alone is the real cause.

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w12.0 THE REASON FOR VARIOUS POSITIONS WITHIN ONE SCHOOL (from b1.2)

LEVELS OF SCHOLARS

w12.1 (Salih Mu'adhdhin:) To clarify the reason for scholarly disagreement within one legal school, we may say that scholars divide each school into various levels, the most important of which (N: after the Imam) may be characterized as follows:

(1) the first level, composed of those qualified to do *ijtihad* (independent legal reasoning) within the school, deploying it according to the general methodological principles established by their Imams, and who transmit the words of the Imam, such scholars being called *colleagues*, including men like Muzani;

(2) the second level, composed of those qualified to do *ijtihad* on particular legal questions that were not discussed by the Imam of the school, including such scholars as Imam Ghazali;

(3) the third level, composed of those qualified to do textual exegesis, and who because of their comprehensive mastery of the works of the school, specialize in interpreting the positions of their Imams that require details and explanation to be properly understood, and in specifying the precise meaning of rulings which might otherwise be understood equivocally; including such scholars as the Imam of the Two Sanctuaries, Juwayni;

(4) and the fourth level, which is composed of those qualified to weigh various scholarly positions and judge which is the soundest, evaluating their Imams' positions in terms of the reliability of the narrators of the channels of transmission of the opinion from the Imam, or in terms of the understanding shown in treating particular legal questions; and who may then say which is the stronger or more suitable position; this level including such men as the Two Sheikhs, Rafi'i and Nawawi.

w12.0 سبب الخلاف في المذهب الواحد

طبقات علماء المذهب

w12.1 (صالح مؤذن:) لتوضيح سبب الخلاف في المذهب الواحد نقول: قسم العلماء كل مذهب إلى طبقات أهمها:

الطبقة الأولى: أهل الاجتهاد في المذهب وهؤلاء يجتهدون ضمن أصول الاجتهاد التي وضعها أئمتهم وينقلون كلام الإمام وهم الأصحاب كالمزني.

الطبقة الثانية: أهل الاجتهاد في المسائل التي لم ترد على إمام المذهب كالإمام الغزالي.

الطبقة الثالثة: أهل التخريج وهؤلاء لإحاطتهم بالمذهب يقتصرون على تفسير قول مجمل من أقوال أئمتهم أو تعيين وجه معين لحكم يحتمل وجهين كإمام الحرمين الجويني.

الطبقة الرابعة: أهل الترجيح وهؤلاء يرجحون ما روي عن أئمتهم من جهة الرواية أو من جهة الدراية فيقول هذا أصح أو أولى ومن هؤلاء الشيخان الرافعي والنووي.

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It is apparent from the foregoing that scholarly differences may occur at each of the levels: in the deductions of the colleagues and their *ijtihad* within the general methodological principles of the school, in judging one position of the Imam of the school to be sounder than another of his positions, or in judging one position's channel of transmission to be sounder than another's; all of which take place according to the evidence available to the particular scholar and his understanding of the Imam's words (*'Umdat al-salik* (y90), 18).

وهكذا نرى أنه في كل طبقة يمكن أن يحصل الخلاف في استنباط الأصحاب واجتهادهم ضمن أصول المذهب أو في ترجيح قول على قول من أقوال إمام المذهب أو ترجيح رواية على أخرى كل ذلك حسب ما يتوافر لدى كل واحد منهم من الأدلة وبحسب فهمه لكلام الإمام [نقل من تعليق لصالح مؤذن على هامش عمدة السالك وعدة الناسك : ١٨].

IT IS OBLIGATORY TO JUDGE ACCORDING TO THE STRONGEST POSITION IN A SCHOOL

وجوب الحكم بالراجح في المذهب

w12.2 (Zayn al-Din Mallibari:) Al-'Iraqi and Ibn Salah have recorded scholarly consensus (def: b7) that it is not permissible to judge by other than the strongest legal position in a school, as Subki has explicitly stated at length in several places in his *Fatawi,* considering it to be "judging by other than what Allah has revealed," since Allah Most High has made it obligatory for *mujtahid*s (def: o22.1(d)) to adopt the position for which the evidence is strongest, and has made it obligatory for non-*mujtahid*s to follow the *ijtihad* of *mujtahid*s in all works that are personally obligatory (dis: b2.1).

w12.2 (زين الدين الملباري:) نقل العراقي وابن الصلاح الإجماع على أنه لا يجوز الحكم بخلاف الراجح في المذهب وصرح السبكي بذلك في مواضع من فتاويه وأطال وجعل ذلك من الحكم بخلاف ما أنزل الله لأن الله تعالى أوجب على المجتهدين أن يأخذوا بالراجح وأوجب على غيرهم تقليدهم فيما يجب عليهم العمل به.

THE STRONGEST POSITION IN THE SHAFI'I SCHOOL

المعتمد في المذهب الشافعي

w12.3 Jalal Bulqini relates from his father (A: Siraj al-Din) that "the soundest position in the [A: Shafi'i] school for court rulings and formal legal opinions (fatwa) [n: in order of which must be accepted first when available] is what Nawawi and Rafi'i agree upon; then Nawawi's position; then Rafi'i's; then what has been judged strongest by the majority of scholars; then by the most knowledgeable; then by the most godfearing." Our sheikh (A: Ibn Hajar Haytami) states that this is what has been agreed upon by the most exacting of the later scholars, and is the position our sheikhs have enjoined us to rely on (*Kitab fath al-*

w12.3 ونقل الجلال البلقيني عن والده [...] أن المعتمد في المذهب للحكم والفتوى ما اتفق عليه الشيخان فما جزم به النووي فالرافعي فما رجحه الأكثر فالأعلم فالأورع. قال شيخنا هذا ما أطبق عليه محققو المتأخرين والذي أوصى باعتماده مشايخنا [محرر من كتاب

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Mu'in bi sharh Qurra al-'ayn bi muhimmat al-din (y85), 348).

فتح المعين بشرح قرة العين: ٣٤٨].

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w13.0 SLAVERY IN ISLAM (from c3.4) (see also k32)

w13.0 الرق في الإسلام

w13.1 (Titus Burckhardt:) Slavery within Islamic culture is not to be confused with Roman slavery or with the American variety of the nineteenth century: in Islam the slave was never a mere "thing." If his master treated him badly, he could appeal to a judge and procure his freedom. His dignity as a Muslim was inviolable. Originally the status of slave was simply the outcome of having been taken as a prisoner of war. A captive who could not buy his own freedom by means of ransom remained in the possession of the captor until he had earned his freedom by work or until he was granted liberty by his master (*Moorish Culture in Spain* (y32), 30).

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w14.0 FOLLOWING ANOTHER IMAM IN LEGAL RULINGS (from c6.4, end)

w14.0 من قلد غير إمامه

w14.1 (Ibn Hajar Haytami:) There are a number of states one may have in following the legal position of an Imam other than one's own, among them:

(1) to believe that the other Imam's position on the particular question is stronger, in which case it is permissible to follow him in deference to what one believes to be the sounder position;

(2) to believe that the position of one's own Imam is stronger, or not to know which Imam has the stronger position on the question, in both of which cases it is permissible to follow the position of the other Imam whether or not one thereby intends to take the way that is religiously more precautionary (dis: c6.5), in which case it is not offensive, though if it is a mere stratagem that is not intended as such (N: i.e. not intended as being religiously more precautionary) it is offensive;

w14.1 (ابن حجر الهيتمي:) [. . .] لمقلد غير إمامه أحوال [ذكرها السبكي أخذاً من كلامهم (ح: أي كلام الأصوليين)]:

- أحدها: أن يعتقد رجحان مذهب الغير في تلك المسألة فيجوز اتباعاً للراجح في ظنه.

- الثانية: أن يعتقد رجحان مذهب إمامه أو لا يعتقد رجحان واحد منهما، فيجوز أيضاً سواء قصد الاحتياط لدينه [. . .] ولا كراهة حينئذ بخلاف الحيلة على غير هذا الوجه (ح: أي غير وجه الاحتياط) فإنها مكروهة.

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(3) to intend by following the other Imam to take a dispensation when there is a need for it (N: such as a Shafi'i circumambulating the Kaaba at a crowded hajj (dis: j5.16(b)) who follows the position of Abu Hanifa that touching a woman does not nullify one's ablution), in which case it is permissible to follow the other Imam, unless one believes both that the position of one's own Imam is stronger, and that it is obligatory to follow the more knowledgeable of the two;

(4) to intend merely following the easier way of taking a dispensation when (N: neither (2) nor (3) above is the case, and) one does not believe that it is the stronger position, in which case following it is not permissible, as Subki says, "because one is then merely pursuing one's own caprice, and it is not for the sake of religion";

(5) to do this frequently, so as to become one of those who seek out dispensations (dis: c6.4), taking the easiest ruling from every school, which is also forbidden, as it connotes a dissolution of the limits of legal responsibility;

(6) to assemble by such a procedure a single composite act that is unacceptable by the consensus of scholars (def: b7), which is impermissible, such as when a Shafi'i follows Imam Malik in considering dogs to be physically pure, but only wipes part of his head when performing ablution (wudu), for in such a case his prayer is not considered valid by Malik, because he has not wiped his whole head, nor yet by Shafi'i, because of the physical impurity of dogs (N: though it is unobjectionable to piece together such a composite act by way of following the scholarly evidences supporting each part, if one is qualified to appreciate them (def: o22.1(d)), since then one has become a *mujtahid* on the question);

(7) or to follow one's original Imam in doing an act whose consequences are still in effect when one subsequently intends to follow another Imam, despite the continued existence of the first act's consequences; such as a Hanafi who, by right of being a neighbor, acquires a piece of land by preempting a neighbor's sale of it to another (shuf'a, def: k21) (N: since one of the purposes

ـ الثالثة : أن يقصد بتقليده الرخصة فيما دعت حاجته إليه (ح : كتقليد شافعي مذهب أبي حنيفة في عدم نقض الوضوء بلمس المرأة عند طوافه للحج مع الازدحام) فيجوز أيضاً، إلا أن يكون يعتقد رجحان مذهب إمامه وأنه يجب تقليد الأعلم.

ـ الرابعة أن يقصد مجرد الترخص (ح : مع عدم وجود الحال الثاني ولا الثالث) من غير أن يغلب على ظنه رجحانه فيمتنع كما قاله السبكي. قال : إنه حينئذ متبع لهواه لا للدين.

ـ الخامسة : أن يكثر من ذلك بحيث يصير متتبعاً للرخص بأن يأخذ من كل مذهب بالأسهل منه، فيمتنع أيضاً لأنه يشعر بانحلال ربقة التكليف.

ـ السادسة : أن يجتمع من ذلك حقيقة مركبة ممتنعة بالإجماع، فيمتنع كأن يقلد شافعي مالكاً في طهارة الكلب ويمسح بعض رأسه لأن صلاته حينئذ لا يقول بها مالك لعدم مسح كل الرأس ولا الشافعي لنجاسة الكلب [. . .]. (ح : لكن إن لفق بدليل فلا بأس عليه إن كان فيه أهلية معرفة الدليل فإذاً صار مجتهداً فيه).

ـ السابعة : أن يعمل بتقليده الأول ويستمر على آثاره ثم يريد أن يقلد غير إمامه مع بقاء تلك الآثار كحنفي أخذ بشفعة الجوار [عملاً بمذهبه] (ح : لأن

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that permit preemption in the Hanafi school is to prevent property adjacent to one's own from being acquired by an objectionable neighbor (n: though the Shafi'i school does not allow preemption for such a reason (dis: k21.0(N:)))—but when a second neighbor for the same reason preempts the Hanafi's taking possession of the land, the Hanafi refuses to allow the second preemption on the pretext that he now follows the Shafi'i school on the question, which is not permissible because it confirms that he is mistaken, either by following the first opinion or by following the second, while he is but a single responsible individual.

(*al-Fatawa al-hadithiyya* (y48), 113–14)

دفع جار السوء سبب من أسباب الشفعة عند الحنفية [فقالوا بالشفعة للجوار]، ثم تستحق عليه فيريد العمل بمذهب الشافعي فلا يجوز لتحقق خطئه إما في الأول أو الثاني مع أنه شخص واحد مكلف.

[محرّر من الفتاوى الحديثية: ١١٣-١١٤].

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w15.0 METRIC EQUIVALENTS OF ISLAMIC WEIGHTS AND MEASURES (from e1.11)

w15.0 ما يعادل المكاييل والأوزان الإسلامية في النظام المتري

w15.1 (n:) The metric equivalents of the Islamic weights and measures mentioned in the present work are as follows:

1 *mithqal* = 4.235 grams
1 dinar = 1 *mithqal* = 4.235 grams
1 dirham = 2.9645 grams
1 *ritl* = 381.15 grams
1 *mudd* = 0.51 liters
1 *sa'* = 2.03 liters
5 *awsuq* = 609.84 kilograms
Qullatayn = 216 liters
1 *dhira'* = 48 centimeters
The distance permitting shortening prayers = 81 km./ 50 mi.

HOW THE EQUIVALENTS WERE ARRIVED AT

w15.2 The weight of the classic Islamic gold dinar, one *mithqal*, is the basis for virtually all the other weights and measures mentioned above. The present volume's estimate of this all-important criterion is based on numismatic studies of

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ancient glass disc *mithqal*-weights, most of them dating back to A.H. 164/A.D. 780, which were originally produced as the standard to gauge the weight of the Islamic dinar, the difference in the weight of all such discs discovered up to the present time not exceeding a third of a milligram. Particularly impressive for accuracy is a study by P. Casanova, who conducted weight tests of several hundred intact specimens of such glass discs, each 18 *mithqals*, and found them to weigh 76.23 grams, from which one may infer a *mithqal* value of 4.235 grams, a result that is especially reliable because it is not possible for the error factor therein to exceed 1/18 per *mithqal* (*al-Makayil wa al-awzan al-Islamiyya* (y50), 9–10). This study furnished the estimate used by the present volume.

The weight of the dirham is 7/10 of the weight of the *mithqal* (*Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* (y73), 1.389), or 2.9645 grams.

The weight of the *ritl* has been estimated by Nawawi as 128 and 4/7 dirhams (*Fayd al-Ilah al-Malik* (y27), 1.15), equalling 128.5714285 dirhams, or 381.15 grams.

The *mudd* is a volume measure that in the Arabic of e5.25 is estimated in terms of a weight, 1 1/3 *ritl*, the weight of water being understood to furnish the basis for conversion to volume, just as it is at e1.11, where *qullatayn* is defined in terms of both. One and one-third *ritl* is 508.1999 grams, giving us a *mudd* of 0.5081999 liters, rounded off to 0.51 liters in the translation.

The *sa'* is 5 1/3 *ritls* (dis: Ar. e5.25) or four *mudds*, equalling 2.0327996 liters, rounded off to 2.03 liters in the translation.

Five *awsuq* amounts to 1600 *ritls* (dis: Ar. h3.4), considered as a weight (*Fayd al-Ilah al-Malik* (y27), 1.248), equalling 609.84 kilograms.

Qullatayn is estimated at e1.11 as about 500 *ritls* (190.575 liters), or 1 1/4 *dhira'*, (lit. *cubit*, meaning the Shafi'i *dhira'*, for otherwise the term has been applied to a wide variety of measures) in height, width, and length, from which one may infer that the *dhira'* is 46.03 centimeters. The translator found both these metric equivalents satisfactory, but in deference to the *ijtihad* of Sheikh Muhammad Amin Kurdi in *Tanwir al-qulub fi mu'amala 'Allam al-Ghuyub* (y74), 172, and Sheikh Ridwan al-'Adal Baybars in *Kitab rawda al-muhtajin li ma'rifa qawa'id al-din* (y29), 186, who both estimate the *dhira'* at 48 centimeters, the latter figure has been adopted, and it yields an estimated *qullatayn* volume of 216 liters (a cube of 60 centimeters on each side) which may be considered religiously more precautionary than the above *qullatayn* estimate, since the greater estimate fulfills the legal requirements of the lesser estimate, though not vice versa.

Adopting a *dhira'* estimate of 48 centimeters rather than 46.03 centimeters yields a distance permitting shortening prayers (masafa al-qasr) of 80.640 kilometers (*Tanwir al-qulub fi mu'amala 'Allam al-Ghuyub* (y74), 172), rather than the 77.3304 kilometers inferable from the lesser estimate; and the greater estimate has been preferred here as well, since it enters into a great many rulings and is religiously more precautionary in the sense explained above. It has been rounded off in the translation to 81 km./ 50 mi.

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w16.0 PROPER MANNERS TOWARDS THE HOLY KORAN (from e8.1, end)

w16.1 (Qurtubi:) It is of the inviolability of the Koran:

(1) not to touch it except in a state of ritual purity (dis: w16.2), and to recite it when in a state of ritual purity;

(2) to brush one's teeth with a toothstick (def: e3), remove food particles from between them, and freshen one's mouth before reciting, since it is the way through which the Koran passes;

(3) to sit up straight if not in prayer, and not lean back;

(4) to dress for reciting it as if intending to visit a prince, for the reciter is engaged in intimate discourse;

(5) to face the direction of prayer (qibla) to recite;

(6) to rinse the mouth out with water if one expectorates mucus or phlegm;

(7) to stop reciting when one yawns, for when reciting, one is addressing one's Lord in intimate conversation, while yawning is from the Devil;

(8) when beginning to recite, to take refuge in Allah from the accursed Devil (def: w1.15) and say the Basmala (w1.6), whether one has begun at the first of the sura or some other part one has reached;

(9) once one has begun, not to interrupt one's recital from moment to moment with human words, unless absolutely necessary;

(10) to be alone when reciting it, so that no one interrupts one, forcing one to mix the words of the Koran with replying, for this nullifies the effectiveness of having taken refuge in Allah from the Devil at the beginning;

w16.0 التأدب مع القرآن الكريم

w16.1 (الإمام القرطبي:) [قال الترمذي الحكيم أبو عبد الله في نوادر الأصول:]

فمن حرمة القرآن ألا يمسه إلا طاهراً.

ومن حرمته أن يقرأه وهو على طهارة.

ومن حرمته أن يستاك ويتخلل فيطيب فاه، إذ هو طريقه [...] ([ت: وقال الترمذي في المرجع المذكور، ص٣٣٣:] وأن تستوي قاعداً إن كنت في غير الصلاة ولا تكون متكئاً).

ومن حرمته أن يتلبس كما يتلبس للدخول على الأمير لأنه مناج.

ومن حرمته أن يستقبل القبلة لقراءته [...].

ومن حرمته أن يتمضمض كلما تنخع [...].

ومن حرمته إذا تثاءب أن يمسك عن القراءة لأنه إذا قرأ فهو مخاطب ربه مناج، والتثاؤب من الشيطان [...].

ومن حرمته أن يستعيذ بالله عند ابتدائه للقراءة من الشيطان الرجيم، ويقرأ بسم الله الرحمن الرحيم إن كان ابتدأ قراءته من أول السورة أو من حيث بلغ.

ومن حرمته إذا أخذ في القراءة لم يقطعها ساعة فساعة بكلام الآدميين من غير ضرورة.

ومن حرمته أن يخلو بقراءته حتى لا يقطع عليه أحد بكلام فيخلطه بجوابه لأنه إذا فعل ذلك زال عنه سلطان الاستعاذة الذي استعاذ في البدء.

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(11) to recite it leisurely and without haste, distinctly pronouncing each letter;

(12) to use one's mind and understanding in order to comprehend what is being said to one;

(13) to pause at verses that promise Allah's favor, to long for Allah Most High and ask of His bounty; and at verses that warn of His punishment to ask Him to save one from it;

(14) to pause at the accounts of bygone peoples and individuals to heed and benefit from their example;

(15) to find out the meanings of the Koran's unusual lexical usages;

(16) to give each letter its due so as to clearly and fully pronounce every word, for each letter counts as ten good deeds;

(17) whenever one finishes reciting, to attest to the veracity of one's Lord, and that His messenger (Allah bless him and give him peace) has delivered his message, and to testify to this, saying: "Our Lord, You have spoken the truth. Your messengers have delivered their tidings, and we are witnesses to this. O Allah, make us of those who bear witness to the truth and who act with justice"; after which one supplicates Allah with prayers;

(18) not to select certain verses from each sura to recite, but rather recite the whole sura;

(19) if one puts the Koran down, not to leave it open;

(20) not to place other books upon the Koran, which should always be higher than all other books (N: though the books of each shelf of a bookcase, for example, are considered separately in this), whether they are books of Sacred Knowledge or something else;

(21) to place the Koran on one's lap when reading, or on something in front of one, not on the floor;

ومن حرمته أن يقرأه على تؤدة وترسيل وترتيل.

ومن حرمته أن يستعمل فيه ذهنه وفهمه حتى يعقل ما يخاطب به.

ومن حرمته أن يقف على آية الوعد فيرغب إلى الله تعالى ويسأله من فضله، وأن يقف على آية الوعيد فيستجير بالله منه، ومن حرمته أن يقف على أمثاله فيمتثلها، ومن حرمته أن يلتمس غرائبه.

ومن حرمته أن يؤدي لكل حرف حقه من الأداء حتى يُبرز الكلام باللفظ تماماً، فإن بكل حرف عشر حسنات.

ومن حرمته إذا انتهت قراءته أن يصدق ربه ويشهد بالبلاغ لرسوله ﷺ، ويشهد على ذلك أنه حق، فيقول: صدقتَ ربَّنا وبلّغتْ رسلك ونحن على ذلك من الشاهدين اللهم اجعلنا من شهداء الحق القائمين بالقسط، ثم يدعو بدعوات.

ومن حرمته إذا قرأ ألا يلتقط الآي من كل سورة فيقرأها [. . . (ت: بل)] يقرأ السورة كلها [. . .].

ومن حرمته إذا وضع المصحف ألا يتركه منشوراً، وألا يضع فوقه شيئاً من الكتب حتى يكون أبداً عالياً لسائر الكتب علماً كان أو غيره.

ومن حرمته أن يضعه في حجره إذا قرأه أو على شيء بين يديه ولا يضعه بالأرض.

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(22) not to wipe it from a slate with spittle, but rather wash it off with water; and if one washes it off with water, to avoid putting the water where there are unclean substances (najasa) or where people walk. Such water has its own inviolability, and there were those of the early Muslims before us who used water that washed away Koran to effect cures;

(23) not to use sheets upon which it has been written as bookcovers, which is extremely rude, but rather to erase the Koran from them with water;

(24) not to let a day go by without looking at least once at the pages of the Koran;

(25) to give one's eyes their share of looking at it, for the eyes lead to the soul (nafs), whereas there is a veil between the breast (N: i.e. the place where it is remembered) and the soul, and the Koran is in the breast. When one recites it from memory, only one's ears hear and convey it to the soul; while if one is looking at the words, both eye and ear participate in the performance, discharging it more completely, and the eyes as well as the ears are given their due;

(26) not to trivially quote the Koran at the occurrence of everyday events, as by saying, for example, when someone comes,

"You have come hither according to a decree, O Moses" (Koran 20:40),

or,

"Eat and drink heartily for what you have done aforetimes, in days gone by" (Koran 69:24),

when food is brought out, and so forth;

(27) not to recite it to song tunes like those of the corrupt, or with the tremulous tones of Christians or the plaintiveness of monkery, all of which is misguidance;

(28) when writing the Koran to do so in a clear, elegant hand;

ومن حرمته ألا يمحوه من اللوح بالبصاق ولكن يغسله بالماء. ومن حرمته إذا غسله بالماء أن يتوقى النجاسات من المواضع، والمواقع التي توطأ، فإن لتلك الغسالة حرمة، وكان من قبلنا من السلف منهم من يستشفي بغسالته.

ومن حرمته ألا يتخذ الصحيفة [إذا بليت ودرست] وقاية للكتب، فإن ذلك جفاء عظيم، ولكن يمحوها بالماء.

ومن حرمته ألا يُخلي يوماً من أيامه من النظر في المصحف مرة [...]، ومن حرمته أن يعطي عينيه حظهما منه، فإن العين تؤدي إلى النفس، وبين النفس والصدر حجاب، والقرآن في الصدر؛ فإذا قرأه عن ظهر قلب فإنما يسمع أذنه فتؤدي إلى النفس، فإذا نظر في الخط كانت العين والأذن قد اشتركتا في الأداء، وذلك أوفر للأداء، وكان قد أخذت العين حظها كالأذن، [...].

ومن حرمته ألا يتأوله عندما يعرض له شيء من أمر الدنيا، [...] - والتأويل مثل قولك للرجل إذا جاءك: «جئت على قدر يا موسى» ومثل قوله تعالى: ﴿كُلُوا وَاشْرَبُوا هَنِيئًا بِمَا أَسْلَفْتُمْ فِي الْأَيَّامِ الْخَالِيَةِ﴾ [هذا] عند حضور الطعام وأشباه هذا، [...].

ومن حرمته ألا يقرأه بألحان الغناء كلحون أهل الفسق، ولا بترجيع النصارى ولا نوح الرهبانية، فإن ذلك كله زيغ [وقد تقدم].

ومن حرمته أن يجلّل تخطيطه إذا خطه، [...].

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(29) not to recite it aloud over another's reciting of it, so as to spoil it for him and make him resent what he hears, making it as if it were some kind of competition;

(30) not to recite it in marketplaces, places of clamor and frivolity, or where fools gather;

(31) not to use the Koran as pillow, or lean upon it;

(32) not to toss it when one wants to hand it to another;

(33) not to miniaturize the Koran, mix into it what is not of it, or mingle this-worldly adornment with it by embellishing or writing it with gold;

(34) not to write it on the ground or on walls, as is done in some new mosques;

(35) not to write an amulet (def: w17) with it and enter the lavatory, unless it is encased in leather, silver, or other, for then it is as if kept in the heart;

(36) if one writes it (N: with saffron, for example on the inside of a dish) and then (N: dissolves the writing into water and) drinks it (N: for a cure or other purpose), one should say the Basmala (def: w1.6) at every breath and make a noble and worthy intention, for Allah only gives to one according to one's intention;

(37) and if one finishes reciting the entire Koran, to begin it anew, that it may not resemble something that has been abandoned.

(*al-Jami' li ahkam al-Qur'an* (y117), 1.27–31)

ومن حرمته ألا يجهر بعض على بعض في القراءة فيفسد عليه حتى يبغض إليه ما يسمع ويكون كهيئة المغالبة، [. . .].

ومن حرمته ألاّ يقرأ في الأسواق ولا في مواطن اللغط واللغو ومجمع السفهاء [. . .].

ومن حرمته ألا يتوسد المصحف ولا يعتمد عليه، ولا يرمي به إلى صاحبه إذا أراد أن يناوله. ومن حرمته ألا يصغر المصحف [. . . قلت: وروي عن عمر بن الخطاب رضي الله عنه أنه رأى مصحفاً صغيراً في يد رجل فقال: من كتبه؟ قال: أنا، فضربه بالدرة، وقال: عظموا القرآن . . .].

ومن حرمته ألا يخلط فيه ما ليس منه، ومن حرمته ألا يحلى بالذهب ولا يكتب بالذهب فتخلط به زينة الدنيا [. . .]، ومن حرمته ألا يكتب على الأرض ولا على حائط كما يفعل به في المساجد المحدثة [. . .].

ومن حرمته أن لا يكتب التعاويذ منه ثم يدخل به في الخلاء إلا أن يكون في غلاف من أدم أو فضة أو غيره فيكون كأنه في صدرك.

ومن حرمته إذا كتبه وشربه سمّى الله على كل نَفَس وعظّم النية فيه فإن الله يؤتيه على قدر نيته [. . .]، ومن حرمته أن يفتتحه كلما ختمه حتى لا يكون كهيئة المهجور [. . .] [محرّر من الجامع لأحكام القرآن: ١/ ٢٧ - ٣١ بتقديم وتأخير].

w16.2 (Imam Baghawi:) 'Abdullah ibn Abu Bakr ibn Muhammad ibn 'Amr ibn Hazm reported that the letter that the Prophet (Allah bless him and give him peace) wrote (N: i.e. dictated and had sent) to 'Amr ibn Hazm contained the injunction that

"none may touch the Koran but someone in a state of ritual purity."

w16.2 (الإمام البغوي:) [. . .] عن عبد الله بن أبي بكر بن محمد بن عمرو بن حزم أنّ الكتاب الذي كتبه رسول الله ﷺ لعمرو بن حزم:

«أنْ لا يمسّ القرآن إلا طاهرٌ».

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(Shu'ayb Arna'ut:) This is a rigorously authenticated (sahih) hadith, and was related in *al-Muwatta'* (y82), 1.199, in the section on the Koran, the chapter of "The Demand to Perform Ablution for Whoever Touches the Koran." Abu 'Umar states, "There is no disagreement reported from Malik that this hadith is *mursal* [def: o22.1(d(II(4)))], though it has also been related through a good channel with a contiguous series of transmitters (musnad) from the Prophet (Allah bless him and give him peace), the letter itself being well known to specialists in the field of prophetic biography and so famous among scholars that its renown suffices it from the need for a pedigree [dis: w48.3]." The hadith has various other channels of transmission and corroboratory evidences that strengthen it and raise it to the degree of rigorously authenticated (sahih). See them in *Nasb al-raya* (y135), 1.196–99 (*Sharh al-sunna* (y22), 2.47–48).

(شعيب الأرنـؤوط:) (هـو) حديث صحيح، وهـو في «الموطأ» ١/ ١٩٩ في القـرآن: باب الأمـر بالوضـوء لمن مس القـرآن، قال أبـو عمـر: لا خلاف عن مالك في إرسال هذا الحديث، وقد روي مسنداً من وجه صالح، وهو كتاب مشهور عند أهل السير، معروف عند أهل العلم معـرفـة يستغنى بهـا في شهـرتهـا عن الإسنـاد؛ [قـلت:] ولـلحـديث طرق وشـواهد يتقوى بها، ويصح، انظرها في «نصب الـراية» ١/ ١٩٦ - ١٩٩ [نقل من شرح السنة: ٢/ ٤٧ - ٤٨].

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w17.0 PROTECTIVE OR HEALING WORDS (RUQYA) AND AMULETS (from e8.2)

w17.0 جواز الرقى والتمائم

w17.1 (Mansur 'Ali Nasif:) Protective or healing words are permitted by Sacred Law and are called for when there is need for them, provided three conditions are met:

(a) that they consist of the word of Allah Most High, His names, or His attributes (n: the hadiths prohibiting amulets being interpreted as referring to the beads and so forth that were used in the pre-Islamic period of ignorance (dis: w17.3));

(b) that they be in Arabic;

(c) and that the user not believe the words have any effect in themselves (n: which is unbelief, as at o8.7(17)), but are rather empowered to do so by Allah Most High.

w17.1 (منصـور علي ناصـف:) [...] فالـرقية مشـروعة ومطلوبة عند الحـاجة بشرط أن تكون بكلام الله تعالى أو بأسمـائه أو صفاته، وأن تكون باللفظ العـربي، وأن يعتقـد أن الـرقية لا تؤثـر بنفسـهـا بل بتقـديـر الله تعـالى. والتميمة

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Amulets are like protective or healing words (ruqya) in the need for these conditions. And Allah knows best (*al-Taj al-jami' li al-usul fi ahadith al-Rasul* (y100), 3.219).

كالرقية في هذا والله أعلم [نقل من كتاب التاج الجامع للأصول في أحاديث الرسول ﷺ: ٣/ ٢١٩].

w17.2 (Nawawi:) One may adduce as evidence for their permissibility the hadith of 'Amr ibn Shu'ayb, from his father, from his grandfather, that the Messenger of Allah (Allah bless him and give him peace) used to teach them for fearful situations the words,

"I seek refuge in Allah's perfect words from His wrath, the evil of His servants, the whispered insinuations of devils, and lest they come to me."

'Abdullah ibn 'Amr used to teach these words to those of his sons who had reached the age of reason, and used to write them and hang them upon those who had not (*al-Majmu'* (y108), 2.71).

w17.2 (النووي:) [...] وقد يستدل للإباحة بحديث عمرو بن شعيب عن أبيه عن جده أن رسول الله ﷺ «كان يعلمهم من الفزع كلمات: أعوذ بكلمات الله التامة من غضبه وشر عباده ومن همزات الشياطين وأن يحضرون». قال: وكان عبد الله بن عمرو يعلمهن من عقل من بنيه ومن لم يعقل كتبه فأعلقه عليه» [رواه أبو داود والترمذي وقال حديث حسن] [نقل من المجموع: ٢/ ٧١].

w17.3 (Ibn Hajar Haytami:) A group of ten riders came to the Prophet (Allah bless him and give him peace), who had nine of them swear a covenant with him, but would not let the tenth do so. They asked, "What is the matter with him?" and the Prophet (Allah bless him and give him peace) replied that there was an amulet on his upper arm, so the man cut it off, and the Prophet let him swear his covenant, after which the Prophet (Allah bless him and give him peace) said,

"Whoever hangs one has ascribed associates (shirk) to Allah."

It is obligatory to interpret the above as referring to what they used to do of hanging a bead on themselves and calling it an "amulet" (tamima), and the like, believing it would protect them from calamities. Without a doubt, to believe this is ignorance and misguidance, and one of the worst enormities, since if it is not associating others with Allah (shirk), it leads to it, for nothing can benefit or harm one, prevent or turn aside, except for Allah Most High (*al-Zawajir 'an iqtiraf al-kaba'ir* (y49), 1.166).

w17.3 (ابن حجر الهيتمي:) [...] جاء في ركب عشرة إلى رسول الله ﷺ فبايع تسعة وأمسك عن رجل منهم فقالوا: ما شأنه؟ فقال: إن في عضده تميمة، فقطع الرجل التميمة فبايعه النبي ﷺ ثم قال: «من علق فقد أشرك».

[...] يتعين حمله على ما كانوا يفعلونه من تعليق خرزة يسمونها تميمة أو نحوها يرون أنها تدفع عنهم الآفات، ولا شك أن اعتقاد هذا جهل وضلال وأنه من أكبر الكبائر لأنه إن لم يكن شركا فهو يؤدي إليه إذ لا ينفع ويضر ويمنع ويدفع إلا الله تعالى [محرر من الزواجر عن اقتراف الكبائر: ١/ ١٦٦].

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w18.0 MAKING UP MISSED PRAYERS IS OBLIGATORY (from f1.1)

w18.0 وجوب قضاء الصلوات الفائتة

w18.1 (n:) This section discusses the view of some contemporary Muslims that someone who purposely misses one or more prescribed prayers need not make them up, which some say is because whoever intentionally neglects an obligatory prayer thereby becomes an unbeliever (kafir), and unbelievers are not obliged to pray. Besides being a weak position that contravenes all four schools of jurisprudence, those who miss prayers and neglect to make them up because of adopting this view will meet their Lord without having performed the first thing they shall be asked about on the Day of Judgement, their obligatory prayers. The following discussion, in explaining why the overwhelming majority of Islamic scholars hold that making up missed prescribed prayers is obligatory, centers on two points:

(1) that a Muslim who misses a prayer out of unconcern cannot by that fact alone be considered an unbeliever;

(2) and that the view that a prayer purposely missed cannot be made up is incorrect.

A MUSLIM WHO NEGLECTS A PRAYER DOES NOT THEREBY BECOME AN UNBELIEVER

المسلم التارك للصلاة لا يكفر

w18.2 (N:) The Hanafis, Malikis, and Shafi'is all hold that someone who misses the prayer out of laziness is a Muslim, and that missing the prayer does not entail his being an unbeliever. Nawawi says, "This is what the vast majority of early and later scholars have held" (*al-Majmu'* (y108), 3.16). As for the Hanbalis, they have two views, the first being that such a person becomes an unbeliever and is dealt with as a renegade from Islam (def: o8.2), while the second view is that he does not become an unbeliever, and this is what Ibn Qudama, in *al-Mughni* (y63), 2.329, has declared to be the soundest position. The opinion that such a person becomes an unbeliever has been ascribed to 'Ali ibn Abi Talib (Allah ennoble his countenance), Ibn al-Mubarak, Ishaq ibn Rahawayh, and some Shafi'is.

w18.2 (ح: ذهب الحنفية والمالكية والشافعية إلى أن تارك الصلاة كسلاً مسلم، وإن ترك الصلاة لا يوجب الحكم بالكفر. قال النووي: «وبه قال الأكثرون من السلف والخلف».

وأما الحنابلة فلهم في ذلك رأيان: الأول أنه يكفر ويعامل كالمرتد، والثاني أنه لا يكفر، وقد رجح ابن قدامة في المغني عدم كفره. وقد روي القول بكفره عن علي بن أبي طالب، وابن المبارك، وإسحق بن راهويه وبعض الشافعية.

THE EVIDENCE THAT SOMEONE WHO NEGLECTS THE PRAYER IS AN UNBELIEVER

حجة من قال بكفر تارك الصلاة

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w18.3 Those who hold that whoever misses a prayer becomes an unbeliever adduce the following evidence:

(1) The hadith of Jabir (Allah be well pleased with him) that he heard the Messenger of Allah (Allah bless him and give him peace) say,

"Between a man between polytheism and unbelief is the nonperformance of the prayer,"

which was related by Muslim.

(2) The hadith of Burayda (Allah be well pleased with him) that the Prophet (Allah bless him and give him peace) said,

"The covenant between us and them consists of the prayer: whoever leaves it has disbelieved,"

a hadith related by Tirmidhi and Nasa'i, the former saying that it was well authenticated (hasan).

(3) The words of 'Abdullah ibn Shaqiq 'Uqayli, one of those (tabi'i) who met and studied under some of the Companions, and someone whose eminence is agreed upon.

"The Companions of Muhammad (Allah bless him and give him peace) did not view the nonperformance of anything as unbelief besides the prayer,"

which was related by Tirmidhi in the Book of Faith with a rigorously authenticated (sahih) channel of transmission.

(4) And the Prophet's saying (Allah bless him and give him peace):

"The first thing you lose from your religion is keeping trusts, and the last thing you lose is the prayer,"

Imam Ahmad commenting that nothing remains of whatever the last has gone.

w18.3 من قال بكفره احتج بما يلي:

١- عن جابر رضي الله عنه قال: سمعت رسول الله ﷺ يقول:

«إن بين الرجل وبين الشرك والكفر ترك الصلاة».

رواه مسلم.

٢- عن بريدة رضي الله عنه عن النبي ﷺ قال:

«العهد الذي بيننا وبينهم الصلاة فمن تركها فقد كفر».

رواه الترمذي والنسائي وقال الترمذي حديث حسن.

٣- وعن عبد الله بن شقيق العقيلي التابعي المتفق على جلالته قال:

«كان أصحاب محمد ﷺ لا يرون شيئاً من الأعمال تركه كفر غير الصلاة».

رواه الترمذي في كتاب الإيمان بإسناد صحيح.

٤- قول النبي ﷺ:

«أول ما تفقدون من دينكم الأمانة وآخر ما تفقدون الصلاة».

قال الإمام أحمد كل شيء ذهب آخره لم يبق منه شيء.

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THE EVIDENCE THAT SOMEONE WHO NEGLECTS THE PRAYER IS NOT AN UNBELIEVER

w18.4 Those who hold that whoever neglects a prayer does not thereby become an unbeliever adduce the following evidence:

(1) The hadith of 'Ubada ibn Samit (Allah be well pleased with him) that he heard the Prophet (Allah bless him and give him peace) say:

"Allah has made five prayers obligatory: whoever performs their ablution well and prays them in their time, completing the bowing, the humility, and the awe that is due in them, has entered a solemn pact with Allah to forgive him. And whoever does not, has no pact with Allah: should He want, He will forgive him, and should He want, He will torment him,"

which is a rigorously authenticated (sahih) hadith related by Abu Dawud and others through multiple authentic channels of transmission. The evidence of the hadith is that the case of someone who does not pray is up to Allah's considered choice, meaning that Allah could choose *not* to torment him, while it is necessarily established that unbelievers will be tormented and enter hell (n: *necessarily* established in that the words of the Koran will necessarily be realized against them, just as Allah has stated (dis: w55.3(2)))—a consideration which with the above hadith indicates that someone who neglects to pray is not an unbeliever.

(2) The words of the Prophet (Allah bless him and give him peace),

"Whoever dies knowing that there is no god but Allah shall enter paradise,"

a hadith related by Muslim that in its generality implies that someone who does not perform the prayer but believes that there is no god but Allah, will enter paradise, whereas if he were an unbeliever, he would not enter it. There are many similar hadiths that imply this in their generality.

حجة من قال بعدم كفر تارك الصلاة

w18.4 واستدل من قال بعدم كفر تارك الصلاة كسلاً بما يلي:

١ـ عن عبادة بن الصامت رضي الله عنه قال: سمعت رسول الله ﷺ يقول:

«خمس صلوات افترضهن الله، من أحسن وضوءهن وصلاهن لوقتهن وأتم ركوعهن وخشوعهن كان له على الله عهد أن يغفر له، ومن لم يفعل، فليس له على الله عهد إن شاء غفر وإن شاء عذبه».

حديث صحيح رواه أبو داود وغيره بأسانيد صحيحة. ووجه الدلالة في الحديث أن من لم يصل داخل تحت المشيئة وقد يشاء الله أن لا يعذبه مع أن الكفار مقطوع بعذابهم ودخولهم النار فدل على أن تارك الصلاة ليس من الكفار.

٢ـ قوله ﷺ:

«من مات وهو يعلم أن لا إله إلا الله دخل الجنة».

رواه مسلم. وهذا يفيد بعمومه أن تارك الصلاة المعتقد بأنه لا إله إلا الله يدخل الجنة، ولو كان كافراً لم يدخلها.

ومثل هذه الأحاديث كثير وعمومها يفيد ذلك.

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(3) That Muslims from earliest times to the present have considered the Muslim who misses the prayer to be entitled to inherit by way of estate division and be inherited from. If in their view he were an unbeliever, he would not inherit or be inherited from (dis: L5.2).

(4) And the consensus of Muslims that the body of someone who neglects the prayer must be washed and prayed over. Were he an unbeliever in their view, they would not wash, shroud, or pray over him.

٣ـ أن المسلمين سلفاً وخلفاً مازالوا يورّثون تارك الصلاة ويرثون عنه ولو كان كافراً في نظرهم لما ورث ولا ورث عنه.

٤ـ اتفاق المسلمين على غسل تارك الصلاة والصلاة عليه. ولو كان كافراً في نظرهم لما غسلوه ولا كفنوه ولا صلوا عليه.

A DISCUSSION OF THE EVIDENCE

مناقشة الأدلة

w18.5 Scholars reply as follows to the hadiths adduced by those who claim that whoever misses the prayer is an unbeliever:

(1) The point of the hadiths is to emphasize the enormity of the crime of whoever misses the prayer and to liken him to unbelievers, not that it is actual unbelief. Other hadiths make their point in this way, such as the words of the Prophet (Allah bless him and give him peace),

"Reviling a Muslim is corruption and fighting him is unbelief,"

and similar ones.

(2) Their meaning is that the person who misses the prayer is like unbelievers in certain respects, such as that he is obligatorily executed (dis: f1.4). Scholars have had recourse to this interpretation in order to reach an accord between these texts of the Sacred Law and its basic principles, since a Muslim, of course, may not be judged an unbeliever unless there is absolute certainty of it, or be considered an unbeliever for something without unquestionable evidence that his act, statement, or belief is in fact unbelief (kufr). It thus appears that the strongest position is that someone who misses the prayer out of neglect is not an unbeliever, for besides the texts that imply his unbelief, others imply the contrary, and the former can bear an alternate interpretation.

w18.5 [. . .] يجيبون عما ورد في الأحاديث التي احتج بها من قال بكفره بما يلي:

١ـ أن المراد بهذه الأحاديث التغليظ على تارك الصلاة وتشبيهه بالكفار لا حقيقة الكفر كقول النبي ﷺ:

«سباب المسلم فسوق وقتاله كفر» [رواه البخاري] [. . .] وأشباه ذلك.

٢ـ [وقالوا إن] المراد أن تارك الصلاة مشارك للكافر في بعض أحكامه وهو وجوب القتل.

وإنما لجأوا إلى هذا التأويل للجمع بين نصوص الشرع وقواعده [التي ذكرناها]، ومن المعلوم أنه لا يحكم بكفر المسلم إلا بيقين ولا يكفر بشيء إلا إذا وجد دليل قاطع على أن هذا العمل أو القول أو العقيدة كفر.

ولهذا يبدو [لي] رجحان القول بعدم كفر تارك الصلاة كسلاً لأن النصوص الواردة بكفره يوجد ما يعارضها وهي قابلة للتأويل.

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MAKING UP MISSED PRAYERS

w18.6 As to whether it is obligatory to make up prayers missed without an excuse, this is a question raised nowadays by some students of jurisprudence, in an era when deliberate nonperformance of obligatory prayer and fasting has become frequent. They believe that the position well known to both scholars and ordinary people that it is obligatory to make up missed prayers and fast-days might be a deterrent from repentance, and they look to eliminate it by adopting the opinions of certain scholars, advancing the position of Ibn Hazm, Ibn Taymiya, and others, while what is obligatory is to defer to the Koran and sunna for the final decision, as the Prophet (Allah bless him and give him peace) has said,

"None of you believes until his inclinations conform to what I have brought,"

and it is obligatory to know what the evidence bears out, since one should, as has been said, "know men by their having spoken the truth, not that it is the truth by certain men having spoken it." So we will expound the question with its evidence, and then see what the evidence shows.

w18.7 The vast majority of scholars, including those of the four main schools of jurisprudence, have concluded that it is obligatory to make up deliberately missed prayers and fast-days, and have even reported scholarly consensus (def: b7) on the obligatory character of making them up, as is mentioned in (n: the Hanbali) *al-Mughni* (y63), 2.332; (n: the Hanafi) *Sharh al-'inaya 'ala al-Hidaya* (y21), 1.485; and in (n: the Shafi'i) *al-Majmu'* (y108), 3.71; while Ibn Hazm, Ibn Taymiya, and Ibn al-Qayyim conclude that someone who deliberately does not perform the prayer until its time is finished can never make it up, but should do as much good and perform as many supererogatory prayers as possible in order to tip the balance in his favor on the Day of Judgement, and repent and ask forgiveness of Allah Mighty and Majestic.

قضاء ما فات من الصلوات بلا عذر

w18.6 وهل يجب قضاء ما فات من الصلاة بلا عذر؟ هذه المسألة مما يثيره بعض المتفقهين هذه الأيام بعد أن كثر ترك الصلاة والصوم عمداً، ويرون أن القول بوجوب قضاء ما فات من الصلاة أو الصيام كما هو معروف بين العلماء والعامة قد يكون مانعاً من التوبة، ويلتمسون لإسقاط القضاء سنداً من أقوال بعض العلماء، فيحتجون بقول ابن حزم وابن تيمية وغيرهما، والواجب أن نحتكم إلى الكتاب والسنة. قال رسول الله ﷺ:

«لا يؤمن أحدكم حتى يكون هواه تبعاً لما جئت به» [رواه الأصفهاني في كتاب الحجة].

والواجب معرفة ما يؤدي إليه الدليل، فقد قيل اعرف الرجال بالحق ولا تعرف الحق بالرجال، ونحن نعرض هذه المسألة بأدلتها ثم نرى ما الذي يؤيده الدليل.

w18.7 ذهب جمهور الفقهاء ومنهم أصحاب المذاهب الأربعة المشهورة إلى وجوب قضاء ما فات من الصلاة أو الصيام عمداً. بل قالوا إن وجوب القضاء إجماع كما ذكر في المغني، وشرح العناية على الهداية [...] والمجموع [...] وذهب ابن حزم وابن تيمية وابن القيم إلى أن من تعمد ترك الصلاة حتى خرج وقتها لا يقدر على قضائها أبداً، فليكثر من فعل الخير وصلاة التطوع ليثقل ميزانه يوم القيامة وليتب وليستغفر الله عز وجل.

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THE EVIDENCE THAT SOMEONE WHO MISSES A PRAYER MUST MAKE IT UP

w18.8 The scholarly majority adduce the following evidence:

(1) The words of the Prophet (Allah bless him and give him peace),

"When any of you sleeps through the prayer or forgets it, then let him pray it when he remembers, for Allah Mighty and Majestic says,

" 'Perform the prayer for My remembrance' (Koran 20:14),"

a hadith related by Muslim. The evidence therein is that despite sleep and forgetfulness being lawful excuses, the obligation to perform the prayer is not eliminated by its time having passed, and the person who has slept or forgotten is required to make it up. So the prayer of someone who has missed it without excuse *a fortiori* remains still obligatory for him to pray, and is *a fortiori* mandatory to make up. The hadith moreover shows that obligatory acts of worship, just as they may initially occur at their specific time, may also validly occur after this time. The delay being a *sin* is a separate issue: if one excusably delays the prayer, there is no sin, while if one delays it without excuse, the sin occurs—but the hadith shows that a prayer's relationship to its specific time is not an intrinsic relationship entailed by its very nature, such that an obligatory prayer cannot be called an obligatory prayer unless it occurs within its proper time. Rather, it may occur after its time and still be termed an obligatory prayer.

(2) The words of the Prophet (Allah bless him and give him peace),

"A debt to Allah has better right to be fulfilled,"

a hadith related by Bukhari and Muslim. The hadith's context is that of making up another person's hajj (dis: j1.9), and the Prophet (Allah bless him and give him peace) likened the missed wor-

استدلال من قال بوجوب القضاء

w18.8 استدل الجمهور لمذهبهم بما يلي:

١ـ قول النبي ﷺ:

«إذا رقد أحدكم عن الصلاة أو غفل عنها فليصلها إذا ذكرها فإن الله عز وجل يقول: أقم الصلاة لذكري» رواه مسلم.

ووجه الدلالة أن النوم والنسيان من الأعذار الشرعية ومع ذلك لم يسقط بهما وجوب الصلاة بعد خروج وقتها وطولب النائم والناسي بالقضاء، فمن فاتته الصلاة بلا عذر أولى بعدم السقوط وأولى بوجوب القضاء.

ثم إن الحديث قد أفاد أن الفرائض كما تقع في وقتها المحدد لها ابتداء يمكن إيقاعها بعد الوقت [إلا ما استثناه الدليل كالحج]. وكون التأخير إثماً أمر آخر، فإن أخرت بعذر فلا إثم، وإن أخرت بلا عذر فالإثم حاصل. لكن الحديث أفاد أن الارتباط بالوقت ليس كارتباط الصفة بالموصوف بحيث لا تسمى الفريضة باسمها إلا إذا وقعت في وقتها بل يمكن أن تقع بعد الوقت ويكون لها نفس الاسم [...].

٢ـ قول النبي ﷺ:

«دَيْنُ الله أحق أن يقضى» رواه البخاري ومسلم.

والحديث وارد في الحج عن الغير وقد شبه العبادة الفائتة بالدين وورد مثله في الصوم فدل ذلك على أن العبادة إذا فاتت

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ship to a debt, similar hadiths existing about fasting, proving that acts of worship, when missed, regardless of the reason, become a debt that must be repaid just as other debts are, and with even better right. We say "regardless of the reason" because the Prophet (Allah bless him and give him peace) did not ask the questioner about the reason for its having been missed. And if this is established in relation to making up the worship of another, it holds with still better right for making up one's *own* missed acts of worship.

(3) It is rigorously authenticated that the Prophet (Allah bless him and give him peace) was prevented from performing the midafternoon prayer ('asr) until the sun had set because of fighting unbelievers at the Battle of the Confederates, when the prayer of peril (def: f16) had not yet been legislated, and he said,

"May Allah fill their graves and houses with fire, as they have occupied us from performing the midmost prayer until the sun set,"

a hadith related by Bukhari and Muslim. The evidence therein is that missing the prayer was excused here, whether because of forgetfulness or absentmindedness in view of the fighting, or because delaying the prayer was permissible under such circumstances before the prayer of peril had been legislated—but in either case it shows that a prayer may be validly performed after its time has finished.

(4) The words of the Prophet (Allah bless him and give him peace),

"Someone fasting who unintentionally vomits is not obliged to make up his fast, but whoever causes himself to vomit must make it up,"

the evidence therein being that it mentions two situations in which the fast is broken, the first being when it is excusably broken, namely, by someone overcome by vomiting, which does not legally vitiate his fast and which he is therefore not obliged to make up; and the second being when it is inexcusably broken, where, by consensus of all scholars, the person has committed a sin by break-

ـ بصرف النظر عن سبب فواتها ـ صارت ديناً يقضى كما تقضى الديون وأولى [. . .] وأقول: «بصرف النظر عن سبب الفوات» لأن النبي ﷺ لم يستفسر من السائل عن سبب الفوات، فإذا ثبت هذا في القضاء عن الغير فالقضاء عن النفس أولى.

٣ـ ثبت أن النبي ﷺ قد شغل عن صلاة العصر بقتال الكفار في غزوة الأحزاب ولم تكن قد شرعت صلاة الخوف حتى غابت الشمس وقال:

«ملأ الله قبورهم وبيوتهم ناراً كما شغلونا عن الصلاة الوسطى حتى غابت الشمس» متفق عليه.

ووجه الدلالة أن الفوات هنا كان بعذر، إما للنسيان والسهو نظراً لحال القتال، أو أنه كان من الجائز تأخير الصلاة في مثل هذه الحالة قبل أن تشرع صلاة الخوف [ولم يكن تأخيرها معصية قطعاً لأن الأنبياء معصومون ومن قال ذلك يكفر]، لكن محل الشاهد أن الصلاة يمكن إيقاعها بعد خروج وقتها.

٤ـ قول النبي ﷺ:

«من ذرعه القيء وهو صائم فليس عليه قضاء ومن استقاء فليقض» [رواه ابن ماجه].

ووجه الدلالة أن الحديث ذكر حالتين للإفطار، الأولى حالة المعذور وهو من غلبه القيء، وهذا لا يفسد صومه ولا قضاء عليه. والثانية حالة غير المعذور الآثم بإفطاره بالاتفاق وهذا قد أوجب

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ing it and the very words of the hadith oblige him to make it up. And this is the significant point, that the Prophet (Allah bless him and give him peace) declared it obligatory for whoever breaks the fast without excuse to make it up, which proves that an act of worship missed without excuse is obligatory to make up afterwards, even if the person who delays it past its time has committed a sin by doing so.

عليه الحديث القضاء.

وهذا موضع الشاهد: أن النبي ﷺ أوجب القضاء على من أفطر بلا عذر فدل على أن العبادة إذا فاتت بلا عذر وجب قضاؤها بعد الوقت ولو كان المؤخر لها عن وقتها آثماً بتأخيرها [...].

REPLIES TO THE OBJECTIONS OF IBN HAZM CONCERNING THE VALIDITY OF MAKING UP MISSED PRAYERS

ردود على ما احتج به ابن حزم لعدم صحة القضاء

w18.9 Ibn Hazm and those who agree with him adduce the following evidence:

(1) The word of Allah Most High,

"Woe to those who pray, unmindful of their prayers" (Koran 107:4–5),

and His word, Mighty and Majestic,

"But a generation followed them who dissipated the prayer and pursued [their] lusts, and they shall find *Ghayy* [n: a "valley in hell" (*Tafsir al-Jalalayn* (y77), 402)]" (Koran 19:59),

the evidence therein being that if the person who intentionally missed the prayer could perform it after its time, there would not be any woe to him, nor would he find *Ghayy*.

(Reply:) Both these verses refer to those who do not repent. There is no disagreement about this, as is attested to by the rest of the second verse,

"... save he who repents, believes, and does good" (Koran 19:60),

there being no disagreement about the validity of the meaning, though there is about the means of repentance. Does someone who has repented make the prayers up, or does he perform supererogatory prayers (dis: w18.9(8)) in their

w18.9 وقد استدل ابن حزم ومن وافقه بما يلي:

١ـ قول الله تعالى:

﴿فَوَيْلٌ لِلْمُصَلِّينَ الَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهُونَ﴾ [الماعون: ٤ - ٥].

وقوله عز وجل:

﴿فَخَلَفَ مِنْ بَعْدِهِمْ خَلْفٌ أَضَاعُوا الصَّلَاةَ وَاتَّبَعُوا الشَّهَوَاتِ فَسَوْفَ يَلْقَوْنَ غَيًّا﴾ [مريم: ٥٩].

ووجه الدلالة أنه لو كان العامد لترك الصلاة مدركاً لها بعد الوقت لما كان له الويل ولا لقي الغي.

(قلت:) هما فيمن لم يتب، وهذا لا خلاف فيه بدليل تمام الآية الثانية وهو قوله تعالى:

﴿إِلَّا مَنْ تَابَ وَآمَنَ وَعَمِلَ صَالِحًا...﴾.

وهذا المعنى لا خلاف في صحته، لكن الخلاف في طريقة التوبة: هل يقضي أم يصلي نافلة؟ والجمهور لم

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stead? The scholarly majority do not claim that he who makes them up has properly performed them.

(2) The prayer has a set time, there being no difference between someone who prays it before its time and someone who prays it after. Because both have prayed it in other than its time, both have transgressed against Allah's limits, and Allah has said,

"Whoever transgresses against Allah's limits has wronged himself" (Koran 65:1).

Otherwise, defining the time would be pointless. Scholars agree that the prayer of whoever prays before the prayer's time does not suffice, and so too must be the prayer of whoever prays after it.

(Reply:) As for the prayer having a definite time, the scholarly majority do not disagree about this, and the suggestion that they do not distinguish between someone who prays during the time and someone who prays after it is not true. It is regrettable to accuse them of this when it is baseless.

(3) Making up missed prayers requires an evidential basis, and there is not any (since in Ibn Hazm's opinion, analogical reasoning (qiyas, def: o22.1(d(III))) is not an acceptable form of legal evidence, which for him can only consist of the Koran, sunna, and scholarly consensus): if it were obligatory, Allah Most High or His messenger (Allah bless him and give him peace) would have explained it.

(Reply:) As for the statement that making up a missed prayer requires an evidential basis, and there is not any; the evidence exists, and we have presented it (dis: w18.8) and shall clarify it further.

(4) It is invalid to make an analogy between someone who intentionally misses a prayer and someone who forgets it and the like, for intentionality is the opposite of forgetfulness. Someone who intentionally misses a prayer is disobedient, while someone who forgets is not.

يقولوا: من قضاها فقد أدركها

٢ـ أن الصلاة لها وقت محدد ولا فرق بين من صلاها قبل وقتها ومن صلاها بعد وقتها لأن كليهما صلى في غير الوقت، وكليهما تعدى حدود الله وقد قال الله تعالى:

﴿وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ﴾ [الطلاق: ١].

وإلا لما كان لتحديد الوقت فائدة. ومن صلى قبل الوقت فصلاته غير مجزية باتفاق؛ فيكون من صلى بعد الوقت مثله.

(قلت:) أما أن الصلاة لها وقت محدد، فالجمهور لا يخالفون في ذلك، والقول بعدم تفريقهم بين من صلى في الوقت ومن صلى بعده ليس صواباً، ومن المؤسف أن ينسب هذا إليهم وليس له أصل.

٣ـ القضاء يحتاج إلى دليل ولا دليل ـ وليس القياس دليلاً عنده، بل الدليل الكتاب والسنة والإجماع فقط ـ ولو كان واجباً لبينه الله تعالى أو بينه رسوله عليه الصلاة والسلام.

(قلت:) أما أن القضاء لا دليل عليه، فالدليل موجود وقد قدمنا أدلة الجمهور، وسنزيدها إيضاحاً.

٤ـ لا يصح قياس العامد على الناسي ونحوه؛ لأن العامد ضد الناسي والأول عاص والثاني غير عاص.

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(Reply:) The validity of the analogy between the person who intentionally misses it and the person who unintentionally misses it has been previously discussed in the evidence of the scholarly majority (w18.8(4)).

(5) Narrations from the prophetic Companions attest to the fact that delaying the prayer past its time is unlawful. If making up a prayer could suffice in its stead, these would have no meaning.

(Reply:) The unlawfulness of delaying the prayer past its time is agreed upon, and no one says that it is permissible.

(6) The prayer of peril (def: f16) is evidence that it is not possible to delay a prayer past its time, and so is the prayer of the sick person (f14).

(Reply:) As for the prayers of peril and illness, the scholarly majority acknowledge them and do not permit delaying the prayer because of peril or illness. The prayers of the imperilled or sick person, which do not require many of the integrals and conditions required by a normal prayer, attest to the position of the majority that the Sacred Law does not lift the obligation of the prayer from such people as it does from a woman in her menstrual period. Rather, because it is impossible for the imperilled and sick person to currently perform the prayer while observing all its conditions and integrals, their only alternative is to either make it up later or perform it while desregarding some of them, so the latter is permitted for them in order to obviate an accumulation of unperformed prayers, and Allah knows best.

And if the responsibility for performing the obligatory prayer is not lifted from the imperilled or sick person, how should it be lifted from the person who *intentionally* misses it?

(7) It is inadmissible to adduce the hadith of the delayed prayer at the Battle of the Confederates (dis: w18.8(3)) because the discussion here centers on the person who commits disobedience by delaying it, while the Prophet (Allah bless him and give him peace) was not disobedient therein, and whoever ascribes disobedience to the Prophet (Allah bless him and give him peace) has committed unbelief (kufr).

(قلت:) أما وجه قياس العامد على الناسي فقد تقدم في حجة الجمهور.

٥ـ استشهد بآثار عن الصحابة في تحريم تأخير الصلاة عن وقتها، فلو كان القضاء يغني لما كان لهذا معنى.

(قلت:) تحريم تأخير الصلاة عن وقتها متفق عليه ولا قائل بجواز التأخير.

٦ ـ صلاة الخوف دليل على عدم إمكان التأخير عن الوقت، وكذلك صلاة المريض.

(قلت:) أما صلاة الخوف والمرض فالجمهور يقولون بهما ولا يجيزون التأخير بسبب الخوف أو المرض وصلاة المريض وصلاة الخائف ـ مع ما فيهما من تجاوز عن كثير من أركان الصلاة وشروطها ـ تشهدان لمذهب الجمهور لأن الشرع لم يسقط الصلاة عنهما كالحائض. والأداء مع مراعاة الشروط والأركان متعذر، فلم يبق إلا القضاء أو الأداء مع التجاوز، فأبيح الأداء مع التجاوز حتى لا تتراكم الفوائت والله أعلم. وإذا لم تسقط عنهم الفريضة فكيف تسقط عن العامد؟

٧ـ لا يجوز الاحتجاج بحديث تأخير الصلاة يوم الخندق لأن الكلام هنا عن العاصي بالتأخير والنبي ﷺ لم يكن عاصياً بذلك [كما تقدم] ومن نسب العصيان للرسول ﷺ فقد كفر.

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(Reply:) Adducing this hadith is not inadmissible as he claims, but is like adducing the cases of the sleeper or forgetful person, in illustrating the conceivability of the existence of an obligation after its original time has ended.

(8) As for the obligatory character of repentance and doing as many supererogatory acts of worship as possible (n: in place of the missed one), the evidence is the word of Allah Most High,

"But a generation followed them who dissipated the prayer and pursued [their] lusts, and they shall find *Ghayy*, save he who repents, believes, and does good, for those shall enter paradise" (Koran 19:59–60),

and many similar verses in the Book of Allah Most High. Another proof is the words of the Prophet (Allah bless him and give him peace):

"The first of people's works that they shall be called to account for on the Day of Judgement is the prayer. Our Lord Holy and Exalted will say to His angels, while knowing better than they, 'Look at the prayer of My servant: did he perform it in full, or fall short of it?' If it is complete, it will be inscribed as complete, while if anything is missing from it, He will say, 'Look to see if My servant has any supererogatory worship,' and if he has, Allah will say, 'Complete My servant's obligatory prayers for him from his supererogatory ones.' And he will be dealt with likewise in his other works."

(Reply:) Whoever reflects on the evidence of both sides will notice the following:

(a) The difference of opinion is less at the practical level than at the theoretical, for Ibn Hazm requires the person who intentionally misses the prayer to perform as many supererogatory prayers as the missed obligatory one and more, so as to be counted for his obligatory prayer on the Day of Judgement. We say "and more" because he states in *al-Muhalla* that "there is a certain amount of good in the obligatory prayer and a cer-

(قلت:) الاحتجاج بقصة صلاة الخندق ليس كما يقول بل هو كالاحتجاج بقضاء النائم والناسي، أي من حيث تصور وجود الفرض بعد فوات وقته الأصلي.

٨ـ أما وجوب التوبة والإكثار من التطوع، فالدليل عليه قول الله تعالى:

﴿فَخَلَفَ مِنْ بَعْدِهِمْ خَلْفٌ أَضَاعُوا الصَّلاةَ واتَّبَعُوا الشَّهَوَاتِ فَسَوْفَ يَلْقَوْنَ غَيّاً، إلاَّ مَنْ تَابَ وَآمَنَ وَعَمِلَ صَالِحاً فَأُولَئِكَ يَدْخُلُونَ الجَنَّةَ﴾ [مريم: ٥٩ ـ ٦٠].

ومثل هذه الآية كثير في كتاب الله تعالى.

ولقول النبي ﷺ:

«أول ما يحاسب الناس به يوم القيامة من أعمالهم الصلاة، يقول ربنا تبارك وتعالى لملائكته وهو أعلم: انظروا في صلاة عبدي أتمها أو نقصها؛ فإن كانت تامة كتبت تامة، وإن كان انتقص منها شيئاً قال انظروا هل لعبدي من تطوع فإن كان له تطوع قال: أتموا لعبدي فريضته من تطوعه ثم تؤخذ الأعمال على ذلك» [رواه النسائي].

(قلت:) من تأمل رأي الطرفين يبدو له ما يأتي:

١ـ أن الخلاف ليس عملياً بل هو نظري لأن ابن حزم يطالب تارك الصلاة عمداً بصلاة نوافل تعادل الفريضة الفائتة وزيادة لكي تحسب له عن الفريضة يوم القيامة، وإنما قلت: وزيادة لأنه يقول في المحلّى: «الفريضة فيها جزء من الخير، والنافلة فيها جزء من الخير، فلا

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tain amount in the supererogatory, so the cumulative amount of good when many supererogatory prayers are performed must equal some fraction or more of the amount in the obligatory prayer" (*al-Muhalla* (y58), 2.332), whereas the scholarly majority require the person, for each missed obligatory prayer, to pray one like it, termed a *makeup*. So the difference of opinion goes back to the intention and the name of such a prayer. Do we call it *supererogatory* or a *makeup*, and does the person praying it intend an unconditional supererogatory prayer to take the place of the missed obligatory prayer, or intend the missed obligatory prayer? The difference, as we said, is mainly theoretical.

It is clear from the foregoing that Ibn Hazm is not opening a way out of performing obligatory prayers for those who miss them. Rather, he is severer on them, requiring that they perform *more* supererogatory prayers than the obligatory ones they missed. To further clarify, we note that Ibn Hazm and the others who hold that it is invalid to make up missed prayers only say this to make it harder on the person who does not pray, because they feel that making up missed prayers has been legislated as a mercy to someone who has slept through the prayer or forgotten it, or to others with lawful excuses. As for the person who sins by deliberately not performing it, he does not deserve this mercy, and they feel that his sin is too enormous to be expiated by making it up. This is a point that deserves attention, because it is the opposite of what most of those who advocate this view understand.

(b) It will be noticed from Ibn Hazm's evidence that he thinks the scholarly majority consider the makeup of the person who has slept through the prayer and the makeup of the person who has deliberately missed it to be equivalent in every respect, and that they likewise consider the makeup of the person who has sinned by missing the prayer to be equivalent to performing it in its proper time. He says, "From whence does he who permits its intentional nonperformance until its time is up derive this permissibility, ordering the person to pray it after its time, and informing him that it fulfills his obligation—without Koran, a sound or even weak hadith, a statement from a

بد أن يجتمع من جزء التطوع إذا كثر ما يوازي جزء الفريضة ويزيد عليه». والجمهور يطالبه أن يصلي عن كل فريضة مثلها باسم القضاء، فرجع الخلاف إلى النية والاسم: هل نسميها نافلة أو قضاء؟ وهل ينوي بصلاتها النافلة المطلقة لتسد مسد الفريضة الفائتة أم ينوي الفريضة الفائتة؟ وهذا خلاف نظري كما قلت.

ومن النقطة السابقة يظهر أن ابن حزم لا يفتح لتاركي الصلاة باب التهرب من الفرائض بل يشدد عليهم ويطالبهم بنوافل تزيد على ما تركوا من فرائض.

وأزيد هذه النقطة إيضاحاً فأقول: إن ابن حزم وغيره ممن قال بعدم صحة القضاء إنما قالوا ذلك من باب التشديد على تارك الصلاة لأنهم رأوا أن القضاء شرع رحمة بالنائم والناسي وأصحاب الأعذار، أما العامد الآثم بتركها فلا يستحق هذه الرحمة، فهم يرون أن ذنبه أكبر من أن يكفر بالقضاء.

وهذه النقطة جديرة بالاهتمام لأنها عكس ما يفهمه الكثيرون من الذين ينادون بهذا الرأي.

ـ ويلاحظ من أدلة ابن حزم أنه يرى أن الجمهور يساوون بين قضاء النائم ونحوه وبين قضاء العامد من كل وجه، ويساوون بين قضاء الآثم بالترك وبين الأداء. ففي المحلى هو يقول: فمن أين أجاز من أجاز تعمد تركها حتى يخرج وقتها، ثم أمره بأن يصليها بعد الوقت، وأخبره بأنها تجزئه كذلك من غير قرآن ولا سنة صحيحة ولا سقيمة ولا قول

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prophetic Companion, or analogy?" (*al-Muhalla* (y58), 2.330). Glory be to Allah! Whoever said that it is permissible to intentionally miss the prayer? As we have previously mentioned, the scholarly majority hold that the person who intentionally misses it should be killed (dis: f1.4). Is he executed for doing something permissible? May Allah have mercy on Ibn Hazm, who was not accurate in this, and to say otherwise would have been more proper for him.

لصاحب ولا قياس؟

وسبحان الله من الذي يقول بجواز تعمد ترك الصلاة؟ لقد قدمنا أنهم يقولون بقتل تارك الصلاة، فهل يقتل فيما يجوز فعله؟ رحم الله ابن حزم لقد كان غير دقيق في هذا، وغير هذا أولى به.

w18.10 Is the person who misses the prayer without excuse like someone who has an excuse, in being able to validly perform the obligatory prayer after its time in the name of an obligatory prayer, even if all scholars agree he has committed a sin by thus delaying it? This is the area of disagreement. The scholarly majority, adducing the foregoing evidence, hold that he may validly do so, while Ibn Hazm says this is invalid, because an unexcused person is not like an excused one.

But Ibn Hazm agrees with the majority that someone who intentionally vomits while fasting Ramadan (dis: w18.8(4)) has committed a sin—i.e. is unexcused—and yet is obliged to make up the fast. This fact establishes the rule for the scholarly majority, if not for Ibn Hazm, because such an individual is an unexcused person who has deliberately vitiated his time-restricted act of worship, and the Lawgiver has made it obligatory for him to make it up—so why should it not be obligatory for other unexcused persons to make up similar acts of worship? This demonstrates that the scholarly majority's opinion is correct. And if Ibn Hazm may be excused because he does not accept analogical reasoning (qiyas), what excuse is there for those who employ analogical reasoning as evidence, and yet accept his opinion?

Nawawi says: "There is consensus among all scholars who matter that whoever deliberately misses the prayer is obliged to make it up. Abu Muhammad 'Ali Ibn Hazm contravened them in this, saying that such a person can never make up the prayer and that doing so can never be valid. What he has said, besides being a violation of scholarly consensus (dis: b7.2), is untrue from the standpoint of evidence, and despite a prolonged discourse to prove his contention, what he men-

w18.10 [. . .] هل غير المعذور كالمعذور، يصح أن يؤدي الفريضة بعد وقتها باسم الفريضة؟ مع الاتفاق على كونه آثماً بالتأخير؟ وهنا موطن الخلاف: أما الجمهور فيقولون نعم يصح منه ذلك استناداً لما تقدم من أدلة، وابن حزم يقول لا يصح لأن غير المعذور ليس كالمعذور. لكن ابن حزم يوافق الجمهور على أن من استقاء وهو صائم في رمضان فهو آثم - أي غير معذور - وعليه القضاء. وهكذا اطَّردت القاعدة عند الجمهور ولم تطرد عند ابن حزم، فهذا غير معذور أبطل عبادته المؤقتة عمداً فأوجب عليه الشارع القضاء فلماذا لا يطالب بالقضاء أمثاله من غير المعذورين؟ فظهر أن الحق مع الجمهور.

وإذا كان لابن حزم عذره، لأنه لا يأخذ بالقياس فما عذر الذين يحتجون بالقياس ثم يتبعون رأيه؟

قال النووي: «أجمع العلماء الذين يعتد بهم على أن من ترك صلاة عمداً لزمه قضاؤها. وخالفهم أبو محمد علي بن حزم فقال إنه لا يقدر على قضائها أبداً ولا يصح فعلها أبداً [. . .] وهذا الذي قاله مع أنه مخالف للإجماع باطل من جهة الدليل. وبسط هو الكلام في الاستدلال وليس فيما ذكر دلالة أصلاً».

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tions is devoid of anything that bears it out" (*al-Majmu'* (y108), 3.71).

(*Qada' al-'ibadat wa al-niyaba fiha* (y114), 198–211)

[محـرر بالتصرف من قضاء العبادات والنيابة فيها: ١٩٨ - ٢١١ بتقديم وتأخير، وقد راجعه المؤلف حفظه الله].

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w19.0 FASTING AND PRAYING AT NORTHERLY LATITUDES (from f2.1, end)

w19.0 الصيام والصلاة في المناطق الشمالية

FASTING

الصيام

w19.1 (n: The Egyptian mufti Hasanayn Muhammad Makhluf was asked for a formal legal opinion (fatwa) concerning the ruling for fasting Ramadan by Muslims living in northern Europe, where the period of fasting during the day may reach 19 hours, 22 hours, or even more. What follows has been translated from the answer he gave.)

(Hasanayn Muhammad Makhluf:) Fasting, as defined by Sacred Law, begins at the coming of dawn and ends at sunset of each day, its time span varying with the different situations of various countries. No matter how long this period is, its mere length is not considered a legitimate excuse permitting one not to fast. It is only permissible not to fast (N: a day or more of Ramadan, making up the missed fast-day by fasting a day in its place later in the year) if one believes it probable that fasting the whole day will lead to illness or exhaustion that will harm one (dis: c7.2) (N: for example, such that one cannot continue working), whether this belief is because of:

(1) a symptom that appears;

(2) having previously tried to fast this long (N: until unable to do so because of weakness, dizziness, etc., and then having eaten);

(3) or being informed by a competent physician.

w19.1 (ت: استُفتي المفتي المصري حسنين محمد مخلوف في صوم رمضان عند مسلمي شمال أوروبا، حيث تصل ساعات النهار تسع عشر ساعة أو اثنين وعشرين ساعة أو أكثر. فالنص التالي من جوابه).

(حسنين محمد مخلوف:) [...] والصوم الشرعي يبتدىء من طلوع الفجر وينتهي بغروب الشمس كل يوم، فتختلف مدته باختلاف عروض البلاد، وكيفما كانت المدة فإن مجرد طولها لا يعدُّ عذراً شرعياً يبيح الفطر، وإنما يباح الفطر إذا غلب على ظن الإنسان بأمارة ظهرت أو تجربة وقعت أو بإخبار طبيب حاذق أن صومه هذه المدة يفضي إلى مرضه أو إلى إعياء شديد يضره، [كما صرح به أئمة الحنفية،] فيكون حكمه

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The ruling in such a case is like that of someone who is ill and fears destruction, an increase in his ailment, or a delay in his recovery were he to fast. This is the general basis of the dispensation not to fast and of leniency for those responsible for the obligations of Sacred Law. Everyone who knows himself and is aware of the reality of his case will know whether it is lawful or unlawful for him not to fast. When one's fasting the long period will lead to illness, debility, or exhaustion, whether these are certainly established or whether considered likely because of one of the above-mentioned means of knowledge, it is permissible for one to take the dispensation not to fast; and when fasting will not lead to this, it is unlawful for one not to fast. People differ in this respect, and for the condition of each there is a particular ruling (*Fatawa shar'iyya wa buhuth Islamiyya* (y79), 1.271–73).

حكم المريض الذي يخشى التلف أو أن يزيد مرضه أو يبطىء شفاؤه إذا صام. هذا هو المبدأ العام في رخصة الفطر وفي التيسير على المكلفين. وكل امرىء بصير بنفسه، عليم بحقيقة أمره، يعرف مكانها من حل الفطر وحرمته. فإذا كان صومه المدة الطويلة يؤدي إلى إصابته بمرض أو ضعف أو إعياء، يقيناً أو في غالب الظن بإحدى الوسائل العلمية التي أومأنا إليها، حل له الترخص بالفطر. وإذا كان لا يؤدي إلى ذلك حرم عليه الفطر. والناس في ذلك مختلفون ولكل حالة حكمها [...] [نقل من فتاوى شرعية وبحوث إسلامية: ١/ ٢٧١ - ٢٧٣].

PRAYING

الصلاة

w19.2 (A: If one's location does not have one or more of the prayer times (n: such as true dawn (def: f2.1(4(n:))), sunrise, etc., due to the extreme northerly latitude), then one should pray at the same time as the closest city that has the true times (n: though for each degree of longitude that this closest city lies to the east of one's location, the prayer time of the city will arrive earlier than at one's own position by four minutes, and one may wish to compensate for this error factor by the appropriate calculations, i.e. not praying simultaneously with that city's times, but rather after its time by four minutes for each degree of longitude it lies to the east, or before its time by four minutes for each degree of longitude it lies to the west. In any case, as pointed out at f2.12, if one's prayer times for a number of days are later found to have been mistaken, one only needs to make up one day's prayers. As for learning the time of the closest city having the true times, the best means as of this writing is the pocket-size computer designed by a Syrian engineer and marketed under the name of "Prayer Minder," that is based on precise astronomical data, programmed for fifty years, and when given various cities' geographical coordinates supplied in the accompanying booklet, provides the prayer times of most major cities in the world).)

(N: For both the dawn prayer (subh) and the *dawn* that marks the beginning of fast-days of Ramadan, if there is sunset and sunrise at one's location but not true dawn because of the persistence of twilight all night, one copies the nearest city that has the true times in terms of the amount of time by which dawn in that city precedes sunrise there. Thus if dawn in this nearest city precedes sunrise by 90 minutes, one's own "dawn" occurs 90 minutes before the sunrise in one's own city. And similarly for the amount of time by which nightfall ('isha) follows the sunset prayer (maghrib).)

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w20.0 THE MERIT OF *WIRDS* (from f2.5)

w20.1 (Ibn Hajar Haytami:) The *wirds* (n: a particular amount of daily *dhikr* or Koran recital) Sufis customarily recite after prayers, according to their degree of spiritual advancement, have an authentic legal basis in the hadith related by Bayhaqi that the Prophet (Allah bless him and give him peace) said,

"To invoke Allah Most High (dhikr) with people after the dawn prayer until sunrise is more beloved to me than this world and all it contains, and to invoke Allah Most High with people after the midafternoon prayer until sunset is more beloved to me than this world and all it contains."

Because the Sufis' practice of joining to recite *wirds* and *dhikr* after the dawn prayer and at other times has a rigorously authenticated (sahih) basis in the sunna, namely the above-mentioned hadith, there can be no objection to their doing so (*al-Fatuwa al-hadithiyya* (y48), 76).

w20.0 فضيلة الأوراد

w20.1 (ابن حجر الهيتمي:) وأوراد الصوفية التي يقرؤونها بعد الصلوات على حسب عاداتهم في سلوكهم لها أصل أصيل، فقد روى البيهقي [عن أنس رضي الله عنه] أن النبي ﷺ قال:

«لأن أذكر الله تعالى مع قوم بعد صلاة الفجر إلى طلوع الشمس أحب إليّ من الدنيا وما فيها، ولأن أذكر الله تعالى مع قوم بعد صلاة العصر إلى أن تغيب الشمس أحب إليّ من الدنيا وما فيها». [...].

وإذا ثبت أن لما يعتاده الصوفية من اجتماعهم على الأذكار والأوراد بعد الصبح وغيره أصلاً صحيحاً من السنة وهو ما ذكرناه، فلا اعتراض عليهم في ذلك [محرر من الفتاوى الحديثية: ٧٦].

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w21.0 PRAYING TOWARDS TOMBS (from f4.14)

w21.1 (Ibn Hajar Haytami:) Ahmad, Bukhari, Muslim, and Nasa'i relate that the Prophet (Allah bless him and give him peace) said,

"May Allah curse the Jews and Christians; they have taken the tombs of their prophets as places of worship,"

and Ahmad, Bukhari, Muslim, and Nasa'i also relate the hadith,

"They are the ones who, when a righteous man among them died, would build a place of worship upon his grave and paint those icons in it. They will be the wickedest of creation in Allah's sight on the Day of Judgement."

w21.0 الصلاة عند القبور واتخاذ مساجد عندها

w21.1 (ابن حجر الهيتمي:) أخرج [أحمد عن أسامة و] أحمد والشيخان والنسائي [عن عائشة وابن عباس ومسلم عن أبي هريرة]: «لعن الله اليهود والنصارى اتخذوا قبور أنبيائهم مساجد».

وأحمد والشيخان والنسائي: «أولئك إذا كان فيهم الرجل الصالح فمات بنوا على قبره مسجداً وصوروا تلك الصور، أولئك شرار الخلق عند الله يوم القيامة». [...].

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The reason for considering it an enormity to take a grave as a place of worship is obvious, for the Prophet (Allah bless him and give him peace) cursed those who did this with the graves of their prophets, and considered those who did it with the graves of the righteous to be "the wickedest of creation in Allah's sight on the Day of Judgement."

Taking a grave as a place of worship means to pray *on* the grave or *towards* it. The prohibition, moreover, applies exclusively to the grave of someone venerated, whether a prophet or friend of Allah (wali, def: w33), as is shown by the hadith's wording "when there was a righteous man among them"; for which reason our colleagues say that it is unlawful to perform the prayer towards the graves of the prophets or friends of Allah "for the blessing of it" (tabarruk, dis: w31) or out of reverence for it, that is, under two conditions:

(a) that the grave is of someone who is honored and venerated;

(b) and that the prayer is performed towards or on the grave with the intention of gaining the blessing of it, or out of reverence for it.

That such an action is an enormity is clear from the above hadiths (A: though if either condition is lacking, performing the prayer near a grave is unobjectionable) (*al-Zawajir 'an iqtiraf al-kaba'ir* (y49), 1.148–49).

عدُّ هذه [السنة] من الكبائر [وقع في كلام بعض الشافعية ووجه أخذ اتخاذ القبر مسجداً منها] واضح لأنه لعن من فعل ذلك بقبور أنبيائه وجعل من فعل ذلك بقبور صلحائه شر الخلق عند الله يوم القيامة [. . .] واتخاذ القبر مسجداً معناه الصلاة عليه أو إليه [. . .] وإنما يتجه هذا الأخذ إن كان القبر قبر معظم من نبي أو ولي كما أشارت إليه رواية: «إذا كان فيهم الرجل الصالح» ومن ثم قال أصحابنا: «تحرم الصلاة إلى قبور الأنبياء والأولياء تبركاً وإعظاماً» فاشترطوا شيئين أن يكون قبر معظم وأن يقصد بالصلاة إليه ومثلها الصلاة عليه التبرك والإعظام، وكون هذا الفعل كبير ظاهر من الأحاديث المذكورة [. . .] [محرر من الزواجر عن اقتراف الكبائر: ١/ ١٤٨ - ١٤٩].

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w22.0 THE JINN (from f5.1)

w22.0 الجن

BELIEF IN THE JINN

وجوب الإيمان بوجود الجن

w22.1 ('Ala' al-Din 'Abidin:) Our prophet Muhammad (Allah bless him and give him peace), who was truthful in all that he did and said, has informed us of matters that are mandatory—personally obligatory for each of us—to believe, accept, and not doubt or be sarcastic about the

w22.1 (علاء الدين عابدين:) [. . . فاعلم أن نبينا [ورسولنا] محمداً ﷺ الصادق في جميع أحواله وأقواله، قد جاءنا بأشياء يفترض علينا - فرضاً عينياً - أن نؤمن بها ونصدقه فيها لا نرتاب في

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slightest bit of. Among the things of which he informed us is that Allah Most High has created angels (def: u3.3) that are pure spirits, neither masculine nor feminine, and created jinn, fiery beings that can assume various forms. The good jinn are Muslims and believers, and will be with us in paradise, where we will see them but they will not see us—the opposite of this world—while the immoral and wicked of them are called *devils*, being of the offspring of Satan, who used to be in paradise, but disobeyed the command of his Lord. and is now

"of those reprieved till the day of a known time" (Koran 15:37–38).

(*al-Hadiyya al-'Ala'iyya* (y4), 460–63)

شيء من ذلك ولا نستخف به [. . .] ومما جاء به [ﷺ] : أن الله تعالى خلق ملائكة هم أرواح مجردة لا توصف بذكورة ولا أنوثة [. . .] وخلق جناً، وهم أجساد نارية قابلة للتشكل . الصالح منهم مسلم مؤمن، يكون معنا في الجنة : نراه ولا يرانا، عكس حالة الدنيا، والفاجر الخبيث منهم يقال له : الشيطان، من نسل إبليس، الذي كان في الجنة، ففسق عن أمر ربه، والذي هو الآن من المنظرين إلى يوم الوقت المعلوم.

THE DIFFERENCE BETWEEN JINN AND ANGELS

الفرق بين الجن والملائكة

w22.2 (Muhammad Sa'id Burhani:) The difference between jinn and angels is that angels are created of light, while jinn are created of fire. Angels (upon whom be peace) do not reproduce, while jinn do. Angels do not commit disobedience, while jinn include both the obedient and the disobedient, both believer and unbeliever, the rebellious of them being called devils. Jinn assume various forms, both noble and base, such as that of a snake and the like, while the angels (upon whom be peace) only assume noble forms, like that of a human being. Angels live in the heavens and earth, while jinn live only on earth. Angels are not called to account on the Day of Judgement, but rather enter paradise, and whoever disparages one of them has committed unbelief. Angels like circles of religious learning and *dhikr*, and supplicate Allah to bless our Prophet (Allah bless him and give him peace) and us, and they ask forgiveness for those on earth. They rejoice at whoever visits the ill or seeks religious knowledge, out of pleasure with what he is doing (ibid., 463).

w22.2 (محمد سعيد البرهاني :) الفرق بين الجن والملائكة : أن الملائكة مخلوقة من نور والجن من نار، - والملائكة عليهم السلام لا يتوالدون والجن يتوالدون، - والملائكة لا تقع منهم المعصية، والجن منهم الطائع والعاصي، ومنهم المؤمن ومنهم الكافر. والمتمرد منهم يقال له شيطان، والجن يتشكلون بأشكال مختلفة، شريفة وغير شريفة، كحية ونحوها. والملائكة عليهم السلام لا يتشكلون إلا بأشكال شريفة كإنسان، - والملائكة مسكنهم السماء والأرض، والجن في الأرض. - والملائكة لا يحاسبون يوم القيامة، ويدخلون الجنة، ومن سب واحداً منهم يكفر، - والملائكة يألفون مجالس العلم والذكر ويصلون على نبينا، وعلينا، ويستغفرون لمن في الأرض، ويفرحون بزائر المريض، وبطالب العلم رضا بما يصنع. [إلى غير ما هنالك] [محرر من الهدية العلائية : ٤٦٠ - ٤٦٣].

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w23.0 WOMEN'S OBLIGATORY CLOTHING (from f5.3)

w23.0 عورة المرأة

w23.1 (A:) The *nakedness* ('awra) of a woman that she is forbidden to reveal differs in the Shafi'i school according to different circumstances. In the privacy of the home, her nakedness is that which is between the navel and knees. In the prayer (n: or hajj, as at j3.24) it means everything besides the face and hands. And when outside the home on the street, it refers to the entire body (N: or for Hanafis, all but the face and hands (dis: m2.8), just as in prayer).

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w24.0 PERFORMING THE OBLIGATORY PRAYER IN A VEHICLE (from f6.2)

w24.0 لزوم الاستقبال عند الصلاة المكتوبة في وسائط النقل

w24.1 (N:) All four schools of jurisprudence agree that it is obligatory for a traveller in a vehicle to stand and to face the direction of prayer (qibla) (n: and perform the prayer's other physical integrals) when performing a prescribed prayer. If it is impossible to stand or to face the direction of prayer (A: or according to Hanafis, if it poses a hardship (dis: below)), and one cannot stop and pray on the ground, then one prays as best one can in the vehicle. According to Hanafis and Malikis, such a prayer does not have to be made up when one is again able to perform it properly, though for Shafi'is, one must make it up.

w24.2 (A:) In the Hanafi school, if one is travelling in a bus or the like where facing the direction of prayer (qibla) poses a hardship (n: and one does not expect the vehicle to stop before the time for prayer has finished (dis: below, end)), one may validly perform the obligatory prayer in one's seat facing the direction of travel. Tahtawi writes:

"... The words of *al-Durar* allude to what we have mentioned, where the author says, '... because such a person is able to face the direction of prayer (qibla) without hardship...' the implication being that when it is not possible to face the direction of prayer, or when there is hardship in doing so, one is not obliged to face the direction of prayer; and the implications of legal texts are evidence, as will not be lost on anyone. As for the words of *Majma' al-riwayat* that 'if one is unable to [A: face the direction of prayer], one refrains from praying,' they are interpretable as referring to when one expects the excuse [A: for

«... وإلى ما ذكرنا يشير كلام الدرر حيث قال: «لأنه يمكنه الاستقبال من غير مشقة» إذ مفهومه أنه عند عدم الإمكان وعند المشقة لا يلزمه الاستقبال ومفاهيم الكتب حجة كما لا يخفى وما في مجمع الروايات أنه إن عجز يمسك عن الصلاة يمكن حمله على حالة الرجاء اهـ. أي

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not facing it] to pass before the prayer's time is over" (*Hashiya 'ala Maraqi al-falah sharh Nur al-idah* (y127), 269).

رجاء زوال العذر قبل الوقت [فتأمل اهـ. بتصرف] [نقل من حاشية على مراقي الفلاح شرح نور الإيضاح: ٢٦٩].

(n: The Hanafi school does not permit joining two prayers in the time of one of them because of travelling (def: f15.9), so one may not do so when taking the above-mentioned dispensation (dis: c6.4, last par.).)

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w25.0 DOUBTS ABOUT THE INTENTION OF PRAYER (from f8.3)

w25.0 الاحتراز عن الوسوسة في نية الصلاة

w25.1 ('Abd al-Wahhab Sha'rani:) I have heard Sheikh al-Islam Futuhi al-Hanbali (Allah have mercy on him) say: "Those with neurotic misgivings burden themselves with the 'words of the intention' they have made up and busy themselves in uttering, while none of this is authenticated as being from the Prophet (Allah bless him and give him peace), who only used to intend with his heart, as did his Companions. Neither he nor the Companions were ever heard to say other than 'Allahu akbar.' Were it conceivable that Allah Most High might require a rational person to pray 'without an intention,' it would be like a command that could not be carried out. Consider the person who goes to the washroom to perform ablution. Ask him where he is going and he will say, 'To perform ablution.' And ask him when he goes to the mosque, 'Where to?' and he will say, 'To pray.' How can a sane man with such a purpose in view doubt that he is intending ablution or prayer? It's a kind of madness" (*Lata'if al-minan wa al-akhlaq* (y122), 2.66–67).

w25.1 (عبد الوهاب الشعراني:) [. . . و] سمعت شيخ الإسلام الفتوحي الحنبلي رحمه الله تعالى يقول: «قد أتعب الموسوسون أنفسهم في ألفاظ النية التي أحدثوها واشتغلوا بمخارج حروفها ولم يصح عنه ﷺ في ذلك شيء. إنما كان ينوي بقلبه فقط وكذلك أصحابه وكان لا يسمع منه ولا من أصحابه إلا لفظ «الله أكبر» لا غير. . . حتى لو قدر أن الله تعالى كلف العاقل بأن يصلي بلا نية لكان ذلك كالتكليف بما لا يطاق. وتأمل الإنسان إذا ذهب إلى الميضأة يتوضأ تقول له: إلى أين؟ فيقول: لأتوضأ، وإذا ذهب إلى المسجد تقول له: إلى أين؟ فيقول: لأصلي، فكيف يشك عاقل مع قصده هذا أنه غير ناوٍ للوضوء والصلاة؟ هذا نوع جنون [نقل من لطائف المنن والأخلاق: ٢/ ٦٦ - ٦٧].

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w26.0 PRESENCE OF MIND IN PRAYER (from f8.21)

w26.0 إحضار القلب في الصلاة

w26.1 (Ghazali:) Prayer is composed of invocation (dhikr), Koran recital, bowing, prostration, standing, and sitting. Without a doubt, the point

w26.1 (الغزالي:) أما الصلاة فليس فيها إلا ذكر وقراءة وركوع وسجود وقيام وقعود [. . .] ولا شك في أن المقصود

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of reciting the Koran and *dhikr* is to glorify and praise, to humbly entreat and supplicate, while the one being addressed is Allah Mighty and Majestic. He whose heart is veiled by inattention is veiled from Allah, not apprehending or contemplating Him, but oblivious of whom he is speaking to, merely moving his tongue out of habit. How far this is from what is meant by prayer, which has been established to polish the heart, renew one's remembrance of Allah Mighty and Majestic, and to deepen the ties of faith in Him. As for bowing and prostrating, the point of them is certainly veneration, for if not, nothing remains but movements of the spine and head.

Hasan al-Basri said, "Every prayer performed without presence of heart is closer to deserving punishment," while it is related from Mu'adh ibn Jabal that "whoever knows who is on his right or left intentionally while at prayer has no prayer." And the Prophet (Allah bless him and give him peace) said,

"Truly, a servant performs the prayer without a sixth of it being recorded for him or a tenth, but only as much as he comprehends."

Had these words come from anyone else, they would have been adopted as "a school of thought." How then can we not go by them? 'Abd al-Wahid ibn Zayd said, "Scholars concur that none of a servant's prayer counts for him except what he comprehends," a position he considered established by scholarly consensus (ijma'). Innumerable statements of similar purport have reached us from godfearing scholars and those knowledgeable in the way of the hereafter. But while the truth lies in returning to the evidence of primary texts and hadiths, and the evidence is compelling that presence of mind is a condition for prayer, the context in which formal legal opinion can define outward moral responsibility is limited by the extent of people's shortcomings, and it is not possible to require them to have full presence of mind throughout the prayer, which hardly anyone can do except for very few (*Ihya' 'ulum al-din* (y39), 1.143–44).

من القراءة والأذكار الحمد والثناء والتضرع والدعاء، والمخاطب هو الله عز وجل و([ت:] من كان) قلبه بحجاب الغفلة محجوب عنه فلا يراه ولا يشاهده بل هو غافل عن المخاطب ولسانه يتحرك بحكم العادة فما أبعد هذا عن المقصود بالصلاة التي شرعت لتصقيل القلب وتجديد ذكر الله عز وجل ورسوخ عقد الإيمان به [...] وأما الركوع والسجود فالمقصود بهما التعظيم قطعاً [...] وإذا خرج عن كونه تعظيماً لم يبق إلا مجرد حركة الظهر والرأس [...].

وروي عن الحسن أنه قال: كل صلاة لا يحضر فيها القلب فهي إلى العقوبة أسرع وعن معاذ بن جبل: من عرف من على يمينه وشماله متعمداً وهو في الصلاة فلا صلاة له و[روي أيضاً مسنداً] قال رسول ﷺ: «إن العبد ليصلي الصلاة لا يكتب له سدسها ولا عشرها وإنما يكتب للعبد من صلاته ما عقل منها» [ت: قال الحافظ العراقي رواه أبو داود والنسائي وابن حبان من حديث عمار بن يسار بنحوه]. وهذا لو نقل عن غيره لجعل مذهباً فكيف لا نتمسك به؟ وقال عبد الواحد بن زيد: أجمعت العلماء على أنه ليس للعبد من صلاته إلا ما عقل منها؛ فجعله إجماعاً. وما نقل من هذا الجنس عن الفقهاء المتورعين وعن علماء الآخرة أكثر من أن يحصى. والحق الرجوع إلى أدلة الشرع؛ والأخبار والآثار ظاهرة في هذا الشرط إلا أن مقام الفتوى في التكليف الظاهر يتقدر بقدر قصور الخلق؛ فلا يمكن أن يشترط على الناس إحضار القلب في جميع الصلاة فإن ذلك يعجز عنه كل البشر إلا الأقلين [محرر من إحياء علوم الدين: ١/ ١٤٣ - ١٤٤].

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w27.0 ROSARIES (from f9.8)

w27.1 (Jalal al-Din Suyuti:) Having long heard questions concerning the rosary (subha) as to whether there is a basis for it in the sunna, I have compiled in this section the hadiths and accounts of early Muslims that relate to it.

Ibn 'Amr said, "I saw the Prophet (Allah bless him and give him peace) count the times he said 'Subhan Allah' on his hand."

Safiyya said, "The Prophet (Allah bless him and give him peace) entered the room where I sat with four thousand date stones in front of me and he asked, 'What is this, O daughter of Huyay?' I said, 'I am saying "Subhan Allah" with them.' He replied, 'I've said "Subhan Allah" more times than this since you've begun,' and I said, 'Show me how, O Messenger of Allah.' He said, 'Say, "Subhan Allah the number of everything He has created."' "

w27.2 As one scholar has said, "Counting the times one says 'Subhan Allah' on one's fingers is superior to doing so on a rosary because of the hadith of Ibn 'Amr, though it has been said that if the person saying it is safe from mistakes in counting, his fingers are better, while if not, then saying it on a rosary is more suitable. Some of the most renowned Muslims have used rosaries, those from whom the religion is taken and who are relied upon, such as Abu Hurayra (Allah be well pleased with him), who had a string with two thousand knots in it, and did not use to go to sleep before saying 'Subhan Allah' with it twelve thousand times."

'Umar al-Maliki said, "I saw my teacher Hasan al-Basri with a rosary in his hand and said, 'Teacher, with your great eminence and the excellence of your worship, do you still use a rosary?' and he replied, 'Something we have used at the beginning we are not wont to leave at the end. I love to remember Allah with my heart, my hand, and my tongue.' " And how should it be otherwise, when the rosary reminds one of Allah Most High, and a person seldom sees one save that he

w27.0 مشروعية السبحة

w27.1 (جلال الدين السيوطي:) [... وبعد] فقد طال السؤال عن السبحة هل لها أصل في السنة؟ فجمعت في هذا الجزء متتبعاً فيه ما ورد فيها من الأحاديث والآثار. [... أخرج ابن أبي شيبة وأبو داود والترمذي والنسائي والحاكم وصححه] عن ابن عمر و قال: «رأيت النبي ﷺ يعقد التسبيح بيده». [... وأخرج الترمذي والحاكم والطبراني] عن صفية قالت: «دخل عليّ رسول الله ﷺ وبين يدي أربعة آلاف نواة أسبح بهن فقال: ما هذا يا بنت حيي؟ قلت: أسبح بهن؛ قال: قد سبحت منذ قمت على رأسك أكثر من هذا، قلت: علمني يا رسول الله؛ قال: قولي سبحان الله عدد ما خلق من شيء» [صحيح أيضاً].

w27.2 [... قال بعض العلماء: عقد التسبيح بالأنامل أفضل من السبحة لحديث ابن عمر و ولكن يقال أن المسبح إن أمن من الغلط كان عقده بالأنامل أفضل وإلا فالسبحة أولى. وقد اتخذ السبحة سادات يشار إليهم ويؤخذ عنهم ويعتمد عليهم كأبي هريرة رضي الله عنه كان له خيط فيه ألفا عقدة فكان لا ينام حتى يسبح به ثنتي عشرة ألف تسبيحة [قاله عكرمة، ...]. [«... كذلك رأيت أستاذي] عمر المالكي [وفي يده سبحة فسألته عما سألتني عنه فـ] قال: [كذلك] رأيت أستاذي الحسن البصري وفي يده سبحة فقلت: يا أستاذ مع عظم شأنك وحسن عبادتك وأنت إلى الآن مع السبحة؟ فقال لي: شيء كنا نستعمله في البدايات ما كنا نتركه في النهايات، أحب أن أذكر الله بقلبي وفي يدي ولساني، [...] فكيف بها وهي مذكرة بالله تعالى لأن الإنسان قل أن يراها إلا ويذكر الله

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remembers Allah, this being among the greatest of its benefits (*al-Hawi li al-fatawi* (y130), 2.2–5).

وهذا من أعظم فوائدها [. . .] [محرر من الحاوي للفتاوي في الفقه وعلوم التفسير والحديث والأصول والنحو والإعراب وسائر الفنون: ٢/ ٢ - ٥].

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w28.0 THE SUNNAS BEFORE THE FRIDAY PRAYER (from f10.2)

w28.0 سنن قبل صلاة الجمعة

SUNNA RAK'AS BEFORE THE PRAYER

سنة الجمعة القبلية

w28.1 (Hasan Saqqaf:) As for the sunna rak'as prayed before the Friday prayer, there are hadiths about them, such as the following:

(1) "The Messenger of Allah (Allah bless him and give him peace) used to pray four rak'as before the Friday prayer and four after it."

The hadith master (hafiz, def: w48.2(end)) Wali al-Din al-'Iraqi states that its channel of transmission is good; the hadith containing an explicit reference to the sunna rak'as before the Friday prayer.

(2) Ibn Majah relates, with a rigorously authenticated (sahih) channel of transmission, that Abu Hurayra (Allah be well pleased with him) said, "Sulayk Ghatafani arrived while the Messenger of Allah (Allah bless him and give him peace) was giving the Friday prayer sermon (khutba), and the Messenger of Allah said to him, 'Did you pray before you came?' and he said no, to which the Prophet replied, 'Then pray two rak'as, keeping them brief.' "

The words of the Prophet (Allah bless him and give him peace) "before you came" furnish explicit proof of the sunna rak'as before the Friday prayer, for the rak'as of greeting the mosque (def: f10.10) are not performed before one arrives. Apparently Sulayk lived near the mosque, so the Prophet (Allah bless him and give him peace) thought that he had prayed before

w28.1 (حسن السقاف:) [. . .] فأما سنة الجمعة القبلية فجاءت فيها أحاديث منها: [روى الإمام الحافظ أبو الحسن الخلعي في فوائده بإسناد جيد من طريق أبي إسحاق عن عاصم بن ضمرة عن علي رضي الله عنه:] «كان رسول الله ﷺ يصلي قبل الجمعة أربعاً وبعدها أربعاً.» قال الحافظ ولي الدين العراقي [في طرح التثريب] إسناده جيد [وكذلك نص عليه . . . المناوي في فيض القدير: ٥/ ٢١٦] ففي هذا الحديث تصريح بسنة الجمعة القبلية.

وروى ابن ماجه بإسناد صحيح عن أبي هريرة رضي الله عنه قال: جاء سُليك الغطفاني ورسول الله ﷺ يخطب، فقال له رسول الله ﷺ: «أصليت قبل أن تجيء؟ قال: لا، قال فصلِّ ركعتين وتجوَّز فيهما. [. . . وقال الحافظ العراقي في شرح الترمذي إسناده صحيح. نقل ذلك الحافظ ولي الدين العراقي في طرح التثريب: ٤/ ٢٤.] فقوله ﷺ: قبل أن تجيء، دليل صريح على سنة الجمعة القبلية، لأن تحية المسجد لا تفعل قبل المجيء. [. . .] والظاهر أن سليك كان بقرب المسجد فظنه النبي قد صلى قبل مجيئه إلى

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coming, and when he informed him that he had not, he ordered him to pray them.

(3) Nafi' relates that "Ibn 'Umar used to pray at length before the Friday prayer, performing two rak'as in his home, saying that the Messenger of Allah (Allah bless him and give him peace) used to do this,"

a hadith related by Abu Dawud, and by Ibn Hibban in his *Sahih*.

It is thus very plain and clear that the sunna rak'as before the Friday prayer are rigorously authenticated as being the practice of the Prophet (Allah bless him and give him peace), his Companions, and the early Muslims, and have been accepted as such by Islamic scholars.

المسجد فلما أخبره بأنه لم يصل أمره بصلاتهما.

وعن نافع قال: كان ابن عمر يطيل الصلاة قبل الجمعة ويصلي ركعتين في بيته ويحدث أن رسول الله ﷺ كان يفعل ذلك. رواه أبو داود وابن حبان في صحيحه [. . .].

[. . .] فتبين واتضح وضوحاً جلياً أن سنة الجمعة القبلية ثابتة عن رسول الله ﷺ وعن الصحابة وعن السلف، وقد قال بها العلماء.

THE SECOND CALL (ADHAN) TO FRIDAY PRAYER

سنية الأذان الثاني لصلاة الجمعة

w28.2 The sunnas before the Friday prayer, meaning the two or four rak'as before it, are a confirmed sunna (def: c4.1). The Prophet (Allah bless him and give him peace) used to pray four rak'as in his house, which adjoined the mosque, after the beginning of the noon prayer's time. Then he would enter the mosque and ascend the pulpit (minbar), whereupon the muezzin would give the call to prayer (adhan) and the Prophet would rise for the sermon. The call to prayer thus took place after the prayer's time had begun and after praying four rak'as. People only used to know when the prayer's time had initially come through their own intuition, and it was thus that the matter remained during the caliphates of our liegelord Abu Bakr and our liegelord 'Umar (Allah be well pleased with them). Then our liegelord 'Uthman (Allah be well pleased with him) established the sunna of a second call to prayer, this second one being the first in order of occurrence; which is to say, the *second call to prayer* that was established as a sunna by our liegelord 'Uthman is the one that is *before* the call to prayer that occurs after the imam ascends the pulpit. So he made this second call to prayer—

w28.2 [. . .] سنة الجمعة القبلية أعني ركعتين أو أربعاً قبلها من السنن المؤكدات، وقد كان رسول الله ﷺ بعد أن [تزول الشمس - أي تميل عن وسط السماء و] يدخل وقت الظهر - يصلي أربع ركعات سنة للجمعة قبلها، في بيته وكان بيته في مسجده ﷺ [كما هو معلوم]، ثم يخرج إلى المسجد فيصعد على المنبر، فيؤذن المؤذن فيقوم للخطبة. فالأذان كان بعد دخول الوقت، وبعد أن يصلي الركعات الأربع. وإنما كانوا يعرفون زوالها سليقة ويبقى الأمر هكذا في زمن سيدنا أبي بكر وكذا في زمن سيدنا عمر رضي الله عنهما. ثم سَنَّ سيدنا عثمان رضي الله عنه الأذان الثاني، والأذان الثاني هو الأول توقيتاً بمعنى أن الأذان الثاني الذي سَنَّهُ سيدنا عثمان قبل الذي يكون بعد صعود الإمام على المنبر. فجعل هذا الأذان الثاني

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which is the first of the two to occur—a means of announcing to people that the prayer's time had come; namely, the noon prayer's time, when the sun has just passed its highest point in the sky for that day. As for the first call to prayer that existed in the time of the Prophet (Allah bless him and give him peace), it remained in its place, which was after the imam had ascended the pulpit, it being the second in order of occurrence but the first to be legally established.

Our liegelord 'Uthman's doing this was a good act that was confirmed by the consensus (ijma') of the prophetic Companions, not a single one of whom criticized him for it or opposed it; nor did any of those who came after them. Moreover, it is established that the Prophet (Allah bless him and give him peace) said,

"Hold fast to my sunna and the sunna of the Rightly Guided Caliphs; clamp your [very] teeth upon it,"

a rigorously authenticated (sahih) hadith related by Abu Dawud, Tirmidhi, Ibn Majah, Imam Ahmad, and Hakim. If someone objects that 'Uthman *innovated* this call to prayer, controverting the sunna that existed in the time of the Prophet (Allah bless him and give him peace), the answer is that such a person is in the wrong and mistaken for a number of reasons, among them:

(1) that he is accusing our liegelord 'Uthman of violating the sunna and inaugurating a reprehensible innovation (bid'a), an accusation such a person has no right to make (dis: w56.1);

(2) that he is charging the prophetic Companions who confirmed the correctness of our liegelord 'Uthman's act with confirming him upon a falsehood (batil), disregarding the Companions' consensus. Islamic scholars and specialists in fundamentals of Sacred Law state that the opinion and position of a Companion, when it becomes widely acted upon and no one is known to object to it, is considered to have become a scholarly consensus (ijma', def: b7) and is thus a decisive proof. Imam Nawawi being among those who explicitly record this, in his commentary on *Sahih Muslim* ((y93), 1.31);

(وهو الأول زمناً) إعلاماً على دخول الوقت، أي وقت الظهر وزوال الشمس عن كبد السماء. وأما الأذان الأول الذي كان على عهد النبي ﷺ، فبقي على محله وهو بعد صعود الإمام على المنبر، فيكون الثاني زمناً والأول تشريعاً.

وفعل سيدنا عثمان لذلك فعل حسن أجمع عليه الصحابة ولم يُعْلَمْ أن أحداً أنكر عليه من الصحابة ومن بعدهم أو خالفه. وقد ثبت أن النبي ﷺ قال:

«عليكم بسنتي وسنة الخلفاء الراشدين المهديين، عضّوا عليها بالنواجذ».

وهو حديث صحيح رواه أبو داود والترمذي وابن ماجه [والدارمي] والإمام أحمد والحاكم [وقال حديث صحيح ليس له علة، وأقره الذهبي].

فمن تنطع قائلاً: لقد ابتدع عثمان هذا الأذان وخالف السنة التي كانت على عهد رسول الله ﷺ، قلنا له: أسأت وأخطأت من أوجه:

(الأول): نسبت إلى سيدنا عثمان مخالفة السنة ورميته بالابتداع وليس لك ذلك.

(الثاني): نسبت إلى الصحابة الذين أقروا سيدنا عثمان على هذا الفعل الإقرار على الباطل ولم تعتبر إجماعهم وقد نص العلماء وأهل الأصول على أن قول الصحابي ومذهبه إذا انتشر ولم يُعلم له مخالف صار إجماعاً وهو حجة، ممّن نص على ذلك الإمام النووي في مقدمة شرحه على صحيح مسلم.

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(3) and that the Prophet (Allah bless him and give him peace) gave us an order, saying,

"Hold fast to my sunna and the sunna of the Rightly Guided Caliphs..."

so that our liegelord 'Uthman's act is a sunna that the Prophet (Allah bless him and give him peace) clearly enjoins us to adhere to in this straightforward hadith.

It is thus plain that whoever seeks to eliminate or annul the second call to Friday prayer is striving to effect a blameworthy innovation and is in reality contravening the sunna, for he has abandoned the injunction that the Prophet (Allah bless him and give him peace) commanded us to obey ("al-Adilla al-jaliyya li sunna al-jumu'a al-qabliyya" (y120), 2–4).

(الثالث): أن النبي ﷺ وصّى وصية فقال:

«عليكم بسنتي وسنة الخلفاء الراشدين المهديين . . .» الحديث، فيكون ما فعله سيدنا عثمان سنة أوصى بالتمسك بها سيدنا رسول الله ﷺ في حديثه الصحيح الصريح هذا.

فيتضح ساعتئذ أن من سعى في إلغاء الأذان الثاني لصلاة الجمعة ساعٍ في بدعة مذمومة ومخالف للسنة حقيقة لأنه ترك وصية النبي ﷺ التي أمر بها [. . .] [محرر من رسالة الأدلة الجلية لسنة الجمعة القبلية: ٢ - ٤].

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w29.0 INNOVATION (BID'A)
(from f10.15)

w29.0 معنى البدعة شرعاً

(n:) This section has been translated to clarify some possible misunderstandings of the concept of *innovation* (bid'a) in Islam, in light of the prophetic hadith,

"... Beware of matters newly begun, for every matter newly begun is innovation. every innovation is misguidance, and every misguidance is in hell."

«. . . وإياكم ومحدثات الأمور فإن كل محدث بدعة وكل بدعة ضلالة وكل ضلالة في النار».

The discussion centers on three points:

(1) Scholars say that the above hadith does not refer to all new things without restriction, but only to those which nothing in Sacred Law attests to the validity of. The use of the word *every* in the hadith does not indicate an absolute generalization, for there are many examples of similar generalizations in the Koran and sunna that are not applicable without restriction, but rather are qualified by restrictions found in other primary textual evidence.

(2) The sunna and way of the Prophet (Allah bless him and give him peace) was to accept new acts initiated in Islam that were of the good and did not conflict with established principles of Sacred Law, and to reject things that were otherwise.

(3) New matters in Islam may not be rejected merely because they did not exist in the first century. but must be evaluated and judged according to the com-

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prehensive methodology of Sacred Law, by virtue of which it is and remains the final and universal moral code for all peoples until the end of time.

THE GENERALIZABILITY OF THE HADITH "EVERY INNOVATION IS MISGUIDANCE"

w29.1 ('Abdullah Mahfuz Ba'alawi:) There are many generalities in the Koran and sunna, all of them admitting of some qualification, such as the word of Allah Most High,

(1) "... And that a man can have nothing, except what he strives for" (Koran 53:39),

despite there being an overwhelming amount of evidence that a Muslim benefits from the spiritual works of others (dis: w35.2), from his fellow Muslims, the prayers of angels for him, the funeral prayer over him, charity given by others in his name, and the supplications of believers for him;

(2) "Verily you and what you worship apart from Allah are the fuel of hell" (Koran 21:98),

"what you worship" being a general expression, while there is no doubt that Jesus, his mother, and the angels were all worshipped apart from Allah, but are not what is meant by the verse;

(3) "But when they forgot what they had been reminded of, We opened unto them the doors of everything" (Koran 6:44),

though the doors of mercy were not opened unto them;

(4) and the hadith related by Muslim that the Prophet (Allah bless him and give him peace) said,

"No one who prays before sunrise and before sunset will enter hell."

which is a generalized expression that definitely does not mean what its outward generality implies, for someone who prays the dawn and

حديث «كل بدعة ضلالة» مخصوص

w29.1 (عبد الله محفوظ باعلوي:) [...و] العمومات في الكتاب والسنة كثيرة وكلها دخلها التخصيص [...] كقوله تعالى:

﴿وَأَنْ لَيْسَ لِلإِنْسَانِ إِلاَّ مَا سَعَى﴾.

- مع أن هناك من الأدلة ما يبلغ التواتر في أن المسلم ينتفع بعمل غيره من إخوانه المسلمين ودعاء الملائكة [...] (و) صلاة الجنازة والصدقة عن الميت ثم دعاء المؤمنين [...].

وكذلك قوله تعالى:

﴿إِنَّكُمْ وَمَا تَعْبُدُونَ مِنْ دُونِ اللَّهِ حَصَبُ جَهَنَّمَ﴾.

- واسم الموصول من صيغ العموم، ولكن مما لا شك فيه أن عيسى عليه السلام وأمه والملائكة وكلهم عبدوا من دون الله غير مرادين في الآية [...] وكقوله تعالى:]

﴿فَلَمَّا نَسُوا مَا ذُكِّرُوا بِهِ فَتَحْنَا عَلَيْهِمْ أَبْوَابَ كُلِّ شَيْءٍ﴾.

- مع أن أبواب الرحمة لم تفتح عليهم.

ومن ذلك حديث مسلم: سمعت رسول الله ﷺ يقول: «لن يلج النار أحد صلى قبل طلوع الشمس وقبل غروبها» وهو من صيغ العموم قطعاً ليس على عمومه فإن من صلى هاتين الصلاتين

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midafternoon prayers and neglects all other prayers and obligatory works is certainly not meant. It is rather a generalization whose intended referent is particular, or a generalization that is qualified by other texts, for when there are fully authenticated hadiths, it is obligatory to reach an accord between them, because they are in reality as a single hadith, the statements that appear without further qualification being qualified by those that furnish the qualification, that the combined implications of *all* of them may be utilized.

الفجر والعصر وتسرك ما عداهما من الصلوات والواجبات ليس مراداً قطعاً فهو من العام الذي أريد به الخصوص أو من العام المخصوص بالنصوص. [قال الطيبي كما نقله عنه الحافظ ابن حجر وأقره] إن الأحاديث إذا ثبتت وجب ضم بعضها إلى بعض فإنها في حكم الحديث الواحد فيحمل مطلقها على مقيدها ليحصل العمل بجميع ما في مضمونها.

INNOVATION (BID'A) IN THE LIGHT OF THE SUNNA OF THE PROPHET CONCERNING NEW MATTERS

مفهوم البدعة في ضوء سنة الرسول وطريقته ﷺ فيما يحدث

w29.2 *Sunna* and *innovation* (bid'a) are two opposed terms in the language of the Lawgiver (Allah bless him and give him peace), such that neither can be defined without reference to the other, meaning that they are opposites, and "things are made clear by their opposites." Many writers have sought to define innovation (bid'a) without defining the sunna, while it is primary, and have thus fallen into inextricable difficulties and conflicts with the primary textual evidence that contradicts their definition of innovation, whereas if they had first defined the sunna, they would have produced a criterion free of shortcomings.

Sunna, in both the language of the Arabs and the Sacred Law, means *way*, as is illustrated by the words of the Prophet (Allah bless him and give him peace),

"He who inaugurates a good sunna in Islam [dis: p58.1(2)] ... And he who introduces a bad sunna in Islam...,"

sunna meaning way or custom. The *way* of the Prophet (Allah bless him and give him peace) in giving guidance, accepting, and rejecting: this is the sunna. For "good sunna" and "bad sunna" mean a good way or bad way, and cannot possibly mean anything else. Thus, the meaning of *sunna* is not what most students, let alone ordinary people,

w29.2 السنة والبدعة أمران متقابلان في كلام صاحب الشرع ﷺ فلا يتحدد أحدهما إلا بتحديد الآخر بمعنى أنهما ضدان (وبضدها تتبين الأشياء) وقد جرى كثير من المؤلفين إلى تحديد البدعة دون أن يقوموا بتحديد السنة أولاً لأنها الأصل، فوقعوا في ضيق لم يستطيعوا الخروج عنه واصطدموا بأدلة تناقض تحديدهم للبدعة ولو أنهم سبقوا إلى تحديد السنة لخرجوا بضابط لا يتخلف [...].

السنة في لغة العرب والشرع هي الطريقة [...] كقول الرسول ﷺ: «من سنَّ في الإسلام سنَّة حسنة» إلى قوله: «ومن سنَّ في الإسلام سنَّة سيئة»، أي طريقة [كما سبق]. فطريقة الرسول ﷺ في هديه وقبوله ورده هي السنة [...] وسنة حسنة وسنة سيئة يعني طريقة حسنة أو طريقة سيئة ولا يحتمل غير ذلك. فليس المراد إذاً ما يفهمه عامة الطلاب فضلاً عن العوام أنها الحديث النبوي أو

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understand; namely, that it is the prophetic *hadith* (n: as when *sunna* is contrasted with *Kitab*, i.e. Koran, in distinguishing textual sources), or the opposite of the obligatory (n: as when *sunna*, i.e. recommended, is contrasted with *obligatory* in legal contexts), since the former is a technical usage coined by hadith scholars, while the latter is a technical usage coined by legal scholars and specialists in fundamentals of jurisprudence. Both of these are usages of later origin that are not what is meant by *sunna* here. Rather, the sunna of the Prophet (Allah bless him and give him peace) is his way of acting, ordering, accepting, and rejecting, and the way of his Rightly Guided Caliphs who followed his way of acting, ordering, accepting, and rejecting. So practices that are newly begun must be examined in light of the sunna of the Prophet (Allah bless him and give him peace) and his way and path in acceptance or rejection.

Now, there are great number of hadiths, most of them in the rigorously authenticated (sahih) collections, showing that many of the prophetic Companions initiated new acts, forms of invocation (dhikr), supplications (du'a'), and so on, that the Prophet (Allah bless him and give him peace) had never previously done or ordered to be done. Rather, the Companions did them because of their inference and conviction that such acts were of the good that Islam and the Prophet of Islam came with and in general terms urged the like of be done, in accordance with the word of Allah Most High,

"And do the good, that haply you may succeed" (Koran 22:77),

and the hadith of the Prophet (Allah bless him and give him peace),

"He who inaugurates a good sunna in Islam earns the reward of it and of all who perform it after him without diminishing their own rewards in the slightest."

Though the original context of the hadith was giving charity, the interpretive principle established by the scholarly consensus (def: b7) of specialists in fundamentals of Sacred Law is that the point of

ما يقابل الفريضة فإن الأول مصطلح المحدثين والثاني مصطلح الفقهاء والأصوليين وكلاهما محدث ليس مراداً هنا. فسنة الرسول ﷺ هي طريقته في الفعل والأمر والقبول والرد وهي طريقة خلفائه الذين سلكوا طريقته في الفعل والأمر والقبول والرد. إذا فما أحدث لا بد من عرضه على سنة الرسول وطريقته ﷺ في القبول والرد [. . .].

[اعلم . . .] أن هناك أحاديث جمة جلها في الصحيح [أو من الصحيح] تثبت أن عدداً من الصحابة أحدثوا أعمالاً وأذكاراً وأدعية ونحو ذلك لم يسبق للرسول ﷺ فعلها أو الأمر بها ولكنهم فعلوها استنباطاً واعتقاداً أنها من الخير الذي جاء به الإسلام ورسول الإسلام ﷺ وحث على مثله عموماً تحت مظلة قوله تعالى:

﴿وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ﴾.

ـ وقول الرسول ﷺ: «من سنَّ في الإسلام سنَّة حسنة فله أجرها وأجر من عمل بها بعده من غير أن ينقص من أجورهم شيء» [كما سبق] وهذا الحديث وإن ورد في الصدقة فإن القاعدة الأصولية المجمع عليها: أن العبرة بعموم

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primary texts lies in the *generality of their lexical significance,* not the *specificity of their historical context,* without this implying that just anyone may make provisions in the Sacred Law, for Islam is defined by principles and criteria, such that whatever one initiates as a sunna must be subject to its rules, strictures, and primary textual evidence.

From this investigative point of departure, one may observe that many of the prophetic Companions performed various acts through their own personal reasoning (ijtihad), and that the sunna and way of the Prophet (Allah bless him and give him peace) was both to accept those that were acts of worship and good deeds conformable with what the Sacred Law had established and not in conflict with it; and to reject those which were otherwise. This was his sunna and way, upon which his caliphal successors and Companions proceeded, and from which Islamic scholars (Allah be well pleased with them) have established the rule that any new matter must be judged according to the principles and primary texts of Sacred Law: whatever is attested to by the law as being good is acknowledged as good, and whatever is attested to by the law as being a contravention and bad is rejected as a blameworthy innovation (bid'a). They sometimes term the former a *good innovation* (bid'a hasana) in view of it lexically being termed an *innovation*, but legally speaking it is not really an innovation but rather an *inferable sunna* as long as the primary texts of the Sacred Law attest to its being acceptable.

We now turn to the primary textual evidence previously alluded to concerning the acts of the Companions and how the Prophet (Allah bless him and give him peace) responded to them:

(1) Bukhari and Muslim relate from Abu Hurayra (Allah be well pleased with him) that at the dawn prayer the Prophet (Allah bless him and give him peace) said to Bilal, "Bilal, tell me which of your acts in Islam you are most hopeful about, for I have heard the footfall of your sandals in paradise," and he replied, "I have done nothing I am more hopeful about than the fact that I do not perform ablution at any time of the night or day without praying with that ablution whatever has been destined for me to pray."

اللفظ لا بخصوص السبب. وليس معنى ذلك أن لكل أحد أن يشرع فإن الإسلام محدود القواعد والضوابط فلا بد أن يكون ما يسنه محفوظاً بقواعده وضوابطه وشواهده. من هذا المنطلق فعل كثير من الصحابة باجتهاداتهم أموراً فكانت سنة الرسول ﷺ وطريقته قبول ما كان من العبادة والخير ويتفق مع المشروع ولا يخالفه. ورد ما كان مخالفاً لذلك. فهذه سنته وطريقته التي سار عليها خلفاؤه وصحابته واقتبس منها العلماء رضوان الله عليهم قولهم إن ما يحدث يجب أن يعرض على قواعد الشريعة ونصوصها فما شهدت له الشريعة بالحسن فهو حسن مقبول وما شهدت له الشريعة بالمخالفة والقبح فهو المردود وهو البدعة المذمومة. وقد يسمون الأول «بدعة حسنة» من حيث اللغة باعتباره محدث وإلا فهو في الواقع ليس ببدعة شرعية بل هو «سنة مستنبطة» ماداست شواهد الشريعة تشهد لها بالقبول. [. . .] ولنترك هذا الآن لـ [ ] نورد الشواهد التي أشرنا إليها من عمل الصحابة وتصرف الرسول ﷺ معهم [. . .].

(١) الحديث الأول ما رواه البخاري ومسلم [والإمام أحمد] عن أبي هريرة رضي الله عنه أن نبي الله ﷺ قال لبلال عند صلاة الفجر: يا بلال حدثني بأرجى عمل عملته في الإسلام، فإني سمعت دف نعليك في الجنة؛ قال: ما عملت عملا أرجى عندي من أني لم أتطهر طهوراً في ساعة من ليل أو نهار إلا صليت بذلك الطهور ما كتب لي.

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Ibn Hajar 'Asqalani says in *Fath al-Bari* that "the hadith shows it is permissible to use personal reasoning (ijtihad) in choosing times for acts of worship, for Bilal reached the conclusions he mentioned by his own inference, and the Prophet (Allah bless him and give him peace) confirmed him therein." Similar to this is the hadith in Bukhari about Khubayb (A: who asked to pray two rak'as before being executed by idolators in Mecca), who was the first to establish the sunna of two rak'as for those who are steadfast in going to their death. These hadiths are explicit evidence that Bilal and Khubayb used their own personal reasoning (ijtihad) in choosing the times of acts of worship, without any previous command or precedent from the Prophet (Allah bless him and give him peace) other than the general demand to perform the prayer.

(2) Bukhari and Muslim relate that Rifa'a ibn Rafi' said, "When we were praying behind the Prophet (Allah bless him and give him peace) and he raised his head from bowing and said, 'Allah hears whoever praises Him,' a man behind him said, 'Our Lord, Yours is the praise, abundantly, wholesomely, and blessedly therein.' When he rose to leave, the Prophet (Allah bless him and give him peace) asked who said it, and when the man replied that it was he, the Prophet (Allah bless him and give him peace) said, 'I saw thirty-odd angels each striving to be the one to write it.'"

Ibn Hajar says in *Fath al-Bari* that the hadith "indicates the permissibility of initiating new expressions of *dhikr* in the prayer other than the ones related through hadith texts, as long as they do not contradict those conveyed by the hadith [n: since the above words were a mere enhancement and addendum to the known, sunna *dhikr*]."

(3) Bukhari relates from 'A'isha (Allah be well pleased with her) that "the Prophet (Allah bless him and give him peace) dispatched a man at the head of a military expedition who recited the Koran for his companions at prayer, finishing each recital with al-Ikhlas (Koran 112). When they returned, they mentioned this to the Prophet (Allah bless him and give him peace), who told them, 'Ask him why he does this,' and when they

[. . .] قال الحافظ ابن حجر في الفتح: يستفاد منه جواز الاجتهاد في توقيت العبادة لأن بلالاً توصل إلى ما ذكره بالاستنباط فصوبه الرسول ﷺ.

ومثل هذا حديث خبيب في البخاري وفيه وهو أول من سن الصلاة لكل مقتول صبراً ركعتين. فهذه الأحاديث صريحة في أن بلالاً وخبيباً اجتهدا في توقيت العبادة ولم يسبق من الرسول ﷺ أمر ولا فعل إلا الطلب العام. [. . .].

(٢) ما رواه البخاري ومسلم [وغيرهما في كتاب الصلاة في باب ربنا لك الحمد] عن رفاعة بن رافع قال: كنا نصلي وراء النبي ﷺ فلما رفع رأسه من الركعة قال: سمع الله لمن حمده؟ قال رجل وراءه: ربنا لك الحمد حمداً كثيراً طيباً مباركاً فيه. فلما انصرف قال: من المتكلم؟ قال: أنا؛ قال: رأيت بضعة وثلاثين ملكاً يبتدرونها أيهم يكتبها.

قال الحافظ في الفتح: يستدل به على جواز إحداث ذكر في الصلاة غير مأثور إذا كان غير مخالف للمأثور [وعلى جواز رفع الصوت بالذكر ما لم يشوش]. [. . .].

(٣) روى البخاري [من كتاب التوحيد] عن عائشة رضي الله عنها أن النبي ﷺ بعث رجلاً على سرية وكان يقرأ لأصحابه في صلاته فيختم بقل هو الله أحد. فلما رجعوا ذكروا ذلك للنبي ﷺ فقال: سلوه لأي شيء يصنع ذلك؛

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asked him, the man replied, 'Because it describes the All-merciful, and I love to recite it.' The Prophet (Allah bless him and give him peace) said to them, 'Tell him Allah loves him.' "

In spite of this, we do not know of any scholar who holds that doing the above is recommended, for the acts the Prophet (Allah bless him and give him peace) used to do regularly are superior, though his confirming the like of this illustrates his sunna regarding his acceptance of various forms of obedience and acts of worship, and shows he did not consider the like of this to be a reprehensible innovation (bid'a), as do the bigots who vie with each other to be the first to brand acts as innovation and misguidance. Further, it will be noticed that all the preceding hadiths are about the *prayer*, which is the most important of bodily acts of worship, and of which the Prophet (Allah bless him and give him peace) said,

"Pray as you have seen me pray,"

despite which he accepted the above examples of personal reasoning because they did not depart from the form defined by the Lawgiver, for every limit must be observed, while there is latitude in everything besides, as long as it is within the general category of being called for by Sacred Law. This is the sunna of the Prophet and his way (Allah bless him and give him peace) and is as clear as can be. Islamic scholars infer from it that every act for which there is evidence in Sacred Law that it is called for and which does not oppose an unequivocal primary text or entail harmful consequences is not included in the category of reprehensible innovation (bid'a), but rather is of the sunna, even if there should exist something whose performance is superior to it.

(4) Bukhari relates from Abu Sa'id al-Khudri that a band of the Companions of the Prophet (Allah bless him and give him peace) departed on one of their journeys, alighting at the encampment of some desert Arabs whom they asked to be their hosts, but who refused to have them as guests. The leader of the encampment was stung by a scorpian, and his followers tried everything to cure him, and when all had failed,

فسألوه فقال: لأنها صفة الرحمن وأنا أحب أن أقرأ بها. فقال النبي ﷺ: أخبروه أن الله يحبه.

[...] ومع كل هذا فلم نعلم أن أحداً من العلماء قال باستحباب ذلك... لأن ما واظب عليه الرسول ﷺ هو الأفضل ولكن إقراره لمثل هذا بوضح سنته ﷺ في قبول ما كان مثل ذلك من أوجه الطاعات والعبادات ولا يعتبر مثله حدثاً مذموماً كما يتسابق المتشددون إلى التبديع والتضليل في الأفعال... والأحاديث التي مرت كلها في الصلاة كما نرى وهي أهم أعمال العبادات البدنية وفيها قول الرسول ﷺ: «صلوا كما رأيتموني أصلي» ومع ذلك قبل هذه الاجتهادات لأنها لا تخرج عن الهيئة التي حددها الشارع. فكل حد لا بد من الالتزام به. وما عدا ذلك فالأمر متسع مادام داخل في الأصل المطلوب. هذه هي سنة الرسول وطريقته وهذا في غاية الوضوح ويؤخذ منها ما أصله العلماء أن كل عمل يشهد له الشرع من الطلب ولم يصادم نصاً تترتب عليه مفسدة فليس داخل في حدود البدعة بل هو من السنة وإن كان غيره أفضل.

(٤) [حديث السرقية وقد] رواه البخاري [في أكثر من موضع من صحيحه وهذا نصه في باب النفث في الرقية:] عن أبي سعيد الخدري رضي الله عنه أن رهطاً من أصحاب النبي ﷺ انطلقوا في سفرة سافروها حتى نزلوا على حي من أحياء العرب فاستضافوهم فأبوا أن يضيفوهم فلُدِغ سيد ذلك الحي [ت: أي لدغته عقرب. كما في رواية الترمذي] فسعوا له بكل شيء فلم ينفعه

one said, "If you'd approach the group camped near you, one of them might have something." So they came to them and said, "O band of men, our leader has been stung and we've tried everything. Do any of you have something for it?" and one of them replied, "Yes, by Allah, I recite healing words [ruqya, def: w17] over people, but by Allah, we asked you to be our hosts and you refused, so I will not recite anything unless you give us a fee." They then agreed upon a herd of sheep, so the man went and began spitting and reciting the Fatiha over the victim until he got up and walked as if he were a camel released from its hobble, nothing the matter with him. They paid the agreed upon fee, which some of the Companions wanted to divide up, but the man who had done the reciting told them, "Do not do so until we reach the Prophet (Allah bless him and give him peace) and tell him what has happened, to see what he may order us to do." They came to the Prophet (Allah bless him and give him peace) and told him what had occurred, and he said, "How did you know it was of the words which heal? You were right. Divide up the herd and give me a share."

The hadith is explicit that the Companion had no previous knowledge that reciting the Fatiha to heal (ruqya) was countenanced by Sacred Law, but rather did so because of his own personal reasoning (ijtihad), and since it did not contravene anything that had been legislated, the Prophet (Allah bless him and give him peace) confirmed him therein because it was of his sunna and way to accept and confirm what contained good and did not entail harm, even if it did not proceed from the acts of the Prophet himself (Allah bless him and give him peace) as a definitive precedent.

(5) Bukhari relates from Abu Sa'id al-Khudri that one man heard another reciting al-Ikhlas (Koran 112) over and over again, so when morning came he went to the Prophet (Allah bless him and give him peace) and sarcastically mentioned it to him. The Prophet (Allah bless him and give him peace) said, "By Him in whose hand is my soul, it equals one-third of the Koran." Daraqutni recorded another version of this hadith in which the man said, "I have a neighbor who

شيء، فقال بعضهم: لو أتيتم هؤلاء الرهط الذي نزل بكم لعله يكون عند بعضهم شيء، فأتوهم فقالوا: يا أيها الرهط إن سيدنا لدغ فسعينا له بكل شيء فهل عند أحد منكم شيء؟ فقال بعضهم: نعم والله إني لراق ولكن والله لقد استضفناكم فلم تضيفونا فما أنا براق لكم حتى تجعلوا لنا جعلاً. فصالحوهم على قطيع من الغنم فانطلق فجعل يتفل ويقرأ الحمد لله رب العالمين حتى لكأنما نشط من عقال فانطلق يمشي ما به قلبة فأوفوهم جعلهم الذي صالحوهم عليه فقال بعضهم: اقسموا، وقال الذي رقى: لا تفعلوا حتى نأتي رسول الله ﷺ فنذكر له الذي كان فننظر ما يأمرنا به؛ فقدموا على رسول الله ﷺ فذكروا له فقال: وما يدريك أنها رقية أصبتم، اقسموا وأضربوا لي معكم بسهم.

[...] وهذا صريح في أن الصحابي لم يكن عنده علم متقدم بمشروعية الرقي بالفاتحة، ولكنه شيء فعله باجتهاده ولما لم يكن فيه مخالفة للمشروع أقره الرسول ﷺ لأن هذه سنته وطريقته في إقرار ما كان من الخير ولا تترتب عليه مفسدة وإن لم يكن من عمل الرسول ﷺ نصاً.

(٥) في البخاري [في فضائل قل هو الله أحد] عن أبي سعيد الخدري أن رجلاً سمع رجلاً يقرأ بقل هو الله أحد يرددها فلما أصبح جاء إلى النبي ﷺ وآله وسلم فذكر له ذلك وكان الرجل يتقالها فقال ﷺ: والذي نفسي بيده إنها لتعدل ثلث القرآن.

[...] وقد خرّج الدارقطني [...] هذا الحديث بلفظ: إن لي جاراً يقوم

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prays at night and does not recite anything but al-Ikhlas."

The hadith shows that the Prophet (Allah bless him and give him peace) confirmed the person's restricting himself to this sura while praying at night, despite its not being what the Prophet himself did (Allah bless him and give him peace), for though the Prophet's practice of reciting from the whole Koran was superior, the man's act was within the general parameters of the sunna and there was nothing blameworthy about it in any case.

(6) Ahmad and Ibn Hibban relate from 'Abdullah ibn Burayda that his father said, "I entered the mosque with the Prophet (Allah bless him and give him peace), where a man was at prayer, supplicating: 'O Allah, I ask You by the fact that I testify You are Allah, there is no god but You, the One, the Ultimate, who did not beget and was not begotten, and to whom none is equal,' and the Prophet (Allah bless him and give him peace) said, 'By Him in whose hand is my soul, he has asked Allah by His greatest name, which if He is asked by it He gives, and if supplicated He answers.' "

It is plain that this supplication came spontaneously from the Companion, and since it conformed to what the Sacred Law calls for, the Prophet (Allah bless him and give him peace) confirmed it with the highest degree of approbation and acceptance, while it is not known that the Prophet (Allah bless him and give him peace) had ever taught it to him (*Adilla Ahl al-Sunna wa al-Jama'a* (y119), 119–33).

بالليل فما يقرأ إلا بقل هو الله أحد اهـ.

وفي الحديث إقرار الرسول ﷺ على هذا التخصيص والاقتصار على هذه السورة في قيام الليل مع ما فيه من التخصيص الذي لم يكن من عمله ﷺ. [...] وما كان عليه عمل الرسول من القراءة بالقرآن كله أفضل من ذلك ولكن عمله وما يشبهه داخل في نطاق السنة وليس فيه ما يذم بل هو محمود على كل حال.

(٦) روى [أصحاب السنن و] أحمد وابن حبان [في صحيحه] عن عبد بن بريدة عن أبيه قال: دخلت مع رسول الله ﷺ المسجد فإذا رجل يصلي يدعو: اللَّهُمَّ إِنِّي أَسْأَلُكَ بِأَنِّي أَشْهَدُ أَنَّكَ أَنْتَ اللَّهُ لَا إِلَهَ إِلَّا أَنْتَ الْأَحَدُ الصَّمَدُ الَّذِي لَمْ يَلِدْ وَلَمْ يُولَدْ وَلَمْ يَكُنْ لَهُ كُفُوًا أَحَدٌ. فقال النبي ﷺ: والذي نفسي بيده لقد سأل الله باسمه الأعظم الذي إذا سئل به أعطى وإذا دعي به أجاب اهـ.

وهذا دعاء أنشأه الصحابي فيما يظهر ولما كان مطابقاً للمطلوب أقره ﷺ بأعلى درجات الإقرار والرضاء ولم يعلم أن الرسول ﷺ علمه إياه [محرر من أدلة أهل السنة والجماعة: ١٢٣ - ١٣٣؛ بتقديم وتأخير].

COMMENTARY ON THE HADITH "EVERY INNOVATION IS MISGUIDANCE"

شرح حديث «كل بدعة ضلالة»

w29.3 The Prophet (Allah bless him and give him peace) said,

"... Beware of matters newly begun, for every innovation is misguidance."

w29.3 قال النبي ﷺ: «... وإياكم ومحدثات الأمور، فإن كل بدعة ضلالة» [من حديث رواه أبو داود والترمذي وقال: حديث حسن صحيح].

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Beware of matters newly begun

(Muhammad Jurdani:) meaning, "Distance yourselves and be wary of matters newly innovated that did not previously exist," i.e. things invented in Islam that contravene the Sacred Law,

for every innovation is misguidance

meaning that every innovation is the opposite of the truth, i.e. falsehood, a hadith that has been related elsewhere as:

for every newly begun matter is innovation, every innovation is misguidance, and every misguidance is in hell

meaning that everyone who is misguided, whether through himself or by following another, is in hell, the hadith referring to matters that are not good innovations with a basis in Sacred Law. It has been stated (A: by 'Izz ibn 'Abd al-Salam) that innovations (bid'a) fall under the five headings of the Sacred Law (n: i.e. the obligatory, unlawful, recommended, offensive, and permissible):

(1) The first category comprises innovations that are *obligatory*, such as recording the Koran and laws of Islam in writing when it was feared that something might be lost from them; the study of the disciplines of Arabic that are necessary to understand the Koran and sunna such as grammar, word declension, and lexicography; hadith classification to distinguish between genuine and spurious prophetic traditions; and the philosophical refutations of arguments advanced by the Mu'tazilites (def: w6.4) and the like.

(2) The second category is that of *unlawful* innovations such as non-Islamic taxes and levies (dis: p32), giving positions of authority in Sacred Law to those unfit for them, and devoting one's time to learning the beliefs of heretical sects that contravene the tenets of faith (def: v1–2) of Ahl al-Sunna.

(3) The third category consists of *recommended* innovations such as building hostels and schools of Sacred Law, recording the research of Islamic schools of legal thought, writing books on beneficial subjects, extensive research into fundamentals and particular applications of Sacred Law, in-depth studies of Arabic linguistics, the

(محمد الجردانى:) [...] «... وإياكم ومحدثات» ([كلاهما منصوب بفعل مضمر، والتقدير:] باعدوا أنفسكم واحذروا محدثات) «الأمور» (أي الأمور المحدثة أي المخترعة في الدين المخالفة للشريعة) «فإن كل بدعة ضلالة» (أي خلاف الحق أي باطل وجاء في بعض روايات هذا الحديث:)

«فإن كل محدث بدعة وكل بدعة ضلالة وكل ضلالة في النار» (يعني صاحبها، من فاعل ومتبع. وهذا في غير البدعة الحسنة التي ترجع إلى أصل شرعي.

وقد قيل إن البدعة تنقسم إلى الأحكام الخمسة (ت: أي الواجب، والحرام، والمندوب، والمكروه، والمباح):

الأولى واجبة كتدوين القرآن والشرائع إذا خيف عليها الضياع وكالاشتغال بالعلوم العربية المتوقف عليها فهم الكتاب والسنة كالنحو والصرف واللغة وكتمييز صحيح الأحاديث من سقيمها والرد على نحو المعتزلة.

الثانية محرمة كالمكوس والمظالم وتولية المناصب الشرعية من لا يصلح لها والاشتغال بمذاهب أهل الضلال المخالفين لما عليه أهل السنة.

الثالثة المندوبة كبناء الربط ومدارس العلم الشرعي وتدوين المذاهب وتصنيف العلوم المستحسنة شرعاً وتقرير القواعد وكثرة التفريع وتتبع كلام العرب

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reciting of *wirds* (def: w20) by those with a Sufi path (A: or circles of *dhikr* in which the movement of the participants increases their remembrance of Allah), and commemorating the birth (mawlid, dis: w58) of the prophet Muhammad (Allah bless him and give him peace) and wearing one's best and rejoicing at it.

(4) The fourth category includes innovations that are *offensive*, such as embellishing mosques, decorating the Koran, and having a backup man (muballigh) loudly repeat the spoken Allahu Akbar of the imam when the latter's voice is already clearly audible to those praying behind him.

(5) The fifth category is that of innovations that are *permissible*, such as sifting flour, using spoons, and having more enjoyable food, drink, and housing.

(*al-Jawahir al-lu'lu'iyya fi sharh al-Arba'in al-Nawawiyya* (y68), 220–21)

وأوراد أهل الطريق، واصطناع مولد المصطفى ﷺ وإظهار الزينة والسرور به.

الرابعة المكروهة كزخرفة المساجد وتزويق المصاحف والتبليغ حيث بلغ المأمومين صوت الإمام.

الخامسة المباحة كاتخاذ المناخل والملاعق والتوسعة في لذيذ المآكل والمشارب والمساكن [نقل من الجواهر اللؤلؤية في شرح الأربعين النووية: ٢٢٠ - ٢٢١].

w29.4 ('Abdullah Muhammad Ghimari:) In his *al-Qawa'id al-kubra*, 'Izz ibn 'Abd al-Salam classifies innovations (bid'a), according to their benefit, harm, or indifference, into the five categories of rulings: the obligatory, recommended, unlawful, offensive, and permissible; giving examples of each and mentioning the principles of Sacred Law that verify his classification. His words on the subject display his keen insight and comprehensive knowledge of both the principles of jurisprudence and the human advantages and disadvantages in view of which the Lawgiver has established the rulings of Sacred Law.

Because his classification of innovation (bid'a) was established on a firm basis in Islamic jurisprudence and legal principles, it was confirmed by Imam Nawawi, Ibn Hajar 'Asqalani, and the vast majority of Islamic scholars, who received his words with acceptance and viewed it obligatory to apply them to the new events and contingencies that occur with the changing times and the peoples who live in them. One may not support the denial of his classification by clinging to the hadith "Every innovation is misguidance,"

w29.4 (عبد الله محمد الغماري:) قسم عز [الدين] بن عبد السلام في قواعده الكبرى البدعة باعتبار اشتمالها على المصلحة والمفسدة أو خلوها عنهما إلى أقسام الحكم الخمسة: الوجوب والندب والحرمة والكراهة والإباحة، ومثل لكل قسم منها وذكر ما يشهد له من قواعد الشريعة. وكلامه في ذلك كلام ناقد بصير أحاط خبراً بالقواعد الفقهية وعرف المصالح والمفاسد التي اعتبرها الشارع في ترتيب الأحكام على وفقها. [ومن مثل سلطان العلماء في معرفة ذلك؟] فجاء تقسيمه للبدعة مؤسساً على أساس من الفقه وقواعده متين، ولذا وافقه عليه الإمام النووي والحافظ ابن حجر وجمهور العلماء وتلقوا كلامه بالقبول، ورأوا أن العمل به متعين في النوازل والوقائع التي تحدث مع تطور الزمان وأهله [...] ولا يمكن أن يتمسك لإنكاره بحديث «كل بدعة

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because the only form of innovation that is without exception misguidance is that concerning tenets of faith, like the innovations of the Mu'tazilites, Qadarites, Murji'ites, and so on, that contradicted the beliefs of the early Muslims. This is the innovation of misguidance because it is harmful and devoid of benefit. As for innovation in works, meaning the occurrence of an act connected with worship or something else that did not exist in the first century of Islam, it must necessarily be judged according to the five categories mentioned by 'Izz ibn 'Abd al-Salam. To claim that such innovation is misguidance without further qualification is simply not applicable to it, for new things are among the exigencies brought into being by the passage of time and generations, and nothing that is new lacks a ruling of Allah Most High that is applicable to it, whether explicitly mentioned in primary texts, or inferable from them in some way. The only reason that Islamic law can be valid for every time and place and be the consummate and most perfect of all divine laws is because it comprises general methodological principles and universal criteria, together with the ability its scholars have been endowed with to understand its primary texts, the knowledge of types of analogy and parallelism, and the other excellences that characterize it. Were we to rule that every new act that has come into being after the first century of Islam is an innovation of misguidance without considering whether it entails benefit or harm, it would invalidate a large share of the fundamental bases of Sacred Law as well as those rulings established by analogical reasoning, and would narrow and limit the Sacred Law's vast and comprehensive scope (*Adilla Ahl al-Sunna wa al-Jama'a* (y119), 145–47).

ضلالة؛ لأن البدعة التي هي ضلالة من غير استثناء هي البدعة الاعتقادية كالمعتقدات التي أحدثها المعتزلة والقدرية والمرجئة ونحوهم على خلاف ما كان يعتقده السلف الصالح فهذه هي البدعة التي هي ضلالة لأنها مفسدة لا مصلحة فيها. أما البدعة العملية بمعنى حدوث عمل له تعلق بالعبادة أو غيرها ولم يكن في الزمن الأول فهذا لا بد فيه من التقسيم الذي ذكره عز [الدين] ابن عبد السلام ولا يتأتى فيه القول بأنه ضلالة على الإطلاق. لأنه من باب الوقائع التي تحدث على مر الزمان والأجيال. وكل واقعة لا تخلو عن حكم لله تعالى إما منصوص عليه أو مستنبط بوجه من وجوه الاستنباط. والشريعة إنما صلحت لكل زمان ومكان وكانت خاتمة الشرائع الإلهية وأكملها بما حوته من قواعد عامة وضوابط كلية، مع ما أوتيه علماؤها من قوة الفهم في نصوصها ومعرفة بالقياس والاستصحاب وأنواعهما إلى غير ذلك مما خصت به شريعتنا الغراء. ولو [اتبعنا طريقة الشاطبي و] حكمنا على كل عمل حدث بعد العصر الأول بأنه بدعة ضلالة من غير أن نعتبر ما فيه من مصلحة أو مفسدة لزم ذلك إهدار جانب كبير من قواعد الشريعة وقياساتها وتضييق لدائرتها الواسعة [محرر من أدلة أهل السنة والجماعة: ١٤٥ - ١٤٧].

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w30.0 MIRACLES (KARAMAT)
(from f15.2)

w30.0 ثبوت الكرامات

w30.1 (Nawawi:) Muslim orthodoxy affirms the existence of miracles vouchsafed to the friends of Allah (awliya', def: w33), and that they occur and

w30.1 (النووي:) [اعلم أن] مذهب أهل الحق إثبات كرامات الأولياء وأنها

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exist throughout all eras of history, as is attested to by both rational evidence and the explicit texts of verses of the Holy Koran and numerous prophetic hadiths. As for the Koranic verses, they include:

(1) the word of Allah Most High in the story of Maryam,

" 'Shake the trunk of the palm tree towards you, and it will let fall fresh ripe dates upon you' " (Koran 19:25),

while Maryam, by scholarly consensus, was not a prophet (n: Qurtubi says, "By the word 'shake,' Allah ordered her to jar the withered palm trunk, that she might behold another of His miracles in reviving the lifeless tree" (*al-Jami' li ahkam al-Qur'an* (y117), 11.94));

(2) "Every time Zakariyya entered the Sanctuary, he found provision with her. He said, 'O Maryam, from whence has this come to you?' And she said, 'It is from Allah' " (Koran 3:37)

(n: Qurtubi says, "When Zakariyya used to enter where she was, he would find the fruits of wintertime with her in summer, and the fruits of summertime in winter, so he asked her, 'O Maryam, from whence has this come to you?' And she said, 'It is from Allah' " (*al-Jami' li ahkam al-Qur'an* (y117), 4.71));

(3) from the story of Sulayman's companion (N: who "possessed knowledge of the Book," and instantly brought from afar the throne of the Queen of Sheba to Sulayman (upon whom be peace)),

"... 'I will bring it to you before your glance returns to yourself' " (Koran 27:40)

(n: Qurtubi says, "According to most Koranic commentators, 'he who possessed knowledge of the Book' was Asuf ibn Barkhiya of the Israelites, a *siddiq* (lit. "one of great faith") who knew the greatest name of Allah, which if He is asked by it He gives, and if supplicated He answers (*al-Jami' li ahkam al-Qur'an* (y117), 13.204));

واقعة موجودة مستمرة في الأعصار. ويدل عليه دلائل العقول وصرائح النقول. [. . .].

وأما النقول فآيات في القرآن العظيم وأحاديث مستفيضة أما الآيات فقوله تعالى في قصة مريم:

﴿وَهُزِّي إِلَيْكِ بِجِذْعِ النَّخْلَةِ تُسَاقِطْ عَلَيْكِ رُطَبًا جَنِيًّا﴾ [مريم: ٢٥].

(ت: قال القرطبي: قوله تعالى: ﴿وَهُزِّي﴾ أمرها بهز الجذع اليابس لترى آية أخرى في إحياء موات الجذع [نقل من الجامع لأحكام القرآن: ١١/ ٩٤].)، [. . .] ولم تكن مريم نبية بإجماع العلماء [. . .].

(٢) وقوله تعالى: ﴿كُلَّمَا دَخَلَ عَلَيْهَا زَكَرِيَّا الْمِحْرَابَ وَجَدَ عِنْدَهَا رِزْقًا، قَالَ يَا مَرْيَمُ أَنَّى لَكِ هَذَا، قَالَتْ هُوَ مِنْ عِنْدِ اللَّهِ﴾ [آل عمران: ٣٧].

(ت: قال القرطبي: كان زكريا إذا دخل عليها يجد عندها فاكهة الشتاء في القيظ وفاكهة القيظ في الشتاء فقال: يا مريم أنّى لك هذا؟ فقالت: هو من عند الله [نقل من الجامع لأحكام القرآن: ٤/ ٧١].).

(٣) ومن ذلك قصة صاحب سليمان عليه السلام حيث قال:

﴿أَنَا آتِيكَ بِهِ قَبْلَ أَنْ يَرْتَدَّ إِلَيْكَ طَرْفُكَ﴾ [النمل: ٤٠].

(ت: قال القرطبي: أكثر المفسرين على أن الذي عنده علم الكتاب آصف بن برخيا وهو من بني إسرائيل وكان صدّيقاً يحفظ اسم الله الأعظم الذي إذا سئل به أعطى، وإذا دعي به أجاب [نقل من الجامع لأحكام القرآن: ١٣/ ٢٠٤].).

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(4) and finally, all the miraculous events that took place in the story of the People of the Cave (Koran 18), who by scholarly consensus were not prophets.

As for hadiths that furnish evidence of miracles, there are many, such as:

(1) the hadith of the three people who took shelter in a cave, and when a great stone sealed off its entrance, each in turn made supplication to Allah, and the stone was moved aside for them, a hadith recorded in the *Sahih*s of Bukhari and Muslim;

(2) and the famous hadith recorded by Bukhari and others about the story of Khubayb al-Ansari (Allah be well pleased with him), a Companion of the Prophet (Allah bless him and give him peace), of whom Bint Harith said: "By Allah, I never saw a better prisoner than Khubayb. By Allah, one day I found him eating from a bunch of grapes in his hand, though he was manacled in irons and there was no fruit in all of Mecca."

The hadiths, narratives of the Companions, and accounts of the early and later Muslims on this subject are beyond number, and there is a sufficiency in those we have just mentioned (*Bustan al-'arifin* (y104), 142–54).

(٤) [. . .] ومن ذلك قصة أهل الكهف وما اشتملت عليه من خوارق العادات [. . .] ولم يكونوا أنبياء بالإجماع.

وأما الأحاديث، فكثيرة:

(١) [. . . و] منها حديث أصحاب الغار الثلاثة الذين أووا إلى الغار فأطبقت صخرة عليهم بابه، فدعا كل واحد منهم بدعوة فانفرجت عنهم الصخرة، وهو مخرج في صحيحي البخاري ومسلم.

(٢) [. . .] ومنها الحديث المشهور في صحيح البخاري وغيره في قصة خبيب الأنصاري [بضم الخاء المعجمة] رضي الله تعالى عنه صاحب رسول الله ﷺ، وقول بنت الحارث: والله ما رأيت أسيراً قط خيراً من خبيب، والله لقد وجدته يوماً يأكل من قطف عنب في يده وأنه لموثق في الحديد وما بمكة من ثمر.

[. . .] والأحاديث والآثار وأقوال السلف والخلف في هذا الباب أكثر من أن تحصر، فيكتفى بما أشرنا إليه [محرر من بستان العارفين: ١٤٢ - ١٥٤].

KINDS OF MIRACLES

أنواع خوارق العادات

w30.2 (Ibrahim Bajuri:) An inimitable prophetic miracle (mu'jiza) is an event contravening natural laws that appears at the hands of someone who claims to be a prophet and is challenged by those who deny this, such that the deniers are unable to perform the like of it. Such inimitable miracles are distinguished from:

(1) miracles of divine favor (karamat) which appear at the hands of servants of manifest righteousness (N: who are not prophets, as opposed to the above);

(2) miracles of provender (ma'una) (N: such as food being miraculously increased to feed a

w30.2 (إبراهيم الباجوري:) [واعلم أن] المعجزة [. . .] هي أمر يظهر بخلاف العادة على يد مدعي النبوة عند تحدّي المنكرين على وجه يعجز المنكرين عن الإتيان بمثله. [. . .] وخرج بذلك:

(١) الكرامة وهي ما يظهر على يد عبد ظاهر الصلاح.

(٢) والمعونة وهي ما يظهر على يد

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multitude), which appear at the hands of ordinary people to save them from hardship;

(3) miracles of delusion (istidraj), which consist of supernatural events that appear at the hands of an unrighteous person as a manifestation of Allah's intention to deceive him and lead him further astray;

(4) miracles of humiliation (ihana), which are supernatural events that appear at the hands of someone to show the falsity of his claims, as happened to (N: the false prophet) Musaylima the Liar, who spat in the eye of a one-eyed man to restore his sight, and the man's good eye went blind;

(5) miracles portending a prophetic mission (irhas), which occur before prophethood or messengerhood to establish the way for it, such as the cloud that gave shade to the Prophet (Allah bless him and give him peace) (N: in his youth, moving as he did and stopping as he did, while he was journeying with a caravan to Syria) before his prophetic mission;

(6) and sorcery (sihr) and also stage magic (sha'badha), which is accomplished by sleight of hand, making the illusory seem real.

(*Sharh Jawhara al-tawhid al-musamma Tuhfa al-murid* (y24), 133)

العوام تخليصاً لهم من شدة.

(٣) والاستدارج وهو ما يظهر على يد فاسق خديعةً ومكراً به.

(٤) والإهانة وهي ما يظهر على يده تكذيباً له كما وقع لمسيلمة الكذاب. فإنه تفل في عين أعور لتبرأ فعميت الصحيحة [. . .].

(٥) و[خرج بذلك] الإرهاص وهو ما كان قبل النبوة والرسالة تأسيساً لها كإظلال الغمام له ﷺ قبل البعثة [. . .].

(٦) و[خرج بذلك] السحر ومنه الشعبذة وهي خفة في اليد يرى أن لها حقيقة ولا حقيقة لها [. . .] [محرر من شرح جوهرة التوحيد المسماة تحفة المريد: ١٣٣].

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w31.0 OBTAINING BLESSINGS (TABARRUK) THROUGH THE RIGHTEOUS (from g3.9)

w31.0 التبرك بالصالحين وآثارهم

w31.1 (A:) To hold that things have properties that cause benefit or harm independently of the will of Allah is unbelief (kufr), whether such properties are considered natural or supernatural. But the contention of certain people that showing veneration (ta'zim) for the righteous or that obtaining blessings (tabarruk) through them or their effects constitutes *worship* of them or associating others with Allah (shirk) is not supportable by the prophetic sunna, which attests to the contrary, as may be seen from the following hadiths:

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(1) Bukhari relates that 'Uthman ibn 'Abdullah said: "My wife sent me to Umm Salama with a cup of water [here the subnarrator Isra'il closed three fingers to show its size] in which to dip a lock containing some of the Prophet's hair (Allah bless him and give him peace). Whenever a person was suffering from the evil eye or an illness, they would send her a vessel of water [A: which Umm Salama would dip the hair in, for treating the ill by their drinking it or washing with it]. I looked into the metal bell [N: holding the lock of hair] and saw some red hairs."

(١) روى البخاري [في كتاب اللباس باب ما يذكر في الشيب] عن عثمان بن عبد الله [بن موهب] قال: أرسلني أهلي إلى أم سلمة بقدح من ماء (وقبض إسرائيل ثلاث أصابع) من قصة فيها شعر من شعر النبي ﷺ. وكان إذا أصاب الإنسان عين أو شيء بعث إليها مخضبة. فاطلعتُ في الجلجل فرأيت شعرات حمراء.

(2) Bukhari relates from Abu Musa that "the Prophet (Allah bless him and give him peace) called for a vessel of water, washed his hands and face in it, spat a mouthful of water back into it and then said to Abu Musa and Bilal, 'Drink from it and pour the rest over your faces and chests.' "

(٢) وروى البخاري [في كتاب الوضوء باب استعمال فضل وضوء الناس من حديث أبي جحيفة] قال أبو موسى: دعا النبي ﷺ بقدح فيه ماء فغسل يديه ووجهه فيه ومجّ فيه ثم قال لهما ([ث: أي] أبي موسى وبلال): «اشربا منه وأفرغا على وجوهكما ونحوركما».

(3) Bukhari relates from Mahmud ibn Rabi' that "when the Prophet (Allah bless him and give him peace) performed his ablution, the Companions almost fought over the excess water."

(٣) وروى البخاري [في نفس الباب من حديث ابن شهاب قال:] أخبرني محمود بن الربيع . . . «إذا توضأ النبي ﷺ كادوا يقتتلون على وضوئه».

The Prophet (Allah bless him and give him peace) would never have permitted the like of this if there were any suspicion of associating partners with Allah (shirk) in it. In each of the above hadiths and others, there is a clear basis for the legal validity of obtaining blessings through the effects of the righteous (tabarruk), as it was done with the Prophet's consent and wish by the Companions, this being the reason that Muslims after them have also done so. And Allah knows best.

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w32.0 INSTRUCTING THE DECEASED (TALQIN) (from g5.6(1))

w32.0 تلقين الميت

w32.1 (N:) *Instructing the deceased* (talqin) is when a Muslim sits beside the grave of his fellow Muslim after burial to speak to him, reminding him of the Testification of Faith "There is no god but Allah, Muhammad is the Messenger of Allah," and certain other matters of belief, such as that death is real, paradise is real, hell is real, and that Allah shall raise up those who are in their

w32.1 (ح:) أما تلقين الميت فهو أن يجلس المسلم عند قبر أخيه المسلم بعد دفنه ليخاطبه مذكراً إياه بشهادة أن لا إله إلا الله وأن محمداً رسول الله. وببعض قواعد العقيدة الإسلامية من أن الموت حق والجنة حق والنار حق وأن الله يبعث

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graves—and praying that the deceased will prove steadfast when the two angels question him. It does not have a particular form, but rather anything that accomplishes the above is called "instructing the deceased." The following evidence may be adduced for its validity in Sacred Law:

(1) The rigorously authenticated (sahih) hadith that the Prophet (Allah bless him and give him peace) ordered that the bodies of the idolators slain on the day of Badr be thrown into a well whose interior was uncased with stones, then he approached the well and began calling the unbelievers by their names and fathers' names, saying: "O So-and-so son of So-and-so, and So-and-so son of So-and-so: it would have been easier had you obeyed Allah and His messenger. We have found what our Lord promised to be true; have you found what your Lord promised to be true?" To which 'Umar said, "O Messenger of Allah, why speak to lifeless bodies?" And he replied, "By Him in whose hand is the soul of Muhammad, you do not hear my words better than they do."

(2) The Prophet (Allah bless him and give him peace) said:

"When a servant is laid in his grave and his friends have turned from him and he hears the footfalls of their sandals, two angels come to him, sit him upright, and ask him, 'What were you wont to say of this man Muhammad (Allah bless him and give him peace)?' The believer will answer, 'I testify that he is the slave of Allah and His messenger,' and it will be said, 'Look at your place in hell, Allah has changed it for a place in paradise,' and the man will behold both of them...."

(3) 'Uthman ibn 'Affan (Allah be well pleased with him) relates that when the Prophet (Allah bless him and give him peace) used to finish burying someone, he would stand by the grave and say, "All of you, ask Allah to forgive your brother and make him steadfast, for he is now being asked."

(4) Abu Umama said, "When I die, do with me as the Prophet (Allah bless him and give him

من في القبور. ويدعو له بالتثبيت عند سؤال الملكين. وليس للتلقين صيغة معينة بل كل ما يؤدي إلى هذا المعنى يسمى تلقيناً. وقد يستدل لمشروعيته بما يلي:

(١) ورد في الحديث الصحيح أن رسول الله ﷺ أمر بقتلى المشركين يوم بدر فألقوا في قليب ثم جاء القليب فجعل ينادي الكفار بأسمائهم وأسماء آبائهم: يا فلان بن فلان ويا فلان بن فلان أيسركم أنكم أطعتم الله ورسوله. فإنا قد وجدنا ما وعدنا ربنا حقاً فهل وجدتم ما وعد ربكم حقاً؟ فقال عمر: يا رسول الله ما تكلم من أجساد لا أرواح لها، فقال: والذي نفس محمد بيده ما أنتم بأسمع لما أقول منهم [رواه البخاري].

(٢) [عن أنس بن مالك رضي الله عنه] عن النبي ﷺ قال: إن العبد إذا وضع في قبره وتولى عنه أصحابه وأنه ليسمع قرع نعالهم أتاه ملكان فيقعدانه فيقولان: ما كنت تقول في هذا الرجل محمد ﷺ، فأما المؤمن فيقول: أشهد أنه عبد الله ورسوله، فيقال: انظر إلى مقعدك من النار قد أبدلك الله به مقعداً من الجنة فيراهما جميعاً [الحديث. رواه البخاري ومسلم وغيرهما].

(٣) وعن عثمان بن عفان رضي الله عنه قال: كان النبي ﷺ إذا فرغ من دفن الميت وقف عليه فقال، «استغفروا لأخيكم واسألوا له التثبيت فإنه الآن يسأل [رواه أبو داود].

(٤) وروي عن أبي أمامة قال: إذا أنا مت فاصنعوا بي كما أمرنا النبي ﷺ قال:

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peace) ordered us, saying, 'When one of your brothers dies and you have smoothed over the earth upon his grave, let one of you stand at the head of the grave and say, "O So-and-so son of So-and-so [n: the latter "So-and-so" is feminine, naming the deceased's mother]"—for he will hear, though he cannot reply—and then say, "O So-and-so son of So-and-so," and he will sit upright; and then say, "O So-and-so son of So-and-so," and he will say, "Direct me, Allah have mercy on you," though you will not hear it, but should say, "Remember the creed upon which you departed from this world, the testification that there is no god but Allah, and Muhammad is His slave and messenger, and that you accepted Allah as your Lord, Islam as your religion, Muhammad as your prophet, and the Koran as your exemplar." For then the two angels Munkar and Nakir will take each other's hand and say, "Let us go, what is there to keep us beside someone who has been instructed how to make his plea?" '

"A man said, 'O Messenger of Allah, what if one does not know the name of his mother?' and he answered, 'Then one should mention his descent from his mother Eve, saying, "O So-and-so son of Eve..." ' "

Tabarani related this hadith in his *al-Mu'jam al-kabir,* and Ibn Hajar 'Asqalani has said that "its chain of transmission is sound" (*Talkhis al-habir fi takhrij ahadith al-Rafi'i al-kabir* (y15), 2.143). Some scholars have said that this hadith is not well authenticated (da'if), while others have gone to the extreme of calling it a forgery.

إذا مات أحد من إخوانكم فسويتم التراب على قبره فليقم أحدكم على رأس قبره ثم ليقل : يا فلان بن فلانة ، فإنه يسمعه ولا يجيب ، ثم يقول : يا فلان بن فلانة ، فإنه يستوي قاعداً ثم يقول يا فلان بن فلانة ، فيقول : أرشدنا يرحمك الله ، ولكن لا تشعرون فليقل : اذكر ما خرجت عليه من الدنيا شهادة أن لا إله إلا الله ، وأن محمداً عبده ورسوله ، وأنك رضيت بالله رباً وبالإسلام ديناً وبمحمد نبياً وبالقرآن إماماً فإن منكراً ونكيراً يأخذ كل واحد بيد صاحبه ويقول : انطلق بنا ما يقعدنا عند من لقن حجته؟

فقال رجل : يا رسول الله فإن لم يعرف أمه قال : ينسبه إلى أمه حواء : يا فلان بن حواء .

هذا الحديث رواه الطبراني في معجمه الكبير وقال الحافظ ابن حجر : إسناده صالح ، وبعض العلماء يضعف هذا الحديث وبعضهم يبالغ فيجعله موضوعاً .

DISCUSSION OF THE EVIDENCE

مناقشة الأدلة

w32.2 The first three of the above hadiths, all of them rigorously authenticated (sahih), show that:

(1) a dead person hears the words of a living person speaking to him and even the sounds of movement around him;

(2) the dead are questioned in their graves;

w32.2 [. . . نستخلص من هذا أن] الأحاديث الثلاثة الأولى وهي أحاديث صحيحة تفيد ما يلي :

(١) أن الميت يسمع كلام الحي إذا خاطبه بل يسمع حركته من حوله .

(٢) أن الميت يسأل في قبره .

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(3) and that it is legally valid after burial for a living person to ask Allah to forgive the deceased and make him steadfast for the questioning of the two angels.

As for the fourth hadith, scholars have felt comfortable with it, saying that if the deceased can hear, we should let him hear these words which he is in the direst need of in such circumstances, and even if the hadith that has conveyed them is not well authenticated, its content is valid and true.

The foregoing is what has been said about instructing the deceased (talqin), so whoever does it cannot be blamed, since they have something of a case for it; and whoever does not cannot be blamed, because they do not consider the case sufficient. In any event, we should be anxious to promote love and brotherhood between Muslims, and not divide the ranks with questions like this, for the important thing is our belief in the oneness of Allah, and the unity of the Islamic Community.

(٣) أن من المشروع أن يستغفر الحي للميت بعد دفنه ويطلب له التثبيت عند سؤال الملكين.

أما الحديث الرابع فقد استأنس به العلماء وقالوا إذا كان الميت يسمع فلنسمعه هذه الكلمات التي هو بأمس الحاجة إليها في هذا الموقف وإن كان الحديث الذي ورد بها ليس قوياً لكن مضمونة كلام حق صحيح [. . .]. هذا ما قيل في الموضوع، وبناء عليه فمن فعله لا ننكر عليه لأن له حجة ما، ومن تركه لا ننكر عليه لأنه لا يرى هذا حجة. [. . .] واحرص على محبة المسلمين وأخوتهم ولا تفرق الصفوف بمثل هذه المسائل، فأهم شيء توحيد الله ووحدة الأمة [محرر بالتصرف من فتوى للشيخ نوح علي سلمان وقد راجعه المؤلف حفظه الله تعالى].

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w33.0 THE FRIENDS OF ALLAH (AWLIYA') (from g5.7(4))

w33.0 أولياء الله تعالى

w33.1 Allah Most High says:

"Verily the friends of Allah, no fear shall be upon them, nor shall they sorrow, those who believe and are godfearing. Great tidings are theirs in this life and the world to come. There is no changing the words of Allah, that is the supreme triumph" (Koran 10:62–64).

w33.1 قال الله تعالى:

﴿أَلَا إِنَّ أَوْلِيَاءَ اللَّهِ لَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ، الَّذِينَ آمَنُوا وَكَانُوا يَتَّقُونَ، لَهُمُ الْبُشْرَى فِي الْحَيَاةِ الدُّنْيَا وَفِي الْآخِرَةِ لَا تَبْدِيلَ لِكَلِمَاتِ اللَّهِ ذَلِكَ هُوَ الْفَوْزُ الْعَظِيمُ﴾ [يونس: ٦٢ - ٦٤].

w33.2 (n:) The following rigorously authenticated (sahih) hadith has been translated below with two commentaries, one by 'Abd al-Ra'uf Munawi (M:) and the other by Muhammad ibn 'Allan Bakri (B:).

The Prophet (Allah bless him and give him peace) said:

"Allah Most High says: 'He who is hostile to a friend (wali) of Mine I declare war against. My

w33.2 (ت: قد ترجم الحديث الصحيح التالي بشرحين: أحدهما لعبد الرؤوف المناوي وشرحه مشار إليه بحرف «م»، والثاني لمحمد بن علان البكري وشرحه مشار إليه بحرف «ب»).

قال رسول الله ﷺ: «إن الله تعالى قال: من عادى لي ولياً فقد آذنته بالحرب، وما تقرب إليَّ عبدي بشيء

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slave approaches Me with nothing more beloved to Me than what I have made obligatory for him, and My slave keeps drawing nearer to Me with voluntary works until I love him. And when I love him, I am his hearing with which he hears, his sight with which he sees, his hand with which he seizes, and his foot with which he walks. If he asks Me, I will surely give to him, and if he seeks refuge in Me, I will surely protect him.' "

He who is hostile to a friend (wali) of Mine

(M: *friend* meaning the knower of Allah ('arif billah) who is constant in obedience to Him and sincere in his acts of worship)

(B: that is, he who is close to Allah by his devotion to Him through obeying His commands and shunning the acts He has forbidden)

I declare war against

(M: I inform him that I shall make war upon him, meaning that Allah will deal with him as one at war does, namely, with theophanies against him of manifestations of omnipotent force and majesty, this being the ultimate threat. The words *hostile to a friend (wali)* mean hostile to him for being a friend (wali), not just any hostility whatever. It excludes such things as taking him to court to have him fulfill an obligation. Rather, hostility to him for being a friend of Allah is to deny it out of mere obstinacy or envy, or to disparage or abuse him, and similar kinds of ill-treatment. And when the peril of being hostile toward such a person is appreciated, the reward for friendship with him may likewise be inferred)

(B: *I declare war against* means *I shall fight this enemy for him,* i.e. destroy him. And this is a very severe threat for opposing or having enmity towards someone Allah loves. Too, the affirmation of Allah's fighting the enemies of His friends entails the affirmation of His friendship for those who befriend them).

My slave approaches Me with nothing more beloved to Me than what I have made obligatory for him

(B: meaning the performance of what I have made obligatory for him, whether individually or communally. The obligatory is more beloved to Allah than voluntary devotions because it is more perfect, since the command to do it is absolute, implying a reward for its performance and punish-

أحبَّ إليَّ مما افترضتُ عليه وما يزال عبدي يتقرب إليَّ بالنوافل حتى أحبه، فإذا أحببتُه كنتُ سمعَهُ الذي يسمعُ به، وبصرَهُ الذي يُبصرُ به، ويدَهُ التي يبطش بها ورجلَهُ التي يمشي بها، وإنْ سألني أعطيتُه ولئنْ استعاذني لأُعيذَنَّهُ» [رواه البخاري].

«... من عادى لي ولياً» (م: والمراد بالولي العارف بالله المواظب على طاعته المخلص في عبادته).

(ب: وهو القريب من الله لتقربه إليه بامتثال أمره واجتناب نواهيه).

«فقد آذنته بالحرب».

(م: أي أعلمته بأني سأحارب أي أن الله سيعامله معاملة المحارب من التجلي عليه بمظاهر القهر والجلال وهذا في الغاية القصوى من التهديد. والمراد عادى ولياً لأجل ولايته لا مطلقاً فخرج نحو محاكمته لخلاص حق. ومعاداته لولايته إما بإنكارها عناداً أو حسداً أو بسبِّه أو شتمه ونحو ذلك من ضروب الإيذاء. وإذا عُلم ما في معاداته من الوعيد علم ما في موالاته من الثواب).

(ب: أي إني محارب له عنه أي مهلكه. وهذا وعيد شديد لمعاندته ومعاداته من أحبه الله تعالى ويلزم من ثبوت محاربته تعالى لأعداء أوليائه ثبوت موالاته لمن والاهم).

«وما تقرَّب إليَّ عبدي بشيء أحب إليَّ مما افترضتُ عليه».

(ب: أي من أداء ما افترضتُ عليه عيناً كان أو كفاية وإنما كان أحب إليه من النفل لأنه أكمل من حيث أن الأمر به جازم متضمن للثواب على فعله والعقاب

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ment for its nonperformance, as opposed to voluntary devotions, whose nonperformance is unpunished, and which, it is said, amount to but one-seventieth of the value of an obligatory act),

and My slave keeps drawing nearer to Me with voluntary works until I love him. And when I love him, I am his hearing

(B: the protector of his hearing)

with which he hears

(B: meaning He who keeps it from being used to hear what is not permissible to listen to, such as slander, talebearing, and the like),

his sight with which he sees

(B: safeguarding it from what is unlawful to look at),

his hand with which he seizes

(B: so that he takes only what is lawful),

and his foot with which he walks

(B: so that he walks only to what is permitted)

(M: in summary, whoever draws near to Allah through what is obligatory, and then through voluntary works, Allah draws him nearer and elevates him from the level of true faith (iman) to the level of the perfection of faith (ihsan, dis: u4) such that the knowledge in his heart becomes visible to the eye of his spiritual perception. To fill one's heart with knowledge of Allah effaces what is other than Him, so that one speaks not except of Him, moves not save at His behest, and if one looks, it is through Him, and if one seizes, it is through Him. And this is the consummate awareness of the oneness of Allah)

(B: the consequence of which is the preservation of the individual's whole person, so that he forsakes selfish desire and is wholly absorbed in obedience. Another interpretive possibility is that the hadith is a metaphor for Allah's help and assistance, as if Allah Most High, figuratively speaking, were to play the role of the senses with which the individual perceives and the limbs he relies on. A variant has the addendum:)

so that through Me he hears, through Me he sees, through Me he seizes, and through Me he walks

(M: concerning which, the sheikhs of the Sufis (Allah Most High be well pleased with them) have had disclosures of the hidden and experiential indications that would make crumbled bones quake. But these are of no use save to those who

على تركه بخلاف النفل فإن الأمر به غير جازم يثاب على فعله ولا يعاقب على تركه ولأنه كما قيل جزء من سبعين جزءاً من الفرض).

«وما يزال عبدي يتقرب إليّ بالنوافل حتى أحبه فإذا أحببته كنت سمعه».

(ب: أي حافظ سمعه).

«الذي يسمع به».

(ب: أي حافظه عن أن يسمع به ما لا يحل سماعه من غيبة ونميمة وما في معناهما).

«وبصره الذي يبصر به».

(ب: أي حافظه عما يحرم النظر إليه).

«ويده التي يبطش بها».

(ب: فلا يبطش إلا فيما يحل).

«ورجله التي يمشي بها».

(ب: فلا يمش إلا فيما يحل).

(م: والحاصل أن من تقرب إليه بالفرض ثم النفل قَرَّبهُ فرقاه من درجة الإيمان إلى مقام الإحسان حتى يصير ما في قلبه من المعرفة يشاهده بعين بصيرته وامتلاء القلب بمعرفته يمحي كل ما سواه فلا ينطق إلا بذكره ولا يتحرك إلا بأمره فإن نظر فبه أو سمع فبه أو بطش فبه وهذا هو كمال التوحيد).

(ب: وحاصل ذلك حفظ جوارحه وأعضائه حتى يقلع عن الشهوات ويستغرق في الطاعات [...] ويجوز أن يكون مجازاً عن نصره وتأييده فكأنه تعالى نزل نفسه منزلة جوارحه التي يدرك بها ويستعين بها تشبيهاً. وزيادة:).

«فبي يسمع وبي يبصر وبي يبطش وبي يمشي».

(م: ولمشائخ الصوفية رضي الله تعالى عنهم في هذا الباب فتوحات غيبية وإشارات ذوقية تهتز بها العظام البالية لكنها لا تصلح إلا لمن سلك سبيلهم

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tread their path and come to know the wellspring from which they drink, as opposed to those who do not, and are not safe from grave error and falling into the abyss of believing that Allah can indwell in created things (hulul, dis: w7.1), or that other than Him can unite with Him (ittihad, w7.2))

(B: this then, and those who fancy that other than Allah can unite with Him or that Allah can indwell in created things claim that the import of the hadith is not figurative but literal, and that Allah, far exalted above what they say, actually permeates or unifies with one, may Allah render them even viler).

If he asks Me, I will surely give to him

(M: what he asks, as happened to many of the early Muslims),

and if he seeks refuge in Me, I will surely protect him

(M: from what he fears, this being the way of a lover with his beloved. His unquestionable promise, solemnified by the form of the oath (n: in the words "I will surely"), entails that whoever draws near to Him through the above will not have his prayer (du'a') rejected).

(*Dalil al-falihin li turuq Riyad al-salihin* (y25), 3.344–46, and *Fayd al-Qadir sharh al-Jami' al-saghir* (y91), 2.240–41)

فعلم مشربهم بخلاف غيرهم فلا يؤمن عليه من الغلط فيهوي في مهواة الحلول والاتحاد).

(ب: هذا والاتحادية والحلولية قبحهم الله يزعمون أن هذا في حقيقته وأنه تعالى عما يقولون علواً كبيراً حال فيه ومتحد به).

«وإن سألني أعطيته».

(م: مؤوله كما وقع لكثير من السلف).

«ولئن استعاذني لأعيذنه».

(م: مما يخاف وهذا حال المحب مع محبوبه وفي وعده المحقق المؤكد بالقسم إيذان بأن من تقرب بما مر لا يرد دعاؤه).

[محرّر من دليل الفالحين لطرق رياض الصالحين: ٣/ ٣٤٤-٣٤٦، ومحرر من فيض القدير شرح الجامع الصغير: ٢/ ٢٤٠ - ٢٤١ بتقديم وتأخير].

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w34.0 VISITING GRAVES (from g5.8)

w34.0 سنّية زيارة القبور

w34.1 (Nawawi:) The Prophet (Allah bless him and give him peace) said,

"I had forbidden you to visit graves, but now visit them...."

This is one of the hadiths that comprise both the ruling that supersedes a previously valid ruling and the one superseded. It explicitly states that the prohibition of men visiting graves has been lifted. Scholars unanimously concur that visiting them is sunna for men. As for women, there is dis-

w34.1 (النووي:) [عن ابن بريدة عن أبيه قال:] قال رسول الله ﷺ:

«نهيتكم عن زيارة القبور فزوروها...» [رواه مسلم].

هذا من الأحاديث التي تجمع الناسخ والمنسوخ وهو صريح في نسخ نهي الرجال عن زيارتها. وأجمعوا على أن زيارتها سنة لهم. وأما النساء ففيهن خلاف لأصحابنا [قدمناه وقدمنا أن] من

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agreement among our colleagues about them, those who hold that women may not visit them saying that women are not intended by an address to men (n: the Arabic male plural imperative *zuruha*) (N: though the sounder position in the Shafi'i school is that woman may visit graves as long as it does not entail blameworthy things such as displays of grief, mixing of men and women, and the like. The hadiths prohibiting women from visiting graves are interpreted by Shafi'i scholars as applicable to the time before the prohibition was lifted by the above hadith) (*Sahih Muslim bi Sharh al-Nawawi* (y93), 7.46–47).

منعهن قال النساء لا يدخلن في خطاب الرجال [...] (ح: والأصح في المذهب الشافعي جواز زيارة النساء للقبور ما لم يترتب على ذلك مفسدة شرعية كإظهارهن الحزن الشديد أو اختلاطهن بالرجال الأجانب ونحوهما. وأما الأحاديث الواردة في نهي النساء عن زيارة القبور فمحمولة عند الشافعية على ما قبل النسخ المذكور في الحديث أعلاه) [محرر من صحيح مسلم بشرح النووي: ٧/ ٤٦ - ٤٧].

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w35.0 DONATING THE REWARD FOR KORAN RECITAL TO THE DECEASED (from g5.8, end)

w35.0 هبة ثواب قراءة القرآن وغيرها من القربات للميت

w35.1 (Muhammad Makhluf:) As for reciting the Koran for the deceased, whether at his grave or far from it, scholars disagree as to whether the reward for it reaches him. The scholarly majority hold that it does reach him, and this is the truth, especially if the reciter afterwards donates the reward of what he has read to the deceased. In such a case the reciter also receives the reward for his recital without this diminishing anything from the reward of the deceased (*Fatawa shar'iyya wa buhuth Islamiyya* (y79), 2.303).

w35.1 (محمد مخلوف:) وأما قراءة القرآن للميت سواء أكانت على القبر أم بعيداً منه، فقد اختلف الفقهاء في وصول ثوابها إليه، والجمهور على الوصول وهو الحق، خصوصاً إذا وهب القارىء بعد القراءة ثواب ما قرأه للميت. وللقارىء أيضاً ثواب لا ينقص من أجر الميت شيئاً [نقل من فتاوى شرعية وبحوث إسلامية: ٢/ ٣٠٣].

w35.2 (N:) The position of Hanafis and Hanbalis is that a Muslim is entitled to donate the reward of any kind of worship he performs to whomever he wishes of the Muslim dead. As for Shafi'is and Malikis, they distinguish between acts that are valid to perform in another's stead and those that are not, the former being valid to donate the reward of to the deceased, while the latter are not, though the later scholars of the Shafi'is and Malikis incline toward the validity of donating the reward for any kind of worship whatever to the dead. The Hanafis and Hanbalis adduce the following evidence to support their position:

w35.2 (ح:) ذهب الحنفية والحنابلة إلى أن كل قربة فعلها المسلم له أن يهب ثوابها لمن شاء من أموات المسلمين. [...] وأما الشافعية والمالكية فقد فرقوا بين ما تصح فيه النيابة وما لا تصح. فما تصح فيه النيابة يجوز التبرع به عن الميت وما لا تصح فيه النيابة لا يصح التبرع به، ولكن متأخريهم يميلون إلى جواز التبرع بالكل. [...].

استدل الحنفية والحنابلة بما يلي:

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(1) Bukhari and Muslim relate that the Prophet (Allah bless him and give him peace) sacrificed two rams of predominately white color, one for himself and the other for his Community (Umma). The evidence therein is that the Prophet (Allah bless him and give him peace) offered sacrifice animals and donated the reward to his Community, which includes both the living and the dead, both those who existed at his time and those who came after.

(2) Anas relates that he said to the Prophet (Allah bless him and give him peace): "O Messenger of Allah, we give in charity, perform the pilgrimage, and supplicate for our dead. Does this reach them?" He replied, "Yes, indeed it reaches them, and they rejoice thereat just as one of you rejoices at the gift of a tray of food."

(3) The Prophet (Allah bless him and give him peace) said, "Whoever dies with an obligatory fast to perform, his responsible family member may fast it in his stead."

(4) The Prophet (Allah bless him and give him peace) said, "Recite Ya Sin [Koran 36] over your dead."

(5) Allah Mighty and Majestic has informed us that the angels ask forgiveness for believers, as He says,

"The angels glorify their Lord with praise and ask forgiveness for those on earth" (Koran 42:5),

and He praises believers who ask forgiveness for their brethren, by saying,

"... And those who come after them say, 'Lord, forgive us and our brethren who have preceded us in faith' " (Koran 59:10).

(6) And the Prophet (Allah bless him and give him peace) used to supplicate for those he performed the funeral prayer over—the evidence in all of the above being that supplications (du'a') are an act of worship, for the Prophet (Allah bless him and give him peace) said,

(١) أن النبي ﷺ ضحى بكبشين أملحين أحدهما عن نفسه والآخر عن أمته، رواه البخاري ومسلم. [...] [ت: وليس في رواية الصحيحين «أحدهما عن نفسه الخ» بل جاء في سنن ابن ماجه مكملاً ومفسراً له] ووجه الدلالة [...] أن النبي ﷺ تبرع بالأضحية وجعل ثوابها لأمته وهذا يشمل الحي والميت ومن كان في زمنه ومن جاء بعده. [...].

(٢) وعن أنس أنه سأل النبي ﷺ فقال: يا رسول الله إنا نتصدق عن موتانا ونحج عنهم وندعو لهم فهل يصل ذلك إليهم؟ قال: «نعم، إنه ليصل إليهم وإنهم ليفرحون به كما يفرح أحدكم بالطبق إذا أهدي إليه» [رواه أبو حفص الكبير العكبري، كما ذكر في فتح القدير: ٣/ ١٤٣].

(٣) وقال عليه الصلاة والسلام: «من مات وعليه صوم صام عنه وليه» [رواه البخاري ومسلم].

(٤) وعن النبي ﷺ أنه قال: «اقرؤوا على موتاكم يس» [رواه أبو داود]. [...].

(٥) وأخبر الله عز وجل أن الملائكة تستغفر للمؤمنين فقال:

﴿وَالْمَلَائِكَةُ يُسَبِّحُونَ بِحَمْدِ رَبِّهِمْ وَيَسْتَغْفِرُونَ لِمَنْ فِي الْأَرْضِ﴾ [الشورى: ٥].

وأثنى الله تعالى على المؤمنين الذين يستغفرون لإخوانهم فقال:

﴿وَالَّذِينَ جَاءُوا مِنْ بَعْدِهِمْ يَقُولُونَ: رَبَّنَا اغْفِرْ لَنَا وَلِإِخْوَانِنَا الَّذِينَ سَبَقُونَا بِالْإِيمَانِ﴾ [الحشر: ١٠].

(٦) وكان ﷺ يدعو لمن صلى عليه من الأموات [والأحاديث في هذا متعددة في كتب السنة] ووجه الدلالة في هذا كله أن الدعاء عبادة قال ﷺ: «الدعاء هو

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"Supplication is worship,"

while the above texts clearly show that supplications benefit others besides the one who makes them, even when the other does not ask for the supplication to be made for him.

The foregoing provides evidence that the deceased benefits from all types of worship, whether monetary or physical, since fasting, pilgrimage, supplications, and asking forgiveness are all physical acts of worship, and Allah Most High conveys the benefit of them to the deceased—and so it must also be with other works (*Qada' al-'ibadat wa al-niyaba fiha* (y114), 400–403).

العبادة» [رواه أبو داود وغيره] وهذه النصوص واضحة في أن الدعاء ينتفع به غير صاحبه ولو لم يكن له تسبب في هذا الدعاء [. . .].

[. . .] وفيها دلالة على انتفاع الميت بسائر القرب سواء المالية منها والبدنية لأن الصوم والحج والدعاء والاستغفار عبادات بدنية وقد أوصل الله تعالى نفعها إلى الميت فكذلك سواها [محرر من قضاء العبادات والنيابة فيها: ٤٠٠ - ٤٠٣؛ بتقديم وتأخير، راجعه المؤلف حفظه الله تعالى].

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w36.0 STUDENTS OF SACRED LAW ACCEPTING ZAKAT (from h8.8(2))

w36.0 جواز الزكاة لطلبة العلم

w36.1 (Ghazali:) If someone attaining knowledge of Sacred Law would be prevented from doing so if he were to engage in earning a living, he is considered "poor" (N: in respect to the permissibility of his accepting zakat), and his ability to earn is not taken into consideration. But if he is merely a devotee whose gaining a livelihood would busy him from his religious devotions and schedule of supererogatory worship, then he must go earn a living, for earning is more important than devotions.

.... The second category consists of those who are short of money (miskin), i.e. whose income does not cover their expenses. Someone might possess a thousand dirhams and be "short of money," while another might possess nothing but an axe and a rope and be self-sufficient. The modest lodgings one lives in and the clothes that cover one, to the degree required by one's condition, do not negate one's being short of money. Nor do household furnishings, meaning those which one needs and are suitable for one. Nor does possessing books of law negate one's being short of money (n: if one is a student of Sacred Law accepting zakat, as above), for if one owned nothing but

w36.1 (الغزالي:) [. . . و] إن كان متفقهاً ويمنعه الاشتغال بالكسب عن التفقه فهو فقير ولا تعتبر قدرته. وإن كان متعبداً يمنعه الكسب من وظائف العبادات وأوراد الأوقات فليكتسب لأن الكسب أولى من ذلك.

[. . .] الصنف الثاني المساكين والمسكين هو الذي لا يفي دخله بخرجه فقد يملك ألف درهم وهو مسكين وقد لا يملك إلا فأساً وحبلاً وهو غني. والدويرة التي يسكنها والثوب الذي يستره على قدر حاله لا يسلبه اسم المسكين. وكذا أثاث البيت أعني ما يحتاج إليه وذلك ما يليق به. وكذا كتب الفقه لا تخرجه عن المسكنة وإذا لم يملك إلا الكتب فلا

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books, one would not be obligated to pay the zakat of 'Eid al-Fitr (dis: h7.1), since books are legally considered as clothing and furnishings are, in that one needs them. One should, however, take the way of greater precaution in curbing one's need for books. Books are only needed for three purposes: teaching, personal benefit, and reading for entertainment. As for the need of reading for entertainment, it is not considered legally significant, such as with books of poetry, historical chronicles, and similar, which are of no benefit in the hereafter and no use in this life except reading and enjoyment. Such books must be sold to pay what is due when one owes an expiation (dis: o20.4) or the zakat of 'Eid al-Fitr, and someone possessing them is not considered short of money. As for the need to teach, if one needs a book to earn a living, as do trainers, teachers, or instructors who work for a salary, such books are the tools of their trade and are not sold to pay the zakat of 'Eid al-Fitr, nor are the tools of a tailor or any other professional. Nor are one's books sold if one teaches to fulfill the communal obligation (def: a5.1); possessing them does not negate one's being short of money, for this is an important need.

As for personal benefit and learning from books, such as keeping books of medicine to treat oneself or books of pious exhortations to read and take admonition from, if there is a doctor or an exhorter in town, one does not need them, while if there is not, one does. Further, one may not happen to need to read a book except after a time, in which case the period in which one needs it should be stipulated, the most reasonable criterion for which would seem to be that whatever one is not in need of during the course of a year one does not really need, for someone with food in excess of his needs for one day is obliged to pay the zakat of 'Eid al-Fitr, and if we stipulate the need for food as being that of one day, we should consider the need for furnishings and clothing as one year, summer clothing not being sold in winter, for example. Books, clothing, and furnishings would seem to be alike in this. Or someone might have two copies of a book and not need both, such that if he were to say that one is more accurate while the other is of finer quality, so both are needed, we would tell him to be satisfied with the

تلزمه صدقة الفطر وحكم الكتاب حكم الثوب وأثاث البيت فإنه محتاج إليه ولكن ينبغي أن يحتاط في قطع الحاجة بالكتاب. فالكتاب محتاج إليه لثلاثة أغراض: التعليم والاستفادة والتفرج بالمطالعة. أما حاجة التفرج فلا تعتبر كاقتناء كتب الأشعار وتواريخ الأخبار وأمثال ذلك مما لا ينفع في الآخرة ولا يجري في الدنيا إلا مجرى التفرج والاستئناس فهذا يباع في الكفارة وزكاة الفطر ويمنع اسم المسكنة. وأما حاجة التعليم إن كان لأجل الكسب كالمؤدب والمعلم والمدرس بأجرة فهذه آلته فلا تباع في الفطرة كأدوات الخياط وسائر المحترفين. وإن كان يدرس للقيام بفرض الكفاية فلا تباع ولا يسلبه ذلك اسم المسكين لأنها حاجة مهمة. وأما حاجة الاستفادة والتعلم من الكتاب كادخاره كتب طب ليعالج بها نفسه أو كتاب وعظ ليطالع فيه ويتعظ به فإن كان في البلد طبيب وواعظ فهذا مستغنى عنه وإن لم يكن فهو محتاج إليه. ثم ربما لا يحتاج إلى مطالعة الكتاب إلا بعد مدة فينبغي أن يضبط مدة الحاجة والأقرب أن يقال ما لا يحتاج إليه في السنة فهو مستغنى عنه فإن من فضل من قوت يومه شيء لزمته الفطرة فإذا قدرنا القوت باليوم فحاجة أثاث البيت وثياب البدن ينبغي أن يقدر بالسنة فلا تباع ثياب الصيف في الشتاء. والكتب بالثياب والأثاث أشبه. وقد يكون له من كتاب نسختان فلا حاجة إلى إحداهما فإن قال إحداهما أصح والأخرى أحسن فأنا محتاج إليهما قلنا

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more accurate one and sell the finer, forgoing mere entertainment and luxury. If one has two books on a subject, one of which is comprehensive and the other abridged, then if personal benefit is the purpose, one should keep the more comprehensive, while if one needs them to teach, one may require both, since each possesses a virtue not found in the other. Similar examples are innumerable and the discipline of jurisprudence cannot cover them all. Rather, the above have been mentioned because of widespread abuse, and to apprise of the merit of the above criterion over others. For it is impossible to deal with all cases, which would entail estimating the amount, number, and kinds of household furnishings and clothes, the spaciousness of a house or lack of it, and so forth, there being no firm limits to such matters. But the legal scholar must use personal reasoning (ijtihad) with respect to them and approximate the criteria that seem likeliest to him, braving the danger of falling into things of doubtful legality, while a godfearing person will take the path that is religiously more precautionary, leaving what causes him doubt for what does not. There are many gray areas between the two clear-cut extremes, and nothing can save one from them except following the way of greater precaution (*Ihya' 'ulum al-din* (y39), 1.199).

اكتف بالأصح وبع الأحسن ودع التفرج والترفه. وإن كان نسختان من علم واحد إحداهما بسيطة والأخرى وجيزة فإن كان مقصوده الاستفادة فليكتف بالبسيط وإن كان قصده التدريس فيحتاج إليهما إذ في كل واحدة فائدة ليست في الأخرى. وأمثال هذه الصور لا تنحصر ولم يتعرض له في فن الفقه. وإنما أوردناه لعموم البلوى والتنبيه بحسن هذا النظر على غيره. فإن استقصاء هذه الصور غير ممكن إذ يتعدى مثل هذا النظر في أثاث البيت في مقدارها وعددها ونوعها وفي ثياب البدن وفي الدار وسعتها وضيقها وليس لهذه الأمور حدود محدودة ولكن الفقيه يجتهد فيها برأيه ويقرب في التحديدات بما يراه ويقتحم فيه خطر الشبهات والمتورع يأخذ فيه بالأحوط ويدع ما يريبه إلى ما لا يريبه. والدرجات المتوسطة المشكلة بين الأطراف المتقابلة الجلية كثيرة ولا ينجي منها إلا الاحتياط [محرر من إحياء علوم الدين: ١/ ١٩٩].

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w37.0 THE UNLAWFULNESS OF MASTURBATION (from i1.18(9))

w37.0 تحريم الاستمناء

w37.1 (N:) Masturbation with one's own hand is unlawful. Imam Shafi'i (Allah be well pleased with him) was asked in connection with masturbation about the word of Allah Most High:

"... those who guard their private parts, save from their wives or [bondwomen] whom their right hands own, for these are not blameworthy. But whoever seeks beyond that, those are the transgressors" (Koran 23:5–7),

﴿... وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ فَمَنِ ابْتَغَىٰ وَرَاءَ ذَٰلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ﴾ [المؤمنون: ٥ - ٧].

and said that these Koranic verses restrict permissible sex to what is mentioned in them, since the last verse denies that anything besides this is lawful.

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w38.0 KEEPING SILENT ALL DAY IS OFFENSIVE (from i1.32)

w38.1 (O:) It is offensive for anyone to keep silent the whole day until night when there is no need, as is attested to by the hadith related by Abu Dawud that 'Ali (Allah be well pleased with him) said, "I have memorized from the Messenger of Allah (Allah bless him and give him peace) that no one is considered an orphan after puberty and no one may remain silent until nightfall." And Bukhari relates that Abu Bakr Siddiq (Allah be well pleased with him) said to a woman on hajj who had resolved to keep silent, "Speak, for this is not permissible but is a practice of the pre-Islamic period of ignorance."

Rather, one should occupy the tongue with Koran, *dhikr*, or other acts of obedience performed with the tongue (*Fayd al-Ilah al-Malik* (y27), 1.284).

w38.0 كراهية الصوم عن الكلام

w38.1 (عمر بركات:) ويكره لكل أحد صمت يوم إلى الليل من غير حاجة لما روى أبو داود [بإسناد حسن] عن علي رضي الله عنه قال: حفظت من رسول الله ﷺ: لا يتم بعد احتلام ولا صمت إلى الليل؛ وروى البخاري عن أبي بكر الصديق رضي الله عنه أنه قال لامرأة حجت مصمتة: تكلمي فإن هذا لا يحل فإنه من عمل الجاهلية.

بل ينبغي أن يشغل لسانه بتلاوة قرآن أو ذكر أو غير ذلك من الطاعات المتعلقة باللسان [محرر من فيض الإله المالك في حل ألفاظ عمدة السالك وعدة الناسك: ١/ ٢٨٤].

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w39.0 LAYLAT AL-QADR (from i3.2)

w39.1 (Muhyiddin ibn al-'Arabi:) Diligently perform the night vigil prayer (tahajjud, def: f10.8) every night of the year, and do not neglect to supplicate Allah each night, letting part of your supplication be for forgiveness and well-being in your religion, this-worldly concerns, and the hereafter, for you do not know which night of the year will coincide with Laylat al-Qadr (*al-Futuhat al-Makkiyya* (y55), 4.486).

w39.0 ليلة القدر

w39.1 (محيي الدين بن العربي:) [...] وحافظ في السنة كلها على القيام كل ليلة [ولو بما ذكرت لك] ولا تهمل الدعاء في كل ليلة واجعل من دعائك السؤال في العفو والعافية في الدين والدنيا والآخرة فإنك لا تدري متى تصادف ليلة القدر من سنتك [نقل من الفتوحات المكية: ٤/ ٤٨٦].

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w40.0 SUPPLICATING ALLAH THROUGH AN INTERMEDIARY (TAWASSUL) (from j13.2)

w40.0 التوسل

w40.1 (n: Special vocabulary:

Tawassul: supplicating Allah by means of an intermediary, whether it be a

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living person, dead person, a good deed, or a name or attribute of Allah Most High.)

w40.2 (Yusuf Rifa'i:) I here want to convey the position, attested to by compelling legal evidence, of the orthodox majority of Sunni Muslims on the subject of supplicating Allah through an intermediary (tawassul), and so I say (and Allah alone gives success) that since there is no disagreement among scholars that supplicating Allah through an intermediary is in principle legally valid, the discussion of its details merely concerns derived rulings that involve interschool differences, unrelated to questions of belief or unbelief, monotheism or associating partners with Allah (shirk); the sphere of the question being limited to permissibility or impermissibility, and its ruling being that it is either lawful or unlawful. There is no difference among groups of Muslims in their consensus on the permissibility of three types of supplicating Allah through an intermediary (tawassul):

(1) *tawassul* through a living righteous person to Allah Most High, as in the hadith of the blind man with the Prophet (Allah bless him and give him peace) as we shall explain;

(2) the *tawassul* of a living person to Allah Most High through his own good deeds, as in the hadith of the three people trapped in a cave by a great stone, a hadith related by Imam Bukhari in his *Sahih;*

(3) and the *tawassul* of a person to Allah Most High through His entity (dhat), names, attributes (dis: w29.2(6)), and so forth.

Since the legality of these types is agreed upon, there is no reason to set forth the evidence for them. The only area of disagreement is supplicating Allah (tawassul) through a righteous dead person. The majority of the orthodox Sunni Community hold that it is lawful, and have supporting hadith evidence, of which we will content ourselves with the Hadith of the Blind Man, since it is the central pivot upon which the discussion turns.

w40.2 (يوسف الرفاعي:) [. . .] هذا وأود أن أنقل فيما يلي رأي أهل السنة والجماعة المستند إلى الأدلة الشرعية المحكمة في موضوع التوسل فأقول وبالله التوفيق [. . .] فمن حيث أن أصل التوسل مشروع لا خلاف عليه، كان الكلام في فروعه من الخلافيات التي لا تتعلق بإيمان ولا كفر، ولا توحيد ولا شرك، وإنما محلها الجواز والمنع، فحكمها الحلال والحرام.

إنه لا خلاف بين طوائف المسلمين إجماعاً على ثلاثة أنواع من التوسل:

- النوع الأول: التوسل بالحي الصالح إلى الله تعالى، كما في حديث الضرير مع النبي ﷺ، الذي سوف يأتي بيانه.
- النوع الثاني: توسل الحي بالعمل الصالح إلى الله تعالى، كما في حديث «الثلاثة أصحاب الغار والصخرة» الذي أورده الإمام البخاري في صحيحه.
- النوع الثالث: التوسل إلى الله بذاته تعالى، وبأسمائه وصفاته ونحوها.

وبما أن هذه الأنواع متفق على مشروعيتها، فلا داعي لسرد الأدلة عليها. وإنما الخلاف هو في التوسل بالميت الصالح؛ وقد أجازه جمهور المسلمين من أهل السنة والجماعة، ولديهم عليه الأدلة النقلية المتعاضدة نكتفي هنا منها بـ «حديث الأعمى» من حيث أنه المحور الأكبر في هذا الباب وعليه يدور النقاش.

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THE HADITH OF THE BLIND MAN

w40.3 Tirmidhi relates, through his chain of narrators from 'Uthman ibn Hunayf, that a blind man came to the Prophet (Allah bless him and give him peace) and said, "I've been afflicted in my eyesight, so please pray to Allah for me." The Prophet (Allah bless him and give him peace) said: "Go make ablution (wudu), perform two rak'as of prayer, and then say:

" 'O Allah, I ask You and turn to You through my prophet Muhammad, the Prophet of Mercy; O Muhammad, I seek your intercession with my Lord *for the return of my eyesight* [and in another version: "for my need, that it may be fulfilled. O Allah, grant him intercession for me"].' "

The Prophet (Allah bless him and give him peace) added, "And if there is some need, do the same."

Scholars of Sacred Law infer from this hadith the recommended character of the *prayer of need,* in which someone in need of something from Allah Most High performs such a prayer and then turns to Allah with this supplication together with other suitable supplications, traditional or otherwise, according to the need and how the person feels. The express content of the hadith proves the legal validity of *tawassul* through a living person (n: as the Prophet (Allah bless him and give him peace) was alive at the time). It implicitly proves the validity of *tawassul* through a deceased one as well, since *tawassul* through a living or dead person is not through a physical body or through a life or death, but rather through the positive meaning (ma'na tayyib) attached to the person in both life and death. The body is but the vehicle that carries that significance, which requires that the person be respected whether alive or dead; for the words "O Muhammad" are an address to someone physically absent—in which state the living and dead are alike—an address to the meaning, dear to Allah, that is connected with his spirit, a meaning that is the ground of *tawassul,* be it through a living or dead person.

حديث الأعمى

w40.3 روى الترمذي بسنده عن عثمان بن حنيف أن رجلاً أعمى أتى النبي ﷺ فقال: إني أصبت في بصري فادع الله لي، قال: اذهب فتوضأ، وصل ركعتين ثم قل: «اللهم إني أسألك وأتوجه إليك بنبيّ محمد، نبي الرحمة، يا محمد إني أستشفع بك على ربي في رد بصري» - وفي رواية «في حاجتي لتقضى لي، اللهم شفّعه فيّ» (ثم قال ﷺ:) وإن كانت حاجة فافعل مثل ذلك.

[(وفي بعض روايات الحديث خلاف يسير في الألفاظ ليس بذي بال)] من هذا الحديث أخذ الفقهاء مندوبية صلاة الحاجة: فمن كانت له إلى الله تعالى حاجة، صلى هذه الصلاة، وتوجه إلى الله بهذا الدعاء، مع ما يناسبه من الدعاء المأثور وغير المأثور، مما تمس إليه الحاجة وما يشعر به صاحبها.

ومنطوق الحديث حجة في صحة التوسل بالحي، ومفهومه حجة على صحة التوسل بالحي أو الميت ليس توسلاً بالجسم ولا بالحياة ولا بالموت، ولكن بالمعنى الطيب الملازم للإنسان في الموت والحياة، وما الجسم إلا حقيبة لصيانة هذا المعنى، فاستوجب بهذا تكريمه حياً كان أو ميتاً، على أن قوله «يا محمد» نداء للغائب الذي يستوي فيه الحي والميت، فهو موجه إلى المعنى الكريم على الله، والملازم للروح، والذي هو موضع التوسل بالحي أو الميت على حد سواء.

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THE HADITH OF THE MAN IN NEED

w40.4 Moreover, Tabarani, in his *al-Mu'jam al-saghir,* reports a hadith from 'Uthman ibn Hunayf that a man repeatedly visited 'Uthman ibn 'Affan (Allah be well pleased with him) concerning something he needed, but 'Uthman paid no attention to him or his need. The man met Ibn Hunayf and complained to him about the matter—this being after the death of the Prophet (Allah bless him and give him peace) and after the caliphates of Abu Bakr and 'Umar—so 'Uthman ibn Hunayf, who was one of the Companions who collected hadiths and were learned in the religion of Allah, said: "Go to the place of ablution and perform ablution (wudu), then come to the mosque, perform two rak'as of prayer therein, and say,

" 'O Allah, I ask You and turn to You through our prophet Muhammad, the Prophet of Mercy; O Muhammad, I turn through you to my Lord, that He may fulfill my need,'

"and mention your need. Then come so that I can go with you [N: to the caliph 'Uthman]." So the man left and did as he had been told, then went to the door of 'Uthman ibn 'Affan (Allah be well pleased with him), and the doorman came, took him by the hand, brought him to 'Uthman ibn 'Affan and seated him next to him on a cushion. 'Uthman asked, "What do you need?" and the man mentioned what he wanted, and 'Uthman accomplished it for him and then said, "I hadn't remembered your need until just now," adding, "Whenever you need something, just mention it." Then the man departed, met 'Uthman ibn Hunayf, and said to him, "May Allah reward you! He didn't see to my need or pay any attention to me until you spoke with him." 'Uthman ibn Hunayf replied, "By Allah, I didn't speak to him, but I have seen a blind man come to the Messenger of Allah (Allah bless him and give him peace) and complain to him of the loss of his eyesight. The Prophet (Allah bless him and give him peace) said, 'Can you not bear it?' and the man replied, 'O Messenger of Allah, I do not have anyone to lead me around, and it is a great hardship for me.' The Prophet (Allah bless him

حديث صاحب الحاجة

w40.4 ومع هذا فقد أخرج الطبراني في معجمه الصغير، عن [أبي أمامة بن سهل بن حنيف، عن عمه] عثمان بن حنيف: أن رجلاً كان يختلف إلى عثمان بن عفان رضي الله عنه في حاجة له، فكان عثمان لا يلتفت إليه ولا ينظر في حاجته، فلقي ابن حنيف فشكا إليه ذلك (أي بعد وفاة النبي ﷺ، وبعد خلافة أبي بكر وعمر).

فقال له عثمان بن حنيف (وهو الصحابي المحدث العالم بدين الله): ايت الميضأة فتوضأ، ثم ايت المسجد، فصل فيه ركعتين، ثم قل:

«اللهم إني أسألك وأتوجه إليك بنبينا محمد نبي الرحمة، يا محمد: إني أتوجه بك إلى ربي فيقضي حاجتي» قال وتذكر حاجتك، ورح حتى أروح معك.

فانطلق الرجل يصنع ما قال له، ثم أتى باب عثمان بن عفان رضي الله عنه، فجاء البواب حتى أخذ بيده فأدخله على عثمان بن عفان فأجلسه معه على الطنفسة [(الوسادة)] فقال: ما حاجتك؟ فذكر حاجته وقضاها له، ثم قال له: ما ذكرت حاجتك حتى كان الساعة. وقال: ما كانت لك من حاجة فاذكرها!

ثم أن الرجل خرج من عنده، فلقي عثمان بن حنيف. فقال له: جزاك الله خيراً، ما كان ينظر في حاجتي ولا يلتفت إليّ حتى كلمته [(يريد أن ابن حنيف كلمه، أي توسط له عند عثمان ابن عفان)].

فقال عثمان بن حنيف: والله ما كلمته. لكني شهدت رسول الله ﷺ وأتاه ضرير فشكا إليه ذهاب بصره، فقال له النبي ﷺ: أفتصبر؟ فقال: يا رسول الله إنه ليس لي قائد، وقد شق عليّ.

فقال ﷺ: ايت الميضأة فتوضأ، ثم

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and give him peace) told him, 'Go to the place of ablution and perform ablution (wudu), then pray two rak'as of prayer and make these supplications.' " Ibn Hunayf went on, "By Allah, we didn't part company or speak long before the man returned to us as if nothing had ever been wrong with him."

This is an explicit, unequivocal text from a prophetic Companion proving the legal validity of *tawassul* through the dead. The account has been classed as rigorously authenticated (sahih) by Bayhaqi, Mundhiri, and Haythami.

صل ركعتين، ثم ادع بهذه الدعوات. قال ابن حنيف: فوالله ما تفرقنا وطال بنا الحديث حتى دخل علينا الرجل كأن لم يكن به ضر قط.

وهذا نص صحابي قطعي صريح في صحة التوسل بالموتى، وقد صحح هذه القصة البيهقي والمنذري والهيثمي [...].

THE AUTHENTICITY OF THE HADITH OF THE BLIND MAN

تحقيق صحة حديث الضرير

w40.5 Tirmidhi has stated that the hadith of the blind man is "a hadith that is well or rigorously authenticated but singular, being unknown except through this chain of narrators, from the hadith of Abu Ja'far, who is not Abu Ja'far Khatmi," which means that the narrators of this hadith, despite Abu Ja'far being unknown to Tirmidhi, were acceptable to the degree of being well or rigorously authenticated in either case. But scholars before Tirmidhi established that Abu Ja'far, this person unknown to Tirmidhi, was Abu Ja'far Khatmi himself. Ibn Abi Khaythama said, "The name of this Abu Ja'far, whom Hammad ibn Salama relates from, is 'Umayr ibn Yazid, and he is the Abu Ja'far that Shu'ba relates from," and then he related the hadith by the channel of transmission of 'Uthman from Shu'ba from Abu Ja'far. Ibn Taymiya, after relating the hadith of Tirmidhi, said, "All scholars say that he is Abu Ja'far Khatmi, and this is correct." Reflect on this. The hadith master Ibn Hajar notes in *Taqrib al-tahdhib* that he is Khatmi, and that he is reliable (saduq). Ibn 'Abd al-Barr likewise says that he is Khatmi in *al-Isti'ab fi ma'rifa al-ashab*. Moreover, Bayhaqi related the hadith by way of Hakim and confirmed that it was rigorously authenticated (sahih), Hakim having related it by a chain of transmission meeting the standards of Bukhari and Muslim, which the hadith master Dhahabi confirmed, and Shawkani cited as evidence. Dhahabi and Shawkani, who are they? The meaning of this is that all the men of the hadith's chain

w40.5 [...وقد] قال الترمذي عنه: حديث حسن صحيح غريب، لا يعرف إلا من هذا الوجه. من حديث أبي جعفر، قال: وهو غير الخطمي [بفتح الخاء] ومعنى هذا: أن رواة هذا الحديث مع مجهولية أبي جعفر عند الترمذي مقبولون بدرجة الحسن والصحة على الوجهين. وعلماء الحديث الذين سبقوا الترمذي حققوا أن أبا جعفر (هذا المجهول عند الترمذي) هو الخطمي بعينه، قال ابن أبي خيثمة: أبو جعفر هذا، الذي حدث عنه حماد بن سلمة: اسمه عمير بن يزيد، وهو أبو جعفر الذي يروي عنه شعبة، ثم روى الحديث من طريق عثمان، عن شعبة، عن أبي جعفر.

قال ابن تيمية، بعد أن روى حديث الترمذي:

«وسائر العلماء قالوا هو أبو جعفر الخطمي، وهو الصواب» فتأمل.

قلنا: وفي (تقريب التهذيب) للحافظ ابن حجر: أنه الخطمي وأنه صدوق [من السادسة] وفي (الاستيعاب) لابن عبد البر: أنه الخطمي كذلك، ثم أن الحديث كذلك رواه البيهقي من طريق الحاكم وأقر تصحيحه، وقد رواه الحاكم بسند على شرط الشيخين، وأقره الحافظ

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of transmission are known to top Imams of hadith such as Dhahabi (and who is severer than he?), Ibn Hajar (and who is more precise, learned, or painstaking than he?). Hakim, Bayhaqi, Tabarani, Ibn 'Abd al-Barr, Shawkani, and even Ibn Taymiya. This hadith was recorded by Bukhari in his *al-Tarikh al-kabir,* by Ibn Majah in his *Sunan,* where he said it was rigorously authenticated (sahih), by Nasa'i in *'Amal al-yawm wa al-layla,* by Abu Nu'aym in *Ma'rifa al-Sahaba,* by Bayhaqi in *Dala'il al-nubuwwa,* by Mundhiri in *al-Targhib wa al-tarhib,* by Haythami in *Majma' al-zawa'id wa manba' al-fawa'id,* by Tabarani in *al-Mu'jam al-kabir,* by Ibn Khuzayma in his *Sahih,* and by others. Nearly fifteen hadith masters (huffaz, hadith authorities with more than 100,000 hadiths and their chains of transmission by memory) have explicitly stated that this hadith is rigorously authenticated (sahih). As mentioned above, it has come with a chain of transmission meeting the standards of Bukhari and Muslim, so there is nothing left for a critic to attack or slanderer to disparage concerning the authenticity of the hadith. Consequently, as for the permissibility of supplicating Allah (tawassul) through either a living or dead person, it follows by human reason, scholarship, and sentiment, that there is flexibility in the matter. Whoever wants to can either take *tawassul* or leave it, without causing trouble or making accusations, since it has been this thoroughly checked (*Adilla Ahl al-Sunna wa al-Jama'a* (y119), 79–83).

الذهبي، واستشهد به الشوكاني. وهما! من هما؟

ومعنى هذا: أن جميع رجال السند معروفون لكبار أئمة الحديث كالذهبي (وهو من هو تشدداً) وابن حجر (وهو من هو ضبطاً وحفظاً وتحقيقاً) والحاكم، والبيهقي، والطبراني، وابن عبد البر، والشوكاني، حتى ابن تيمية [... الخ].

ثم أن هذا الحديث أخرجه البخاري في (التاريخ الكبير) وابن ماجه في (السنن) ونص على صحته، والنسائي في (عمل اليوم والليلة) وأبو نعيم في (معرفة الصحابة) والبيهقي في (دلائل النبوة) والمنذري في (الترغيب) والهيثمي في (المجمع) والطبراني في (الكبير) وابن خزيمة في صحيحه، وآخرون.

وقد نص على صحته نحو خمسة عشر حافظاً، وهكذا جاء الحديث كما قدمنا على شرط الصحيحين: البخاري ومسلم، فلم يبق بعد هذا مطعن لطاعن، أو مغمز لمغتمز في صحة الحديث.

وبالتالي في جواز التوسل بالحي والميت جميعاً من طريق: العقل، والعلم، والعاطفة، في الأمر سعة: من شاء توسل ومن شاء ترك بلا فتنة ولا تأثيم، بعد كل هذا التحقيق الدقيق [محرر من أدلة أهل السنة والجماعة: ٧٩ - ٨٣].

w40.6 (n:) It is well to review some salient features of the above article, such as:

(1) that there are two hadiths, Tirmidhi's hadith of the *blind man* and Tabarani's hadith of the *man in need* to whom 'Uthman ibn Hunayf related the story of the blind man, teaching him the *tawassul* that the Prophet (Allah bless him and give him peace) had taught the blind man.

(2) Tirmidhi's hadith is rigorously authenticated (sahih), being the subject of the above investigation of its chain of narrators, the authenticity of which is established beyond a reasonable doubt and attested to by nearly fifteen of the foremost hadith specialists of Islam. The hadith explicitly proves the validity of supplicating Allah (tawassul) through a living intermediary, as the Prophet (Allah bless him and give him peace) was alive at the time. The author of the article holds that the hadith implicitly shows the validity of supplicating Allah (tawassul) through a deceased intermediary as well, since:

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The Prophet (Allah bless him and give him peace) told the blind man to go perform ablution (wudu), pray two rak'as, and then make the supplication containing the words, "O Muhammad, I seek your intercession with my Lord for the return of my eyesight," which is a call upon someone physically absent, a state in which the living and the dead are alike.

Supplicating Allah (tawassul) through a living or deceased intermediary is, in the author's words, "not *tawassul* through a physical body, or through a life or death, but rather through the positive meaning attached to the person in both life and death, for the body is but the vehicle that carries that significance."

And perhaps the most telling reason, though the author does not mention it, is that everything the Prophet (Allah bless him and give him peace) ordered to be done during his lifetime was *legislation* valid for all generations until the end of time unless proven otherwise by a subsequent indication from the Prophet himself (Allah bless him and give him peace), the *tawassul* he taught during his lifetime not requiring anything else to be generalized to any time thereafter.

(3) The authenticity of Tabarani's hadith of the man in need during the caliphate of 'Uthman (Allah be well pleased with him) is not discussed by the article in detail, but deserves consideration, since the hadith explicitly proves the legal validity of supplicating Allah (tawassul) through the deceased, for 'Uthman ibn Hunayf and indeed all the prophetic Companions, by scholarly consensus (ijma'), were legally upright ('udul, dis: w56), and are above being impugned with teaching someone an act of disobedience, much less idolatry (shirk). The hadith is rigorously authenticated (sahih), as Tabarani explicitly states in his *al-Mu'jam al-saghir* (y131), 1.184. The translator, wishing to verify the matter further, took the hadith with its chain of transmitters to hadith specialist Sheikh Shu'ayb Arna'ut, who after examining it, agreed that it was rigorously authenticated (sahih) as Tabarani indicated, a judgement which was also confirmed to the translator by the Moroccan hadith specialist Sheikh 'Abdullah Muhammad Ghimari, who characterized the hadith as "very rigorously authenticated," and noted that hadith masters Haythami and Mundhiri had explicitly concurred with Tabarani on its being rigorously authenticated (sahih). The upshot is that the recommendedness of *tawassul* to Allah Most High—through the living or the dead—is the position of the Shafi'i school, which is why both our author Ibn Naqib at j13.2, and Imam Nawawi in his *al-Adhkar* (y102), 281–82, and *al-Majmu'* (y108), 8.274, explicitly record that *tawassul* through the Prophet (Allah bless him and give him peace) and asking his intercession are recommended. A final article below by a Hanafi scholar concludes the discussion.

CALLING UPON THE RIGHTEOUS

w40.7 (Muhammad Hamid:) As for calling upon (nida') the righteous (n: when they are physically absent, as in the words "O Muhammad" in the above hadiths), *tawassul* to Allah Most High

نداء الصالحين

w40.7 (محمد الحامد:) ([ت:] أما) نداء الصالحين فيجوز التوسل بهم إلى الله تعالى، والدعاء يكون لله

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through them is permissible, the supplication (du'a') being to Allah Most Glorious, and there is much evidence for its permissibility. Those who call on them intending *tawassul* cannot be blamed. As for someone who believes that those called upon can cause effects, benefit, or harm, which they create or cause to exist as Allah does, such a person is an idolator who has left Islam (dis: o8.7(17))—Allah be our refuge! This then, and a certain person has written an article that *tawassul* to Allah Most High through the righteous is unlawful, while the overwhelming majority of scholars hold it is permissible, and the evidence the writer uses to corroborate his viewpoint is devoid of anything that demonstrates what he is trying to prove. In declaring *tawassul* permissible, we are not hovering on the brink of idolatry (shirk) or coming anywhere near it, for the conviction that Allah Most High alone has influence over anything, outwardly or inwardly, is a conviction that flows through us like our very lifeblood. If *tawassul* were idolatry (shirk), or if there were any suspicion of idolatry in it, the Prophet (Allah Most High bless him and give him peace) would not have taught it to the blind man when the latter asked him to supplicate Allah for him, though in fact he did teach him to make *tawassul* to Allah through him. And the notion that *tawassul* is permissible only during the lifetime of the person through whom it is done but not after his death is unsupported by any viable foundation from Sacred Law (*Rudud 'ala abatil wa rasa'il al-Shaykh Muhammad al-Hamid* (y44), 2.39).

سبحانه، والأدلة على ذلك كثيرة، ومن ناداهم بقصد التوسل بهم لا يلام. أما من اعتقد فيهم التأثير والنفع والضرر خلقاً وإيجاداً كالذي يكون من الله تعالى فهو مشرك مرتد عن الإسلام والعياذ بالله. هذا وقد كتب بعض الناس كتابة حرم فيها التوسل إلى الله تعالى بالصالحين في حين أن جمهرة العلماء تجيزه، وما أسند إليه في تصويب وجهة نظره لا دليل فيه على ما يريد، وإننا في إجازتنا التوسل لا نحوم حول الشرك ولا ندنو منه لأن الاعتقاد بأن الله تعالى هو المؤثر وحده في الأمور باديها وخافيها، هذا الاعتقاد سالك منا مسلك الروح. ولو كان التوسل شركاً أو فيه شائبة الشرك ما علمه نبي الله ﷺ للأعمى حين سأله أن يدعو الله له. فقد علمه التوسل به.

وإجازة التوسل في حياة المتوسل به لا بعد مماته لا يعتمد أصلاً شرعياً [نقل من ردود على أباطيل ورسائل الشيخ محمد الحامد: ٢/ ٣٩].

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w41.0 SMOKING (from j16.5)

w41.0 تحريم التدخين

w41.1 (A:) Many contemporary scholars hold it is unlawful to buy, sell, use, or grow tobacco, because of the unlawfulness of consuming what has been proven to be harmful, which is attested to by the word of the Prophet (Allah bless him and give him peace),

Let there be no harming, nor reciprocating harm,"

«لا ضرر ولا ضرار».

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a well-authenticated hadith (n: of which Muhammad Jurdani says, "The ostensive meaning of this hadith is the prohibition of all forms of harmfulness, great or small, since the grammatical indefinite [n: of the words "harming" and "reciprocating harm"] in a negative context indicates generality" (*al-Jawahir al-lu'lu'iyya fi sharh al-Arba'in al-Nawawiyya* (y68), 244).)

حديث حسن [رواه ابن ماجه والدارقطني وغيرهما مسنداً]. (ت: قال الشارح محمد الجرداني: وظاهر هذا الحديث تحريم سائر أنواع الضرر ما قل منها وما كثر لأن النكرة في سياق النفي تعم [نقل من الجواهر اللؤلؤية في شرح الأربعين النووية: ٢٤٤].

EVIDENCE OF THE HARMFULNESS OF SMOKING

إثبات ضرر التدخين

w41.2 (Richard Doll and R. Peto:) .... Particularly large and impressive studies have been carried out in the United States (by the American Cancer Society and the National Cancer Institute), in Japan (by Hirayama), and in Sweden, and all point to the conclusion that, in countries in which many cigarette smokers have been smoking regularly since early adult life, lung cancer is some 10 to 15 times commoner in regular cigarette smokers than in lifelong non-smokers and up to 40 times commoner in very heavy smokers....

These observations that smokers were at far greater risk of lung cancer than nonsmokers did not, in themselves, prove that smoke caused the disease, although it was difficult to think of any other way in which such a close quantitative relationship could have been produced; but *other observations effectively exclude any alternative* [n: emphasis the translator's]. These include the fact that the relative risk of lung cancer increased with decreasing age of starting to smoke and decreased with the number of years that smoking had been stopped; that the increase in incidence appeared at an appropriate time after the increase in cigarette sales (after due allowance is made for a spurious increase due to improved diagnosis) and with an appropriate lag in time between the increase among men (who started to smoke cigarettes early this century) and that among women (who started about a quarter of a century later); and that there is a general parallelism between the incidence of the disease in different countries and social and religious groups and the corresponding figures for the consumption of cigarettes. (Furthermore, it was found that when extracts of cigarette smoke were applied repeatedly to the skins of laboratory mice many tumours developed.) (*Oxford Textbook of Medicine* (y76), 4.61)

(n: The foregoing is a statement by competent medical authorities that smoking is harmful to the body.)

w41.3 (Sulayman Bujayrmi:) Whatever harms the body or mind is unlawful, from which the unlawfulness of the well-known tobacco (dukhan) is known (*Tuhfa al-habib 'ala Sharh al-Khatib al-musamma bi al-Iqna' fi hall alfaz Abi Shuja'* (y6), 4.276).

w41.3 (سليمان البجيرمي:) [...] ويحرم ما يضر البدن أو العقل: ومنه يعلم حرمة الدخان المشهور [نقل من تحفة الحبيب على شرح الخطيب ٤/ ٢٧٦].

(A: This is an explicit text (nass) from a Shafi'i scholar that establishes the ruling for smoking in our school. As for the evidence that growing, buying, and

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selling tobacco is unlawful, it consists in the principle of Sacred Law that whatever leads to the unlawful is itself unlawful. A number of Islamic scholars have explicitly declared the total prohibition of tobacco, among them Hashim al-Khatib, 'Ali al-Daqar, Badr al-Din al-Hasani, Sheikh al-Qalyubi, and Muhammad Hamid. In past centuries, before the harmfulness of tobacco had been scientifically established, some formal legal opinions (fatwas) were given that smoking was merely offensive. In light of what we know today about the harm tobacco causes, such opinions are plainly no longer the reliable position for *fatwa*. If uneducated Muslims who follow these opinions may plead ignorance. Islamic scholars, for their part, should fear Allah and remember that there is scholarly consensus that it is not lawful to judge by other than the soundest and most reliable position (dis: w12.2). Someone with knowledge is obliged to teach people what is closer to Islam.)

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w42.0 BUYING AND SELLING INSURANCE IS UNLAWFUL (from k2.1(e))

w42.0 تحريم عقد التأمين

w42.1 (A:) In addition to the fact that they are usurious (riba, def: k3), buying and selling insurance policies are unlawful because of the Prophet's prohibition (Allah bless him and give him peace) of sales in which there is chance or risk (gharar). Muslim relates from Abu Hurayra that

"The Messenger of Allah (Allah bless him and give him peace) prohibited sales of 'whatever a pebble thrown by the seller hits,' and sales in which there is chance or risk (gharar)."

عن أبي هريرة قال: نهى رسول الله ﷺ عن بيع الحصاة وعن بيع الغرر [رواه مسلم في كتاب البيوع؛ باب: بطلان بيع الحصاة والبيع الذي فيه الغرر؛ صحيح مسلم: ٣/ ١١٥٣].

w42.2 (Nasir al-Mutarrizi:) *Gharar* is chance or risk, meaning it is not known whether it will come to be or not, such as selling fish in the water or birds on the wing. It includes transactions of unknown things, the particulars of which are not fully comprehended by the buyer and seller (*al-Mughrib fi tartib al-Mu'rib* (y94), 2.100).

w42.2 (ناصر المطرزي:) الغرر [...] هو الخطر الذي لا يدرك أيكون أم لا، كبيع السمك في الماء والطير في الهواء [... قال الأزهري:] وتدخل البيوع المجهولة التي لا يحيط بها المتبايعان [محرر من المغرب في ترتيب المعرب: ٢/ ١٠٠].

w42.3 (n:) Urging the permissibility of insurance, one Muslim modernist has written that the very precise statistical data possessed by insurance companies concerning the probabilities of various eventualities makes what they are selling determinately known (ma'lum). This argument fails when one realizes that statistical data from a group of events yields probability figures that, properly speaking, are a description of the group as a whole, and are only *analogically* applied to the individual events within it. When generalized to similar groups of events in

the future, such probabilities yield commercially useful knowledge about the likelihood of a particular outcome for these future groups. But they cannot and do not tell what the outcome will be for any *particular* member of the group, in this case the particular insurance policy. Thus, a "17 percent probability" that circumstances will enable one to collect such and such an amount on a policy is a mere description of the whole group of previous policy holders in similar circumstances, which does not tell whether one will collect the amount or not. One may collect a certain amount or may not collect it, which is precisely the *gharar* that is unlawful.

w42.4 (A:) When one needs a car in a country whose laws force one to have car liability insurance, buying the insurance has effectively become a tax, and is the moral responsibility of the lawmakers, not the person forced to comply.

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w43.0 DEALING IN INTEREST (RIBA) IN ENEMY LANDS (DAR AL-HARB) (from k3.0, end)

w43.1 (Muhammad Hamid:) A formal legal opinion (fatwa) given by the mufti of Dar al-'Ulum and his assistant in Deoband, India, states that dealing in interest (riba, def: k3.0(N:)) is permissible between Muslims and non-Muslims in enemy lands (dar al-harb), meaning areas in which the rules of Islam do not exist, such countries not holding its validity or believing in it. This *fatwa* states that it is permissible for a Muslim to both take interest (riba) and give it, and claims that India is an enemy land (dar al-harb), so there is no objection to dealing in interest there, and it lastly permits Muslims to put their money in the banks of non-Muslims and take interest from them, and likewise permits them to loan the state money for interest. That is a summary of the contents of the *fatwa*. It bases the permissibility of dealing in interest (riba) with non-Muslims in enemy lands (dar al-harb, def: w43.5) on the opinion of Imams Abu Hanifa and Muhammad ibn Hasan Shaybani, the colleague of Abu Hanifa (Allah Most High have mercy on them). Without a doubt, this is what the two Imams have explicitly stated, and is the position of the Hanafi school, as conveyed in both its main texts and their commentaries.

w43.0 التعامل بالربا في دار الحرب

w43.1 (محمد الحامد:) صدرت فتوى من مفتي دار العلوم بديوبند في الهند ومن مساعده، تصرح بجواز التعامل بالربا بين المسلمين وبين الكفار في دار الحرب، وهي البلاد التي لا تسري فيها أحكام الإسلام، إذ لا يعتقد أهله صحته فهم به غير مؤمنين.

وقد أجازت هذه الفتوى أخذ المسلم الربا وإعطاءه، وزعمت أن بلاد الهند دار حرب، فلا حرج في التعامل بالربا فيها. وسمحت اخيراً بوضع المسلمين أموالهم في مصارف غير المسلمين، وبأخذ الفائدة الربوية منها، كما سوّغت إقراض الدولة المال بفائدة أيضاً.

هذا ملخص ما جاء في الفتوى.

وقد بنت جواز التعامل مع غير المسلمين في دار الحرب على قول الإمامين أبي حنيفة وصاحبه محمد بن الحسن الشيباني رحمهما الله تعالى. ولا شك أن هذا صريح قولهما، وهو منقول المذهب متوناً وشروحاً.

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Imams Shafi'i and Abu Yusuf, the colleague of Abu Hanifa, (Allah Most High have mercy on them) contradict this opinion. What I, while unqualified to intervene in positions that are differed upon by *mujtahid* Imams (def: o22.1(d)), would nevertheless like to direct attention to is that the dissenting opinion of Shafi'i and Abu Yusuf is not a feeble viewpoint unsupported by evidence—by no means is that the case. Their position on an issue like this deserves to be given its due, so that one can fully live up to the demands of religion. Nothing actualizes one's innocence like taking reasonable precautions, and perhaps a look at the evidence will dictate doing so.

لكن خالفهما في قولهما هذا الإمامان الشافعي رحمه الله وأبو يوسف صاحب أبي حنيفة رحمهما الله تعالى. ونحن وإن لم نكن أهلاً للدخول فيما بين الأئمة المجتهدين في خلافاتهم لكن الذي أحب توجيه النظر إليه هو أن خلاف الشافعي وأبي يوسف ليس بالخلاف الهزيل الذي لا يستند إلى دليل. كلا. فإن قولهما في مثل هذا جدير بأن يحسب له حسابه، استبراء من المرء لدينه، ولا يحقق البراءة شيء كالاحتياط المعقول، ولعل النظر في الدليل يملي الأخذ بالحيطة.

THE EVIDENCE OF ABU HANIFA AND IMAM MUHAMMAD

حجة أبي حنيفة والإمام محمد

w43.2 The evidence of Abu Hanifa and Muhammad for the permissibility of taking interest (riba) from non-Muslims in enemy lands (dar al-harb) is the Prophet (Allah bless him and give him peace) having said,

"There is no usury (riba) between the Muslim and the hostile non-Muslim in enemy lands (dar al-harb),"

such that their property is lawful to us in their own lands. It is permissible for a Muslim who is there under a safe-conduct to take it from them with their approval, unless it is by way of deceit, which is unlawful because it violates the safe-conduct agreement they have effected with him that permits him to enter their lands under stipulation that he honor it, it being unlawful for him to violate it. As for when one of them enters our lands under a safe-conduct, it is not permissible to deal in interest (riba) with him, for our safe-conduct agreement with him makes his property inviolable to us, except what he transacts in a lawful way free of sin or blame, for the lands are those of Islam.

w43.2 استدل أبو حنيفة ومحمد لجواز أخذ الربا من الكافرين في دار الحرب بقول النبي ﷺ:

«لا ربا بين المسلم والحربي في دار الحرب».

بأن مالهم مباح لنا في دارهم، فإذا أخذه المسلم المستأمن منهم فيها برضاهم جاز، إلا ما كان بطريق الغدر، فهو حرام، لمنافاته عقد الأمان الذي عقدوه له، إذ سمحوا له بدخول دارهم، وشرطوا عليه الوفاء به فيحرم عليه تعديه.

أما إذا دخل مستأمن منهم دارنا فلا تسويغ للربا معه لأن عقد أماننا له يحرّم علينا ما له إلا ما كان بطريق شرعي لا إثم فيه ولا ملام، إذ الدار دار إسلام.

THE EVIDENCE OF SHAFI'I AND ABU YUSUF

حجة الشافعي وأبي يوسف

w43.3 Shafi'i and Abu Yusuf hold that hostile

w43.3 والشافعي وأبو يوسف يعتبران

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non-Muslims in their own lands are like those of them with a safe-conduct agreement in our lands: just as dealing in interest (riba) with one of them in our lands is not lawful, neither is dealing in it with them in theirs. They say that the above-mentioned hadith is singular (gharib), meaning it has reached us through but one single narrator. Kamal ibn al-Humam states in *Fath al-Qadir* that Shafi'i relates from Abu Yusuf that Abu Hanifa only held this position because a certain sheikh related from Makhul that "the Prophet (Allah bless him and give him peace) said,

" 'There is no usury (riba) between enemy non-Muslims,'

"[N: Makhul adding,] and I think he said, 'and people who are Muslims.' " Bayhaqi reports that Shafi'i said, "This hadith is not authenticated and there is no evidence in it." The Hanafi Sarakhsi says in *al-Mabsut*, "This hadith is *mursal* [n: i.e. reported by one of those (tabi'i) who had personally met and studied under one or more of the prophetic Companions (Sahaba) but not the Prophet himself (Allah bless him and give him peace), hadiths reported in the form of quoting the Prophet (Allah bless him and give him peace) without mentioning the name of the Companion who related it directly from him], though Makhul [n: the *tabi'i* in this case] is a reliable narrator, and a *mursal* hadith from someone like him is acceptable as evidence...."

الكافر الحربي في دارهم كالمستأمن في دارنا، فكما لا يحل الربا مع هذا لا يحل مع ذاك. وقالا في الحديث إنه غريب - أي تفرد به راوٍ واحد فقط -.

قال الكمال بن الهمام في فتح القدير [الذي شرح به كتاب الهداية]: قال الشافعي: قال أبو يوسف: إنما قال أبو حنيفة هذا لأن بعض المشيخة حدثنا عن مكحول عن رسول الله ﷺ أنه قال:

«لا ربا بين أهل الحرب» أظنه قال: «وأهل الإسلام» قال الشافعي: وهذا الحديث ليس بثابت ولا حجة فيه. أسنده عنه البيهقي.

قال [- أي شمس الأئمة] السرخسي الحنفي في المبسوط -: هذا مرسل، ومكحول ثقة، والمرسل من مثله مقبول. [...].

w43.4 (n: Several pages follow, discussing the evidence and *ijtihad* of Abu Hanifa and Imam Muhammad, as to why they allow:

(a) taking interest (riba), not giving it;

(b) from an enemy non-Muslim, not from a Muslim;

(c) when both parties are in enemy lands (dar al-harb), not when either party or both are in Muslim lands.)

.... Thus, what the *fatwa* of the mufti of Dar al-'Ulum of Deoband says about the permissibility

w43.4 (ت: ويلي ما سبق ذكره عدة صفحات يناقش المؤلف فيها أدلة أبي حنيفة ومحمد واجتهادهما في تجويز:

- أخذ الربا (دون إعطائه).

- بشرط أن يكون من الكافر الحربي (لا من المسلم).

- وإنما يكون كل من الآخذ والمعطي في دار الحرب، لا إن كان أحدهما أو كلاهما في دار الإسلام).

.. وعلى هذا فما في فتوى مفتي دار العلوم بديوبند من إجازة إعطاء

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of the Muslim giving interest (riba) to non-Muslims in enemy lands (dar al-harb) being like the permissibility of taking it from them, is wrong and unacceptable because it flatly contradicts the authoritatively transmitted position of the Hanafi school, as Imam Sarakhsi has explicitly stated in *al-Sayr al-kabir wa sharhuhu*, for the recorded position of the Hanafi school is for the permissibility of *taking* it from them only, not the permissibility of giving it to them....

This then, and it should be noted that Muslims in enemy lands (dar al-harb) dealing with each other in interest (riba) is not lawful, even though the above-mentioned *fatwa* does not direct itself to the question....

As for the *fatwa*'s permitting Muslims to put their money in non-Muslims' banks for interest (riba), and to loan the state money for interest, this could only be done conformably with the opinion of Abu Hanifa and Imam Muhammad if the Muslim were in enemy lands (dar al-harb) and put his money in the enemy non-Muslims' bank there, and similarly with loaning the state money for interest. As for doing it in Muslim lands, it is not permissible, no matter whether the bank is located in Muslim lands or enemy lands, for the Muslim is forbidden to do such a thing in Muslim countries because Islam's rulings apply there, and scholars stipulate for the permissibility of his dealing in interest (riba) that firstly it be with non-Muslims, and secondly in enemy lands, so the prohibition applies in either case.

المسلم الربا للحربيين في دار الحرب كإحازة أخذه منهم، ممنوع لا يسلم له لمخالفته منقول المذهب الذي صرح به شمس الأئمة السرخسي في «السير الكبير وشرحه». فإن المنقول هو جواز الأخذ منهم فقط، لا جواز إعطائهم...

هذا ومما ينبغي أن يعلم أن تعامل المسلمين في دار الحرب بالربا فيما بينهم غير جائز، وإن لم تتعرض الفتوى المذكورة له...

وأما سماح الفتوى بوضع المسلمين أموالهم في مصارف غير المسلمين بالفائدة الربوية وتسويغهما لهم إقراض الدولة المال بها أيضاً، فهو إنما يتم في قول أبي حنيفة ومحمد إذا كان المسلم في دار الحرب ووضع ماله في مصرف الحربيين في دارهم. وكذا الحكم في إقراض ماله للدولة بالفائدة، أما إذا كان في دار الإسلام فلا؛ سواء كان المصرف فيها أو في دار الحرب لأنه ممنوع من هذا التصرف في بلاد المسلمين لسريان أحكام الإسلام فيها. والفقهاء قيدوا الجواز بأن يكون التعامل بالربا معهم في دارهم فالمنع شامل للصورتين.

WHAT IS MEANT BY "ENEMY LANDS" (DAR AL-HARB)

ما هي دار الحرب؟

w43.5 As for the *fatwa*'s claim that India is an enemy land (dar al-harb), it is not in its generality true. Because areas where Muslims reside and there is a remnant of Islam's rules—even if this is limited to marriages and what pertains to them, for example—are considered *Muslim lands*. A Muslim land does not become an enemy land except under three conditions:

(a) that the security of Muslims through their

w43.5 وأما زعم الفتوى أن بلاد الهند دار حرب فإنه على عمومه غير صحيح. ذلك بأن المناطق التي يقطنها المسلمون منها، وفيها بقية من أحكام الإسلام ولو كانت قاصرة على الأنكحة وما إليها مثلاً، تعتبر دار إسلام. ولا تنقلب دار الإسلام إلى دار حرب إلا بشروط ثلاثة هي:

أولاً: أن يزول الأمان الأول الذي كان

leader no longer exists and the security of non-Muslims has taken its place;

للمسلمين بإمامهم ويحل محله أمان الكافرين.

(b) that they have been surrounded on all sides such that it is impossible for the aid of Muslims to reach them;

ثانياً: أن يحاط بهم من كل جوانبهم فلا يمكن وصول مدد المسلمين إليها.

(c) and that not a single one of Islam's rules remains therein (N: which effectively means that none of the lands that Islam has spread to and in which something of it remains can be considered an enemy land. As for other countries, *enemy lands* (dar al-harb, lit, "abode of war") consist of those with whom the Muslim countries (dar al-Islam) are at a state of war) (n: in the light of which, it is clear that there is virtually no country on the face of the earth where a Muslim has an excuse to behave differently than he would in an Islamic country, whether in his commercial or other dealings).

ثالثاً: أن لا يبقى فيها حكم من أحكام الإسلام [محرر من ردود على أباطيل ورسائل الشيخ محمد الحامد: ٢/ ٢٦٧ - ٢٧٩].

(ح: فلا يعد من دار الحرب بلد انتشر فيها الإسلام وبقي فيها شيء منه. أما غيره من البلاد: فدار الحرب هي ما بينها وبين دار الإسلام حالة حرب (ت: وفي ضوء هذا فلا يكاد يكون على وجه الأرض بلد يعذر فيه المسلم بأن يتصرف خلاف تصرفه في دار الإسلام، سواء في ماله أو في غيره)).

(*Rudud 'ala abatil wa rasa'il al-Shaykh Muhammad al-Hamid* (y44), 2.267–79)

PROTECTING LENDERS FROM LOSS DUE TO INFLATION

ماذا يجب في وفاء القرض عند هبوط سعر العملة الورقية.

w43.6 (n:) Muhammad Amin ibn 'Abidin records that if one borrows ten *fils* (a monetary unit) which then lose *all* their value (kasada), one is not obliged, according to Abu Hanifa, to repay anything but the same amount of them. Abu Yusuf and Imam Muhammad, however, hold that one is obliged to repay their value (A: as it stood at the time of the loan) in silver (A: and since it is a financial obligation, the lender is entitled to accept other than silver in its place, such as the silver's value in currency at the market prices current on the day of repayment) (*Hashiyat radd al-muhtar 'ala al-Durr al-mukhtar sharh Tanwir al-absar* (y47), 5.162). As for a lawful alternative to interest for protecting the lender from losing money because of simple *inflation* (which in contradistinction to the above is a mere *decrease* in the value of currency), the best means would seem to be to initially loan a specific amount of gold or silver, and then repay the loan with the same amount of gold or silver, or its value in currency at the market prices current on the day of repayment, if the lender will accept this in place of it, as in (A:) above.

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w44.0 BEQUEATHING MORE THAN ONE-THIRD OF ONE'S PROPERTY (from L3.1(A:))

w44.1 (Muhammad Amin ibn 'Abidin:)

(Question:) "So-and-so bequeathed [wasiyya, def: L1.0(A:)] all of his property to a nonfamily member and died insisting on this, and only a wife survived him. She did not agree to permit this bequest [N: by waiving her own estate division share of one-fourth]. What is the ruling on it?"

(Answer:) "Bequeathing more than a third of one's property is not lawful when there is an estate division heir [n: or more than one] who deserves the whole estate. As for when an heir does not deserve the whole estate, such as a husband [N: whose maximal estate division share is one-half (dis L6.3)] or wife [N: whose maximal share is one-fourth (dis: L6.4)] [A: or when there are no eligible estate division heirs at all], then it is permissible to bequeath more than a third of one's property" (*al-'Uqud al-durriyya fi tanqih al-Fatawa al-Hamidiyya* (y53), 2.310).

w44.0 جواز الوصية بأكثر من ثلث المال عند فقد الورثة عند الحنفية

w44.1 (محمد أمين بن عابدين:) (سئل) فيما إذا أوصى زيد بجميع ماله لأجنبي ومات مصراً على ذلك عن زوجة لا غير ولم تجز الزوجةُ الوصيةَ فكيف الحكم؟

(الجواب) الوصية بما زاد على الثلث غير جائزة إذا كان هناك وارث يجوز أن يستحق جميع المال. أما إذا كان لا يستحق جميع الميراث كالزوج والزوجة فإنه يجوز أن يوصي بما زاد على الثلث [نقل من العقود الدرية في تنقيح الفتاوى الحامدية: ٢/ ٣١٠].

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w45.0 A WIFE'S MARITAL OBLIGATIONS (from m5.1, end)

A WIFE'S MARITAL OBLIGATIONS IN THE SHAFI'I SCHOOL

w45.1 (Abu Ishaq Shirazi:) A woman is not obliged to serve her husband by baking, grinding flour, cooking, washing, or any other kind of service, because the marriage contract entails, for her part, only that she let him enjoy her sexually, and she is not obligated to do other than that. (A: Rather, it is considered sunna in our school for the wife to do the housework, and the husband (who is obliged to support her) to earn the living, since this is how the Prophet (Allah bless him and give him peace) divided the work between Fatima and

w45.0 واجبات الزوجة

واجبات الزوجة عند الشافعية

w45.1 (أبو إسحق الشيرازي:) [. . . و] لا يجب عليها خدمته في الخبز والطحن والطبخ والغسل وغيرها من الخدم لأن المعقود عليه من جهتها هو الاستمتاع فلا يلزمها ما سواه [نقل من المهذب في فقه الإمام الشافعي: ٢/ ٦٨]. (ع: بل عندنا يسن لها خدمته ويسن للزوج التكسب - إذ نفقتها واجبة

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'Ali (Allah be well pleased with them)) (*al-Muhadhdhab fi fiqh al-Imam al-Shafi'i* (y125), 2.68).

عليه - لأن النبي ﷺ قسم العمل بين فاطمة وعلي رضي الله عنهما هكذا).

A WIFE'S MARITAL OBLIGATIONS IN THE HANAFI SCHOOL

واجبات الزوجة عند الحنفية

w45.2 (Nahlawi:) The wife's serving her husband at home—by cooking, cleaning, and baking bread—is religiously obligatory for her, and if she does not, she is committing a sin, though it is not something that she may be forced to do by the court (*al-Durar al-mubaha fi al-hazr wa al-ibaha* (y99), 172).

w45.2 (النحلاوي:) [...و] وعليها خدمته داخل البيت ديانةً، من الطبخ والغسل والخبز، ولو لم تفعل أثمت. ولكن لا تجبر عليها قضاءً [نقل من الدرر المباحة في الحظر والإباحة: ١٧٢].

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w46.0 THE PERMISSIBILITY OF CONTRACEPTION (from m5.5)

w46.0 جواز تنظيم النسل

w46.1 (Yusuf Qaradawi:) Islam has encouraged prolific reproduction and blessed children, male and female. But birth control has been made a dispensation for the Muslim when rational motives and real necessities call for it. The prevalent means people resorted to for preventing or diminishing births in the time of the Prophet (Allah bless him and give him peace) was coitus interruptus, placing the sperm outside the womb when ejaculation was felt imminent, and the prophetic Companions did this during the time of prophethood and divine inspiration. Bukhari and Muslim relate from Jabir. "We used to practice coitus interruptus in the time of the Messenger of Allah (Allah bless him and give him peace), while the Koran was being revealed." And in *Sahih Muslim:* "We used to practice coitus interruptus in the time of the Messenger of Allah (Allah bless him and give him peace). Word of this reached him and he did not prohibit it."

A man came to the Prophet (Allah bless him and give him peace) and said: "O Messenger of Allah, I have a bondwoman with whom I practice coitus interruptus. I do not want her to get

w46.1 (يوسف القرضاوي:) [...] قد حبب الإسلام في كثرة النسل، وبارك الأولاد ذكوراً وإناثاً ولكنه رخص للمسلم في تنظيم النسل إذا دعت إلى ذلك دواعٍ معقولة وضرورات معتبرة، وقد كانت الوسيلة الشائعة التي يلجأ إليها الناس لمنع النسل أو تقليله في عهد الرسول ﷺ - هي العزل (وهو قذف النطفة خارج الرحم عند الإحساس بنزولها) وقد كان الصحابة يفعلون ذلك في عهد النبوة والوحي كما روي في الصحيحين عن جابر: «كنا نعزل على عهد رسول الله ﷺ والقرآن ينزل».

وفي صحيح مسلم قال: «كنا نعزل على عهد رسول الله فبلغ ذلك رسول الله ﷺ فلم ينهنا».

وجاء رجل إلى النبي ﷺ فقال: «يا رسول الله، إن لي جارية وأنا أعزل

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pregnant, but I want what men want. The Jews say that coitus interruptus is a lesser form of killing one's children." The Prophet (Allah bless him and give him peace) said:

"The Jews have lied. If Allah wanted to create it, you would not be able to prevent it."

(*al-Halal wa al-haram fi al-Islam* (y110), 191–92)

عنها، وإني أكره أن تحمل وأنا أريد ما يريد الرجال وإن اليهود تحدث: أن العزل الموءودة الصغرى، فقال عليه السلام: «كذبت اليهود. لو أراد الله أن يخلقه ما استطعت أن تصرفه» [رواه الترمذي وأصحاب السنن] [نقل من الحلال والحرام في الإسلام: ١٩١ - ١٩٢].

THE OFFENSIVENESS OF CONTRACEPTION IN THE SHAFI'I SCHOOL

كراهة العزل في المذهب الشافعي

w46.2 (Ghazali:) It is of the etiquette of intercourse not to practice coitus interruptus, there being disagreement among scholars as to the permissibility or offensiveness of doing so, though the correct position in our opinion is that it is permissible. As for its offensiveness, *offensive* is a term applied to things whose prohibition is closer to the unlawful, things whose prohibition is closer to the permissible, and things involving merely the nonperformance of something meritorious; and it (n: coitus interruptus) is offensive in this third sense, the nonperformance of a meritorious act, just as it is said, for example, that "it is offensive for someone in a mosque to sit without invoking Allah (dhikr) or praying," or "it is offensive for someone living in Mecca not to perform the hajj every year." The meaning of this offensiveness is merely that it is forgoing what is fitter and more praiseworthy, as we established earlier in explaining the virtue of having a child (*Ihya' 'ulum al-din* (y39), 2.47).

w46.2 (الغزالي:) ومن الآداب أن لا يعزل [...] فإن عزل فقد اختلف العلماء في إباحته وكراهته [...] والصحيح عندنا أن ذلك مباح وأما الكراهية فإنها تطلق لنهي التحريم ولنهي التنزيه ولترك الفضيلة. فهو مكروه بالمعنى الثالث، أي فيه ترك فضيلة كما يقال يكره للقاعد في المسجد أن يقعد فارغاً لا يشتغل بذكر أو صلاة، ويكره للحاضر في مكة مقيماً بها أن لا يحج كل سنة، والمراد بهذه الكراهية ترك الأولى والفضيلة فقط وهذا ثابت لما بيناه من الفضيلة في الولد [محرر من إحياء علوم الدين: ٢/ ٤٧].

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w47.0 A WARNING AGAINST CARELESS ACCUSATIONS OF UNBELIEF (from o8.7(11))

w47.0 التحذير من المجازفة بالتكفير

w47.1 (Muhammad 'Alawi Maliki:) Many people error, may Allah correct them, in under-

w47.1 (محمد علوي المالكي:) يخطىء كثير من الناس - أصلحهم الله -

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standing the real reasons that put a person beyond the fold of Islam and necessitate that he be considered an unbeliever. One sees them rushing to judge Muslims as unbelievers for mere contraventions of Sacred Law, until there is hardly a Muslim on the face of the earth, save a handful. While we endeavor to excuse such people and give them the benefit of the doubt, saying that perhaps they have a good motive such as the intention to fulfill the obligation to command the right and forbid the wrong, what has escaped them is that performing the duty of commanding the right and forbidding the wrong requires wisdom and goodly exhortation, and if the matter requires argument, it must be with that which is better, as Allah Most High says,

"Call to the path of your Lord with wisdom and goodly exhortation, and argue with them with that which is better" (Koran 16:125),

for this is likelier to gain acceptance and achieve one's purpose, and to do otherwise is error and folly.

If one tries to convince a Muslim—who prays, fulfills the obligations of Allah, avoids what He has prohibited, invites people to His religion, maintains His mosques, and keeps His covenants—to accept something one feels is the truth, but he views the matter to be otherwise, and the opinion of Islamic scholars affirming and denying it has been divided since time immemorial, and he will not agree with one's point of view; then if one charges him with unbelief merely because he opposes one's opinion, one has committed an enormous wrong and a grievous sin that Allah has forbidden, having rather called us to criticize with wisdom and graciousness. There is scholarly consensus that it is unlawful to charge with unbelief anyone who faces Mecca to pray, unless he denies the Almighty Creator, Majestic and Exalted, commits open polytheism that cannot be explained away by extenuating circumstances, denies prophethood, or something which is necessarily known as being of the religion, or which is *mutawatir* (def: o22.1(d(I1))) (N: whether the latter is of the Koran or hadith), or which there is scholarly consensus upon its being necessarily

في فهم حقيقة الأسباب التي تخرج صاحبها عن دائرة الإسلام وتوجب عليه الحكم بالكفر. فتراهم يسارعون إلى الحكم على المسلم بالكفر لمجرد المخالفة حتى لم يبق من المسلمين على وجه الأرض إلا القليل. ونحن نتلمس لهؤلاء العذر تحسيناً للظن، ونقول لعل نيتهم حسنة من دافع واجب الأمر بالمعروف والنهي عن المنكر ولكن فاتهم أن واجب الأمر بالمعروف والنهي عن المنكر لا بد في أدائه من الحكمة والموعظة الحسنة وإذا اقتضى الأمر المجادلة يجب أن تكون بالتي هي أحسن كما قال تعالى:

﴿ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ﴾ [النحل: ١٢٥].

وذلك أدعى إلى القبول وأقرب للحصول على المأمول ومخالفته خطأ وحماقة.

فإذا دعوت مسلماً يصلي، ويؤدي فرائض الله، ويجتنب محارمه وينشر دعوته، ويشيد مساجده، ويقيم معاهده، إلى أمر تراه حقاً ويراه هو على خلافك، والرأي فيه بين العلماء مختلف قديماً إقراراً وإنكاراً فلم يطاوعك في رأيك فرميته بالكفر لمجرد مخالفته لرأيك فقد قارفت عظيمة نكراء، وأتيت أمراً إداً نهاك عنه الله ودعاك إلى الأخذ فيه بالحكمة والحسنى. وقد انعقد الإجماع على منع تكفير أحد من أهل القبلة إلا بما فيه نفي الصانع القادر جل وعلا أو شرك جلي لا يحتمل التأويل أو إنكار النبوة أو إنكار ما علم من الدين بالضرورة أو إنكار متواتر أو مجمع عليه ضرورة من الدين. والمعلوم من الدين ضرورة كالتوحيد والنبوات وختم الرسالة بمحمد ﷺ

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known as part of the religion. *Necessarily known* means such things as the oneness of Allah, the attributes of prophethood, that prophetic messengerhood has ended with Muhammad (Allah bless him and give him peace), the resurrection on the Last Day, the Final Reckoning, the recompense, and paradise and hell—the denier of any of which is an unbeliever, and which no Muslim has an excuse for ignorance of, unless he is a new convert to Islam, who is excused until he can learn, but not afterwards.

To judge a Muslim to be an unbeliever for anything besides the above is a very dangerous thing, as has come in the hadith,

"If someone says to his fellow Muslim, 'You unbeliever,' one of them deserves the name."

It is not valid for such a judgement to proceed from anyone except someone who knows the things that involve unbelief from those that acquit one of it in the light of the Sacred Law, and the strict demarcation between faith and unbelief according to the standards of the Law of Islam. It is not permissible for any human being to rush onto the field and charge another with unbelief on the basis of opinions and imaginings without having checked and made sure, and without firm knowledge. Otherwise the torrent would flood the valley floor, and not a Muslim would remain on the face of the earth, except a few. The Imam of the Two Sanctuaries (n: Juwayni) has said, "If we were asked to distinguish the expressions that deserve to be considered unbelief from those that do not, we would reply that this is a wish for something pointless to wish for, being too distant a reach and too stony a path to tread, involving as it does the very bases of the science of divine unity; someone who does not attain to the furthest reaches of the facts cannot arrive at anything reliable to vindicate his criteria for unbelief."

Because of this, we urge the utmost caution, in other than the above-mentioned cases, against careless accusations of unbelief, for they are extremely dangerous. And Allah guides to the best of ways, and unto Him is the final destination (*Mafahim yajibu an tusahhaha* (y83), 5–7).

والبعث في اليوم الآخر والحساب والجزاء والجنة والنار، بكفر جاحده ولا يعذر أحد من المسلمين بالجهل به إلا من كان حديث عهد في الإسلام فإنه يعذر إلى أن يتعلمه فإنه لا يعذر بعده. [. . .].

وإن الحكم على المسلم بالكفر في غير هذه المواطن التي بيناها أمر خطير، وفي الحديث: «من قال لأخيه المسلم يا كافر فقد باء بها أحدهما» [رواه البخاري].

ولا يصح صدوره إلا ممن عرف بنور الشريعة مداخل الكفر ومخارجه والحدود الفاصلة بين الكفر والإيمان في حكم الشريعة الغراء. فلا يجوز لأي إنسان الركض في هذا الميدان والتكفير بالأوهام والمظان دون تثبت ويقين وعلم متين. وإلا اختلط سيلها بالأبطح ولم يبق مسلم على وجه الأرض إلا القليل. [. . .] وكان إمام الحرمين يقول: لو قيل لنا فصلوا ما يقتضي التكفير من العبارات مما لا يقتضي لقلنا هذا طمع في غير مطمع فإن هذا بعيد المدرك وعر المسلك يستمد من أصول التوحيد ومن لم يحط بنهايات الحقائق لم يتحصل من دلائل التكفير على وثائق.

لذلك نحذر كل تحذير من المجازفة بالتكفير في غير المواطن السابق بيانها لأنه جد خطير. والله الهادي إلى سواء السبيل وإليه المصير [محرر من مفاهيم يجب أن تصحح: ٥ - ٧].

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DEVIATIONS AND ABERRATIONS THAT ARE UNQUESTIONABLY INVALID

w47.2 (Muhammad Sa'id Buti:) We do not consider *deviations and aberrations* to include any position reflecting a disagreement between Islamic scholars resulting from their differences on derived rulings or particular applications of Sacred Law, for these all return to its basic methodology. Rather, we categorically affirm that this is a normal variance entailed by the very nature of the case (dis b6.2) and its methodological bases, though we subject these various viewpoints to an examination of which is the soundest, classifying them according to their relative strengths and weaknesses, each of us through his own reasoning (ijtihad) and judgement.

Nor do deviant and aberrant opinions necessarily entail the unbelief of the people who hold them, or being beyond the pale of Islam. Rather, there are some opinions so deviant that they reach the degree of negating what is necessarily known as being of the religion, leading to what the Prophet (Allah bless him and give him peace) termed *open unbelief;* others whose deviance reaches only the degree of being a violation of the methodological principles concurred upon by scholars of the Arabic language and hence by scholars of Islamic Law, entailing blameworthy innovation (bid'a), and perhaps corruption and turning from the truth without excuse; and still others whose deviance and aberrance wavers between reaching actual unbelief and merely falling within the bounds of corruption and blameworthy innovation, the honest and sincere investigator not finding any firm basis to consider them unbelief, yet not being able to accept with confidence that they are only a marginal deviance that does not compromise the person who holds them or put him outside of Islam. In dealing with this category of deviations and intellectual aberrances, we prefer to follow the way of greater precaution, which in this context consists of understanding people's states insofar as possible as if they were still within the fold of Islam and under its rubric. For the mistake of giving them the benefit of the doubt does not entail the losses entailed by making a mistake

ليس كل شذوذ في الرأي كفر

w47.2 (محمد سعيد البوطي:) [. . . و] لا نعد من الشذوذ أو الانحراف كل مذهب أو رأي انعكس الخلاف بين العلماء فيه عن خلافهم في تلك الجزئيات أو التطبيقات العائدة إلى المنهج. بل هو، فيما نجزم به، خلاف طبيعي اقتضاه الخلاف في جذور القضية وأصولها المنهجية، وإن كنا نُخضع هذه الآراء الخلافية لميزان الترجيح والتصنيف بين درجات القوة والضعف. فيما قد يهديه اجتهاد كل منا ونظره. [. . .].

ثم إن [هذه] الآراء الشاذة والمنحرفة [التي سنستعرض نماذج منها] ليست بالضرورة مستوجبة لكفر أصحابها وخروجهم عن الملة. بل فيها ما يشتد الشذوذ والانحراف فيه بحيث يبلغ درجة إنكار ما هو معروف من الدين بالضرورة، فيجر ذلك إلى ما سماه رسول الله ﷺ بالكفر البواح. وفيها ما يقف الشذوذ والانحراف فيه عند حد الخروج عن قواعد المنهج المتفق عليها عند علماء الشريعة الإسلامية، فيستلزم ابتداعاً وربما فسقاً وجنوحاً عن الحق بدون عذر. . . وفيها ما قد يتردد الشذوذ والانحراف فيه بين بلوغ درجة الكفر وحدود الفسق والابتداع، فلا يجد فيه الباحث المنصف معتمداً راسخاً للتكفير، كما لا يطمئن إلى أنه انحراف جزئي لم يند بصاحبه ولم يخرجه عن دائرة الإسلام. ونحن في مثل هذا النوع من الشذوذات والضلالات الفكرية نؤثر اتباع الحيطة. وإنما الحيطة في هذا المقام حمل حال الناس ما أمكن على أنهم لا يزالون داخلين في حظيرة الإسلام واقفين تحت مظلته، فإن الخطأ في تحسين الظن بهم لن يجر الوبال الذي يجره الخطأ في إساءة الظن بهم بنسبتهم

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by not giving them it and accusing them of unbelief and having left Islam. Despite which, we spare no effort to explain their corruption, and that they have innovated something Allah Mighty and Majestic has not given leave to; explaining their deviation from the methodology agreed upon by the scholars of this Community and warning people not to be misled by them or affected by their falsehoods (*al-Salafiyya marhala zamaniyya mubaraka la madhhab Islami* (y34), 109–10).

إلى الكفر والمروق عن الإسلام. هذا مع العلم بأننا لا نألو جهداً في بيان فسقهم وابتداعهم لما لم يأذن به الله عز وجل وشذوذهم عن المنهج الذي اتفق عليه علماء هذه الأمة، وفي تحذير الناس من الاغترار بهم والتأثر بزيفهم [محرر من السلفية مرحلة زمنية مباركة لا مذهب إسلامي: ١٠٩ - ١١٠].

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w48.0 WEAK HADITHS (from p9.5)

w48.0 الاحتجاج بالحديث الضعيف

w48.1 (A:) *Weak* (da'if) is a term for any hadith with a chain of transmission containing a narrator whose memory was poor, one who was not trustworthy, not identified by name, or for other reasons. But *weak* cannot simply be equated with *false*. Were this the case, mere analysis of the transmitters would be the universal criterion for acceptance or rejection of particular rulings based on hadiths. While scholars do use this measure in upgrading the work of preceding generations of legal authorities, they have not employed it as a simplistic expedient to eliminate every piece of legal information that is connected with a weak hadith, because of various considerations.

MULTIPLE MEANS OF TRANSMISSION

كثرة الطرق

w48.2 One of these is that when a piece of information is received through a means of transmission that may or may not be trustworthy, we generally have doubts about it. But when one and the same piece of information reaches us through several completely different channels, even though each one may or may not be trustworthy, the logical probability of the information's falsity is much reduced. And if we receive the very same piece of information from ten such channels, the possibility of its falsity does not usually even come to mind.

This verificatory principle has two important implications, one being the obligatory nature of belief in hadiths that are *mutawatir* (def: o22.1(d(II))), and the second being the weight that hadith scholars give to multiple means of transmission, which can raise a hadith from well authenticated (hasan) to rigorously authenticated (sahih), or from weak (da'if) to well authenticated, as described in the following account of a hadith's reclassification by a major specialist in hadith forgeries.

('Ali Qari:) The hadith "I am the city of knowledge and 'Ali is its gate," was mentioned by Tirmidhi in his *Jami'*, where he said it was

(علي القاري:) حديث «أنا مدينة العلم وعليٌ بابها» رواه الترمذي في جامعه وقال إنه منكر.

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unacknowledgeable. Bukhari also said this, and said that it was without legitimate claim to authenticity. Ibn Ma'in said that it was a baseless lie, as did Abu Hatim and Yahya ibn Sa'id. Ibn Jawzi recorded it in his book of hadith forgeries, and was confirmed by Dhahabi and others in this. Ibn Daqiq al-'Eid said, "This hadith is not confirmed by scholars, and is held by some to be spurious." Daraqutni stated that it was uncorroborated. Ibn Hajar 'Asqalani was asked about it and answered that it was well authenticated (hasan), not rigorously authenticated (sahih), as Hakim had said, but not a forgery (mawdu') as Ibn Jawzi had said. This was mentioned by Suyuti. The hadith master (hafiz) Abu Sa'id 'Ala'i said, "The truth is that the hadith is well authenticated (hasan), in view of its multiple means of transmission, being neither rigorously authenticated (sahih) nor weak (da'if), much less a forgery" (*Risala al-mawdu'at* (y112), 26).

وكذا قال البخاري وقال إنه ليس له وجه صحيح. وقال ابن معين إنه كذب لا أصل له وكذا قال أبو حاتم ويحيى بن سعيد. وأورده ابن الجوزي في الموضوعات ووافقه الذهبي وغيره على ذلك. وقال ابن دقيق العيد هذا الحديث لم يثبتوه وقيل إنه باطل. وقال الدارقطني غير ثابت.

وسئل عنه الحافظ العسقلاني فأجاب بأنه حسن لا صحيح كما قال الحاكم ولا موضوع كما قال ابن الجوزي ذكره السيوطي.

وقال الحافظ أبو سعيد العلائي الصواب أنه حسن باعتبار كثرة طرقه لا صحيح ولا ضعيف فضلاً عن أن يكون موضوعاً [على ما ذكره الزركشي] [نقل من رسالة الموضوعات: ٢٦].

(A:) Thus, when the person who has related a hadith is an Islamic scholar of the first rank, it is not enough for a student or popular writer to find one chain of transmission for the hadith that is weak. There are a great many hadiths with several chains of transmission, and adequate scholarly treatment of how these affect a hadith's authenticity has been traditionally held to require a master (hafiz), those like Bukhari, Muslim, Dhahabi, Ibn Kathir, or Suyuti who have memorized at least 100,000 hadiths—their texts, chains of transmission, and significance—to undertake the comparative study of the hadith's various chains of transmission that cannot be accurately assessed without such knowledge. Today, when not one hadith master (hafiz) remains in the Muslim Community, we do not accept the judgement of any would-be reclassifiers of hadith, no matter how large their popular following, unless it is corroborated by the work of previous hadith masters.

w48.3 Another reason why *weak* cannot simply be equated with *false* is the fact that *weak* is an attribute of the hadith's chain of transmission, while *false* is an attribute of the hadith's text. These are two different things, and the relationship between their respective reliabilities is a probabilistic expectation (istinbat) that is neither strictly causal, nor yet a necessary logical implication (lazim), there being four logical possibilities for any hadith:

(1) a sound text and sound chain of transmission, as with well-authenticated (hasan) or rigorously authenticated (sahih) hadiths;

(2) a sound text and an unsound chain of transmitters, reflecting the possibility that a transmitter with a poor memory, or unknown to the person who recorded the hadith, or one not trustworthy, is in principle capable of relating the hadith correctly;

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(3) an unsound text and unsound chain of transmitters, as with hadiths that are forged (mawdu');

(4) or an unsound text and a sound chain of transmitters, reflecting the possibility that one of those who classify the personalities and reliability of various hadith transmitters could in principle make an error in their *ijtihad* regarding a particular person.

Because of the distinction between text and transmission, forms of evidence other than the authenticity rating of the chain of narrators are sometimes admissible, as when there is a consensus of legal scholars who have received the hadith with acceptance, which is an acknowledged form of corroboration for hadiths of the second type mentioned above.

(Isma'il Ansari:) Ibn Hajar 'Asqalani says: "Among the characteristics that necessitate acceptance is for scholars of Sacred Law to have concurred on applying the implications of a hadith. Such a hadith is acceptable, even obligatory to apply, as a number of the Imams of fundamentals of Islam (usul) have explicitly stated. Shafi'i, for example, says, 'What I have said about water when its taste, odor, and color change, has been related from the Prophet (Allah bless him and give him peace) through a channel of transmission that hadith scholars do not confirm the like of, but it is the position of all scholars without a single dissenting voice I know of.' And he said of the hadith 'There is no bequest to an estate division heir' —'Scholars of hadith do not corroborate it, but all scholars receive it with acceptance and apply it.' "

Ibn al-Qayyim, in his *I'lam al-muwaqqi'in,* when discussing the hadith of Mu'adh about judgements (A: in which the Prophet (Allah bless him and give him peace) asked Mu'adh ibn Jabal when dispatching him to Yemen how he would judge, to which Mu'adh replied that he would judge first by the Koran, then by the sunna, and then by his own reasoning (ijtihad)), says, "Legal scholars accept it and employ it as evidence, from which we learn that they hold it to be rigorously authenticated (sahih), just as we learn of the authenticity of the Prophet's saying (Allah bless him and give him peace):

(1) " 'There is no bequest to an estate division heir.'

(إسماعيل الأنصاري:) [. . . وقال الصنعاني في توضيح الأفكار:] قال [الحافظ يعني] ابن حجر: من جملة صفات القبول [التي لم يتعرض لها شيخنا - يريد زين الدين في منظومته وشرحها] أن يتفق العلماء على العمل بمدلول حديث فإنه يقبل، حتى يجب العمل به وقد صرح بذلك جماعة من أئمة الأصول ومن أمثلته قول الشافعي: وما قلت إنه إذا غيّر طعم الماء وريحه ولونه يروى عن النبي ﷺ من وجه لا يثبت أهل الحديث مثله ولكنه قول العامة لا أعلم خلافاً. وقال في حديث «لا وصية لوارث» لا يثبته أهل العلم بالحديث ولكن العامة تلقته بالقبول وعملت به. [. . .]

[. . .] قال ابن القيم في إعلام الموقعين في كلام على حديث معاذ في القضاء: إن أهل العلم تلقوه واحتجوا به فوقفنا بذلك على صحته عندهم كما وقفنا على صحة قول رسول الله ﷺ «لا وصية لوارث» وقوله في البحر «هو الطهور ماؤه»

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(2) " '[The hadith about the sea,] Its water is purifying.'

(3) " 'When buyer and seller differ about the price they have agreed upon and the merchandise still exists, each swears [N: that his side of the story is correct] and [N: if they cannot agree] they cancel the sale.'

(4) " 'The killer's extended family is responsible for the indemnity.'

"Even if these hadiths are unauthenticated in their chains of transmission, since virtually all scholars have related them, the hadiths' authenticity, which they accept, eliminates their need to verify the channels of transmission, and so it is too with the hadith of Mu'adh: the fact that all scholars have adduced it as evidence eliminates the need for their checking its means of transmission."

And Ibn 'Abd al-Barr says in *al-Istidhkar*, concerning Tirmidhi's having related that Bukhari said of the hadith of the sea "Its water is purifying" that it was rigorously authenticated (sahih)—"Hadith scholars do not consider hadiths with the like of its chain of transmission to be rigorously authenticated (sahih), though I hold it to be so, because scholars have received it with acceptance" (*al-Isaba fi nusra al-Khulafa' al-Rashidin wa al-Sahaba* (y10), 11.8–9).

وقوله «إذا اختلف المتبايعان في الثمن والسلعة قائمة تحالفا وترادا البيع» وقوله «الدية على العاقلة» وإن كانت هذه الأحاديث لا تثبت من جهة الإسناد ولكن لما بلغتها الكافة غنوا بصحتها عندهم عن طلب الإسناد لها فكذلك حديث معاذ لما احتجوا به جميعاً غنوا عن طلب الإسناد. [. . .].

قال ابن عبد البر في الاستذكار لما حكي عن الترمذي أن البخاري صحح حديث البحر «هو الطهور ماؤه»: أهل الحديث لا يصححون مثل إسناده ولكن الحديث عندي صحيح لأن العلماء تلقوه بالقبول. [محرر من الإصابة في نصرة الخلفاء الراشدين والصحابة في تصحيح حديث ابن خصيفة في التراويح: ١١/ ٨ - ٩؛ بتقديم وتأخير].

(A:) Among the primary textual evidence for the admissibility of such hadiths is the word of the Prophet (Allah bless him and give him peace):

"Allah will never make my Community concur upon misguidance, and Allah's hand is over the group."

«لا يجمع الله أمتي على ضلالة أبداً ويد الله على الجماعة» [رواه الحاكم ١/ ١١٦ بسند صحيح].

So it is inadequate for someone who proposes to annul a ruling of Sacred Law to adduce that the hadith supporting it has a weak chain of transmission, unless he can also establish both that there are not a number of similar variants or alternate channels of transmission that strengthen it, confirming this by means of a text by a hadith master (hafiz); and that the meaning of the hadith has not been received with acceptance by the scholars of the Muslim Community.

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w49.0 ACCEPTING THE PROCEEDS OF UN-ISLAMIC TAX REVENUES (from p32.3)

w49.0 حل قبول الراتب على عمل مشروع من دولة غير إسلامية

w49.1 (A:) A Muslim may take wages for lawful work from a government whose main income is non-Islamic tax revenues on condition that at least some of the government's property is from lawful transactions such as the money taken from customers paying for postal services, etc.; the legal basis for which is the principle that "the legitimate in Sacred Law is that whose origin is unknown," meaning not established to be unlawful. Similarly, it is lawful to accept money from a merchant, for example, who deals in interest with a bank, since one is able to presume that the money one is accepting is from the lawful part of his wealth.

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w50.0 THE PROHIBITION OF DEPICTING ANIMATE LIFE (from p44.1 (n:))

w50.0 تحريم التصوير

HADITH EVIDENCE OF THE PROHIBITION OF DEPICTING ANIMATE LIFE

أدلة تحريم التصوير من السنة

w50.1 ('Abd al-Ghaffar 'Uyun al-Sud:) One should realize that the prohibition of picture making is extremely severe, that it is counted among the enormities, and the threats against doing it are very emphatic. Bukhari and Muslim relate that a man came to Ibn 'Abbas (Allah be well pleased with him and his father) and said, "My livelihood comes solely from my hands, and I make these pictures. Can you give me a legal opinion about them?" Ibn 'Abbas told him, "Come closer," and the man did. "Closer," he said, and the man did, until he put his hand on the man's head and said: "Shall I tell you what I heard from the Messenger of Allah (Allah bless him and give him peace)? I heard the Messenger of Allah say,

" 'Every maker of pictures will go to the fire, where a being will be set upon him to torment him in hell for each picture he made.'

"So if you must, draw trees and things without animate life in them."

w50.1 (عبد الغفار عيون السود:) وليعلم أن التصوير حرام شديد التحريم وهو من الكبائر ومتوعد عليه بالوعيد الشديد. ففي الصحيحين أن رجلاً جاء إلى ابن عباس رضي الله عنهما فقال: إنما معيشتي من صنعة يدي وإني أصنع هذه التصاوير فافتني فيها. فقال له: ادن مني؛ فدنا ثم قال: ادن مني؛ فدنا حتى وضع يده على رأسه وقال له: ألا أنبئك بما سمعت من رسول الله ﷺ؟ سمعت رسول الله ﷺ يقول: «كل مصوّر في النار يجعل له بكل صورة صوّرها نفساً تعذبه في جهنم»، قال ابن عباس: فإن كنت لا بد فاعلا فاصنع الشجر وما لا نفس له

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And Tirmidhi relates that the Prophet (Allah bless him and give him peace) said,

"On the Day of Judgement, part of the hellfire will come forth with two eyes with which to see, two ears with which to hear, and a tongue with which to speak, saying, 'I have been ordered to deal with three: he who holds there is another god besides Allah, with every arrogant tyrant, and with makers of pictures.' "

And Bukhari, Tirmidhi, and Nasa'i relate the prophetic hadith from Ibn 'Abbas,

"Whoever makes a picture, Allah shall torture him with it on the Day of Judgement until he can breathe life into it, and he will never be able to."

وأخرج الترمذي [وصححه] عن النبي ﷺ قال: «يخرج عُنُقٌ (أي جانب) من النار يوم القيامة له عينان يبصر بهما وأذنان يسمعان ولسان ينطق به يقول: وكلت بثلاثة، بمن جعل مع الله إلهاً آخر وبكل جبار عنيد وبالمصورين.

وأخرج البخاري والترمذي والنسائي من حديث ابن عباس مرفوعاً «من صوّر صورةً عذبه الله بها يوم القيامة حتى ينفخ فيها الروح وما هو بنافخ».

IMITATING THE CREATIVE ACT OF ALLAH

مضاهاة خلق الله

w50.2 The reason for the unlawfulness of pictorial representation is that it imitates the creative act of Allah Most High, as is indicated by the hadith related by Bukhari and Muslim that 'A'isha (Allah be well pleased with her) said, "The Prophet (Allah bless him and give him peace) returned from a trip, and I had draped a cloth with pictures on it over a small closet. When he saw it, he ripped it down, his face colored, and he said,

" 'A'isha, the people most severely tortured by Allah on the Day of Judgement will be those who try to imitate what Allah has created,' "

the representation in question consisting of winged horses, as is mentioned in Muslim's version. (A: If the sole basis for the prohibition of pictures was that they were worshipped in pre-Islamic times as gods, as has been claimed by certain contemporary scholars, there would have been no point in the Prophet (Allah bless him and give him peace) tearing the cloth down, since 'A'isha was not an idol worshipper or raised among idolators.)

w50.2 وعلة المنع من التصوير ما فيه من مضاهاة خلق الله تعالى كما يشير إليه ما في الصحيحين [وغيرهما] عن عائشة رضي الله عنها قالت: «قدم رسول الله ﷺ من سفر وقد سترت سهوة لي بقرام فيه تماثيل فلما رآه هتكه وتلون وجهه وقال: «يا عائشة أشد الناس عذاباً يوم القيامة الذين يضاهون بخلق الله» [أي يشبهون ما يصنعونه بما يصنعه الله. والسهوة بفتح السين المهملة وسكون الهاء: الخزانة الصغيرة والقرام بكسر القاف هو الستر]. وكانت التماثيل صور الخيل ذوات الأجنحة على ما صرحت به رواية مسلم عنها. (ع: ولو كان التحريم لمجرد أن الصور تعبد من دون الله - كما زعم بعض المعاصرين - لما كان لهتكه ﷺ قرام عائشة فائدة، لأنها لم تكن من عبدة الأوثان ولا تربت فيهم).

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PROCURING PICTURES

اتخاذ الصور حرام كصنعها

w50.3 The foregoing hadiths show that producing representations is unlawful under any circumstances, and just as making a picture is unlawful, so too is procuring one, because the threat that pertains to the maker pertains to the user, for pictures are only made to be used.

w50.3 فعلم من ذلك أن صنعة التصوير حرام بكل حال وكما يحرم التصوير يحرم اتخاذ الصورة لأن الوعيد إذا حصل لصانعها فهو حاصل لمستعملها لأنها لا تصنع إلا لتستعمل.

w50.4 (A:) The determining factor in the prohibition of procuring images is the purpose for which they are procured. For example, someone who buys cookies with the shape of animals is not doing wrong if his purpose is to eat, though the maker of them is doing wrong. And similarly with books containing pictures, if the buyer intends obtaining the text, then the presence of pictures is the fault of the printer, not the buyer. The same holds for photographs (dis: w50.9) required for official documents: the authorities are responsible for the sin, not the individual forced to comply. As for dolls, making them is unlawful, though using them is merely offensive. And with rugs, making pictures in them is unlawful, though using such rugs is permissible.

THREE-DIMENSIONAL IMAGES

الصور المجسمة

w50.5 Regarding the prohibition, it makes no difference whether the figure is three-dimensional (lit. "has a shadow") or not, meaning when it has a solid form, as opposed to when it is portrayed on paper, a garment, a wall, or something else. This position (N: of there being no difference between images that are three-dimensional or otherwise) was held by the majority of the Companions, those who came after them, and the following generation, as is mentioned by Nawawi. Some of the early Muslims held that two-dimensional images were permissible, a view for which they adduced the Abu Talha hadith related by Bukhari and others, in which an exception is made for images depicted on cloth. But Nawawi understands the exception as referring to the depiction of trees and similar objects without animate life, interpreting the hadith this way to reach an accord between it and the above hadith (w50.2) about the Prophet (Allah bless him and give him peace) tearing down the cloth with which 'A'isha had covered the small closet, for it consisted of mere drawn images without three dimensions. Nawawi says, "The view

w50.5 [. . .] وسواء في ذلك ما له ظل من الصور وما لا ظل له أعني ما إذا كانت مجسمة ذات جرم أو رقماً في ورق أو ثوب أو حائط أو غير ذلك. وعلى هذا جمهور الصحابة والتابعين فمن بعدهم كما أفاده النووي. وقال بعض السلف لا بأس بالصور التي لا ظل لها مستدلين بحديث أبي طلحة عند البخاري وغيره وفيه استثناء ما كان رقماً في ثوب وحمله النووي على رقم صورة الشجرة ونحوها مما ليس بذي روح جمعاً بينه وبين ما تقدم من هتك النبي ﷺ قرام عائشة الذي ستر به السهوة فإنه كان مجرد رقم لا ظل له. وقال النووي إن القول بأن ما لا

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that non-three-dimensional images are unobjectionable is a falsehood," declaring it invalid. But if not an outright falsehood, it is a position that the evidence is against. (A: This was the position of some of the later followers of Imam Malik. As for the Imam himself, he held that pictures were as unlawful as statues.)

ظل له لا بأس به مذهب باطل كذا أطلق عليه البطلان فإن لم يكن باطلاً كما قال فهو مذهب مرجوح (ع: وهو مذهب بعض متأخري المالكية. أما الإمام مالك فالصور حرام عنده مثل التماثيل المجسمة).

IMAGES PREVENT ANGELS FROM ENTERING A HOUSE

الصور تمنع الملائكة من دخول البيت

w50.6 Another reason pictures are unlawful is that they prevent angels from entering the house where they are found (N: meaning the angels of mercy, though protecting angels enter such houses), as is attested to by the hadith related by Bukhari that the Prophet (Allah bless him and give him peace) said,

"Angels do not enter a house in which there are pictures."

house meaning any place a person is, whether it be a building, tent, or other. Qurtubi says, "Angels do not enter a house where there are pictures because the person who puts them there is imitating non-Muslims, who put pictures in their homes and honor them, the angels abandoning such a person for this."

Nasa'i relates that Abu Hurayra (Allah be well pleased with him) said, "Gabriel (upon whom be peace) asked the Prophet for permission to enter his house, and when the Prophet told him to come in, Gabriel replied, 'How can I come in when there is a curtain in your house with pictures on it? You should either remove their heads or make it a mat to walk on, for we angels do not enter a house in which there are pictures,'" which shows that the pictures that prevent angels from entering are those that retain their original form and are in an unhumiliated deployment. As for images that are abased and walked upon by feet, or those whose form has been altered, these do not bar the angels' entry, *altered* meaning the onlooker imagines it is not the form of a living being, as is clearly implied by the version of this hadith related in the *Sunan* as, "... Order that the

w50.6 [...] ولأنها تمنع من دخول الملائكة بيتاً هي فيه (ح: والمقصود ملائكة الرحمة، أما ملائكة الحفظ فيدخلون) لحديث البخاري عنه ﷺ قال: «إن البيت الذي فيه صور لا تدخله الملائكة». والمراد بالبيت المكان الذي يستقر فيه الشخص سواء كان بناء أو خيمة أو غير ذلك.

قال القرطبي: إنما لا تدخل الملائكة البيت الذي فيه الصور لأن متخذها قد تشبه بالكفار لأنهم يتخذون الصور في بيوتهم ويعظمونها فلم تدخل الملائكة بيته هجراً له على ذلك.

وأخرج النسائي عن أبي هريرة رضي الله عنه قال: «استأذن جبريل عليه السلام على النبي ﷺ فقال: أدخل؟ فقال: كيف أدخل وفي بيتك ستر فيه تصاوير فإما أن تقطع رؤوسها أو تجعل بساطاً يوطأ فإنا معشر الملائكة لا ندخل بيتاً فيه تصاوير» فعلم من هذا أن الصورة التي تمنع من دخول الملائكة هي الباقية على هيأتها غير الممتهنة. أما الممتهنة التي توطأ بالأقدام أو التي غيرت هيأتها ففيز مانعة من دخول الملائكة والمراد بتغييرها أن تجعل بحيث يتخيل للناظر إليها أنها ليست بصورة حيوان بدليل ما جاء في رواية هذا الحديث في السنن

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heads of the images be removed so they resemble the form of trees."

بلفظ «مر برأس التمثال يقطع فيصير كهيأة الشجرة».

PORTRAITS

صورة بعض الجسم

w50.7 Some people might think there is no harm in having portraits made today because they are not full length but are rather from the chest up, imagining this to be permissible from the words of the scholars that "if a picture lacks a portion without which the figure could not live, there is no harm in it." This is a mistake that should be abandoned, for by the expression *without which the figure could not live,* scholars mean that the beholder's mind does not register the figure is a living one but rather perceives it as dead. Now, someone looking at pictures of only the upper half does not apprehend the figure as dead, but rather as living, save only that the lower half is as though sunken in a place that conceals it, or covered by something, which is because the lower half is not met by the viewer's gaze, and the area in view is merely confined to the upper half. For this reason, some scholars prohibit portrayal of the head alone, and whoever reflects on Gabriel's words, "Order that the heads of the figures be removed so that they resemble trees," can plainly see the truth of what we have mentioned.

w50.7 قد يظن بعض الناس أنه لا بأس باتخاذ الصور اليوم من حيث أنها ليست تامة بل هي من الصدر فما فوقه يتوهم ذلك من قول الفقهاء إن الصورة إذا كانت ممحوة عضو لا حياة بدونه لا بأس بها.

وهذا غلط ينبغي الرجوع عنه فإن مراد الفقهاء بقولهم لا حياة بدونه نفي الحياة في تخيل الناظر إلى الصورة بحيث لا يراها صورة حيوان حي بل صورة حيوان ميت. والناظر إلى الصور التي يصور فيها النصف الأعلى فقط لا يتخيل إليه أنها صورة حيوان ميت بل صورة حيوان حي غير أن نصفه الأسفل كأنه في مكان منخفض يستره أو مغطى بشيء وذلك لأن النصف الأسفل غير مقصود بالنظر وإنما العمدة في النظر النصف الأعلى فلذا منع بعض الفقهاء اتخاذ صورة الرأس وحده [كما نص عليه في المحيط]. ومن تأمل قول جبريل عليه السلام: «مر برأس التمثال يقطع فيصير كهيأة الشجرة» ظهر له ما ذكرنا.

w50.8 Others suppose that the sole reason for prohibiting pictures is that they were worshipped as gods apart from Allah, and that today there is no longer any danger of it, so there is no harm in having them. And this is totally wrong, for the banning of images is not only because they were worshipped, but also because of their imitating the creative act of Allah Most High, and the emulation therein of non-Muslims.

To summarize, the use of pictures comes of weakness of faith and unconcern for religious matters. Whoever prefers what his Master wishes above what gratifies his own ego and what he would personally care for will stay as far from

w50.8 ومن الناس من يتوهم أن تحريم الصورة إنما كان من حيث أنها كانت تعبد من دون الله، أما اليوم فقد أمن ذلك فلا بأس بها وهذا غلط بحت لأن تحريم الصورة لا من حيث أنها كانت تعبد فقط بل لما فيها من مضاهاة خلق الله تعالى ولما فيها من التشبه بالكفرة.

وبالجملة اتخاذ الصور هو من ضعف الإيمان وقلة الاهتمام بالأمور الدينية ومن كان يؤثر ما يرضى عنه مولاه على ما تشتهيه نفسه ويهواه يتباعد عن ذلك كل

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them as possible (*al-Riyad al-nadira fi tafsir suratayy al-Fatiha wa al-Baqara* (y133), 1.139–44).

البعد [محرر من الرياض النضرة في تفسير سورتي الفاتحة والبقرة: ١: ١٣٩ - ١٤٤، بتقديم وتأخير].

PHOTOGRAPHS OF ANIMATE LIFE

تصوير ما له روح بالآلة الفوتوغرافية

w50.9 (n: Photography did not exist in previous eras of Islamic scholarship, and contemporary scholars are divided about it. Some, like Muhammad Bakhit Muti'i, contend that photography is not picture making, but merely "the retention of an object's shadow" (habs al-zill) and therefore permissible, while others, like the author of the passage below, have not accepted such reasoning. Because of scholarly disagreement concerning its permissibility, one is not entitled to condemn Muslims who use photographs, though one may still distinguish between this dispensation (rukhsa, def: c6.3) and what is the stronger position and more precautionary in religion, and to this end the following article has been translated.)

(Muhammad Hamid:) A factual question arises here, namely that the photographic device does not act except through an agent, who causes this "shadow" to be fixed and retained by aiming and focusing the camera at a particular object to permit this fixation and make this retention appear. But since this is really an aquisition and is precisely image making, and since the prohibition of making pictures by the hand alone is not merely because of the hand's motion but because of what it thereby produces, then if the result is the same, should not the ruling also be? Moreover, hand-made images do not give the picture the fidelity of the camera-made image, which delineates features, conveys reality, and reveals details so that nothing great or small escapes it, being thus *abler* than the unaided hand to achieve pictorial representation, because of which the prohibition of making pictures thereby applies to it with still better right, and can never be mitigated by the mere fact that it consists in pressing a button as long as what is forbidden is even more fully realized thereby, since matters are judged by their intended outcomes, in permissibility or being unlawful. Just as killing someone by pressing a particular button on a device is unlawful, so too making a picture by this pressure is unlawful in view of the effect and result. Nor does the fact that it is widespread among people justify it. It is no different than interest (riba), adultery, drinking, gambling, or other blameworthy acts whose night

[محمد الحامد:) [. . . و] هنا يرد سؤال علمي هو أن الآلة (ت: الفوتوغرافية) لا عمل لها إلا بعامل فهو الذي قصد إلى تثبيت هذا الظل وحبسه بتوجيهها وتركيزها على نحو معين كي يتسنى هذا التثبيت ويظهر هذا الحبس. على أنه في الحقيقة التقاط وهو التصوير عينه فإن تحريم التصوير باليد المجردة ليس لمحض حركتها بل لما ينشأ عنها وإذا كانت النتيجة واحدة أفلا يكون الحكم واحداً؟ بل إن التصوير باليد لا يعطي الصورة وضوحاً كالتصوير بالآلة الفوتوغرافية هذه التي تبسط المعالم وتحكي الواقع وتبرز الدقائق فلا يفوت شيء من الصورة قل أو جل فهي أقدر على تحقيق التصوير من اليد المجردة فتحريم التصوير بها يتناولها تناولاً أولوياً ولن يخفف منه أنه ضغط زر معين مادام الشيء المنهي عنه متحققاً بها أتم تحقق (فالأمور بمقاصدها) حلاً وحرمة، وكما أن قتل النفس بضغط زر معين في آلة حرام فكذا التصوير بهذا الضغط حرام اعتباراً بالأثر والنتيجة.

وشيوع هذا التصوير في الناس لا يجعله مباحاً فما هو إلا كالربا والزنا والخمر والقمار وسائر المنكرات التي

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has overspread the people and darkness enveloped them. The commonness of something that is wrong never makes it permissible. And groping for support from Sacred Law for each new reprehensible practice that appears is a dangerous misstep that forebodes great evil. Allah Most High says,

"These are Allah's limits, so transgress them not, for whoever goes beyond Allah's limits, those are the wrongdoers" (Koran 2:229).

(*Rudud 'ala abatil wa rasa'il al-Shaykh Muhammad al-Hamid* (y44), 1.164–65)

غشي الناس قتامها وعمهم ظلامها. وما كان انتشار المنكر أن يبيحه، والتماس تكأة من الشرع لكل منكر يجد ويحدث مزلق خطير يؤذن بشر مستطير، والله تعالى قال:

﴿تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ﴾ [البقرة: ٢٢٩] [نقل من ردود على أباطيل ورسائل الشيخ محمد الحامد: ١/ ١٦٤ - ١٦٥].

TELEVISION

التلفزيون

w50.10 (n:) The Council of Islamic Scholars (Majlisul Ulama) of Port Elizabeth, South Africa, have published a booklet on Islam and television in which they list the factors present in television that are unlawful or offensive, the existence of any one of which is sufficient to make watching it a violation of Sacred Law, including:

(1) pictures of animate objects and picture making (dis: w50);

(2) music (r40.1);

(3) immorality, nudity, illicit sex, pornography, etc. (m2.3–8);

(4) obscene language (r26.2);

(5) incitement to fornication (p12);

(6) negation of modesty (haya', dis: r26.1(2));

(7) scenes of violence, sadism, and crime in general portrayed (r13.1);

(8) the addictive influence exercised by TV;

(9) it encourages the acceptance of aggression as a mode of behavior (p48.1);

(10) it encourages imitation of the crimes portrayed (r7.1(3,(end)));

(11) the brainwashing action of TV, especially on the young (t3.16);

(12) TV stunts intellectual growth (w41.3);

(13) it wastes time (r13.3);

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(14) it interferes with one's religious duties and one's necessary and important worldly duties (k29.5(4));

(15) it diverts one's attention from the remembrance of Allah (r1.2(5));

(16) and it falls under the category described by Islam as *pointless amusement* (lahw, def: r13.3).

(Majlisul Ulama:) In the face of this formidable array of evil factors and harmful effects no one can have any doubt of the illegality of television in Islam. Television, as has been seen, is an embodiment of sin and immorality. Islam can never condone or permit an institution which plays havoc with the spiritual, mental, and moral development of mankind (*Islam and Television* (y78), 20–21).

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w51.0 WOMEN REMOVING FACIAL HAIR (from p59.1)

w51.1 The Prophet (Allah bless him and give him peace) said,

"May Allah curse women who wear false hair or arrange it for others, who tattoo or have themselves tattooed, who pluck facial hair or eyebrows or have them plucked, and women who separate their front teeth for beauty, altering what Allah has created."

w51.2 (Ibn Hajar 'Asqalani:) Nawawi says that "an exception from the prohibition of plucking away facial hair is when a woman has a beard, mustache, or hair growing between her lower lip and chin, in which cases it is not unlawful for her to remove it, but rather is commendable (mustahabb)," the permissibility being on condition that her husband knows of it and gives his permission, though it is prohibited if he does not, because of the deception it entails (*Fath al-Bari* (y17), 10.378).

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w51.0 النماص

w51.1 قال النبي ﷺ:
«لعن الله الواصلة والمستوصلة والواشمة والمستوشمة والنامصة والمتنمصة والمتفلجات للحسن المغيرات خلق الله» [رواه الذهبي في الكبائر وقال: متفق عليه].

w51.2 (ابن حجر العسقلاني:) [... و] قال النووي: يستثنى من النماص ما إذا نبت للمرأة لحية أو شارب أو عنفقة فلا يحرم عليها إزالتها بل يستحب. [قلت:] وإطلاقه مقيد بإذن الزوج وعلمه، وإلا فمتى خلا عن ذلك منع للتدليس [نقل من فتح الباري بشرح صحيح الإمام أبي عبد الله محمد بن إسماعيل البخاري: ١٠/ ٣٧٨].

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w52.0 IBN HAJAR HAYTAMI'S LIST OF ENORMITIES (from p76)	w52.0 الكبـــائـــر عنـد ابن حجر الهيتمي

w52.1 (A:) Ibn Hajar's purpose in *al-Zawajir 'an iqtiraf al-kaba'ir* is to warn readers against any act that an Islamic scholar has classified as an enormity. Because of the wider scope of the work, he does not confine himself, as does Imam Dhahabi, to sins agreed upon by scholars as being enormities, but also records those which are differed about, mentioning them by way of furnishing a fuller definition of godfearingness (taqwa).

INWARD ENORMITIES	الكبائر الباطنة
(1) Associating others with Allah Most High (shirk);	(١) الشرك [الأكبر أعاذنا الله منه].
(2) the lesser form of associating others with Allah (shirk), which is showing off in good works;	(٢) الشرك الأصغر وهو الرياء.
(3) anger without right, malice, and envy;	(٣) الغضب بالباطل والحقد والحسد.
(4) arrogance, pride, and conceit;	(٤) الكبر والعجب والخيلاء.
(5) cheating others;	(٥) الغش.
(6) hypocrisy;	(٦) النفاق.
(7) excesses against others;	(٧) البغي.
(8) keeping aloof from others out of pride or contempt for them;	(٨) الإعـــراض عن الخلق استكبـاراً واحتقاراً لهم.
(9) conversations about what does not concern one (def: w54);	(٩) الخوض فيما لا يعني.
(10) acquisitive greed;	(١٠) الطمع.
(11) fear of poverty;	(١١) خوف الفقر.
(12) resentment about what Allah Most High has destined;	(١٢) سخط المقدور.
(13) admiring the rich and honoring them for their wealth;	(١٣) النظر إلى الأغنياء وتعظيمهم لغناهم.
(14) sarcasm towards the poor because of their poverty;	(١٤) الاستهزاء بالفقراء لفقرهم.

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(15) avarice in holding on to one's possessions;	(١٥) الحرص.
(16) vying with others for worldly gain and taking pride in it;	(١٦) التنافس في الدنيا والمباهاة بها.
(17) adorning oneself for the sake of one's fellow creatures with what is unlawful as adornment;	(١٧) التزين للمخلوقين بما يحرم التزين به.
(18) compromising one's principles (def: r17);	(١٨) المداهنة.
(19) enjoying being praised for what one does not do;	(١٩) حب المدح بما لا يفعله.
(20) being too occupied with others' faults to notice one's own;	(٢٠) الاشتغال بعيوب الخلق عن عيوب النفس.
(21) forgetting one's blessings;	(٢١) نسيان النعمة.
(22) zealotry for other than Allah's religion;	(٢٢) الحمية لغير دين الله.
(23) being unthankful;	(٢٣) ترك الشكر.
(24) not accepting fate (dis: w59);	(٢٤) عدم الرضا بالقضاء.
(25) for a person not to take the rights of Allah Most High and His commands seriously;	(٢٥) هوان حقوق الله تعالى وأوامره على الإنسان.
(26) sarcasm towards, looking down on, or having contempt for the servants of Allah Most High;	(٢٦) سخريته بعباد الله تعالى وازدراؤه لهم واحتقاره إياهم.
(27) following one's caprice and ignoring the truth;	(٢٧) اتباع الهوى والإعراض عن الحق.
(28) plotting and treachery;	(٢٨) المكر والخداع.
(29) wanting the life of this world (N: more than the next);	(٢٩) إرادة الحياة الدنيا.
(30) obstinately opposing the truth;	(٣٠) معاندة الحق.
(31) thinking badly of a Muslim or not giving him the benefit of the doubt;	(٣١) سوء الظن بالمسلم.
(32) not accepting the truth when it conflicts with one's own preference, or when it comes from someone one dislikes;	(٣٢) عدم قبول الحق إذا جاء بما لا تهواه النفس أو جاء على يد من تكرهه وتبغضه.

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(33) exulting in disobedience;	(٣٣) فرح العبد بالمعصية.
(34) persisting in disobedience;	(٣٤) الإصرار على المعصية.
(35) loving to be praised for one's acts of obedience;	(٣٥) محبة أن يحمد بما يفعله من الطاعات.
(36) satisfaction with the life of this world and being contented with it;	(٣٦) الرضا بالحياة الدنيا والطمأنينة إليها.
(37) forgetting Allah Most High and the next world;	(٣٧) نسيان الله تعالى والدار الآخرة.
(38) anger for the sake of one's ego and vindicating or justifying oneself when in the wrong;	(٣٨) الغضب للنفس والانتصار لها بالباطل.
(39) feeling secure from Allah's intrigue by committing acts of disobedience while relying on His mercy;	(٣٩) الأمن من مكر الله بالاسترسال في المعاصي مع الاتكال على الرحمة.
(40) despairing of Allah's mercy;	(٤٠) اليأس من رحمة الله.
(41) thinking badly of Allah Most High;	(٤١) سوء الظن بالله تعالى.
(42) loss of all hope in Allah's mercy;	(٤٢) القنوط من رحمة الله.
(43) learning Sacred Knowledge for the sake of this world;	(٤٣) تعلم العلم للدنيا.
(44) concealing Sacred Knowledge;	(٤٤) كتم العلم.
(45) not applying what one knows (N: in matters that occur);	(٤٥) عدم العمل بالعلم.
(46) claims to knowledge, mastery of the Koran, or any act of worship, made out of pride and boastfulness;	(٤٦) الدعوى في العلم أو القرآن أو شيء من العبادات زهواً وافتخاراً.
(47) neglect that results in the loss of people such as Islamic scholars, or sarcasm towards them;	(٤٧) إضاعة نحو العلماء والاستخفاف بهم.
(48) intentionally lying about Allah Most High;	(٤٨) تعمد الكذب على الله تعالى.
(49) intentionally lying about the Messenger of Allah (Allah bless him and give him peace);	(٤٩) أو على رسوله ﷺ.
(50) inaugurating a reprehensible innovation;	(٥٠) من سن سنة سيئة.

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(51) abandoning the sunna;

(٥١) ترك السنة.

(52) disbelief in destiny;

(٥٢) التكذيب بالقدر.

(53) not fulfilling the terms of an agreement (A: if one intends this from its outset);

(٥٣) عدم الوفاء بالعهد.

(54) love of oppressors or the immoral, no matter what the type of their immorality;

(٥٤) محبة الظلمة أو الفسقة بأي نوع كان فسقهم.

(55) hating the righteous (N: for their righteousness);

(٥٥) بغض الصالحين (ح: لصلاحهم).

(56) harming the friends of Allah (awliya') and enmity towards them;

(٥٦) أذية أولياء الله ومعاداتهم.

(57) reviling destiny;

(٥٧) سب الدهر.

(58) saying something that causes great harm or extensive damage, something that angers Allah Most High but to which the speaker pays little attention;

(٥٨) الكلمة التي تعظم مفسدتها وينتشر ضررها مما يسخط الله تعالى ولا يلقي لها قائلها بالاً.

(59) being ungrateful to someone who does one a kindness;

(٥٩) كفران نعمة المحسن.

(60) neglecting to say the blessings on the Prophet (Allah bless him and give him peace) when one hears his name mentioned;

(Yusuf Nabahani:) Ibn Salah says: "One should be diligent about writing Allah's blessings and peace on the Messenger of Allah (Allah bless him and give him peace) whenever he is mentioned, and not grow weary of repeating it as often as it occurs, for this is one of the greatest benefits attained by students of hadith and their copyists, while someone oblivious to it misses an enormous reward. The blessings thus recorded are a written prayer, not words being quoted, so they are not restricted to the written version of the text that is related or the words of the original.... One should avoid writing it in two defective styles, one of which is deficient in form, i.e. alluding to the blessings by two letters or the like, as certain lazy, ignorant, or unlearned people do, writing *pbuh* instead of 'Allah bless him and give him peace'; while the other is deficient in meaning, i.e. by not adding the words 'and give him peace' " (*Sa'ada al-darayn fi al-salat 'ala Sayyid al-Kawnayn* (y96), 189);

(٦٠) ترك الصلاة على النبي ﷺ عند سماع ذكره ﷺ.

(يوسف النبهاني:) [...و] قال ابن الصلاح: وينبغي أن يحافظ على كتب الصلاة والتسليم على رسول الله ﷺ عند ذكره ولا يسأم من تكرير ذلك عند تكرره فإن ذلك من أكبر الفوائد التي يتعجلها طلبة الحديث وكتبتهم ومن أغفل ذلك حرم حظاً عظيماً. وما يكتبه من ذلك فهو دعاء يثبته لا كلام يرويه فلذلك لا يتقيد بالرواية ولا يقتصر فيه على ما في الأصل [وهكذا الأمر في الثناء على الله تعالى عند ذكر اسمه نحو عز وجل وتبارك وتعالى. ثم قال] وليجتنب في إثباتها نقصين: أن يكتبها منقوصة صورة رامزاً إليها بحرفين أو نحو ذلك كما يفعله بعض الكسالى والجهلة والعوام فيكتبون صورة «صلعم» بدلاً عن ﷺ؛ والثاني أن يكتبها منقوصة معنى بأن لا يكتب فيها وسلم اهـ [نقل من سعادة الدارين في الصلاة على سيد الكونين: ١٨٩].

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(61) such hardheartedness as would prevent one from feeding a needy person, for example;	(٦١) قسوة القلب بحيث تحمل صاحبها على منع إطعام المضطر مثلاً.
(62) acquiescing to any enormity;	(٦٢) الرضا بكبيرة من الكبائر.
(63) aiding someone in committing an enormity;	(٦٣) الإعانة عليها بأي نوع كان.
(64) persisting in wickedness and obscenity until people fear one for one's evil;	(٦٤) ملازمة الشر والفحش حتى يخشاه الناس اتقاء شره.
(65–66) cutting minted coins (N: into segments of which some are smaller than others and cause loss to users, and because it is destruction of Muslim moneys); or minting it in a fraudulent way that if people knew of, they would not accept;	(٦٥-٦٦) كسر دراهم ودنانير؛ (ح: أي تقسيمها إلى أجزاء يكون بعضها صغير فيدخل النقص على المتعامل بها، ولأنه إتلاف نقود المسلمين)؛ وضرب نحو الدراهم والدنانير على كيفية من الغش لو اطلع عليها الناس لما قبلوها.
PURIFICATION	الطهارة
(67) eating or drinking from a gold or silver vessel;	(٦٧) الأكل أو الشرب في آنية الذهب أو الفضة.
(68) forgetting the Koran, any of its verses, or even a single letter (A: the prohibition of *forgetting the Koran* being taken literally by the Shafi'i school, according to whom repentance entails rememorizing what has been forgotten, though not for Malik and Abu Hanifa, who interpret *forgetting* as abandoning its implications);	(٦٨) نسيان القرآن أو آية منه بل أو حرف.
(69) disputation and picking apart another's words—meaning to argue with another seeking merely to win or defeat him—when discussing the Koran or religion;	(٦٩) الجدال والمراء وهو المخاصمة والمحاججة وطلب القهر والغلبة في القرآن أو الدين.
(70) defecating on a path;	(٧٠) التغوط في الطريق.
(71) not eliminating all traces of urine from one's person or clothes;	(٧١) عدم التنزه من البول في البدن أو الثوب.
(72) omitting any of the integrals of ablution (wudu);	(٧٢) ترك شيء من واجبات الوضوء.
(73) omitting any of the integrals of the purificatory bath (ghusl);	(٧٣) ترك شيء من واجبات الغسل.

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(74) disclosing one's nakedness when there is no need, including entering a (N: public) bathhouse without a covering;	(٧٤) كشف العورة لغير ضرورة، ومنه دخول الحمام بغير مئزر ساتر لها.
(75) sexual intercourse with a woman during menstruation;	(٧٥) وطء الحائض.
THE PRAYER	الصلاة
(76) deliberately not performing the prescribed prayer;	(٧٦) تعمد ترك الصلاة.
(77) deliberately performing the prayer before or after its time without an excuse such as travel or similar;	(٧٧) تعمد تأخير الصلاة عن وقتها أو تقديمها عليه من غير عذر كسفر الخ.
(78) sleeping on a roof that lacks a wall around its edges;	(٧٨) النوم على سطح لا تحجير به.
(79) omitting an obligatory feature of the prayer;	(٧٩) ترك واجب من واجبات الصلاة.
(80) lengthening one's hair with false hair, or having it done;	(٨٠) الوصل وطلب عمله.
(81) tattooing, or having it done;	(٨١) الوشم وطلب عمله.
(82) sharpening the teeth or having it done;	(٨٢) وشر الأسنان أي تحديدها وطلب عمله.
(83) plucking eyebrows or facial hair, or having it done;	(٨٣) النتميص وطلب عمله [وهو جرد الوجه].
(84) walking in front of someone at prayer who has placed a barrier before himself;	(٨٤) المرور بين يدي المصلي إذا صلى لسترة بشرطها.
(85) the people of a village or town all hanging back from praying one of the five prescribed prayers in congregation when the conditions obliging them to perform it in a group exist;	(٨٥) إطباق أهل القرية أو البلد أو نحوهما على ترك الجماعة في فرض من المكتوبات الخمس وقد وجدت فيهم شروط وجوب الجماعة.
(86) for an imam to lead a group of people who dislike him;	(٨٦) إمامة الإنسان لقوم وهم له كارهون.
(87) leaving a row of people at prayer incomplete;	(٨٧) قطع الصف.
(88) not straightening the row of people praying;	(٨٨) عدم تسويته.

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(89) getting ahead of the imam in the actions of the prayer;	(٨٩) مسابقة الإمام.
(90) raising one's eyes to the sky during the prayer;	(٩٠) رفع البصر إلى السماء في الصلاة.
(91) turning (N: one's chest) to either side when performing the prayer;	(٩١) الالتفات في الصلاة (ح: أي بصدره).
(92) putting one's hands on the hips while at prayer;	(٩٢) الاختصار فيها.
(93–98) taking graves as places of worship (def: w21.1); lighting lamps over them; taking them as idols; circumambulating around them; putting one's hands on them; or performing the prayer towards them;	(٩٣-٩٨) اتخاذ القبور مساجد؛ إيقاد السرج عليها؛ اتخاذها أوثاناً؛ الطواف بها؛ استلامها؛ الصلاة إليها.
(99–100) travelling alone ((Ibn Hajar Haytami:).... The position of Ibn Khuzayma that this is disobedience is interpreted as referring to someone who knows that considerable harm would result from his travelling alone or with only one companion); or for a woman to travel alone where indecencies may occur (N: which is an enormity if this is likely, but merely unlawful if it is not);	(٩٩-١٠٠) سفر الإنسان وحده ((ابن حجر:) فليحمل قول ابن خزيمة بالعصيان على من علم حصول ضرر عظيم له بسفره وحده أو مع آخر فقط). سفر المرأة وحدها بطريق تخاف فيها على بضعها.
(101) cancelling a trip or returning from one because of a "bad omen";	(١٠١) ترك السفر أو الرجوع منه تطيراً.
(102) neglecting to pray the Friday prayer in congregation when there is no excuse, even if one says one is "performing the noon prayer (zuhr) alone";	(١٠٢) ترك صلاة الجمعة مع الجماعة من غير عذر وإن قال إنه يصليها ظهراً وحده.
(103) stepping over people seated in the mosque for the Friday prayer;	(١٠٣) تخطي الرقاب يوم الجمعة.
(104) sitting in the center of a circle of people;	(١٠٤) الجلوس وسط الحلقة.
UNLAWFUL DRESS	ما يحرم لبسه
(105) for an adult male to wear pure silk (or cloth whose weight is mostly silk, even if it does not show) without an excuse such as preventing lice or itching;	(١٠٥) لبس الذكر البالغ العاقل الحرير الصرف أو الذي أكثره حرير وزناً لا ظهوراً من غير عذر كدفع قمل أو حكة.

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(106) a male wearing gold, such as a ring, or wearing silver other than rings;	(١٠٦) تحلي الذكر البالغ العاقل بذهب كخاتم أو فضة غير خاتم.
(107) men imitating women in things usually considered characteristic of women's dress, speech, and so forth; or vice versa;	(١٠٧) تشبه الرجال بالنساء فيما يختصصن به عرفاً غالباً من لباس أو كلام أو نحوها أو بالعكس.
(108) a woman wearing a thin garment that reveals her body contours, or her inclining (N: showing desire for others) and making others incline towards her;	(١٠٨) لبس المرأة ثوباً رقيقاً يصف بشرتها وميلها وإمالتها.
(109) having one's wraparound, robe, sleeves, or turban ends overly long from conceit;	(١٠٩) طول الإزار أو الثوب أو الكم أو العذبة خيلاء.
(110) having a strutting gait;	(١١٠) التبختر في المشي.
(111) dying the beard or hair black for other than jihad or the like;	(١١١) خضب نحو اللحية بالسواد لغير غرض نحو جهاد.
(112) for a person to say after it rains, "The coming of such and such a star has brought us rain," believing it to have an effect;	(١١٢) قول الإنسان إثر المطر: مطرنا بنوء نجم كذا أي وقته معتقداً أن له تأثيراً.
THE FUNERAL PRAYER	الجنازة
(113) clawing or slapping one's cheeks and the like (N: out of grief);	(١١٣) خمش أو لطم نحو الخد.
(114) ripping one's collar;	(١١٤) شق [نحو] الجيب.
(115) cries of lamentation;	(١١٥) النياحة.
(116) listening to them;	(١١٦) سماعها.
(117) shaving off or pulling out one's hair;	(١١٧) حلق أو نتف الشعر.
(118) cries of "woe" or "disaster" in afflictions;	(١١٨) الدعاء بالويل والثبور عند المصيبة.
(119) breaking the bones of the dead (A: or autopsies);	(١١٩) كسر عظم الميت.
(120) sitting on graves;	(١٢٠) الجلوس على القبور.
(121) praying upon graves or lighting lamps over them;	(١٢١) اتخاذ المساجد أو السرج على القبور.

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(122) women visiting graves (dis: w34.1, end);	(١٢٢) زيارة النساء لها.
(123) women following funeral processions;	(١٢٣) تشييعهن الجنائز.
(124) healing or protective words (ruqya) (N: that violate the conditions of Sacred Law (dis: w17.1));	(١٢٤) الرقى.
(125) hanging on an amulet (dis: w17.3);	(١٢٥) تعليق التمائم.
(126) disliking to meet Allah Most High;	(١٢٦) كراهة لقاء الله تعالى.
ZAKAT	الزكاة
(127) not paying zakat;	(١٢٧) ترك الزكاة.
(128) delaying payment after it is due, without lawful excuse;	(١٢٨) تأخيرها بعد وجوبها لغير عذر شرعي.
(129) for a creditor who knows that his debtor cannot pay to show greed towards him by pestering him or detaining him;	(١٢٩) شح الدائن على مدينه المعسر مع علمه بإعساره بالملازمة أو الحبس.
(130) dishonesty in handling or taking charity;	(١٣٠) الخيانة في الصدقة.
(131) collecting un-Islamic taxes or getting involved with any of the proceeds thereof (dis: p32);	(١٣١) جباية المكوس والدخول في شيء من توابعها.
(132) someone asking for charity who is not in need of it because of either having money or being able to earn some, but who rather asks out of greed or acquisitiveness;	(١٣٢) سؤال الغني بمال أو كسب التصدق عليه طمعاً وتكثراً.
(133) asking for charity with irritating insistence that injures the person being asked;	(١٣٣) الإلحاح في السؤال المؤذي للمسؤول إيذاء شديداً.
(134) not giving a relative the charity he has been compelled to ask one for, when able to give it and there is no excuse not to;	(١٣٤) منع الإنسان لقريبه [أو مولاه] مما سأله فيه لاضطراره إليه مع قدرة المانع عليه وعدم عذر له في المنع.
(135) reminding recipients of one's charity to them;	(١٣٥) المن بالصدقة.
(136) not giving access to one's surplus water when the person asking it is in need of it;	(١٣٦) منع فضل الماء بشرط الاحتياج أو الاضطرار إليه.

(137) being ungrateful for Allah's creatures' kindness to one, which entails being ungrateful for Allah's kindness to one;	(١٣٧) كفران نعمة الخلق المستلزم لكفران نعمة الحق.
(138) to ask for anything besides paradise with the words "for Allah's sake" (bi wajh Allah);	(١٣٨) أن يسأل السائل بوجه الله غير الجنة.
(139) not to give to someone who asks "for Allah's sake";	(١٣٩) أن يمنع المسؤول سائله بوجه الله.
FASTING	الصيام
(140) not fasting a day of Ramadan;	(١٤٠) ترك صوم يوم من أيام رمضان.
(141) breaking one's fast during it;	(١٤١) الإفطار فيه.
(142) delaying making up a fast-day of Ramadan missed without excuse;	(١٤٢) تأخير قضاء ما تعدى بفطره من رمضان.
(143) a woman fasting a day that is not obligatory for her to fast immediately, when her husband is present and without his consent;	(١٤٣) صوم المرأة غير ما وجب فوراً وزوجها حاضر بغير رضاه.
(144) fasting on the two 'Eids, or on the three days that follow 'Eid al-Adha (Ayam al-Tashriq);	(١٤٤) صوم العيدين وأيام التشريق.
(145–46) nonperformance of a period of spiritual retreat (i'tikaf) that one has vowed for a certain time; or vitiating it by something such as lovemaking;	(١٤٥-٤٦) ترك الاعتكاف المنذور المضيق؛ إبطاله بنحو الجماع.
(147) lovemaking in a mosque, even if not in spiritual retreat (i'tikaf);	(١٤٧) الجماع في المسجد ولو من غير معتكف.
THE PILGRIMAGE	الحج
(148) nonperformance of the pilgrimage (hajj) until one's death, after having been able to perform it;	(١٤٨) ترك الحج مع القدرة عليه إلى الموت.
(149) lovemaking on hajj or 'umra before partial release from ihram (def: j9.13);	(١٤٩) الجماع في الحج أو العمرة قبل التحلل الأول.
(150) for someone in ihram for hajj or 'umra to kill a game animal;	(١٥٠) قتل المحرم بحج أو عمرة صيداً مأكولاً وحشياً.

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(151) a woman entering ihram for a supererogatory hajj or 'umra without her spouse's permission;	(١٥١) إحرام الحليلة بتطوع حج أو عمرة من غير إذن الحليل.
(152) not considering the Kaaba sacrosanct (N: i.e. not respecting it as one should);	(١٥٢) استحلال البيت الحرام.
(153) violating the sanctity of the Meccan Sacred Precinct (Haram) (dis: p72);	(١٥٣) الإلحاد في حرم مكة.
(154–59) frightening the people of the Prophet's city of Medina (upon its overseer be the best of prayers and peace); intending evil towards them; inaugurating an innovation (bid'a) therein, meaning a sin (N: like the opening of banks), or sheltering whoever does such a thing; cutting the trees of Medina; or cutting its grass;	(١٥٤-٥٩) إخافة أهل المدينة النبوية على مشرفها أفضل الصلاة والسلام؛ وإرادتهم بسوء؛ وإحداث حدث أي إثم فيها؛ وإيواء محدث ذلك الإثم؛ وقطع شجرها؛ أو حشيشها.
(160) nonperformance of the 'Eid al-Adha sacrifice by someone (N: such as a Hanafi) who holds it to be obligatory and is able to perform it;	(١٦٠) ترك الأضحية مع القدرة عند من قال بوجوبها.
(161) selling the hide of an 'Eid al-Adha sacrifice animal;	(١٦١) بيع جلد الأضحية.
(162–65) mutilating an animal by cutting off part of its nose or ear or the like; branding an animal's face; taking an animal as a target; or killing one for other than food;	(١٦٢-٦٥) المثلة بالحيوان كقطع شيء من نحو أنفه أو أذنه؛ ووسمه في وجهه؛ واتخاذه غرضاً؛ وقتله لغير الأكل.
(166) not killing and slaughtering as quickly and painlessly as possible;	(١٦٦) عدم إحسان القتلة والذبح.
(167) slaughtering in the name of other than Allah (N: is an enormity) when it is not outright unbelief, as when one does not intend the reverence of worship to the person for whom it is slaughtered (N: in which case it is not unbelief);	(١٦٧) الذبح باسم غير الله على وجه لا يكفر به بأن لم يقصد تعظيم المذبوح له كنحو التعظيم بالعبادة [والسجود].
(168) to release a camel to roam and pasture freely for the rest of its life unridden and unused, in fulfillment of a vow;	(١٦٨) تسييب السوائب.
(169) calling someone "the King of Kings";	(١٦٩) التسمية بملك الأملاك.
(170) to take an intoxicant such as hashish, opium, henbane, ambergris, and the like, of substances that are not ritually unclean (najis);	(١٧٠) أكل المسكر الطاهر كالحشيشة والأفيون والشيكران وهو البنج وكالعنبر.

(171–73) to eat blood outpoured; pork; or unslaughtered meat;	(١٧١-٧٣) أكل الدم المسفوح؛ أو لحم الخنزير؛ أو الميتة.
(174) to burn an animal with fire;	(١٧٤) إحراق الحيوان بالنار.
(175–77) to consume something unclean (najis); revolting; or harmful;	(١٧٥-٧٧) تناول النجس؛ تناول المستقذر؛ تناول المضر.
TRADE	البيع
(178) selling a freeman as a slave;	(١٧٨) بيع الحر.
(179–85) consuming usurious gain (riba, def: k3); feeding the proceeds to others; recording a transaction involving it in writing; being a witness to one; acting as a go-between for two parties dealing in it; abetting it; or taking it through a subterfuge by someone who holds the subterfuge to be unlawful;	(١٧٩-٨٥) أكل الربا؛ وإطعامه؛ وكتابته؛ وشهادته؛ والسعي فيه؛ والإعانة عليه؛ والحيل في الربا وغيره عند من قال بتحريمها.
(186) not lending one's stud animal for use;	(١٨٦) منع الفحل.
(187) consuming wealth gotten through invalid transactions, or any other unlawful earnings;	(١٨٧) أكل المال بالبيوعات الفاسدة وسائر وجوه الأكساب المحرمة.
(188) hoarding a commodity for later sale at a high price when it becomes scarce;	(١٨٨) الاحتكار.
(189–93) selling grapes, raisins, or similar to someone who will make wine out of them; or wood or the like to someone who will make a musical instrument; weapons to non-Muslims who will use them against us; wine to someone who will drink it (N: as opposed to selling it to a vinegar maker, for example); or hemp or similar to someone who will use it as a drug;	(١٨٩-٩٣) بيع العنب والزبيب ونحوهما ممن علم أنه يعصره خمراً؛ والخشب ونحوه ممن يتخذه آلة لهو؛ والسلاح للحربيين ليستعينوا به على قتالنا؛ والخمر ممن يعلم أنه يشربها؛ ونحو الحشيشة ممن يعلم أنه يستعملها.
(194) having someone "bid up" a price to fool another bidder;	(١٩٤) النجش.
(195–96) undercutting another's price or deal (def: k4.7);	(١٩٥-٩٦) البيع على بيع الغير؛ والشراء على شرائه؛
(197) cheating in sales or the like, such as by not milking a dairy animal for several days before the sale to give the impression she's a good milk producer;	(١٩٧) الغش في البيع وغيره كالتصرية وهي منع حلب ذات اللبن إيهاماً لكثرته.

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(198) selling merchandise at a higher price by lyingly swearing that it was purchased for more than it was;	(١٩٨) إنفاق السلعة بالحلف الكاذب.
(199) plotting and deceit;	(١٩٩) المكر والخديعة.
(200) selling short-measure, short-weight, or short-footage;	(٢٠٠) بخس نحو الكيل أو الوزن أو الذرع.
(201) any loan made to benefit the lender;	(٢٠١) القرض الذي يجر نفعاً للمقرض.
(202) to borrow money with the intention not to repay;	(٢٠٢) الاستدانة مع نيته عدم الوفاء.
(203) to borrow money when one has no hope of repaying it, as when one does not urgently need it, there is no obvious source to get the money to repay, and the lender is ignorant of the borrower's condition;	(٢٠٣) الاستدانة مع عدم رجائه بأن لم يضطر ولا كان له جهة ظاهرة يفي منها والدائن جاهل بحاله.
(204) for a borrower who can afford to pay back a debt to delay doing so without excuse when asked to repay;	(٢٠٤) مطل الغني بعد مطالبته من غير عذر.
(205) consuming an orphan's property;	(٢٠٥) أكل مال اليتيم.
(206) spending money, no matter how little, on something that is unlawful, even if only a lesser sin;	(٢٠٦) إنفاق مال ولو فلساً في محرم ولو صغيرة.
(207) to annoy one's neighbor, even if a non-Muslim subject, by the likes of having a view over-looking his walls, or building something uncountenanced by Sacred Law that is a nuisance to him;	(٢٠٧) إيذاء الجار ولو ذمياً كأن يشرف على حرمه أو يبني ما يؤذيه مما لا يسوغ له شرعاً.
(208) to build higher than one needs to, out of pride;	(٢٠٨) البناء فوق الحاجة للخيلاء.
(209) surreptitiously changing property-line markers;	(٢٠٩) تغيير منار الأرض.
(210) misleading a blind person from the way;	(٢١٠) إضلال الأعمى عن الطريق.
(211–12) doing something to a dead-end path or street without the permission of the people living on it; or doing something to a street that results in considerable and unlawful annoyance to people passing along it;	(٢١١-١٢) التصرف في الطريق غير النافذ بغير إذن أهله، والتصرف في الشارع مما يضر المارة إضراراً بليغاً غير سائغ شرعاً

(213) for someone (who holds that it is not permissible) to do something not customarily tolerated to a shared wall without the other owner's permission;

(٢١٣) التصرف في الجدار المشترك بغير إذن شريكه بما لا يحتمل عادة عند من قال بحرمة ذلك.

(214) for the guarantor of a debt to refuse to cover the debt that he has guaranteed with a guarantee he believes to be valid;

(٢١٤) امتناع الضامن ضماناً صحيحاً في عقيدته من أداء ما ضمنه للمضمون له.

(215) for one member of a partnership to cheat the other;

(٢١٥) خيانة أحد الشريكين لشريكه.

(216) for a person commissioned as an agent to betray the trust of the person who commissioned him;

(٢١٦) خيانة الوكيل لموكله.

(217) for a person to make a formal acknowledgement that he owes one of his heirs or a non-heir a debt, or that he has property belonging to such a person in his possession, when this is not true (N: but is rather done to cheat his estate division heirs of their just due, by thus effectively "willing" (wasiyya, def: L1.0) more than the lawful one-third of his property to such a person, who would be able to collect it as if it were his own, after the former's death);

(٢١٧) الإقرار لأحد ورثته كذباً أو لأجنبي بدين أو عين.

(218) for an ill person not to make a formal acknowledgement of his debts or the articles in his keeping that belong to others when no one else whose word is acceptable knows of them except his heirs;

(٢١٨) ترك إقرار المريض بما عليه من الديون أو عنده من الأعيان إذا لم يعلم به من غير الورثة من يثبت بقوله.

(219–20) a lying acknowledgement or denial of being someone's son;

(٢١٩-٢٠) الإقرار بنسب كذباً، أو جحده كذلك.

(221–23) to employ an article lent for use ('ariyya) in other than the employment authorized by its lender; for the borrower to relend it to a third party without the original lender's permission when the borrower holds that such relending is not permissible; or for the person to whom the article has been lent to use it beyond the time stipulated by the lender;

(٢٢١-٢٣) استعمال العارية في غير المنفعة التي استعارها لها، وإعارتها من غير إذن مالكها عند من قال بمنعها، واستعمالها بعد المدة المؤقتة بها.

(224) wrongful appropriation, meaning unjustly taking another's property (N: or right);

(٢٢٤) الغصب وهو الاستيلاء على مال الغير (ح: أو حق الغير) ظلماً.

(225) to delay paying someone his wages, or

(٢٢٥) تأخير أجرة الأجير أو منعه منها

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not giving them to him after the work has been completed;	بعد فراغ عمله.
(226) for someone (who holds it is unlawful) to build at 'Arafa, Muzdelifa, or Mina;	(٢٢٦) البناء بعرفة أو مزدلفة أو منى عند من قال بتحريمه.
(227) to forbid people things that are permissible to them, both in general and in particular;	(٢٢٧) منع الناس من الأشياء المباحة لهم على العموم أو الخصوص.
(228) renting any part of the street to another and taking payment for it, even if it is within the confines of one's property or store;	(٢٢٨) إكراء شيء من الشارع وأخذ أجرته وإن كان حريم ملكه أو دكانه.
(229) taking over water that is free for all to use, or forbidding such water to travellers;	(٢٢٩) الاستيلاء على ماء مباح ومنعه ابن السبيل.
(230) violating the stipulations of the founder of a pious endowment (waqf);	(٢٣٠) مخالفة شرط الواقف.
(231–32) to use a lost and found article without having fulfilled the conditions of advertising it before taking possession of it (dis: k27); or concealing it from its true owner after one knows who he is;	(٢٣١-٣٢) أن يتصرف في اللقطة قبل استيفاء شرائط تعريفها وتملكها؛ وكتمها من ربها بعد علمه به.
(233) not having witnesses attest to one's having found a foundling child;	(٢٣٣) ترك الإشهاد عند أخذ اللقيط.
INHERITANCE AND BEQUEST	الفرائض والوصايا
(234–36) harming heirs in bequests; willing more than a third of one's property in bequests (dis: L3.1); or to fraudulently affirm that part or all of one's property belongs to some non-heir, or that one owes a debt that does not really exist, when this is done to prevent the estate from going to one's rightful heirs; or to falsely affirm that a debt someone owes one has been paid off; or to sell something for a token price or buy something at an exorbitant sum when it is done to keep property from one's heirs, or to donate a third of one's property to a charity not for Allah's sake but rather to diminish the shares of the heirs—all this is included in "harming others in bequests";	(٢٣٤-٣٦) الإضرار في الوصية؛ وأن يوصي بأكثر من الثلث؛ أو يقر بكل ماله أو بعضه لأجنبي، أو يقر على نفسه بدين لا حقيقة له دفعاً للميراث عن الورثة، أو يقر بأن الدين الذي كان له على فلان استوفاه منه، أو يبيع شيئاً بثمن رخيص، ويشتري شيئاً بثمن غال كل ذلك لغرض أن لا يصل المال إلى الورثة أو يوصي بالثلث لا لوجه الله لكن لغرض تنقيص الورثة فهذا هو الإضرار في الوصية.
(237) betraying one's trusts, such as with respect to articles given to one for safekeeping, put up as collateral, rented to one, and so forth;	(٢٣٧) الخيانة في الأمانات كالوديعة والعين المرهونة أو المستأجرة وغير ذلك.

MARRIAGE	النكاح
(238–40) looking with lust at a woman who is not one's unmarriageable kin (mahram, def: m6.1) when temptation is apprehended (A: if there is no temptation, it is unlawful, but not an enormity); touching such a woman; or being alone with her when neither party has one of their unmarriageable kin present to remind them of the limits of decorum—even if only a female—and the woman has no husband present;	(٢٣٨-٤٠) نظر الأجنبية بشهوة مع خوف فتنة ولمسها كذلك وكذا الخلوة بها بأن لم يكن معهما محرم لأحدهما يحتشمه - ولو امرأة كذلك - ولا زوج لتلك الأجنبية.
(241–42) slander (def: r2); or accepting and acquiescing to it by not objecting when it is heard;	(٢٤١-٤٢) الغيبة، والسكوت عليها رضاً وتقريراً.
(243) giving one another disliked nicknames;	(٢٤٣) التنابز بالألقاب المكروهة.
(244) ridicule or mockery towards a Muslim;	(٢٤٤) السخرية والاستهزاء بالمسلم.
(245) talebearing (namima, def: r3);	(٢٤٥) النميمة.
(246) being two-faced with people (dis: r16.1), while devoid of honor in Allah's sight;	(٢٤٦) كلام ذي اللسانين وهو ذو الوجهين الذي لا يكون عند الله وجيهاً.
(247) calumny;	(٢٤٧) البهت.
(248) for a guardian to keep a woman under his guardianship from marrying;	(٢٤٨) عضل الولي موليته عن النكاح.
(249) proposing marriage to a woman whom someone has already proposed to, when the previous proposal was permissible, plainly stated, and explicitly accepted by those whose acceptance counts;	(٢٤٩) الخطبة على خطبة الغير الجائزة الصريحة إذا أجيب صريحاً إليها ممن تعتبر إجابته.
(250–51) turning a wife's heart against her husband; or a husband's against his wife;	(٢٥٠-٥١) تخبيب المرأة على زوجها أي إفسادها عليه؛ والزوج على زوجته.
(252) for a man to make a marriage contract with a woman who is his unmarriageable kin (mahram, def: m6.1), whether by birth, marriage, or suckling (n12), even if such a marriage is not consummated;	(٢٥٢) عقد الرجل على محرمه بنسب أو رضاع أو مصاهرة وإن لم يطأ.
(253–55) for a man who has divorced his wife to accept that she should marry and have intercourse with another solely for the purpose of	(٢٥٣-٥٥) رضا المطلق بالتحليل؛

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remarrying her himself (dis: n7.7); for the wife to comply with this; or for the second husband to marry her for such a purpose;	وطواعية المرأة المطلقة عليه ؛ ورضا الزوج المحلل له.
(256–57) for a man to reveal his wife's secret by mentioning details of their sexual intercourse or other similar private matters; or for her to reveal his;	(٢٥٦-٥٧) إفشاء الرجل سرّ زوجته ، وهي سره بأن تذكر ما وقع بينهما من تفاصيل الجماع ونحوها مما يخفى.
(258) sodomizing one's wife;	(٢٥٨) إتيان الزوجة في دبرها.
(259) to make love to one's spouse in the presence of a third party, male or female;	(٢٥٩) أن يجامع حليلته بحضرة أجنبية أو رجل أجنبي.
(260) to marry a woman with the intention not to pay her the marriage payment (mahr, def: m8) if she asks for it;	(٢٦٠) أن يتزوج امرأة وفي عزمه أن لا يوفيها صداقها لو طلبته.
(261) to make a representation of an animate creature upon anything, in a respectful or humiliated deployment, on the ground or elsewhere;	(٢٦١) تصوير ذي روح على أي شيء كان من معظَّم أو ممتهن بأرض أو غيرها.
(262) *sponging,* meaning to join another at his meal to eat from it without his permission or acceptance;	(٢٦٢) التطفل وهو الدخول على طعام الغير ليأكل منه من غير إذنه ولا رضاه.
(263) for a guest to eat more than he needs to be full when he does not know of his host's acceptance of this;	(٢٦٣) وأكل الضيف زائداً على الشبع من غير أن يعلم رضا المضيف بذلك.
(264–65) a person's eating copiously of his own money when he knows this will harm him considerably; or being lavish in food and drink out of greediness and vanity;	(٢٦٤-٦٥) وإكثار الإنسان الأكل من مال نفسه بحيث يعلم أنه يضره ضرراً بيناً ؛ والتوسع في المآكل والمشارب شرهاً وبطراً.
(266) oppressively and wrongfully favoring one wife over another;	(٢٦٦) ترجيح إحدى الزوجات على الأخرى ظلماً وعدواناً.
(267–68) a husband not giving his wife her rights; or she not giving him his;	(٢٦٧-٦٨) منع الزوج حقاً من حقوق زوجته الواجبة لها عليه ؛ ومنعها حقاً له عليها.
(269–71) to avoid meeting one's fellow Muslim longer than three days for other than a reason permitted by Sacred Law; to turn one's face from him when one meets him; or have a change in heart towards him that results in either of these;	(٢٦٩-٧١) التهاجر بأن يهجر أخاه المسلم فوق ثلاثة أيام لغير غرض شرعي ؛ والتدابر وهو إعراض عن المسلم بأن يلقاه فيعرض عنه بوجهه ؛ والتشاحن وهو تغير القلوب المؤدي إلى أحد ذينك.
(272) a woman leaving her house perfumed	(٢٧٢) خروج المرأة من بيتها متعطرة

and adorned, even with her husband's permission;	متزينة ولو بإذن الزوج.
(273) the rebelliousness of a woman towards her husband, such as by leaving home without his permission or acceptance for other than a reason countenanced by Sacred Law;	(٢٧٣) نشوز المرأة بنحو خروجها من منزلها بغير إذن زوجها ورضاه لغير ضرورة شرعية.
(274–75) failure to provide one's wife with her support and clothing without lawful excuse; or neglecting one's dependents such as young children;	(٢٧٤-٧٥) منع نفقة الزوجة أو كسوتها من غير مسوّغ شرعي؛ وإضاعة عياله كأولاده الصغار.
(276) disrespect towards either or both of one's parents, grandparents, and on up;	(٢٧٦) عقوق الوالدين أو أحدهما وإن علا.
(277) severing the ties of kinship;	(٢٧٧) قطع الرحم.
(278–79) tormenting a servant or beast of burden; or goading animals to fight each other;	(٢٧٨-٧٩) وتعذيب القن أو الدابة؛ والتحريش بين البهائم.
(280) for a woman to ask her husband for a divorce when she has not suffered any harm from him;	(٢٨٠) سؤال المرأة زوجها الطلاق من غير بأس.
(281) for a husband to accept being a cuckhold;	(٢٨١) الديانة.
(282) pimping between men and women;	(٢٨٢) القيادة بين الرجال والنساء.
(283) for someone (who believes it is unlawful (dis: n7.4(N:))) to have intercourse with his divorced wife before formally taking her back;	(٢٨٣) وطء الرجعية قبل ارتجاعها ممن يعتقد تحريمه.
(284) foreswearing one's wife by an oath not to have intercourse with her for more than four months;	(٢٨٤) الإيلاء من الزوجة بأن يحلف ليمتنعنّ من وطئها أكثر من أربعة أشهر.
(285–86) accusing a man or woman who could be chaste (def: o13.2) of adultery or sodomy; or acquiescing to such a charge by not objecting to it when heard;	(٢٨٥-٨٦) قذف المحصن أو المحصنة بزنا أو لواط؛ والسكوت على ذلك.
(287–88) vituperating a Muslim or attacking his honor; or being the cause of another's cursing or disparaging one's parents;	(٢٨٧-٨٨) سب المسلم والاستطالة في عرضه؛ وتسبب الإنسان في لعن أو شتم والديه.
(289) cursing a Muslim;	(٢٨٩) لعنه مسلماً.
(290) attacking someone's ancestry;	(٢٩٠) الطعن في النسب.

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(291) for a woman to falsely ascribe her child from adultery to a people it is not from;	(٢٩١) أن تدخل المرأة على قوم من ليس منهم بزنا [أو وطء شبهة].
(292) a divorced woman's deceit regarding the end of her postmarital waiting period ('idda, def: n9);	(٢٩٢) الخيانة في انقضاء العدة.
(293) for a divorced woman during her postmarital waiting period to leave the lodgings she is obliged to remain in until its end, when there is no lawful excuse to go out (dis: n9.13–14);	(٢٩٣) خروج المعتدة من المسكن الذي يلزمها ملازمته إلى انقضاء العدة بغير عذر شرعي.
(294) for a woman whose husband has died not to avoid adornment (def: n9.16) during her waiting period;	(٢٩٤) عدم إحداد المتوفى عنها زوجها.
JUSTICE	الجنايات
(295) killing a Muslim or a non-Muslim subject of the Islamic state intentionally or quasi-intentionally;	(٢٩٥) قتل المسلم أو الذمي المعصوم عمداً أو شبه عمد.
(296) suicide;	(٢٩٦) قتل الإنسان نفسه.
(297–98) aiding another in an unlawful killing or its preliminaries;	(٢٩٧-٩٨) الإعانة على القتل المحرم أو مقدماته.
(299) to strike a Muslim or non-Muslim subject of the Islamic state without a lawful excuse;	(٢٩٩) ضرب المسلم أو الذمي بغير مسوّغ شرعي.
(300–301) frightening a Muslim; or gesturing at him with a weapon or the like;	(٣٠٠-٣٠١) ترويع المسلم؛ والإشارة إليه بسلاح أو نحوه.
(302–16) sorcery that does not entail unbelief; teaching it; learning it; having it done; professing to foretell the future, to be "psychic," or know the unseen (dis: w60.1); considering something a bad omen; divination by pebbles or drawing lines in sand; astrology; taking auguries from birds; going to someone who claims to foretell the future; going to a "psychic," a diviner by pebbles or lines, an astrologer, or an augerer or omen-reader from birds;	(٣٠٢-١٦) السحر الذي لا كفر فيه؛ وتعليمه؛ وتعلمه؛ وطلب عمله؛ والكهانة؛ والعرافة؛ والطيرة؛ والطرق؛ والتنجيم؛ والعيافة؛ وإتيان كاهن، وإتيان عراف؛ وإتيان طارق؛ وإتيان منجم؛ وإتيان ذي طيرة ليتطير له أو ذي عيافة ليخط له.
(317–18) rebellion against the caliph, even if he is unjust, when there is no mitigating pretext or one that is patently false; or betraying one's fealty	(٣١٧-١٨) البغي أي الخروج على الإمام ولو جائراً بلا تأويل أو تأويل يقطع ببطلانه؛ ونكث بيعة الإمام لفوات غرض

to him because of some worldly disadvantage in remaining loyal;	دنيوي.
(319–21) to assume the caliphate or other position of authority when one knows oneself likely to betray it, or one has the intention to; or to ask for such a position or spend money to gain it when one has this knowledge or intention;	(٣١٩-٢١) تولي الإمامة أو الإمارة مع علمه بخيانة نفسه أو عزمه عليها؛ وسؤال ذلك وبذل مال عليه مع العلم أو العزم المذكورين.
(322) for an oppressor or immoral person to take over any of the Muslims' concerns;	(٣٢٢) تولية جائر أو فاسق أمراً من أمور المسلمين.
(323) to discharge a righteous and competent person from office and appoint someone who is not;	(٣٢٣) عزل الصالح وتولية من هو دونه.
(324) for a caliph, leader, or judge to be unjust;	(٣٢٤) جور الإمام أو الأمير أو القاضي.
(325–26) for a leader to cheat his followers; or neglect to fullfill, through himself or a representative, their pressing concerns that they are compelled to obtain;	(٣٢٥-٢٦) غشه لرعيته؛ واحتجابه عن قضاء حوائجهم المهمة المضطرين إليها بنفسه أو نائبه.
(327) for rulers, leaders, judges, or others to wrong a Muslim or non-Muslim subject of the Islamic state;	(٣٢٧) ظلم السلاطين والأمراء والقضاة وغيرهم مسلماً أو ذمياً.
(328) to leave the oppressed unaided;	(٣٢٨) خذلان المظلوم.
(329–31) visiting unjust rulers; aiding them in wronging others; or stirring their hearts against people by telling them falsehoods;	(٣٢٩-٣١) الدخول على الظلمة؛ وإعانتهم على الظلم؛ والسعاية إليهم بباطل.
(332) sheltering the guilty, meaning to protect them from those who want to obtain their rights from them, *guilty* meaning those who commit an offense that entails a consequence stipulated by Sacred Law;	(٣٣٢) إيواء المحدثين أي منعهم ممن يريد استيفاء الحق منهم، والمراد بهم من يتعاطى مفسدة يلزمه بسببها أمر شرعي.
(333) saying to a Muslim "O unbeliever," or "O enemy of Allah";	(٣٣٣) قول إنسان لمسلم يا كافر، أو يا عدو الله.
(334) interceding for someone, to obviate one of the prescribed penalties of Sacred Law (hadd, def: o12–o16);	(٣٣٤) الشفاعة في حد من حدود الله تعالى.
(335) blackening a Muslim's name and searching out his shameful points so as to disgrace and humiliate him before others;	(٣٣٥) هتك المسلم وتتبع عوراته حتى يفضحه ويذله بها بين الناس.

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(336) displaying the attire of the righteous in public while committing unlawful acts, even if only lesser ones, when alone;	(٣٣٦) إظهار زي الصالحين في الملأ وانتهاك المحارم ولو صغائر في الخلوة.
(337) compromising any of the prescribed legal penalties;	(٣٣٧) المداهنة في إقامة حد من الحدود.
(338–43) fornication; sodomy; bestiality; sodomizing a woman; lesbianism between women (meaning one woman doing with another that which resembles what a man would do with her); or for a husband to have intercourse with the body of a deceased wife;	(٣٣٨-٤٣) الزنا؛ واللواط؛ وإتيان البهيمة؛ والمرأة [الأجنبية] في دبرها؛ ومساحقة النساء، وهو أن تفعل المرأة بالمرأة مثل صورة ما يفعل بها الرجل؛ ووطء الزوج لزوجته الميتة.
(344 46) consummating a marriage contracted with neither guardian nor witnesses; consummating a "temporary marriage"; or having intercourse with a prostitute;	(٣٤٤-٤٦) والوطء في نكاح بلا ولي ولا شهود؛ وفي نكاح المتعة؛ ووطء المستأجرة
(347) for a woman to allow someone to fornicate with her;	(٣٤٧) وإمساك المرأة لمن يزني بها.
(348) theft;	(٣٤٨) السرقة.
(349) to block the road, meaning to threaten passers upon it, even if one does not kill anyone or take any money;	(٣٤٩) قطع الطريق أي إخافتها وإن لم يقتل نفساً ولا أخذ مالاً.
(350–61) drinking wine in any form or other intoxicant, even if only a drop; pressing out the juice to make wine or other intoxicant; pressing it for another person; carrying it for purposes of drinking, or having it carried; serving it to others or having it served; selling it; buying it; having it bought or sold; consuming the proceeds from selling it; or keeping wine or other intoxicant;	(٣٥٠-٦١) شرب الخمر مطلقاً والمسكر من غيرها ولو قطرة؛ وعصر أحدهما؛ واعتصاره؛ وحمله وطلب حمله لتحو شربه؛ وسقيه وطلب سقيه؛ وبيعه؛ وشراؤه؛ وطلب أحدهما؛ وأكل ثمنه؛ وإمساك أحدهما.
(362–65) attacking anyone under the state's protection in order to kill him, rob him, rape his wife, terrorize or frighten him;	(٣٦٢-٦٥) الصيال على معصوم لإرادة نحو قتله أو أخذ ماله أو انتهاك حرمة بضعه أو لإرادة ترويعه وتخويفه.
(366) peeping into another's house without his permission, such as into the women's quarters;	(٣٦٦) أن يطلع من نحو ثقب ضيق في دار غيره بغير إذنه على حرمه.
(367) listening to people who are averse to being overheard;	(٣٦٧) التسمع إلى حديث قوم يكرهون الاطلاع عليه.
(368) not getting circumcised, even after having reached puberty;	(٣٦٨) ترك الختان بعد البلوغ.

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(369–70) not performing jihad when personally obliged to; or no one performing it at all;	(٣٦٩-٧٠) ترك الجهاد عند تعينه؛ وترك الناس الجهاد من أصله.
(371) people of outlying provinces neglecting to protect border fortifications;	(٣٧١) وترك أهل الإقليم تحصين ثغورهم.
(372–73) not commanding the right or forbidding the wrong when able to;	(٣٧٢-٧٣) ترك الأمر بالمعروف والنهي عن المنكر مع القدرة.
(374) one's actions contradicting one's words;	(٣٧٤) ومخالفة القول الفعل.
(375) not returning someone's greetings of Salam (dis: r33.2):	(٣٧٥) ترك رد السلام.
(376) to like for others to rise from their seat for one, because of pride and arrogance;	(٣٧٦) محبة الإنسان أن يقوم الناس له افتخاراً أو تعاظماً.
(377) fleeing from combat with unbelievers, unless one is falling back to regroup or separating to join another unit to reinforce them;	(٣٧٧) الفرار من الزحف إلا لتحرف لقتال أو لتحيز إلى فئة يستنجد بها.
(378) fleeing from an outbreak of plague (N: in one's town);	(٣٧٨) الفرار من الطاعون.
(379–80) pilfering from the spoils of war; or concealing such pilfering;	(٣٧٩-٨٠) الغلول من الغنيمة؛ والستر عليه.
(381–83) killing, treachery towards, or wronging anyone who is under a safe-conduct, is a subject of the Islamic state, or is under an agreement of protection;	(٣٨١-٨٣) قتل أو غدر أو ظلم من له أمان أو ذمة أو عهد؛
(384) showing others the weak points of the Muslims;	(٣٨٤) الدلالة على عورات المسلمين.
(385–86) acquiring a horse out of pride, or for wagers or gambling; or engaging in contests of marksmanship for any of these reasons;	(٣٨٥-٨٦) اتخاذ نحو الخيل تكبراً أو للمسابقة عليها رهاناً أو مقامرة؛ والمناضلة بالسهام كذلك.
(387) to neglect one's marksmanship after having learned it. out of aversion for it, such as might lead to being defeated by the enemy and their mocking the people of Islam;	(٣٨٧) وترك الرمي بعد تعلمه رغبة عنه بحيث يؤدي إلى غلبة العدو واستهتاره بأهل الإسلام.
(388–90) to swear an engulfing oath (def: p23); a lying oath; or to frequently swear oaths, even if truthful;	(٣٨٨-٩٠) اليمين الغموس؛ واليمين الكاذبة؛ وكثرة الأيمان وإن كان صادقاً.

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(391–94) swearing by *one's trust;* or by an idol, for example; or the words of reckless people who say, "If I do that, I'm an unbeliever" or "quit of Islam" or "of the Prophet"; or to swear, "then I'm of such and such a religion," lyingly;	(٣٩١-٩٤) الحلف بالأمانة أو بالصنم مثلاً وقول بعض المجازفين: إن فعلت كذا فأنا كافر؛ أو بريء من الإسلام؛ أو النبي؛ الحلف بملة غير الإسلام كاذباً.
(395) not fulfilling a vow, no matter whether it was to perform an act of worship or whether made in the heat of anger;	(٣٩٥) عدم الوفاء بالنذر سواء أكان نذر قربة أم نذر لجاج.
(396–98) appointing a person to the judgeship who knows he is dishonest, unjust, or the like; for such a person to accept the judgeship; or seek it:	(٣٩٦-٩٨) تولية القضاء لمن يعلم من نفسه الخيانة أو الجور أو نحوهما؛ وتوليه؛ وسؤاله.
(399) to judge when ignorant;	(٣٩٩) القضاء بجهل.
(400) to judge unjustly;	(٤٠٠) أو بالجور.
(401) aiding and abetting someone making a false claim in court;	(٤٠١) إعانة المبطل ومساعدته.
(402) for a judge (or anyone else) to please people with what Allah Most High detests;	(٤٠٢) إرضاء القاضي وغيره الناس بما يسخط الله تعالى.
(403–5) taking or giving a bribe for falsehood; or being an intermediary between the persons giving and accepting it;	(٤٠٣-٠٥) أخذ الرشوة وإعطاؤها بباطل؛ والسعي فيها بين الراشي والمرتشي.
(406–7) accepting money for appointing a judge; or a person who is not personally obliged to take the judgeship (N: because no one else is competent) paying to attain it when he could do so without paying;	(٤٠٦-٧) أخذ المال على تولية الحكم؛ ودفعه حيث لم يتعين عليه القضاء ولم يلزمه البذل.
(408) a judge accepting a gift for having interceded for one of the litigants;	(٤٠٨) قبول الهدية بسبب شفاعته.
(409–10) arguing for a falsehood; or arguing without knowledge of who is in the right, as a judge's deputy does;	(٤٠٩-١٠) الخصومة بباطل؛ أو بغير علم كوكلاء القاضي.
(411–13) seeking one's rights, but with vehemence and lies, so as to offend the other party and defeat him; arguing out of pure obstinacy to prevail over one's opponent and finish him; and the picking apart of another's words and disputation which are reprehensible;	(٤١١-١٣) طلب حق لكن مع إظهار لدد وكذب لإيذاء الخصم والتسلط عليه؛ والخصومة لمحض العناد بقصد قهر الخصم وكسره؛ والمراء والجدال المذموم.

(414–15) for a person distributing zakat to divide it unjustly between recipients; or for the person who estimates how much will be due on crops to assess them unjustly;	(٤١٤-١٥) جور القاسم في قسمته والمقوِّم في تقويمه.
(416–18) falsely testifying; knowingly accepting such false testimony; or not testifying to something that one has witnessed when there is no excuse not to;	(٤١٦-١٨) شهادة الزور؛ وقبولها؛ وكتم الشهادة بلا عذر؛
(419) lying, when it entails a prescribed legal penalty or harm;	(٤١٩) الكذب الذي فيه حد أو ضرر.
(420) a plaintiff litigating against another person for something he knows is not his;	(٤٢٠) دعوى الإنسان على غيره بما يعلم أنه ليس له.
(421) sitting with those who drink or other immoral people out of friendship for them;	(٤٢١) الجلوس مع الشربة وغيرهم من الفساق إيناساً لهم.
(422) Koran reciters or religious scholars sitting in the company of the corrupt;	(٤٢٢) مجالسة القراء والفقهاء الفسقة.
(423–25) gambling, whether by itself or connected with offensive games like chess or unlawful ones like backgammon; playing backgammon; or for someone (who holds it is unlawful) to play chess;	(٤٢٣-٢٥) القمار سواء كان مستقلاً أو مقترناً بلعب مكروه كالشطرنج أو محرم كالنرد؛ واللعب بالنرد؛ واللعب بالشطرنج عند من قال بتحريمه.
(426–31) playing stringed instruments; listening to them; playing reed instruments; listening to them; beating a long drum (kuba); or listening to it;	(٤٢٦-٣١) ضرب وتر؛ واستماعه؛ وزمر بمزمر؛ واستماعه؛ وضرب بكوبة؛ واستماعه.
(432–33) embellishing a poetic ode by mentioning a particular woman, even without indecency, or mentioning an unnamed woman indecently; or to sing such an ode;	(٤٣٢-٣٣) التشبيب بامرأة [أجنبية] معينة وإن لم يذكرها بفحش أو بامرأة مبهمة مع ذكرها بالفحش؛ وإنشاد هذا التشبيب.
(434–37) poetry that contains mockery of a Muslim, obscenity, or lying; or singing such poetry and spreading it;	(٤٣٤-٣٧) الشعر المشتمل على هجو المسلم أو على فحش أو كذب فاحش؛ وإنشاد هذا الهجو وإذاعته.
(438) composing panegyrics with poetic figures of speech that exceed normal bounds, earning one's living thereby and spending most of one's time at it;	(٤٣٨) الإطراء في الشعر بما لم تجر العادة به والتكسب به مع صرف أكثر وقته.
(439) becoming habituated to a lesser sin or sins such that one's disobedience becomes more than one's obedience;	(٤٣٩) إدمان صغيرة أو صغائر بحيث تغلب معصيته طاعته.

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(440) not repenting from an enormity;

(441–42) hatred of the Medinan Helpers (Ansar); or speaking badly of any of the prophetic Companions (Allah be well pleased with them all).

(*al-Zawajir 'an iqtiraf al-kaba'ir* (y49), 1.27–266, 2.3–230)

(٤٤٠) ترك التوبة من كبيرة.

(٤٤١-٤٢) بغض الأنصار؛ وشتم واحد من الصحابة رضوان الله عليهم أجمعين.

[محرر من كتاب الزواجر عن اقتراف الكبائر: ١/ ٢٧ - ٢٤٠، ٢/ ٣ - ٢٣٠].

w52.2 (n:) Some twenty-five of the enormities listed by Ibn Hajar have been omitted above because of being repetitions or about matters that are rare. As stated in the preface, many scholars do not consider all of the foregoing to be enormities, among them Abu Talib Makki, who restricts them solely to sins explicitly designated as enormities by the primary texts.

w52.3 (Abu Talib Makki:) .... My own position, to join between the different views mentioned above, is that they are seventeen in number. Four of them are of the works of the heart:

(1) associating others with Allah Most High (shirk);

(2) persisting in disobedience to Allah Most High;

(3) despairing of the mercy of Allah Most High;

(4) and feeling secure from the design of Allah Most High (def: p66).

Four are of the tongue:

(5) testifying to the truth of a falsehood;

(6) charging someone who could be chaste (def: o13.2) with adultery;

(7) swearing an engulfing oath, meaning one which negates something true and affirms something false, termed *engulfing* because it engulfs its swearer in the wrath of Allah Most High, or in hellfire;

(8) and sorcery, meaning words and acts that transmute substances, alter people (n: changing

w52.3 (أبو طالب المكي:) [...] والذي عندي في جملة ذلك مجتمعاً من المتفرق سبع عشرة [تفصيلها]: أربعة من أعمال القلوب وهن: الشرك بالله تعالى، والإصرار على معصية الله تعالى، والقنوط من رحمة الله تعالى، والأمن من مكر الله تعالى؛ وأربعة في اللسان وهن: شهادة الزور، وقذف المحصن [وهو الحر البالغ المسلم]، واليمين الغموس وهي التي تبطل بها حقاً وتحق بها باطلاً [وقيل هي التي يقطع بها مال مسلم ظلماً ولو سواكاً من أراك] وسميت غموساً لأنها تغمسه في غضب الله تعالى وقيل [لأنها تغمس صاحبها] في النار، والسحر وهو ما كان من كلام أو فعل يقلب الأعيان أو يغير الإنسان وينقل

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one's love for someone to hate, for example), or remove meanings from the things for which they were created.

Three are of the stomach:

(9) drinking wine or other intoxicating beverages;

(10) wrongfully consuming an orphan's property;

(11) and knowingly consuming usurious gain (riba).

Two are of the genitals:

(12) adultery;

(13) and sodomy.

Two are of the hands:

(14) murder;

(15) and theft.

One is of the feet:

(16) fleeing from combat with unbelievers when one is not outnumbered by more than two to one, unless falling back to regroup or separating to join another unit, believing one will attack again.

And one is of the whole body:

(17) a person's undutiful treatment of his parents, meaning, in summary, that when they swear an oath for him to do something that is not blameworthy, he does not fulfill their oath; if they ask him for something they need, he does not give it to them; if they trust him, he betrays them; if they are hungry, he eats his fill and does not feed them; and if they revile him, he strikes them;

Other scholars hold that *any* sin that is deliberate is an enormity... but what we have mentioned of the above bodily traits is among the

المعاني عن موضوعات خلقها [والسحرة هم النفاثات في العقد الذين أمر الله تعالى بالاستعاذة منهم]؛ وثلاثة في البطن وهي شرب الخمر والمسكر من الأشربة، وأكل مال اليتيم ظلماً، وأكل الربا وهو يعلم؛ واثنتان في الفرج وهما الزنا، وأن يعمل عمل قوم لوط في الأدبار؛ واثنتان في اليدين وهما القتل، والسرقة؛ وواحدة في الرجلين وهي الفرار من الزحف الواحد من اثنين غير متحرف [. . .] (ح: للقتال) ولا متحيزاً إلى فئة ولا معتقد الكرة؛ وواحدة في جميع الجسد وهي عقوق الوالدين وتفسير العقوق جملة: أن يقسما عليه في حق فلا يبر قسمهما، وأن يسألاه في حاجة فلا يعطيهما، وأن يأمناه فيخونهما، وأن يجوعا فيشبع ولا يطعمهما، وأن يستباه فيضربهما [. . .].

وقالت طائفة: كل عمد فهو كبيرة. . . فالذي ذكرناه من الخصائل هو من أوسط

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soundest and most equitable opinions, is what scholars agree upon, and is what is conveyed by a great number of primary texts. These, then, are the deadly enormities that if one avoids them, one's wrongs will be forgiven and one's supererogatory works that are like in kind to the five duties that are the pillars of Islam (N: i.e. the Testification of Faith "La ilaha ill Allah Muhammadun rasul Allah," the prayer, zakat, fasting Ramadan, and hajj)—are counted for one. The reason for this is because the pillars of Islam and these enormities are antipodal counterparts, antithetical to each other in magnitude and significance, the enormities being so great that avoiding them expiates the other, lesser sins, and if the five duties that are the pillars of Islam are fully performed, they too expiate other wrongdoings, the servant is rewarded for his supererogatory works, and his bad deeds are changed for good ones. Such a person attains to great favor, and paradise is to be hoped for him and the stations of those who strive, for he is of the outstrippers in good deeds. Allah Most High says,

"If you avoid the enormities of what you have been forbidden, We shall acquit you of your wrongdoings" (Koran 4:31),

and says, after mentioning the enormities,

"... save he who repents, believes, and works righteousness: those Allah will change their bad deeds for good" (Koran 25:70).

And the Prophet (Allah bless him and give him peace) said,

"The five prayers entail forgiveness for what is between them as long as the enormities are avoided."

When the enormities are committed, they annul (N: supererogatory) good deeds just as the five duties of Islam annul the bad deeds that occur between them other than the enormities, which are too great for them to annul (N: but rather require a sincere repentance in order to be forgiven). So with a servant's committing enormities, nothing can remain for him on Judgement Day of

الأقوال وأعدلها وهو ما اتفقوا عليه وكثرت الأخبار فيه. فهذه الكبائر الموبقات التي من اجتنبها كفرت عنه السيئات وثبتت له النوافل من الفرائض الخمس التي هي أبنية الإسلام. وذلك أن دعائم الإسلام وهذه الكبائر قرينان يعتلجان ويتقاومان في العظم والمعنى بالتضاد، فالكبائر كبرت فكفّر اجتنابها ما دونها من الصغائر، والفرائض الخمس التي هي أبنية الإسلام إذا تممت كفّرت ما بعدها من السيئات وثبت للعبد نوافله وتبدل سيئاته حسنات. فيكون له فضل عظيم يرجى له الجنة ومنازل العاملين وهو السابق بالخيرات. قال الله تعالى:

﴿إِنْ تَجْتَنِبُوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ﴾ [النساء: ٣١].

وقال من بعد ذكر الكبائر:

﴿إِلَّا مَنْ تَابَ وَآمَنَ وَعَمِلَ عَمَلًا صَالِحًا فَأُولَئِكَ يُبَدِّلُ اللَّهُ سَيِّئَاتِهِمْ حَسَنَاتٍ﴾ [الفرقان: ٧٠].

وقال رسول الله ﷺ: «الصلوات الخمس كفارات لما بينهن ما اجتُنبت الكبائر».

... فإذا انتهكت الكبائر أحبطت الأعمال. والفرائض أحبطت ما بينها من السيئات إلا الكبائر فإنها كبرت فلا تكفرها. فلا يبقى للعبد يوم القيامة مع ارتكاب الكبائر من الأعمال إلا الفرائض

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his good works except the five duties of Islam, the enormities having devoured all his supererogatory works: hell is to be feared for such a person, and the stations of the profligates, and he has truly wronged himself, which Allah Most High warns believers against by saying,

"O you who believe, obey Allah and obey the Prophet, and do not nullify your works" (Koran 47:33),

and,

"Nay, but whoever earns a wicked deed and is encompassed by his error, those are the inhabitants of hell" (Koran 2:81),

referring, it is said, to enormities that encompass one's good deeds and efface them (*Qut al-qulub* (y81), 2.148–49).

الخمس وقد أكل سائر نوافله ارتكاب الكبائر فيخاف عليه النار ومنازل المسرفين وهذا هو الظالم لنفسه وهو الذي حذر الله تعالى المؤمنين عنه قال:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَلَا تُبْطِلُوا أَعْمَالَكُمْ﴾ [محمد: ٣٣].

- ومنه قول تعالى:

﴿بَلَىٰ مَنْ كَسَبَ سَيِّئَةً وَأَحَاطَتْ بِهِ خَطِيئَتُهُ [(ت: وتمام الآية:] فَأُولَٰئِكَ أَصْحَابُ النَّارِ﴾ [البقرة: ٨١].

قيل هي الكبائر أحاطت بجميع حسناته فمحقتها [محرر من قوت القلوب في معاملة المحبوب ووصف طريق المريد إلى مقام التوحيد: ٢/ ١٤٨ - ١٤٩].

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w53.0 REPENTANCE DOES NOT ELIMINATE OTHERS' RIGHTS

(from p77.3)

w53.0 التوبة لا تبطل حق الغير

w53.1 (Shu'ayb Arna'ut:) Bukhari and Ahmad relate that Jabir ibn 'Abdullah said, "I heard of a hadith that a certain man had heard from the Messenger of Allah (Allah bless him and give him peace), so I bought a camel, cinched my saddle on it, and travelled for a month to reach him, coming upon him in Damascus, the man being 'Abdullah ibn Unays. I told the doorman, 'Tell him Jabir is at the door,' and the reply came, 'Ibn 'Abdullah?' and when I said yes, he rushed out, stepping on the hem of his garment. He embraced me and I returned his embrace and said, 'Tell me the hadith I am informed you heard from the Messenger of Allah (Allah bless him and give him peace) about retaliation. I have been afraid that you or I would die before I heard it.' He said, 'I heard the Messenger of Allah (Allah bless him and give him peace) say:

w53.1 (شعيب الأرنؤوط:) [...] أخرجـ[ـه] البخاري [في «الأدب المفرد» (٩٧٠)] وأحمد [في «المسند» ٣/ ٤٩٥ وغيرهما من طريق عبد الله بن محمد ابن عقيل أنه سمع] جابر بن عبد الله يقول: بلغني عن رجل حديث سمعه من رسول الله ﷺ، فاشتريت بعيراً، ثم شددت عليه رحلي، فسرت إليه شهراً حتى قدمت عليه الشام، فإذا عبد الله بن أنيس، فقلت للبواب: قل له جابر على الباب، فقال: ابن عبد الله؟ قلت نعم، فخرج يطأ ثوبه، فاعتنقني واعتنقته، فقلت: حديثاً بلغني عنك أنك سمعته من رسول الله ﷺ في القصاص، فخشيت أن تموت أو أموت قبل أن أسمعه، قال:

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" ' "People shall be mustered on the Day of Judgement naked, uncircumcized, and possessionless, and a call will be made to them in a voice that those who are far shall hear as well as those who are near, saying: 'I am the King, I am He who gives recompense: it is not meet for any inhabitant of hell to enter it while any of the inhabitants of paradise owes him something until I exact it of them. And it is not meet for any inhabitant of paradise to enter it while he owes any of the inhabitants of hell something until I exact it from him, even if it be the requital of a single slap of the face.' " We asked the Prophet (Allah bless him and give him peace). "How will this be, when we will meet Allah Mighty and Majestic naked, uncircumcized, and without a thing?" And he said, "With good and bad deeds." ' "

(*Sharh al-sunna* (y22), 1.280–81)

سمعت رسول الله ﷺ يقول: «يحشر الناس يوم القيامة [أو قال: العباد،] عراة غرلاً بهماً [، قال: قلنا: وما بهماً؟ قال: ليس معهم شيء]، ثم يناديهم بصوت يسمعه مَن بعد [أحسبه قال:] كما يسمعه مَن قرب: أنا الملك، أنا الديان، لا ينبغي لأحد من أهل النار أن يدخل النار، وله عند أحد من أهل الجنة حق حتى أقصه منه، ولا ينبغي لأحد من أهل الجنة أن يدخل الجنة ولأحد من أهل النار عنده حق حتى أقصه منه حتى اللطمة، [قال:] قلنا: كيف، وإنما نأتي الله عز وجل عراة غرلاً بهماً؟ قال: «بالحسنات والسيئات» [وحسنه الحافظ وصححه الحاكم: ٢/ ٤٣٧ - ٤٣٨ ووافقه الذهبي] [نقل من شرح السنة: ١/ ٢٨٠ - ٢٨١].

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w54.0 LEAVING WHAT DOES NOT CONCERN ONE (from r1.2(3))

w54.0 ترك ما لا يعني

w54.1 The Prophet (Allah bless him and give him peace) said,

"The excellence of a person's Islam includes leaving what does not concern him."

The excellence of a person's Islam

(Muhammad Jurdani:) Meaning the fullness and perfection of a person's Islam and his submission to its rules

includes leaving what does not concern him

meaning that which is not connected with what is important to one, be it in word or deed. The matters that concern a person are those connected with necessities of life in gaining a livelihood and having a safe return in the afterlife. These do not amount to much in comparison with what does not concern one (*al-Jawahir al-lu'lu'iyya fi sharh al-Arba'in al-Nawawiyya* (y68), 99).

w54.1 قال النبي ﷺ:

«من حسن إسلام المرء تركه ما لا يعنيه» [رواه الترمذي وغيره].

﴿محمد الجرداني:﴾ «من حسن إسلام المرء» (يعني من كمال إسلام المرء وتمامه والاستسلام لأحكامه) «تركه ما لا يعنيه» (أي ما لا تتعلق عنايته به قولاً كان أو فعلاً. والذي يعني الإنسان من الأمور ما يتعلق بضرورة حياته في معاشه وسلامته في معاده وذلك يسير بالنسبة إلى ما لا يعنيه [محرر من الجواهر اللؤلؤية في شرح الأربعين النووية: ٩٩].

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w55.0 THE ETERNALITY OF PARADISE AND HELL (from s1.2)

w55.0 بقاء الجنة والنار

w55.1 (n:) The view that the punishment of unbelievers in hell is not eternal has been misrepresented by some Muslim writers and Koran translators as if it were a matter over which there is scholarly disagreement, or as if the proof of it from the Koran, hadith, and consensus of Muslims (ijma', def: b7) were capable of bearing more than one interpretation. The present section, by two of the foremost Sunni scholars in tenets of Islamic belief (usul), has been translated to clarify the question.

w55.2 ('Abd al-Qahir Baghdadi:) The scholars of Ahl al-Sunna and all the previous righteous of the Muslim Community are in unanimous agreement (ijma') that paradise and hell are eternal, and that the bliss of the inhabitants of paradise and the torment of unbelievers in hell will endure forever (*Usul al-din* (y23), 238).

w55.2 (عبد القاهر البغدادي:) أجمع أهل السنة وكل من سلف من أخيار الأمة على دوام بقاء الجنة والنار وعلى دوام نعيم أهل الجنة ودوام عذاب الكفرة في النار [نقل من أصول الدين: ٢٣٨].

w55.3 (Taqi al-Din Subki:) The faith of Muslims is that paradise and hell do not perish, Abu Muhammad Ibn Hazm having transmitted scholarly consensus (ijma') on this point and on the fact that whoever denies it is an unbeliever (kafir) by scholarly consensus. And there is no doubt of this, for it is necessarily known (def: f1.3(N)) as part of the religion of Islam, and proof after proof bears it out. Allah Most High says:

(1) "Nay, but whoever earns a wicked deed and is encompassed by his error, those are the inhabitants of hell, abiding therein forever" (Koran 2:81).

(2) "Verily those who disbelieve and die as unbelievers; the curse of Allah, the angels, and people, one and all, is upon them, abiding therein forever; the torment shall not be lightened from them, nor shall they be respited" (Koran 2:161–62).

(3) "Whoever of you leaves his religion and dies as an unbeliever, those are they whose works have failed in this world and the next, and those are the inhabitants of hell, abiding therein forever" (Koran 2:217).

w55.3 (تقي الدين السبكي:) [. . . وبعد] فإن اعتقاد المسلمين أن الجنة والنار لا تفنيان وقد نقل أبو محمد بن حزم الإجماع على ذلك وأن من خالفه كافر بإجماع، ولا شك في ذلك فإنه معلوم من الدين بالضرورة وتواردت الأدلة عليه؛ قال الله تعالى:

﴿بَلَىٰ مَنْ كَسَبَ سَيِّئَةً وَأَحَاطَتْ بِهِ خَطِيئَتُهُ فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ﴾ [البقرة: ٨١].

وقال تعالى:

﴿إِنَّ الَّذِينَ كَفَرُوا وَمَاتُوا وَهُمْ كُفَّارٌ أُولَٰئِكَ عَلَيْهِمْ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ خَالِدِينَ فِيهَا لَا يُخَفَّفُ عَنْهُمُ الْعَذَابُ وَلَا هُمْ يُنظَرُونَ﴾ [البقرة: ١٦١ - ١٦٢].

وقال تعالى:

﴿وَمَنْ يَرْتَدِدْ مِنكُمْ عَن دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَٰئِكَ حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ﴾ [البقرة: ٢١٧].

وقال تعالى:

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(4) "Those who disbelieve, their friends are the evil ones, who lead them from the light to darknesses. Those are the dwellers of hell, abiding in it forever (Koran 2:257).

﴿وَالَّذِينَ كَفَرُوا أَوْلِيَاؤُهُمُ الطَّاغُوتُ يُخْرِجُونَهُمْ مِنَ النُّورِ إِلَى الظُّلُمَاتِ أُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ﴾ [البقرة: ٢٥٧].

(n: There follow some fifty-six Koranic verses of similar purport which have been left untranslated for the sake of brevity:

2:162	23:103	2:167	35:36
3:116	32:14	2:102	17:97
4:14	25:69	3:22	40:49–50
4:93	33:64–65	4:56	42:45
4:168–69	39:72	4:121	69:36
6:128	41:28	5:37	78:30
7:36	43:74–75	11:8	87:13
9:63	47:15	11:16	90:20
9:68	59:17	14:21	82:16.)
10:27	64:10	14:29	
11:106–7	72:23	23:108	
13:5	98:6	29:23	
16:29	2:86	45:35	
21:99	32:20	22:22	

.... The other verses that mean the same thing are very many, a fact that eliminates the possibility of explaining them away figuratively and necessitates complete conviction of them; just as the verses proving bodily resurrection, because of their great numbers, eliminate any possibility of explaining them away figuratively. We adjudge whoever explains these verses as if they were figurative to have committed unbelief because of the knowledge which the evidence *en masse* affords. And so it is too with the very numerous and intersubstantiative hadiths about this, such as the Prophet's saying (Allah bless him and give him peace):

(1) "Whoever kills himself with a knife will abide in the fire of hell, perpetually stabbing his belly with it, undying therein forever. And whoever hurls himself from a mountain and kills himself shall abide in the fire of hell, perpetually falling to his death, undying therein forever."

(2) "As for the inhabitants of hell who are its people, they shall be undying therein and unliving."

. . . وغيرها من الآيات كثير في هذا المعنى جداً وذلك يمنع من احتمال التأويل ويوجب القطع بذلك، كما أن الآيات الدالة على البعث الجسماني لكثرتها يمتنع تأويلها. ومن أوّلها حكمنا بكفره بمقتضى العلم جملة وكذلك الأحاديث المتظاهرة جداً على ذلك كقوله ﷺ:

«من قتل نفسه بحديدة فحديدته في يده يتوجأ بها في بطنه في نار جهنم خالداً مخلّداً فيها أبداً ومن تردى من جبل فقتل نفسه فهو يتردى في نار جهنم خالداً مخلّداً فيها أبداً» [متفق عليه من حديث أبي سعيد].

وقوله ﷺ: «أما أهل النار الذين هم أهلها فإنهم لا يموتون فيها ولا يحيون» [صحيح من حديث أبي سعيد].

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(3) "When the people of paradise go to paradise and the people of hell go to hell, Death shall be brought forward, placed between paradise and hell, and slaughtered. And a crier shall be heard, 'O people of paradise, there is no death; O people of hell, there is no death!' "

وقوله عليه السلام: «إذا صار أهل الجنة إلى الجنة وأهل النار إلى النار جيء بالموت حتى يجعل بين الجنة والنار فيذبح فينادي مناد يا أهل الجنة لا موت ويا أهل النار لا موت» [وفي رواية صحيحة: «فخلود فلا موت»]. وفي الجنة مثل ذلك، وقال تعالى:

And there is the like of the above evidence concerning paradise, as Allah Most High says:

(1) "Those who believe and do good works, they are the dwellers of paradise, abiding therein forever (Koran 2:82).

(2) "Whoever obeys Allah and His messenger, He will admit them to gardens beneath which rivers flow, abiding therein forever. That is the mighty triumph" (Koran 4:13).

﴿وَالَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ أُولَئِكَ أَصْحَابُ الْجَنَّةِ هُمْ فِيهَا خَالِدُونَ﴾ [البقرة: ٨٢]. [...].

وقال تعالى:

﴿وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الأَنْهَارُ خَالِدِينَ فِيهَا وَذَلِكَ الْفَوْزُ الْعَظِيمُ﴾ [النساء: ١٣].

(n: Thirty-eight verses of similar purport follow, which have been left untranslated, as before, for brevity:

2:82	11:23	23:11	56:17
3:15	10:26	25:15	57:12
10:62	11:108	25:76	58:22
3:198	13:35	29:58	50:34
4:13	14:23	4:122	64:9
4:57	15:48	39:73	65:11
5:85	18:3	41:8	95:6
5:119	18:107	43:71	98:8.)
9:89	20:76	41:30	
9:100	21:102	48:5	

.... So these are the verses we can recall about the eternality of paradise and hell. We have mentioned hell first because we've come across a work about hell perishing by one of the people of the present era. We have quoted about one hundred Koranic verses, approximately sixty concerning hell, and forty on paradise. *Immortality* (khuld) or words derived from it are found in thirty-four of those dealing with hell and thirty-eight of those about paradise. *Everlastingness* (ta'bid) has been mentioned in conjunction with immortality in four of those dealing with hell, and mentioned eight times about paradise, seven of them in connection with immortality. *Never leaving* and so forth has been plainly stated in over thirty verses. The consequence of the concatenate and intersubstantia-

... فهذه الآيات التي استحضرناها في بقاء الجنة والنار. وبدأنا بالنار لأنا وقفنا على تصنيف لبعض أهل العصر في فنائها. وقد ذكرنا نحو مائة آية، منها نحو ستين في النار ونحو أربعين في الجنة، وقد ذكر الخلد أو ما اشتق منه في أربع وثلاثين في النار وثمان وثلاثين في الجنة وذكر التأبيد في أربع في النار مع الخلود وفي ثمان في الجنة منها سبع مع الخلود. وذكر التصريح بعدم الخروج أو معناه في أكثر من ثلاثين. وتضافر هذه الآيات

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tive character of these and similar verses is absolute certainty that what Allah Most High thereby intends is their literal meaning and significance. It is not something in which the outward sense might be used to imply other than the plain purport, which is why Muslims unanimously concur upon faith in it, descendants having taken it from ancestors in unbroken succession from their Prophet (Allah bless him and give him peace). It is integrally embedded in the innate faith (fitra) of the Muslims, necessarily known as part of the religion of Islam, and even held by all non-Muslim sects. Whoever denies it is an unbeliever (kafir), and whoever explains it away figuratively is the same as someone who figuratively explains away Koranic verses about the bodily resurrection, meaning that he too is an unbeliever, because knowing the verses necessitates belief.

I have come upon the above-mentioned work, whose author notes three positions about paradise and hell perishing: that both end, which he declares none of the early Muslims have said; that neither ends; and that paradise remains but hell ends; the latter of which he inclines toward and adopts, saying that it is the position of the early Muslims (salaf). Allah be our refuge from this! I exonerate the early Muslims from it and do not believe a single one of of them said it. There are only some words that have been ascribed to certain individuals of them that are to be taken as all problematic utterances are, meaning they are construed and interpreted in light of other than their ostensive sense, for just as there occur expressions requiring such exegesis in Koranic verses and hadiths, so too words occur in the discourse of scholars that must be fittingly explained. Whoever takes words of early Muslims that were spoken to motivate people to do good or be afraid of doing evil and so forth, and interprets them literally, recording them as if they were a "school of thought" has misled himself and others. Nor is this scholarship, for the way of scholars is to uncover the *meaning* of words and what is intended by them. When we are certain that what has been ascribed to a speaker is his actual position on a matter and his belief, we attribute it to him. But unless we are certain, we do not attribute it to him, this being especially true of basic tenets of Islamic belief like the above, about which Muslims unani-

ونظائرها يفيد القطع بإرادة حقيقتها ومعناها، وأن ذلك ليس مما استعمل فيه الظاهر في غير المراد به ولذلك أجمع المسلمون على اعتقاد ذلك وتلقوه خلفاً عن سلف عن نبيهم ﷺ. وهو مركوز في فطرة المسلمين معلوم من الدين بالضرورة بل وسائر الملل غير المسلمين يعتقدون ذلك. ومن رد ذلك فهو كافر ومن تأوله فهو كمن يؤول الآيات الواردة في البعث الجسماني وهو كافر أيضاً بمقتضى العلم.

وقد وقفت على التصنيف المذكور وذكر فيه ثلاثة أقوال في فناء الجنة والنار:

أحدها أنهما تفنيان وقال إنه لم يقل به أحد من السلف.

والثاني أنهما لا تفنيان.

والثالث أن الجنة تبقى والنار تفنى. ومال إلى هذا واختاره وقال إنه قول السلف. ومعاذ الله، وأنا أبرىء السلف عن ذلك ولا أعتقد أن أحداً منهم قاله، وإنما روي عن بعضهم كلمات تتأول كما تتأول المشكلات التي تردّ وتحمل على غير ظاهرها. فكما أن الآيات والأحاديث يقع فيها ما يجب تأويله كذلك كلام العلماء يقع فيه ما يجب تأويله. ومن جاء إلى كلمات ترد عن السلف في ترغيب أو ترهيب أو غير ذلك فأخذ بظاهرها وأثبتها أقوالاً ضل وأضل. وليس ذلك من دأب العلماء ودأب العلماء التنقير عن معنى الكلام والمراد به وما انتهى إلينا عن قائله فإذا تحققنا أن ذلك مذهبه واعتقاده نسبناه إليه وأما بدون ذلك فلا. ولا سيما في مثل هذه العقائد التي المسلمون مطبقون فيها على شيء

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mously agree on one position. How can one proceed to the opposite of what they believe and then attribute it to the greatest of Muslims and exemplars of the believers, considering it a topic of scholarly disagreement as if it were a question about ablution (wudu)? How remote whoever does this is from knowledge and guidance! This is a reprehensible innovation (bid'a) of the most ominous and ugliest sort, and Allah has knowingly led whoever says it astray....

كيف يعمد إلى خلاف ما هم عليه ينسبه إلى جُلّة المسلمين وقدوة المؤمنين ويجعلها مسألة خلاف كمسألة في باب الوضوء؟ ما أبعد من صنع هذا عن العلم والهدى. وهذه بدعة من أنحس البدع وأقبحها أضل الله من قالها على علم. [...].

(n: Several pages follow, examining various objections to the eternality of hell raised by the above-mentioned author, some of them citing statements ascribed to early Muslims, which, as Subki points out, apply to disobedient Muslims who will one day leave the hellfire, not to unbelievers, polytheists, or the likes of Pharaoh and Satan. Only a few of these objections could be translated below because of their length.)

(Objection:) There is a hadith in the *Musnad* of Ahmad that herbiage will one day grow on the floor of hell.

[...] فإن قلتَ: [...] في مسند أحمد حديث ذكر فيه أنه ينبت فيها الجرجير.

(Reply:) It is not in the *Musnad* of Ahmad, but in others, and is a weak hadith. If it were rigorously authenticated (sahih), it would be interpreted as referring to the level where disobedient Muslims ('usat) are.

قلتُ: ليس في مسند أحمد ولكنه في غيره وهو ضعيف ولو صح حمل على طبقة العصاة.

(Objection:) Harb Kirmani said, "I asked Ishaq about the word of Allah Most High,

فإن قلتَ: قال حرب الكرماني: سألت إسحق عن قول الله تعالى: ﴿إِلَّا مَا شَاءَ رَبُّكَ﴾.

" '... except as your Lord wills' (Koran 11:107),

فقال: أتت هذه الآية على كل وعيد في القرآن. وعن أبي نضرة عن بعض أصحاب النبي ﷺ قال: هذه الآية تأتي على القرآن كله حيث كان في القرآن ﴿خالدين فيها﴾ تأتي عليه.

"and he replied, 'This verse applies to every threat of punishment in the Koran.' " And it is related from Abu Nadra that one of the Companions of the Prophet (Allah bless him and give him peace) said, "This verse applies to the entire Koran wherever the words 'Abiding therein forever' are mentioned."

(Reply:) If authenticated, these statements are interpreted as applying to disobedient Muslims, for the departure of Muslim sinners from hell is not explicitly stated in the Koran, but only in the sunna, and is through intercession (dis: v2.8). So the meaning of these statements is to show the agreement between the Koran and sunna on this, for the early Muslims had great fear, and did not find in the Koran that true monotheists would leave hell, and were afraid of unending punishment.

قلتُ: إن صحت هذه الآثار حملت على العصاة لأن القرآن لم يرد فيه خروج العصاة من النار صريحاً، إنما ورد في السنة بالشفاعة فالمراد بهذه الآثار موافقة القرآن للسنة في ذلك. فإن السلف كانوا شديدي الخوف ولم يجدوا في القرآن خروج الموحدين من النار وكانوا يخافون الخلود [...].

(Objection:) Allah has informed us that His

[...] فإن قلتَ: [...] إنه أخبر أن

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mercy encompasses everything (Koran 7:156), and has said, "My mercy has outstripped My wrath" (*Sahih al-Bukhari* (y30), 9.411), while if one hypothesizes an unending torment, there is no mercy at all.

(Reply:) The hereafter is of two abodes, an abode of mercy unmixed with anything else, which is paradise; and an abode of torment unmixed with anything else, which is hell; this being a proof of Allah's omnipotence, while the present life is compounded of both. So if by saying, "If one hypothesizes an unending torment, there is no mercy at all," one means to absolutely deny that there is any mercy, it is not true, for there is the very perfection of mercy in paradise; while if one means there is no mercy in hell, we reply that even if one holds that mercy and torment are *things*, Allah Most High says (n: in the remainder of the verse "My mercy encompasses everything"),

"I shall inscribe it for those who are godfearing" (Koran 7:156).

(Objection:) It is established that Allah is all-wise and all-compassionate, and that wicked souls (who, if they were returned to this world, would go back to their wrongdoing) are unfit to dwell in the abode of peace. Now, if given a torment that would purge their souls of this evil, it would be tenable with respect to the divine wisdom, but as for creating souls who do evil in this world and for whom there is nothing but torment in the next, this is a contradiction than which few things are more inconsistent with wisdom and mercy. This is why Jahm denied that Allah is the Most Merciful of the Merciful, but rather said that He does whatever He wills, and those who follow Jahm's path, like Ash'ari and others, do not hold that He actually has wisdom or mercy. But since it is established that He is all-wise and all-compassionate, and the falsity of Jahm's position is realized, this necessitates that we affirm what wisdom and mercy entail—so the position of the Mu'tazilites concerning His wisdom and mercy, as well as that of the Qadarites, determinists, and deniers of the divine attributes, are equally false, and the most glaring of their errors is considering hell eternal. That is what their positions imply, while Allah has

رحمته وسعت كل شيء، وسبقت رحمتي غضبي، فإذا قُدِّر عذاب لا آخر له لم يكن هناك رحمة البتة.

قلتُ: الآخرة داران: دار رحمة لا يشوبها شيء وهي الجنة، ودار عذاب لا يشوبه شيء وهي النار، وذلك دليل على القدرة. والدنيا مختلطة بهذا وبهذا. فقوله: إذا قدر عذاب لا آخر له لم يكن هناك رحمة البتة، إن أراد نفي الرحمة مطلقاً فليس بصحيح لأن هناك كمال الرحمة في الجنة وإن أراد لم يكن في النار، قلنا له: وإن قال إنها شيء والعقاب شيء وقد قال تعالى:

﴿فَسَأَكْتُبُهَا لِلَّذِينَ يَتَّقُونَ﴾ [الأعراف: ١٥٦].

فإن قلتَ: قد ثبت أنه حكيم رحيم والنفوس الشريرة التي لو ردت إلى الدنيا لعادت لا تصلح أن تسكن دار السلام، فإذا عذبوا عذاباً تخلص نفوسهم من ذلك الشر كان هذا معقولاً في الحكمة. أما خلق نفوس تعمل الشر في الدنيا، وفي الآخرة لا تكون إلا في العذاب فهذا تناقض يظهر فيه من مناقضة الحكمة والرحمة ما لا يظهر في غيره. ولهذا كان جهم ينكر أن يكون الله تعالى أرحم الراحمين بل يفعل ما يشاء. والذين سلكوا طريقته كالأشعري وغيره ليس عندهم في الحقيقة له حكمة ولا رحمة. وإذا ثبت أنه حكيم رحيم وعلم بطلان قول جهم تعين إثبات ما تقتضيه الحكمة والرحمة. وما قاله المعتزلة أيضاً باطل، فقول القدرية والمجبرة والنفاة في حكمته ورحمته باطل ومن أعظم غلطهم اعتقادهم تأبيد جهنم. فإن ذلك يستلزم ما قالوه، وقد أخبر تعالى أن أهل الجنة

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informed us that the inhabitants of paradise and hell will not die, so they must have some abode, and it is impossible that they should be tormented after entering paradise, so no alternative remains except the abode of happiness. A living being is never without either pleasure or pain, and if pain is excluded, this necessarily implies eternal pleasure.

(Reply:) Having openly said what he has said at the end of the above, this person implies that Satan, Pharaoh, Haman, and all unbelievers will end up in eternal bliss and perpetual enjoyment, something that no Muslim, Christian, Jew, polytheist, or even philosopher has ever said. Muslims believe that paradise and hell last forever, while a polytheist holds that there will be no resurrection, and a philosopher believes that wicked souls will be in a state of pain. So we do not know of anyone who has made the statement this man has, which entails leaving Islam, because of the knowledge afforded by the sheer amount of the evidence against it. Glory be to Allah Most High, who says,

"Those who disbelieve in the signs of Allah and in meeting Him, it is they who shall despair of My mercy" (Koran 29:23),

and says,

"Whenever it abates, We shall increase for them the blaze" (Koran 17:97).

Allah's prophet (Allah bless him and give him peace) has informed us that Death shall be slaughtered between paradise and hell, which without doubt could only be done to show the people of hell's despair and their certainty of living forever in torment. Were they to move on to pleasure and enjoyment, it would be a great hope for them, better than death, and they would be without despair. How can anyone who believes in these verses and hadiths say such a thing? What he said about wisdom is ignorance, and what he said about Ash'ari (Allah be well pleased with him) is a deliberate lie against him that we seek refuge in Allah Most High from.

(Objection:) One could hold that souls are

والنار لا يموتون فلا بد لهم من دار، ومحال أن يعذبوا بعد دخول الجنة، فلم يبق إلا دار النعيم. والحي لا يخلو من لذة أو ألم فإذا انتفى الألم تعينت اللذة الدائمة.

قلتُ: قد صرح بما صرح به في آخر كلامه فيقتضي أن إبليس وفرعون وهامان وسائر الكفار يصيرون إلى النعيم المقيم واللذة الدائمة. وهذا ما قال به مسلم ولا نصراني ولا يهودي ولا مشرك ولا فيلسوف. أما المسلمون فيعتقدون دوام الجنة والنار، وأما المشرك فيعتقد عدم البعث، وأما الفيلسوف فيعتقد أن النفوس الشريرة في ألم. فهذا القول الذي قاله هذا الرجل ما نعرف أحداً قاله وهو خروج عن الإسلام بمقتضى العلم إجمالاً وسبحان الله إذا كان الله تعالى يقول:

﴿أُولَئِكَ الَّذِينَ يَئِسُوا مِن رَّحْمَتِي﴾ [العنكبوت: ٢٣].

وكذلك قوله تعالى:

﴿كُلَّمَا خَبَتْ زِدْنَاهُمْ سَعِيرًا﴾ [الإسراء: ٩٧].

ونبيه ﷺ يخبر بذبح الموت بين الجنة والنار ولا شك أن ذلك إنما يُفعل إشارة إلى إياسهم وتحققهم البقاء الدائم في العذاب. فلو كانوا ينتقلون إلى اللذة والنعيم لكان ذلك رجاءً عظيماً لهم وخيراً من الموت ولم يحصل لهم إياس. فمن يصدق بهذه الآيات والأحاديث كيف يقول هذا الكلام؟ وما قاله من مخالفة الحكمة جهل وما ينسبه إلى الأشعري رضي الله عنه افتراء عليه نعوذ بالله تعالى منه.

فإن قلت: قد يقول إنه تخلص

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cleansed of wickedness by this torment and then become Muslims.

(Reply:) Allah be our refuge! Their becoming Muslims in the hereafter will be of no benefit to them, by unanimous consensus of Muslims, and by the word of Allah Most High,

"Its faith will not benefit any soul that did not believe before" (Koran 6:158).

(Objection:) What wisdom is there in creating such people?

(Reply:) The wisdom lies in making manifest the divine omnipotence so that believers may contemplate it and reflect upon the immensity of the majesty of Allah Most High, who has the power on the one hand to create the angels, the righteous, the prophets, and the Liegelord of Creation Muhammad (Allah bless him and give him peace); and the power on the other hand to create Pharaoh, Haman, Abu Jahl, the fiends of jinn and mankind, and Satan, the Chief of Misguidance; and who has the power to create the two final abodes, each pure and unadmixed: one for everlasting happiness, the other for agonizing torment, and yet a third abode, this world, compounded of both. Glory to Him whose omnipotence is such, and whose magnificence is so exalted! Allah Most Glorious is well able to create all people as obedient believers, but He Most Glorious has willed to manifest the thing and its opposite, those who know to know it, and those who are ignorant to be ignorant of it, knowledge being the origin of all felicity and that from which true faith and obedience grow, and ignorance being the origin of all damnation and that from which all unbelief and disobedience grow. I have not seen anything ruinous to the affairs of this world or the next save that it was the result of ignorance, which is truly the most baneful of all things. ...Whoever says that heaven or hell perish is an unbeliever (*al-Rasa'il al-Subkiyya* (y52), 196–208).

نفوسهم من الشرّ بذلك العذاب فيسلمون.

قلتُ: معاذ الله. أما إسلامهم في الآخرة فلا ينفعهم بإجماع المسلمين، وبقوله تعالى:

﴿لا يَنْفَعُ نَفْسًا إِيمَانُهَا لَمْ تَكُنْ آمَنَتْ مِنْ قَبْلُ﴾ [الأنعام: ١٥٨]. [...].

فإن قلتَ: ما في خلق هؤلاء من الحكمة؟

قلت: إظهار القدرة واعتبار المؤمنين وفكرتهم في عظمة الله تعالى القادر على أن يخلق الملائكة والبشر الصالحين والأنبياء ومحمداً ﷺ سيد الخلق وعلى أن يخلق من الطرف الآخر فرعون وهامان وأبا جهل وشياطين الجن والإنس وإبليس رأس الضلال والقادر على خلق الدارين متمحضة كل واحدة منهما: هذه للنعيم المقيم وهذه للعذاب الأليم ودار ثالثة وهي الدنيا ممتزجة من النوعين. فسبحان من هذه قدرته وجلّت عظمته. وكان الله سبحانه قادراً أن يخلق الناس كلهم مؤمنين طائعين ولكن أراد سبحانه أن يبين الشيء وضده علمه من علمه وجهله من جهله. والعلم منشأ السعادة كلها نشأ عنه الإيمان والطاعة، والجهل منشأ الشقاوة كلها نشأ عنه الكفر والمعصية. وما رأيت مفسدة من أمور الدنيا والآخرة تنشأ إلا عن الجهل فهو أضر الأشياء. [...] من قال بفناء الجنة والنار أو أحدهما فهو كافر [محرر من الرسائل السبكية في الرد على ابن تيمية وتلميذه ابن قيم الجوزية: ١٩٦ - ٢٠٨].

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w56.0 THE EXCELLENCE OF THE PROPHETIC COMPANIONS (SAHABA) (from v2.9)

w56.0 فضيلة الصحابة

w56.1 (Nawawi: (n: with commentary by Jalal al-Din Suyuti)) The prophetic *Companions* (N: meaning anyone who personally met the Prophet (Allah bless him and give him peace) and died believing in Islam) are all legally upright ('adal, def: o24.4), both those of them who took part in conflicts (dis: w56.3) and those who did not, by unanimous consensus of all scholars whose opinion matters. ((Suyuti:) Allah Most High says,

"Thus have We made you a justly balanced nation" (Koran 2:143),

meaning upright, and He says,

"You are the best nation ever brought forth for people" (Koran 3:110),

the address being to those who were alive at that time. And the Prophet (Allah bless him and give him peace) said,

"The best of people are those of my time."

(*Tadrib al-rawi fi sharh Taqrib al-Nawawi* (y109), 2.214))

w56.1 (النووي (ت: بشرح جلال الدين السيوطي)) [. . .] الصحابة كلهم عدول، من لابس الفتن وغيرهم بإجماع من يعتد به (قال تعالى:
﴿وكذلك جعلناكم أمة وسطا﴾ [البقرة: ١٤٣] الآية.
أي عدولاً، وقال تعالى:
﴿كنتم خير أمة أخرجت للناس﴾ [آل عمران: ١١٠].
والخطاب فيها للموجودين حينئذ.
وقال ﷺ: «خير الناس قرني» [رواه الشيخان]. . .) [نقل من تدريب الراوي في شرح تقريب النواوي: ٢/ ٢١٤].

w56.2 (Wasiyyullah 'Abbas:) Among the evidence of the legal uprightness ('adala) of the Companions is the word of Allah Most High:

(1) "Muhammad is the Messenger of Allah, and those with him are hard against the unbelievers, compassionate towards one another. You see them bowing and prostrating, seeking bounty from Allah and His good pleasure. Their mark is upon their faces from the effect of prostration—that is their likeness in the Torah; and their likeness in the Evangel is as a grain that sends forth its shoot, strengthens it, and it thickens and rises straight upon its stalk, pleasing the sowers, that through them He may enrage the unbelievers. Allah promises those who believe and do good

w56.2 (وصي الله عباس:) [(ت:] من) أدلة عدالة الصحابة من كتاب الله عز وجل: قال تعالى:
- ﴿مُحَمَّدٌ رَسُولُ اللَّهِ، وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ تَرَاهُمْ رُكَّعًا سُجَّدًا يَبْتَغُونَ فَضْلًا مِنَ اللَّهِ وَرِضْوَانًا، سِيمَاهُمْ فِي وُجُوهِهِمْ مِنْ أَثَرِ السُّجُودِ ذَلِكَ مَثَلُهُمْ فِي التَّوْرَاةِ وَمَثَلُهُمْ فِي الْإِنْجِيلِ كَزَرْعٍ أَخْرَجَ شَطْأَهُ فَآزَرَهُ فَاسْتَغْلَظَ فَاسْتَوَى عَلَى سُوقِهِ يُعْجِبُ الزُّرَّاعَ لِيَغِيظَ بِهِمُ الْكُفَّارَ وَعَدَ اللَّهُ الَّذِينَ

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works of them forgiveness and an immense reward" (Koran 48:29).

آمَنُوا وَعَمِلُوا الصَّالِحَاتِ مِنْهُمْ مَغْفِرَةً وَأَجْراً عَظِيماً﴾ [الفتح : ٢٩].

(2) "... And the outstrippers, the first of the Emigrants and the Helpers, and those who followed them in excellence: Allah is pleased with them, and they are pleased with Him, and He has prepared for them gardens under which rivers flow, abiding therein forever. That is the mighty triumph" (Koran 9:100).

وقال تعالى :
﴿وَالسَّابِقُونَ الأَوَّلُونَ مِنَ المُهَاجِرِينَ وَالأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ، وَأَعَدَّ لَهُمْ جَنَّاتٍ تَجْرِي تَحْتَهَا الأَنْهَارُ، خَالِدِينَ فِيهَا أَبَداً ذَلِكَ الفَوْزُ العَظِيمُ﴾ [التوبة : ١٠٠].

(3) "... it is for the poor Emigrants, who were forced out of their homes and possessions, seeking bounty from Allah and His pleasure, aiding Allah and His messenger: those are the ones who are true" (Koran 59:8).

وقال تعالى :
ـ ﴿لِلْفُقَرَاءِ المُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلاً مِنَ اللَّهِ وَرِضْوَاناً وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ، أُولَئِكَ هُمُ الصَّادِقُونَ﴾ [الحشر : ٨].

(4) "Allah was pleased with the believers when they swore fealty to you under the tree, and He knew what was in their hearts, sent down tranquility upon them, and rewarded them with a nigh victory" (Koran 48:18).

وقال تعالى :
ـ ﴿لَقَدْ رَضِيَ اللَّهُ عَنِ المُؤْمِنِينَ إِذْ يُبَايِعُونَكَ تَحْتَ الشَّجَرَةِ فَعَلِمَ مَا فِي قُلُوبِهِمْ فَأَنْزَلَ السَّكِينَةَ عَلَيْهِمْ، وَأَثَابَهُمْ فَتْحاً قَرِيباً﴾ [الفتح : ١٨] [...].

And as for evidence from the prophetic sunna, the Prophet (Allah bless him and give him peace) said,

ومن السنة النبوية : قال النبي ﷺ :

"Do not revile my Companions, for by Him in whose hand is my soul, were one of you to spend gold equal to Mount Uhud, you would not attain the reward of the handsful of one of them or even half of it [N: because what they spent benefited Islam more]."

«لا تسبّوا أصحابي، فوالذي نفسي بيده، لو أن أحدكم أنفق مثل أُحُدٍ ذهباً ما أدرك مدَّ أحدهم ولا نصيفه» [إسناده صحيح].

(n: While there is no disagreement among scholars that merely being a Companion is itself an excellence and rank that cannot be reached by anyone who came after them, one may appreciate yet another facet of their position with Allah by considering the hadith,

"When a human being dies, his work comes to an end except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him,"

«إذا مات ابن آدم انقطع عمله إلاّ من ثلاث : صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له» [رواه مسلم].

which scholars say shows that whenever a member of the Muslim Community benefits from religious knowledge transmitted by a Companion from the Prophet (Allah bless him and give him peace), the reward for it is counted among the Companion's works. To realize the station of 'Umar, for example (Allah be well pleased with him), one has only to reflect on the number of Muslims throughout the centuries who have benefited from the hadith,

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"Works are only according to intentions..."

«إنّما الأعمال بالنيات» [من حديث عمر رواه الشيخان].

which enters into the validity of virtually every act of worship in a Muslim's life (dis: t1.1), and which no one besides 'Umar (Allah be well pleased with him) related from the Prophet (Allah bless him and give him peace). Or consider the hadith,

"He who inaugurates a good sunna [custom] in Islam earns the reward of it and of all who perform it after him without diminishing their own rewards in the slightest..."

«من سنَّ في الإسلام سنّة حسنة فله أجرها وأجر من عمل بها من بعده من غير أن ينقص من أجورهم شيئاً» [من حديث رواه مسلم].

and reflect that 'Uthman (Allah be well pleased with him) ordered the Koran to be gathered into the single volume that innumerable Muslims have recited and studied from that century to this, 'Uthman's share therein being renewed, according to the above hadith, each time a Koran is opened. Nor is it difficult to imagine a similar rank for those whose efforts and jihad led to whole nations and their posterity becoming Muslims down to the present age, from which examples and similar ones we may understand the superiority of both our Prophet (Allah bless him and give him peace), who is the exemplar of all who worship Allah on the face of the earth until the end of time, and of the early Muslims in general over all those who came after them.)

There is scholarly consensus of the Sunni Community that all the Companions are legally upright. Khatib (N: Baghdadi) says: "There are many hadiths of this purport, every one of them in conformity with the explicit text of the Koran, all of which attests to the purity of the Companions and necessitates the conviction of their uprightness and faultless character. None of them requires the exoneration of other human beings alongside the declaration of their unimpeachability by Allah Most High, who is well aware of their inmost state. Thus are they characterized until one of them should prove to have deliberately committed an act unexplainable as anything besides intentional disobedience, uninterpretable by extenuating circumstances, that they should be considered to have lost their legal uprightness; but this Allah has declared them innocent of, and has raised their station in His sight. Had none of what we have mentioned reached us from Allah Mighty and Majestic or His messenger (Allah bless him and give him peace) concerning them, the mere way they were—their emigration, jihad, backing of Islam, spending of lifeblood and possessions, slaying of fathers and sons, sincere advice in religion, and strength of faith and certitude—would

وأجمع أهل السنة والجماعة على عدالتهم. قال الخطيب (ح: البغدادي): «والأخبار في هذا المعنى تنسع، وكلها مطابقة لما ورد في نص القرآن، وجميع ذلك يقتضي طهارة الصحابة والقطع على تعديلهم ونزاهتهم. فلا يحتاج أحد منهم مع تعديل الله تعالى لهم المطلع على بواطنهم إلى تعديل أحد من الخلق له. فهم على هذه الصفة إلى أن يثبت على أحد ارتكاب ما لا يحتمل إلا قصد المعصية والخروج من باب التأويل فيحكم بسقوط العدالة، وقد برأهم الله من ذلك ورفع أقدارهم عنده. على أنه لو لم يرد من الله عز وجل ورسوله فيهم شيء مما ذكرنا لأوجبت الحال التي كانوا عليها من الهجرة والجهاد والنصرة وبذل المهج والأموال وقتل الآباء والأولاد والمناصحة في الدين وقوة الإيمان واليقين القطع على عدالتهم والاعتقاد

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necessitate the conviction of their uprightness, the certainty of their blamelessness, and their superiority over any appraisers or vindicators coming after them until the end of time."

As for the beliefs of the Mu'tazilites, and those of the *Shiites* who reject the legitimacy of the first three caliphs (n: these being termed *Rawafid* (lit. "Rejectors"), including the Twelver Shiites, as opposed to the *Ghulat* ("Extremists") on the one hand, who may believe that 'Ali is God, or that Gabriel (upon whom be peace) made a mistake in delivering the Koran to Muhammad (Allah bless him and give him peace) instead of 'Ali, and because of such convictions are unquestionably unbelievers; and as opposed to, on the other hand, the *Mufaddila* ("Preferers"), such as the Zaydis, who believe that 'Ali had a better claim to the imamate than the first three caliphs, though the latters' caliphates were nevertheless legally valid—which distinctions are courtesy of Sheikh Yusuf Rifa'i)—it is sufficient to mention the position of Ibn Kathir, who says: "All of the Companions are legally upright according to the People of the Sunna and Community (Ahl al-Sunna wa al-Jama'a). The view of the Mu'tazilites that all of the Companions are upright except those who fought against 'Ali (dis: w56.3) is untrue, base, and unacceptable. As for the various sects of Shiites (Rawafid), their ignorance, lack of intelligence, and their contention that the Companions all committed unbelief except for seventeen of them, whom they name, it is gibberish without any corroboration except the corrupt opinion of benighted minds and caprice blindly pursued, and which does not even deserve a rebuttal, so patent is the evidence to the contrary" (*Kitab fada'il al-Sahaba* (y3), 1.13–16).

لنزاهتهم وأنهم أفضل من المعدلين والمزكين الذين يجيئون من بعدهم أبد الآبدين. اهـ.

وأما عقيدة المعتزلة والروافض فنكتفي فيها بذكر قول ابن كثير: «والصحابة كلهم عدول عند أهل السنة والجماعة، وقول المعتزلة: الصحابة عدول إلا من قاتل علياً قول باطل مرذول ومردود. وأما طوائف الروافض وجهلهم وقلة عقلهم ودعاويهم أن الصحابة كفروا إلا سبعة عشر صحابياً وسموهم فهو من الهذيان بلا دليل إلا مجرد الرأي الفاسد عن ذهن بارد وهوى متبع، وهو أقل من أن يرد والبرهان على خلافه أظهر» [محرر من كتاب فضائل الصحابة: ١/ ١١٣ - ١١٦].

w56.3 (Ghazali:) The true imam after the Messenger of Allah (Allah bless him and give him peace) was Abu Bakr, then 'Umar, then 'Uthman, and then 'Ali (Allah be well pleased with them). The Prophet (Allah bless him and give him peace) never explicitly appointed an imam at all, since if one had been designated, he would have been likelier to have been known than the individuals appointed to oversee various lesser commissions of authority, or those assigned to

w56.3 (الغزالي:) [السابع أن] الإمام الحق بعد رسول الله ﷺ أبو بكر ثم عمر ثم عثمان ثم علي رضي الله عنهم ولم يكن نص رسول الله ﷺ على إمام أصلاً إذ لو كان لكان أولى بالظهور من نصبه آحاد الولاة والأمراء على الجنود في

lead the armies in various countries, and the identity of these was not hidden from anyone, so how should the identity of an imam have been? And if it had been known, how should it have been lost so as not to have been conveyed to us? Abu Bakr was thus not installed as imam save through being chosen and sworn fealty to, and as for the hypothesis that the Prophet (Allah bless him and give him peace) explicitly appointed someone else, it amounts to an accusation against all the Companions of contravening the Messenger of Allah (Allah bless him and give him peace), which is a violation of scholarly consensus (ijma'), and something that no one has had the effrontery to invent except the Shiites (Rawafid). The People of the Sunna and Community (Ahl al-Sunna wa al-Jama'a) believe in the blamelessness of all the Companions, and praise them as Allah Most Glorious and Exalted has praised them, and as has His messenger (Allah bless him and give him peace). The events that occurred between Mu'awiya and 'Ali (Allah be well pleased with both of them) proceeded from the personal reasoning (ijtihad) of each, not from any avidness of Mu'awiya for the imamate. 'Ali (Allah be well pleased with him) believed that delivering up those responsible for the death of 'Uthman, because of the numerousness of their clans and their dispersal throughout the army, would lead to an upheaval in the matter of the supreme leadership at its very inception, and he felt that to postpone dealing with them would be fitter; while Mu'awiya believed that in view of the enormity of their crime, to delay their apprehension would incite people against the leadership and cause needless loss of life. Some of the most outstanding scholars of Sacred Law have held that both sides in a disagreement between those qualified to do independent legal reasoning (ijtihad) are correct, while others hold that only one side is; but no one of any scholarly competence has ever suggested that 'Ali was in error (*Ihya' 'ulum al-din* (y39), 1.102).

البلاد ولم يخف ذلك فكيف خفي هذا؟ وإن ظهر فكيف اندرس حتى لم ينقل إلينا؟ فلم يكن أبو بكر إماماً إلا بالاختيار والبيعة وأما تقدير النص على غيره فهو نسبة الصحابة كلهم إلى مخالفة رسول الله ﷺ وخرق الإجماع، وذلك مما لا يستجرىء على اختراعه إلا الروافض. واعتقاد أهل السنة [(ت:) والجماعة) تزكية جميع الصحابة والثناء عليهم كما أثنى الله سبحانه وتعالى ورسوله ﷺ. وما جرى بين معاوية وعلي رضي الله عنهما كان مبنياً على الاجتهاد لا منازعة من معاوية في الإمامة إذ ظن علي رضي الله عنه أن تسليم قتلة عثمان مع كثرة عشائرهم واختلاطهم بالعسكر يؤدي إلى اضطراب أمر الإمامة في بدايتها فرأى التأخير أصوب، وظن معاوية أن تأخير أمرهم مع عظم جنايتهم يوجب الإغراء بالأئمة ويعرّض الدماء للسفك. وقد قال أفاضل العلماء كل مجتهد مصيب وقال قائلون المصيب واحد. ولم يذهب إلى تخطئة علي ذو تحصيل أصلاً [نقل من إحياء علوم الدين: ١/ ١٠٢].

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w57.0 THE ASH'ARI SCHOOL (from w6.3)

w57.0 حقيقة الأشاعرة

w57.1 (n:) In fundamentals of Islamic faith (usul), virtually all of the scholars quoted in the present volume are Ash'aris, whose school of thought has been presented for readers to examine themselves in sections u3, v1, v2, and w8. The school's position on figurative interpretation (ta'wil) of primary texts has also been discussed at a4.2 and w6.3, the latter of which explains that like all orthodox Muslims, the Ash'aris interpret matters of the afterlife—heaven, hell, and so on—as literal realities, while interpreting certain expressions referring to attributes of Allah Most High—His 'hand', 'eyes', and the like—as figurative, meaning as allusions to His power, omniscience, and so forth. Though many, like Imam Ash'ari himself and Imam Nawawi, consign the knowledge of the real meaning of such expressions to Allah (tafwid), others of the school, originally in reply to anthropomorphists of their time, have found figurative interpretations both more useful to Islam, and ultimately, more convincing. To support their position, they adduce that since words such as *hand* must be either figurative (majazi) or literal (haqiqi), and since the literal meaning of *hand* is a bodily limb, an attribute that is unbelief (kufr) to ascribe to Allah Most High, the only other possibility is that it is figurative. The Koran contains many examples of figures of speech, such as,

"Whoever was blind in this life shall be blind in the hereafter, and even further astray" (Koran 17:72),

«وَمَنْ كَانَ فِي هَٰذِهِ أَعْمَىٰ فَهُوَ فِي الْآخِرَةِ أَعْمَىٰ وَأَضَلُّ سَبِيلًا» [الإسراء: ٧٢].

which does not refer to the physically blind in this life, but rather to those *blind*, figuratively speaking, to the signs of Allah and heedless of His warnings. Or the verse,

"Today We forget you, as you have forgotten this day of yours" (Koran 45:34),

«الْيَوْمَ نَنسَاكُمْ كَمَا نَسِيتُمْ لِقَاءَ يَوْمِكُمْ هَٰذَا...» [الجاثية: ٣٤].

in which Allah's *forgetting* cannot be literally interpreted as a divine attribute, for Allah forgets nothing, but must rather be understood in its intended figurative sense as meaning that Allah will abandon unbelievers to their punishment. Like virtually all languages of mankind, the ancient classical Arabic in which the Holy Koran was revealed abounds in metaphors, metonyms, figures of speech, and rhetorical embellishments—indeed, a revelation devoid of such features would have had little claim to eloquence among the Arabs—and the figurative interpretations of the Ash'aris are in general supported by compellingly similar linguistic examples, parallels, and lexical precedents drawn from the language's long history. Despite which, because of the possibility that Allah intends something other by such expressions than the particular interpretations suggested by scholars, the best and safest path for a Muslim is consignment of the knowledge of such things to Allah (tafwid), unless forced to refute anthropomorphists, who do not in effect worship the transcendent deity of Islam but rather a *form* like themselves, something unquestionably rejected by the Koranic verse,

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"There is nothing whatsoever like unto Him" (Koran 42:11).

﴿لَيْسَ كَمِثْلِهِ شَيْءٌ ...﴾ [الشورى: ١١].

The Ash'ari school has naturally earned the criticism of misconceived contemporary efforts to revive anthropomorphism, the excesses of whose proponents have inspired the author of the section below to remind Muslims of the fundamentally orthodox character of the school that has represented the majority of Sunni Muslims for the greater part of Islam's history.

w57.2 (Muhammad 'Alawi Maliki:) Many sons of Muslims are ignorant of the Ash'ari school, whom it represents, and its positions on tenets of Islamic faith, and yet some of them are not god-fearing enough to refrain from accusing it of deviance, departure from the religion of Islam, and heresy about the attributes of Allah. This ignorance of the Ash'ari school is a cause of rending the unity of Ahl al-Sunna and dispersing its ranks. Some have gone so far as to consider the Ash'aris among the categories of heretical sects, though it is beyond me how believers can be linked with misbelievers, or how Sunni Muslims can be considered equal with the most extreme faction of the Mu'tazilites, the Jahmites.

"Shall We deal with Muslims as We do criminals? How is it that you judge?" (Koran 68:35–36).

The Ash'aris are the Imams of the distinguished figures of guidance among the scholars of the Muslims, whose knowledge has filled the world from east to west, and whom people have unanimously concurred upon their excellence, scholarship, and religiousness. They include the first rank of Sunni scholars and most brilliant of their luminaries, who stood in the face of the excesses committed by the Mu'tazilites (dis: w6.4), and who constitute whole sections of the foremost Imams of hadith, Sacred Law, and Koranic exegesis. Sheikh al-Islam Ahmad ibn Hajar 'Asqalani, the mentor of hadith scholars and author of the book *Fath al-Bari bi sharh Sahih al-Bukhari*, which not a single Islamic scholar can dispense with, was Ash'ari. The sheikh of scholars of Sunni Islam, Imam Nawawi, author of *Sharh Sahih Muslim* and many of other famous works, was Ash'ari. The master of Koranic exegetes,

w57.2 (محمد علوي المالكي:) يجهل كثير من أبناء المسلمين مذهب الأشاعرة ولا يعرفون من هم الأشاعرة ولا طريقتهم في أمر العقيدة؛ ولا يتورع البعض أن ينسبهم إلى الضلال أو يرميهم بالمروق من الدين والإلحاد في صفات الله. وهذا الجهل بمذهب الأشاعرة سبب تمزق وحدة أهل السنة وتشتت شملهم حتى غدا البعض يسلك الأشاعرة ضمن طوائف أهل الضلال، ولست أدري كيف يقرن بين أهل الإيمان وأهل الضلال؟ وكيف يساوي بين أهل السنة وبين غلاة المعتزلة وهم الجهمية؟

﴿أَفَنَجْعَلُ الْمُسْلِمِينَ كَالْمُجْرِمِينَ مَا لَكُمْ كَيْفَ تَحْكُمُونَ﴾؟ [القلم: ٣٥ - ٣٦].

الأشاعرة هم أئمة أعلام الهدى من علماء المسلمين، الذين ملأ علمهم مشارق الأرض ومغاربها وأطبق الناس على فضلهم ودينهم. هم جهابذة علماء أهل السنة وأعلام علمائهم الأفاضل الذين وقفوا في وجه طغيان المعتزلة [...] إنهم طوائف المحدثين والفقهاء والمفسرين من الأئمة الأعلام. شيخ الإسلام أحمد بن حجر العسقلاني شيخ المحدثين بلا مراء صاحب كتاب «فتح الباري على شرح البخاري» أشعري المذهب وكتابه لا يستغني عنه أحد من العلماء. وشيخ علماء أهل السنة الإمام النووي صاحب «شرح صحيح مسلم» وصاحب المصنفات الشهيرة أشعري المذهب. وشيخ المفسرين الإمام القرطبي صاحب تفسير «الجامع لأحكام

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Imam Qurtubi author of *al-Jami' li ahkam al-Qur'an*, was Ash'ari. Sheikh al-Islam Ibn Hajar Haytami, who wrote *al-Zawajir 'an iqtiraf al-kaba'ir*, was Ash'ari. The sheikh of Sacred Law and hadith, the conclusively definitive Zakariyya Ansari, was Ash'ari. Imam Abu Bakr Baqillani; Imam 'Asqalani; Imam Nasafi; Imam Shirbini; Abu Hayyan Tawhidi, author of the Koranic commentary *al-Bahr al-muhit;* Imam Ibn Juzayy, author of *al-Tashil fi 'ulum al-Tanzil;* and others—all of these were Imams of the Ash'aris. If we wanted to name all of the top scholars of hadith, Koranic exegesis, and Sacred Law who were Imams of the Ash'aris, we would be hard put to do so and require volumes merely to list these illustrious figures whose wisdom has filled the earth from east to west. And it is incumbent upon us to give credit where credit is due, recognizing the merit of those of knowledge and virtue who have served the Sacred Law of the Greatest of Messengers (Allah bless him and give him peace). What good is to be hoped for us if we impugn our foremost scholars and righteous forebears with charges of aberrancy and misguidance? Or how should Allah give us the benefit of their scholarship if we believe it is deviance and a departure from the way of Islam? I ask you, is there a single Islamic scholar of the present day, among all the Ph.D.'s and geniuses, who has done what Ibn Hajar 'Asqalani or Imam Nawawi have, of the service rendered by these two noble Imams (Allah enfold them in His mercy and bliss) to the pure prophetic sunna? How should we charge them and all Ash'aris with aberrancy when it is we who are in need of their scholarship? Or how can we take knowledge from them if they were in error? For as Imam Zuhri (Allah have mercy on him) says, "This knowledge is religion, so look well to whom you are taking your religion from."

Is it not sufficient for someone opposed to the Ash'aris to say, "Allah have mercy on them, they used their reasoning (ijtihad) in figuratively interpreting the divine attributes, which it would have been fitter for them not to do"; instead of accusing them of deviance and misguidance, or displaying anger towards whoever considers them to be of the Sunni Community? If Imam Nawawi, 'Asqalani, Qurtubi, Baqillani, al-Fakhr al-Razi, Haytami, Zakariyya Ansari, and others were not

القرآن» أشعري المذهب. وشيخ الإسلام ابن حجر الهيتمي صاحب كتاب «الزواجر عن اقتراف الكبائر» أشعري المذهب. وشيخ الفقه والحديث الإمام الحجة الثبت زكريا الأنصاري أشعري المذهب. والإمام العسقلاني والإمام النسفي والإمام الشربيني، وأبو حيان التوحيدي صاحب تفسير «البحر المحيط»، والإمام ابن جزي صاحب «التسهيل في علوم التنزيل» الخ.. كل هؤلاء من أئمة الأشاعرة. ولو أردنا أن نعدد هؤلاء الأعلام من المحدثين والمفسرين والفقهاء من أئمة الأشاعرة لضاق بنا الحال واحتجنا إلى مجلدات في سرد أولئك العلماء الأفاضل الذين ملأ علمهم مشارق الأرض ومغاربها. إن من الواجب أن نرد الجميل لأصحابه وأن نعرف الفضل لأهل العلم والفضل الذين خدموا شريعة سيد المرسلين ﷺ [من العلماء الأعلام]. وأي خير يرجى فينا إن رمينا علماءنا وأسلافنا الصالحين بالزيغ والضلال؟ وكيف يفتح الله علينا لنستفيد من علومهم إذا كنا نعتقد فيها الانحراف والزيغ عن طريق الإسلام؟ إنني أقول: هل يوجد بين علماء العصر من الدكاترة والعباقرة من يقوم بما قام به شيخ الإسلام ابن حجر العسقلاني والإمام النووي من خدمة السنة النبوية المطهرة كما فعل هذان الإمامان الجليلان تغمدهما الله بالرحمة والرضوان؟ فكيف نرميهما - وسائر الأشاعرة - بالضلال ونحن بحاجة إلى علوم هؤلاء؟ وكيف نأخذ العلوم عنهم إذا كانوا على ضلال وقد قال الإمام الزهري رحمه الله: إن هذا العلم دين فانظروا عمن تأخذون دينكم.

أفما كان يكفي أن يقول المعارض: إنهم رحمهم الله اجتهدوا فأخطأوا في تأويل الصفات وكان الأولى أن لا يسلكوا هذا المسلك؛ بدل أن نرميهم بالزيغ والضلال ونغضب على من عدهم من أهل السنة والجماعة؟ وإذا لم يكن الإمام النووي والعسقلاني والقرطبي والباقلاني

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among the most brilliant scholars and illustrious geniuses, or of the Sunni Community, then who are the Sunnis?

I sincerely entreat all who call others to this religion or who work in the field of propagating Islam to fear Allah respecting the honor of the Community of Muhammad (Allah bless him and give him peace), especially its greatest sages and scholars in Sacred Law. For the Community of Muhammad (Allah bless him and give him peace) is possessed of goodness until the Final Hour, while we are bereft of any if we fail to acknowledge the worth and excellence of our learned (*Mafahim yajibu an tusahhaha* (y83), 38–40).

والفخر الرازي والهيتمي وزكريا الأنصاري وغيرهم من جهابذة العلماء وفطاحل النبغاء إذا لم يكونوا من أهل السنة والجماعة فمن هم أهل السنة إذن؟

إنني أدعو مخلصاً كل الدعاة وكل العاملين في حقل الدعوة الإسلامية أن يتقوا الله في أمة محمد ﷺ وبخاصة في أجلة علمائها وأخيار فقهائها. فأمة محمد ﷺ بخير إلى قيام الساعة ولا خير فينا إذا لم نعرف لعلمائنا قدرهم وفضلهم [محرر من مفاهيم يجب أن تصحح: ٣٨ - ٤٠].

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w58.0 COMMEMORATING THE BIRTH (MAWLID) OF THE PROPHET (ALLAH BLESS HIM AND GIVE HIM PEACE) (from w29.3(3))

w58.0 عمل المولد

w58.1 (Jalal al-Din Suyuti:) The Sheikh of Islam and hadith master of his age, Ahmad ibn Hajar (N: 'Asqalani) was asked about the practice of commemorating the birth of the Prophet (Allah bless him and give him peace), and gave the following written reply: "As for the origin of the practice of commemorating the Prophet's birth (Allah bless him and give him peace), it is an innovation (bid'a) that has not been conveyed to us from any of the pious early Muslims of the first three centuries, despite which it has included both features that are praiseworthy and features that are not. If one takes care to include in such a commemoration only things that are praiseworthy and avoids those that are otherwise, it is a praiseworthy innovation (dis: w29.2), while if one does not, it is not.

"An authentic primary textual basis from which its legal validity is inferable has occurred to me, namely the rigorously authenticated (sahih) hadith in the collections of Bukhari and Muslim that 'the Prophet (Allah bless him and give him peace) came to Medina and found the Jews fasting on the tenth of Muharram ('Ashura'), so he asked

w58.1 (جلال الدين السيوطي:) [... وا قد سئل شيخ الإسلام حافظ العصر [أبو فضل] أحمد بن حجر (ح: العسقلاني) عن عمل المولد فأجاب بما نصه: أصل عمل المولد بدعة لم تنقل عن أحد من السلف الصالح من القرون الثلاثة، ولكنها مع ذلك قد اشتملت على محاسن وضدها فمن تحرى في عملها المحاسن وتجنب ضدها كان بدعة حسنة وإلا فلا.

[قال:] وقد ظهر لي تخريجها على أصل ثابت وهو ما ثبت في الصحيحين من أن النبي ﷺ قدم المدينة فوجد اليهود يصومون يوم عاشوراء فسألهم فقالوا: هو

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them about it and they replied, "It is the day on which Allah drowned Pharaoh and rescued Moses, so we fast it in thanks to Allah Most High," ' which indicates the validity of giving thanks to Allah for the blessings He has bestowed on a particular day in providing a benefit or averting an affliction, repeating one's thanks on the anniversary of that day every year, *giving thanks to Allah* taking any of various forms of worship such as prostration, fasting, giving charity, or reciting the Koran. And what blessing is greater than the birth of the Prophet (Allah bless him and give him peace), the Prophet of Mercy, on this day? In light of which, one should take care to commemorate it on the day itself in order to conform to the above story of Moses and the tenth of Muharram, though those who do not view the matter thus do not mind commemorating it on any day of the month, while some have expanded its time to any day of the year, whatever exception may be taken at such a view.

"The foregoing is in regard to its legal basis. As for what is done therein, it should be confined to what expresses thanksgiving to Allah Most High, of the like of the above-mentioned practices such as reciting the Koran, feeding others, giving charity, and singing something of the odes that praise the Prophet (Allah bless him and give him peace) or encourage one to do with less of this-worldly things, inspiring the hearts of the listeners to do good and to work for the hereafter. As for what is added to this, of listening to singing, amusement, and so forth, what should be said of it is that the permissible therein that displays rejoicing over the day is of no harm if conjoined with it, while what is unlawful, offensive, or unpraiseworthy (khilaf al-awla) is forbidden" (*al-Hawi li al-fatawi* (y130), 1.196).

يوم أغرق الله فيه فرعون ونجى موسى فنحن نصومه شكراً لله تعالى؛ فيستفاد منه فعل الشكر لله على ما من به في يوم معين من إسداء نعمة أو دفع نقمة ويعاد ذلك في نظير ذلك اليوم من كل سنة. والشكر لله يحصل بأنواع العبادة كالسجود والصيام والصدقة والتلاوة. وأي نعمة أعظم من النعمة ببروز النبي ﷺ نبي الرحمة في ذلك اليوم؟ وعلى هذا فينبغي أن يتحرى اليوم بعينه حتى يطابق قصة موسى في يوم عاشوراء ومن لم يلاحظ ذلك لا يبالي بعمل المولد في أي يوم من الشهر بل توسع قوم فنقلوه إلى أي يوم من السنة وفيه ما فيه، فهذا ما يتعلق بأصل عمله. وأما ما يعمل فيه فينبغي أن يقتصر فيه على ما يفهم الشكر لله تعالى من نحو ما تقدم ذكره من التلاوة والإطعام والصدقة وإنشاد شيء من المدائح النبوية والزهدية المحركة للقلوب إلى فعل الخير والعمل للآخرة، وأما ما يتبع ذلك من السماع واللهو وغير ذلك فينبغي أن يقال ما كان في ذلك مباحاً بحيث يقتضي السرور بذلك اليوم لا بأس بإلحاقه به وما كان حراماً أو مكروهاً فيمنع وكذا ما كان خلاف الأولى [انتهى] [نقل من الحاوي للفتاوي في الفقه وعلوم التفسير والحديث والأصول والنحو والإعراب وسائر الفنون: ١/١٩٦].

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w59.0 THE ACCEPTANCE OF FATE (from w52.1(24))

w59.0 الرضا بالقضاء

THINGS INCONSISTENT WITH THE ACCEPTANCE OF FATE

ما يناقض الرضا بالقضاء

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w59.1 (Ghazali:) Complaining, no matter what the circumstances, is inconsistent with accepting fate. Criticizing food and finding fault with it is a rejection of what Allah Most High has destined, since blaming what is made is blaming the maker, and everything is Allah's work. For a person to say that "poverty is an affliction and trial," or "having a family to support is worry and fatigue," or "working for a living is a burden and hardship"—all this is inconsistent with accepting fate. One should rather leave the plan to its planner, the kingdom to its king, and say, as 'Umar did (Allah be well pleased with him), "I do not care whether I become rich or poor, for I don't know which is better for me."

w59.1 (الغزالي:) [...و] الشكوى تناقض الرضا بكل حال وذم الأطعمة وعيبها يناقض الرضا بقضاء الله تعالى لأن مذمة الصنعة مذمة للصانع والكل من صنع الله تعالى وقول القائل: الفقر بلاء ومحنة والعيال همّ وتعب والاحتراف كد ومشقة كل ذلك قادح في الرضا، بل ينبغي أن يسلم التدبير لمدبره والمملكة لمالكها ويقول ما قاله عمر رضي الله عنه: لا أبالي أصبحت غنياً أو فقيراً فإني لا أدري أيهما خير لي [...].

THINGS THAT ARE NOT INCONSISTENT WITH THE ACCEPTANCE OF FATE

ما لا يناقض الرضا

w59.2 As for prayers (du'a'), Allah requires us to worship Him thereby, as is substantiated by the great many supplications made by the Messenger of Allah (Allah bless him and give him peace) and all the prophets (upon whom be peace). Praying for forgiveness, for Allah's protection of one from acts of disobedience, and indeed for all means that assist one to practice one's religion—none of these is inconsistent with accepting what Allah Most High has destined, for Allah demands the worship of supplications from His servants so that their prayers may bring forth the purity of His remembrance, the humility of soul, and the softening of earnest entreaty so as to polish the heart, open it to spiritual insight, and obtain the manifold blessings of His kindnesses—just as carrying a pitcher and drinking water are not inconsistent with the acceptance of Allah's having decreed thirst. As drinking water to eliminate thirst is merely to employ one of the means that the Creator of means has arranged, so too is prayer an instrumental relation that Allah Most High has devised and ordered to be used. To employ such means, in conformity with the normal way Allah Most High deals with the world (sunna Allah), is not inconsistent with full confidence in divine providence (tawakkul). Nor is hating acts of disobedience, detesting their perpetrators and causes, or striving

w59.2 فأما الدعاء فقد تعبدنا به، وكثرة دعوات رسول الله ﷺ وسائر الأنبياء عليهم السلام تدل عليه. [...] والدعاء بالمغفرة والعصمة من المعاصي وسائر الأسباب المعينة على الدين غير مناقض للرضا بقضاء الله تعالى. فإن الله تعبد العباد بالدعاء ليستخرج الدعاء منهم صفاء الذكر وخشوع القلب ورقة التضرع ويكون ذلك جلاء للقلب ومفتاحاً للكشف وسبباً لتواتر مزايا اللطف كما أن حمل الكوز وشرب الماء ليس مناقضاً للرضا بقضاء الله تعالى في العطش، وشرب الماء طلباً لإزالة العطش مباشرة سبب رتبه مسبب الأسباب فكذلك الدعاء سبب رتبه الله تعالى وأمر به. وقد ذكرنا أن التمسك بالأسباب جرياً على سنة الله تعالى لا يناقض التوكل. [...] وكذلك كراهة المعاصي ومقت أهلها ومقت أسبابها والسعي في إزالتها بالأمر

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to remove them by commanding the right and forbidding the wrong (q1); none of which is inconsistent with accepting fate, though some deluded good-for-nothings have erred in this, claiming that since acts of disobedience, wickedness, and unbelief are from the destiny and decree of Allah Mighty and Majestic, accepting them is obligatory—while this is rather from their lack of understanding and blindness to the deeper purposes of Sacred Law. For Allah requires that we worship Him by condemning acts of disobedience, hating them, and not acquiescing to them, and blames those who accept them by saying:

"They willingly accept a worldly life [dis: w5] and are contented with it" (Koran 10:7);

and,

"They accept to remain with the women who stay behind; Allah has set a seal upon their hearts" (Koran 9:87).

And in a famous hadith,

"Whoever sees something wrong and accepts it is as though he had committed it."

It might be objected that Koranic verses and hadiths exist about accepting what Allah Most High has destined, while it is impossible and inconsistent with the divine unity that acts of disobedience should not be through Allah's having decreed them, and yet if they are from the decree of Allah Most High, then hating and detesting them is hatred of the decree of Allah, so how can one reconcile these two seemingly contradictory aspects or join between the acceptance and hatred of one and the same thing? The answer to this is that acceptance and displeasure are only inconsistent when directed towards a single aspect of single object in a single respect. For it is not inconsistent to dislike something in one respect and accept it in another, as when one's enemy dies who was the enemy of another of one's enemies and was striving to destroy him, such that one dislikes his death insofar as the nemesis of one's enemy has died, yet accepts it in that at least one of them has died. And so too, disobedience has

بالمعروف والنهي عن المنكر لا يناقضه أيضاً. وقد غلط في ذلك بعض البطالين المغترين وزعم أن المعاصي والفجور والكفر من قضاء الله وقدره عز وجل فيجب الرضا به وهذا جهل بالتأويل وغفلة عن أسرار الشرع. [. . .] و[أما] إنكار المعاصي وكراهتها وعدم الرضا بها فقد تعبد الله به عباده وذمهم على الرضا بها فقال:

﴿وَرَضُوا بِالْحَيَاةِ الدُّنْيَا وَاطْمَأَنُّوا بِهَا﴾ [يونس: ٧].

وقال تعالى:

﴿رَضُوا بِأَنْ يَكُونُوا مَعَ الْخَوَالِفِ وَطُبِعَ اللَّهُ عَلَى قُلُوبِهِمْ﴾ [التوبة: ٨٧].

وفي الخبر المشهور:

«من شهد منكراً فرضي به فكأنه قد فعله».

فإن قلت: فقد وردت الآيات والأخبار بالرضا بقضاء الله تعالى فإن كانت المعاصي بغير قضاء الله تعالى فهو محال وهو قادح في التوحيد وإن كانت بقضاء الله تعالى فكراهتها ومقتها كراهة لقضاء الله تعالى. وكيف السبيل إلى الجمع وهو متناقض على هذا الوجه وكيف يمكن الجمع بين الرضا والكراهة في شيء واحد؟ [. . . بل نقول] الرضا والكراهة يتضادان إذا تواردا على شيء واحد من جهة واحدة على وجه واحد. فليس من التضاد في شيء واحد أن يكره من وجه ويرضى به من وجه. إذ قد يموت عدوّك الذي هو أيضاً عدوّ بعض أعدائك وساع في إهلاكه فتكره موته من حيث أنه مات عدوّ عدوّك وترضاه من حيث أنه مات عدوّك.

وكذلك المعاصي لها وجهان وجه إلى

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two aspects, one regarding Allah Most High, since it is His effect, choice, and will, in which respect one accepts it out of deference to the Sovereign and His sovereignty, assenting to His disposal of the matter; and another aspect regarding the perpetrator, since it is his acquisition and attribute (dis: u3.8), the sign of his being detested and odious to Allah, who has afflicted him with the causes of remoteness and hatred, in respect to which he is condemnable and blameworthy. And this clarifies the Koranic verses and hadiths about hatred for the sake of Allah and love for the sake of Allah, being unyielding towards the unbelievers, hard against them, and detesting them, while accepting the destiny of Allah Most High insofar as it is the decree of Allah Mighty and Majestic (*Ihya' 'ulum al-din* (y39), 4.300–303).

الله تعالى من حيث أنه فعله واختياره وإرادته فيرضى به من هذا الوجه تسليماً للملك إلى مالك الملك والرضا بما يفعله فيه. ووجه إلى العبد من حيث أنه كسبه ووصفه وعلامة كونه ممقوتاً عند الله وبغيضاً عنده حيث سلط عليه أسباب البعد والمقت فهو من هذا الوجه منكر ومذموم. [. . .] وبهذا يتقرر جميع ما وردت به الأخبار من البغض في الله والحب في الله والتشديد على الكفار والتغليظ عليهم والمبالغة في مقتهم مع الرضا بقضاء الله تعالى من حيث أنه قضاء الله عز وجل [محرر من إحياء علوم الدين: ٤/ ٣٠٠ - ٣٠٣؛ بتقديم وتأخير].

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w60.0 KNOWLEDGE OF THE UNSEEN (from w52.1(306))

w60.0 علم الغيب

w60.1 (Ibn Hajar Haytami:)

(Question:) "Is someone who says, 'A believer knows the unseen (al-ghayb),' thereby considered an unbeliever, because of Allah Most High having said:

" 'No one in the heavens or earth knows the unseen except Allah' (Koran 27:65),

"and,

" '[He is] the Knower of the Unseen, and discloses not His unseen to anyone...' (Koran 72:26),

"or is such a person asked to further explain himself, in view of the possibility of knowing some details of the unseen?"

(Answer:) "He is not unconditionally considered an unbeliever, because of the possibility of otherwise construing his words, for it is obligatory to ask whomever says something interpretable as either being or not being unbelief for further

w60.1 (ابن حجر الهيتمي:) سئل [. . .] من قال إن المؤمن يعلم الغيب، هل يكفر لقوله تعالى:

﴿قُل لَا يَعْلَمُ مَن فِي السَّمَاوَاتِ وَالْأَرْضِ الْغَيْبَ إِلَّا اللَّهُ﴾ [النمل: ٦٥].

و﴿عَالِمُ الْغَيْبِ فَلَا يُظْهِرُ عَلَىٰ غَيْبِهِ أَحَدًا﴾ [الجن: ٢٦].

أو يستفصل لجواز العلم بجزئيات من الغيب؟

(فأجاب [بقوله رحمه الله ونفعنا به آمين]:) لا يطلق القول بكفره لاحتمال كلامه ومن تكلم بما يحتمل الكفر وغيره

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clarification, as has been stated in [n: Nawawi's] *al-Rawda* and elsewhere....

"If asked to explain and such a person answers: 'By saying, "A believer knows the unseen," I meant that Allah could impart certain details of the unseen to some of the friends of Allah (awliya')'—this is accepted from him, since it is something logically possible and its occurrence has been documented, it being among the countless miracles [karamat, dis: w30] that have taken place over the ages. The possibility of such knowledge is amply attested to by what the Koran informs us about Khidr (Allah bless him and give him peace), and the account related of Abu Bakr Siddiq (Allah Most High be well pleased with him) that he told of his wife being pregnant with a boy, and thus it proved; or of 'Umar (Allah Most High be well pleased with him), who miraculously perceived [n: the Muslim commander] Sariya and his army who were in Persia, and while on the pulpit in Medina giving the Friday sermon, he said, 'O Sariya, the mountain!' warning them of the enemy ambush intending to exterminate the Muslims. Or the rigorously authenticated (sahih) hadith that the Prophet (Allah bless him and give him peace) said of 'Umar (Allah Most High be well pleased with him),

" 'He is of those who are spoken to [i.e. preternaturally inspired].'

"....What we have mentioned about the above Koranic verse [n: on the unseen] has been explicitly stated by Nawawi in his *Fatawa*, where he says: 'It means that no one except Allah knows this independently and with full cognizance of all things knowable. As for [n: knowledge imparted through] inimitable prophetic miracles (mu'jizat) and divine favors (karamat) it is through Allah's giving them to know it that it is known; as is also the case with what is known through ordinary means' " (*al-Fatawa al-hadithiyya* (y48), 311–13).

وجب استفصاله كما في الروضة وغيرها . . .

ومتى استفصل فقال: أردت بقولي المؤمن يعلم الغيب أن بعض الأولياء قد يعلمه الله ببعض المغيبات، قبل منه ذلك لأنه جائز عقلاً وواقع نقلاً إذ هو من جملة الكرامات الخارجة عن الحصر على ممر الأعصار [. . .] ويكفي بذلك ما أخبر به القرآن عن الخضر [. . .] ﷺ، وما جاء عن أبي بكر الصديق رضي الله تعالى عنه أنه أخبر عن حمل امرأته أنه ذكر وكان كذلك. وعن عمر رضي الله تعالى عنه أنه كشف عن سارية وجيشه وهم بالعجم فقال على منبر المدينة وهو يخطب يوم الجمعة: يا سارية الجبل: يحذره الكمين الذي أراد استئصال المسلمين، وما صح عنه ﷺ أنه قال في عمر رضي الله تعالى عنه: «إنه من المحدَّثين»، أي الملهمين.

. . . وما ذكرنا في الآية صرح به النووي رحمه الله في فتاواه فقال: معناها لا يعلم ذلك استقلالاً وعلم إحاطة بكل المعلومات إلا الله. وأما المعجزات والكرامات فبإعلام الله لهم علمت، وكذا ما علم بإجراء العادة [انتهى كلامه] [محرر من الفتاوى الحديثية: ٣١١ - ٣١٣].

w60.2 (Muhammad Hamid:) Allah Most Glorious is the All-knower of things unseen and their inmost secrets, with primal, intrinsic, supernatural knowledge whose basis no one else has a share in. If any besides Him has awareness or

w60.2 (محمد الحامد:) الله سبحانه العليم بالغيوب ومكنوناتها علماً لدنياً ذاتياً أصلياً لا يشاركه أحد في هذه الأصالة، ولئن كان لغيره اطّلاع ومعرفة

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knowledge, it is through their being made aware or given knowledge by Him Magnificent and Exalted. They are unable—being servants without capacity—to transcend their sphere or go beyond their limit to draw aside the veils from things unseen, and if not for His pouring something of the knowledge of these things upon their hearts, they would know nothing of it, little or much. Yet this knowledge is disparate in degree, and some of it higher than other of it and more certainly established.

The divine inspiration of it to prophet messengers is beyond doubt and above question, like the rising sun in its certitude and clarity, of which the Koran says,

"[He is] the Knower of the Unseen, and discloses not His unseen to anyone, save a messenger He approves; for him He places protectors before and behind" (Koran 72:26-27).

protectors meaning guards from among the angels, so that nothing of it is leaked to devils when it is being delivered to the Messenger (Allah bless him and give him peace), to safeguard its inimitability and it remain a unique prophetic sign (mu'jiza).

The miraculous perceptions (kashf) of the friends of Allah (awliya') are a truth we do not deny, for Bukhari relates in his *Sahih* from Abu Hurayra (Allah Most High be well pleased with him) that the Prophet (Allah bless him and give him peace) said:

"In the nations before you were people who were spoken to [i.e. inspired] though they were not prophets. If there is anyone in my Community, it is 'Umar ibn Khattab."

and Muslim relates in his *Sahih* from 'A'isha (Allah Most High be well pleased with her) that the Prophet (Allah bless him and give him peace) said:

"There used to be in the nations before you those who were spoken to. If there are any in my Community, 'Umar ibn Khattab is one of them."

But this intuition (ilham) does not equal the divine inspiration (wahy) of the prophets in strength (n:

فبإطلاعه وتعريفه جل وعلا، وما كان لهم - وهم عباد عاجزون - أن يتخطوا طورهم ويتعدوا حدهم فيكشفوا الحجوف عن المغيبات. ولولا إفاضته سبحانه على قلوبهم المعرفة ببعض الغيب ما عرفوا منه قليلاً ولا كثيراً. لكن هذه المعرفة متفاوتة فبعضها أرقى من بعض وأرسخ ثبوتاً. فالوحي بها للمرسلين لا يتطرق إليه شك ولا يعتريه ريب وهو كالشمس المشرقة ثبوتاً ووضوحاً، وعن هذا جاء القرآن يقول:

﴿عَالِمُ الْغَيْبِ فَلَا يُظْهِرُ عَلَىٰ غَيْبِهِ أَحَدًا. إِلَّا مَنِ ارْتَضَىٰ مِن رَّسُولٍ فَإِنَّهُ يَسْلُكُ مِن بَيْنِ يَدَيْهِ وَمِنْ خَلْفِهِ رَصَدًا﴾ [الجن: ٢٦ - ٢٧].

أي حرساً من الملائكة حتى لا يتسرب شيء منه إلى الشياطين وقت إلقائه إلى الرسول عليه الصلاة والسلام فيبقى الإعجاز ونسلم المعجزة.

والكشف للأولياء حق لا ننكره فقد روى البخاري في صحيحه عن أبي هريرة رضي الله تعالى عنه قال: قال رسول الله ﷺ:

«لقد كان فيمن كان قبلكم من الأمم ناس محدَّثون» - أي ملهَمون - «من غير أن يكونوا أنبياء، وإن يكن في أمتي أحد فإنه عمر بن الخطاب».

ت: قلت لم أجده في البخاري بهذا اللفظ بل وجدت حديثين هما: «لقد كان فيما قبلكم من الأمم محدَّثون فإن يك في أمتي أحد فإنه عمر» وآخر: «لقد كان فيمن كان قبلكم من بني إسرائيل رجال يكلَّمون من غير أن يكونوا أنبياء. فإن يكن من أمتي منهم أحد فعمر». فلعل المؤلف رحمه الله جمع بين الروايتين أو روى بمعناهما]. ولمسلم في صحيحه عن عائشة رضي الله تعالى عنها عن النبي ﷺ أنه كان يقول: «قد كان يكون في الأمم قبلكم محدَّثون فإن يكن في أمتي منهم أحد فإن عمر بن الخطاب منهم».

لكن هذا الإلهام لا يساوي وحي الأنبياء في القوة لجواز كون إخبار الولي

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of certainty), because of the possibility that what is apprehended by the friend of Allah (wali) is merely the thoughts of his own mind. As it is sometimes admixed, and other things are mistaken for it, the possibility of error exists in it, and it cannot be a basis for establishing legal rulings or a criterion for works.

As for what astrologers and fortune-tellers say, there is no way it can be accepted, for soothsaying was annulled when the Prophet (Allah bless him and give him peace) was sent and the heavens were safeguarded by stars, after which devils no longer had access to the heavens as they had had before, to eavesdrop on what angels were saying about the events on earth that Allah Most Glorious informed the angels of before they happened (n: Koran 15:17–18 and 72:8–10). The Holy Koran is explicit that

"they [the devils] are prevented from hearing" (Koran 26:212),

and in a hadith,

"Whoever goes to a 'psychic' ('arraf) or fortune-teller and believes what he says has disbelieved in what has been revealed to Muhammad [Allah bless him and give him peace]."

The things that such people inform of that actually come to pass belong to the category of coincidence, which is not given the slightest value in Islam.

All of which is on the topic of the unseen generally. As for the Final Hour, Allah Most High has veiled the knowledge of the time it will occur from all creatures entirely, and no one, archangel or prophetic messenger, knows when it will be, the Koranic verses and hadiths being intersubstantiative and in full agreement on this. Were I to list them it would be a lengthy matter, and what I have mentioned is adequate and sufficient for whomever the divine assistance reaches (*Rudud 'ala abatil wa rasa'il al-Shaykh Muhammad al-Hamid* (y44), 2.61–63).

مجـرد حديث نفس، ولتلونـه أحيـاناً والتبـاسـه فللخطأ فيـه احتمـال فلا يكون مناط تشريع ولا دستور عمل.

أما ما يقـولـه المنجمون والكهّان فلا سبيـل إلى قبـولـه وتصـديقه من حيث إن الكهانة بطلت ببعث النبي ﷺ، وحرست السمـاء بالنجـوم، فلم يعـد للشيـاطين خلوص كالـذي كان لهم من قبـل إليهـا لاستـراق السمع بما يتحدث به الملائكة عن الكـوائن في الأرض ممـا يخبـرهم به الله سبحـانـه من قبـل أن يقـع. والقـرآن الكريم صريح في هذا:

﴿إِنَّهُمْ عَنِ السَّمْعِ لَمَعْزُولُونَ﴾ [الشعراء: ٢١٢].

وفي الحديث الشريف:

«من أتى عرّافـاً أو كاهنـاً فصـدقـه بما يقـول فقد كفر بما أنزل على محمد» ﷺ [رواه الإمـام أحمـد والحـاكم من حديث أبي هريـرة عن رسـول الله عليـه والـه الصـلاة والسـلام]. وما يقع مما يخبرون به فهـو من قبيـل الصـدفة التي لا يقام لها وزن في الإسـلام.

هذا كله في الغيب عمـومـاً، وأمـا أمر السـاعـة فإن الله تعـالى حجب علم وقت وقـوعـهـا عن الخلق كلهم أجمعين فلا يعلم وقتهـا أحـد: لا ملك مقرب ولا نبي مرسـل، والآيـات والأحـاديث متظـاهـرة على هذا متضافرة فيه. ولو ذهبت أسردها لامتـد بي القـول وطـال وفيما ذكرت غنية وكفـاية لمن لاحظته عين العناية [نقل من ردود على أبـاطيـل ورسائل الشيخ محمد الحامد: ٢/ ٦١ - ٦٣].

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BOOK X

BIOGRAPHICAL NOTES

تراجم الأعلام

INTRODUCTION:

(n:) The persons mentioned below are listed alphabetically, first name first, exactly as spelled in the English texts of the present volume, though titles like *Sheikh, Imam, al-Hajj, Sheikh al-Islam,* etc. are not taken into alphabetical consideration, such that Imam Ahmad, for example, is listed in the *A*'s as *(Imam) Ahmad.* Also disregarded for the purposes of alphabetizing are the diacritic ' ('ayn), the Arabic definite article *al-*, and the word *ibn,* unless the latter is capitalized in the texts, as with Ibn Majah, for example, who is listed under *Ibn.*

As for recording the full name of each person, the procedure has been to write the name: "So-and-so *ibn* [lit. "son of"] So-and-so ibn So-and-so"—back to several ancestors; then a comma followed by the agnomen (kunya) if known, "Abu [lit. "father of"] So-and-so," which Muslim men adopt upon the birth of a son or daughter; then the reputational epithet (shuhra) if any, by which famous scholars were often known to each other and the public, such as "Zayn al-Din," or "Jalal al-Din"; and finally the ascriptive name (nisba) which denoted their family origin or residence. Thus, a typical name might be like that of Imam Dhahabi, for example, who was Muhammad ibn Ahmad ibn 'Uthman ibn Qaymaz, Abu Abdullah Shams al-Din al-Dhahabi. The order of the last three elements occasionally varies in Muslim biographical literature, but the order used here is widely accepted.

The biographies themselves contain facts of the individuals' lives (occasionally eclectic in details the sources differ about) as well as inferences and judgements by the translator that were felt to be warranted by the accounts related, marked by the letter *n* at the end of the entries in which they figure. Information from oral sources such as the translator's sheikhs is designated, as in the rest of the present volume, by the letters *A, N,* or the informant's name. Where the words *hadith master (hafiz)* appear, they mean that the subject of the biography was one of the mnemones of Islam, those scholars who had memorized at least one hundred thousand hadiths with their chains of transmission. In stories of pre-Islamic figures like the ancient prophets (upon whom be peace), the narratives of Bani Isra'il (Isra'iliyyat) have been freely quoted from the Koranic commentaries indicated, as Muslim scholars concur that they are permissible to relate in matters that do not contradict the principles of Islam (dis: *Fath al-Bari* (y17), 6.498–99,

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hadith 3461), and Allah knows best as to their authenticity. Finally, where both Hijra and Christian dates are used, the Hijra date is mentioned first, followed by the Christian date.

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x1 (A:) (*see* 'Abd al-Wakil Durubi, x19)

x2 Aaron (*see* Harun, x135)

x3 'Abbas (j13.4) is al-'Abbas ibn 'Abd al-Muttalib ibn Hashim, the paternal uncle of the Prophet (Allah bless him and give him peace), and born before him by two years. In the pre-Islamic period of ignorance he was responsible for the custodianship of the Sacred Precinct and giving water to its visitants. He entered Islam and emigrated to Medina before Mecca was conquered by the Muslims, and died in Medina in A.H. 32 (*al-Shifa* (y116), 1.181).

x4 'Abd al-Ghaffar 'Uyun al-Sud (w50.1) was a Hanafi author and Koranic exegete of the present century who was a member of a family of scholars from Homs, Syria. He completed his three-volume commentary on the first two suras of the Koran, *al-Riyad al-nadira fi tafsir suratayy al-Fatiha wa al-Baqara* [The verdant gardens: an exegesis of the suras al-Fatiha and al-Baqara], sometime before 1343/1924–25 (A).

x5 'Abd al-Ghani Nabulsi (w9.4) is 'Abd al-Ghani ibn Isma'il ibn 'Abd al-Ghani al-Nabulsi, born in Damascus in 1050/1641. He was a prolific Hanafi Imam, mufti, Sufi, and poet, the author of nearly five hundred books and treatises in the natural and religious sciences, among them *Idah al-maqsud min wahdat al-wujud* [Clarifying what is meant by the 'unity of being'], in which he explains that by the 'unity of being' Sufis do not mean that the created universe is God, for God's being is necessary (wajib al-wujud) while the universe's being is merely possible (ja'iz al-wujud), i.e. subject to nonbeing, beginning, and ending, and it is impossible that one of these two orders of being could in any sense *be* the other, but rather the created universe's act of being is derived and subsumed by the divine act of creation, from which it has no ontic independence, and hence *is* only through the being of its Creator, the one true Being. 'Abd al-Ghani travelled to Baghdad, Palestine, Lebanon, Egypt, and the Hijaz, returning to settle in Damascus, where he authored most of his works and died in 1143/1733 (*Idah al-maqsud min wahdat al-wujud* (y98), 30; Sheikh 'Abd al-Rahman Shaghouri; and n).

x6 'Abd al-Hamid Sharwani (o25.0) was a Shafi'i scholar who lived in Mecca and in 1289/1872 completed his major work, comprising the most reliable positions of the later Shafi'i school in a ten-volume exegesis of Ibn Hajar Haytami's interlineal commentary on Nawawi's *Minhaj al-talibin* [The seekers' road], (*Hawashi al-Shaykh 'Abd al-Hamid al-Sharwani* (y2), 10.432–33).

x7 'Abd al-Karim Jili (s4.9) is 'Abd al-Karim ibn Ibrahim al-Jili, the Qutb of

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Jilan, born in 768/1365. A great-grandson of 'Abd al-Qadir al-Jilani, he was a Sufi, gnostic, and scholar of Sacred Law who authored many works, among the most famous of which is his *al-Insan al-kamil fi ma'rifa al-awakhir wa al-awa'il* [The perfected man: on the knowledge of last and first things]. He died in 832/1428 (*al-A'lam* (y136), 4.50).

x8 'Abd al-Qadir al-Jaza'iri (w9.4) is 'Abd al-Qadir ibn Muhyiddin ibn Mustafa al-Hasani al-Jaza'iri. Born in Qaytana, Algeria, in 1222/1807, he was a leader of men, fighter for Islam (mujahid), and the author of the three-volume Sufi classic *al-Mawaqif* [Standpoints] that attests to both his mastery of the traditional Islamic disciplines and adepthood in the mystic path. Originally educated in Oran, he later performed the pilgrimage to Mecca with his father, visiting Medina, Damascus, and Baghdad. In 1246/1830, when the French entered Algeria, his fellow countrymen swore fealty to him and made him their leader, and he stood in the face of the invasion, personally leading his army into battle against the enemy until 1263/1847, when the Sultan of the West 'Abd al-Rahman ibn Hisham made a peace with the French, and 'Abd al-Qadir was taken to Toulon. In 1281/1864–65 he was allowed to move to Damascus, where he died in 1300/1883 (ibid., 4.45–46).

x9 'Abd al-Qahir al-Baghdadi (w9.11) is 'Abd al-Qahir ibn Tahir ibn Muhammad ibn 'Abdullah al-Baghdadi, a Shafi'i scholar, Imam in fundamentals of Islam (usul), and heresiologist who was born and raised in Baghdad, later moving to Nishapur. He was a teacher who used to lecture in seventeen subjects to students, and was the author of *Usul al-din* [The fundamentals of the religion] and *al-Farq bayn al-firaq* [The distinction between heretical sects], both major works on the beliefs of Ahl al-Sunna. He died in Asfara'in in 429/1037 (ibid., 4.48; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 5.136).

x10 'Abd al-Rahman ibn 'Awf (o25.4(2)) is 'Abd al-Rahman ibn 'Awf ibn 'Abd 'Awf al-Qurashi, among the ten Companions whom the Prophet (Allah bless him and give him peace) affirmed would enter paradise. An early convert to Islam, he emigrated twice in the path of Allah, first to Ethiopia and then to Medina, and was one of those who fought in the battle of Badr. He died in A.H. 31 in Medina and is buried in al-Baqi' cemetery there (*al-Shifa* (y116), 1.281).

x11 'Abd al-Rahman Ba'alawi (b7.6) is 'Abd al-Rahman ibn Muhammad ibn Husayn ibn 'Umar Ba'alawi, Shafi'i scholar and the mufti of Hadramawt, Yemen. He finished writing *Bughyat al-mustarshidin fi talkhis fatawa ba'd al-a'imma min al-muta'akhkhirin* [The goal of guidance-seekers: a summary of the formal legal opinions of certain later Imams] in 1251/1835 (*al-A'lam* (y136), 3.333).

x12 'Abd al-Rahman ibn Jawzi (q0.1) is 'Abd al-Rahman ibn 'Ali ibn Muhammad al-Jawzi, born in Baghdad in 508/1114. A Hanbali Imam and one of the greatest scholars of his age in history and hadith, he authored nearly three hundred works in the sciences of hadith, Arabic grammar, Koranic exegesis, history, Sufism, physiognomy, medicine, and biographies of famous Muslims. He is sometimes confused with Ibn Qayyim al-Jawziyya, whom he was not related to, though the former's name (lit. "son of the superintendent of the Jawziyya") was

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derived from the name of the Jawziyya School founded by a grandson of Ibn al-Jawzi in Damascus where Ibn Qayyim's father worked. Ibn al-Jawzi died in Baghdad in 597/1201 (ibid., 3.316; and Sheikh Shu'ayb Arna'ut).

x13 'Abd al-Rahman Jaziri (f15.18) is 'Abd al-Rahman ibn Muhammad 'Awad al-Jaziri, born in Gezira Shandawil, Egypt, in 1299/1882. Educated at al-Azhar University in Cairo, he later taught there and authored his well known five-volume work on comparative Islamic law, *al-Fiqh 'ala al-madhahib al-arba'a* [Jurisprudence according to the four schools]. He died in Helwan, Egypt, in 1360/1941 (*al-A'lam* (y136), 3.334–35).

x14 (Sheikh) 'Abd al-Rahman Shaghouri (Document I) is 'Abd al-Rahman ibn 'Abd al-Rahman al-Shaghouri, born in Homs, Syria, in 1332/1914. A Shafi'i scholar, poet, and Sufi, he moved at a young age to Damascus, where he was educated in Arabic grammar and lexicology, Sacred Law, and the Islamic religious sciences by such sheikhs as Husni al-Baghghal, Muhammad Barakat, 'Ali al-Daqar, Isma'il al-Tibi, Lutfi al-Hanafi, and others, and in Sufism by Sheikh Muhammad Hashimi, with whom he associated more than twenty years as a disciple and as the leader of his chorus of singers of mystical poetry (munshidin) at public circles of *dhikr*. Originally a weaver, then mechanic of textile machinery, and later foreman of technicians at a fabrics plant, he was instrumental in unionizing workers in the present century in Damascus, and served on the executive committee that led the Syrian Textile Workers' Union in a successful forty-day strike for workmen's compensation. He represented Syria in the United Arab Workers' Union, and has since led an active public life in seeing to the needs of Muslims. A Sufi adept, he has composed a volume (diwan) of his own poetry similar in tone and content to that of Sheikh Ahmad al-'Alawi, whose *tariqa* he is the heir and sheikh of in Damascus. In lessons with students, he teaches not only from classic texts like those of Sha'rani, and Ibn al-'Arabi's *al-Futuhat al-Makkiyya* [Meccan Revelations], but from the poetry, usually sung as odes before it is exposited, of such masters as Ibn al-Farid, al-Ghawth Abu Madyan, 'Abd al-Ghani Nabulsi, Ahmad al-'Alawi, and himself, explaining that their words are "scientific texts" (mutun 'ilmiyya) that may be correctly or incorrectly understood, depending on whether one has the knowledge and depth of Islamic learning to recognise their profound accord with the Sacred Law and faith of Islam. For this reason his *tariqa* emphasizes not only the illumination of the heart through *dhikr*, particularly by the solitary retreat (khalwa) under his strict supervision, but also the mastery of the tenets of faith of Ahl al-Sunna from classic Ash'ari texts which provide the meanings that are only given life and seriously comprehended through the gnosis of those who remember Allah much and whom Allah remembers. Sheikh 'Abd al-Rahman currently works as a professor of Islamic faith ('ilm al-tawhid) and the sciences of Arabic at a religious academy in Damascus (n).

x15 'Abd al-Ra'uf Munawi (p75.0) is Muhammad 'Abd al-Ra'uf ibn Taj al-'Arifin ibn 'Ali ibn Zayn al-'Abidin al-Munawi, born in 952/1545. A major Shafi'i scholar in the religious and traditional sciences, he lived in Cairo, where he devoted himself to research and writing, producing nearly eighty works, of which perhaps the most signal contribution is his six-volume *Fayd al-Qadir sharh al-Jami' al-saghir* [The outpouring of the Omnipotent: an exegesis of "The minor

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compendium"], a commentary on a famous hadith collection by Suyuti. Towards the end of his life, he weakened himself through lack of food and sleep, became ill, and finally had to dictate his works to his son. He died in 1031/1622 (*al-A'lam* (y136), 6.204; and n).

x16 'Abd al-Wahhab Khallaf (a1.1) is 'Abd al-Wahhab ibn 'Abd al-Wahid Khallaf, a twentieth-century Arabist, scholar, and specialist in Islamic jurisprudence. Born in 1305/1888 in Kafr al-Ziyat, Egypt, he graduated from the school of Islamic judiciary in Cairo in 1912, and also served as an inspector of Islamic courts in Cairo and as a member of the Academy of the Arabic Language. He was appointed assistant professor of Islamic jurisprudence in the Faculty of Law at the University of Cairo in 1935 and became full professor in 1948, authoring several works on Sacred Law and Koranic exegesis, among them *'Ilm usul al-fiqh* [The science of the fundamentals of Islamic jurisprudence], which is widely used in universities throughout the Islamic world. He died in Cairo in 1375/1956 (*al-A'lam* (y136), 4.184).

x17 'Abd al-Wahhab Sha'rani (c6.5) is 'Abd al-Wahhab ibn Ahmad ibn 'Ali al-Hanafi al-Sha'rani, born in 898/1493 in Qalqanshada, Egypt. A Shafi'i scholar and prolific author of works in Sufism, Sacred Law, and tenets of faith, he is probably most famous in the legal sphere for his classic, *al-Mizan al-kubra* [The supreme scale], in which he comparatively studies the rulings of all four Sunni schools of Sacred Law as if they were a single school, treating their differences according to their difficulty as either strictness ('azima) or dispensation (rukhsa). He was also a sheikh and adept in Sufism, among its outstanding Arab spokesmen, showing the unity between law and way in works that have remained popular to this day, among them *Lata'if al-minan wa al-akhlaq* [Subtleties of gifts and character], *Lawaqih al-anwar al-qudsiyya* [The fecundating sacred illuminations], and *Kitab al-yawaqit wa al-jawahir fi bayan 'aqa'id al-akabir* [The book of rubies and jewels: an explanation of the tenets of faith of mystic luminaries]. He died in Cairo in 973/1565 (ibid., 4.180–81; and n).

x18 'Abd al-Wahid ibn Zayd (w26.1) was one of the pious early Muslims. He knew Hasan al-Basri and other spiritual figures of his time, and was among those given to praying at night, for forty years performing the dawn prayer (subh) with the ablution (wudu) he had made for the nightfall prayer ('isha) (*al-Tabaqat al-kubra* (y124), 1.46).

x19 (Sheikh) 'Abd al-Wakil Durubi (Introduction) is 'Abd al-Wakil ibn 'Abd al-Wahid ibn Sa'id al-Durubi, Shafi'i sheikh, Sufi, and imam of Jami' Darwish Pasha (al-Darwishiyya) Mosque in Damascus. Born in 1333/1914 in Homs, Syria, he moved at the age of eighteen to Zabadani, where he read various Shafi'i works with Sheikh Ibrahim Tayyib al-Ghazzi, teacher in the school of Islamic judiciary, and with Sheikh Muhammad Salim Taha, the mufti of Zabadani. He studied a number of Shafi'i legal classics with them during his eighteen-year residence there including *al-Iqna' fi hall alfaz Abi Shuja'* [The persuading: an explanation of the terms in "Abu Shuja'"] by Muhammad Shirbini Khatib, the *Hashiya* [Commentary] of Sheikh Ibrahim Bajuri, and others in Shafi'i law, as well as works on fundamentals of Islamic belief ('ilm al-tawhid), hadith, Koranic exegesis, and

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Sufism, before moving in 1950 to Damascus, where he was appointed imam of the Darwishiyya. The translator can attest to both his remarkable memory, which holds a number of traditional works in the Islamic sciences (mutun) in their entirety, and to his deep comprehension of Sacred Law and its ancillary disciplines, enriched by over thirty-five years of reading and discussion in his library and bookshop off the courtyard of the mosque. He has published a number of the works of scholars and mystics, among them a volume of poetry by 'Abd al-Ghani Nabulsi entitled *Diwan al-haqa'iq wa majmu' al-raqa'iq* [The collected poems of higher spiritual realities and compendium of heartfelt subtleties], Sheikh Ahmad al-'Alawi's *Diwan* [Collected poems] and *al-Minah al-quddusiyya fi sharh al-Murshid al-mu'in bi tariq al-Sufiyya* [Sacred gifts: a Sufi exegesis of "The helping guide"], Abul Mawahib Shadhili's *Qawanin hukm al-ishraq* [The laws of the dawning of illumination], and others. *'Umdat al-salik* was chosen to be translated for the present volume at his suggestion. His first sheikh in Sufism was Sa'd al-Din al-Jabawi of the Sa'diyya tariqa in Homs, who sent him to Sheikh Muhammad Hashimi when he moved to Damascus. As someone who knows through firsthand experience, he emphasizes the need for students of the Islamic disciplines to have a spiritual path to train the heart and avoid the dangers of pride and unworthy intention inherent in acquiring and teaching such knowledge. If there are increasingly fewer scholars like Sheikh 'Abd al-Wakil left in the world, it may happen that Allah will make the present work endure as a testimony to future generations of Muslims as to the seriousness and depth with which men like him understood Sacred Law, for the spirit that imbues the book is his (n).

x20 'Abdullah ibn 'Amr (w17.2) is 'Abdullah ibn 'Amr ibn al-'As (Allah be well pleased with him), one of the most renowned Companions of the Prophet (Allah bless him and give him peace), an ascetic whose keen intelligence was reflected in his devotion to worshipping Allah Most High, which he did until the Prophet (Allah bless him and give him peace) had to remind him, "Verily, your body, your wife, and your eyes have rights upon you ...." Among the main transmitters of hadiths, he was literate before entering Islam. He participated in the Muslim's battles, and at the end of his life lost his eyesight, dying in 65/684 (*al-A'lam* (y136), 4.111).

x21 'Abdullah ibn Abu Bakr ibn Muhammad ibn 'Amr ibn Hazm (w16.2) was a reliable hadith transmitter (thiqa) whose hadiths are recorded in Bukhari, Muslim, and other main collections, and who lived and served as a judge in Medina. He died in A.H. 135 at seventy years of age (*Taqrib al-tahdhib* (y16), 297).

x22 'Abdullah ibn Burayda (w29.2(6)) is 'Abdullah ibn Burayda ibn al-Husayb al-Aslami. One of those who met and studied under the Companions, he was the judge of Merv (in present-day Turkmen S.S.R.) and a reliable hadith transmitter (thiqa) whose hadiths are recorded in all six main hadith collections. He died in A.H. 105 at one hundred years of age (ibid., 297; and n).

x23 (Sheikh) 'Abdullah Diraz (b4.1) edited the four-volume *al-Muwafiqat* [Correspondences] of al-Shatibi in fundamentals of Islamic jurisprudence, and was among the religious scholars of Dumyat, Egypt, at the turn of the present century (Sheikh Shu'ayb Arna'ut).

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x24 'Abdullah Mahfuz Ba'alawi (w29.1) is 'Abdullah ibn Mahfuz ibn Muhammad al-Haddad al-Ba'alawi, a contemporary Shafi'i scholar who was born in al-Deys, South Yemen, in 1923. He studied at religious academies in Hadramawt, was appointed as a judge in 1946, as presiding head of the court of appeals in Mukalla in 1960, and as head of the judiciary of Hadramawt in 1965, a position from which he resigned in 1970. In 1976 he was appointed lecturer in 'Aden University (*al-Sunna wa al-bid'a* (y20), back cover).

x25 'Abdullah Muhammad Ghimari (w29.4) is 'Abdullah ibn Muhammad ibn al-Siddiq ibn Ahmad al-Ghimari, born in Tangiers, Morocco, in 1328/1910, a descendant of the Prophet (Allah bless him and give him peace) through Hasan, the son of 'Ali and Fatima (Allah be well pleased with them), and on his mother's side from the Moroccan Sufi Ibn 'Ajiba. A specialist in Maliki and Shafi'i jurisprudence, fundamentals of Islamic law and faith (usul), and Arabic lexicology, he is among the foremost living hadith experts (muhaddithin) and scholars in Sacred Law. He first studied the Islamic sciences under the traditional scholars of Morocco of his day, among them his father, the hadith specialist Muhammad ibn Siddiq Ghimari, and Sheikh 'Abbas Bannani, after which he attended the Qarawiyyin Madrasa in Fez, and then al-Azhar, whose scholars took him as an authority and reference in the sciences of hadith, and where he studied under such sheikhs as the grand mufti of Egypt Muhammad Bakhit al-Muti'i before returning to Morocco, where he deepened his knowledge of hadith under the tutelage of his brother, the hadith master (hafiz) Ahmad ibn Muhammad ibn Siddiq. He has authored nearly 150 books and treatises on the sciences of Islam, which amply attest to his rank among contemporaries, among the most famous of which are his *Bida' al-tafasir* [The blameworthy innovations of Koranic exegeses], and *al-Radd al-muhkam al-matin* [The invincibly strong rebuttal], which explains in detail why Sunni Islam rejects the innovations of the Wahhabi sect in faith and works. He is the sheikh of the Siddiqiyya branch of the Shadhili tariqa, and presently lives and teaches at the order's *zawiya* in Tangiers (Sheikh Hasan Saqqaf; and n).

x26 'Abdullah ibn Shaqiq al-'Uqayli (w18.3(3)), originally of Basra, was a reliable transmitter (thiqa) who related hadiths from such narrators as 'Abdullah ibn Suraqa and 'Abdullah ibn Abi Jadh'a (Allah be well pleased with them), and whose hadiths appear in the collections of Bukhari, Muslim, and others. He died in A.H. 108 (*Siyar a'lam al-nubala'* (y37), 1.6, 11.110; and *Taqrib al-tahdhib* (y16), 307).

x27 'Abdullah ibn Unays (w53.1) is 'Abdullah ibn Unays al-Juhani (Allah be well pleased with him), a prophetic Companion who lived in Medina, swore fealty to the Prophet (Allah bless him and give him peace) at 'Aqaba, and fought at the battle of Uhud. He died in Damascus in A.H. 54 during the caliphate of Mu'awiya (*Taqrib al-tahdhib* (y16), 296).

x28 Abraham (*see* Ibrahim, x180)

x29 Abu 'Abd al-Rahman Sulami (w9.11) is Muhammad ibn al-Husayn ibn Musa, Abu 'Abd al-Rahman al-Sulami, born in Nishapur, Persia, in 325/936. A Shafi'i scholar and one of the foremost historians and sheikhs of the Sufis, he

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wrote over a hundred works, among the most widely read of them his *Tabaqat al-Sufiyya* [The successive generations of Sufis]. He died in Nishapur in 412/1021 (*al-A'lam* (y136), 6.99; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 4.143).

x30 Abu 'Ali Daqqaq (r1.3) is al-Hasan ibn 'Ali ibn Muhammad ibn Ishaq, Abu 'Ali al-Daqqaq, the Imam of the Sufis of his time and sheikh of Abul Qasim Qushayri. Originally from Nishapur, he learned Arabic there and fundamentals of Islamic faith and law, after which he travelled to Merv, where he studied Shafi'i jurisprudence and became an outstanding scholar, and then took the way of Sufism, applying himself to living what he had learned. He died in A.H. 405 (*Tabaqat al-Shafi'iyya al-kubra* (y128), 4.329–30).

x31 Abu Bakr (j13.2) is 'Abdullah ibn 'Uthman ibn 'Amir, Ibn Abi Quhafa, Abu Bakr al-Siddiq (Allah be well pleased with him) one of the greatest Companions of the Prophet (Allah bless him and give him peace). Born fifty-one years before the Hijra (A.D. 573) in Mecca, he was a prominent and wealthy figure among the Quraysh, learned, noble, and brave, and became the first adult male to accept Islam from the Prophet (Allah bless him and give him peace) and the first of the four Rightly Guided Caliphs after him. He forbade himself wine in the pre-Islamic period and did not drink. A man who saw many remarkable events during the lifetime of the Prophet (Allah bless him and give him peace), he fought in the Muslims' battles, bore their hardships, and spent his wealth to establish Islam. 'Umar ibn Khattab (Allah be well pleased with him) once attested that if the faith of Abu Bakr were placed on one side of a scale and the faith of the entire Muslim Community (Umma) on the other, Abu Bakr's would outweigh it. An eloquent speaker who was clement and forbearing towards all, he nevertheless possessed a tremendous personal courage and presence of mind that saved the day after the Prophet's death (Allah bless him and give him peace) when the desert Arabs turned from Islam and attacked the Muslims. If not for Abu Bakr's valiant and decisive leadership of the swift, hard-fought campaign that ended the insurrection, Islam might well have been lost and Allah not worshipped on the face of the earth. During his caliphate, Syria and Palestine were added to the Islamic lands as well as much of 'Iraq. He died in Medina in 13/634 (*al-A'lam* (y136), 4.102; and n).

x32 (Imam) Abu Bakr Baqillani (w57.2) is Muhammad ibn al-Tayyib ibn Muhammad ibn Ja'far, Abu Bakr al-Baqillani. An Islamic judge who was born in Basra in 338/950, he became one of the foremost figures in Islamic scholastic theology ('ilm al-kalam), and because of his logical acumen and swift, unhesitating replies, the caliph 'Adud al-Dawla dispatched him as an envoy to the Byzantine court in Constantinople, and he debated with Christian scholars in the presence of their king. He lived most of his life in Baghdad, where he authored a number of works on tenets of Islamic belief, and died in 403/1013 (*al-A'lam* (y136), 6.176).

x33 Abu Bakr Siddiq (*see* Abu Bakr, x31)

w34 Abu Darda' (a2.4) is 'Uwaymir ibn Malik ibn Qays ibn Umayya, Abu Darda' al-Khazraji (Allah be well pleased with him), one of the Medinan Helpers

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(Ansar) and Companion of the Prophet (Allah bless him and give him peace), as notable among his contemporaries for his superb horsemanship as for his piety and wisdom in giving legal judgements. Before the prophetic mission he was first a merchant in Medina, and then devoted himself exclusively to worship, though when he became a Muslim he gained renown for his considerable courage in fighting for Islam. He was one of those who memorized the entire Koran during the lifetime of the Prophet (Allah bless him and give him peace), and when Mu'awiya, then a regional governor, appointed him to the judiciary in Damascus at the behest of 'Umar, he became its first judge. He died in Damascus in 32/652 (*al-A'lam* (y136), 5.98).

x35 Abu Dawud (Introduction) is Sulayman ibn al-Ash'ab ibn Ishaq ibn Bashir al-Azadi al-Sijistani, born in 202/817 in Sijistan, Persia, a Shafi'i scholar who, through numerous journeys to gain knowledge of the prophetic traditions, became a hadith master (hafiz) and the Imam of the science in his time. Muhammad ibn Ishaq al-Saghani once remarked of him, "Hadith was made subject to Abu Dawud as iron was made subject to the prophet Dawud (upon whom be peace)." And hadith master Musa ibn Ibrahim said: "Abu Dawud was created in this world for hadith, and in the next world for paradise. I have never seen better than he." Hakim observed, "Abu Dawud was the undisputed Imam of the people of hadith in his age." He died in Basra in 275/889 (ibid., 3.122; *Tabaqat al-Shafi'iyya al-kubra* (y128), 2.293; and *al-Targhib wa al-tarhib* (y9), 1.20).

x36 (Imam) Abu Hamid Ghazali (*see* (Imam) Ghazali, x127)

x37 (Imam) Abu Hanifa (b1.2) is Abu Hanifa al-Nu'man ibn Thabit, the Greatest Imam, born in A.H. 80 in Kufa. He was the scholar of Iraq and the foremost representative and exemplar of the school of juridical opinion (ra'y). The Hanafi school, which he founded, has decided court cases in the majority of Islamic lands for the greater part of Islam's history, including the Abbasid and Ottoman periods, and maintains its preeminence in Islamic courts today. Abu Hanifa was the first to analyse Islamic jurisprudence, divide it into subjects, distinguish its issues, and determine the range and criteria for analogical reasoning (qiyas) therein. Shafi'i used to say of him, "In jurisprudence, all scholars are the children of Abu Hanifa." The Imam and his school have been misunderstood by some who have believed that the Imam's knowledge of hadith was largely limited to what was transmitted by the narrators of Kufa, especially through the Companion Ibn Mas'ud. In fact, the Imam was a hadith expert who had all the hadiths of the Companions of Mecca and Medina in addition to those of Kufa, and only lacked the relatively few channels of narrators who were in Damascus. His *Musnad* [Ascribed traditions] is comparable in size to the *Muwatta'* of Imam Malik and the *Musnad* of Shafi'i which the latter based their respective schools upon, and when one reads *Muwatta' al-Imam Muhammad*, Malik's work which Abu Hanifa's disciple Muhammad ibn Hasan al-Shaybani studied and annotated for three years under Malik at Medina, one gains complete conviction from Muhammad's notes that virtually every hadith therein was familiar to Abu Hanifa before he arrived at the positions of his school, all of which is a persuasive case against the suggestions of the unlearned that Abu Hanifa did not know hadith. Nevertheless, the Imam was of an age that was plagued by hadith forgers, and he was

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moved by his extreme piety to reject any hadith that he was not reasonably sure was authentic, for which reason he applied a relatively selective range of hadith evidence in Sacred Law. His school, for example, does not accept qualifications or modifications of any ruling established by a Koranic verse (takhsis ayah) when such qualification comes through a hadith with but one, even if rigorously authenticated (sahih), channel of transmission, but only if it comes through a hadith with three separate channels of transmission. So despite Abu Hanifa's being a hadith specialist, his school reflects a legacy of extensive use of analogy and deduction from specific rulings and general principles established by primary texts acceptable to the Imam's rigorous standards, as well as the use of inference and juridical opinion as to what conforms to the human interests in general protected and furthered by Sacred Law.

With his legal brilliance, he was equally well known for his piety and asceticism, and though he had wealth from a number of shops selling cloth, to which he made occasional rounds in superintending their managers, he devoted his fortune to helping students and researchers in Sacred Law, and many a scholar was to realize how much the Imam's financial help had meant when it was discontinued after his death. He shunned sleep at night, and some called him the Peg because of his perpetual standing for prayer therein, often reciting the entire Koran in his nightly rak'as. He performed the dawn prayer for forty years with the ablution (wudu) made for the nightfall prayer, would only sleep a short while between his noon and midafternoon prayers, and by the end of his life, had recited the Holy Koran seven thousand times in the place where he died. He would never sit in the shade of a wall belonging to someone he had loaned money, saying, "Every loan that brings benefit is usury." He died in Baghdad in A.H. 150 at seventy years of age, leaving an intellectual and spiritual legacy that few scholars have ever equalled (*al-Tabaqat al-kubra* (y124), 1.53–54; *al-Targhib wa al-tarhib* (y9), 1.13; Sheikh Shu'ayb Arna'ut; and n).

x38 Abu Hatim (w48.2) is Muhammad ibn Idris ibn al-Mundhir ibn Dawud, Abu Hatim al-Hanzali, born in Rayy, Persia, in 195/810. He was a Shafi'i hadith master (hafiz) who was a contemporary of Bukhari and Muslim. He travelled much during his lifetime, to Iraq, Syria, Egypt, and Anatolia, and wrote a number of works in the field of hadith. He died in Baghdad in 277/890 at eighty years of age (*al-A'lam* (y136), 6.27; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 2.207).

x39 Abu Hayyan Tawhidi (w57.2) is 'Ali ibn Muhammad ibn 'Abbas, Abu Hayyan al-Tawhidi. Born in Shiraz, Persia, where he taught in A.H. 400, he was an Imam in Arabic grammar and lexicology, a scholar in Shafi'i jurisprudence, history, and Sufism. Though stigmatized by Ibn Jawzi and Dhahabi as having corrupt beliefs, Taj al-Din Subki studied his works and declared: "Nothing has been established to my satisfaction about Abu Hayyan that gives reason to vituperate him. I have examined a great deal of what he said, and found nothing except a few things indicating that he had a strong personality and disdained his contemporaries, which does not deserve the criticism he has received" (*Tabaqat al-Shafi'iyya al-kubra* (y128), 5.286–88).

x40 Abu Hilman (w9.11) is Abu Hilman al-Dimashqi. Of Persian origin, he first promulgated his heretical innovations in Damascus, where he taught that

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every human being endowed with beauty was infused with the spirit of the Deity. He is also related to have said that whoever held his beliefs had no obligation to obey the Sacred Law (Sheikh Hasan Saqqaf).

x41 Abu Hurayra (o25.1) is 'Abd al-Rahman ibn Sakhr al-Dawsi (Allah be well pleased with him), one of the Companions of the Prophet (Allah bless him and give him peace) and the greatest of them in memorizing and relating hadiths. He came to Medina when the Prophet (Allah bless him and give him peace) was at Khaybar, and he became a Muslim in A.H. 7. He oversaw affairs at Medina for a time, and in the caliphate of 'Umar was made governor of Bahrain, though 'Umar found him too lenient and devoted to worship, and removed him, and when he later wanted to reinstate him, Abu Hurayra refused. He lived most of his life in Medina and died there in 59/679 at seventy-seven years of age (*al-A'lam* (y136), 3.308).

x42 Abu Ishaq Shirazi (w45.1) is Ibrahim ibn 'Ali ibn Yusuf, Abu Ishaq al-Fayruzabadi al-Shirazi, a Shafi'i Imam, teacher, and debater. Born in Fayruzabad, Persia, in 393/1003, he studied in Shiraz and Basra before coming to Baghdad where he displayed his genius in Sacred Law, becoming the mufti of the Islamic Community (Umma) of his time, the sheikh of the Nizamiyya Academy which the vizier Nizam al-Mulk built in Baghdad to accomodate Abu Ishaq's students. He was known for the persuasiveness with which he could urge a case in discussions, and he authored many works, among the most famous of them his two-volume *al-Muhadhdhab fi fiqh al-Imam al-Shafi'i* [The rarefaction: on the jurisprudence of Imam Shafi'i] which took him fourteen years to produce, and which furnished the basic text for Nawawi's *al-Majmu': Sharh al-Muhadhdhab* [The compendium: an exegesis of "The rarefaction"]. He died in Baghdad in 476/1083 (ibid., 1.51; and n).

x43 Abu Isra'il (j18.1) (Allah be well pleased with him) was a Companion of the Prophet (Allah bless him and give him peace) of whom little else is known. No one else among the Companions had this agnomen, though scholars disagree as to his true name, whether it was Qushayr, Yusayr, Qaysar, or Qays. He was of the Quraysh, though some have mistakenly supposed that he was of the people of Medina (*Fath al-Bari* (y17), 11.590).

x44 Abu Ja'far Khatmi (w40.5) is 'Umayr ibn Yazid ibn 'Umayr ibn Habib al-Ansari, Abu Ja'far al-Khatmi, a reliable hadith transmitter (saduq) who was the contemporary of some of the generation who met the prophetic Companions, though it is not established that he himself met any of them. Hadiths related by him appear in the collections of Abu Dawud, Tirmidhi, Nasa'i, and Ibn Majah. Originally from Medina, he lived in Basra and died sometime after A.H. 100 (*Taqrib al-tahdhib* (y16), 432).

x45 Abu Jahl (r38.2) is 'Amr ibn Hisham ibn Mughira, Abu al-Hakam al-Makhzumi, a noble of the Quraysh in Mecca, and enemy of Allah and His prophet (Allah bless him and give him peace). He was slain at the battle of Badr in 2/624 (*al-A'lam* (y136), 5.87; and *al-Shifa* (y116), 1.270).

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x46 Abu Lahab (r38.2) is 'Abd al-'Uzza ibn 'Abd al-Muttalib ibn Hashim, the paternal uncle of the Prophet (Allah bless him and give him peace). A noble of the Quraysh, he was among the greatest in enmity against the Muslims, a proud and wealthy man who would not follow a religion brought by his brother's son. Surat al-Masad (Koran 111) was revealed in connection with him. He died after the battle of Badr in 2/624 (*al-A'lam* (y136), 4.12).

x47 Abul Hasan Ash'ari (a1.3) is 'Ali ibn Isma'il ibn Ishaq, Abu al-Hasan al-Ash'ari, the Imam of Ahl al-Sunna in tenets of faith, born in Basra in 260/874. A descendant of the Companion Abu Musa al-Ash'ari, he was a Shafi'i scholar and the founder of the school of tenets of faith that bears his name and reflects his powerful intellect and profound knowledge of the Holy Koran and hadith. Imam Ibn Hajar Haytami has defined Sunni Muslims (Ahl al-Sunna wa al-Jama'a) as "those who follow Abul Hasan Ash'ari and Abu Mansur Maturidi, the Two Imams of Ahl al-Sunna." The substantive differences between the two Imams amount to about six questions, though because the scholars of the Maturidi school were mainly confined to the lands beyond the Oxus before the Mongol depredations, and decimated thereafter, the Ash'ari school has been the standard-bearer for the faith of Sunni Islam for most of its history. Originally educated in the school of the Mu'tazilites (dis: w6.4), Imam Ash'ari saw the Prophet (Allah bless him and give him peace) in a dream three times one Ramadan, who told him, "O 'Ali, support the positions that have been transmitted from me, for they are the truth," after which he abandoned the Mu'tazilites and became the champion of Islamic orthodoxy as embodied in the Koran and hadith, defending it alike from the danger of image-worship by interpreting the divine attributes anthropomorphically, and the danger of denying the positive significance of the attributes of Allah and the life of the hereafter by explaining them away. Imam Ash'ari did not give figurative interpretations (ta'wil, dis: w6.3, w57) to problematic expressions of divine attributes, but rather urged they be accepted as they have come without saying how they are meant, while affirming that Allah is absolutely beyond any likeness to created things; though later members of his school did give such interpretations in rebuttal of anthropomorphists, preserving the faith of Islam from their innovations in the same spirit and with the same dedication that the Imam had preserved it before them by his rebuttals of the Mu'tazilites. He authored nearly three hundred books and treatises on all aspects of the faith of Ahl al-Sunna, and died in Baghdad in 324/936 (ibid., 4.263; *al-Fatawa al-hadithiyya* (y48), 280; *Tabaqat al-Shafi'iyya al-kubra* (y128), 3.347–49; A; and n).

x48 (Imam) Abul Hasan Mawardi (o25.0) is 'Ali ibn Muhammad ibn Habib, Abu al-Hasan al-Mawardi, born in Basra in 364/974. The head of the judiciary under the Abbasid caliph al-Qa'im bi Amr Illah, he was one of the foremost Shafi'i scholars of his era, and published major works in Islamic jurisprudence, Koranic exegesis, principles of law, and literature, of which his work on the caliphal system of Islamic government *al-Ahkam al-sultaniyya wa al-wilayat al-diniyya* [The rules of power and positions of religious authority] is still among the most professional available. He was respected by the caliphs of his time, and occasionally interceded for someone with them. He died in Baghdad in 450/1058 at eighty-six years of age (*al-A'lam* (y136), 4.327; *Tabaqat al-Shafi'iyya al-kubra* (y128), 5.267; and n).

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x49 Abul Jahm (r9.2) is 'Amir ibn Hudhayfa ibn Ghanim, Abu al-Jahm al-Qurashi al-'Adawi (Allah be well pleased with him), a Companion of the Prophet (Allah bless him and give him peace). Some commentators say that the Prophet's advice (Allah bless him and give him peace) to a woman not to marry him because "he never leaves his stick" was an allusion to his perpetual travels away from home, while others say it referred to his harshness towards women (*al-Futuhat al-rabbaniyya* (y26), 7.13).

x50 Abul Layth (r14.2) is Mudar ibn Muhammad, Abu al-Layth al-Samarqandi of Samarkand (in present-day Uzbek S.S.R.), called the Imam of Guidance, a principle Hanafi scholar who authored works in Sacred Law, Koranic exegesis, and Islamic ethics and character (akhlaq), among the most famous of which were his *Tanbih al-ghafilin* [The apprising of the heedless] and *Bustan al-'arifin* [The grove of the gnostics]. He died in A.H. 383 (*al-Shifa* (y116), 1.51).

x51 Abul Qasim al-Junayd (c2.6) is al-Junayd ibn Muhammad ibn al-Junayd, Abu al-Qasim al-Baghdadi. Imam of the Sufis, he comprehensively joined between law and way, outward and inward, one of the most renowned mystics of Islamic history and at the same time an outstanding scholar of Sacred Law in the school of Abu Thawr. The historian Ibn al-Athir described him as "the Imam of the World of his time." Junayd once defined Sufism as "dissociating the beginninglessly eternal from that which originates in time (ifrad al-qadim 'an al-hadith)," and on another occasion simply as "the experience (al-dhawq)," both of which are typical of his succinctness. Though he left few written works, his sayings are preserved among the Sufis, to whom he remains an important authority in the path. He died in Baghdad in 297/910 (*al-A'lam* (y136), 2.141; and n).

x52 Abul Qasim al-Nasrabadhi (w9.11) is Ibrahim ibn Muhammad ibn Ahmad ibn Mahmawayh, Abu al-Qasim al-Nasrabadhi al-Naysaburi, born in Nasrabad, Persia. He was the sheikh of the Sufis of Khurasan in his time, and a scholar in hadith who studied with Ibn Khuzayma and others. Among those who transmitted hadiths from him were Imam Hakim, Sulami, and Abu 'Ali Daqqaq. At the end of his life he went on pilgrimage and remained close to the Kaaba in Mecca until his death in A.H. 367 (*Siyar a'lam al-nubala'* (y37), 16.263–64; and *Tabaqat al-Sufiyya* (y129), 484).

x53 Abul Qasim Qushayri (r1.3) is 'Abd al-Karim ibn Hawazin ibn 'Abd al-Malik, Abu al-Qasim al-Qushayri, born in Khurasan in 376/986. He was a Shafi'i scholar, Koranic exegete, and Sufi master who lived in Nishapur and authored several works, of which his *al-Risala al-Qushayriyya* [The Qushayri letter] is perhaps the most famous. He died in Nishapur in 465/1072 (*al-A'lam* (y136), 4.57; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 5.153).

x54 Abu Malik Ash'ari (r27.2) is one of two Companions of the Prophet (Allah bless him and give him peace) who were known by this name, the one referred to by the hadith of our text being al-Harith ibn Harith, Abu Malik al-Ash'ari (Allah be well pleased with him), who later settled in Syria. Hadiths from him have been recorded by Muslim, Tirmidhi, and Nasa'i (*Taqrib al-tahdhib* (y16), 145; and Sheikh Shu'ayb Arna'ut).

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x55 Abu Muhammad 'Ali ibn Hazm (*see* Ibn Hazm, x161)

x56 Abu Musa (w31.1(2)) is 'Abdullah ibn Qays ibn Salim, Abu Musa al-Ash'ari (Allah be well pleased with him), one of the Companions of the Prophet (Allah bless him and give him peace) who conquered and ruled new lands for Islam. Born in Yemen twenty-one years before the Hijra (A.D. 602), it is related that he had the most beautiful voice of any of the Companions in reciting the Koran. He came to Mecca when Islam appeared and accepted it, and emigrated to Ethiopia, after which the Prophet (Allah bless him and give him peace) appointed him to govern Zabid and 'Aden in Yemen. In A.H. 17, 'Umar made him governor of Basra, from whence Abu Musa proceeded to conquer Ahvaz and Isfahan, which 'Uthman, in his caliphate, confirmed him as governor over but later removed him, whereupon Abu Musa went to Kufa, whose inhabitants asked 'Uthman to appoint him as governor over them, which he did. Upon 'Uthman's death, 'Ali confirmed his appointment, but when 'Ali asked the people of Kufa to aid him in the Battle of al-Jamal, Abu Musa ordered them not to participate, and 'Ali rescinded his confirmation. He died in Kufa in 44/665 (*al-A'lam* (y136), 4.114).

x57 Abu Nadra (w55.3) is al-Mundhir ibn Malik ibn Quta'a, Abu Nadra of Basra, a reliable hadith narrator (thiqa) of the generation who met and studied under the Companions. His hadiths appear in the collections Bukhari, Muslim, Tirmidhi, Nasa'i, and others. He died in A.H. 108 or 109 (*Taqrib al-tahdhib* (y16), 546).

x58 Abu Nu'aym (w40.5) is Ahmad ibn 'Abdullah ibn Ahmad, Abu Nu'aym al-Asbahani, born in Isfahan, Persia, in 336/948. He was a Shafi'i scholar, hadith master (hafiz), and historian, who was reliable in memory and transmission. He is perhaps most famous for his ten-volume *Hilya al-awliya'* [The adornment of the saints], in which he records the lives and sayings of the early Muslims and friends of Allah (awliya'). He died in Isfahan in 430/1038 (*al-A'lam* (y136), 1.157; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 4.18).

x59 Abu Sa'id 'Ala'i (w48.2) is Khalil ibn Kaykaldi ibn 'Abdullah, Abu Sa'id Salah al-Din al-'Ala'i, born in Damascus in 694/1295. He was educated in Damascus and became a hadith specialist and Shafi'i scholar, authoring many works in both Sacred Law and hadith. After much travel, he settled in Jerusalem, where he took a post as a teacher in al-Salahiyya school in A.H. 731, and later died there in 761/1359 (*al-A'lam* (y136), 2.321).

x60 Abu Sa'id al-Khudri (w29.2(4)) is Sa'd ibn Malik ibn Sinan, Abu Sa'id al-Khudri al-Khazraji (Allah be well pleased with him) one of the Medinan Helpers (Ansar), a Companion of the Prophet (Allah bless him and give him peace) who was born ten years before the Hijra (A.D. 613). He constantly kept the company of the Prophet (Allah bless him and give him peace), and some 1,170 hadiths were related by him. He participated in twelve of the Muslims' battles, and died in Medina in 74/693 (ibid., 3.87).

x61 Abu Sufyan (r2.19) is Sakhr ibn Harb ibn Umayya ibn 'Abd al-Shams ibn

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'Abd al-Manaf, Abu Sufyan (Allah be well pleased with him), born fifty-seven years before the Hijra (A.D. 567). One of the nobles of the Quraysh in the pre-Islamic period, he was a Companion of the Prophet (Allah bless him and give him peace) and the father of Mu'awiya, head of the Umayyad caliphate. He led the Meccan idolators against the Muslims in the battles of Uhud and the Confederates, and entered Islam the day Mecca was conquered by the Muslims. A redoubtable warrior, he lost one eye fighting for Islam in the battle of Ta'if, and the other in the battle of Yarmouk, becoming totally blind. He died in Medina in 31/652 (ibid., 3.201).

x62 Abu Talha (w50.5) is Zayd ibn Sahl ibn al-Aswad, Abu Talha (Allah be well pleased with him) a Companion of the Prophet (Allah bless him and give him peace) who was born thirty-six years before the Hijra (A.D. 585) in Medina. A superb and valiant archer, he was one of the most celebrated Medinan Helpers (Ansar), swearing fealty to the Prophet (Allah bless him and give him peace) at 'Aqaba, and fighting in the battles of Badr, Uhud, and the rest. He died in Medina in 34/654 (ibid., 3.58–59).

x63 Abu Talib Makki (w52.2) is Muhammad ibn 'Ali ibn 'Atiyya, Abu Talib al-Harithi al-Makki. Born in Iraq between Baghdad and Wasit, he was a Sufi, preacher (wa'iz), ascetic, and scholar of Sacred Law. His most influential work is probably the two-volume *Qut al-qulub fi mu'amala al-Mahbub wa wasf tariq al-murid ila maqam al-tawhid* [The sustenance of hearts: on dealing with the Beloved, and a description of the way to seekers of the spiritual station of witnessing the divine unity], a direct ancestor in its arrangement and style to Ghazali's *Ihya' 'ulum al-din* [Giving life to the sciences of the religion]. He died in Baghdad in 386/996 (ibid., 6.274; and n).

x64 Abu Umama (w32.1(4)) is Sudayy ibn 'Ajlan ibn Wahb, Abu Umama al-Bahili (Allah be well pleased with him), a Companion of the Prophet (Allah bless him and give him peace). He was with 'Ali in the battle of Siffin, and later settled in Syria. Some 250 hadiths are related from him by Bukhari and Muslim. He died in Homs in 81/700, the last of the Companions to die in Syria (*al-A'lam* (y136), 3.203).

x65 Abu 'Umar (w16.2) (*see* Ibn 'Abd al-Barr, x150)

x66 Abu 'Uthman (t1.4) is Sa'id ibn Isma'il ibn Sa'id ibn Mansur, Abu 'Uthman al-Hiri, originally from Rayy, Persia. He was a Sufi who first kept the company of Yahya ibn Mu'adh and Shah al-Kirmani, and then travelled to Nishapur, where he met Hafs al-Haddad, who married his daughter to Abu 'Uthman and took the the way from him. At his hands the path of Sufism spread in Nishapur, where he died in A.H. 292 (*al-Tabaqat al-kubra* (y124), 1.86; and *Tabaqat al-Sufiyya* (y129), 170).

x67 Abu Ya'la al-Mawsuli (a4.1) is Ahmad ibn 'Ali ibn al-Muthanna al-Tamimi, Abu Ya'la al-Mawsuli. He was a hadith master (hafiz) who was known as the Hadith Scholar of Mosul (in northern Iraq), and people undertook journeys

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to learn from him. He composed several collections of hadith and was nearly one hundred years old when he died in Mosul in 307/919 (*al-A'lam* (y136), 1.171).

x68 Abu Yazid (t1.5) is Tayfur ibn 'Isa ibn Sarushan, Abu Yazid al-Bistami, the famous Sufi born in 188/804 in Bistam, a city between Khurasan and Iraq. His grandfather was a Zoroastrian who became a Muslim. Many miracles and ecstatic utterances are attributed to Abu Yazid, whom some consider to have been the first to speak of the 'unity of being' (wahdat al-wujud, dis: x5) in a direct way. Among his numerous sayings on Sufism is "When Allah loves a servant, He imbues him with three attributes as a proof of His love: generosity like that of the sea, beneficence like that of the sun, and humility like that of the earth." When a prominent scholar once asked him from whence he had acquired his knowledge, he replied that it was from applying the maxim, "Whoever applies what he knows, Allah bequeaths him knowledge of what he did not know." He died in Bistam in 261/875 at seventy-one years of age (ibid., 3.235; *al-Imam al-'Izz Ibn 'Abd al-Salam* (y38), 1.136; *al-Tabaqat al-kubra* (y124), 1.77; and *Tabaqat al-Sufiyya* (y129), 67).

x69 Abu Yusuf (k24.2) is Ya'qub ibn Ibrahim ibn Habib al-Ansari, Abu Yusuf al-Kufi al-Baghdadi, born in Kufa in 113/731. He was the companion and student of Abu Hanifa, and the first to propagate his school. A hadith master (hafiz) and one of the most brilliant judicial minds in Islamic history, he served as judge in Baghdad during the caliphates of al-Mahdi and al-Hadi, and as head of the judiciary under the caliph Harun al-Rashid, who made the rulings of the Hanafi school the official state code for the entire Abbasid period. He was the first to write works on the fundamentals of Hanafi jurisprudence, a *mujtahid* Imam with an extensive knowledge of Koranic exegesis who authored works in hadith in addition to his many books and treatises in Sacred Law. He died in Baghdad in 182/798 (*al-A'lam* (y136), 8.193; and n).

x70 Adam (u3.5) (upon whom be peace) was the first prophet of Allah Most High. Created by Allah without father or mother, commentators relate that he lived 960 years, the Father of Mankind whose story is mentioned in many places in the Holy Koran (*al-Futuhat al-ilahiyya* (y65), 1.39; and n).

x71 'Adil Yusuf Rayhan (Document 2) is 'Adil ibn Yusuf ibn 'Isa, Abu Muhammad Rayhan, born in Jarash, Jordan, in 1944. He is a Sufi of the Hashmi-Darqawi tariqa who first took the way in 1961 from Sheikh Muhammad Sa'id Kurdi, the successor in Jordan of Sheikh Muhammad Hashimi of Damascus. He served Kurdi until his death in 1972, and among the teachings he had from him are the words, "The remembrance of Allah is the charter of saintship (al-dhikr manshur al-wilaya)". He read Shafi'i jurisprudence with his sheikh as well as with Sheikh Barakat, the late mufti of Irbid, Jordan, and he currently studies with Sheikh Yunus Hamdan in Amman, where he lives and has a grocery store (n).

x72 (Imam) Ahmad (b1.2) is Ahmad ibn Muhammad ibn Hanbal ibn Hilal ibn Asad, Abu 'Abdullah al-Shaybani, Imam of Ahl al-Sunna, born in 164/780 in Baghdad, where he grew up as an orphan. For sixteen years he travelled in pursuit of the knowledge of hadith, to Kufa, Basra, Mecca, Medina, Yemen, Damascus,

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Morocco, Algeria, Persia, and Khurasan, memorizing one hundred thousand hadiths, thirty thousand of which he recorded in his *Musnad* [Ascribed traditions]. Imam Ahmad was among the most outstanding students of Shafi'i, who when he left Baghdad for Egypt, said, "In departing from Baghdad, I have left no one in it more godfearing, learned in Sacred Law, abstinent, pious, or knowledgeable than Ibn Hanbal."

Out of piety, Imam Ahmad never gave a formal legal opinion (fatwa) while Shafi'i was in Iraq, and when he later formulated his school of jurisprudence, he mainly drew on explicit texts from the Koran, hadith, and scholarly consensus, with relatively little expansion from analogical reasoning (qiyas). He was probably the most learned in the sciences of hadith of the four great Imams of Sacred Law, and his students included many of the foremost scholars of hadith. Abu Dawud said of him: "Ahmad's gatherings were gatherings of the afterlife: nothing of this world was mentioned. Never once did I hear him mention this-worldly things." And Abu Zur'a said: "Ahmad was even greater than Ishaq [Rahawayh] and more knowledgeable in jurisprudence. I never saw anyone more perfect than Ahmad." He never once missed praying in the night, and used to recite the entire Koran daily. He said, "I saw the Lord of Power in my sleep, and said, 'O Lord, what is the best act through which those near to You draw nearer?' and He answered, 'Through [reciting] My word, O Ahmad.' I asked, 'With understanding, or without?' and He answered, 'With understanding and without.' " Ibrahim al-Harbi noted of Ahmad, "It is as though Allah gathered in him the combined knowledge of the first and the last."

Ahmad was imprisoned and tortured for twenty-eight months under the Abbasid caliph al-Mu'tasim in an effort to force him to publicly espouse the Mu'tazilite position that the Holy Koran was created, but the Imam bore up unflinchingly under the persecution and refused to renounce the belief of Ahl al-Sunna that the Koran is the uncreated word of Allah, after which Allah delivered and vindicated him. When Ahmad died in 241/855, he was accompanied to his resting place by a funeral procession of eight hundred thousand men and sixty thousand women, marking the departure of the last of the four great *mujtahid* Imams of Islam (*al-A'lam* (y136), 1.203; *Siyar a'lam al-nubala'* (y37), 11.198–99; *al-Tabaqat al-kubra* (y124), 1.55; *al-Targhib wa al-tarhib* (y9), 1.17; and n).

x73 (Sheikh) Ahmad al-'Alawi (s4.8) is Ahmad ibn Mustafa ibn 'Aliwa, Abu al-'Abbas al-'Alawi, born in Mostaghanem, Algeria, in 1291/1874. He was a Sufi, Maliki scholar, Koranic exegete, poet, and the sheikh and renewer of the Shadhili tariqa, of which he founded the 'Alawi-Darqawi order that bears his name. His teaching stressed the threefold nature of the Muslim religion (din) as mentioned in the Gabriel hadith (dis: u1): Islam, represented by one's inward and outward submission to the rules of Sacred Law; true faith (iman), in the tenets of faith of Ahl al-Sunna; and the perfection of faith (ihsan), in the knowledge of Allah which the way of Sufism provides the means to. He authored works in each of these spheres, though his most important legacy lay in the spiritual way he founded, which emphasized knowledge of Allah (ma'rifa) through the practice of solitary retreat (khalwa) under the supervision of a sheikh, and the invocation (dhikr) of the Supreme Name.

Europeans visited the sheikh, but some who met him later wrote works that tried to assimilate him to a sort of perennialist philosophy that would consider all

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religious traditions as valid and acceptable reflections of but a single truth, substituting *traditional spirituality versus modern materialism* for *Islam versus unbelief*. The sheikh's own works emphatically deny their philosophy, and the reason Allah afflicted them with it would seem to be that they did not remain with the sheikh long enough to absorb his state or become as he was, a follower of the way of the prophets and purified ones, rather taking their affiliation with him as a means to legitimize opinions they had from the first and were unwilling to ever relinquish, remaking the master, as it were, in their own image. The true measure of a spiritual way, however, does not lie in books produced by writers, in the wrong or in the right, but in the hearts it opens to knowledge of divine realities conveyed by prophetic revelation, and in this Sheikh Ahmad al-'Alawi, whose order has spread to the farthest reaches of the Muslim world, certainly stands as one of the greatest Sufi masters of Islamic history. He died in Mostaghanem in 1353/1934 (*al-A'lam* (y136), 1.258; Sheikh 'Abd al-Rahman Shaghouri; and n).

x74 (Sheikh al-Islam) Ahmad Ibn Hajar 'Asqalani (*see* Ibn Hajar 'Asqalani, x159)

x75 Ahmad ibn Hanbal (*see* (Imam) Ahmad, x72)

x76 Ahmad ibn Naqib al-Misri (Title Page) is Ahmad ibn Lu'lu' ibn 'Abdullah al-Rumi, Shihab al-Din Ibn al-Naqib al-Misri. His father was a Christian convert to Islam from Antakya, Turkey, who was originally captured and made a slave by a Muslim prince who then educated him and set him free, whereupon he served the prince as a captain (naqib) and later became a Sufi in the Baybarsiyya of Cairo, where his son was born in 702/1302. Ahmad grew up among Islamic scholars, memorizing the Holy Koran in its seven canonical readings (qira'at), and at the age of twenty studied Sacred Law, which he pursued until he excelled at it. Among his sheikhs were the great Shafi'i *mujtahid* and hadith master (hafiz), Imam Taqi al-Din Subki in Islamic jurisprudence, the hadith master Ibn Mulaqqin in the sciences of hadith, and Abu Hayyan in Arabic grammar. A master of Koran recitation, Shafi'i law, Koranic exegesis, fundamentals of Islamic faith and law, Arabic, and Sufism, he memorized a great many hadiths, expecially those connected with *dhikr* and devotions, and worked at length correcting and refining Abu Ishaq Shirazi's *al-Muhadhdhab* [The rarefaction], condensing Shirazi's *al-Tanbih* [The notification], and annotating Nawawi's *Minhaj al-talibin* [The seekers' road], all of which are reflected in his most famous work, *'Umdat al-salik wa 'uddat al-nasik* [The reliance of the traveller and tools of the worshipper], the basic text of the present volume, which follows the order of Shirazi's *al-Muhadhdhab* and the conclusions of Nawawi's *Minhaj* in a work he seemingly designed and edited for practical application in life, avoiding rare and obscure legal questions, and presenting only the soundest positions of the school. He never gave formal legal opinions or accepted an official teaching position, but rather applied himself to worship, writing, and teaching a relatively small circle of students. Those who knew him described him as learned, humble, quiet, dignified, intelligent, polite, godfearing, and ascetic. Despite his rigorous self-discipline in worship, he had a good sense of humor and a talent for relating amusing anecdotes. Devoted like his father to Sufism, he performed the hajj several times, and stayed for extended periods near the Kaaba. He died of the plague in the mid-

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dle of Ramadan at sixty-seven years of age in Cairo in 769/1368 (*al-A'lam* (y136), 1.200; *'Umdat al-salik wa 'uddat al-nasik* (y90), 7; and n).

x77 Ahmad Quduri (m2.8) is Ahmad ibn Muhammad ibn Ahmad ibn Ja'far ibn Hamdan, Abu al-Husayn al-Quduri, born in Baghdad in 362/973. He was a scholar in Sacred Law who became the Hanafi school's foremost representative in Iraq. His most famous work is *Kitab al-Quduri* [Quduri's book], which has remained a classic in the school for nearly a thousand years. He also authored the seven-volume *al-Tajrid* [The abstract] on differences between the Shafi'i and Hanafi schools, and died in Baghdad in 428/1037 (*al-A'lam* (y136), 1.212).

x78 Ahmad Zarruq (w9.3) is Ahmad ibn Ahmad ibn Muhammad ibn 'Isa, Abu al-'Abbas Zarruq al-Burnusi, born in Fez, Morocco, in 846/1442. He was a Sufi, Maliki scholar, and hadith specialist who studied Sacred Law in Fez, Cairo, and Medina. He then became dedicated to Sufism, withdrew from the world, and took to a wandering life. He was one of the most renowned sheikhs of the Shadhili tariqa and authored a number of works, well written and concise, that attest to their author's illumination in the spiritual way. He died in Takrin, Libya, in 899/1493 (ibid, 1.91; and n).

x79 'A'isha (b3.2) is 'A'isha bint Abu Bakr al-Siddiq 'Abdullah ibn 'Uthman (Allah be well pleased with her), the wife of the Prophet (Allah bless him and give him peace) and Mother of the Faithful, born of the Quraysh nine years before the Hijra (A.D. 613) in Mecca. She was the most knowledgeable of Muslim women in Sacred Law, religion, and Islamic behavior (adab), having married the Prophet (Allah bless him and give him peace) in the second year after the Hijra, becoming the dearest of his wives to him in Medina. She related 2,210 hadiths from the Prophet (Allah bless him and give him peace), and after his death, leading figures of the Companions would come and ask her for legal opinions, which she would supply. She died in Medina in 58/678 (*al-A'lam* (y136), 3.240).

x80 'Ala' al-Din 'Abidin (o8.7(16)) is Muhammad 'Ala' al-Din ibn Muhammad Amin ibn 'Umar ibn 'Abd al-'Aziz 'Abidin, born in Damascus in 1244/1828. The son of Imam Muhammad Amin Ibn 'Abidin, he was a first-rank Hanafi scholar in his own right who was appointed during his lifetime to many posts in the Islamic judiciary. He travelled to Istanbul and was one of the members of the panel of scholars who authored *al-Majalla* [The lawbook], among the most famous works on Islamic governmental law produced during the Ottoman period. Though he originally wrote his *al-Hadiyya al-'Ala'iyya* [The gift of 'Ala'] as a primer in Sacred Law for schoolchildren, it has become an important Hanafi legal reference for subsequent scholars. Appointed as a judge in Tripoli, Lebanon, in 1292/1875, he later returned to Damascus, where he died in 1306/1889 (ibid., 6.270; and n).

x81 'Ali (b3.2) is Imam 'Ali ibn Abi Talib ibn 'Abd al-Muttalib, Abu al-Hasan al-Hashimi al-Qurashi (Allah be well pleased with him), the Friend (Wali) of Allah, Commander of the Faithful, and fourth of the Rightly Guided Caliphs, born of noble lineage in Mecca twenty-three years before the Hijra (A.D. 600) and raised from the age of five by the Prophet (Allah bless him and give him peace),

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who was the son of 'Ali's paternal uncle and later married his own daughter Fatima to him. When the Prophet (Allah bless him and give him peace) paired off the Meccan Emigrants and Medinan Helpers as brothers, he told 'Ali, "You are my brother." Strong, young, and valiant, he bore the Muslims' standard into battle after battle, was a renowned swordsman, and at Khaybar the Prophet (Allah bless him and give him peace) attested to 'Ali's love of Allah and Allah's love of 'Ali. He was of the ten who were informed that they would enter paradise, and was the first male to accept Islam from the Prophet (Allah bless him and give him peace), as well as the first to pray behind him. When 'Ali became caliph in A.H. 35 after the death of 'Uthman, he made Kufa his capital and patiently bore up under the dissension and civil strife with which the Muslims were afflicted during his caliphate (dis: w56.3). Heroically courageous, a wise and fair judge, a speaker of surpassing eloquence, and a sea of spiritual wisdom, he was among the most learned of the Companions, and related hundreds of hadiths. His signet ring was engraved with the words, "Allah is the King" (Allah al-Malik). When he was assassinated while at prayer by a Kharijite at Kufa in 40/661, his last words were, "There is no god but Allah, Muhammad is the Messenger of Allah" (*al-A'lam* (y136), 4.295; *al-Tabaqat al-kubra* (y124), 1.20; and n).

x82 'Ali ibn Abi Talha (w4.5) is 'Ali ibn Salim, a client of the Bani al-'Abbas tribe. He lived in Homs, Syria, and was of the generation who were contemporaries with some of those who met the prophetic Companions, but it is not established that he himself met any of them. He was an honest hadith transmitter, but made occasional mistakes. He died in A.H. 143 (*Taqrib al-tahdhib* (y16), 402).

x83 'Ali ibn Abi Talib (*see* 'Ali, x81)

x84 'Ali al-Daqar (w41.3) is Muhammad 'Ali ibn 'Abd al-Ghani al-Daqar, born in Damascus in 1294/1877. He was a Shafi'i scholar known among his contemporaries for his learning, piety, and efforts in the cause of Islam. Of a wealthy family, he brought about a virtual renaissance of Islamic learning in Damascus by founding al-Jami'iyya al-Ghurra', an institution of more than eleven separate schools that provided food, clothing, housing, and traditional instruction to needy students, particularly those from outlying rural areas and the Horan Plain south of Damascus, who returned to their homes to teach a whole generation of Muslims the religion. During the French occupation he travelled the Syrian countryside to towns and villages with the hadith scholar Badr al-Din al-Hasani, explaining to people the obligatory character of armed jihad against the colonialists. He was a sheikh of the Tijani tariqa who had all his students take the way, and many considered him a friend (wali) of Allah Most High. An ascetic in his private life, he spent himself, his wealth, and his life in the service of Islam, and died in Damascus in 1362/1943 (*Tarikh 'ulama' Damashq* (y1), 2.586–90; Sheikh 'Abd al-Rahman Shaghouri; and n).

x85 'Ali Qari (w48.2) is 'Ali ibn Sultan Muhammad, Nur al-Din al-Mulla al-Qari, born in Herat, Afghanistan. One of the foremost Hanafi scholars of his time, he lived in Mecca, and it is related that he used to earn his income by writing out one copy of the Holy Koran each year embellished with marginal notes containing commentary and canonical readings (qira'at), and selling it to live on the

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proceeds until the following year. He authored a number of works in Hanafi jurisprudence, fundamentals of Islamic faith, the sciences of hadith, Sufism, history, Arabic lexicology, and Koranic exegesis, though the most frequently used of his works may well be his litany *al-Hizb al-a'zam* [The supreme daily *dhikr*], in which he gathered hundreds of supplications from prophetic hadiths and divided them into seven parts, one to be read each day of the week—a litany that forms an integral part of Muhammad al-Juzuli's celebrated manual of *dhikr*, *Dala'il al-khayrat* [Guides to blessings]. He died in Mecca in 1014/1606 (*al-A'lam* (y136), 5.12; and n).

x86 Allah (*see* v1.1)

x87 al-Amidi (b3.3) is 'Ali ibn Muhammad ibn Salim al-Taghlibi, Abu al-Hasan Sayf al-Din al-Amidi, a specialist in fundamentals of Islamic law and faith who was born in 551/1156 in Amid (present-day Diyarbakir, Turkey). Originally a Hanbali, he became a Shafi'i when he came to Baghdad to study hadith, after which he travelled first to Damascus and then to Cairo, where he taught and became widely known. Some scholars there later grew envious of his reputation and accused him of heresy, forcing him to leave Cairo secretly and take refuge in Hama, Syria, from whence he proceeded to Damascus. He wrote some twenty works, the most famous of which is his four-volume *al-Ihkam fi usul al-ahkam* [The proficiency: on fundamentals of legal rulings]. He died in 631/1233 (*al-A'lam* (y136), 4.332; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 8.306).

x88 'Amr ibn Hazm (w16.2) is 'Amr ibn Hazm ibn Zayd ibn Lawdhan (Allah be well pleased with him), a Medinan Helper and Companion of the Prophet (Allah bless him and give him peace). He participated in the Battle of the Confederates and in subsequent battles, and when the Prophet (Allah bless him and give him peace) appointed him governor over Najran, he wrote him a lengthy letter of covenant containing legislation and instruction. He died in 53/673 (*al-A'lam* (y136), 5.76).

x89 'Amr ibn Shu'ayb (w17.2) is 'Amr ibn Shu'ayb ibn Muhammad ibn 'Abdullah ibn 'Amr ibn al-'As, a reliable hadith narrator (saduq) of the generation of whom some met the Companions. His hadiths were related by Abu Dawud, Tirmidhi, Nasa'i, and Ibn Majah. He died in A.H. 118 (*Taqrib al-tahdhib* (y16), 423).

x90 Anas (a4.1) is Anas ibn Malik ibn Nadar al-Khazraji (Allah be well pleased with him), a Medinan Helper and Companion of the Prophet (Allah bless him and give him peace). Born ten years before the Hijra (A.D. 612) in Medina, he entered Islam while young, was the personal servant of the Prophet during the last ten years of his life (Allah bless him and give him peace), and related over 2,200 hadiths. After the Prophet's death (Allah bless him and give him peace), he travelled to Damascus and later settled in Basra. The Prophet (Allah bless him and give him peace) prayed that Allah would bless him with abundance (baraka) in his wealth, life, and offspring, and grant him forgiveness; and he became among the wealthiest of men, had over 120 children and grandchildren at the time of his death, an orchard that bore fruit twice a year, and he lived until he was tired of living any longer, dying in Basra at one hundred years of age in 93/712, the last

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of the Companions to die there (*al-A'lam* (y136), 2.24–25; and *al-Shifa* (y116), 1.47).

x91 The Antichrist (w9.9) is Ibn Sayyad al-Masih al-Dajjal of Bani Isra'il, according to Imam Nawawi alive at the present day among the Jews. He will come forth at the end of time, claim to be a deity, and work wonders, bringing forth a heaven, a hell, and mountains of bread, though he will be unable to enter Mecca or Medina. The prophet 'Isa (upon whom be peace) will slay him at his Final Coming (*al-Shifa* (y116); 1.663; and A).

x92 Ash'ari (*see* Abul Hasan Ash'ari, x47)

x93 (Imam) 'Asqalani (*see* Ibn Hajar 'Asqalani, x159)

x94 Asuf ibn Barkhiya (w30.1(3)) was the vizier of the prophet Sulayman (upon whom be peace), a *siddiq* (great-faithed one) who was steadfastly true to Allah and to his fellow men, a friend (wali) of Allah Most High to whom Allah vouchsafed many miracles (*al-Futuhat al-ilahiyya* (y65), 3.315).

x95 Ayyub (u3.5) is Ayyub ibn Amwas ibn Razih ibn 'Ays ibn Ishaq ibn Ibrahim (upon whom be peace), the prophet and messenger of Allah Most High, who mentions him in various places in the Holy Koran. He is best known for his proverbial steadfastness and patience in affliction (*al-Futuhat al-ilahiyya* (y65), 2.58; and *al-Shifa* (y116), 1.293).

x96 al-'Azizi (b7.5) is 'Ali ibn Ahmad ibn Muhammad al-'Azizi al-Bulaqi, born in al-'Aziziyya, Egypt. He was a scholar of Shafi'i jurisprudence and hadith who authored various works, of which his three-volume *al-Siraj al-munir sharh al-Jami' al-saghir* [The lightgiving lamp: an exegesis of "The minor compendium"], a commentary on a famous hadith collection by Suyuti, is perhaps the most well known. He died in Bulaq in 1070/1660 (*al-A'lam* (y136), 4.258).

x97 'Azra'il (u3.3) is not mentioned by name in the Koran, but referred to only as the "Angel of Death" (Malak al-Mawt). In reality it is Allah who reclaims the souls of men from their bodies, but He does so by means of the Angel of Death, whom He orders to take a person's soul when the time arrives. 'Azra'il has helpers in this from the angels of mercy and angels of torment, depending on whom the deceased is, and they draw out the spirit of the deceased until it reaches the throat, when 'Azra'il takes it himself. The whole world has been made as if it were the size of an open palm for him, and he takes the soul of anyone he wishes, from east to west, without difficulty (*al-Futuhat al-ilahiyya* (y65), 2.40, 3.415; and n).

x98 Badr al-Din al-Hasani (e14.1) is Muhammad Badr al-Din ibn Yusuf ibn Badr al-Din ibn 'Abd al-Rahman al-Hasani, born in Damascus in 1267/1850. The son of a Moroccan Maliki scholar, Badr al-Din followed the Hanafi school and became the hadith scholar of Damascus of his time. He memorized the Holy Koran, the *Sahihs* of Bukhari and Muslim with their texts and channels of transmission, and twenty thousand verses of the rhyming mnemonic texts (mutun) that

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Islamic scholars formerly used to commit to memory to have a framework within which to remember and understand the more detailed works of the Islamic sciences that they would read with their sheikhs. After this, he devoted himself to worship and teaching, living an ascetic life of fasting and service to the Muslim community. He wrote works in many fields, including hadith, tenets of Islamic faith, Koranic exegesis, mathematics, logic, and Arabic grammar. The attribution to him of the formal legal opinion (fatwa) mentioned at e14.1 of the present volume was made by Sheikh Shu'ayb Arna'ut, Sheikh 'Abd al-Wakil Durubi, and others. He died in Damascus in 1354/1935 (*al-A'lam* (y136), 7.157–58; and n).

x99 (Imam) Baghawi (w4.3) is al-Husayn ibn Mas'ud ibn Muhammad ibn al-Farra', Abu Muhammad Muhyi al-Sunna al-Baghawi, born in Bagha, Persia, in 436/1044. Known to contemporaries as the Reviver of the Sunna, he was an Imam in Shafi'i jurisprudence, hadith, and Koranic exegesis, writing valuable works in each, among them his sixteen-volume *Sharh al-sunna* [The explanation of the sunna], which proceeds through the usual chapter arangement of works on Shafi'i jurisprudence, discussing the hadiths and Koranic verses upon which the rulings of the school are based, and how the various other Imams have understood them. His commentary on the Holy Koran *Lubab al-ta'wil fi ma'alam al-Tanzil* [The quintessence of interpretation: on features of the Revelation], has also proved very popular among scholars and been printed in several editions. He died in Merv (in present-day Turkmen S.S.R.) in 510/1117 (*al-A'lam* (y136), 2.259; and n).

x100 Bajuri (k1.1) is Ibrahim ibn Muhammad ibn Ahmad al-Bajuri, born in Bajuri, Egypt, in 1198/1784. Educated at al-Azhar, he was one of the foremost Shafi'i scholars and theologians of his time, authoring over twenty works and commentaries in Sacred Law, tenets of faith, Islamic estate division, scholastic theology, logic, and Arabic. In A.H. 1263 he was appointed Sheikh of al-Azhar, an office he remained in until his death in Cairo in 1288/1860 (*al-A'lam* (y136), 1.71).

x101 Baqillani (*see* (Imam) Abu Bakr Baqillani, x32)

x102 Baydawi (r21.1) is 'Abdullah ibn 'Umar ibn Muhammad ibn 'Ali, Nasir al-Din al-Shirazi al-Baydawi, born in Bayda, near Shiraz, Persia. He was a Shafi'i scholar, judge, and Koranic exegete whose commentary *Anwar al-Tanzil wa asrar al-ta'wil* [The lights of the Revelation and secrets of interpretation] is so well known that whenever scholars mention "The Judge" (al-Qadi) in the context of Koranic commentary, it is Baydawi who is meant. He wrote a number of other scholarly works in tenets of faith, jurisprudence, and Arabic, as well as a history in Persian. After serving as a judge in Shiraz, he moved to Tabriz, where he died in 685/1286 (*al-A'lam* (y136), 4.110; and n).

x103 Bayhaqi (f8.44) is Ahmad ibn al-Husayn ibn 'Ali, Abu Bakr al-Bayhaqi, born in Khasrajand, a village around Bayhaq near Nishapur, Persia, in 384/994. A principle hadith master (hafiz) and Shafi'i Imam, he was raised in Bayhaq, but travelled to gain Sacred Knowledge to Baghdad, Kufa, Mecca, and other cities. Dhahabi was to say of him, "Had Bayhaqi wanted to found his own school of jurisprudence and be its *mujtahid*, he would have been able to, because of the vast

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range of subjects of which he was a master, and his knowledge of scholarly differences." Bayhaqi's works amount to nearly one thousand volumes, treating the sciences of hadith, Koranic exegesis, Sacred Law, tenets of faith, and other subjects. The Imam of the Two Sanctuaries Juwayni once observed, "Every Shafi'i scholar is indebted to Shafi'i except Bayhaqi, to whom Shafi'i is indebted for his writing so many works strengthening the school, expanding questions on which the Imam had been brief, and supporting his positions." He died in Nishapur in 458/1066 (*al-A'lam* (y136), 1.116).

x104 B.G. Martin (w9.4) is Bradford G. Martin, a professor who has taught and written about Sufism and Muslim Africa since 1963. The preface to his *Muslim Brotherhoods in Nineteenth-Century Africa* was written in Bloomington, Indiana, in 1976. The book accurately reports the names and dates of the events it discusses, though its explanations of Muslim figures, their motives, and their place within the Islamic world are observed through the lens of unbelief (kufr), giving an inverted image of many of the realities thus beheld, and perhaps calling for a word here on the literature that has been termed *Orientalism*, or in the contemporary idiom, "area studies."

It is a viewpoint requiring that scholarly description of something like "African Islam" (Martin's phrase) be first and foremost *objective*. The premises of this objectivity conform closely, upon reflection, to the lived and felt experience of a post-religious, Western intellectual tradition in understanding religion; namely, that comparing human cultural systems and societies in their historical succession and multiplicity leads the open-minded observer to moral relativism, since no moral value can be discovered which on its own merits is transculturally valid. Here, human civilizations, with their cultural forms, religions, hopes, aims, beliefs, prophets, sacred scriptures, and deities, are essentially plants that grow out of the earth, springing from their various seeds and soils, thriving for a time, and then withering away. The scholar's concern is only to record these elements and propose a plausible relation between them.

Such a point of departure, if *de rigueur* for serious academic works like *Muslim Brotherhoods*, is of course non-Islamic and anti-Islamic. As a fundamental incomprehension of Islam, it naturally distorts what it seeks to explain, yet with an observable disparity in the *degree* of distortion in any given description that seems to correspond roughly to how close the object of explanation is to the core of Islam. In dealing with central issues like Allah, the Prophet (Allah bless him and give him peace), the Koran, or hadith, it is at its worst: while the further it proceeds to the periphery, such as historical details of trade concessions, treaties, names of rulers, weights of coins, etc., the less distorted it becomes. In either case, it is plainly superior for Muslims to rely on fellow Muslims when Islamic sources are available on a subject (and there are few imaginable subjects that Islamic scholars have not discussed in detail and written highly interesting and professional works about), if only to avoid the subtle and not-so-subtle distortions of non-Islamic works about Islam. One cannot help but feel that nothing bad would happen to us if we were to abandon the trend of many contemporary Muslim writers of faithfully annotating our works with quotes from the founding fathers of Orientalism, if only because to sleep with the dogs is generally to rise with the fleas. And where Islamic works cannot be found and non-Islamic sources are used, we should keep in mind that their premises are those of unbelief, and

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how this colors the whole process of scholarly inquiry. We find in *Muslim Brotherhoods*, for example, a discussion of a hypothesized alteration in the "carbon dioxide-oxygen balance in the brain," resulting from communal remembrance of Allah (dhikr) and producing a susceptibility to visions, hallucinations, and intense emotional experiences that enabled African Sufi brotherhoods to "generate much love and devotion" between members, who could thereby be more successfully directed towards collective action. When one looks at the men being explained, however, those who risked their lives in jihad against the enemies of Allah for four, twelve, fifteen, twenty-one, or thirty-five years, an explanation of their motivations that downplays faith in Allah and His messenger (Allah bless him and give him peace) must surely need a great deal more to be convincing than this type of fatuous detail. Or the suggestion that a *mujahid* scholar who had memorized the Holy Koran and the *Sahih* collections of Bukhari and Muslim, and lived and taught the strictest adherence to Islam by precept and example for a lifetime of seventy years ('Umar Tal, x355) might have committed suicide after a defeat in battle—a report based on a single story told by a blacksmith of unknown veracity some twenty-six years after the event—such aspects show little appreciation of psychological absurdities in an Islamic context.

Though there is little doubt that B.G. Martin's work is a sincere attempt to understand its subject matter, and one that incidentally uses much original African source material, it should be understood by Muslims for what it is, an account of "African Islam"—of religious men, sacrifices, and motives—from a point of view that has been sanitized of anything religious to guard its "objectivity" (*Muslim Brotherhoods* (y86), preface and bibliography; Sharif 'Abdul-Karim; and n).

x105 Bilal (w29.2) is Bilal ibn Rabah, Abu 'Abdullah al-Habashi (Allah be well pleased with him), the muezzin of the Prophet (Allah bless him and give him peace) and his watchman over the Muslim common fund (bayt al-mal). A hadith says of him, "Bilal is the foremost of the Ethiopians." One of the earliest converts to Islam, he was present at every battle with the Prophet (Allah bless him and give him peace), and when the latter died, Bilal called the Muslims to prayer for his last time. He lived in Medina until Muslim armies were dispatched to Syria and then travelled with them, dying in Damascus in 20/641 (*al-'Alam* (y136), 2.73).

x106 Bint Harith (w30.1) is Zaynab bint al-Harith, the sister of 'Uqba ibn al-Harith, who killed Khubayb al-Ansari (x220) (*Fath al-Bari* (y17), 7.382).

x107 Bukhari (Introduction) is Muhammad ibn Isma'il ibn Ibrahim ibn Mughira, Abu 'Abdullah al-Bukhari, born in Bukhara (in present-day Uzbek S.S.R.) in 194/810. Raised as an orphan, he was a Shafi'i scholar who learned Sacred Law in Mecca from 'Abdullah ibn Zubayr al Humaydi, the disciple of Shafi'i, and he became the greatest Imam in hadith that the world has ever known. He began his long travels in search of hadith in A.H. 210, visiting Khurasan, Iraq, Egypt, the Hijaz, and Syria, hearing hadiths from nearly a thousand sheikhs, gathering some 600,000 prophetic traditions from which he selected the approximately 4,400 (not counting those repeated) that compose his *Jami' al-Sahih* [Rigorously authenticated collection]. Choosing them for their authenticity, he was the first scholar in Islam to compile a work on this basis, and his book is the

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foremost of the six great hadith collections. Ibn Khuzayma said of him, "No one under the sky is more knowledgeable in hadith," and Abu 'Umar al-Khaffaf once referred to him as the "pure, godfearing scholar whom I have never seen anyone comparable to, Muhammad ibn Isma'il Bukhari, twenty times greater in knowledge of hadith than Ishaq [Rahawayh], Ahmad, or anyone else." At the end of his life some bigots attacked him for not agreeing with their misunderstanding of the uncreatedness of the Koran, and for his steadfastness in the convictions of Ahl al-Sunna they hounded him from Bukhara to Samarkand, where he died in the village of Khartan in 256/870 (*al-A'lam* (y136), 6.34; *Tabaqat al-Shafi'iyya al-Kubra* (y128), 2.212–14; *al-Targhib wa al-tarhib* (y9), 1.19; N; and n).

x108 Burayda (w18.3(2)) is Burayda ibn al-Husayb ibn 'Abdullah ibn al-Harith al-Aslami (Allah be well pleased with him), a Companion of the Prophet (Allah bless him and give him peace) who entered Islam before the battle of Badr and participated in the siege of Khaybar and conquest of Mecca. He related 167 hadiths. He lived in Medina, later moved to Basra, and finally to Merv (in present-day Turkmen S.S.R.), where he died in 63/683 (*al-A'lam* (y136), 2.50; and n).

x109 Darami (h8.8) is Muhammad ibn 'Abd al-Wahid ibn Muhammad ibn 'Umar, Abu al-Faraj al-Darami, born in Baghdad in 358/969. A gifted speaker in Arabic, he was a mathematician and legal scholar who did in-depth research in the Shafi'i school and produced a number of copious works including *Jami' al-jawami' wa muda' al-bada'i'* [The compendium of compendiums and storehouse of wonders], which details the positions of the school and evaluates the evidence for them, and *al-Istidhkar* [The reminding], which contains a large number of rare legal questions. He died in Damascus in 449/1057 (*al-A'lam* (y136), 6.254; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 4.182–85).

x110 Daraqutni (m3.4) is 'Ali ibn 'Umar ibn Ahmad ibn Mahdi, Abu al-Hasan al-Daraqutni, born in Dar al-Qutn, a neighborhood in Baghdad, in 306/919. He was a Shafi'i scholar who was among the Imams of his time in hadith, and the first to record the canonical readings of the Holy Koran (qira'at) in a work. He travelled to Egypt, where he helped Ibn Hanzaba compose his *Musnad* [Ascribed traditions] and then returned to Baghdad. He wrote a number of works on hadith, the most famous of which is his *Sunan* [Sunnas]. He died in Baghdad in 385/995 (*al-A'lam* (y136), 4.314).

x111 David (*see next entry*)

x112 Dawud (u3.5) is Dawud ibn Isha (upon whom be peace), a prophet of Allah Most High to Bani Isra'il. He was the first to forge iron into chain mail, and is mentioned more than once in the Holy Koran. While still a boy, he slew the giant Jalut (Goliath), a deed for which King Talut (Saul) gave him his daughter in marriage and half his kingdom. Dawud lived with the king for forty years until the latter's death, after which he lived another seven years and then died too (*al-Futuhat al-ilahiyya* (y65), 1.204).

x113 (The) Devil (*see* Satan, x321)

x114 (Imam) Dhahabi (Introduction) is Muhammad ibn Ahmad ibn 'Uthman ibn Qaymaz, Abu 'Abdullah Shams al-Din al-Dhahabi, the great Shafi'i hadith master (hafiz) and historian of Islam, born in Damascus in 673/1274. Of Turkoman origin, he first studied in Damascus and then travelled to Cairo and other cities in pursuit of Sacred Knowledge. He authored nearly a hundred works, some of them of considerable size, like his twenty-three volume *Siyar a'lam al-nubala'* [The lives of noble figures], or his thirty-six volume *Tarikh al-Islam al-kabir* [Major history of Islam]. In addition to his mastery of hadith, he was also an Imam in canonical Koranic readings (qira'at) and textual criticism. He went blind about seven years before his death, and died in Damascus in 748/1348 (*al-A'lam* (y136), 5.326; *Kitab al-kaba'ir* (y36), 23–25; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 9.100).

x115 Dhul Kifl (u3.5) is Hizqil (upon whom be peace), a prophet of Allah Most High to Bani Isra'il. He was the third prophet to succeed Musa (upon whom be peace), and commentators relate that he was nicknamed Dhul Kifl (lit. "He of the Guarantee") because he gave his guarantee to the wicked of Bani Isra'il that he would ensure the appearance on a particular day of seventy prophets whom they wished to kill, putting up his own life in forfeit, after which he told the prophets, "Go, it is better that I should be killed than you." When the time for the execution arrived and Dhul Kifl was asked about them, he merely said he did not know where they had gone, after which Allah Most High saved him too (*al-Siraj al-munir* (y72), 1.158).

x116 Dhul Nun al-Misri (t1.9) is Thawban ibn Ibrahim; Abu al-Fayd al-Ikhmimi al-Misri, the famous Egyptian ascetic and saint. One of the greatest of the early Sufis, he was of Nubian origin and had a gift for expressive aphorisms, of which a large number have fortunately been preserved. He was the first in Egypt to speak of the states and spiritual stations of the way. The Abbasid caliph al-Mutawakkil charged him with heresy (zandaqa) and had him brought to him, but upon hearing Dhul Nun speak he realized his innocence and released him, whereupon he returned to Egypt. He died in Giza in 245/859 (*al-A'lam* (y136), 2.102; and n).

x117 Elias (*see* Ilyas, x186)

x118 Elisha (*see* al-Yasa', x374)

x119 Enoch (*see* Idris, x185)

x120 Eve (w32.1(4)) is Hawa', the wife of the prophet Adam (upon whom be peace), created from him to become the Mother of Mankind. She was named Hawa' because she was created directly from a living being (hayy), Adam, in his sleep without his being aware of it or feeling any pain therefrom (*al-Siraj al-munir* (y72), 1.49).

x121 Ezekial (*see* Dhul Kifl, x115)

x122 (a) al-Fakhr al-Razi (w57.2) is Muhammad ibn 'Umar ibn al-Hasan ibn al-Husayn, Abu 'Abdullah Fakhr al-Din al-Razi, born in Rayy, Persia (just south of

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present-day Tehran, Iran), in 544/1150. A Shafi'i scholar of genius and a *mujtahid* Imam in tenets of faith, he was among the foremost figures of his time in mastery of the rational and traditional Islamic sciences, and preserved the religion of Ahl al-Sunna from the deviations of the Mu'tazilites, Shiites, Anthropomorphists, and other aberrant sects of his era by authoring a number of brilliant works that came to enjoy a wide readership among his contemporaries and have remained popular with scholars to this day. His thirty-two-volume Koranic exegesis *Mafatih al-ghayb* [The keys of the unseen] is one of the most famous of his works, though he also wrote on tenets of belief, heresiology, fundamentals of Islamic law and faith, scholastic theology, rhetoric, geometry, and poetry in Arabic and Persian, in both of which he was a preacher of considerable eloquence. His efforts to purify Islam from the heresies of anthropomorphists reached the point that when unable to answer his arguments against them, they resorted to writing ugly remarks and insinuations on scraps of paper and attaching them to the pulpit (minbar) from which he gave the Friday sermon. He arrived one day and read one of these, and then spoke to those present in an impassioned voice, saying: "This piece of paper says that my son does such and such. If it is true, he is but a youth and I hope he will repent. It also says that my wife does such and such. If it is true, she is a faithless woman. And it says that my servant does such and such. Servants are wont to commit every wrong, except for those Allah protects. But on none of these scraps of paper—and may Allah be praised!—is it written that my son says Allah is a corporeal body, or that he likens Him to created things, or that my wife believes that, or my servant—So which of the two groups is closer to guidance?" He travelled to Khawarzim and Khurasan, and finally to Herat, Afghanistan, where he died in 606/1210 (*al-A'lam* (y136), 6.313; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 8.81–89).

x122 (b) Fath Allah Ya Sin Jazar (Document 4) was born in Nahiya in the governorate of Giza, Egypt, in 1930. He memorized the Holy Koran at nine years of age and in 1946 entered al-Azhar, where he studied at the secondary level and then at the College of Arabic Language, from whence he received his first degree in 1959, after which he pursued his studies in the language to receive a master's degree in 1960. In 1965 he joined al-Azhar's Islamic Research Academy, which, according to the terms of its charter, is "the highest scholarly body for Islamic research" and is presided over by the Sheikh of al-Azhar. In addition to research, propagating Islam (da'wa), sending delegates to Muslim countries to teach, and checking and certifying new books for accuracy and conformity with the tenets of Islam, the academy also examines all Korans published in Egypt and those sent to it from abroad for authorization. Sheikh Fath Allah worked in the latter capacity until 1971, when he was sent as al-Azhar's delegate to Tripoli, Lebanon, to foster Islamic education through teaching and publishing. In 1977, he returned to the academy's General Department of Research as trustee, and was subsequently named as General Director of Research, Writing, and Translation in 1985, the position he currently holds. The present volume, *The Reliance of the Traveller*, was submitted to the academy for checking and authorization on 14 May 1990 and was certified on 11 February 1991 (n).

x123 Fatima (b7.6) is Fatima al-Zahra bint Muhammad (Allah be well pleased with her) born to the Messenger of Allah (Allah bless him and give him peace)

and his wife Khadija eighteen years before the Hijra. With Maryam, the mother of the prophet 'Isa (upon whom be peace), Fatima is the purest and best of womenkind. The Prophet (Allah bless him and give him peace) gave her to 'Ali ibn Abi Talib in marriage when she was eighteen years old, and they had four children, al-Hasan, al-Husayn, Umm Kalthum, and Zaynab. She was the only one of the Prophet's children to survive him (Allah bless him and give him peace), though she died after him by only six months in A.H. 11, at twenty-nine years of age (*al-A'lam* (y136), 5.132; and *al-Shifa* (y116), 1.412).

x124 Furani (r40.4) is 'Abd al-Rahman ibn Muhammad ibn Ahmad ibn Furan, Abu al-Qasim al-Furani, born in Merv (in present-day Turkmen S.S.R.) in 388/998. He was a Shafi'i scholar in applications of Islamic jurisprudence and fundamentals of law and faith who authored works in Sacred Law, scholarly differences of opinion, tenets of faith, and heresiology. He died in Merv in 461/1069 (*al-A'lam* (y136), 3.326).

x125 (Sheikh al-Islam) Futuhi al-Hanbali (w25.1) is Muhammad ibn Ahmad ibn 'Abd al-'Aziz, Abu al-Baqa al-Futuhi al-Hanbali, also known as Ibn al-Najjar, born in 898/1492. He was an Egyptian Hanbali scholar, judge, and author. 'Abd al-Wahhab Sha'rani once said of him, "I kept his company for forty years, and never saw anything reprehensible in him, nor anyone who spoke better than he or showed more politeness to those he sat with." He died in 972/1564 (ibid., 6.6).

x126 Gabriel (u1.1) is Jibril (upon whom be peace), the chief of the angels, who descended to the prophets of Allah Most High bearing the divine revelation. He is also the angel entrusted with visiting Allah's punishments upon men, for which reason Bani Isra'il have traditionally feared him. A hadith relates that 'Umar once asked the Jews about Gabriel, and they said, "He is an enemy of ours, for he reveals our secrets to Muhammad and is the one entrusted with making the earth swallow (khasf) those to whom it happens, and with inflicting every divine punishment." Qurtubi records the position of some Koranic exegetes that Gabriel is meant by the verses, "Do you feel secure that he who is in the heavens [lit. "sky"] will not make the earth swallow you while it quakes? Or do you feel secure that he who is in the heavens will not send a storm of pebbles against you, that you shall know how My warning is?" (Koran 67:16–17). Allah Most High also describes Gabriel as "a noble messenger endowed with power, of station with Him of the Throne, obeyed there and trustworthy" (Koran 81:19–21) (*al-Jami' li ahkam al-Qur'an* (y117), 18.215; *al-Shifa* (y116), 1.710; and *al-Siraj al-munir* (y72), 1.79, 4.344).

x127 (Imam) Ghazali (a4.4) is Muhammad ibn Muhammad ibn Muhammad ibn Ahmad, Abu Hamid Hujjat al-Islam al-Ghazali al-Tusi, the Shafi'i Imam, Proof of Islam, and Sufi adept born in Tabiran, near Tus (just north of present-day Mashhad, Iran), in 450/1058. The Imam of his time, nicknamed Shafi'i the Second for his legal virtuousity, he was a brilliant intellectual who first studied jurisprudence at Tus, and then travelled the Islamic world, to Baghdad, Damascus, Jerusalem, Cairo, Alexandria, Mecca, and Medina, taking Sacred Knowledge from its masters, among them the Imam of the Two Sanctuaries Juwayni, with whom he studied until the Imam's death, becoming at his hands a scholar in

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Shafi'i law, logic, tenets of faith, debate, and in the rationalistic doctrines of the philosophical schools of his time, which he was later called upon to refute. When Juwayni died, Ghazali debated the Imams and scholars of Baghdad in the presence of the vizier Nizam al-Mulk, who was so impressed that he appointed him to a teaching post at the Nizamiyya Academy in Baghdad, where word of his brilliance spread, and scholars journeyed to hear him.

His worldly success was something of a mixed blessing, and in mid-career, after considerable reflection, he was gripped by an intense fear for his soul and his fate in the afterlife, and he resigned from his post, travelling first to Jerusalem and then to Damascus to purify his heart by following the way of Sufism. In Damascus he lived in seclusion for some ten years, engaged in spiritual struggle and the remembrance of Allah, at the end of which he emerged to produce his masterpiece *Ihya' 'ulum al-din* [Giving life to the religious sciences], a classic among the books of the Muslims about internalizing godfearingness (taqwa) in one's dealings with Allah, illuminating the soul through obedience to Him, and the levels of believers' attainments therein. The work shows how deeply Ghazali personally realized what he wrote about, and his masterly treatment of hundreds of questions dealing with the inner life that no one had previously discussed or solved is a performance of sustained excellence that shows its author's well-disciplined legal intellect and profound appreciation of human psychology. He also wrote nearly two hundred other works, on the theory of government, Sacred Law, refutations of philosophers, tenets of faith, Sufism, Koranic exegesis, scholastic theology, and bases of Islamic jurisprudence. He died in Tabiran in 505/1111 (*al-A'lam* (y136), 7.22; *Ihya' 'ulum al-din* (y39), 1.330; *al-Munqidh min al-dalal* (y41), 46–50; *al-Shifa* (y116), 2.602; N; and n).

x128 ("al-Hajj ...") (*see under proper name*)

x129 Hakim (g1.1) is Muhammad ibn 'Abdullah ibn Hamdawayh ibn Na'im al-Dabi, Abu 'Abdullah al-Hakim al-Naysaburi, born in Nishapur, Persia, in 321/933. A Shafi'i scholar, hadith master, and Imam, he journeyed far in quest of knowledge of prophetic traditions, travelling to 'Iraq, to the Hijaz, and then to the lands beyond the Oxus, hearing hadiths from nearly two thousand sheikhs. He was appointed to the judiciary in Nishapur in A.H. 359, whence the nickname al-Hakim (the Magistrate), and subsequently in Jurjan, but refused the second position. He was among the most knowledgeable scholars in distinguishing rigorously authenticated from poorly authenticated hadiths, and among the most prolific. Ibn 'Asakir estimates that Hakim's works on hadith and other subjects amount to approximately fifteen hundred volumes, though he is most famous for his four-volume *al-Mustadrak 'ala al-Sahihayn* [The addendum to the two "Sahih" collections of Bukhari and Muslim]. He died in Nishapur in 405/1014 (*al-A'lam* (y136), 6.227; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 4.155).

x130 Hakim Tirmidhi (w9.4) is Muhammad ibn 'Ali ibn al-Hasan ibn Bishr, Abu 'Abdullah al-Hakim al-Tirmidhi, a muezzin and author originally from Termez (in present-day Uzbek S.S.R.). A Sufi and Shafi'i scholar in Sacred Law, hadith, and tenets of faith, he was exiled from his native Termez over a book its inhabitants did not agree with, and went to Balkh (present-day Wazirabad, Afghanistan), where he was welcomed and honored. He wrote a number of works

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in hadith, Sacred Law, and Sufism, among which his *Nawadir al-usul* [Rare hadith sources] is perhaps the best known. He died in Balkh at ninety years of age, probably around A.H. 320 (*al-A'lam* (y136), 6.272; and *Tabaqatal-Shafi'iyya al-kubra* (y128), 2.245; and n).

x131 Haman (r38.2) was the vizier of Pharaoh (Fir'awn). Among his commissions was to build a tower of baked bricks so that Pharaoh, imagining Allah to be a corporeal entity in the sky, might climb up and look for him (*al-Futuhat al-ilahiyya* (y65), 3.349–50).

x132 Hammad ibn Salama (w40.5) is Hammad ibn Salama ibn Dinar, Abu Salama al-Basri, the mufti of Basra and a trustworthy memorizer and principle narrator of hadith, though his memory grew poor in his advanced years. Dhahabi relates that he was an Imam in the field of Arabic, and an author and scholar in Sacred Law who uncompromisingly opposed reprehensible innovations (bid'a). He died in 167/784 (*al-A'lam* (y136), 2.272).

x133 Harb Kirmani (w55.3) is Harb ibn Isma'il, Abu Muhammad al-Kirmani, a Hanbali scholar who studied under Imam Ahmad ibn Hanbal, Ishaq ibn Rahawayh, and others. Dhahabi states that his *Masa'il* [Legal questions] is among the most valuable works in the Hanbali school. He died in A.H. 280 at about ninety years of age (*Siyar a'lam al-nubala'* (y37), 13.244–45).

x134 Harith al-Muhasibi (t1.8) is al-Harith ibn Asad, Abu 'Abdullah al-Muhasibi, born in Basra. Notable for his abstinence and self-discipline, he was the teacher of most of the Sufis of Baghdad in his time, a scholar in fundamentals of law and faith who possessed considerable eloquence in giving sermons. Among his sayings is, "The finest people of this Community are those whose hereafter does not prevent them from attending to their this-worldly concerns, nor this world prevent from attending to their hereafter." He authored works on Sufism, asceticism, and rebuttals of the Mu'tazilites, and died in Baghdad in 243/857 (*al-A'lam* (y136), 2.153).

x135 Harun (u3.5) is Harun ibn 'Imran ibn Qahith ibn 'Azir ibn Lawi ibn Ya'qub ibn Ishaq ibn Ibrahim (upon whom be peace), the prophet of Allah Most High to Bani Isra'il and brother and vizier of the prophet Musa (upon whom be peace). Commentators relate that he died a year before the death of Musa during the forty years Bani Isra'il were wandering in the desert, having gone forth with his brother to some caves, where he died and was buried by him (*al-Futuhat al-ilahiyya* (y65), 1.56, 3.89).

x136 Harut (p3.2) was one of two Angels sent to the city of Babylon to teach sorcery to the wicked, as a temptation and trial from Allah, who commanded the two to warn people not to learn it from them. Ghazali explains *sorcery* as "a type of learning deduced from the knowledge of properties of substances and arithmetical relations concerning the positions of stars, from which properties a form is taken resembling the image of the victim, and the stars are observed for a particular time to come, when words of unbelief (kufr) and obscenity, violating the Sacred Law, are pronounced, whereby the help of devils is sought, and through

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which, by virtue of natural relations of instrumentality that Allah has disposed and arranged, strange states are brought about in the person ensorcelled." Another position is that the two angels were sent down to teach men sorcery so that the difference between sorcery and inimitable prophetic miracles (mu'jiza, def: w30.2) might be recognized, and people not be misled by sorcerers, of whom many existed at that time and some claimed to be prophets (*al-Futuhat al-ilahiyya* (y65), 1.87; and *al-Siraj al-munir* (y72), 1.82).

x137 Hasanayn Muhammad Makhluf (L10.2) is a contemporary Egyptian scholar, the son of the Maliki scholar Muhammad Makhluf. The former grand mufti of Egypt (mufti al-diyar al-Misriyya), he is a member of the Faculty of Outstanding Islamic Scholars at al-Azhar University, and a member of the founding council of the Islamic World League (*Mafahim yajibu an tusahhaha* (y83), 30).

x138 Hasan al-Basri (w26.1) is al-Hasan ibn Yasar, Abu Sa'id al-Basri, born in Medina in 21/642 and raised at the side of 'Ali ibn Abi Talib (Allah be well pleased with him). He was the Imam of Basra and scholar of the Islamic Community of his time; learned, eloquent, devout, courageous, and held in such awe by contemporaries that he could walk into the chambers of rulers and command the right and forbid the wrong, which he did on several occasions without fear of whoever might blame him. Ghazali said of him, "His speech was the closest of any to that of the prophets, and his guidedness the closest of any to that of the Companions." He died in Basra in 110/728 (*al-A'lam* (y136), 2.226).

x139 Hasan Saqqaf (w28.1) is Hasan ibn 'Ali ibn Hashim ibn Ahmad, Abu Hashim al-Saqqaf al-Husayni, a contemporary Shafi'i scholar who lives in Amman, Jordan. His sheikhs include Hashim Majdhub of Damascus in Shafi'i jurisprudence, Muti' Hammami in estate division, and Muhammad Hulayyil of Amman in Arabic grammar, and he has been given written authorizations in the Shadhili tariqa and hadith from Sheikh 'Abdullah Ghimari of Tangiers. He teaches a circle of students in Amman and has published over forty-five books and treatises on tenets of faith, jurisprudence, and heresiology (n).

x140 Hashim al-Khatib (w41.3) is Muhammad Hashim ibn Rashid ibn Muhammad ibn 'Abdullah al-Khatib, born in Damascus in 1304/1890. He was a Shafi'i scholar, public speaker, and teacher who studied under nearly twenty-eight of the foremost sheikhs of his time in Damascus and received written authorizations from each of them to teach the subjects he read with them. He knew the Holy Koran by heart and was a master of its recitation and exegesis. Of the Qadiri tariqa, he was one of the scholars who travelled the Syrian countryside during the French occupation and urged the Muslims to rise in jihad against it. He taught in the Umayyad Mosque, the Sulaymaniyya Takiya, and at the Qalbaqjiyya Mosque, where he devoted the latter part of his life to teaching students. He authored a number of treatises and pamphlets on contemporary religious issues, and died in Damascus in 1378/1958 (*Tarikh 'ulama' Dimashq* (y1), 2.710–14).

x141 Hatib ibn Abi Balta'a (p74.1) is Hatib ibn Abi Balta'a al-Lakhami (Allah be well pleased with him), born thirty-five years before the Hijra (A.D. 586), a Companion of the Prophet (Allah bless him and give him peace) who was present

at every battle with him. Among the greatest archers of the Companions, an outstanding horseman of the Quraysh, and a poet from the pre-Islamic period of ignorance, he had extensive trade dealings, and the Prophet (Allah bless him and give him peace) selected him as his envoy to the Muqawqis of Alexandria. He died in 30/650 in Medina (*al-A'lam* (y136), 2.159).

x142 Haytami (*see* (Imam, Sheikh al-Islam) Ibn Hajar Haytami, x160)

x143 Haythami (w40.4) is 'Ali ibn Abu Bakr ibn Sulayman, Abu al-Hasan Nur al-Din al-Haythami, born in Cairo in 735/1335. He was a Shafi'i scholar, hadith master (hafiz), and Imam who compiled many hadith collections, among the most famous of which is his ten-volume *Majma' al-zawa'id wa manba' al-fawa'id* [Compendium of hadiths not mentioned in the six main collections, and wellspring of information], which has become a virtual necessity for modern students of hadith. He is sometimes confused with Ibn Hajar Haytami, whom he is unrelated to. He died in 807/1405 (*al-A'lam* (y136), 4.266; and Sheikh Shu'ayb Arna'ut).

x144 Hilal ibn al-'Ala' (p35.3) is Hilal ibn al-'Ala' ibn Hilal ibn 'Umar ibn Hilal, Abu 'Umar al-Bahili. A hadith master (hafiz) and Imam who was a reliable (saduq) transmitter, he died in A.H. 280 or 281 (*Siyar a'lam al-nubula'* (y37), 13.309–10).

x145 Hind (r2.19) is Hind bint 'Utba ibn Rabi'a ibn 'Abd al-Shams ibn 'Abd Manaf (Allah be well pleased with her), the mother of the caliph Mu'awiya and wife of Abu Sufyan, the Companion of the Prophet (Allah bless him and give him peace). She was an eloquent and courageous woman of the Quraysh who was noted for her outstanding poetry. At first a bitter foe of Islam and the Muslims, she entered Islam after the conquest of Mecca and made good her Islam. She had extensive trade dealings in the caliphate of 'Umar, was present at the battle of Yarmouk, and with her poetry inspired and encouraged the Muslim forces in their jihad against the unbelievers on the Syrian campaign. She died in 14/635 (*al-A'lam* (y136), 8.98).

x146 Hud (u3.5) is Hud ibn 'Abdullah ibn Rabah ibn al-Khulud ibn 'Ad (upon whom be peace), the Arabian prophet of Allah Most High to the people of 'Ad, in the northern part of what is now the Hadramawt region of South Yemen. They were idol worshippers and Hud called them to worship the one God, but they cried lies to him and were destroyed for their unbelief (*al-A'lam* (y136), 8.101; and Koran 26:123–40).

x147 Husayn ibn Mansur al-Hallaj (w9.11) is al-Husayn ibn Mansur, Abu al-Mughith al-Hallaj, originally from Bayda, Persia, but raised in Wasit, Iraq. He kept the company of Junayd, Abu al-Husayn al-Nuri, 'Amr al-Makki, and others of the Sufis. Sulami records that most of the sheikhs of his own time rejected al-Hallaj and denied that he had any standing in the Sufi way, though others praised him, among them Muhammad ibn Khafif (x166), who called him "a godly scholar." Allah knows best as to his spiritual state, but he was executed in Baghdad in 309/922 for saying "*Ana al-Haqq*" ("I am the Truth," i.e. God), and among the evidence that he wronged himself was that his former sheikh, Junayd, was among

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those who gave the verdict that he should die (*Tabaqat al-Sufiyya* (y129), 307–8; and n).

x148 Huyay (w27.1) is Huyay ibn Akhtab, one of the chiefs of the Medinan Jewish tribe of Bani Nadir. Huyay participated in their plan to invite the Prophet (Allah bless him and give him peace) to a meal to kill him, but Gabriel warned him of it and he got up and left, after which he sent a messenger telling them that they had vitiated their solemn covenant and would have to leave Medina. The tribe resettled in Khaybar, from whence they endeavored to recoup their losses by sending a delegation of their leaders, among them Huyay, to Mecca to enter into a pact with Abu Sufyan, Safwan ibn Umayya, and other leaders of the Quraysh to extirpate the Muslims. The pact culminated in the Battle of the Confederates, after which Huyay was captured and executed with the Medinan Jewish tribe of Bani Qurayza, whom he had also persuaded to violate their covenant with the Muslims by joining the hostilities against them (*Muhammad* (y75), 203, 215, and 268).

x149 Ibn 'Abbas (b3.2) is 'Abdullah ibn 'Abbas ibn 'Abd al-Muttalib (Allah be well pleased with him), born three years before the Hijra (A.D. 619) in Mecca. He was the cousin and Companion of the Prophet (Allah bless him and give him peace) and kept his company during his lifetime, relating some 1,660 hadiths from him. Among the most knowledgeable of the Companions, much Koranic exegesis is also related from him, and the caliph 'Umar used to call for Ibn 'Abbas when he could not reach a conclusion on a particular legal question, telling him, "This and the likes of it are what you are for," and he would adopt Ibn 'Abbas's judgement on the matter without consulting anyone else. His memory was phenomenal, and when the poet Ibn Abi Rabi' delivered an eighty-stanza ode in his presence, Ibn 'Abbas could recite it by heart upon hearing it the once. The scholar of the Muslims of his time, he was visited by many people seeking knowledge of the lawful and unlawful, poetry, Arabic, and geneology. He went blind in his later years and resided at Ta'if, where he died in 68/687 (*al-A'lam* (y136), 4.95).

x150 Ibn 'Abd al-Barr (w40.5) is Yusuf ibn 'Abdullah ibn Muhammad ibn 'Abd al-Barr, born in Cordova (in present-day Spain) in 368/978. A major hadith master (hafiz), Maliki scholar, and author, he was nicknamed the Hadith Master of the West, and was known for his travels throughout Andalusia in pursuit of hadith. He was appointed to the judiciary more than once, and authored works in hadith, Sacred Law, biographies of famous Muslims, canonical Koranic readings (qira'at), geneology, and history. He died in Shatiba in 463/1071 (*al-A'lam* (y136), 8.240).

x151 Ibn 'Abd al-Salam (*see* (Imam) 'Izz ibn 'Abd al-Salam, x199)

x152 Ibn Abi Khaythama (w40.5) is Ahmad ibn Zuhayr Abi Khaythama ibn Harb ibn Shidad, Abu Bakr al-Nasa'i, born in Baghdad in 185/801. A historian, hadith master (hafiz), and the Imam of his own now-extinct school of jurisprudence, he authored a fifty-volume history entitled *al-Tarikh al-kabir* [The major history], of which Daraqutni said, "I know of no work richer in notes (fawa'id) than his history," but of which only fragments remain. He died in Baghdad in 279/892 (*al-A'lam* (y136), 1.128).

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x153 Ibn 'Ajiba (s4.5) is Ahmad ibn Muhammad ibn al-Mahdi ibn 'Ajiba al-Hasani, born in Morocco in 1160/1747. He was a Maliki scholar, Sufi, and Koranic exegete who authored works in Arabic grammar, Sufism, Maliki biographies, and history, as well as a mystical Koranic exegesis called *al-Bahr al-madid fi tafsir al-Qur'an al-Majid* [The far-stretching sea: an exegesis of the Noble Koran] in four volumes. He took the Shadhili tariqa from the Moroccan master al-'Arabi al-Darqawi by way of his deputy, Muhammad Buzaydi (not the Muhammad Buzidi who was the sheikh of Ahmad al-'Alawi), and Darqawi addresses him in various places of his *al-Rasa'il al-Darqawiyya* [The Darqawi letters]. He is said to have written some seventeen commentaries on the *Hikam* [Aphorisms] of Ibn 'Ata' Illah, of which his *Iqaz al-himam fi sharh al-Hikam* [The awakening of spiritual powers: a commentary on "The aphorisms"] is the most widely known. He died in 'Anjara, Morocco, in 1224/1809 (ibid., 1.245; Sheikh 'Abdullah Muhammad Ghimari; and n).

x154 Ibn 'Amr (w27.1) (*see* 'Abdullah ibn 'Amr, x20)

x155 Ibn 'Ata' (w9.11) is Ahmad ibn Muhammad ibn Sahl ibn 'Ata', Abu al-'Abbas al-Adami, of Baghdad. A Sufi ascetic and devotee, it is related that for a space of years he would recite the whole Koran daily, but later spent more than twenty years finishing it but once, for his pondering its meanings. He died in Baghdad in A.H. 309 (*Siyar a'lam al-nubala'* (y37), 14.255–56).

x156 Ibn 'Ata' Illah (t2.1) is Ahmad ibn Muhammad ibn 'Abd al-Karim. Abu al-Fadl Taj al-Din Ibn 'Ata' Illah al-Iskandari, Sufi Imam and author of *al-Hikam al-'Ata'iyya* [The aphorisms of 'Ata'], one of the greatest works of the Shadhili tariqa, in which he was the second successor to Imam Abul Hasan al-Shadhili himself. Originally from Alexandria, he moved to Cairo, where he attracted a large following and gave public lectures that were well attended. He was a scholar in Arabic grammar, hadith, Koranic exegesis, fundamentals of law and faith, and jurisprudence; and Dhahabi notes that when he spoke at al-Azhar Mosque, he would combine the words of the Sufis with hadiths, stories of the early Muslims, and scholarly topics. Among the words he conveyed from the founder of his order were, "This path is not monasticism, eating barley and bran, or the garrulousness of affectation, but rather perseverence in the divine commands and certainty in the divine guidance." He was also the sheikh of the Shafi'i Imam Taqi al-Din Subki, whose son Taj al-Din feels that Ibn 'Ata' Illah was more probably a Shafi'i than a Maliki, as others have held. But his true legacy lies in the path he served and the disciples he left to further it, their hearts opened to the knowledge of Allah Most High through his instruction in the mystic way, which his *Hikam* and other works amply attest to his profound mastery of. He died in Cairo in 709/1309 (*al-A'lam* (y136), 1.221–22; *al-Durar al-kamina* (y13), 1.273–74; *Tabaqat al-Shafi'iyya al-kubra* (y128), 9.23; and n).

x157 Ibn Daqiq al-'Eid (p75.27) is Muhammad ibn 'Ali ibn Wahb ibn Muti', Abu al-Fath Taqi al-Din al-Qushayri, born in Yanbu' on the Hijaz side of the Red Sea, and known, like his father and grandfather, as Ibn Daqiq al-'Eid. He was a Shafi'i *mujtahid* Imam who was educated in Damascus, Alexandria, and in Cairo, where he was appointed to the judiciary in A.H. 695. One of Islam's great scholars

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in fundamentals of law and belief, he authored *al-Ilmam bi ahadith al-ahkam* [An outline of the hadiths for the rulings of Sacred Law] and other works in law, principles of jurisprudence, hadith, tenets of faith, and poetry, and died in Cairo in 702/1302 (*al-A'lam* (y136), 6.283; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 9.207).

x158 Ibn Hajar (m1.4) (*see* (Imam, Sheikh al-Islam) Ibn Hajar Haytami, x160)

x159 Ibn Hajar 'Asqalani (w29.2(1)) is Ahmad ibn 'Ali ibn Muhammad al-Kinani, Abu al-Fadl Shihab al-Din Ibn Hajar al-'Asqalani, born in Cairo in 773/1372. A Shafi'i Imam and hadith master (hafiz), he reached the level of Commander of the Faithful in Hadith, the only rank above that of hadith master (hafiz). He first learned literature and poetry, but then devoted his considerable talents to hadith, which he studied under the renowned African master al-Zayla'i and others in Cairo, Yemen, and the Hijaz. His works were popular in his own lifetime and were hand-copied by the greatest scholars of the era and given by kings to one another as gifts. Known as Sheikh al-Islam, scholars travelled to take knowledge from him, and he was appointed to the judiciary in Egypt several times. He authored a number of works on hadith, history, biography, Koranic exegesis, poetry, and Shafi'i jurisprudence, among the most famous of them his fourteen-volume *Fath al-Bari bi sharh Sahih al-Bukhari* [The victory of the Creator: a commentary on the "Sahih" of Bukhari] which few serious students of Islamic knowledge can do without. He died in Cairo in 852/1449 (*al-A'lam* (y136), 1.178; Sheikh Shu'ayb Arna'ut; Sheikh Hasan Saqqaf; and A).

x160 (Imam, Sheikh al-Islam) Ibn Hajar Haytami (o25.0) is Ahmad ibn Muhammad ibn 'Ali ibn Hajar, Abu al'Abbas Shihab al-Din al-Haytami al-Makki, born in 909/1504 in Abu Haytam, western Egypt. He was the Shafi'i Imam of his time, a brilliant scholar of in-depth applications of Sacred Law, and with Imam Ahmad al-Ramli, represents the foremost resource for legal opinion (fatwa) for the entire late Shafi'i school. He was educated at al-Azhar, but later moved to Mecca, where he authored major works in Shafi'i jurisprudence, hadith, tenets of faith, education, hadith commentary, and formal legal opinion. His most famous works include *Tuhfa al-muhtaj bi sharh al-Minhaj* [The gift of him in need: an explanation of "The road"], a commentary on Nawawi's *Minhaj al-talibin* [The seekers' road] whose ten volumes represent a high point in Shafi'i scholarship; the four-volume *al-Fatawa al-kubra al-fiqhiyya* [The major collection of legal opinions]; and *al-Zawajir 'an iqtiraf al-kaba'ir* [Deterrents from committing enormities], which with its detailed presentation of Koran and hadith evidence and masterful legal inferences, remains unique among Muslim works dealing with godfearingness (taqwa) and is even recognized by Hanafi scholars like Ibn 'Abidin as a source of authoritative legal texts (nusus) valid in their own school. After a lifetime of outstanding scholarship, the Imam died and was buried in Mecca in 974/1567 (*al-A'lam* (y136), 1.234; A; and n).

x161 Ibn Hazm (b3.2) is 'Ali ibn Ahmad ibn Sa'id, Abu Muhammad ibn Hazm al-Zahiri, born in Cordova (in present-day Spain) in 384/994. A gifted author, minister in government, poet, and the scholar of Andalusia in his era, he followed Imam Dawud al-Zahiri ("the literalist"), a student of Imam Shafi'i who accepted

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only the Koran, hadith, and scholarly consensus (ijma') as sources of evidence in Sacred Law, denying the validity of analogical reasoning (qiyas). As nothing remains of Dawud's writings, Ibn Hazm, with the Sufi Muhyiddin ibn al-'Arabi, remains virtually the only written representative of the Zahiri school.

Though he authored works on heresiology, poetry, logic, history, biography, grammar, and fundamentals of Islamic Law, Ibn Hazm is perhaps most famous for an eleven-volume work in his own school of jurisprudence entitled *al-Muhalla* [The embellished], whose good aspects are somewhat alloyed with bitter attacks on other Imams of jurisprudence, misrepresentations of their lines of evidence, and abuse of any who would disagree with his own methodological premises, none of which have traditionally been the hallmarks of Islamic scholars. Were one to eliminate these features from it, as Ibn al-'Arabi did in an unfortunately lost work, much would remain that would be valuable. Ibn Hajar 'Asqalani praises Ibn Hazm's accuracy in relating hadiths, and because of his extremism in restricting the validity of scholarly consensus (ijma') to the prophetic Companions exclusively, when he does report consensus on an issue, it carries particular weight. His acrimonious way of making a case against opponents has endeared him to some contemporary Muslim students, but few of the great scholars of Islam have accepted many of his premises or conclusions, not only because of his unfair attacks and misrepresentations, but also because of the inflexibility of the Zahiri school's method, whose inability to use analogy makes it something of a dinosaur in dealing with a changing world. The scholars of his time agreed that Ibn Hazm was misguided, warned their rulers against the strife he was causing, and the common people from approaching him, and he was exiled and fled to Labla in the Andalusian countryside, where he died in 456/1064 (*al-A'lam* (y136), 4.254; N; and n).

x162 Ibn Hibban (g1.1) is Muhammad ibn Hibban ibn Ahmad ibn Hibban ibn Mu'adh ibn Ma'bad, Abu Hatim al-Tamimi al-Busti, born in Bust (in present-day Afghanistan). A Shafi'i Imam and hadith master (hafiz), he was an extremely prolific author whom Yaqut once said "produced works in the sciences of hadith that no one else could have written." In his search for knowledge of hadith, he travelled to Khurasan, Syria, Egypt, Iraq, the Arabian Peninsula, and Nishapur, before returning to his native city, after which he served as a judge for a period in Samarkand. He authored *al-Anwa' wa al-taqasim* [Types and categories], also known as *al-Musnad al-sahih* [Authenticated ascribed traditions] and other voluminous works in hadith, encyclopediology, biography, and history, and died in Bust in 354/965 (*al-A'lam* (y136), 6.78; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 3.131).

x163 Ibn Jawzi (*see* 'Abd al-Rahman ibn Jawzi, x12)

x164 (Imam) Ibn Juzayy (w57.2) is Muhammad ibn Ahmad ibn Muhammad ibn 'Abdullah, Abu al-Qasim Ibn Juzayy al-Kalbi of Granada (in present-day Spain), born in 693/1294. He was a Maliki scholar and Imam in Koranic exegesis and Arabic lexicology who also did research in fundamentals of Sacred Law and hadith. His Koranic commentary *al-Tashil li 'ulum al-Tanzil* [The facilitation of the sciences of the Revelation] enjoys a prodigious reputation and is widely quoted. He died in 741/1340 (*al-A'lam* (y136), 5.325; and n).

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x165 Ibn Kathir (Introduction) is Isma'il ibn 'Umar ibn Kathir ibn Daww ibn Dara', Abu al-Fida' 'Imad al-Din, born in 701/1302 in a village outside of Damascus, where he moved with his brother at the age of five. He later travelled in pursuit of Sacred Knowledge, becoming a principle Shafi'i scholar, hadith master (hafiz), and historian who authored works in each of these fields, though he is perhaps best known for his four-volume *Tafsir al-Qur'an al-'Azim* [Commentary on the Mighty Koran], which reflects its author's magisterial command of the sciences of hadith. He died in Damascus in 774/1373 (*al-A'lam* (y136), 1.320).

x166 Ibn Khafif (w9.11) is Muhammad ibn Khafif ibn Isfikshar, Abu 'Abdullah al-Shirazi, born in 276/890. The son of a prince, he later turned to asceticism, wandered much, and became a Sufi of whom Sulami said, "He is today the Sheikh of Sheikhs.... No Sufi remains who is more advanced than he. He kept the company of Ruwaym ibn Ahmad and Ibn 'Ata', met al-Hallaj, and is among the most knowledgeable sheikhs in outward learning, strictly adhering to the Koran and sunna, a Shafi'i scholar." He lived in Shiraz, Persia, where he died at ninety-five years of age in 371/982 (ibid., 6.114; and *Siyar a'lam al-nubala'* (y37), 16.342–47).

x167 Ibn Khaldun (b3.1) is 'Abd al-Rahman ibn Muhammad ibn Muhammad, Abu Zayd Ibn Khaldun, born in Tunis in 732/1332. He was a philosopher and historian who grew up in Tunis and travelled to Tlemcen, Fez, Granada, and Andalusia, where he was appointed to various governmental positions, which he lost through the vicissitudes of the day and eventually returned to Tunis. He then set out for Egypt, where the sultan al-Zahir welcomed and honored him, appointing him to the Maliki judgeship, a position from which he was dismissed for preferring his native Tunisian dress during the hours of work over the customary judicial robes, but to which he was later reinstated. He is most famous for his seven-volume *al-'Ibar wa diwan al-mubtadi' wa al-khabar fi tarikh al-'arab wa al-'ajam wa al-barbar* [The reflections and record of subject and predicate: a history of the Arabs, Persians, and Berbers], whose *al-Muqaddima* [The prolegomenon] is considered the world's first work on social theory. He died in Cairo in 808/1406 (*al-A'lam* (136), 3.330).

x168 Ibn Khuzayma (w40.5) is Muhammad ibn Ishaq ibn Khuzayma, Abu Bakr al-Sulami, born in Nishapur, Persia, in 223/838. He was a Shafi'i scholar and *mujtahid*, the Imam of Nishapur in his time, a hadith specialist who travelled for Sacred Knowledge to Iraq, Syria, the Arabian Peninsula, and Egypt. He authored more than 140 works, among them his main contribution to the science of hadith, *Mukhtasar al-Mukhtasar* [The abridgement of "The abridgment"], also known as his *Sahih*. He died in Nishapur in 311/924 (ibid., 6.29; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 3.109).

x169 Ibn Ma'in (w48.2) is Yahya ibn Ma'in ibn 'Awn ibn Ziyad, Abu Zakariyya al-Baghdadi, born in Niqya, a village near al-Anbar, Iraq, in 157/775. Among the greatest Imams of hadith and in knowledge of its narrators, Imam Ahmad referred to him as "the most knowledgeable of us in transmitters of hadith," and Dhahabi called him the "Master of Hadith Masters." His father left him a large fortune which he spent in learning and gathering hadiths. He once said, "I have written a million hadiths with my hand." He lived in Baghdad, authored a number

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of valuable works on the sciences of hadith, and died while on hajj in 233/848 (*al-A'lam* (y136), 8.172–73).

x170 Ibn Majah (Introduction) is Muhammad ibn Yazid al-Rub'i, Abu 'Abdullah Ibn Majah al-Qazwini, of Qazvin, Persia, born in 209/824. He was a hadith master (hafiz), Imam, and Koranic exegete whose travels in pursuit of knowledge of hadith led him to Basra, Baghdad, Syria, Cairo, the Hijaz, and Rayy, and enabled him to author his *Sunan* [Sunnas], one of the six principle collections of Sunni Islam. He died in 273/887 (ibid., 7.144; and *al-Targhib wa al-tarhib* (y9), 1.21).

x171 Ibn Mas'ud (b3.2) is 'Abdullah ibn Mas'ud ibn Ghafil ibn Habib, Abu 'Abd al-Rahman al-Hadhali (Allah be well pleased with him), of Mecca. One of the greatest of the Companions in virtue, intelligence, and in closeness to the Prophet (Allah bless him and give him peace), he was among the earliest converts to Islam, the first to recite the Holy Koran aloud in Mecca, and a trusted servant of the Prophet (Allah bless him and give him peace) who kept his secrets, carried his sandals, and accompanied him while travelling or at home. 'Umar once referred to him as "a vessel replete with knowledge." He made both the emigration to Ethiopia and to Medina, was present at the battle of Badr and all the others, and was put in charge of the Muslim common fund (bayt al-mal) at Kufa after the Prophet's death (Allah bless him and give him peace), though he returned to Medina during the caliphate of 'Uthman. He loved perfume and when he left home, people could tell where he had passed by the beautiful scent. Among the great scholars of the Companions, he related 848 hadiths, and died in Medina in 32/653 at about sixty years of age (*al-A'lam* (y136), 4.137; and *al-Shifa* (y116), 1.214).

x172 Ibn al-Mubarak (w18.2) is 'Abdullah ibn al-Mubarak ibn Wadih, Abu 'Abd al-Rahman al-Hanzali al-Tamimi, originally of Merv (in present-day Turkmen S.S.R), born in 118/736. He was a hadith master (hafiz) and scholar of Sacred Law and Arabic who spent nearly his whole life travelling, whether for hajj, jihad, or trade, and he joined in his person between learning, generosity, and courage. The first author in Islam to produce a work on jihad, he died in Hit, Iraq, after a battle with the Byzantines in 181/797 (*al-A'lam* (y136), 4.115).

x173 Ibn Naqib (*see* Ahmad ibn Naqib al-Misri, x76)

x174 Ibn al-Qayyim (w18.7) is Muhammad ibn Abu Bakr ibn Ayyub ibn Sa'd, Abu 'Abdullah al-Zura'i Ibn Qayyim al-Jawziyya, born in Damascus in 691/1292. He was a Hanbali hadith scholar and author who wrote a number of works, among them *Zad al-ma'ad* [The provision for the return] in hadith, and *I'lam al-muwaqqi'in* [The instruction of those who sign formal legal opinions] in fundamentals of Islamic law. His most significant contribution however, was his editing and preparing for publication the writings of Ibn Taymiya, whose devoted pupil he was. He went to prison with his sheikh in the citadel of Damascus and suffered with him until Ibn Taymiya's death in 728/1328, when he was released. He thereafter worked to spread and popularize the master's ideas, as dedicated to him after his death as he had been in life, supporting him in what was right and what

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was wrong. A specimen of the latter is Ibn al-Qayyim's *al-Qasida al-nuniyya* [Ode rhyming in the letter *n*], a lengthy poem on tenets of faith that is filled with corrupt suggestions about the attributes of God, which Imam Taqi al-Din Subki analyses in detail in his *al-Sayf al-saqil* [The burnished sword], giving the verdict that the poem's anthropomorphisms of the Divinity are beyond the pale of Islam. The poem could not be openly circulated in Ibn al-Qayyim's lifetime but only secretly, and it seems that he never abandoned it, for the Hanbali historian and biographer Ibn Rajab heard it from its author in the year of his death.

A second unfortunate peculiarity the poem shares with some of Ibn al-Qayyim's other works on Islamic faith is that it presents the reader with a false dilemma, namely that one must either believe that Allah has eyes, hands, a descending motion, and so forth, in a *literal* (haqiqi) sense, or else one has nullified ('attala) or negated (nafa) these attributes. And this is erroneous, for the *literal* is that which corresponds to an expression's primary lexical sense as ordinarily used in a language by the people who speak it, while the above words are clearly intended otherwise, in accordance with the Koranic verse, "There is nothing whatsoever like unto Him" (Koran 42:11), for if the above were intended literally, there would be innumerable things like unto Him in such respects as having eyes, hands, motion, and so forth, in the literal meaning of these terms. The would-be dilemma is also far from the practice of the early Muslims, who used only to accept such Koranic verses and hadiths as they have come, consigning the knowledge of what is meant by them—while affirming Allah's absolute transcendence above any resemblance to created things—to Allah Most High alone, without trying to determinately specify how they are meant (bi la kayf), let alone suggesting people understand them *literally* (haqiqatan) as Ibn al-Qayyim tried to do.

While granting that his other scholarly achievements are not necessarily compromised by his extreme aberrances in tenets of faith, it should not be forgotten that depicting the latter as a "reform" or "return to early Islam" represents a blameworthy innovation on his part that appeared more than seven centuries after the time of the Prophet (Allah bless him and give him peace) and his Companions. A particularly unsavory aspect of it is that in his attempts to vindicate the doctrine, Ibn al-Qayyim casts aspersions upon the Islam of anyone who does not subscribe to it, at their forefront the Ash'ari school, whom his books castigate as "Jahmiyya" or "Mu'attila," implying, by equating them with the most extreme factions of the Mu'tazilites, that they deny any significance to the divine attributes, a misrepresentation that has seen a lamentable recrudescence in parts of the Muslim world today. Whether such views are called "fundamentalism" or some other name, the scholars of the Muslims remember history, and that it was Abu Hanifa who first observed, "Two depraved opinions have reached us from the East, those of Jahm, the nullifier of the divine attributes [dis: x202], and those of Muqatil [n: ibn Sulayman al-Balkhi, d. ca. A.H. 150], the likener of Allah to His creation." To make of these two an either-or for Muslims, or depict the latter as "sunna" when it has been counted among heresies and rejected by the Muslim Community for the first seven centuries of Islam that preceded Ibn al-Qayyim and his mentor Ibn Taymiya, is to say the least difficult to accept, and it would seem fitter to simply acknowledge that Ibn al-Qayyim was a talented author in fundamentals of law, hadith, and other fields, but unfortunately enamored with his teacher to the extent of following him in innovations (bid'a) in tenets of faith and

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misrepresenting the positions of those who opposed them. He died in Damascus in 751/1350 (*al-A'lam* (y136), 6.56; *al-Sayf al-saqil* (y70), 2–192; *Sharh al-Qasida al-nuniyya* (y45), 1.268–88; *Siyar a'lam al-nubala'* (y37), 7.202; and n).

x175 Ibn Qudama (w18.2) is 'Abdullah ibn Muhammad ibn Qudama, Abu Muhammad Muwaffaq al-Din al-Jama'ili al-Maqdisi, born in Jama'il, Palestine, in 541/1146. A Hanbali scholar and Imam, he was educated in Damascus, and was the author of the nine-volume *al-Mughni* [The enricher] in Hanbali jurisprudence as well as other works in fundamentals of Sacred Law, tenets of faith, geneology, biography, and Koranic exegesis. He travelled to Baghdad in A.H. 561 and lived there four years before returning to Damascus, where he died in 620/1223. Both he and the subject of the next entry were called Ibn Qudama al-Maqdisi, as were others, all from a single family that was blessed with Hanbali scholars (*al-A'lam* (y136), 4.67; and n).

x176 Ibn Qudama al-Maqdisi (q0.1) is Ahmad ibn 'Abd al-Rahman ibn Muhammad ibn Ahmad ibn Muhammad ibn Qudama al-Maqdisi, born in Damascus in 651/1253. He studied hadith and Hanbali jurisprudence with his father, who was head of the judiciary (qadi al-qudah), and when he was himself appointed as a judge before thirty years of age, he performed the office diligently and well. A Hanbali scholar of great personal virtue and integrity, he taught at many schools in Damascus, and was a well-known preacher at Friday prayers on Mount Qasiyun. He participated in the campaign in which the sultan Malik Mansur liberated Tripoli, Lebanon, from foreign occupation, and died in Damascus at thirty-eight years of age in 689/1290 (*Mukhtasar Minhaj al-qasidin* (y62), 8).

x177 Ibn Salah (b7.6) is 'Uthman ibn 'Abd al-Rahman Salah al-Din ibn 'Uthman ibn Musa, Abu 'Amr Taqi al-Din al-Shahrazuri, born in Sharkhan of Kurdish descent in 577/1181. One of the greatest Shafi'i Imams in knowledge and godfearingness, he was a hadith master (hafiz) who studied in Mosul, Baghdad, Nishapur, Merv, and in Damascus under Hanbali Imam Muwaffaq al-Din Ibn Qudama al-Maqdisi. He taught for a period in the Salahiyya School in Jerusalem, after which he returned to Damascus, where he was appointed as the head of Dar al-Hadith. He authored a number of works in Shafi'i jurisprudence, Koranic exegesis, hadith, the methodology of formal legal opinion, and biography, and died in Damascus in 643/1245 (*al-A'lam* (y136), 4.207–8; *Tabaqat al-Shafi'iyya al-kubra* (y128), 8.326; and Sheikh Hasan Saqqaf).

x178 Ibn Taymiya (p75.23) is Ahmad ibn 'Abd al-Halim ibn 'Abd al-Salam ibn 'Abdullah, Abu al-'Abbas Taqi al-Din Ibn Taymiya al-Harrani, born in Harran, east of Damascus, in 661/1263. A famous Hanbali scholar in Koranic exegesis, hadith, and jurisprudence, Ibn Taymiya was a voracious reader and author of great personal courage who was endowed with a compelling writing style and a keen memory. Dhahabi wrote of him, "I never saw anyone faster at recalling the Koranic verses dealing with subjects he was discussing, or anyone who could remember hadith texts more vividly." Dhahabi estimates that his legal opinions on various subjects amount to three-hundred or more volumes.

He was imprisoned during much of his life in Cairo, Alexandria, and Damascus for his writings, scholars of his time accusing him of believing Allah to be a cor-

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poreal entity because of what he mentioned in his *al-'Aqida al-Hamawiyya*, and *al-Wasitiyya* and other works, such as that Allah's 'hand', 'foot', 'shin', and 'face', are literal (haqiqi) attributes, and that He is upon the Throne in person. The error in this, as mentioned above at x174, is that suggesting such attributes are literal is an innovation and unjustifiable inference from the Koranic and hadith texts that mention them, for the way of the early Muslims was mere acceptance of such expressions on faith without saying how they are meant, and without additions, subtractions, or substituting meanings imagined to be synonyms, while acknowledging Allah's absolute transcendence beyond the characteristics of created things, in conformity with the Koranic verse, "There is nothing whatsoever like unto Him" (Koran 42:11). As for figurative interpretations that preserve the divine transcendence, scholars of tenets of faith have only had recourse to them in times when men of reprehensible innovations (bid'a), quoting hadiths and Koranic verses, have caused confusion in the minds of common Muslims as to whether Allah has attributes like those of His creation or whether He is transcendently beyond any image conceivable to the minds of men. Scholars' firmness in condemning those who have raised such confusions has traditionally been very uncompromising, and this is no doubt the reason that a number of the Imams of the Shafi'i school, among them Taqi al-Din Subki, Ibn Hajar Haytami, and al-'Izz Ibn Jama'a, gave formal legal opinions that Ibn Taymiya was misguided and misguiding in tenets of faith, and warned people from accepting his theories. The Hanafi scholar Muhammad Zahid al-Kawthari has written, "Whoever thinks that all the scholars of his time joined in a single conspiracy against him from personal envy should rather impugn their own intelligence and understanding, after studying the repugnance of his deviations in belief and works, for which he was asked to repent time after time and moved from prison to prison until he passed on to what he'd sent ahead."

While few deny that Ibn Taymiya was a copious and eloquent writer and hadith scholar, his career, like that of others, demonstrates that a man may be outstanding in one field and yet suffer from radical deficiencies in another, the most reliable index of which is how a field's Imams regard his work in it. By this measure, indeed, by the standards of all previous Ahl al-Sunna scholars, it is clear that despite a voluminous and influential written legacy, Ibn Taymiya cannot be considered an authority on tenets of faith, a field in which he made mistakes profoundly incompatible with the beliefs of Islam, as also with a number of his legal views that violated the scholarly consensus (ijma') of Sunni Muslims. It should be remembered that such matters are not the province of personal reasoning (ijtihad), whether Ibn Taymiya considered them to be so out of sincere conviction, or whether simply because, as Imam Subki said, "his learning exceeded his intelligence." He died in Damascus in 728/1328 (*al-A'lam* (y136), 1.144; *al-Durar al-kamina* (y13), 1.144 55; *al-Fatawa al-hadithiyya* (y48), 114; *al-Rasa'il al-Subkiyya* (y52), 151–52; *al-Sayf al-saqil* (y70), 6; Sheikh Hasan Saqqaf; and n).

x179 Ibn 'Umar (b3.2) is 'Abdullah ibn 'Umar ibn al-Khattab, Abu 'Abd al-Rahman al-'Adawi (Allah be well pleased with him), born to one of the noblest families of the Quraysh in Mecca ten years before the Hijra (A.D. 613). He was a Companion of the Prophet (Allah bless him and give him peace) who emigrated to Medina with his father 'Umar ibn Khattab and was raised in Islam. Though too young to fight at Badr, he was daring and courageous, and participated in the Bat-

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tle of the Confederates and the conquest of Mecca. One of the most knowledgeable of the Companions, he gave formal legal opinions to Muslims for sixty years and related 2,630 hadiths. He fought in jihad in North Africa on two separate campaigns, lost his eyesight at the end of his life, and was the last of the Companions to die in Mecca, in 73/692 (*al-A'lam* (y136), 4.108; and n).

x180 Ibrahim (f8.45) is Ibrahim ibn Tarikh ibn Azar ibn Takhur ibn Sharukh ibn Arghu ibn Faligh (upon whom be peace), the prophet and messenger of Allah Most High. The blessing upon "Ibrahim and the *folk* of Ibrahim" in the final Testification of Faith (Tashahhud) of the prayer (salat) refers to the prophets, *siddiqs* (great-faithed ones), martyrs, and pious of his descendants, for all the prophets (upon whom peace) of Bani Isra'il were descended from Ishaq, Ibrahim's son by Sarah, while the only prophet descended from Isma'il, his son by Hajar, was the Prophet Muhammad (Allah bless him and give him peace). Ibrahim is mentioned in various places in the Holy Koran, which records how he built the Kaaba with his son Isma'il, how he smashed the idols of his people, and how he obeyed what he was bidden to do in a dream by going to sacrifice his son, who did not have to be sacrificed in the end, but for which Ibrahim became the Friend of the All-merciful (Khalil al-Rahman). He is buried in al-Khalil (Hebron) in Palestine (*al-Futuhat al-ilahiyya* (y65), 1.102; *al-Futuhat al-rabbaniyya* (y26), 2.348; and n).

x181 Ibrahim (g6.3) is Ibrahim ibn Muhammad ibn 'Abdullah, born to the Messenger of Allah (Allah bless him and give him peace) of Mariya the Copt, the Prophet's concubine who was given to him by the Muqawqis of Alexandria. Ibrahim was born in A.H. 8, and when he died before reaching two full years of age, the Prophet (Allah bless him and give him peace) said, "Verily, O Ibrahim, we are in deep sorrow over your departure" (Sheikh Yunus Hamdan; and n).

x182 Ibrahim ibn Adham (r2.13) is Ibrahim ibn Adham ibn Mansur, Abu Ishaq al-Tamimi al-Balkhi, an early Sufi saint and ascetic. Originally born into a wealthy family of Balkh (in present-day Afghanistan), he eschewed the comfortable life, studied Sacred Law, and then travelled to Baghdad, after which he wandered at length through Iraq, Syria, and the Hijaz, taking knowledge from many famous scholars while supporting himself by working as a reaper, porter, guard for orchards, and miller. He fought in jihad against the Byzantines, and when a slave brought him the news at Massisa (south of present-day Antakya, Turkey) that his father had died, leaving him a tremendous fortune in Balkh of which the slave was carrying ten thousand dirhams, Ibrahim freed him and gave him the dirhams, informing him that he had no desire for the rest. He used to fast whether travelling or not, always spoke faultless Arabic, and many of his sayings have been preserved. When he attended the homilies of Sufyan al-Thawri, the latter would curtail his words for fear of making a mistake. He died, probably at Sufnan on the southern Byzantine frontier, in 161/778 (*al-A'lam* (y136), 1.31; and n).

x183 (Sheikh) Ibrahim Bajuri (*see* Bajuri, x100)

x184 Ibrahim al-Ghazzi (Introduction) is Ibrahim ibn Tayyib al-Ghazzi, a teacher in the school of Islamic judiciary in Zabadani, northwest of Damascus,

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and the sheikh and mentor of Sheikh 'Abd al-Wakil Durubi, who was with him from approximately 1933 to 1950 (n).

x185 Idris (u3.5) is a prophet of Allah Most High whose true name, according to commentators, was Akhnukh ibn Shith ibn Adam (upon whom be peace). The grandfather of the prophet Nuh, he was called "Idris" for his devoted study (darasa) of Sacred Scripture, since when Allah made him a prophet, He revealed to him thirty-three pages. He was a tailor, and the first to write with a pen, sew, and wear cloth garments (skins were worn before him), the first to take weapons and fight unbelievers in jihad, and the first to study astronomy and mathematics. He is mentioned in the Holy Koran (19:56–57), where he is described as a *siddiq* (lit. "great-faithed one") and prophet, and Allah says, "We raised him to a high place," which refers to the fourth heaven where he presently is, having been seen there by the Prophet (Allah bless him and give him peace) on the night of his nocturnal ascent (mi'raj), as mentioned in a rigorously authenticated (sahih) hadith (*al-Futuhat al-ilahiyya* (y65), 3.67).

x186 Ilyas (u3.5) is Ilyas ibn Yasin ibn Fanhas ibn 'Izar ibn Harun ibn 'Imran (upon whom be peace), a prophet of Allah Most high who was a descendant of the prophet Harun, brother of Musa (upon whom be peace). Commentators relate that he was sent to a tribe of Bani Isra'il who lived around Baalbek (in present-day Lebanon) under King Arhab, who erected a huge gold statue with four faces that he called Baal and had them worship. Satan used to enter the statue and issue commands and prohibitions to its priests, who would memorize his directives and convey them to the people, while Ilyas called them to the worship of the one God. As Ilyas saw that the people but followed their king, he convinced the king to enter his religion, and there was a period of guidance, after which the king forsook the true path and returned to his former ways, with great anger and spite against Ilyas. He was forced to flee to the mountains and live in caves and ravines on herbs and fruits, while the people sought in vain to find and slay him. After living thus for seven years, Ilyas supplicated Allah Most High to relieve him of them, and Allah made his companion al-Yasa' a prophet in his stead (ibid., 2.58, 3.550).

x187 ("Imam ...") (*see under proper name*)

x188 al-'Iraqi (w12.2) is 'Abd al-Rahman ibn al-Husayn ibn 'Abd al-Rahman, Abu al-Fadl Zayn al-Din al-Hafiz al-'Iraqi, born in 725/1325 in Razanan, near Arbil, Iraq. A Shafi'i scholar of Kurdish origin, he moved with his father while still young to Cairo, where he was educated and became one of the greatest hadith masters (huffaz) of his time. He travelled to the Hijaz, Syria, and Palestine before returning to Egypt, where he settled and authored works in hadith, fundamentals of Islamic law and faith, principles of jurisprudence, prophetic biography, and biographies of Islamic scholars. He died in Cairo in 806/1404 (*al-A'lam* (y136), 3.344; and Sheikh Shu'ayb Arna'ut).

x189 'Isa (u3.5) is 'Isa ibn Maryam (upon whom be peace), the prophet and messenger of Allah Most High to Bani Isra'il, who denied him and plotted against him. He was known as the Word of God because Allah created him without a father by the mere word "be" (kun), whereupon his mother Maryam conceived

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him. Among the inimitable prophetic miracles (mu'jizat) vouchsafed to him was that by the leave of Allah he raised the dead, made the blind see, healed lepers, and when he molded a bird from clay and breathed into it, it became a living bird. It is related that when the Sacred Law was summarized before him by a lawyer in the words "It is that you love the Lord your God with your whole heart, whole soul, whole strength and whole mind; and that you love neighbor as yourself," 'Isa confirmed him in this. When Bani Isra'il wanted to kill him, Allah Most High saved him, as described in the words of the Holy Koran, "They did not slay him or crucify him, but thus was it made to seem to them" (Koran 4:157), referring to when Yahuda, chief of the Jews, met with a band of his people to kill 'Isa out of fear of his message, but Allah sent Gabriel to 'Isa to lead him to a covered alleyway that had a skylight, through which he was taken up to the sky. When Yahuda, in pursuit, ordered one of his companions to follow him into the passageway and murder him, Allah cast the likeness of 'Isa upon the man as he entered, and when he came out again after a fruitless search, the Jews attacked and killed him, thinking him to be 'Isa, and hung him upon a cross (*al-Shifa* (y116), 1.192; *al-Siraj al-munir* (y72), 1.213, 1.216–17, 1.220; and n).

x190 Isaaq (*see next entry*)

x191 Ishaq (u3.5) is Ishaq ibn Ibrahim ibn Tarikh ibn Azar (upon whom be peace), the prophet of Allah Most High and son of the prophet Ibrahim and Sarah. All the prophets of Bani Isra'il were descended from Ibrahim through him, and commentators relate that he lived 180 years (*al-Futuhat al-ilahiyya* (y65), 1.102, 2.57).

x192 Ishaq (w55.3) (*see next entry*)

x193 Ishaq ibn Rahawayh (w18.2) is Ishaq ibn Ibrahim ibn Mukhallad, Abu Ya'qub Ibn Rahawayh al-Hanzali al-Tamimi, originally of Merv (in present-day Turkmen S.S.R.), born in 161/778. The scholar of Khurasan of his time, he is counted among the great hadith masters (huffaz) of Islam. He travelled in pursuit of knowledge to Iraq, the Hijaz, Syria, and Yemen, hearing hadiths from such sheikhs as Ahmad, Bukhari, Muslim, Tirmidhi, Nasa'i, and others, and he authored numerous works in the science, including his four-volume *Musnad* [Ascribed traditions]. Khatib Baghdadi once said of him, "He combined in his person hadith, Sacred Law, scholarship, truthfulness, piety, and abstinence," and Darami observed, "His sincerity was greater than the peoples of the east and west." He settled in Nishapur, and died there in 238/853 (*al-A'lam* (y136), 1.292).

x194 Ishmael (*see next entry*)

x195 Isma'il (u3.5) is Isma'il ibn Ibrahim ibn Tarikh ibn Azar (upon whom be peace), the prophet of Allah Most High. The son of Ibrahim and Hajar, he was born before the prophet Ishaq, and was eighty-nine years old when his father died, after which he lived another forty-one years. He is called the Father of the Arabs because he married into the tribe of Jurhum, from whom the Arabs are descended (*al-Futuhat al-ilahiyya* (y65), 1.102, 2.57; and *al-Shifa* (y116), 1.296).

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x196 Isma'il Ansari (w48.3) is Isma'il ibn Muhammad al-Ansari, a contemporary Egyptian scholar of hadith and Sacred Law who works at the Department of Islamic Legal Opinion (Da'ira al-Ifta') in Riyadh, Saudi Arabia (A; and N).

x197 Israfil (u3.3) is one of the Archangels, and is responsible for blowing into the *Sur*, a horn-like trumpet whose call will usher in the events of the Last Day (*al-Shifa* (y116), 1.709; and n).

x198 Isra'il (w31.1) is Isra'il ibn Yunus ibn Abi Ishaq 'Amr ibn 'Abdullah, Abu Yusuf al-Hamdani al-Shaybi'i of Kufa, born in A.H. 100. He was a memorizer and trustworthy narrator whose hadiths appear in the works of both Bukhari and Muslim. It is related that he had a book of hadiths he memorized from. Shaqiq al-Balkhi said of him, "I learned awe (khushu') from Isra'il. We would be around him, and he would not know who was on his right or left, for his absorption in the hereafter, so I knew him for a pious man." He died in A.H. 160 (*Siyar a'lam al-nubala'* (y37), 7.355–60).

x199 (Imam) 'Izz ibn 'Abd al-Salam (p77.3) is 'Abd al-'Aziz ibn 'Abd al-Salam ibn Abu al-Qasim ibn al-Hasan, 'Izz al-Din al-Sulami, nicknamed the Sultan of Scholars, born in Damascus in 577/1181. A Shafi'i scholar and *mujtahid* Imam, he was educated in Damascus, went to Baghdad in A.H. 599, and then returned to his native city, where he first taught and gave the Friday sermon at the Zawiya of al-Ghazali, and then at the Great Umayyad Mosque. When the ruler al-Salih Isma'il ibn al-'Adal willingly surrendered the Palestinian citadel of Safad to the Franks, Ibn 'Abd al-Salam condemned him from the pulpit and omitted mentioning him in the post-sermon prayer, for which he was imprisoned. Upon his release, he moved to Cairo, where he was appointed as judge and imam of the Friday prayer, gaining such public influence that he could (and did) command the right and forbid the wrong with the force of law. He later resigned from the judiciary and remained at home to produce a number of brilliant works in Shafi'i jurisprudence, Koranic exegesis, methodological fundamentals of Sacred Law, formal legal opinion, government, and Sufism, though his main and enduring contribution was his masterpiece on Islamic legal principles *Qawa'id al-ahkam fi masalih al-anam* [The bases of legal rulings in the interests of mankind]. It is recorded that he kept the company of Imam Abul Hasan al-Shadhili, founder of the Shadhili tariqa, and his works on Sufism bespeak an understanding of the way. He died in Cairo at the age of eighty-one in 660/1262 (*al-A'lam* (y136), 4.21; *al-Imam al-'Izz ibn 'Abd al-Salam* (y38), 1.130–31; and n).

x200 Jabir (f10.12) is Jabir ibn 'Abdullah ibn 'Amr ibn Haram al-Khazraji (Allah be well pleased with him), a Medinan Helper and Companion of the Prophet (Allah bless him and give him peace) who was born sixteen years before the Hijra (A.D. 607). He participated in all the Muslims' battles except Badr. A prolific narrator of hadith, 1,540 traditions have been related from him by Bukhari, Muslim, and others. In later years he used to teach in the Prophet's mosque, and was the last of the Companions to die at Medina, in 78/697 (*al-A'lam* (y136), 2.104; and *al-Shifa* (y116), 1.154).

x201 Jabir ibn 'Abdullah (w53.1) (*see previous entry*)

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x202 Jahm (w55.3) is Jahm ibn Safwan, Abu Muhriz al-Rasibi of Samarkand (in present-day Uzbek S.S.R.), a writer who inaugurated reprehensible innovations (bid'a) in tenets of faith, founding the Jahmiyya school that bore his name. His doctrines first appeared in Termez, and represented among other things a denial of the Divine attributes affirmed by the Koran and hadith, claiming that Allah was beyond them; that man's acts were purely determined by Allah; that Allah was "everywhere"; and that the Koran was created. He was killed by Salam ibn Ahwaz in Merv (in present-day Turkmen S.S.R.) in 128/745 for denying that Allah spoke to Moses (*al-A'lam* (y136), 2.141; *Sharh al-sunna* (y22), 1.172; and *Siyar a'lam al-nubala'* (y37), 6.26–27).

x203 Jalal al-Din Suyuti (*see* Suyuti, x341)

x204 Jalal Bulqini (w12.3) is 'Abd al-Rahman ibn 'Umar ibn Ruslan, Abu al-Fadl Jalal al-Din al-Kinani al-Bulqini, born in 763/1362. He was an Egyptian Shafi'i scholar and hadith specialist who succeeded his father Siraj al-Din as the foremost Shafi'i authority of his time for formal legal opinion (fatwa). Appointed to the Islamic judiciary in Egypt several times, he served as a judge until the end of his life, and authored works in Sacred Law, Koranic exegesis, hadith commentary, and admonitions (wa'z). He died in Cairo in 824/1421 (*al-A'lam* (y136), 3.320).

x205 Jesus (*see* 'Isa, x189)

x206 Jibril (*see* Gabriel, x126)

x207 Job (*see* Ayyub, x95)

x208 John (*see* Yahya, x371)

x209 Jonah (*see* Yunus, x376)

x210 Joseph (*see* Yusuf, x378)

x211 Junayd (*see* Abul Qasim al-Junayd, x51)

x212 (The Imam of the Two Sanctuaries) Juwayni (a2.7) is 'Abd al-Malik ibn 'Abdullah ibn Yusuf ibn Muhammad, Abu al-Ma'ali Rukn al-Din Imam al-Haramayn al-Juwayni, a scholar in tenets of faith and the Imam of the Shafi'i school of his time, originally from Juwain (in present-day Afghanistan), born in 419/1028. He was educated by his father, and after his death read his father's entire library and then took his place as teacher at Nishapur, though he was later forced to travel to Baghdad because of trouble between the Ash'aris, Mu'tazilites, and Shiites. After meeting the greatest scholars of Baghdad, he went on to Mecca, living in the Sacred Precinct for four years, after which he moved to Medina and taught and gave formal legal opinion (fatwa), gaining his nickname, the Imam of the Two Sanctuaries, i.e. of Mecca and Medina. At length he returned to Persia, where the vizier Nizam al-Mulk, having built a first Nizamiyya Academy in Baghdad for Abu Ishaq Shirazi to teach in, built a second one for al-

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Juwayni at Nishapur. It was here the Imam wrote in earnest, completing his fifteen-volume *Nihaya al-matlab fi dirayа al-madhhab* [The utmost of what is sought: on understanding the evidence of the Shafi'i school] which no one in the field of Islamic law had ever produced the like of, as well as other works in tenets of faith, Ash'ari theology, fundamentals of Islamic legal methodology, and Shafi'i law. Among his greatest legacies to Islam and the Muslims was his pupil Ghazali, who is said to have surpassed even the Imam at the end of his life. He died in Nishapur in 478/1085 (*al-A'lam* (y136), 4.160; *Introduction to Sharh al-Waraqat* (y64), 3–4; *Tabaqat al-Shafi'iyya al-kubra* (y128), 5.165; and n).

x213 Kamal 'Abd al-Majid Muhammad (Document 2) is Kamal ibn 'Abd al-Majid ibn Muhammad, Abu Muhammad, Abu Hudayb al-'Abbadi al-Balqawi, born in 1953 in Khilda, in the al-Balqa' region of Jordan to the northwest of Amman. He took the Shadhili tariqa from Sheikh 'Abd al-Rahman Shaghouri of Damascus in 1977, and has studied Arabic grammar, tenets of faith, Shafi'i jurisprudence, and hadith with Sheikh Yunus Hamdan. He lives in Khilda, where he presently manufactures and distributes concrete building blocks (n).

x214 Kamal ibn al-Humam (w43.3) is Muhammad ibn 'Abd al-Wahid ibn 'Abd al-Hamid ibn Mas'ud, Kamal al-Din Ibn al-Humam, born in Alexandria in 790/1388. He was among the foremost Imams of the Hanafi school, and a scholar in Sacred Law, hadith, tenets of faith, Koranic exegesis, estate division, mathematics, Arabic lexicology, and logic. He was educated in Cairo, and lived for a time in Aleppo, Mecca, and Medina before returning to Egypt, where the came to enjoy considerable prestige among the rulers and heads of state. His major work is the eight-volume *Fath al-Qadir* [Triumph of the Omnipotent], a commentary on Marghiyani's *al-Hidaya* [Guidance]. Though unfinished by its author, it ranks among the greatest Hanafi works for explaining primary textual evidence from the Koran and hadith and the reasoning of the school's Imams in deriving rulings from them. He died in Cairo in 861/1457 (*al-A'lam* (y136), 6.255; and Sheikh Shu'ayb Arna'ut).

x215 Khalil Nahlawi (t0.1) is Khalil ibn 'Abd al-Qadir al-Shaybani al-Nahlawi, a Hanafi scholar of Damascus. He did not live to publish his *al-Durar al-mubaha fi al-hazr wa al-ibaha* [The uncovered pearls: on the unlawful and lawful], but died in Damascus in 1350/1931, after which his sons printed the work (*al-Durar al-mubaha* (y99), 235; and *Mu'jam al-mu'allifin* (y69), 4.121).

x216 Khatib Baghdadi (w56.2) is Ahmad ibn 'Ali ibn Thabit, Abu Bakr al-Khatib al-Baghdadi, born in Ghuzayya, midway between Kufa and Mecca, in 392/1002. He was a Shafi'i scholar, hadith master (hafiz), and historian who was raised in Baghdad and travelled to Mecca, Basra, al-Dinawar, Kufa, and other cities in quest of hadith before returning to Baghdad, where his ability won recognition from the caliph's vizier Ibn Musallam. A turn in political fortunes toward the end of his career caused him to leave Baghdad for a period, during which he travelled to Syria and resided in Damascus, Sur, Tripoli, and Aleppo before returning. He authored some fifty-six works in hadith, Sacred Law, and history, though he is best known for his fourteen-volume *Tarikh Baghdad* [The history of Baghdad]. In his final illness he made a pious endowment of his entire library and

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distributed his money and property to charitable causes. He died in Baghdad in 463/1072 (*al-A'lam* (y136), 1.172; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 4.29).

x217 (Sheikh) al-Khatib (*see* Muhammad Shirbini Khatib, x264(a))

x218 Khattabi (r4.2) is Hamd ibn Muhammad ibn Ibrahim ibn al-Khattab, Abu Sulayman al-Khattabi of Bust, Afghanistan, born in 319/931. An Imam in Shafi'i jurisprudence, hadith, and Arabic lexicology, he studied hadith in Mecca, Basra, Baghdad, and Nishapur, and later taught many students, including the hadith master (hafiz) al-Hakim. He wrote a number of works in Sacred Law and hadith, but is perhaps best known for his outstanding four-volume commentary on the *Sunan* of Abu Dawud, *Ma'alim al-Sunan* [The waymarks of "The sunnas"]. He died in Bust in 388/998 (*al-A'lam* (y136), 2.273; and *Tabaqat al-Shafi'iyya al-Kubra* (y128), 3.282).

x219 Khidr (w9.10), according to commentators, is Balya' ibn Malikan, Abu al-'Abbas al-Khidr (upon whom be peace), who is referred to in the story of Moses in sura al-Kahf of the Holy Koran (18:65). It is said that he was of Bani Isra'il, while others relate that he was a prince who left his this-worldly possessions for a life of asceticism and devotions. He was nicknamed al-Khidr (derived from "greenness") because when he sat on withered patch of vegetation it would become thriving and green. Scholars disagree as to whether he is presently alive, though most believe he is and will remain so until the Day of Judgement because of having drunk of the water of life—and also as to whether he is a prophet, angel, or friend of Allah (wali), the majority holding him to be a prophet (*al-Futuhat al-ilahiyya* (y65), 3.35; *al-Siraj al-munir* (y72), 2.391; and A).

x220 Khubayb al-Ansari (w30.1) is Khubayb ibn 'Adi ibn 'Amir ibn Majda'a ibn Jahjaba (Allah be well pleased with him), one of the Medinan Helpers and a Companion of the Prophet (Allah bless him and give him peace). Dispatched on the raid of al-Raji', Khubayb was captured and later sold in Mecca to the sons of al-Harith ibn 'Amir, whom he had previously slain at the battle of Badr. He remained their prisoner until his killers assembled, and they took him to Tan'im, outside the Sacred Precinct, where he asked to be allowed to pray two rak'as, after which he said, "By Allah, were I not afraid of your thinking I fear death, I would have prayed more." Then he supplicated, "O Allah, reckon them in number, kill them one by one, and let none of them remain alive." Then 'Uqba ibn al-Harith rose and killed him. Khubayb thus being the one to establish the sunna for Muslims being killed to pray two rak'as (*Siyar a'lam al-nubala'* (y37), 1.246–47).

x221 Kirmani (p75.2) is Muhammad ibn Yusuf ibn 'Ali ibn Sa'id, Shams al-Din al-Kirmani, born in 717/1317. A scholar of hadith and Sacred Law originally from Kirman, Persia, he became famous in Baghdad, where he taught for thirty years. He resided for a period in Mecca, where he devoted himself to writing his twenty-five-volume commentary on Bukhari's *Sahih* called *al-Kawakib al-darari fi sharh Sahih al-Bukhari* [The brilliant stars: an exegesis of "Sahih al-Bukhari"]. He also authored works on Koranic commentary and fundamentals of Islamic law and

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faith. He died in 786/1384 on his return from hajj to Baghdad, where he was buried (*al-A'lam* (y136), 7.153).

x222 Korah (w8.2) is Qarun ibn Yas-hur ibn Qahath ibn Lawi ibn Ya'qub ibn Ishaq ibn Ibrahim, a cousin of the prophet Musa (upon whom be peace), as his father Yas-hur and Musa's father 'Imran were brothers. He believed in Musa, though he later grew jealous of Musa's being sent as a prophet and Harun's being an Imam, and finally became an unbeliever because of his wealth, seeking to be superior to Musa by wearing his garments long and by oppressing Bani Isra'il when Pharaoh appointed him over them. Allah gave him such wealth that carrying the very keys to it weighed heavily on a group of strong men, and when his people told him not to exult in it but to seek the life of the next world by spending it in obedience to Allah, he replied that he had only been given it because of his knowledge, for he was the most learned of them in the Torah after Musa (upon whom be peace). One day, as he came out in his finery to the people, some of whom envied him for his wealth and success, Allah caused the earth to swallow both him and his house (*al-Futuhat al-ilahiyya* (y65), 3.359–62).

x223 Lot (*see next entry*)

x224 Lut (u3.5) is Lut ibn Haran ibn Tarikh (upon whom be peace), the prophet of Allah Most High to the people of Sadhum (Sodom). His father Haran was the brother of the prophet Ibrahim (upon whom be peace). Commentators relate that they lived in Babylon in Iraq, but emigrated west, Ibrahim settling in Palestine, and Lut in Jordan, from whence he was sent to Sadhum. The story of Lut and the people of Sadhum is told in the Holy Koran (7:80–84), and how Allah Most High rained down stones upon them and destroyed them for their wicked practice of sodomy (*al-Futuhat al-ilahiyya* (y65), 2.58–59, 2.161–62).

x225 Ma' al-'Aynayn al-Qalqami (w9.4) is Muhammad Mustafa ibn Muhammad Fadil ibn Muhammad May'man, Abu al-Anwar Ma' al-'Anayn al-Qalqami, born near Walata in the Hawd of southeastern Mauritania in 1831. Of Mauritanian and Moroccan descent, he was a traditional religious figure, Sufi sheikh of the Qadiri order, and a prolific writer who was also widely known as a digger of wells and energetic founder of Sufi hospices (zawaya). He participated, after making a personal alliance with the Sharifian dynasty of Morocco, in armed resistance to the French in which he lost several sons, dying in Tiznit in southern Morocco in 1910 (*al-A'lam* (y136), 7.243; and *Muslim Brotherhoods* (y86), 125).

x226 Mahmud ibn Rabi' (w31.1) is Mahmud ibn al-Rabi' ibn Suraqa ibn 'Amr, Abu Muhammad al-Khazraji (Allah be well pleased with him) of Medina, born in A.H. 6. He met the Prophet (Allah bless him and give him peace) when four years old in his family's home, where the Prophet (Allah bless him and give him peace) spat a mouthful of water from the family well upon his face for the blessing of it. An Imam and reliable transmitter, he related hadiths from Abu Ayyub al-Ansari, 'Ubada ibn al-Samit, and others; and among those who related hadiths from him were Anas ibn Malik, Makhul, and Zuhri. He died in A.H. 99 at ninety-three years of age (*Siyar a'lam al-nubala'* (y37), 3.519)

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x227 Makhul (w43.3) is Makhul ibn Abi Muslim Shahrab ibn Shadhil, Abu 'Abdullah al-Shamil, born in Kabul, Afghanistan. The scholar of Syria of his time, he was a freed slave who learned Sacred Law and travelled to many places in search of knowledge, among them Iraq, Medina, and Damascus, where he settled. Imam Zuhri said of him, "No one of his time had more insight in giving formal legal opinions." He died in Damascus in 112/730 (*al-A'lam* (y136), 7.284).

x228 (Imam) Malik (b1.2) is Malik ibn Anas ibn Malik, Abu 'Abdullah al-Asbahi al-Himyari, the *mujtahid* Imam born in Medina in 93/712. The second of the four greatest Imams of Sacred Law, his school has more followers than that of anyone besides Abu Hanifa. He was known as the Scholar of Medina, and was as renowned for his sincerity, faith, piety, and godfearingness as for his command of the sciences of hadith and knowledge of Sacred Law.His generosity was legendary, as was his love for the Prophet (Allah bless him and give him peace), whom he held in such awe and respect that he would not mount his horse within the confines of Medina out of reverence for the ground that enclosed the Prophet's body (Allah bless him and give him peace). His piety was such that he was never too proud to say he did not know when asked about matters he was not sure of, and he would not relate a hadith without first performing ablution. He was the author of *al-Muwatta'* [The trodden path], the greatest hadith collection of its time, nearly every hadith of which was accepted by Bukhari in his *Sahih*. His disciple Imam Shafi'i used to say of it, "After the Book of Allah, no book has appeared on earth that is sounder than Malik's." He was uncompromising in his religion and kept far from the rulers and princes of his time. When he gave the opinion that the caliph al-Mansur should be removed and Muhammad ibn 'Abdullah of 'Ali's family be instated, the caliph's uncle Ja'far ibn Sulayman, governor of Medina, had Malik scourged seventy lashes, dislocating his shoulder. The only effect of this was to increase the Imam's highmindedness and dignity, and when al-Mansur learned of it, he apologized profusely and asked Malik to write a book of Islamic jurisprudence that he could enjoin with the force of law upon all Muslims regardless of their school, but the Imam refused. He authored outstanding works in Sacred Law, hadith, and Koranic exegesis, and left behind a host of brilliant scholars he had trained as part of his great legacy to Islam and the Muslims. He died in Medina in 179/795 (*al-A'lam* (y136), 5.257; *al-Muwatta'* (y82), introduction; *al-Targhib wa al-tarhib* (y9), 1.14; Sheikh Shu'ayb Arna'ut; and n).

x229 Malik (u3.3) is the keeper of hell and head of the angels of torment there, who receive his orders. His place in the midst of hell is connected to all parts of it by bridges which the angels of torment pass upon, above its inhabitants, and he sees the farthest reaches of it as easily as he sees the closest (*al-Futuhat al-ilahiyya* (y65), 4.96).

x230 Malik ibn Dinar (s5.1) is Malik ibn Dinar, Abu Yahya al-Basri, born in the time of Ibn 'Abbas. He was an early Sufi and scholar who studied under Hasan al-Basri, from whom he related hadiths, as well as from Anas ibn Malik, Ibn Sirin, and others. Pious and abstinent, he lived from the work of his own hands, copying out Korans for payment. Among his sayings is, "Since coming to know people I have not enjoyed their praise or disliked their blame, for those who praise exag

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gerate, and those who blame exaggerate." He died in Basra in 131/748 (*al-A'lam* (y136), 5.260–61; *Siyar a'lam al-nubala'* (y37), 5.362–64; and n).

x231 Malik al-Rahawi (p48.2) is Malik ibn Marara al-Rahawi (Allah be well pleased with him) of Yemen, a prophetic Companion. It is related that when he returned to his people after visiting the Prophet (Allah bless him and give him peace), the latter sent them a letter that said, "... I enjoin you to goodness towards him, for he is looked up to," and the Hamdan tribe gathered eighty-nine camels that they presented him as a gift (*al-Isaba fi tamyiz al-Sahaba* (y14), 3.334–35).

x232 Mansur 'Ali Nasif (w17.1) is Mansur ibn 'Ali Nasif, an Egyptian Shafi'i scholar and hadith specialist of the present century. A teacher in the Zaynabi Friday Mosque in Cairo, his most well known work is the five-volume *al-Taj al-jami' li al-usul fi ahadith al-Rasul* [The crown containing the fundamentals of Sacred Law from the hadiths of the Prophet], which, with its 5,887 hadiths, is among the best works on the primary texts for the rulings of the Shafi'i school. He died sometime after 1371/1951 (*al-A'lam* (y136), 7.301; and n).

x233 Martin Lings (w1.1) is a contemporary English Muslim author on Islam and Sufism. He took an English degree at Oxford and later lectured at Cairo University, mainly on Shakespeare, for twelve years. In 1952 he returned to England, took a degree in Arabic at London University, and was appointed in special charge of the Arabic manuscripts at the British Museum. Sheikh 'Abd al-Wakil remembers him visiting Sheikh Muhammad Hashimi in Damascus when researching his book on Sheikh Ahmad al-'Alawi, *A Sufi Saint of the Twentieth Century*. Among his other works are his outstanding prophetic biography *Muhammad*, as well as *What Is Sufism?, Shakespeare in the Light of of Sacred Art, Quranic Arts of Calligraphy and Illumination*, and *Ancient Beliefs and Modern Superstitions*.

Despite many excellent passages of genuine insight, the latter work and parts of his others diverge from the teachings of Islam on such questions as the validity of non-Islamic religions (dis: w4, x348), and the suggestion that all the inhabitants of hell will enter paradise (*Muhammad* (y75), 94), adducing the words of the Koran referring to hell's eternality, "... except as your Lord wills" (Koran 6:128, 11:107, previously discussed in the twentieth paragraph of w55.3), together with a hadith to the effect that Allah will remove from hell a people (Ar. *qawm*, and in Bukhari's version "some peoples" (*aqwam*)) who did no good at all, and enter them into paradise (*Sahih al-Bukhari* (y30), 9.398–99; and *Sahih Muslim* (y92), 1.170). Some scholars understand the hadith as alluding to those who did no good in this life beyond mere acknowledgement of Allah and His messenger, even if this minimal amount of faith was not perceptible to the angels previously commanded to remove those with "a grain of faith in their hearts" from the fire; while others say it refers not to those who refused to believe in the prophetic messengers sent to them, but rather to those who lived in the times between the coming of successive messengers such that Allah's commands did not reach them. Both groups of scholars interpret the hadith in this way to reach an accord between it and the more than fifty Koranic verses mentioned above at w55.3 that clearly prove that unbelievers shall remain in hell forever, for it is understood among scholars that while abrogation (nasikh wa mansukh) enters into certain primary texts about

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rites and acts, it does not under any circumstances enter into texts about tenets of faith ('aqida), such that one Koranic text should be believed and another discarded. Rather, we look for a more comprehensive explanation that joins between all the texts, for all are the truth. Despite such interpretive shortcomings. Lings's works are generally of a high quality, and some, like his *What Is Sufism?* and *Muhammad* are unsurpassed in their genre, and seem destined to contribute much to the understanding of Islam in the West. He presently lives in England (*Muhammad* (y75), inside back cover; Sheikh Shu'ayb Arna'ut; N; and n).

x234 Marut (p3.2) is one of the two angels sent to Babylon to teach sorcery to the wicked, discussed above at x136 (n).

x235 Mary (*see next entry*)

x236 Maryam (w30.1) is Maryam bint 'Imran, the daughter of the priest 'Imran and his wife Hanna, who when pregnant with Maryam, vowed to dedicate the child she bore to the service of the Holy Temple in Jerusalem, and at her birth accordingly named her *Maryam,* meaning "servant of her Lord." The purest of womenkind, she was a *siddiqa* (lit. "great-faithed one"), and miraculously conceived the prophet 'Isa (upon whom be peace). Both she and her child were unfortunately later taken as objects of worship by some sects of Christians because of the strangeness of 'Isa's birth without a father, though as commentators point out, by such reasoning the prophet Adam (upon whom be peace) might better deserve to be worshipped, since he had neither father nor mother (*al-Futuhat al-ilahiyya* (y65), 1.262–63, 1.269; and n).

x237 al-Mawardi (*see* (Imam) Abul Hasan Mawardi, x48)

x238 Maydani (m2.8) is 'Abd al-Ghani ibn Talib ibn Hamada ibn Ibrahim al-Ghunaymi al-Maydani, of Damascus, born in 1222/1807. A Hanafi scholar who studied under Imam Muhammad Amin Ibn 'Abidin and authored works in Sacred Law, hadith commentary, tenets of faith, and Arabic grammar, his best known work is the four-volume *al-Lubab fi sharh al-Kitab* [The quintessence: an exegesis of "The book"], which expounds Ahmad Quduri's classic inHanafi jurisprudence *Kitab al-Quduri*. He died in 1298/1881 (*al-A'lam* (y136), 4.33).

x239 Mika'il (u3.3) is the archangel of safety, fertility, and rain. He is mentioned together with Gabriel in the Holy Koran (at 2:98) because he is the angel of sustenance (rizq), the life of the body; just as Gabriel is the angel of revelation (wahy), the life of the spirit (*al-Futuhat al-ilahiyya* (y65), 1.84; *al-Shifa* (y116), 1.710; and *al-Siraj al-munir* (y72), 1.79).

x240 Moses (*see* Musa, x271)

x241 Mu'adh (*see next entry*)

x242 Mu'adh ibn Jabal (w26.1) is Mu'adh ibn Jabal ibn 'Amr ibn Aws, Abu 'Abd al-Rahman al-Khazraji (Allah be well pleased with him), born twenty years before the Hijra (A.D. 603). A Medinan Helper, he was among the greatest of the

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Companions of the Prophet (Allah bless him and give him peace) in the knowledge of the lawful and unlawful, and one of the six who gathered the Koran in the lifetime of the Prophet (Allah bless him and give him peace). He participated in the battles of Badr, the Confederates, and all the others. After the campaign of Tabuk, he was sent as a judge and teacher to the people of Yemen, where he remained until Abu Bakr had been made caliph following the Prophet's death (Allah bless him and give him peace), when he returned to Medina. He went with Abu 'Ubayda ibn al-Jarrah on the Syrian jihad, which he assumed command of when Abu 'Ubayda died of the plague, and he was confirmed in the position by 'Umar. He died of the plague in the same year, 18/639, and was buried in the Jordan Rift Valley to the west of present-day Irbid, Jordan (*al-A'lam* (y136), 7.258; and n).

x243 Mu'awiya (r9.2) is Mu'awiya ibn Abu Sufyan Sakhr ibn Harb ibn Umayya ibn 'Abd al-Shams ibn 'Abd Manaf (Allah be well pleased with him), born in Mecca twenty years before the Hijra (A.D. 603). A noble of Quraysh, collected, eloquent, and dignified, he entered Islam the day Mecca was conquered (A.H. 8), and the Prophet (Allah bless him and give him peace) made him one of the scribes who recorded the Koran in writing. He later became the governor of Syria and in A.H. 41 assumed the Islamic caliphate, founding the Umayyad dynasty whose capital was Damascus. His reign was one that added great conquests to the domains of Islam, which was established in his time as the religion of peoples across North Africa to the Atlantic Ocean, as well as Sudan, many of the islands of Greece, and the Dardenelles. He was the first to use the Mediterranean for naval jihad, and the first to build mihrabs (niches) in mosques. He died in Damascus in 60/680 (*al-A'lam* (y136), 7.261–62).

x244 al-Mughira (m2.2) is al-Mughira ibn Shu'ba ibn Abu 'Amr ibn Mas'ud, Abu 'Abdullah al-Thaqafi (Allah be well pleased with him), born in Ta'if twenty years before the Hijra (A.D. 603). A Companion of the Prophet (Allah bless him and give him peace) who was noted for his keen intellect, he entered Islam in A.H. 5, was present at Hudaybiya, fought against the false prophet Musaylima at al-Yamama, and also took part in the northern jihads that opened Syria-Palestine for Islam, losing an eye at the battle of Yarmouk. The caliph 'Umar made him governor of Basra, and he conquered several new lands for Islam before 'Umar removed him from the position, though he later instated him as governor of Kufa, an office which the caliph 'Uthman first confirmed him in, but then removed him. He stayed aloof from the discord between 'Ali and Mu'awiya, and the latter afterwards made him governor of Kufa a second time, and he remained in the position the rest of his life. He related 136 hadiths from the Prophet (Allah bless him and give him peace), and died in Kufa in 50/670 (ibid., 7.277).

x245 Muhammad (Introduction) is Muhammad ibn 'Abdullah ibn 'Abd al-Muttalib ibn Hashim, Abu al-Qasim (Allah bless him and give him peace), the unlettered Qurayshite Arabian prophet of Allah Most High to the entire world, the greatest and most influential human being in the history of mankind, born on the twelfth of Rabi' Awwal, fifty-three years befor the Hijra (A.D. 571), in Mecca. The son of 'Abdullah ibn 'Abd al-Muttalib and Amina bint Wahb of Bani Zahra, his father died before his birth, leaving him an orphan. He first grew up in the

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desert, being nursed there for two years by Halima al-Sa'diyya, and when his mother died in his seventh year, his grandfather 'Abd al-Muttalib became his guardian. Despite being raised as an orphan, he developed the noblest character, and was known among his people as the Truthful and Trustworthy (al-Sadiq al-Amin). He first worked as a shepherd and then engaged in trade, travelling to Syria twice, and he married the owner of the goods he managed, the wealthy, beautiful, and virtuous Khadija bint Khuwaylid at her request when he was twenty-five years of age.

When he was forty, Allah Most High chose him to be the last of the succession of His prophets, sent to all mankind and jinn to teach them the religion of Islam, the most perfect and comprehensive system for felicity in this world and unending happiness in the next. The essence of the new religion was to proclaim that there was no god but the one living eternal God, Allah, who is without son, associate, or partner; to call to the worship of Him alone, obedience of His laws alone, and the recognition that the only superiority men possess over one another is in their godfearingness (taqwa) and sincerity in servanthood to Him; and to warn men that they would be accountable for their actions on a Day of Judgement, whence they would enter paradise or hell. In a word, it enjoined high-mindedness and nobility and forbade all that was contemptible and base, ordering man to use every means to realize the right and eliminate the wrong.

After thirteen years of calling people in Mecca to Islam and enduring the persecution of idolators there, the Prophet (Allah bless him and give him peace) was invited by a delegation of the notables of Medina (then called Yathrib) in the north to end their immemorial feuds by agreeing to rule them, and his emmigration (hijra) to them was to mark the beginning of the Islamic calendar. At Medina, a new phase began, deputations were sent to various peoples to invite them to Islam, and finally Allah ordered the Prophet (Allah bless him and give him peace) to fight to free mankind from the servitude of false gods and other men, and lead them to the light of revealed monotheism. In this undertaking, though a gentle and peaceable man, the Prophet (Allah bless him and give him peace) risked his person in some twenty-seven separate battles, including Badr in A.H. 2 and Uhud in A.H. 3, both against the idolators of Mecca; Bani Nadir in A.H. 4; the Confederates and Bani Qurayza in A.H. 5; Khaybar and the conquest of Mecca in A.H. 7; Hunayn in A.H. 8; and Tabuk in A.H. 9. Never in his life did the Prophet (Allah bless him and give him peace) flee from battle or turn his back to the enemy, even in the deadliest peril, and by ten years after the Hijra, Allah was worshipped in the Arabian peninsula, and the one true religion had been established.

While abrogating the laws of all prior religions regarding particular religious rites and works (furu'), it was equally the primordial religion, identical with the message of every previously sent prophet in tenets of faith (usul), in terms of enjoining belief and worship of the one Supreme Being alone, in which sense Muslims say, "We differentiate between none of His messengers" (Koran 2:285), for all taught pure monotheism. At the same time, Allah Most High mentions the prophets by saying, "Those are the messengers, We have favored some above others" (Koran 2:253), and He vouchsafed favors to Muhammad (Allah bless him and give him peace) that no prophet had previously been given; among them that he was sent to all mankind, not just a particular tribe or race; that he was the final prophet and messenger; that his followers are greater in number than those of any other prophet; that he was sent as a mercy unto the worlds; and that he was

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granted the magnificent and incomparable Arabic Koran, a living miracle which no one has ever been able to compose anything similar to, which remains in its textual purity as it was revealed, preserved from alteration by human hand until the end of time. By any standards, no one has so profoundly influenced so many, in day to day manners, speech, dress, worship, belief, and culture, as has the Prophet (Allah bless him and give him peace), who died in Medina, his message delivered and mission wonderfully accomplished, in 11/633 (*al-A'lam* (y136), 6.218–19; *al-Siraj al-munir* (y72), 1.166; *Sutur min hayat Muhammad* (y115), 2–4; and n).

x246 (Imam) Muhammad (*see* Muhammad ibn Hasan Shaybani, x257)

x247 Muhammad 'Abdullah Jurdani (j12.6) is Muhammad ibn 'Abdullah ibn 'Abd al-Latif al-Jurdani, born in Dumyat, Egypt. One of the great Shafi'i scholars of nineteenth-century Egypt, he studied under Sheikh Ibrahim Bajuri and authored a number of valuable works in hadith commentary, tenets of faith, and Sacred Law, in the latter field being best known for his four-volume *Fath al-'Allam bi sharh Murshid al-anam* [The victory of the All-knowing: an exegesis of "The people's guide"], a commentary on a shorter work by himself. He died in Dumyat in 1331/1913 (*al-A'lam* (y136), 6.244; and n).

x248 Muhammad Abul Mawahib (w9.4) is Muhammad, Abu al-Mawahib Jamal al-Din al-Shadhili of Cairo. He was an Islamic scholar, Sufi sage, and author of considerable eloquence in all aspects of the Sufi way. Among his works is *Qawanin hukm al-ishraq* [The laws of the dawning of illumination], which 'Abd al-Wahhab Sha'rani describes as "a marvelous work which no one else has produced anything comparable to, and which attests to the fullness of its author's experience in the path." He lived near al-Azhar Mosque in Cairo, and died sometime after A.H. 851 (*al-Tabaqat al-kubra* (y124), 2.67, 2.74).

x249 (al-Hajj) Muhammad al-Ahrash (w9.4), also known as Bu Dali, was a Moroccan Sufi of the Darqawi tariqa who went to the Hijaz on pilgrimage, and when he returned in 1799 via Egypt, which was under attack by the French, he gathered a force of Tunisians and Moroccans, many of whom lived in Cairo, to fight the invaders. He later fought the forces of the Bey of Constantine from the mountains of eastern Algeria, from which he was eventually dislodged and fled westward to the Oran region where he joined Muhammad ibn Sharif, after which history records nothing further of him (*Muslim Brotherhoods* (y86), 43–44).

x250 Muhammad 'Alawi Maliki (w47.1) is Muhammad al-Hasan ibn 'Alawi ibn 'Abbas ibn 'Abd al-'Aziz al-Maliki, a descendant of the Prophet (Allah bless him and give him peace). A contemporary Meccan scholar of hadith, Maliki jurisprudence, Koranic exegesis, tenets of faith, and prophetic biography, he was born to a family of traditional Maliki scholars of ancestral residence in the Holy City and educated by his father, al-Sayyid 'Alawi Maliki, who authorized him to teach every work he read with him, which he began to do while still in his childhood. He has a doctorate in hadith from al-Azhar, and has travelled to Morocco, Egypt, Pakistan, and India to learn hadiths, gather manuscripts, visit scholars, and record their knowledge. In A.H. 1390/1970 he was appointed full professor in the college of Sacred Law at Umm al-Qura University in Mecca, and after his father's

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death, the scholars of Mecca met in his home to ask him to accept his father's position as teacher in al-Masjid al-Haram, which he did. He has authored a number of works on the Prophet (Allah bless him and give him peace), Sacred Law, and tenets of faith, including *Muhammad al-insan al-kamil* [Muhammad, the perfect man], *Mafahim yajibu an tusahhaha* [Notions that should be corrected], and *Mawatta' al-Imam Malik ibn Anas riwaya Ibn al-Qasim* ["The trodden path" of Imam Malik ibn Anas in the transmission received from Ibn al-Qasim]. Currently prevented from teaching in both the Sacred Mosque and the university, he gives free traditional Islamic instruction in Arabic grammar, hadith, Maliki jurisprudence, and other subjects at his own residence and mosque on Maliki Street in the Rusayfa district of Mecca (*al-Ta'i' al-sa'id* (y84), 3–4; and n).

x251 Muhammad 'Ali Sanusi (w9.4) is Muhammad ibn 'Ali ibn al-Sanus, Abu 'Abdullah al-Sanusi al-Khattabi al-Hasani al-Idrisi, born in Mosteghanem, Algeria, in 1202/1787. The founder of the Sanusi tariqa, he was a scholar of the Koran, hadith, and Maliki jurisprudence, and a Sufi adept whose sheikhs included al-'Arabi al-Darqawi and Ahmad Tijani, the respective founders of the Darqawi and Tijani orders. He was a prolific writer who produced more than forty books, poems, and treatises in Sacred Law, hadith, fundamentals of jurisprudence, tenets of faith, history, geneology, and mathematics. He travelled to Fez, Tunis, Tripoli, Egypt, and Mecca, and in 1842 founded his main Sufi center (zawiya) near al-Bayda in Libya. His order worked continuously for the next fifteen years to proselytize for Islam in a sustained southerly movement along the trade routes to the interior of Africa, with considerable success in establishing the religion throughout the sub-Saharan region. Leaving the order's affairs in the hands of a deputy, he travelled to Mecca and remained there until 1853, when he returned to establish a new center in the east of Libya, at Jaghbub, where he spent the final productive years of his life, and died in 1286/1859 (*al-A'lam* (y136), 6.299; and *Muslim Brotherhoods* (y86), 101–14).

x252 Muhammad ibn 'Allan Bakri (j16.1) is Muhammad 'Ali ibn Muhammad 'Allan ibn Ibrahim ibn Muhammad ibn 'Allan al-Bakri al-Siddiqi, born in Mecca in 996/1588. He was a Shafi'i scholar of hadith, Sacred Law, Koranic exegesis, and other subjects, which he acquired from the sheikhs of his time, memorizing the Koran in all of its canonical readings (qira'at), and becoming learned enough in Shafi'i jurisprudence to be named mufti of Mecca at the age of twenty-four. Called the Suyuti of His Time, he authored works about the Prophet (Allah bless him and give him peace), as well as in Koranic exegesis, hadith, Sacred Law, formal legal opinion, Sufism, tenets of faith, history, and Arabic grammar. His two hadith commentaries, *al-Futuhat al-rabbaniyya 'ala al-adhkar al-Nawawiyya* [The godly victories: an exegesis of Nawawi's "Remembrances of Allah"], and *Dalil al-falihin li turuq Riyad al-salihin* [The guide of the successful to the ways of "The gardens of the righteous"], are both extremely professional and attest to his knowledge of Sacred Law and hadith. He died in Mecca in 1057/1647 and was buried near Sheikh al-Islam Ibn Hajar Haytami (*al-A'lam* (y136), 6.293; *al-Adhkar* (y102), 7–10: and n).

x253 (Imam) Muhammad Amin ibn 'Abidin (w9.4) is Muhammad Amin ibn 'Umar ibn 'Abd al-'Aziz 'Abidin, born in Damascus in 1198/1784. Originally a

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Shafi'i, he changed his school and became the Hanafi Imam of his time. His most famous work, the eight-volume *Hashiya radd al-muhtar 'ala al-Durr al-mukhtar* [The enlightenment of the baffled: a commentary on "The choice pearls"], is highly thought of by Hanafi scholars, who consider every word of it an authoritative text (nass) in the school. He also authored works in fundamentals of Islamic law and faith, formal legal opinion, Koranic exegesis, and estate division, and died in Damascus in 1252/1836 (*al-A'lam* (y136), 6.42; A; and n).

x254 (Sheikh) Muhammad Amin Kurdi (w9.1) is Muhammad Amin ibn Fath Allah al-Irbali al-Kurdi, born in Arbil, Iraq. Of Kurdish origin, he was Shafi'i scholar who was among the greatest Naqshbandi masters of the last century. Instructed and authorized in the Sufi path in Iraq by Sheikh 'Umar Diya' al-Din ibn 'Uthman Siraj al-Din al-Naqshbandi, he travelled to the Hijaz on hajj and stayed in Mecca for a year before proceeding to Cairo, where he studied Sacred Law and other subjects at al-Azhar, an education he turned to good account in his *Tanwir al-qulub fi mu'amala 'Allam al-Ghuyub* [The enlightenment of hearts: on one's dealings with the Knower of the Unseen], a manual on tenets of faith, Shafi'i Law, and the path of Sufism as taught by his masters. Of great personal sincerity, sanctity, and spiritual will, he gained a large following in Cairo and became the sheikh of his time in guiding seekers to the truth, placing particular emphasis in his training on the insight that only Allah Most High has any effect in the world, and that He is beyond any resemblance to created things. He authored a number of works in Sacred Law, tenets of faith, and Sufism, and Allah vouchsafed many graces to him during his lifetime, the greatest of which was his firm adherence to the Koran and sunna. He died in Cairo in 1331/1914 (*al-A'lam* (y136), 6.43; *Tanwir al-qulub* (y74), 1–55; and n).

x255 Muhammad Bakhit al-Muti'i (e14.1) is Muhammad Bakhit ibn Husayn al-Muti'i, born in al-Muti'a, upper Egypt, in 1271/1854. The grand mufti of Egypt and one of the leading Hanafi scholars of his time, he was educated at al-Azhar, where he subsequently taught before being appointed first as judge in A.H. 1297, and then as mufti in 1333/1914, which office he held for seven years. After contact with Jamal al-Din al-Afghani, he became one of the bitterest foes of the "Islamic Reform" movement of Afghani and Afghani's pupil and fellow Mason, Muhammad 'Abduh. An author of works in Sacred Law, formal legal opinion, fundamentals of jurisprudence, tenets of faith, and Koranic exegesis, he was a godfearing traditional scholar who chose to lose his position as mufti rather than bow to government pressure to issue an opinion that a Muslim who had killed a Christian deserved to be executed for it (dis: o1.2(2)). His legal opinion on the purity (tahara) of alcohol (dis: e14.1(7)) appeared in the magazine *al-Islam*, published at al-Azhar in Cairo in 1938, while his opinion on the permissibility of photographs (dis: w50.9) was mentioned to the translator by Sheikh Shu'ayb Arna'ut, Sheikh 'Abdullah Muhammad Ghimari, and others. He died in Cairo in 1354/1935 (*al-A'lam* (y136), 6.50; Sheikh 'Abdullah Muhammad Ghimari; Sheikh Shu'ayb Arna'ut; and n).

x256 Muhammad Hamid (w8.1) is Muhammad ibn Mahmud al-Hamid, a prominent Hanafi scholar of the present century who was born in Hama, Syria, in 1328/1910. Orphaned while young, his brother the poet Badr al-Din al-Hamid

sent him after primary school to the Dar al-'Ulum Islamic Secondary School, and then to Aleppo, where he enrolled in the Khusrawiyya School of Islamic Law, run at the time by a number of leading Hanafis such as Sheikh Ahmad Zarqa, Sheikh Ahmad al-Kurdi the Hanafi mufti of Aleppo, and others. Upon finishing, he returned to Hama and then travelled to Egypt where he attended al-Azhar, receiving a number of higher degrees in Sacred Law, specializing in judicial studies and taking a certification for the Islamic judgeship, though when he came home he preferred instead to teach and lead the Friday prayer at the Sultan Mosque, and to continue his education under the sheikhs of Hama of his time, including Muhammad Sa'id al-Jabi, Muhammad Tawfiq al-Sabbagh, and the mufti of Hama Muhammad Sa'id Na'sani. He also took the Sufi path from Sheikh Muhammad Abu al-Nasir al-Naqshbandi of Homs. He wrote a number of books and treatises on tenets of faith, Koranic exegesis, Sacred Law, and formal legal opinion, of which the best known is the two-volume ***Rudud 'ala abatil wa rasa'il al-Shaykh Muhammad al-Hamid*** [Rebuttals of falsehoods, and the letters of Sheikh Muhammad Hamid], comprising letters, articles, and answers to questions on Sacred Law sent to him from all parts of the Arab and Islamic world. When he died in 1389/1969, all of Hama joined his funeral procession, and his passing was mourned in Damascus and other cities by public figures and religious scholars alike (*Shuruh Risala al-Shaykh Arslan* (y51), 286–87).

x257 Muhammad ibn Hasan Shaybani (w43.1) is Muhammad ibn al-Hasan ibn Farqad, Abu 'Abdullah al-Shaybani, born in Wasit, Iraq, in 131/748. A *mujtahid* Imam of powerful intellect, prodigious mastery of Koranic and hadith primary texts, and the matchless legal training of being educated by Imams Abu Hanifa, Abu Yusuf, and Malik, he was among the greatest figures in the history of Islamic jurisprudence. He was raised in Kufa where he first met Abu Hanifa, joined his school of thought, and distinguished himself before moving to Baghdad, where he was appointed by Harun al-Rashid to the judiciary. He was among the sheikhs of Imam Shafi'i, who once observed, "If I wished to say that the Koran was revealed in the language of Muhammad ibn Hasan, I could say it, for the purity of his Arabic." He wrote a large number of works in Sacred Law and its methodology, as well as in the sciences of hadith, and it is related that when Imam Ahmad was once asked, "From whence did you acquire these legal subtleties?" he replied, "From the books of Muhammad ibn Hasan." He died in 189/804 in Rayy, Persia (*al-A'lam* (y136), 6.80; *Siyar a'lam al-nubala'* (y37), 9.134–36; Sheikh Shu'ayb Arna'ut; and n).

x258 (Sheikh) Muhammad Hashimi (w9.7) is Muhammad ibn Ahmad ibn Muhammad ibn Muhammad ibn 'Abd al-Rahman ibn Abu Jam'a al-Hashimi, born in Sabda near Tlemcen, Algeria, in 1298/1880. He was a Sufi, Maliki scholar, author in tenets of Islamic faith, and the successor in the East of Sheikh Ahmad al-'Alawi. Educated in Algeria before emigrating with his sheikh Muhammad ibn Yallis to Damascus, he completed his studies in Syria with a number of the sheikhs of his time, among them Badr al-Din al-Hasani, Muhammad Ja'far al-Kattani, Tawfiq al-Ayyubi, and others. Ibn Yallis authorized him to give the general litany (al-wird al-'amm) of the *tariqa* to those who wanted it, but it was not until after Ibn Yallis's death that the great renewer of the Shadhili tariqa Sheikh Ahmad al-'Alawi (who had had the same sheikh as Ibn Yallis's teacher) came to

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Damascus on his way to hajj in 1350/1931 and authorized Hashimi as a sheikh in the order's 'Alawi-Darqawi branch that he had founded, giving him full authority in all aspects of the way, including the solitary retreat (khalwa) that al-'Alawi emphasized. Hashimi's spiritual presence, humility, and ability to guide seekers to the truth gained him many disciples, and whoever sought Allah did not go away disappointed. He taught Islam at all levels, in classes at his home and in mosques, and would not permit disciples' ignorance in Islamic law or tenets of faith, the latter of which he taught from traditional Ash'ari classics and his own *Miftah al-janna fi sharh 'aqida Ahl al-Sunna* [The key to paradise: an explanation of the faith of Ahl al-Sunna]. He gave written authorizations during his lifetime to a number of sheikhs in the path, among them 'Abd al-Qadir 'Isa of Aleppo, author of *Haqa'iq 'an al-Tasawuf* [Facts about Sufism]; Muhammad Sa'id Burhani, his immediate successor in Damascus; and Muhammad Sa'id al-Kurdi, who brought the Shadhili tariqa to Jordan. When he died in Damascus in 1381/1961, he left a legacy not only of his writings, but also the illumined hearts of those he had led to Allah, and it was they who, out of regard for the master, renamed the *tariqa* the Hashimi-Darqawi way after his death (*Tarikh 'ulama' Damashq* (y1), 2.747–51; Sheikh 'Abd al-Rahman Shaghouri; and n).

x259 Muhammad Jurdani (*see* Muhammad 'Abdullah Jurdani, x247)

x260 Muhammad Makhluf (w35.1) is Muhammad Hasanayn ibn Muhammad Makhluf al-'Adawi al-Maliki, born in Bani 'Adi, Egypt, in 1288/1871. He was a Maliki scholar who was educated at al-Azhar University, where he taught and became a member of its supervisory board, in which capacity he founded and organized al-Azhar Library. After later appointments, first as sheikh of the Ahmadi Mosque and then as general director of religious academies, he retired in A.H. 1334 to devote himself to teaching Islamic theology (tawhid), philosophy, and fundamentals of law and faith. He authored some thirty-seven works in Koranic exegesis, fundamentals of jurisprudence, and other subjects, and died in Cairo in 1355/1936 (*al-A'lam* (y136) 6.96).

x261 Muhammad Ma'ruf (w9.4) is Muhammad Ma'ruf ibn Ahmad ibn Abu Bakr, born is 1853 in Moroni on Grand Comoro Island, which lies between the northern tip of Madagascar and the East African Coast. He was a social reformer, preacher, and the sheikh of the Yashrutiyya branch of the Shadhili tariqa in East Africa, which is credited with contributing to a considerable expansion of Islam there, and is reported to have had, before the sheikh's death, many hospices (zawaya) along the islands and mainland of the East African Coast, including Madagascar, Mozambique, Zanzibar, Pemba, Mauritius, Mafia Island, and the Comoros, as well as in Kenya, Tanganyika, and even far-off New Guinea. He died in 1905 and was buried at his *zawiya* on Grand Comoro Island (*Muslim Brotherhoods* (y86), 152–58).

x262 Muhammad Sa'id Burhani (t3.1) is Muhammad Sa'id ibn 'Abd al-Rahman ibn Muhammad Sa'id ibn Mustafa ibn 'Ali al-Daghestani al-Burhani, a Hanafi scholar in fundamentals of law and faith, Sufi, and commentator who was born in Damascus in 1311/1894. He fought against the French at the outset of the foreign occupation of Syria in 1920, after which he returned to Damascus to study

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the Islamic sciences, first with his father, and then with scholars such as 'Abd al-Qadir al-Iskandari, Badr al-Din al-Hasani, the mufti of Damascus 'Ata Allah al-Kasam, and others. After first taking the Naqshbandi way from Sheikh Abu al-Khayr al-Maydani, he became a disciple of Sheikh Muhammad Hashimi. He taught at the Tawba and Umayyad Mosques, and upon his retirement devoted himself to helping Sheikh Hashimi, who was to appoint him as his successor. A voracious reader, he edited, annotated, and prepared indexes for a large number of books and treatises, among them 'Ala' al-Din 'Abidin's classic primer in Hanafi law, *al-Hadiyya al-'Ala'iyya* [The gift of 'Ala'], and Sheikh Muhammad Hashimi's *Sharh Shatranj al-'arifin* [Explanation of "The chess of the gnostics"], a mystical commentary on a chessboard-like diagram ascribed to Sheikh Muhyiddin ibn al-'Arabi. He died in 1386/1967 in Damascus (*Shuruh Risala al-Shaykh Arslan* (y51), 281–82; and *Tarikh 'ulama' Dimashq* (y1), 2.794).

x263 Muhammad Sa'id Buti (b1.1) is Muhammad Sa'id ibn al-Mulla Muhammad Ramadan al-Buti, born of Kurdish descent in 1350/1931 in Damascus. The son of one of the foremost Shafi'i scholars of his time, Mulla Ramadan, he studied Arabic grammar, logic, and philosophy with his father, as well as Shafi'i jurisprudence and fundamentals of Islamic law and faith, and after graduating from the al-Tawjih al-Islami Institute in Damascus, travelled to Cairo and took a degree from al-Azhar before returning to Syria, where he taught first in Homs and then in Damascus at the College of Sacred Law. He took a doctorate in principles of Islamic legal methodology from the University of Damascus in A.H. 1385, and was appointed as a professor there in the Faculty of Sacred Law and Arts. He has written many works, among them *Fiqh al-sira* [Sacred Law inferred from the prophetic biography], and *al-Lamadhhabiyya akhtar bid'a tuhaddidu al-shari'a al-Islamiyya* [Not following a school of jurisprudence is the most dangerous innovation threatening Islamic Sacred law], while his most recent work, *al-Salafiyya marhala zamaniyya mubaraka la madhhab Islami* [The "way of the early Muslims" was a blessed historical epoch, not an Islamic school of thought], has gained a wide readership. He lives in Damascus, where he writes, teaches at the university, and gives well-attended public lectures at several mosques (*Shuruh Risala al-Shaykh Arslan* (y51), 283; and n).

x264 (a) Muhammad Shirbini Khatib (h1.0) is Muhammad ibn Ahmad, Shams al-Din al-Shirbini al-Khatib of Cairo. A Shafi'i Imam and Koranic exegete of knowledge and piety, he studied in Cairo under Imam Ahmad al-Ramli, as well as Nur al-Din Mahalli, Ahmad Burullusi, and others, who authorized him to give formal legal opinion and instruction. He educated a multitude of scholars, and his works won recognition in their author's lifetime for their outstanding clarity and reliability, among the most famous of them his four-volume *Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj* [The enricher of him in need of knowledge of the meanings of the words of "The seekers' road"], a commentary on Nawawi's *Minhaj al-talibin*; and his Koranic exegesis *al-Siraj al-munir fi al-i'ana 'ala ma'rifa ba'd kalam Rabbina al-Hakim al-Khabir* [The light-giving lamp: an aid in knowing some of the words of our Lord, the All-wise and All-knowing]. He died in Cairo in 977/1570 (*al-A'lam* (y136), 6.6; *Mughni al-muhtaj* (y73), 4.548; and n).

x264 (b) Muhammad 'Umar Muhammad 'Umar (Document 4) was born in the Suwayd governorate of Egypt in about 1934 and was educated in Cairo, where he

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graduated from the College of Arts at Cairo University. In 1985 he was appointed to his current post as Director of the Department of Translation at al-Azhar's Islamic Research Academy (Sheikh Fath Allah Ya Sin Jazar).

x265 Muhyiddin ibn al-'Arabi (r20.3) is Muhammad ibn 'Ali ibn Muhammad ibn al-'Arabi, Abu Bakr Muhyi al-Din al-Hatimi al-Ta'i, The Greatest Sheikh (al-Shaykh al-Akbar), born in Murcia (in present-day Spain) in 560/1165. A *mujtahid* Imam in Sacred Law, Sufism, Koranic exegesis, hadith, and other Islamic sciences, and widely regarded as a friend (wali) of Allah Most High, he was the foremost representative of the Sufi school of the 'oneness of being' (wahdat al-wujud, dis: x5), as well as a Muslim of strict literal observance of the prescriptions of the Koran and sunna. He first took the way of Sufism in A.H. 580, and in the years that followed authored some six hundred books and treatises in the course of travels and residences in Fez, Tunis, Alexandria, Cairo, Mecca, Baghdad, Mosul, Konya, Aleppo, and finally Damascus, where he lived till the end of his life and completed his *al-Futuhat al-Makkiyya* [The Meccan revelations] and *Fusus al-hikam* [The precious stones of the ring-settings of the wisdoms]. Since interest in his work continues among even non-Muslim scholars, a number of hermeneutical obstacles are worth mentioning here that have in some measure so far hindered serious efforts to understand the sheikh's works, by friend and foe alike.

The first is lack of common ground with the author, who has written, "We are a group whose works are unlawful to peruse, since the Sufis, one and all, use terms in technical senses by which they intend other than what is customarily meant by their usage among scholars, and those who interpret them according to their usual significance commit unbelief." While this may not be particularly intimidating to someone who is already an unbeliever, it does at least implicitly deny the validity of a do-it-yourself approach to the sheikh's thought and point up the relevance of the traditional maxim, Knowledge is to be taken from those who possess it.

A related difficulty is that the context of much of Ibn al-'Arabi's *Futuhat* and other works is not only the outward Islamic sciences, but also their inner significance, not by any means an "esoteric symbolism" that nullifies the outward content of the sheikh's inquiries, but a dimension of depth, a reflective counterpart to their this-worldly significance whose place and existential context is the world of the spirit, to which the physical universe—in which many of his would-be interpreters are firmly enmeshed and know nothing besides, especially those who are atheists—is like a speck of dust in the sea. While the present discussion cannot adequately do justice to the topic, one may yet observe that the heart of someone familiar only with the "What will I eat," "What will I say," "Will it prove feasible," and other physical and intellectual relations of instrumentality that make up this world is no more capable of real insight into the world of someone like the sheikh than a person inches away from a giant Monet is capable of *seeing* the picture he believes is "before his very eyes." The way of Ibn al-'Arabi is precisely a *way*, and if one has not travelled it or been trained to see as Ibn al-'Arabi sees, one may well produce intelligent remarks about one's perceptions of the matter, as attested to by a whole literature of "historical studies" of Sufism, but the fact remains that one does not see.

A third difficulty is the problem of spurious interpolations by copyists, as once happened to 'Abd al-Wahhab Sha'rani, who had to bring his own handwritten manuscript to court to prove he was innocent of the unbelief that enemies had

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inserted into his work and published in his name. The *Hashiya* of Ibn 'Abidin notes that this has also happened to the *Fusus al-hikam* of Ibn al-'Arabi, the details being given in a promulgation by the Supreme Ottoman Sultanate exonerating the author of the statements of unbelief (kufr) it said that Jews had interpolated into the work. This is supported by the opinion of Mahmud Mahmud Ghurab, an Ibn al-'Arabi specialist of Damascus who has published more than twelve books on the sheikh's thought, among them *al-Fiqh 'ind al-Shaykh al-Akbar Muhyiddin ibn al-'Arabi* [Sacred Law according to the Greatest Sheikh, Muhyiddin ibn al-'Arabi], which clarifies Ibn al-'Arabi's position as a Zahiri Imam and *mujtahid* in Sacred Law; and *Sharh Fusus al-hikam* [Exegesis of "The precious stones of the ring-settings of the wisdoms"], in which Ghurab indicates eighty-six passages of the *Fusus* that he believes are spurious, adducing that they contradict the letter and spirit of *al-Futuhat al-Makkiyya*, which must be given precedence because we possess a manuscript copy in the author's own handwriting, while there are no such copies of the *Fusus*.

One may summarize the above-mentioned difficulties and others by the general observation that without a master with whom to read these texts, someone who has himself read them with a teacher aware of their place in the whole of the sheikh's work, one is in danger of projecting one's own limitations onto the author. This happens in our times to various groups of interpreters, among them non-Muslim "Sufis" who have posthumously made Ibn al-'Arabi an honorary Mason, saying that he believed all religions to be equally valid and acceptable—which Ghurab says is an ignorant misreading, and to which the sheikh himself furnishes a sufficient reply in his account of his convictions ('aqida) at the first of the *Futuhat* where he says, "Just as I charge Allah, His angels, His entire creation, and all of you to bear witness upon me that I affirm His unity, so too I charge Him Most Glorious, His angels, His entire creation, and all of you to bear witness upon me that I believe in the one He has elected, chosen, and selected from all His existence, Muhammad (Allah bless him and give him peace), whom He has sent to all mankind entirely (ila jami' al-nas kaffatan) to bring good tidings and to warn and to call to Allah by His leave" (*al-Futuhat al-Makkiyya* (y55), 1.38). It is fairly obvious that his being sent to all mankind would be pointless if all other religions were not now abrogated, as would jihad, something that Ibn al-'Arabi discusses, before going on to explain its spiritual side, in what is unmistakably a treatment of its outward military aspect and rules, believer against unbeliever, sword against sword, which Ghurab points out would be meaningless if both sides were upon guidance. Finally, in a chapter entitled "The Levels of the Inhabitants of Hell" (*al-Futuhat al-Makkiyya* (y55), 1.301), the sheikh clearly explains that while disobedient Muslims ('usat) will one day leave the hellfire, those who associated others with Allah (mushrikun) and the Jews and Christians (Ahl al-Kitab) who did not accept the Prophet (Allah bless him and give him peace) after his coming will remain in hell forever—which is as far from the universal validity of all religions as anything could be.

Other interpreters who error are well-meaning Muslims who do not and cannot understand the sheikh's work, which they read in their native Arabic as if it were a newspaper and then level accusations of unbelief against the author on the basis of what comes to their minds while doing so. For all groups of interpreters, there is a pressing need for scholarly modesty and candor about our exegetical limitations, and to draw attention to the fact that without a guide in reading the

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sheikh's thought, one is adrift in a sea of one's own guesswork.

Aside from these basic hermeneutic requirements for reading the work of Ibn al-'Arabi, other, existential qualifications are needed, for as mentioned above, the sheikh's method is a way, and as such entails not only curiosity, but commitment and most of all submission to Allah Most High as the sheikh had submission to Him, namely through Islam—as well as other conditions mentioned by Ibn Hajar Haytami in a legal opinion in which, after noting that it is permissible or even meritorious (mustahabb) to read the sheikh's works, but only for the qualified, he writes: "Imam Ibn al-'Arabi has explicitly stated: 'It is unlawful to read [the Sufis'] books unless one attains to their level of character and learns the meaning of their words in conformity with their technical usages, neither of which is found except in someone who has worked assiduously, rolled up his sleeves, abandoned the wrong, tightened his belt, filled himself replete with the outward Islamic sciences, and purified himself from every low trait connected with this world and the next. It is just such a person who comprehends what is being said and is allowed to enter when he stands at the door.' " The sheikh outlines what is entailed by *working assiduously* in a series of injunctions (wasaya) at the end of his *Futuhat* ((y55), 4.444–551) that virtually anyone can benefit from, and by which one may infer some of the outward details of the sheikh's way. By all accounts, he lived what he wrote in this respect, and his legacy bears eloquent testimony to it. He died in his home in Damascus, a copy of Ghazali's *Ihya' 'ulum al-din* on his lap, in 638/1240 (*al-A'lam* (y136), 6.281; *al-Fatawa al-hadithiyya* (y48), 296–97; *al-Futuhat al-Makkiyya* (y55), 1.38, 1.301, 2.425, 4.444–551; *Hashiya radd al-muhtar* (y47), 4.238; *Sharh Fusus al-hikam* (y42), 475–98; Mahmud Mahmud Ghurab; Sheikh 'Abd al-Rahman Shaghouri; A; and n).

x266 Muhyiddin Mahmalji (Document 1) is a friend of Sheikh 'Abd al-Wakil Durubi and Yasin 'Arafa who lives in Damascus. He frequently visits the Darwishiyya to sit with the circle that gathers there, and is about Sheikh 'Abd al-Wakil's age (n).

x267 Mujahid (a4.6) is Mujahid ibn Jabr, Abu al-Hajjaj al-Makki, of Mecca, born in 21/642. A Koranic exegete of the generation who followed that of the Companions, he is referred to by Dhahabi as "the sheikh of Koran reciters and interpreters" and took his knowledge of Koranic exegesis from Ibn 'Abbas, with whom he read the Koran three times, stopping at every verse and asking him how and in reference to what it was revealed. He moved from place of place and finally settled in Kufa. Unable to hear of anything strange or marvelous without personally going to investigate, he went to the Well of Barahut in Hadramawt, Yemen, which is said to contain the souls of unbelievers and hypocrites, and went to Babylon to look for Harut and Marut. It is said he died while prostrate in prayer, in 104/722 (*al-A'lam* (y136), 5.278; and *Mu'jam al-buldan* (y43), 1.405).

x268 Munawi (*see* 'Abd al-Ra'uf Munawi, x15)

x269 Mundhiri (w40.4) is 'Abd al-'Adhim ibn 'Abd al-Qawi ibn 'Abdullah ibn Salama, Abu Muhammad Zaki al-Din al-Mundhiri, born in Egypt in 581/1185. He was a Shafi'i scholar, historian, lexicographer, and the hadith master (hafiz)

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of his time, a saintly ascetic who was regarded by contemporaries as a friend (wali) of Allah Most High. He studied hadith under masters in Mecca, Damascus, Harran, al-Ruha, and Alexandria before returning to Cairo, where he was appointed as sheikh in the Dar al-Hadith al-Kamaliyya. He held this position for twenty years, teaching, writing, and not leaving the school except for the Friday prayer, and he authored a lexicon, a history, and a number of works on hadith, of which the four-volume *al-Targhib wa al-tarhib* [The instilling of desire and fear] is the most well known. He died in Cairo in 657/1258 (*al-A'lam* (y136), 4.30; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 8.259).

x270 Munkar (u3.3) is one of the two fearsome angels who question the newly-buried in their graves, as discussed above at v2.2 and w32.1(2) (n).

x271 Musa (u3.5) is Musa ibn 'Imran ibn Qahith ibn 'Azir ibn Lawi ibn Ya'qub ibn Ishaq ibn Ibrahim (upon whom be peace), the prophet and messenger of Allah Most High to Bani Isra'il. He is mentioned in many places in the Holy Koran, among them sura al-A'raf, which tells of the two great signs that Allah vouchsafed to him to convince Pharaoh to let Bani Isra'il leave Egypt with him. The first of these was that when he cast his staff, it became a snake, while the second was that when Musa drew forth his hand from his bosom, it illumined the earth to the sky, after which he returned it to his bosom and it became as it had been. But the members of Pharaoh's council told him that Musa was merely a sorcerer, and Pharaoh refused to heed what he had been shown. The Koran describes the afflictions that were visited on Pharaoh's people in the wake of his refusal, how Musa left Egypt with Bani Isra'il, the drowning of Pharaoh and his host, and the wanderings of Bani Isra'il in the desert for forty years, during which Musa's brother Harun died, and then Musa a year later (*al-Futuhat al-ilahiyya* (y65), 1.56; *Qisas al-anbiya'* (y59), 296; *al-Siraj al-munir* (y72), 1.499; and n).

x272 Musaylima the Liar (w30.2) is Musaylima al-Kadhdhab ibn Thumama ibn Habib al-Hanafi al-Wa'ili, born in al-Yamama in a village now known as al-Jubayla in the Najd highlands of eastern Arabia. It is related that he wrote a letter to the Prophet (Allah bless him and give him peace) after the conquest of Mecca, saying: "From Musaylima the Messenger of Allah to Muhammad the Messenger of Allah. Peace be upon you. To commence: I have been given to share with you in the matter. We shall have half the earth and the Quraysh have half, though the Quraysh are a people who transgress." The Prophet (Allah bless him and give him peace) answered, "From Muhammad the Messenger of Allah to Musaylima the Liar. Peace be upon whoever follows guidance. To commence: the earth belongs to Allah, who bequeaths it to whomever He wills of His servants, and the outcome is to the godfearing." Musaylima composed rhyming verse in attempts to imitate the Koran, and the Prophet (Allah bless him and give him peace) died before he could finish him, though when Abu Bakr became caliph he gathered a large army he placed under the leadership of Khalid ibn al-Walid, who proceeded to Yamama and attacked Musaylima in A.H. 12 in a pitched battle that extirpated the false prophet and his followers, but at a cost of some 1,220 Muslim lives, 450 of whom were Companions (*al-A'lam* (y136), 7.226).

x273 Muslim (Introduction) is Muslim ibn al-Hajjaj ibn Muslim, Abu al-Husayn al-Qushayri al-Naysaburi, born in Nishapur, Persia, in 204/820. A Shafi'i

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scholar, and a hadith master (hafiz) and Imam second only to his mentor Bukhari, he was the author of the famous hadith collection *Sahih Muslim* [The rigorously authenticated collection of Muslim], which has inspired many commentaries and is considered among the greatest works on hadith in Islam. Besides studying with Bukhari, he travelled to the Hijaz, Egypt, Syria, and Iraq, learning hadiths from over 220 of the principle sheikhs of the time, including Ahmad and Ishaq ibn Rahawayh. While some scholars have considered Muslim's *Sahih* to be greater than Bukhari's because of the excellence of its arrangement and other editorial features, the truth is that Bukhari's collection is superior because of its additional strictures for a hadith's admissibility as "rigorously authenticated" (sahih). Imam Muslim also wrote a number of other works in hadith, and died in Nishapur in 261/875 (ibid., 7.221; *Sharh Sahih Muslim* (y93), 1.1–3; *Siyar a'lam al-nubala'* (y37), 12.557–61; *al-Taj al-jami' li al-usul* (y100), 1.16; and n).

x274 Mutawalli (m12.6) is 'Abd al-Rahman ibn Ma'mun ibn 'Ali ibn Ibrahim, Abu Sa'd al-Naysaburi al-Mutawalli, born in Nishapur, Persia, in 426/1035. A Shafi'i Imam and scholar in Sacred Law, principles of jurisprudence, and tenets of faith, he studied in Merv (in present-day Turkmen S.S.R.) under 'Abd al-Rahman Furani (x124) and authored *Tatimma al-Ibana* [The completion of "The explanation"], a voluminous commentary on a work by Furani. He also studied Shafi'i jurisprudence under the sheikh of Imam Baghawi, al-Qadi Husayn ibn Muhammad Marwazi, and took hadith from Abul Qasim Qushayri before succeeding Abu Ishaq Shirazi as the sheikh of the Nizamiyya Academy at Baghdad, where he died in 478/1087 (ibid., 3.323; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 5.106–7).

x275 Muzani (o1.0) is Isma'il ibn Yahya ibn Isma'il, Abu Ibrahim al-Muzani of Egypt, born in 175/791. A Shafi'i scholar of Sacred Law and student of the Imam himself, he was so expert at arguing a case that Shafi'i once remarked of him, "Were he to debate the Devil, he would win." Abu Ishaq Shirazi described him as "an ascetic scholar and *mujtahid*, a debater of considerable skill at presenting an argument with an aptitude for subtle shades of meaning." He wrote a number of works in Sacred Law, of which his summary of the school's rulings, *al-Mukhtasar* [The epitome], is perhaps the most famous. Devoted to worship, if he missed a prescribed prayer in congregation he would pray it twenty-five times alone, and it was his practice to wash the dead without payment in hope of Allah's reward, saying, "I do it to soften my heart." He died in 264/878 (*al-A'lam* (y136), 1.329; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 2.93).

x276 (N:) (*see* (Sheikh) Nuh 'Ali Salman, x290)

x277 (n:) (*see* Nuh Ha Mim Keller, x291)

x278 Nafi' (w28.1(3)) is Nafi', Abu 'Abdullah al-Qurashi. Originally taken prisoner by 'Abdullah ibn 'Umar, he grew up in Medina to become the mufti and Imam of the generation that followed the Companions. He was one of the sheikhs of Imam Malik, relating hadiths from Ibn 'Umar, 'A'isha, Abu Hurayra, Abu Sa'id al-Khudri, and others. Not a single mistake is known in all the hadiths he related, and Imam Bukhari was to say, "The most rigorously authenticated chan-

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nel of transmission is that of Malik from Nafi' from Ibn 'Umar." He died in 117/735 (*al-A'lam* (y136), 8.5; and *Siyar a'lam al-nubala'* (y37), 5.95–97).

x279 Nahlawi (*see* Khalil Nahlawi, x215)

x280 Najm al-Ghazzi (r28.1) is Muhammad ibn Muhammad ibn Muhammad, Abu al-Makarim Najm al-Din al-Ghazzi, born in Damascus in 977/1570. He was a Shafi'i scholar, researcher, litterateur, biographer, and historian who composed a number of books and treatises, including his well-known biographical collection *al-Kawakib al-sa'ira fi tarajim a'yan al-mi'a al-'ashira* [The moving stars: on biographies of notables of the tenth century]. He died in Damascus in 1061/1651 (*al-A'lam* (y136), 7.63; and Sheikh Shu'ayb Arna'ut).

x281 Nakir (u3.3) is one of the two angels who question the dead in their graves after burial, as mentioned above at v2.2 and w32.1(2) (n).

x282 (Imam) Nasafi (w57.2) is 'Abdullah ibn Ahmad ibn Mahmud, Abu al-Barakat Hafiz al-Din al-Nasafi of Idhaj, a village near Isfahan, Persia. Among the great Hanafi Imams of his time, he authored major contributions in methodological fundamentals of Sacred Law, Hanafi jurisprudence, and tenets of faith, though he is most famous outside of his school for his three-volume Koranic commentary *Madarik al-Tanzil* [Realizations of the Revelation], which places particular emphasis on the lexical and grammatical dimensions of Koranic interpretation. He died in Idhaj in 710/1310 (*al-A'lam* (y136), 4.67).

x283 Nasa'i (Introduction) is Ahmad ibn 'Ali ibn Shu'ayb ibn 'Ali ibn Sinan ibn Bahr ibn Dinar, Abu 'Abd al-Rahman al-Nasa'i, originally of Nasa, Persia, born in 215/830. He was a Shafi'i scholar and judge, a hadith master (hafiz) and Imam. Educated in hadith by scholars like Ishaq ibn Rahawayh, Abu al-Qasim Tabarani, and others during travels to Khurasan, Iraq, Syria, the Hijaz, and the Arabian Peninsula, he eventually settled in Egypt. It is related that he used to fast every other day, and was fond of women, having four wives whom he took turns with as well as a number of concubines. While he authored works on the merits of the Companions and an outstanding volume on the excellences of Imam 'Ali ibn Abi Talib (Allah be well pleased with him), his main work is his *Sunan* [Sunnas], one of the six great hadith collections of Islam. Daraqutni said of him, "Abu 'Abd al-Rahman leads all others of his time who are mentioned in the field of hadith," and when Dhahabi was asked who was more learned, Nasa'i or Muslim, he replied that the former was, a verdict that Imam Taqi al-Din Subki concurred with. After a lifetime of worship and of devotion to Sacred Knowledge, Nasa'i was martyred in 303/915 in Damascus for his love of Imam 'Ali by remnants of the Kharijite sect, who gave him a beating from which he died (ibid., 1.171; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 3.14–16).

x284 Nasir al-Mutarrizi (w42.2) is Nasir ibn 'Abd al-Sayyid Abi al-Makarim ibn 'Ali, Abu al-Fath Burhan al-Din al-Mutarrizi, born in Jurjaniyya, Khawarizm (in present-day Turkmen S.S.R.), in 538/1144. A Hanafi scholar and poet, he was a specialist in Arabic lexicology and grammar who wrote a number of works of which his *al-Mughrib fi tartib al-Mu'rib* [The causer of wonder: on the order of

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"The clarifier"], an exposition of a shorter rhymed work on lexicology of his own composition, is still among the best books available for rare words appearing in Hanafi legal texts. He died in Khawarizm in 610/1213 (*al-A'lam* (y136), 7.348; and n).

x285 (Imam) Nawawi (Introduction) is Yahya ibn Sharaf ibn Murri ibn Hasan, Abu Zakariyya Muhyi al-Din al-Nawawi, born in the village of Nawa on the Horan Plain of southern Syria in 631/1233. He was the Imam of the later Shafi'i school, the scholar of his time in knowledge, piety, and abstinence, a hadith master (hafiz), biographer, lexicologist, and Sufi. When he first came to Damascus in A.H. 649, he memorized the text of Abu Ishaq Shirazi's *al-Tanbih* [The notice] in four and a half months, then the first quarter of Shirazi's *al-Muhadhdhab* [The rarefaction], after which he accompanied his father on hajj, then visited Medina, and then returned to Damascus, where he assidously devoted himself to mastering the Islamic sciences. He took Shafi'i Law, hadith, tenets of faith, fundamentals of jurisprudence, Arabic, and other subjects from more than twenty-two scholars of the time, including Abu Ibrahim Ishaq al-Maghribi, 'Abd al-Rahman ibn Qudama al-Maqdisi, and others, at a period of his life in which, as Dhahabi notes, "his dedication to learning, night and day, became proverbial." Spending all his time in either worship or gaining Sacred Knowledge, he took some twelve lessons a day, only dozed off in the night at moments when sleep overcame him, and drilled himself on the lessons he learned by heart while walking along the street. Fastidious in detail and deep in understanding of the subjects he thus mastered, he authored many great works in Shafi'i jurisprudence, hadith, history, and legal opinion, among the best known of which are his *Minhaj al-talibin* [The seekers' road], which has become a main reference for the Shafi'i school, *Riyad al-salihin* [The gardens of the righteous] and *Kitab al-adhkar* [The Book of remembrances of Allah] in hadith, and his eighteen-volume *Sharh Sahih Muslim* [Commentary on Muslim's "Sahih"]. He lived simply, and it is related that his entire wardrobe consisted of a turban and an ankle-length shirt (thawb) with a single button at the collar. After a residence in Damascus of twenty-seven years, he returned the books he had borrowed from charitable endowments, bade his friends farewell, visited the graves of his sheikhs who had died, and departed, going first to Jerusalem and then to his native Nawa, where he became ill at his father's home and died at forty-four years of age in 676/1277, young in years but great in benefit to Islam and the Muslims (*al-A'lam* (y136), 8.149; *Mughni al-muhtaj* (y73), 4.545–47; *Riyad al-salihin* (y107), introduction; Sheikh Hasan Saqqaf; A; and n).

x286 Nimrod (u3.8) is Nimrudh, the illegitimate son of King Kan'an. The first man to claim he was God, to tyrannize people, and to put a crown on his head, he was the enemy of the prophet Ibrahim (upon whom be peace), whom he threw into a fire and tried to burn, though Allah Most High commanded the fire to be cool and harmless to Ibrahim. After this, according to commentators, Nimrudh was killed when Allah sent an affliction of gnats upon his people as a punishment (*al-Futuhat al-ilahiyya* (y65), 1.210, 3.135).

x287 Noah (*see* Nuh, **x289**)

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x288 Nu'aym ibn Hammad (w4.7) is Nu'aym ibn Hammad ibn Mu'awiya ibn al-Harith, Abu 'Abdullah al-Khuza'i, originally of Merv (in present-day Turkmen S.S.R.), who lived in Egypt. A scholar who knew the rules of Islamic estate division (fara'id), he is considered by Ibn Hajar 'Asqalani to be an honest hadith narrator who had a poor memory and made many mistakes in transmission, though Muhammad Zahid al-Kawthari and others have drawn attention to a number of hadiths he related containing corrupt convictions about basic tenets of faith. He died in A.H. 228 (*Taqrib al-tahdhib* (y16), 564; and n).

x289 Nuh (u3.5) is Nuh ibn Lamak ibn Matushalakh ibn Akhnukh (upon whom be peace), the first prophet sent by Allah Most High after Idris. The first to bring a revealed law (shari'a), to warn against polytheism (shirk), and the first whose people were punished for rejecting his message, he was a carpenter by trade who was sent to his people when fifty years old. Commentators relate that his true name was 'Abd al-Ghaffar, but he became known as Nuh for his copious weeping (naha) over his having prayed to Allah to extirpate his corrupt people, who, after rejecting his message for 950 years, were drowned in a flood. Allah preserved Nuh and the believers from the Deluge by inspiring him to build an Ark which carried them safely upon the waters. All the inimitable miracles (mu'jizat) that Allah vouchsafed to Nuh pertained to his person, for he lived a thousand years without loss of strength or his hair turning gray, even though he fasted perpetually, and no one ever bore the afflictions he endured from his people throughout his life (*al-Siraj al-munir* (y72) 1.345, 1.484; and n).

x290 (Sheikh) Nuh 'Ali Salman (Introduction) is Nuh ibn 'Ali ibn Salman al-Qudah, born in 1939 in 'Ayn Janna, near 'Ajlun, Jordan. His father was a Shafi'i scholar who was educated in Damascus under Sheikh 'Ali al-Daqar, and when he returned to Jordan, studied various works of the Islamic sciences (among them Ghazali's *Ihya 'ulum al-din,* which he read seven times) and taught his four sons Sacred Law, grammar, and tenets of faith before sending them, each in their turn, to Damascus for an Islamic education. Nuh went in 1954, spending seven years in the Islamic preparatory and secondary schools of al-Jama'iyya al-Ghurra' founded by his father's sheikh, where in addition to secular subjects, he studied tenets of faith and Shafi'i jurisprudence from works like *'Umdat al-salik* [The reliance of the traveller], *Matan Abi Shuja'* [The text of Abu Shuja'], and Nawawi's *Minhaj al-talibin* [The seekers' road] with such sheikhs as 'Abd al-Karim al-Rifa'i, Ahmad al-Basrawi, 'Abd al-Razzaq al-Himsi, Nayyif al-'Abbas, Mahmud al-Ranqusi, and the judge Muhammad Khayr al-Shamma', and during which time he also attended the lessons of Sheikh Muhammad Hashimi, from whom he took the daily *dhikr* (wird) of the Shadhili tariqa. After secondary school, he attended the College of Sacred Law at the University of Damascus for four years, much of his study devoted to Hanafi jurisprudence, under Mustafa al-Zarqa, Wahbi al-Zuhayli, 'Abd al-Rahman al-Sabuni, Amin al-Misri, 'Abd al-Fattah Abu Ghudda, Muhammad al-Mubarak, Fawzi Faydullah, and others. He graduated in 1965 and returned to Jordan, where he joined the armed forces and worked with Sheikh 'Abdullah Muhammad al-'Azam whom he succeeded as mufti in 1972. In 1977, he went to Cairo and spent three years in the master's degree program at al-Azhar, where he studied fundamentals of law and belief

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under Sheikh 'Abd al-Ghani 'Abd al-Khaliq, comparative jurisprudence with Sheikh Hasan al-Shadhili, and heard the late rector of al-Azhar Sheikh 'Abd al-Halim Mahmud lecture on Sufism. It was during this period that he wrote his *Qada' al-'ibadat wa al-niyaba fiha* [Making up acts of worship and performing them for others] with Sheikh Muhammad al-Anbadhi as his supervisor, for which he received his master's degree in 1980. The following year, he enrolled in the doctoral program at the University of Imam Muhammad ibn Sa'ud in Riyadh, and in 1986 took a doctorate for his second main work, *Ibra' al-dhimma min huquq al-'ibad* [Fulfilling one's obligation to give others their rights].

From the time of his appointment as mufti in 1972, Sheikh Nuh has discharged the duties of his office with energy and competence, writing hundreds of formal legal opinions in response to questions on all aspects of the religion of Islam, many of them published in the Armed Forces monthly religious journal *al-Tadhkira* [The reminder], in addition to lectures, books, and articles on Sacred Law, prophetic biography, tenets of faith, and other topics. During his tenure, the Jordanian Army has been distinguished by having an imam in every unit who is not only part of it wherever it goes, but leads the obligatory prayers, gives weekly religious lessons, answers questions about Islam, and is subject to regular refresher courses in Shafi'i jurisprudence, hadith, Koran, and tenets of faith. In the course of helping with the present volume, though busy with official duties, Sheikh Nuh generously spent his after-work hours with the translator in sessions often extending late into the night at his own home, never refusing any service he could render or declining to research any question connected with Sacred Law, and never asking for anything in return. He presently lives in Marj al-Hamam, near Amman, Jordan (n).

x291 Nuh Ha Mim Keller (Title Page) is from Odessa, Washington, in the northwestern United States. Born in 1954 and raised as a Roman Catholic, he worked as a commercial fisherman in the North Pacific for a space of years between travelling in the off-seasons and attending institutions of higher learning. He studied philosophy, concentrating mainly on the epistemology of ethical theory, with Andrew J. Bjelland at Gonzaga University and with the French philosopher Paul Ricoeur, author of *The Symbolism of Evil* and *The Conflict of Interpretations,* at the University of Chicago. It was at the latter that he first studied classical Arabic with Carolyn Killean and Galal Nahhal, then with Salim Hermis Yunus in Cairo—where he became a Muslim at al-Azhar by the mercy and grace of Allah in 1977—and then with Claude Audebert at UCLA, from which he received a degree in philosophy in 1980. Moving to Jordan, he pursued his learning of Arabic at the University of Jordan under Hala Nashif and later taught English at Yarmouk University. He took the Shadhili tariqa in 1982 in Damascus from Sheikh 'Abd al-Rahman Shaghouri, his teacher in the way of *tasawwuf* from that time. In need of a basic manual of Islamic law, in the fall of 1982 he bought the copy of *'Umdat al-salik wa 'uddat al-nasik* that with the help and instruction of Sheikh 'Abd al-Wakil Durubi and Sheikh Nuh 'Ali Salman was completed in annotated translation as the present work, *The Reliance of the Traveller,* in 1990. Among his other teachers is Sheikh Shu'ayb Arna'ut, with whom he studies Hanafi jurisprudence. He presently lives in Amman (n).

x292 (O:) (*see* (Sheikh) 'Umar Barakat, x352)

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x293 P. Casanova (w15.2) is Paul Casanova, a French orientalist born in Algeria who went to Paris in 1879, studied at the School of Living Eastern Languages, and was appointed as secretary of the Department of Oriental Numismatics, after which he became a professor of Arabic at the University of France in 1909. He journeyed to Cairo three times and published works about Ibn Khaldun, Egypt, and studies on Islamic coinage, weights, and measures. He died in Cairo in 1334/1924 (*al-A'lam* (y136), 2.78).

x294 Pharaoh (q6.3) is Fir'awn, a title customarily borne by each of the Amalekite kings of ancient Egypt, though applied in the Koran to al-Walid ibn Mus'ab ibn Rayyan, the king at the time of the prophet Musa (upon whom be peace). Described in many places in the Holy Koran, Pharaoh was the personification of evil for his enmity towards the prophet Musa and crimes against God and man. He lived more than four hundred years and was drowned in the Red Sea at the head of his armies while pursuing Bani Isra'il (*al-Futuhat al-ilahiyya* (y65), 1.51; *al-Shifa* (y116), 1.211; and n).

x295 (The) Prophet (*see* Muhammad, x245)

x296 Qadi 'Iyad (o25.3(a)) is 'Iyad ibn Musa ibn 'Iyad ibn 'Imran, Abu al-Fadl al-Yahsabi, born in Sabta (present-day Ceuta, on the Strait of Gibraltar) in 476/1083. The Imam of western Muslimdom in hadith and Arabic lexicology, he was a gifted Maliki scholar and author who wrote a number of books in the sciences of hadith, Maliki jurisprudence, and history, though he is best remembered for his two-volume *al-Shifa bi ta'rif huquq al-Mustafa* [The cure, in outlining the attributes of the Chosen One], universally acknowledged as among the finest works ever written on the Prophet (Allah bless him and give him peace). He was appointed as the judge (Ar. *qadi*, whence the nickname) of Sabta, then Granada, and finally Marrakesh, where he died of poisoning, allegedly by a Jew, in 544/1149 (*al-A'lam* (y136), 5.99).

x297 (Sheikh) al-Qalyubi (w41.3) is Ahmad ibn Ahmad ibn Salama, Abu al-'Abbas Shihab al-Din al-Qalyubi, of Qalyub, Egypt. He was a Shafi'i scholar in Sacred Law and hadith, a physician, and the author of a number of books, commentaries, and treatises in Islamic jurisprudence, hadith, medicine, history, and geography. He died in 1069/1659 (ibid., (y136), 1.92; *Rudud 'ala abatil* (y44), 1.646; and Sheikh Shu'ayb Arna'ut).

x298 al-Qannad (w9.11) is probably 'Ali ibn 'Abd al-Rahim, Abu al-Hasan al-Qannad al-Sufi of Wasit, Iraq, who used to travel without any provisions, and met many of the sheikhs of his time. From the fact that he related some of the sayings of al-Hallaj, he may be supposed to have died after the latter's death in 309/922 (*Tabaqat al-Sufiyya* (y129), 165; and n).

x299 Qatada (a4.6) is Qatada ibn Da'ama ibn Qatada ibn 'Uzayr, Abu al-Khattab al-Sadusi, of Basra, Iraq, born in 61/680. Blind from birth, he was a hadith scholar and Imam of Koranic exegesis, Arabic, and geneology who met and related hadiths from many of the prophetic Companions and from those who came after them, including Anas ibn Malik, Abu al-Tufayl al-Kinani, Sa'id ibn al-

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Musayyib, and others. Ahmad once called him "the most learned person in Basra." He died of the plague in Wasit in 118/736 (*al-A'lam* (y136), 5.189; and *Siyar a'lam al-nubala'* (y37), 5.269–70).

x300 (The) Queen of Sheba (w30.1) is Bilqis bint Sharahil, descended of Ya'rab ibn Qahtan. It is related that her father, the king of Yemen, was unable to find a suitable wife among the princesses of outlying kingdoms, so he instead wed Rayhan bint al-Sakan, a woman of the jinn, and from their marriage was born Bilqis, who inherited his kingdom. The Holy Koran tells how the hoopoe of Sulayman (upon whom be peace) went to her kingdom and saw the queen and her people prostrating to the sun, and describes the events that led to her accepting Islam from Sulayman. Commentators relate that Sulayman then married her and confirmed her in her kingdom, ordering the jinn to build three incomparable palaces for her in Yemen, where he would visit her each month for three days, and that her reign lasted as long as his (*al-Futuhat al-ilahiyya* (y65), 3.309–18).

x301 (Imam) Qurtubi (p75.23) is Muhammad ibn Ahmad ibn Abu Bakr ibn Farah, Abu 'Abdullah al-Ansari al-Qurtubi, of Cordova (in present-day Spain). A Maliki scholar and hadith specialist, he was one of the greatest Imams of Koranic exegesis, an ascetic who divided his days between worship and writing. Educated in hadith by masters like 'Ali ibn Muhammad al-Yahsabi and al-Hasan ibn Muhammad al-Bakri, he wrote works in the sciences of hadith and tenets of faith, though his enduring contribution is his twenty-volume *al-Jami' li ahkam al-Qur'an* [The compendium of the rules of the Koran], from which he mainly omitted the stories and histories customary in other commentaries, and recorded instead the legal rulings contained in the Koran and how scholars have inferred them, together with canonical readings (qira'at), Arabic grammar, and which verses abrogate others and which are abrogated (nasikh wa mansukh). Scholars have used it extensively ever since it was written. It is related that Qurtubi disdained airs, and used to walk about in a simple caftan with a plain cap (taqiyya) on his head. He travelled east and settled in Munya Abi al-Khusayb in upper Egypt, where he died in 671/1273 (*al-A'lam* (y136), 5.322; *al-Jami' li ahkam al-Qur'an* (y117), 1.6–7; Sheikh Shu'ayb Arna'ut; and n).

x302 Qushayri (*see* Abul Qasim Qushayri, x53)

x303 (Imam) Rafi'i (d1.2) is 'Abd al-Karim ibn Muhammad ibn 'Abd al-Karim ibn al-Fadl ibn al-Hasan, Abu al-Qasim al-Rafi'i of Qazvin, Persia, born in 557/1162. The Imam of his time in Sacred Law and Koranic exegesis, he represents, with Imam Nawawi, the principle reference of the late Shafi'i school. His main work, a commentary on Ghazali's *al-Wajiz* [The synopsis] entitled *Fath al-'Aziz fi sharh al-Wajiz* [The victory of the Invincible: an exegesis of "The synopsis"] was later to furnish the textual basis for Nawawi's *Minhaj al-talibin* [The seekers' road]. Taj al-Din Subki noted of its author: "Imam Rafi'i was steeped to repletion in the sciences of Sacred Law, Koranic exegesis, hadith, and fundamentals of Islamic legal methodology, towering above his contemporaries in the transmission of evidence, in research, guidance, and in attainment.... It was as if jurisprudence had been dead, and he revived it and spread it, raising its foundations after ignorance had killed and buried it." He authored works in Sacred Law

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and history, and taught Koranic exegesis and hadith in Qazvin, where the hadith master (hafiz) Mundhiri was among his students. Known as a pure-hearted ascetic who followed the mystic path, Nawawi observed of him that he "had a firm standing in righteousness, and many miracles were vouchsafed to him." He died in Qazvin in 623/1226 (*al-A'lam* (y136), 4.55; *Tabaqat al-Shafi'iyya al-kubra* (y128), 8.281–85; and n).

x304 Richard Doll (w41.2) is Sir Richard Doll, Emeritus Regius Professor of Medicine, University of Oxford, Green College, Oxford, U.K. (*Oxford Textbook of Medicine* (y76), xiv).

x305 Ridwan (u3.3) is the angel who guards the gates of paradise (n).

x306 (Sheikh) Ridwan al-'Adal Baybars (w15.2) is Ridwan ibn al-'Adal ibn Ahmad Baybars, Abu al-Na'im al-Jazari, born in 1264/1847 in Jazira al-Qibab, Egypt. He was a Shafi'i scholar and Sufi who authored works of litanies of the Blessings upon the Prophet (Allah bless him and give him peace), and Sacred Law, among the latter his *Rawda al-muhtajin li ma'rifa qawa'id al-din* [The garden of those in need of knowing the fundamentals of the religion], which is distinguished by its clear presentation and discussions of contemporary legal questions. He died sometime after 1323/1905 (*Mu'jam al-mu'allifin* (y69), 4.165; and n).

x307 Rifa'a ibn Rafi' (w29.2(2)) is Rifa'a ibn Rafi' ibn Malik ibn 'Ajlan, Abu Mu'adh al-Zuraqi (Allah be well pleased with him), a Medinan Helper and Companion of the Prophet (Allah bless him and give him peace). He was among those who fought at the battle of Badr, and related twenty-four hadiths from the Prophet (Allah bless him and give him peace). He died in 41/661 (*al-A'lam* (y136), 3.29).

x308 R. Peto (w41.2) is the Imperial Cancer Research Fund Reader in Cancer Studies, Nuffield Department of Clinical Medicine, University of Oxford, Radcliffe Infirmary, Oxford, U.K. (*Oxford Textbook of Medicine* (y76), xvi).

x309 Rukana (n3.5) is Rukana ibn 'Abd Yazid ibn Hashim ibn al-Muttalib ibn 'Abd Manaf (Allah be well pleased with him). A Companion of the Prophet (Allah bless him and give him peace) who entered Islam the day Mecca was conquered, he later settled in Medina, where he died in A.H. 42 (*al-Shifa* (y116), 1.165; and *Taqrib al-tahdhib* (y16), 210).

x310 Ruyani (m13.2) is 'Abd al-Wahid ibn Isma'il ibn Ahmad, Abu al-Mahasin Fakhr al-Islam al-Ruyani, of Ruyan in Tabaristan, Persia, born in 315/1025. He was a Shafi'i Imam who was educated under the sheikhs of his time in Bukhara, Ghazna, Nishapur, Rayy, and Isfahan, and founded a school in Amul, Tabaristan (just south of the Caspian seacoast northeast of present-day Tehran, Iran). He once said, "If all Shafi'i's books were burned, I could dictate them anew from memory." Renowned in his lifetime for his scholarship and honored by the vizier Nizam al-Mulk, he authored *Bahr al-madhhab* [The sea of the school], one of the most extensive works in Shafi'i jurisprudence. He died in 402/1108 (*al-A'lam* (y136), 4.175; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 7.193–94).

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x311 Sa'd ibn Abi Waqqas (o25.4) is Sa'd ibn Abi Waqqas Malik ibn Wuhayb ibn 'Abd Manaf, Abu Ishaq al-Zuhri al-Qurashi (Allah be well pleased with him), born twenty-three years before the Hijra (A.D. 600). Among the great Companions of the Prophet (Allah bless him and give him peace), he entered Islam at seventeen years of age, fought at the battle of Badr, and led the Muslims to victory at the battle of Qadisiyya, conquering Iraq and the cities of Persia for Islam. He was the first Muslim to release an arrow in the path of Allah, and was one of the ten informed he would enter paradise. Appointed as governor of Kufa during the caliphate of 'Umar, he was confirmed therein for a period by 'Uthman but then dismissed, after which he returned to Medina. He later lost his eyesight, and died at home in 'Aqiq, about ten miles from Medina, in 55/675 (*al-A'lam* (y136), 3.87; *Taqrib al-tahdhib*, (y16), 232; and n).

x312 Safiyya (w27.1) is the Mother of the Faithful, Safiyya bint Huyay ibn Akhtab ibn Sa'ya (Allah be well pleased with her), a descendant of the prophet Harun (upon whom be peace). The daughter of Huyay, a notable of the Jewish tribes of Bani Qurayza and Nadir, when her husband was killed at Khaybar, she fell the lot of Dihya al-Kalbi and was presented to the Prophet (Allah bless him and give him peace), who freed her and married her. Safiyya was a noble and religious woman who possessed beauty and intelligence, and it is related that she had a bondswoman during the caliphate of 'Umar who went to him and said, "Safiyya loves Saturday and has connections with the Jews," whereupon 'Umar sent for her and inquired about it, and she replied, "As for Saturday, I have not loved it since Allah gave me Friday in its place, and as for the Jews, I have kinfolk among them and maintain my family ties." When she asked her servant what made her do what she did, she was told, "The Devil," to which Safiyya responded, "You may go now, you are free." She died in Medina in 50/670 (*al-A'lam* (y136), 3.206; and *Siyar a'lam al-nubala'* (y37), 2.232–33).

x313 Safwan ibn Umayya (o9.16) is Safwan ibn Umayya ibn Khalaf ibn Wahb ibn Hudhafa (Allah be well pleased with him), of Mecca, a Companion of the Prophet (Allah bless him and give him peace). A noble of the Quraysh renowned for his eloquence and generosity, he entered Islam after the conquest of Mecca and made good his Islam, being among those who fought in the battle of Yarmouk. He related thirteen hadiths, and died in Mecca in A.H. 41 (*al-A'lam* (y136), 3.205; and *Siyar a'lam al-nubala'* (y37), 2.562–67).

x314 Sahl ibn 'Abdullah (t1.7) is Sahl ibn 'Abdullah ibn Yunus, Abu Muhammad al-Tustari, of Shushtar, Persia, born in 200/815. An Imam of the Sufis and scholar who wrote on Koranic exegesis and Sufism, no one of his time resembled him in piety, asceticism, and devotions, and he was vouchsafed many miracles. Fine aphorisms on sincerity and self-discipline are related from him, and it is recorded that he met Dhul Nun al-Misri in Mecca in the year of the latter's hajj. He died in 283/896 (*al-A'lam* (y136), 3.143; *al-Risala al-Qushayriyya* (y118), 400; and n).

x315 Salama ibn al-Akwa' (p15.2) is Salama ibn 'Amr ibn Sinan al-Akwa' al-Aslami (Allah be well pleased with him). Among the Companions who swore fealty to the Prophet (Allah bless him and give him) under the tree, he was a

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courageous archer and runner who participated in seven battles with the Prophet (Allah bless him and give him peace) including Khaybar and Hunayn, and fought in the Muslim jihad in North Africa during the caliphate of 'Uthman. He related some seventy-seven hadiths, and died in Medina in 74/693 (*al-A'lam* (y136), 3.113; and n).

x316 Salih (u3.5) is Salih ibn 'Ubayd ibn Asif ibn Masih ibn 'Ubayd ibn Hadhir ibn Tamud ibn Ghabir ibn Sam ibn Nuh (upon whom be peace), the prophet of Allah Most High to the people of Thamud, who carved homes in the rock of mountainsides. He lived before the time of Shu'ayb and Musa (upon whom be peace), and was sent to guide his people, though all but a very few denied him. When Allah enjoined them to allow a she-camel to graze and water freely as a sign to them, they hamstrung and killed it, and in punishment were taken by a great earthquake from beneath and a cry (sayha) from the sky, which slew them while sitting upon their knees in their homes (*al-A'lam* (y136), 3.188; *al-Futuhat al-ilahiyya* (y65), 2.158; and *al-Siraj al-munir* (y72), 1.488–90).

x317 Salih Mu'adhdhin (b6.1) is Salih ibn Muhammad Mu'adhdhin, born in Damascus in 1947. He is a contemporary Shafi'i scholar who studied Sacred Law with Sheikh 'Abd al-Karim al-Rifa'i, Sheikh Muhammad 'Awad, and Sheikh Jamal al-Din al-Sayrawan. In 1972 he took a degree in pharmacy from the University of Damascus, and now lives in Amman (n).

x318 Salman the Persian (w4.4) is Salman, Abu 'Abdullah al-Farisi (Allah be well pleased with him), a Companion of the Prophet (Allah bless him and give him peace). Originally a devout Zoroastrian from near Isfahan, Persia, he converted to Christianity and travelled to a series of ascetic masters, serving each in turn until their death, in Damascus, Mosul, Nusaybin, and Ammuriyya (in present-day Turkey), whence he was directed to seek out a new prophet from Mecca whose time was imminent. Enslaved on the way, he was sold to a Jew of Bani Qurayza, met the Prophet (Allah bless him and give him peace) in Medina, and three years later with the help of his fellow Muslims was able to purchase his freedom from his master. Digging the trench before the Battle of the Confederates was his idea. He was a physically strong man of wisdom and learning who was well acquainted with the books of the Persians, Greeks, and Jews; when 'Ali was once asked about him he said, "He was a man of us and for us, the line of the prophetic house, and in relation to you was as the sage Luqman, having learned the first knowledge and the last, read the first scripture and the last: an inexhaustible sea." He related some sixty hadiths, and died in 36/656 (*al-A'lam* (y136), 3.111–12; and *Siyar a'lam al-nubala'* (y37), 1.505–11).

x319 (Imam) Sarakhsi (w43.3) is Muhammad ibn Ahmad ibn Sahl, Abu Bakr Shams al-A'imma al-Sarakhsi of Serakhs (in present-day Turkmen S.S.R.). He was a great Hanafi Imam, *mujtahid*, judge, and the author of the encyclopedic *al-Mabsut* [The extensive], whose thirty volumes he dictated to students from an underground cell where he was imprisoned in Uzjand near Fergana (in present-day Uzbek S.S.R.) for advising a local chief in the matter of religion. He wrote a number of outstanding works in Hanafi jurisprudence and methodological principles of Sacred Law, and died in Fergana in 483/1090 (*al-A'lam* (y136), 5.315; and n).

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x320 Sariya (w60.1) is Sariya ibn Zunaym ibn 'Abdullah ibn Jabir ibn Mahmiyya al-Kinani (Allah be well pleased with him). A physically powerful man who could outstrip horses for his fleetness of foot, he was a brigand in the pre-Islamic period of ignorance who participated in many raids, but afterwards became a Muslim who made good his Islam. Ibn 'Asakir believes him to have known the Prophet (Allah bless him and give him peace), though Ibn Hibban considers him among those (tabi'in) who met only the Companions. In 23 A.H., the caliph 'Umar (Allah be well pleased with him) placed Sariya at the head of an army which he dispatched to Persia, and when he was later giving the Friday prayer sermon in Medina, it came to his mind that the army was encountering the enemy in the middle of a valley near a mountain. They seemed to 'Umar to be on the verge of fleeing, so he called out in the midst of the sermon, "O Sariya, the mountain! the mountain!" raising his voice, which Allah miraculously caused to reach the hearing of Sariya and the army, and the Muslims rallied to the side of the mountain and fought the enemy from a united front until Allah gave them the victory. Imam Bayhaqi related this with a well-authenticated (hasan) chain of transmission from Nafi' from Ibn 'Umar, and the story is corroborated by a number of other parallel accounts of the event. It is said that Sariya also won Isfahan for Islam through peaceful negotiation (*al-Isaba fi tamyiz al-Sahaba* (y14), 2.2–3; and *Usud al-ghaba fi ma'rifa al-Sahaba* (y57), 2.306).

x321 Satan (r2.14) is the Devil, Iblis, the Accursed, a slave and creature of Allah Most High. Originally of the angels in kind but of the jinn in works, he was cast down from a high degree of obedience and faith through his pride and disobedience to Allah when ordered to prostrate out of respect to Adam (upon whom be peace). He was then respited until the Last Day, as a trial and affliction for those who would accept his misguidance, though he has no power except through Allah's will and no influence over Allah's righteous servants (*al-Siraj al-munir* (y72), 1.48; and n).

x322 Sayyid Muhammad 'Abdullah al-Somali (w9.4) is Muhammad ibn 'Abdullah ibn Hasan al-Somali, born in 1864 near Bohotle, in north central Somalia. A scholar in Shafi'i jurisprudence, the Koran, and hadith, he was an important Somali intellectual and religious leader who led resistance to the British and Italians in his country for more than two decades (1899–1920). He studied for five or six years in Mecca under Sheikh Muhammad ibn Salih al-Rashidi, founder of the Salihiyya tariqa of which he was made a sheikh before returning to Somalia via Aden in 1895. Among his recorded speeches are the words: "Unbelieving men of religion have assaulted our country from their remote homelands. They wish to corrupt our religion, to force us to accept Christianity, supported by the armed force of their governments, their weapons, their numbers. You have only your faith in God, your arms and your determination. Do not be frightened by their soldiers or armies: God is mightier than they ...." Bradford Martin relates that with the Salihiyya tariqa as an organizational basis, Sayyid Muhammad mounted a military movement that was perhaps longer sustained and more successful than any other movement led by an African Muslim leader of the nineteenth or early twentieth century, for twenty years tying the hands of the British and Italians and making them spend huge sums and many lives on purely military operations; through which means he maintained and defended traditional Somalian Muslim

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values and ways of life. He died, possibly of influenza, in 1920 at fifty-six years of age (*Muslim Brotherhoods* (y86), 179–200).

x323 Seyyed Hossein Nasr (Facing Title Page) was born in Tehran, Iran, where he received his early education. He later studied in the West and received his B.S. from the Massachusetts Institute of Technology and his M.A and Ph.D. from Harvard, where he studied the history of science and learning with special concentration on Islamic science and philosophy. He has taught at Tehran University, the American University in Beirut, Temple University, and George Washington University, and is the author of a number of works that are among the best available in English on the relevance of traditional Islamic sciences and mystical disciplines to the situation of modern man, including *Ideals and Realities of Islam*, *Man and Nature*, *Islamic Science: an Illustrated Study*, and *Sufi Essays*. The translator is indebted to his writings for being among the reasons he became a Muslim. While from a Shiite background, Hossein Nasr has a firmer footing in traditional Islamic knowledge than many other western interpreters of Islam, Muslim or non-Muslim, and his works are generally free of the mistakes in detail found in others' books, though some passages are occasionally colored by the comparative religions approach (dis: x348) that mars the writings of a number of contemporary Muslim intellectuals. He lives and teaches in the United States (*Ideals and Realities of Islam* (y101), 4; and n).

x324 (Imam) Shafi'i (Introduction) is Muhammad ibn Idris ibn al-'Abbas ibn 'Uthman ibn Shafi' ibn al-Sa'ib ibn 'Ubayd ibn 'Abd Yazid ibn Hashim ibn al-Muttalib ibn 'Abd Manaf, Abu 'Abdullah al-Qurashi al-Makki al-Shafi'i, descended from the great-grandfather of the Prophet (Allah bless him and give him peace). Born in 150/767 in Gaza, Palestine, Shafi'i was the Imam of the World, the *mujtahid* of his time, one of the most brilliant and original legal scholars mankind has ever known. An orphan brought to Mecca when two years old and raised there by his mother in circumstances of extreme poverty and want, he memorized the Holy Koran at age seven, the *Muwatta'* of Imam Malik at ten, and was authorized to give formal legal opinion (fatwa) at the age of fifteen by his sheikh, Muslim ibn Khalid al-Zinji, the mufti of Mecca. He travelled to Medina and studied under Imam Malik, and then to Baghdad, where he was the student of Imam Muhammad ibn Hasan Shaybani, the colleague of Abu Hanifa. In Baghdad, Imam Shafi'i produced his first school of jurisprudence (al-madhhab al-qadim), but when the persecution arose over the uncreatedness of the Koran (dis: x72), he spoke to Ahmad ibn Hanbal, and they mutually agreed that rather than risk the loss of both of Islam's living *mujtahids*, they should part company, Shafi'i travelling with his books and belongings to Cairo, and Ahmad remaining in Iraq. It was in Cairo that in the astonishing space of only four years, Shafi'i conceived and edited a second, entirely new school of jurisprudence (al-madhhab al-jadid), embodied in his seven-volume *al-Umm* [The mother].

The Imam and his legacy are monumental. His *al-Risala* [The letter] was the first work in the history of mankind to investigate the theoretical and practical bases of jurisprudence. In Koranic exegesis, he was the first to formulate the principles of the science of which verses abrogate others and which are abrogated ('ilm al-nasikh wa al-mansukh). His knowledge of the Koran and sunna and of the accord between the different elements of each and the conditionality and explana-

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tion of some by others were incomparable. His Arabic style and diction were recorded and used as lexical evidence by later grammarians and lexicologists, and despite his surpassing eloquence in the language, being Arabic in tongue, residence, and historical epoch, he studied it in depth for twenty years, and through the medium of it grasped the Koran and sunna. He paved the way for the enormous importance attached by subsequent generations of Muslims to the study of prophetic hadith, as reflected in the fact that most of the Imams in the field were of his school, including Bukhari, Muslim, Abu Dawud, Tirmidhi, Nasa'i, Ibn Majah, Bayhaqi, al-Hakim, Abu Nu'aym, Ibn Hibban, Daraqutni, Ibn Khuzayma, Ibn Salah, al-'Iraqi, Suyuti, Dhahabi, Ibn Kathir, Nur al-Din Haythami, Mundhiri, Nawawi, Taqi al-Din Subki, and others. Imam Muhammad ibn Hasan Shaybani said of him, "If the scholars of hadith speak, it is in the language of Shafi'i," and Hasan ibn Muhammad Za'frani observed, "The scholars of hadith were asleep and awoke when Shafi'i woke them." Imam Ahmad said, "No one touches an inkwell or pen with his hand, save that he owes a debt to Shafi'i."

By the time Shafi'i reached Cairo in A.H. 199, his fame had spread to the horizons, scholars from all parts of the Muslim world travelled to hear him, and his student and scribe Rabi' ibn Sulayman was to say, "I have seen seven hundred riding camels tethered at Shafi'i's door, belonging to those who came to hear him exposit his writings." The author of some 113 works, it was nonetheless Shafi'i's hope that "people would learn this knowledge without ascribing a single letter of it to me," and as Zakariyya Ansari remarked, "Allah granted his wish, for one seldom hears any position of his, save that it is ascribed to others of his school with the words, 'Rafi'i, or Nawawi, or Zarkashi says ...' and the like." Of proverbial generosity, it is recorded that when he once brought ten thousand dinars from Yemen, he pitched a tent outside of Mecca and had given it all away to passersby before the day ended. He was moderate in dress, and his ring bore the inscription, "Allah suffices Muhammad ibn Idris as a reliance." He once said, "Knowledge is not what is memorized, but only what benefits," and this conviction imbued his personal religious life, for he divided his night into three parts, in the first of which he would write, in the second pray, and in the third sleep. He recited the entire Koran each day at prayer, and twice a day in Ramadan. When a remark was once made to him about his using a walking stick, he said, "I do it to remind myself that I am on a journey out of this life." A man of intense spiritual presence who could truthfully say of himself, "I have never told a lie," his students were in such awe of him that they could not take a drink of water while he was looking on. Among his pupils were a number of the Imams of the time such as Ahmad, Rabi' ibn Sulayman, al-Muzani, Dawud ibn Khalaf al-Zahiri, and others. He studied and taught Sacred Law in Cairo until his death at fifty-three years of age in 204/820, the end of a lifetime of service to Islam and the Muslims by one of the greatest in knowledge of the Koran and sunna (*al-A'lam* (y136), 6.26; *al-Majmu'* (y108), 1.8–10; *'Umdat al-salik* (y90), 9–10; *al-Tabaqat al-kubra* (y124) 1.50–52; and n).

x325 Shamil Daghestani (w9.4) is Shamil Muhammad al-Daghestani, a sheikh who helped spread the Naqshbandi tariqa throughout Caucasia and fought with the Muslim jihad there against Czarist Russia for some thirty-five years. His sheikh was Mulla Muhammad al-Ghazi al-Kamrawi, whose military career began when Russia declared protection for Christians in Khurjistan and then formal annexation of the region from Safavid Persia in 1215/1800. Al-Ghazi (lit. "the

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Warrior") recruited hundreds of thousands of soldiers from his Naqshbandi dervishes and fought until his death in 1248/1832, when his successor al-Amir Hamza al-Khanzaji took over but was martyred the same year, after which the jihad's leadership devolved to Sheikh Shamil. He fought many pitched battles with the Russians in the twenty-seven years of jihad that followed, in 1260/1844 freeing Daghestan of the unbelievers and capturing thirty-five of their cannon, which provoked Russia to send an even larger army to finish the *mujahidin*, who fought on fifteen more years until 1279/1859, when the sheikh was captured. Advanced in years, he was banished to Turkey, whence he travelled to Medina in hope of being buried there with the Companions and early Muslims. He spent the last of his life worshipping in the Rawda of the Mosque of the Prophet (Allah bless him and give him peace) between the pulpit and the noble tomb, and when he died he was interred, according to his wish, in al-Baqi' Cemetery (*al-Muslimun fi al-Ittihad al-Sufyati 'abr al-tarikh* (y28), 1.65, 1.149, 1.154–55, 1.398).

x326 Shams al-Din ... Dhahabi (*see* (Imam) Dhahabi, x114)

x327 Shawkani (w40.5) is Muhammad ibn 'Ali ibn Muhammad ibn 'Abdullah al-Shawkani, born in Shawkan near Khawlan, Yemen, in 1173/1760. A major scholar in Sacred Law and hadith, he was educated in San'a, where he was appointed as an Islamic judge in A.H. 1229, a position he held throughout his life. He authored 114 works in hadith, biography, Sacred Law, Koranic exegesis, fundamentals of Islamic jurisprudence, and tenets of faith, though his greatest work was his eight-volume hadith commentary *Nayl al-awtar min asrar muntaqa al-akhbar* [The realization of desires, from the secrets of selected hadiths]. He died in San'a in 1250/1834 (*al-A'lam* (y136), 6.298).

x328 ("Sheikh...," "Sheikh al-Islam...,") (*see under proper name*)

x329 (Imam, Sheikh) Shirbini (al-Khatib) (*see* Muhammad Shirbini Khatib, x264(a))

x330 Shu'ayb (u3.5) is Shu'ayb ibn Mikil ibn Yashjar ibn Madyan (upon whom be peace), a prophet of Allah Most High who was nicknamed the Speaker of the Prophets for the fairness of his exhortations to the folk of Madyan, who were unbelievers who cheated when weighing and measuring out goods to people. He was descended of Ibrahim (upon whom be peace) and came after Hud and Salih, only a short time before Musa. Commentators relate that when his people repeatedly rejected his call to pure monotheism, Shu'ayb and those who believed departed from them, and Allah opened up to them one of the gates of hell, afflicting them with the most extreme heat. They entered tunnels to flee from it, but found it the more unbearable, so some of them came out onto an open plain, where they found a cloud above them and with it, a cool, pleasant breeze. They called the others to come and join them until the entire people were assembled under it, whereupon Allah caused the earth to quake, changed the cloud to fire, and burned them to ashes (*al-A'lam* (y136), 3.165–66; and *al-Siraj al-munir* (y72), 1.495).

x331 (Sheikh) Shu'ayb Arna'ut (o22.1(d(II(end)))) is Shu'ayb ibn Muharram ibn 'Ali, Abu Usama al-Arna'ut, born in Damascus in 1928, two years after his

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father's emigration for religious reasons from Shköder, Albania. He is a scholar of hadith, Hanafi law, Koranic exegesis, and Arabic grammar and lexicology who has edited many classic Islamic works from old manuscripts. Educated in Damascus, he studied Hanafi jurisprudence with sheikhs such as 'Abd al-Razzaq al-Halabi, Nuh al-Albani, Sulayman al-Ghawji, and others, and hadith terminology under 'Abdullah al-Habashi, Sheikh al-Kallas, and Salih al-Farfur, with the latter of whom he also read the eight-volume Hanafi *Hashiya radd al-muhtar* of Ibn 'Abidin during the course of seven years, and the Koranic commentaries of Zamakhshari and Nasafi. Among the better known scholars of his profession, he has edited, annotated, and judged the hadiths of more than eighty works to date, of which the most famous is perhaps the five-volume *Zad al-ma'ad* [The provision for the return] by Ibn Qayyim al-Jawziyya, though he feels that his most important scholarly contribution lies in the editing of three works: *Sharh al-sunna* [The explanation of the sunna] by Imam Baghawi, which presents the primary Koranic and hadith textual evidence for rulings of Sacred Law; *Sharh mushkil al-athar* [The explanation of problematic hadiths] by Imam Tahawi, which explains the accord between ostensible contradictions among hadiths in terms of which ones are understood, abrogated, or conditioned by others or by the Koran; and *al-Ihsan fi taqrib Sahih Ibn Hibban* [The proficiency: on facilitating the "Rigorously authenticated hadith collection" of Ibn Hibban], whose basic text is 'Ala' al-Din Farisi's commentary on the *Sahih* of Ibn Hibban. The preparation of these works, each of which has sixteen volumes, was by no means a mere exercise in editing. With *Ibn Hibban*, for example, the original text consisted of eight volumes, to which Sheikh Shu'ayb supplied the equivalent of eight additional volumes of his own notes and commentary. In our times, as sheikhs qualified to teach the classic works of the Islamic sciences grow steadily fewer. Shu'ayb's hope is that such expanded and annotated editions will to some extent fulfill the educational needs of the Muslims who read them. Though he will probably be remembered for his work in hadith, he strongly believes that Muslims should take their religion from those with the best understanding of the primary texts of the Koran and prophetic traditions, at their forefront the Imams of the four schools. "They are explainers, not popes," he says, "but in each of their schools there afterwards followed a hundred or more scholars who refined and added to their work, men whose stature in Islamic knowledge was like mountains, any of whom could put fifteen of the scholars available today in his pocket." He presently lives in Amman, where he supervises the research staff and library of the Mu'assasa al-Risala publishing house (n).

x332 Shu'ba (w40.5) is Shu'ba ibn al-Hajjaj ibn al-Ward, Abu Bistam al-'Ataki, of Wasit, Iraq, and then of Basra, born in 82/701. A reliable narrator and proficient hadith scholar, he was the first to search in Iraq for knowledge of the reliability of various hadith transmitters and to defend the sunna. Imam Shafi'i said of him, "If not for Shu'ba, hadith would have been unknown in Iraq." He was noted for his devotions in his personal life, and died in 160/778 (*al-A'lam* (y136), 3.164; and *Taqrib al-tahdhib* (y16), 266).

x333 Siraj al-Din Bulqini (w12.3) is 'Umar ibn Ruslan ibn Nusayr ibn Salih, Abu Hafs Siraj al-Din al-Kinani al-Bulqini, born in Bulqina, Egypt, in 724/1324. A Shafi'i *mujtahid* Imam, hadith master (hafiz), and judge, he was educated in

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Cairo and gained recognition as the foremost representative of the Shafi'i school in his time. In A.H. 769 he was appointed to the judiciary in Damascus. He authored a number of works in Shafi'i jurisprudence, hadith, and formal legal opinion, and died in Cairo in 805/1403 (*al-A'lam* (y136), 5.46; and n).

x334 Solomon (*see* Sulayman, x338)

x335 Subki (*see* (Imam) Taqi al-Din Subki, x345)

x336 Suddi (w4.4) is Isma'il ibn 'Abd al-Rahman ibn Abi Karima, Abu Muhammad al-Suddi, originally of the Hijaz and then of Kufa. An Imam of Koranic exegesis whom Ahmad ibn Hanbal names as a reliable narrator, he related hadiths from the Companions Anas ibn Malik, Ibn 'Abbas, and 'Abd Khayr al-Hamdani, while his hadiths were related by Shu'ba, Sufyan al-Thawri, Isra'il, and others. He died in A.H. 127 (*Siyar a'lam al-nubala'* (y37), 5.264–65).

x337 Sufyan al-Thawri (a2.6) is Sufyan ibn Sa'id ibn Masruq ibn Habib, Abu 'Abdullah al-Thawri of Kufa, born in 97/716. The Imam of hadith masters (huffaz) of his time and among the foremost in Sacred Knowledge and godfearingness, he possessed a phenomenal memory and was able to say, "I have never learned something and then forgot it." His father began educating him while young, and he studied under nearly six hundred sheikhs, the most important of whom were those who transmitted hadiths from Companions like Abu Hurayra, Jarir ibn 'Abdullah, Ibn 'Abbas, and others. A number of principle Imams took hadiths from him, such as Ja'far al-Sadiq, Abu Hanifa, al-Awza'i, Shu'ba, (all of whom died before he did) and a number of others. He once said, "I've never heard a hadith of the Prophet (Allah bless him and give him peace) without acting upon it, even if only once." He authored a number of works in hadith and Islamic estate division, and many of his aphorisms have been recorded, among them, "Asceticism is not eating coarse food or wearing poor clothes, but rather expecting life not to last, and being watchful for death." He died in 161/778 (*al-A'lam* (y136), 3.104–5; and *Siyar a'lam al-nubala'* (y37), 7.229–43).

x338 Sulayk Ghatafani (w28.1) is Sulayk ibn 'Amr al-Ghatafani (Allah be well pleased with him), of the Ghatafan tribe, a Companion of the Prophet (Allah bless him and give him peace). The incident mentioned in the hadith of the text (at w28.1) was related by Muslim and others, and is virtually the only information known about him (*Usud al-ghaba fi ma'rifa al-Sahaba* (y57), 2.441–42).

x339 Sulayman (u3.5) is Sulayman ibn Dawud ibn Isha (upon whom be peace), the prophet of Allah Most High and son of the prophet Dawud. He knew the language of birds, inherited the kingship of Bani Isra'il from his father, and had an army of birds, jinn, and men. Allah Most High subjected the winds to his command, and according to commentators, he possessed a great platform that could hold all he needed of palaces, tents, belongings, horses, camels, men, and jinn; and whenever he desired to make war, travel, or sojourn in any land on earth, he would laden it and command the winds to convey it there, and it would travel a month's journey in a single day. Many wonders are recorded of him in the Holy Koran and its commentaries, and he is said to have ruled for forty years before his death at the age of fifty-two (*Qisas al-anbiya'* (y59), 498–519).

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x340 Sulayman Bujayrmi (w41.3) is Sulayman ibn Muhammad ibn 'Umar al-Bujayrmi, born in Bujayrm, Egypt, in 1331/1719. He was a Shafi'i scholar who moved to Cairo at a young age, was educated at al-Azhar, and later taught there. Though he lost this eyesight, he produced a number of famous commentaries on Shafi'i classics, among them his four-volume *al-Tajrid* [The abstract], and *Tuhfa al-Habib* [The gift of the beloved], a commentary on Shirbini's *al-Iqna'* [The persuading] also in four volumes. He died in the village of Mastiyya, near Bujayrm, in 1221/1806 (*al-A'lam* (y136), 3.133).

x341 Suyuti (b3.2) is 'Abd al-Rahman ibn Abu Bakr ibn Muhammad ibn Sabiq al-Din, Jalal al-Din al-Suyuti, born in 849/1445. He was a Shafi'i *mujtahid* Imam, Sufi, hadith master (hafiz), and historian, a prolific writer who authored works in virtually every Islamic science. Raised as an orphan in Cairo, he memorized the Koran at eight, then several complete works of Sacred Law, fundamentals of jurisprudence, and Arabic grammar; after which he devoted himself to studying the Sacred Sciences under some of the foremost sheikhs of the time in each discipline, among them Siraj al-Din Bulqini, with whom he studied Shafi'i jurisprudence until his death; Sharaf al-Din al-Munawi, with whom he read Koranic exegesis; Taqi al-Din al-Shamani in hadith and the sciences of Arabic; and others. He travelled to gain Sacred Knowledge to Damascus, the Hijaz, Yemen, India, Morocco, and the lands south of Morocco, as well as to centers of learning in Egypt such as Mahalla, Dumyat, and Fayyum.

When he reached forty years of age, he abandoned the company of men for the solitude of the Garden of al-Miqyas by the side of the Nile, avoiding his former colleagues as though he had never known them, and it was here that he authored most of his nearly six hundred books and treatises. Wealthy Muslims and princes would visit him with offers of money and gifts, but he put all of them off, and when the sultan requested his presence a number of times, he refused. Blessed with success in his years of solitude, it is difficult to name a field in which Suyuti did not make outstanding contributions, among them his ten-volume hadith work *Jam' al-jawami'* [The collection of collections]; his Koranic exegesis *Tafsir al-Jalalayn* [The commentary of the two Jalals], of which he finished the second half of an uncompleted manuscript byJalal al-Din Mahalli in just forty days; his classic commentary on the sciences of hadith *Tadrib al-rawi fi sharh Taqrib al-Nuwawi* [The training of the hadith transmitter: an exegesis of Nawawi's "The facilitation"]; and many others. A giant among contemporaries, he remained alone, producing a sustained output of scholarly writings until his death in Cairo at sixty years of age in 911/1505 (*al-A'lam* (y136), 3.301–2; *Tadrib al-rawi* (y109), 1.11–12; and n).

x342 (a) Tabarani (w32.1) is Sulayman ibn Ahmad ibn Ayyub ibn Mutayr, Abu al-Qasim al-Lakhami al-Tabarani, born in Acre, Palestine, in 260/873. A great hadith master (hafiz) and Koranic commentator, he travelled to listen to hadith masters for sixteen years, to the Hijaz, Yemen, Egypt, Iraq, Persia, and the Arabian Peninsula, meeting approximately a thousand sheikhs. He finally settled in Isfahan, Persia, where he related hadiths for sixty years, was visited by scholars from all parts of the Muslim world, and authored his three main hadith collections, the largest of which is his twenty-five-volume *al-Mu'jam al-kabir* [The major lexicon], called a "lexicon" because of the alphabetical arrangement of its narrators. When once asked how he acquired such a prodigious store of hadith

knowledge, he answered, "By sleeping on reed mats for thirty years." He died in Isfahan in 360/971 (*al-A'lam* (y136), 3.121; *Siyar a'lam al-nubala'* (y37), 16.119–23; *al-Targhib wa al-tarhib* (y9), 1.21; and Sheikh Shu'ayb Arna'ut).

x342 (b) (Dr.) Taha Jabir al-'Alwani (Document 3) is a Shafi'i scholar and specialist in fundamentals of Islamic jurisprudence born of Kurdish parents in al-Falluja, to the west of Baghdad, in 1935. After receiving his elementary and secondary education in Iraq, he attended al-Azhar, where he studied under Sheikh 'Abd al-Ghani 'Abd al-Khaliq, author of *Hujjiya al-sunna* [The evidentiary character of the sunna], and other scholars and graduated in 1959 from theCollege of Sacred Law, then pursued his postgraduate studies to receive a master's degree and his doctorate in 1972. He has taught Islamic law and its principles at the University of Imam Muhammad ibn Sa'ud in Riyadh, Saudi Arabia, is a member of the founding council of the Muslim World League in Mecca, a member of the Organization of the Islamic Conference (OIC) Islamic Fiqh Academy at Jedda, and president of the Fiqh Council of North America. He has edited and annotated the six-volume *al-Mahsul fi 'ilm al-usul* [The summary: the science of the principles of Islamic jurisprudence] by al-Fakhr al-Razi, currently under preparation for its second printing, and has authored *Adab al-ikhtilaf fi al-Islam* [The proper way of scholarly disagreement in Islam], *Usul al-fiqh al-Islami* [The bases of Islamic jurisprudence], and *al-Ijtihad wa al-taqlid fi al-Islam* [Personal juridical reasoning versus following qualified scholarship in Islam], the latter two of which have been recently translated into English. The International Institute of Islamic Thought, which Dr. al-'Alwani helped found in 1981, is an autonomous, non-profit organization dedicated to articulating the relevance of Islam to the problems of thought and life of contemporary Muslims, and promoting and serving Islamic research throughout the world. From its headquarters in Washington D.C., and with offices from Cairo to Kuala Lumpur, it conducts specialized seminars, commissions the production of scholarly works, grants research scholarships, and disseminates an impressive array of publications to interested scholars around the globe. He has headed the institute as president since 1986 (n).

x343 Tahtawi (w24.2) is Ahmad ibn Muhammad ibn Isma'il al-Tahtawi, born in Tahta, near Asyut, Egypt. He was educated at al-Azhar, where he was later appointed sheikh of the Hanafi school. He is best known for his *Hashiya al-durr al-mukhtar* [The commentary on "The choice pearls"], a commentary on the basic text of Ibn 'Abidin's famous *Radd al-muhtar* [The enlightenment of the baffled]; and his *Hashiya 'ala Maraqi al-falah sharh Nur al-idah* [Commentary on "The ascents of felicity: an exegesis of 'The light of clarity' "]. He died in Cairo in 1231/1816 (*al-A'lam* (y136), 1.245).

x344 Talha (o25.4) is Talha ibn 'Ubayd Allah ibn 'Uthman, Abu Muhammad al-Tamimi al-Qurashi (Allah be well pleased with him), born twenty-eight years before the Hijra (A.D. 596) in Mecca. Among the most courageous and generous Companions of the Prophet (Allah bless him and give him peace), he was of the first eight men to enter Islam, of the ten informed that they would enter paradise, and one of the committee (shura) 'Umar chose to name his caliphal successor. Present with the Prophet (Allah bless him and give him peace) at the battle of Uhud, Talha stood unflinchingly by his side during the reverses suffered there,

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and swearing to remain with him to the death if need be, sustained twenty-four wounds from which he later recovered to fight in every subsequent battle. He had extensive trade dealings in Iraq, and never allowed a member of his clan to suffer want or debt save that he would pay for their needs at his own expense. He was killed at the Battle of al-Jamal at the side of 'A'isha in 36/656 and buried in Basra (ibid., 3.229).

x345 (Imam) Taqi al-Din Subki (Introduction) is 'Ali ibn 'Abd al-Kafi ibn 'Ali ibn Tamam, Abu al-Hasan Taqi al-Din al-Subki, born in Subk, Egypt, in 683/1284. The Shafi'i scholar and Imam of his time, he was a brilliant intellectual, hadith master (hafiz), Koranic exegete, and Islamic judge who was described by Ibn Hajar Haytami as "the *mujtahid* Imam whose imamate, greatness, and having reached the level of *ijtihad* are agreed upon," and by Dhahabi as "the most learned, eloquent, and wisest in judgement of all the sheikhs of the age." Educated in Cairo by such scholars as Ibn Rif'a in Sacred Law, 'Alam al-Din Iraqi in Koranic exegesis, and Sharaf al-Din al-Dimyati in hadith, he also travelled to acquire knowledge of hadith from the sheikhs of Syria, Alexandria, and the Hijaz, after which, as Suyuti records, "he devoted himself to writing and giving legal opinion, authoring more than 150 works, his writings displaying his profound knowledge of hadith and other fields and his magisterial command of the Islamic sciences. He educated the foremost scholars of the time, was a painstaking, accurate, and penetrating researcher, and a brilliant debater in the disciplines. No previous scholar attained to his achievements in Sacred Law, of masterful inferences, subtleties in detail, and carefully worked-out methodological principles." Salah al-Din Safadi said of him, "People say that no one like him had appeared since Ghazali, though in my opinion they thereby do him an injustice, for to my mind he does not resemble anyone less than Sufyan al-Thawri." With his vast erudition, he was at the same time a godfearing ascetic in his personal life who was devoted to worship and mysticism, though vigilant and uncompromising in matters of religion and ready to assail any innovation (bid'a) or departure from the tenets of faith of Ahl al-Sunna. In addition to *al-Takmila* [The completion], his eleven-volume supplement to Nawawi's *Sharh al-Muhadhdhab* [The exegesis of "The rarefaction"], he also authored the widely quoted *Fatawa al-Subki* [The legal opinions of Subki] in two volumes, as well as a number of other works on tenets of faith, Koranic exegesis, and fundamentals of Islamic law, in the latter of which his three-volume *al-Ibhaj fi sharh al-Minhaj* [The gladdening: an exegesis of "The road"], an exposition of Baydawi's *al-Minhaj* on the methodological bases of legal *ijtihad*, has won lasting recognition among scholars. In A.H. 739 he moved from Cairo to Damascus, where he was appointed to the judiciary and presided for seventeen years, at the end of which he became ill, was replaced by his son Taj al-Din, and returned to Cairo, where he died twenty days later in 756/1355 (ibid., 4.302; *al-Fatawa al-hadithiyya* (y48), 114; *al-Rasa'il al-Subkiyya* (y52), 9–13; Sheikh Hasan Saqqaf; and n).

x346 Tha'laba ibn Hatib (p75.15) is Tha'laba ibn Hatib (or ibn Abi Hatib) al-Ansari. Ibn Ishaq mentions him among those who helped build the Mosque of al-Dirar (Koran 9:107) by which they intended, out of hypocrisy and unbelief, to compete with the Mosque of Quba' and disunite the Muslims, and in hopes that the longtime enemy of Islam Abu 'Amir the Monk would return from Syria to

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defeat the Prophet (Allah bless him and give him peace) and make the mosque his center. This Tha'laba is sometimes confused with Tha'laba ibn Hatib ibn 'Amr ibn 'Ubayd ibn Umayya al-Aws, who fought at Badr and was martyred at Uhud. The hadith mentioned in the text (p75.15) of the former Tha'laba's nonpayment of zakat was researched by Ibn Hajar 'Asqalani, who said that its chains of transmission are weak, as they come through 'Ali ibn Yazid al-Alhani, an extremely unreliable (matruk) hadith narrator (*al-Isaba fi tamyiz al-Sahaba* (y14) 1.200–201; *al-Siraj al-munir* (y72), 1.649; and *Zad al-masir fi 'ilm al-tafsir* (y12), 3.474).

x347 Tirmidhi (Introduction) is Muhammad ibn 'Isa ibn Sura ibn Musa, Abu 'Isa al-Sulami al-Tirmidhi, of Termez (in present-day Uzbek S.S.R.), born in 209/824. A hadith master (hafiz) and Imam who was a student of Bukhari, Ishaq ibn Rahawayh, and others, he travelled in pursuit of knowledge to Khurasan, Iraq, Medina, and Mecca, and authored a number of works in history and hadith, among the most famous of which are his five-volume *al-Jami' al-kabir* [The major collection], also known as *Sahih al-Tirmidhi;* and his *al-Shama'il al-nabawiyya* [The prophetic traits], which describes in detail the person, manners, and appearance of the Prophet (Allah bless him and give him peace). 'Umar ibn 'Allak said of Tirmidhi, "Bukhari died without leaving anyone in Khurasan like Abu 'Isa in knowledge, memory, piety, and asceticism ...." In later life he became blind, and died in Termez in 279/892 (*al-A'lam* (y136), 6.322; and *Siyar a'lam al-nubala'* (y37), 13.270–73).

x348 Titus Burckhardt (w13.1) is a European Muslim writer of the present century who was born in Florence, Italy, the son of the Swiss sculptor Carl Burckhardt and a member of a patrician family of Basle. Although he first followed his father's profession, his strong attraction to oriental art led him to a theoretical study of eastern doctrines and repeated journeys to Islamic countries. After some years of studying the history of art and oriental languages, he became director of the Graf-Verlag publishing house, which specialized in facsimile editions of ancient manuscripts. In 1972 he was appointed to UNESCO for the preservation of the ancient city of Fez. He is the author of *The Moorish Culture in Spain,* one of the best and most sensitive works on an Islamic civilization; *Art of Islam: Language and Meaning; Sacred Art in East and West; An Introduction to Sufi Doctrine;* and *Letters of a Sufi Master,* a translation of the *Rasa'il* [Letters] of al-'Arabi al-Darqawi. His books on Sufism have a wide readership, both Muslim and non-Muslim, for which reason it is worth mentioning here two points of departure in them that occasionally obscure the spirit of what they are intended to explain.

The first is his transposition of Sufi theosophy to Platonic philosophical language, not only in ordinary, needful metaphysical distinctions such as 'being', 'act', and 'essence', but also in substantive doctrinal conceptions of the Platonic worldview such as 'immutable essences', 'archetypes', 'Ideas', and so forth, which at Burckhardt's hands often generate passages of philosophical interest, but whose connection with their *explanadum,* Sufism, is not clear or convincing. For Sufis, whatever vocabulary they may choose, behold the Truth by the sun of divine revelation, not the movements of human introspection, and in a word, are illumined, while Plato is unillumined.

The second point of departure is a *comparative religions* approach to Islam

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and Sufism which understands them according to the "essential unity" (and universal validity) of all religions. On this point, Islam clearly teaches that all true religions, as originally revealed, were identical in fundamentals of belief (usul) such as the oneness of God, the Final Judgement, and heaven and hell, in which sense "we make no distinction between any of His messengers" (Koran 2:285), though each prophetic messenger brought particular rules and rites (furu') that differed to some extent from those of previous messengers, and "to every nation We appointed a worship" (Koran 22:67). So while the anciently revealed religions that are found today naturally show some similarities to Islam, this fact does not prove their "essential unity" with it as they presently exist, for the One who revealed the religions informs us not only that their beliefs and scriptures have since been altered by the hands of men, who "changed the words from their places and forgot a share of what they were reminded of" (Koran 5:13), but also that their rites and laws have been abrogated by those revealed to the Final Messenger (Allah bless him and give him peace), which is why "whoever seeks other than Islam as a religion will never have it accepted from him" (Koran 3:85). This is how Allah Most High has explained the similarities and differences between religions, and any comparative approach beyond this can never lay claim to the truth.

Aside from such ideas, which are far from Islam, the works of Titus Burckhardt contain many original discussions of the meaning of Islamic art, a field which few westerners have equalled his depth in and appreciation of, and for which he is likely to be remembered. He died in Lausanne, Switzerland, in 1984 (*Art of Islam* (y31), inside back cover; and n).

x349 'Ubada ibn al-Samit (w18.4) is 'Ubada ibn al-Samit ibn Qays, Abu al-Walid al-Khazraji (Allah be well pleased with him), born thirty-eight years before the Hijra (A.D. 586). A Medinan Helper and Companion of the Prophet (Allah bless him and give him peace), he was known for his personal piety, and was among those who fought at the battle of Badr, as well as the others, and in the conquest of Egypt. He related 181 hadiths from the Prophet (Allah bless him and give him peace) and became the first person appointed as an Islamic judge in Palestine, where he died, in either Ramla or Jerusalem, in 34/654 (*al-A'lam* (y136), 3.258).

x350 Ubayy ibn Khalaf (o9.0) was one of the unbelievers of Mecca who used to injure the Prophet (Allah bless him and give him peace) and once even incited 'Uqba ibn Abi Mu'it to spit in his face. When he told the Prophet (Allah bless him and give him peace) after Badr that he was feeding a horse each day in Mecca upon which he would kill him, the Prophet (Allah bless him and give him peace) replied, "It is I who shall slay you, Allah willing," and kept his word the following year at the battle of Uhud, where he killed him with a stab from a short spear. A hadith declares, "The wretchedest of men is whoever kills a prophet, or a prophet kills" (*al-Shifa* (y116), 1.238–39).

x351 'Umar (b3.2) is 'Umar ibn al-Khattab ibn Nufayl, Abu Hafs al-Qurashi al-'Adawi (Allah be well pleased with him), born forty years before the Hijra (A.D. 584) in Mecca. He was one of the greatest Companions of the Prophet (Allah bless him and give him peace), as renowned for his tremendous personal courage and steadfastness as for his fairness in giving judgements. Among the heroes of the Meccan nobles in the pre-Islamic period of ignorance, he entered Islam five

years before the emigration to Medina, and Ibn Mas'ud was later to observe, "We were not able to pray by the Kaaba until 'Umar became Muslim." He fought in all the battles of the Prophet (Allah bless him and give him peace) and was sworn fealty to as the second caliph of Islam on the day of Abu Bakr's death. During his ten-and-a-half-year caliphate, Syria, Palestine, Iraq, Egypt, and all the Arabian Peninsula were added to the dominions of Islam, and about twelve thousand mosques were built. He related 537 hadiths from the Prophet (Allah bless him and give him peace) and was the first to date Islamic events from the year of the Hijra. His sayings, addresses, and letters were of great eloquence, and a memorable event seldom befell him without his composing a line of poetry about it. His ring was inscribed with the words, "Death suffices as an admonition, O 'Umar." Stabbed by a slave while performing the dawn prayer, he died three nights later in 23/644 (*al-A'lam* (y136), 5.45–46).

x352 (Sheikh) 'Umar Barakat (Introduction) is 'Umar Barakat ibn al-Sayyid Muhammad Barakat al-Shami al-Biqa'i. A scholar of Shafi'i jurisprudence and rhetoric, he was originally from al-Biqa', north of Damascus, Syria, and was educated at al-Azhar, where he studied under Sheikh Ibrahim Bajuri. He then moved to Mecca and authored his two-volume commentary on *'Umdat al-salik* [The reliance of the traveller] entitled *Fayd al-Ilah al-Malik fi hall alfaz 'Umdat al-salik wa 'uddat al-nasik* [The outpouring of the Sovereign Divinity in solving the words of "The reliance of the traveller and tools of the worshipper"], which he wrote because, in his words, "there was no explanative work to solve its words and clarify its meanings except for one commentary by the great teacher al-Jawjari, which is a valuable exegesis of the familiar short work, but which contains interpolations and misprints unnoticable to any save someone with experience in authoring works of Sacred Law, as well as some obvious errors. It has remained thus because it was printed in Mallibar, there being no one in those lands to correct it ...." He also authored a work on rhetoric about types of metaphors, and died sometime after 1307/1890, the date he completed *Fayd al-Ilah al-Malik* (ibid., 5.65; and *Fayd al-Ilah al-Malik* (y27), 1.2–3, 2.224, 2.355).

x353 'Umar ibn Khattab (*see* 'Umar, x351)

x354 'Umar al-Maliki (w27.2) is someone about whom no other information was available than that he was a disciple of the early ascetic and mystic, Hasan al-Basri, as is mentioned in Suyuti's narrative at w27.2 (n).

x355 (al-Hajj) 'Umar Tal (w4.9) is 'Umar ibn Sa'id ibn 'Uthman, al-Futi al-Turi al-Kidiwi, born in Halwar, near Podor in the Gidi district of northern Senegal in 1794. A Tijani sheikh of impressive education, intellect, and remarkable organizational talents, he conducted jihad against French troops and pagan indigenous peoples in Guinea, Senegal, and Mali from 1852 to 1864. He first studied Arabic and Islamic subjects with his father, and by the time he left home to study elsewhere, had not only memorized the Koran, but also the two *Sahihs* of Bukhari and Muslim. He taught the Sacred Sciences in Satina for about twelve years, during which period he joined the Tijani tariqa, a new order founded only thirteen years before his birth which was then spreading through West Africa from

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Mauritania. He first took the way from Sheikh 'Abd al-Karim ibn Ahmad al-Naqil, but in less than two years decided to perform the hajj, and made his way eastward across Africa to the Hijaz, where he fulfilled the pilgrimage and completed his training in the *tariqa* with the Moroccan sheikh Muhammad al-Ghali al-Tijani. He stayed with the latter for three years in Medina before being authorized as an independent sheikh. After performing hajj again, he returned first to Cairo, where he authored a Koranic commentary, and then set off in 1830 for West Africa. Enroute, he stopped for a series of residences in various cities, among them Sokoto, Nigeria, where he remained six years with Muhammad Bello, the son of the Fulani *mujahid* 'Uthman ibn Fodi (x364), writing and acquiring the firsthand military and administrative expertise that he was later to use in his jihad in West Africa, the plans for which he was beginning to formulate in his mind. Returning to his homeland after twenty years, he recruited many to the Tijani tariqa, which he marshalled for the purposes of jihad. In his military campaigns, which are too numerous to record in detail here, he fought occasional skirmishes with the French, but his main efforts were directed at spreading Islam eastward by fighting the pagan Bambara people of Karta and Segu, which he did with considerable success at the head of an army that at its peak numbered some thirty thousand men. His force was well disciplined and applied Islamic law, as for example at the surrender of Karta, where 'Umar ordered the indigenous idols be brought out to be smashed at his own hands with an iron mace. His opinions paralleled those of Ahmad ibn Idris al-Fasi and Muhammad 'Ali Sanusi on many issues, and he admired the writings of Sheikh 'Abd al-Wahhab Sha'rani. He died in Ghoro, Mali, in 1280/1864 after an escape from being besieged in Hamdallahi during an unsuccessful bid to take Masina (*Muslim Brotherhoods* (y86), 68–98).

x356 'Umayr ibn Yazid (*see* Abu Ja'far Khatmi, x44)

x357 Umm Kulthum (r8.2) is Umm Kulthum bint 'Uqba ibn Abi Mu'it al-Umawiyya (Allah be well pleased with her), not the Prophet's daughter (Allah bless him and give him peace) of that name, but the half-sister of the caliph 'Uthman from his mother. Among those who entered Islam very early, when she learned that the Prophet (Allah bless him and give him peace) had left for Medina, she set out on foot to follow him, refusing to return when her brothers caught up with her to take her back. She related hadiths from the Prophet (Allah bless him and give him peace) that are recorded in the collections of both Bukhari and Muslim, and died in about 33/653 (*al-A'lam* (y136), 5.231).

x358 Umm Salama (w31.1) is Hind bint Abi Umayya ibn al-Mughira ibn 'Abdullah ibn 'Umar, Umm Salama al-Makhzumiyya (Allah be well pleased with her), Mother of the Faithful, one of the wives of the Prophet (Allah bless him and give him peace). One of the most intelligent and refined of women, she entered Islam in the early years and emigrated with her first husband, Abu Salama, to Ethiopia before emigrating to Medina, where her husband died. Abu Bakr then asked for her hand in marriage but she refused, after which the Prophet (Allah bless him and give him peace) proposed to her and she accepted, marrying him in A.H. 4. She lived a long life, relating 378 hadiths from the Prophet (Allah bless him and give him peace), and died in Medina in 62/681 (ibid., 8.97–98; and *Taqrib al-tahdhib* (y16), 754).

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x359 'Uqba ibn 'Amir (k29.0) is 'Uqba ibn 'Abas al-Juhani (Allah be well pleased with him). One of the Companions of the Prophet (Allah bless him and give him peace), he was an archer, poet, and reciter of the Koran who was knowledgeable in Sacred Law. He was one of those who helped gather the Holy Koran, and he related fifty-five hadiths from the Prophet (Allah bless him and give him peace). He participated in the Muslim conquest of Egypt with 'Amr ibn al-'As, and ruled it for a time before being relieved of command, after which he took charge of Muslim naval military expeditions, and later died in Egypt in 58/678 (*al-A'lam* (y136), 4.240).

x360 'Uthman (o25.4) is 'Uthman ibn 'Affan ibn Abi al-'As ibn Umayya al-Qurashi (Allah be well pleased with him), born in Mecca forty-seven years before the Hijra (A.D. 577). He was the third caliph of Islam and one of the ten whom the Prophet (Allah bless him and give him peace) informed they would enter paradise. Of noble lineage, wealthy, and extremely handsome, he entered Islam shortly after the prophetic mission began, and among his greatest works was to outfit the "army of hardship" for the expedition to Tabuk, donating three hundred camels with their equipage and one thousand gold dinars, whereupon the Prophet (Allah bless him and give him peace) said, "Nothing 'Uthman does after today will harm him." He accepted the caliphate after 'Umar's death in A.H. 23, and during His tenure, Armenia, Caucasia, Khurasan, Kirman, Sijistan, Cyprus, and much of North Africa were added to the dominions of Islam. He completed the gathering of the Koran begun by Abu Bakr, who had collected the written fragments of it that the Companions possessed, which 'Uthman now called for to be checked and collated with those who had memorized it, written into a single volume, and ordered everything else to be burned before he had the text copied and sent to all parts of the Muslim world. He related 146 hadiths from the Prophet (Allah bless him and give him peace), who married two of his daughters to him at different times, Ruqayya and Umm Kulthum, for which reason 'Uthman was called He of the Two Lights (Dhul Nurayn). At the end of his caliphate in 35/656, groups of men came from Egypt, Basra, and Kufa, complaining that 'Uthman had placed members of his clan, Bani Umayya, in prominent public offices, and demanded he remove them. When he refused, they surrounded his house in an attempt to force him to resign, but he would not, and finally some of them climbed over the walls of his home and murdered him as he sat reading the Koran (ibid., 4.210; and Sheikh Shu'ayb Arna'ut).

x361 'Uthman (w40.5) is 'Uthman ibn 'Umar ibn Faris al-Abadi of Basra, originally from Bukhara. He was a reliable transmitter (thiqa) whose hadiths were recorded in the works of Bukhari, Muslim, and in the other main collections. He died in A.H. 209 (*Taqrib al-tahdhib* (y16), 385).

x362 'Uthman ibn 'Abdullah (w31.1) is 'Uthman ibn 'Abdullah ibn Mawhab al-Tamimi, of Medina. A reliable hadith transmitter of the generation who came after the Companions, his hadiths were recorded in the collections of Bukhari, Muslim, Tirmidhi, and others. He died after A.H. 120 (ibid., 385; and *Siyar a'lam al-nubala* (y37), 5.187).

x363 'Uthman ibn 'Affan (*see* 'Uthman, x360)

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x364 'Uthman ibn Fodi (w9.4), known as Usuman dan Fodio, was born in Maratta in northern Nigeria in 1754. An Islamic scholar and Qadiri sheikh from a family of learned Muslims, he led the Fulani jihad in northern Nigeria with his younger brother 'Abdallahi and son Muhammad Bello. Having memorized the Koran and learned Maliki jurisprudence, hadith, and Arabic grammar when young, he became an accomplished scholar, author, poet, and Sufi. He recorded his experience of a stage of the mystic way in the words, "When I reached the age of thirty-six, God stripped the veil from my sight, the imperfection from my hearing and sense of smell, the flatness from my taste, the knots from my hands, and the heaviness from my feet and body. I saw things far away like near things and heard distant sounds like close ones. I smelt the good smell of the worshipper of God, sweeter than any sweetness, and the bad odor of the sinful man, more repugnant than any putrefaction ...." Though he authored a number of works in Arabic on Sufism, theology, and Sacred Law, his particular concern was syncretism, the compromise of Islam by admixture of pagan elements indigenous to the Nigeria of his time. These aberrant practices led first to an emigration (hijra) by him and his Qadiri followers from the lands of Gobir to the north and west, and then galvanized them to undertake a jihad that would physically bring all the region to orthodox Islam. It began with a vision of 'Abd al-Qadir al-Jilani, who fastened upon him "the sword of Allah to draw against His foes," and 'Uthman and his army were to fight for four years, mainly against the Gobir and Habe peoples, their hardest campaign being the siege on the Gobir capital of Alkalawa in 1806, which lasted two years. With its surrender, the Habe will to resist also disappeared and 'Uthman and his forces had effectively won the war. He divided the leadership of the Islamic state between his brother and son, and then retired to study and to teach his many students until his death in Sifawa in 1817 (*Muslim Brotherhoods* (y86), 15–25).

x365 'Uthman ibn Hunayf (w40.3) is 'Uthman ibn Hunayf ibn Wahb, Abu 'Amr of Aws (Allah be well pleased with him). A Companion of the Prophet (Allah bless him and give him peace) who participated in the battle of Uhud and those after it, he was appointed during 'Umar's caliphate as governor of southern Iraq (al-Sawad), and in 'Ali's time as governor of Basra. After the Battle of al-Jamal he went to live in Kufa, where he died in the caliphate of Mu'awiya some time after 41/661 (*al-A'lam* (y136), 4.205).

x366 'Uthman ibn 'Isa Marani (m12.6) is 'Uthman ibn 'Isa ibn Dirbas ibn Khayr, Abu 'Amr Diya' al-Din al-Marani al-Kurdi al-Mawsuli, born near Mosul, Iraq, in 516/1123. A Shafi'i scholar of Kurdish descent described by Taj al-Din Subki as "the most learned Shafi'i of his time in jurisprudence and fundamentals of law and faith," he first studied Sacred Law in Arbil, Iraq, and then Damascus before moving to Cairo, where he settled. He was appointed as head of the Egyptian judiciary by Sultan Salah al-Din Ayyubi in A.H. 566, though he later left the position and devoted himself to teaching and writing. He authored a commentary on Abu Ishaq Shirazi's *al-Luma'* [The effulgences] in fundamentals of jurisprudence, but is best known for his twenty-volume work in Shafi'i law, *al-Istiqsa' li madhahib al-fuqaha'* [The comprehensive: on jurists' schools of thought], a commentary on Shirazi's *al-Muhadhdhab* [The rarefaction]. He died in Cairo in 602/

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1206 (ibid., 4.212; *Siyar a'lam al-nubala'* (y37), 22.291; and *Tabaqat al-Shafi'iyya al-kubra* (y128), 8.337).

x367 Uways al-Barawi (w9.4) is Uways ibn Muhammad ibn Bashir al-Barawi, born in Brava on the southern Somalian coast in 1847. He studied Shafi'i jurisprudence, Koranic exegesis, Arabic grammar, and Sufism in his hometown before travelling to Baghdad, the headquarters of the Qadiri order to which he belonged, for fuller instruction in the way. After a number of years of study there with Sheikh Mustafa ibn al-Sayyid Salman al-Jaylani, he received authorization as a sheikh in the *tariqa* and returned home. Possessed of considerable organizational capacity, leadership, and spiritual gifts, he won numerous adherents, many of whom he trained for missionary activities, and his Uwaysi-Qadiri tariqa is credited with a considerable expansion of Islam in Tanganyika, southern Somalia, and eastern Zaire. He also founded agricultural settlements at Bilad al-Amin and at Biolay, 150 miles north of Brava, where he was assassinated at the age of sixty-three in 1909. B.G. Martin states: "In its spread from Brava to Zanzibar to the mainland of Tanganyika and then westward into the Congo, the Uwaysiya Qadiriya became a major Muslim movement in East Africa. Though it began as early as 1883, Qadiri proselytization is still continuing. In a region where adherence to a *tariqa* is synonymous with conversion to Islam, such a movement assumed more than ordinary significance" (*Muslim Brotherhoods* (y86), 152–65, 176).

x368 Wali al-Din al-'Iraqi (w28.1) is Ahmad ibn 'Abd al-Rahim ibn al-Husayn, Abu Zar'a Wali al-Din al-'Iraqi, born in Cairo in 762/1361. Of Kurdish descent, he was the son of Zayn al-Din al-'Iraqi (x188) and like him, was also a Shafi'i scholar and hadith master (hafiz). His father took him to Damascus, where he was educated, and when he returned to Cairo, he succeeded Jalal Bulqini as the head of the judiciary, though his uncompromising attitude towards rulers caused him to be later removed from office. He authored a number of works in Sacred Law, hadith and its sciences, Muslim biographies, and formal legal opinion, and died in Cairo in 826/1423 (*al-A'lam* (y136), 1.148).

x369 Wasiyyullah 'Abbas (w56.2) is a contemporary hadith scholar who edited and annotated Imam Ahmad ibn Hanbal's *Fada'il al-Sahaba* [The excellences of the prophetic Companions] as his doctoral thesis at Umm al-Qura University in Mecca. His two-volume dissertation was first published in Beirut in 1403/1983 (n).

x370 Ya'qub (u3.5) is Ya'qub ibn Ishaq ibn Ibrahim (upon whom be peace), a prophet of Allah Most High. Also known as Isra'il, the offspring of his twelve sons composed the twelve tribes of Bani Isra'il, who took their name from him. He is mentioned in the Holy Koran in various places, among them sura Yusuf, named for his son, who was also a prophet. Commentators record that he lived for 147 years (*al-Futuhat al-ilahiyya* (y65), 2.433; and n).

x371 Yahya (u3.5) is Yahya ibn Zakariyya (upon whom be peace), the prophet of Allah Most High born to the prophet Zakariyya and his wife, who was the maternal aunt of 'Isa (upon whom be peace), though Yahya was born before 'Isa. Commentators record that he was descended through Zakariyya from Sulayman

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(upon whom be peace), and that he was the last one sent before 'Isa to Bani Isra'il, who killed him when he was 120 years old, just as they had killed his father (*al-Shifa* (y116), 1.192).

x372 Yahya ibn Abi Kathir (a2.5) is Yahya ibn Salih, Abu Nasr Ibn Abi Kathir al-Ta'i al-Yamami. Originally of Basra, he lived in Medina for ten years, taking hadiths from the foremost of the generation that followed the Companions, and then moved to Yamama, in the Najd, where he was famous as a hadith scholar, though he later suffered for his outspoken condemnation of some of the policies of the Umayyad caliphs. One of the leading early hadith Imams, some have considered him even more learned than Zuhri. He died in 129/747 (*al-A'lam* (y136), 8.150).

x373 Yahya ibn Sa'id (w48.2) is Yahya ibn Sa'id ibn Qays, Abu Sa'id al-Ansari al-Najjari, originally of Medina. An Islamic judge first in Medina and later in Iraq, he was one of the main figures in the early science of hadith, and al-Jumhi said of him, "I have not seen anyone who resembled Zuhri more closely than Yahya ibn Sa'id. If not for the two of them, many sunnas would have been lost." He died in al-Hashimiyya, Iraq, in 143/760 (ibid., 8.147).

x374 al-Yasa' (u3.5) is al-Yasa' ibn Akhtub ibn al-'Ajuz (upon whom be peace), whom Allah Most High made a prophet and messenger to Bani Isra'il after Ilyas (x186) was raised up from among them. Allah inspired and aided him, and his people believed in him and honored him, applying the Sacred Law among themselves until his death (*al-Futuhat al-ilahiyya* (y65), 2.58, 3.550).

x375 Yasin 'Arafa (Document 1), a native of Damascus, is a friend of Sheikh 'Abd al-Wakil Durubi's of about his own age who has visited him almost daily for the past thirty-five years and been his business partner in editing and publishing a number of classic works on Sufism and Shafi'i jurisprudence (n).

x376 Yunus (u3.5) (upon whom be peace), also known as He of the Fish (Dhul Nun), was the prophet of Allah Most High to the people of Nineveh (in present-day Iraq) whom, as commentators relate, he called to the worship of Allah alone, but who rejected him and his message until he at length grew angry with them and departed, informing them that Allah's punishment would be visited upon them in three days. When he left them and boarded a ship, his people saw the seriousness of their plight and made a deep and sincere repentance, all of them coming forth from their dwellings to beg Allah to turn aside His punishment, and when it appeared above like a section of darkest night, Allah caused it to revolve harmlessly overhead. A storm at sea meanwhile assailed the ship carrying Yunus, and in the course of it, the passengers saw that their only hope was for one of their number to lighten ship by jumping overboard, but when they drew lots to see who it would be, the lot fell to Yunus. Unwilling to put him off, they cast lots again and again, but each time it fell to the prophet, and at length they saw that some great matter was afoot and let him go. As he took to the water, a great fish swallowed him and he remained in its belly for some days, regretting his anger towards his people, and expressing his abject humility towards Allah with the words, "There is no god but You, glory be to You, verily I was of the wrongdoers," and Allah

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saved him by causing the fish to cast him up on the shore (*Qisas al-anbiya'* (y59), 286–93).

x377 Yunus Hamdan (Document 2) is Yunus ibn Hamdan ibn Qublan Abu Jamus, Abu Anas, born in the Marka area east of Amman, Jordan, in 1944. Educated in Amman, he served as a teacher for four years in the Jordanian Army before becoming the imam of a mosque under the Ministry of Endowments (Wizara al-Awqaf) in 1968. He took the Shadhili tariqa from Sheikh Muhammad Sa'id Kurdi in the summer of 1967, and by the time of the sheikh's death five years later, was one of his most advanced disciples. He studied Shafi'i jurisprudence with both his sheikh and with the mufti of Irbid, Sheikh Barakat, and in 1982 took a degree from the University of Jordan in Sacred Law. He has been the translator's neighbor since 1983, and was one of those who generously agreed to check the Arabic of the present volume before it was submitted for publication. One of the signs of Allah in humility, kindness, and patience, he currently lives in Amman, where he teaches Arabic grammar, Shafi'i jurisprudence, and Koran recital to a small circle of students (n).

x378 Yusuf (u3.5) is Yusuf ibn Ya'qub (upon whom he peace), the prophet of Allah Most High whose story is recounted by the Holy Koran in the sura that bears his name; how his brothers, jealous of the love their father had for him, cast him into a well, how he was sold into slavery in Egypt, later rising to a high position there, and the forgiveness he showed them when they came to him in their hour of need (Koran 12; and n).

x379 Yusuf Ardabili (o22.1(d(II))) is Yusuf ibn Ibrahim, Jamal al-Din al-Ardabili, of Ardabil, Azerbaijan. He was a Shafi'i scholar whom Ibn Qadi Shuhba described as "tremendous in Sacred Knowledge," and who authored *Kitab al-anwar li a'mal al-abrar* [The book of lights for the works of the pious] in Sacred Law. He died in Ardabil in 799/1397 at over seventy years of age (*al-A'lam* (y136), 8.212).

x380 (Sheikh) Yusuf Nabahani (w52.1(60)) is Yusuf ibn Isma'il ibn Yusuf al-Nabahani, born in the village of Ijzim, Palestine, in 1265/1849. He was a Shafi'i scholar, Sufi, judge, poet, and the author of works in Sacred Law, tenets of faith, prophetic biography, hadith, heresiology, and Sufism, including his two-volume *Jami' karamat al-awliya'* [Compendium of the miracles of the friends of Allah], *Wasa'il al-wusul ila shama'il al-Rasul* [The means of knowing the attributes of the Prophet], *Sa'ada al-darayn fi al-salat 'ala Sayyid al-Kawnayn* [Felicity in this world and the next through the blessings upon the Liegelord of the Two Abodes], and forty-five others, among them some of the most beautiful works that exist in commemoration of the Prophet (Allah bless him and give him peace). He was educated at al-Azhar, edited a newspaper in Istanbul for a period and corrected the books it published, and then returned to be appointed to the judiciary in Beirut, a capacity in which he served for twenty years before moving to Medina. After the outbreak of the First World War, he returned to Ijzim, where he died in 1350/1932 (ibid., 8.218; *Wasa'il al-wusul* (y97), 11; and n).

x381 Yusuf Qaradawi (w46.1) was born in Egypt in 1926. A contemporary Islamic scholar, author, and poet, he memorized the Holy Koran before age ten

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and completed his education at al-Azhar, where he took a doctoral degree with highest honors in 1973. He has written more than twenty works which have gained a wide readership in the Islamic world, but is probably best known for his *al-Halal wa al-haram fi al-Islam* [The lawful and unlawful in Islam] which, although it contains some unreliable positions in Sacred Law, represents an original effort to make the comprehensive rules of Islam accessible and understandable to nonspecialists, and shows its author as a modern thinker concerned with joining between the principles of the religion and the problems of the times. He is currently the Dean of a college of Sacred Law in Qatar (*al-Sahwa al-Islamiyya* (y111), back cover; and n).

x382 (a) (Sheikh) Yusuf al-Rifa'i (w40.2) is Yusuf ibn al-Sayyid Hashim al-Rifa'i, born in Kuweit in 1351/1932. A Shafi'i scholar, former minister of state, educator, Sufi, and author, he was given his primary education in the Holy Koran by Sheikh Ahmad al-'Aqil in Kuweit, and studied Sacred Law in Damascus and Shafi'i jurisprudence under Sheikh Muhammad Muhammad Salih of Kuweit and others. His father, al-Sayyid Hashim al-Rifa'i, was the captain of a pearl-harvesting sailing ship, then a state official, and finally an advocate in the Shari'a court of Kuweit. Sheikh Yusuf is descendant of the Prophet (Allah bless him and give him peace) through the friend (wali) of Allah Most High, Sheikh Ahmad al-Rifa'i. He was made a member of Parliament in Kuweit in 1963, minister of telecommunications and postage in 1964, and he served as the minister of state from 1965 to 1970. He is also a sheikh of the Rifa'i tariqa founded by his ancestor, having been authorized in Zabadani, near Damascus, by Sheikh Makki al-Kattani, whose teacher Ibrahim al-Rawi was the student of Sheikh Abu al-Huda al-Sayyadi, one of the outstanding recent figures in the Rifa'i way, which Yusuf notes is especially distinguished, like its founder, for its rigorous adherence to the Sacred Law, outwardly and inwardly. The value of Sufism in Islam, he believes, is not only as a means to spiritual sincerity, but as a powerful force to convey Islam (da'wa) to non-Muslims and to regenerate the religion in the Muslim heartlands from within. Among his written works are *Khawatir fi al-siyasa wa al-mujtama'* [Thoughts on politics and society], comprising articles on contemporary issues such as the need for Muslims to defend the rights of Muslim minorities in non-Muslim countries; *Adilla Ahl al-Sunna wa al-Jama'a aw al-Radd al-muhkam al-mani' 'ala munkarat wa shubuhat Ibn Mani'* [The evidences of the Sunni Community, or, The unassailably proficient rebuttal of the blameworthy and doubtful points of Ibn Mani'], which he wrote in response to a contemporary's attack on Sheikh Muhammad 'Alawi Maliki for the latter's having contradicted the tenets of the Wahhabi sect on a number of questions; and *Adilla al-qunut fi salat al-fajr* [The evidences for standing in supplication at the dawn prayer]. He takes a keen interest in the problems of Muslims today, and at a recent symposium in Amman with Sheikh 'Abdullah Muhammad Ghimari and Sheikh Hasan Saqqaf, he voiced his concern for the obstacles to the current Islamic revival and world propagation of Islam that are being put in its way by "fundamentalists" whose view of Allah is anthropomorphic, view of the Prophet (Allah bless him and give him peace) is that he is over-venerated and loved by Muslims, and view of Muslims is that they are unbelievers or immersed in unlawful innovations (bid'a). The unity of the Community and its future, he said, lie in holding fast to the agreed-upon schools of jurisprudence and tenets of faith, directing our efforts to non-Muslims; not in

trying to convince Muslims that everything their forefathers believed was a mistake. He presently directs the al-Iman School, founded in 1973 in Kuweit, which provides Islamic and secular education patterned on the al-Azhar model at the elementary, preparatory, and secondary levels. He is a familiar figure at Islamic conferences around the world, and in 1988 was elected as president of the World Union of Islamic Propagation and Information at its London conference (n).

x382 (b) Yusuf Talal DeLorenzo (Document 3) is an American Muslim scholar who was born in Plymouth, Massachusetts in 1947 and raised in Duxbury, where his family has lived for several generations. He entered Islam in 1970 in Beirut, and in 1971 became the student of the hadith expert Sheikh Muhammad Yusuf al-Bannuri of Pakistan. After six years of study, the sheikh, author of *Ma'arif al-Sunan* [The knowledges of "The sunnas"], a six-volume commentary on *Jami' al-Tirmidhi* [The hadith collection of Tirmidhi], and other works, authorized him to teach and relate the hadiths he had read before him and on which he had commented. Yusuf has since taught hadith and principles of jurisprudence (usul al-fiqh) in Pakistan, served as advisor on Islamic education to the late President Zia al-Haqq (Allah have mercy on him), been headmaster of the only private Muslim college in Sri Lanka—where he taught *'Umdat al-salik*, the main text of the present volume—lectured at the International Islamic University in Islamabad, and served as Chief of the Translation Bureau at the Islamic Research Institute there. In June, 1989, after nearly twenty years abroad, he was appointed as research coordinator for the International Institute of Islamic Thought in Washington, D.C.

A veteran Islamic translator, his more than ten works include English versions of a Hanafi manual of Sacred Law as well as *Kitab al-halal wa al-haram* [The book of the lawful and unlawful] from Imam Ghazali's *Ihya' 'ulum al-din* [Giving life to the religious sciences], *Usul al-fiqh al-Islami* [The bases of Islamic jurisprudence], and *al-Ijtihad wa al-taqlid fi al-Islam* [Personal juridical reasoning versus following qualified scholarship, in Islam], both by Dr. Taha Jabir al-'Alwani. His most recent effort, a pioneering translation of his own Arabic edition of Abu Bakr al-Jassas's multi-volume Koranic exegesis *Ahkam al-Qur'an* [Legal interpretations of the Koran], seems destined for wide recognition and use, representing the definitive Hanafi work on deducing legal rulings from the Holy Koran. He presently lives in Sterling, Virginia (n).

x383 Zacharias (*see next entry*)

x384 Zakariyya (u3.5) is Zakariyya ibn Ladun ibn Muslim ibn Saduq ibn Hashban ibn Dawud ibn Sulayman (upon whom be peace), a prophet of Allah Most High to Bani Isra'il. The Holy Koran mentions how Allah gave him a son, the prophet Yahya, in his old age to inherit his knowledge and prophethood, and how, when his wife's sister gave birth to Maryam and vowed her to the service of the Sacred Temple, Zakariyya undertook to care for her in a room in the temple, where he brought her food, drink, and other necessities. Allah Most High describes him and family as "vying in pious deeds, calling upon Us in hope and fear, and humble to Us" (Koran 21:90) (*Qisas al-anbiya'* (y59), 543–44).

x385 (Sheikh al-Islam) Zakariyya Ansari (o16.6) is Zakariyya ibn Muhammad ibn Ahmad ibn Zakariyya, Abu Yahya Sheikh al-Islam al-Ansari, born in Sanika,

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Egypt, in 823/1420. Known as the Sheikh of Sheikhs, he was the Shafi'i scholar of his time, a hadith master (hafiz), judge, and Koranic exegete. He was educated in Cairo in circumstances of such poverty that he used to have to leave the mosque by night to look for watermelon rinds, which he would wash and eat. When his knowledge later won him fame and recognition, he was to receive so many gifts that his income before his appointment to the judiciary amounted to nearly three thousand dirhams a day, which he spent to gather books, teach, and give financial help to the students who studied with him. When Sultan Quytubay al-Jurkasi appointed him as head of the judiciary in Cairo, he accepted the post with reluctance after being repeatedly asked, but when the sultan later committed a wrong act and he sent him a letter upbraiding him, the sultan dismissed him and he returned to teaching. He authored works in Sacred Law, the sciences of Koran and hadith, logic, Arabic, fundamentals of jurisprudence, and Sufism, and was the sheikh of Imam Ibn Hajar Haytami. He died in 926/1520 at one hundred years of age (*al-A'lam* (y136), 3.46).

x386 Zarkashi (f5.1) is Muhammad ibn Bahadur ibn 'Abdullah, Abu 'Abdullah Badr al-Din al-Zarkashi, born in Egypt in 745/1344. Of Turkish origin, he was a scholar of Shafi'i jurisprudence, fundamentals of law, hadith, and literature, who wrote many works, among them his three-volume *al-Bahr al-Muhit* [The encompassing sea], on Islamic legal principles. He died in 794/1392 (ibid., 6.60).

x387 Zayd ibn 'Ali ibn Husayn (b7.6) is Zayd ibn 'Ali ibn Husayn ibn 'Ali ibn Abi Talib, Abu al-Husayn al-Shahid al-'Alawi al-Hashimi, born in 79/698. He was an Imam of Sacred Law who lived in Kufa, Iraq, where Imam Abu Hanifa knew him and once said, "I never saw anyone of his time more knowledgeable in Sacred Law, faster to answer, or clearer in discourse." Two works have been ascribed to him, the recently discovered *Majmu' fi al-fiqh* [Collection in Sacred Law], which if his, is the oldest recorded work in Islamic jurisprudence; and *Tafsir gharib al-Qur'an* [Explanation of rare words in the Koran], whose ascription likewise remains unestablished. At the end of his life he headed an uprising against the Umayyads, and was killed in Kufa in 122/740 (ibid., 3.59).

x388 Zayd ibn Thabit (b3.2) is Zayd ibn Thabit ibn al-Dahhak, Abu Kharija (Allah be well pleased with him), born in Medina eleven years before the Hijra (A.D. 611) and raised in Mecca. Among the great Companions of the Prophet (Allah bless him and give him peace), he was one of the scribes who recorded the Koran in writing. His father was killed when he was six years old, and he emigrated at age eleven to Medina, where he learned the religion of Islam and later became one of the Companions' principle scholarly resources in deciding cases, giving formal legal opinion, in Koranic recitation, and inheritance. When the caliph 'Umar used to travel from Medina, he would leave Zayd in his place until he returned. Ibn 'Abbas, with his immense erudition, used to visit him at home to take knowledge from him. He was among those who gathered the Koran in the time of the Prophet (Allah bless him and give him peace) and checked it with him, who wrote it in the time of Abu Bakr, and who copied out the Korans that 'Uthman sent to the cities of the outlying Islamic lands. He related ninety-two hadiths, and when he died in 45/665, Abu Hurayra said, "The scholar of this

nation has died today; haply Allah will make Ibn 'Abbas his successor" (ibid., 3.57).

x389 Zayn al-Din Mallibari (w12.2) is Zayn al-Din ibn 'Abd al-'Aziz ibn Zayn al-Din ibn 'Ali ibn Ahmad al-Mallibari, originally of Mallibar, India. A Shafi'i scholar who studied under Imam Ibn Hajar Haytami, he authored *Qurra al-'ayn bi muhimmat al-din* [The gladdening of the eye with the essentials of the religion] and its commentary *Fath al-Mu'in* [The victory of the Helper]; as well as *Irshad al-'ibad ila sabil al-rashad* [The guidance of servants to the way of wisdom]. He died in 987/1579 (ibid. 3.64; *Mu'jam al-buldan* (y43), 5.196; and A).

x390 Zubayr (o25.4) is Zubayr ibn al-'Awwam ibn Khuwaylid, Abu 'Abdullah al-Asadi al-Qurashi (Allah be well pleased with him), born twenty-eight years before the Hijra in Mecca. One of the most courageous of the Companions of the Prophet (Allah bless him and give him peace), he entered Islam at the age of sixteen, was one of the ten informed they would enter paradise, and was the first to draw a sword for Islam, participating in the battles of Badr, Uhud, and others. He was the son of the paternal aunt of the Prophet (Allah bless him and give him peace), and 'Umar considered him one of those qualified to be caliph after him. A wealthy man with wide trade dealings, his property was sold after his death for forty million dirhams. He was assassinated by Ibn Jarmuz in 36/656 on the day of the Battle of al-Jamal, about twenty-one miles outside of Basra (*al-A'lam* (y136), 3.43).

x391 (Imam) Zuhri (w57.2) is Muhammad ibn Muslim ibn 'Abdullah ibn Shihab, Abu Bakr al-Zuhri of Medina, born in 58/678. Of the generation that met the Companions, Zuhri was reportedly the first to record prophetic traditions in writing, and one of the most important early scholars in hadith and Sacred Law. He visited Syria and settled there, and the caliph 'Umar ibn 'Abd al-'Aziz wrote to some of his officials, "See well to Ibn Shihab [Zuhri], for you will find no one more knowledgeable in the sunnas of the past than he." He died in 124/742 in Shaghb, at the northern extremity of the Hijaz where it becomes Palestine (ibid., 7.97).

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BOOK Y

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للإجـازة، فأجـازه مجمع البحوث الإسلامية في الأزهر الشريف، وكذلك المعهـد العالمي للفكر الإسلامي بواشنطن، وقد أثبت صورة عن كل من هاتين الإجازتين في أول الكتاب، والحمد لله أولاً وآخراً.

هذا؛ وقد وضعت النص العربي الأصيل للكتاب إلى يمين الترجمة الإنكليزية؛ راغباً من وراء ذلك بتحقيق غايتين:

الأولى: أن لا أفوّت على القارىء الذي نال قسطاً من المعرفة باللغة العربية أن يطّلع على النص الأصلي للمادة المترجمة.

والأخرى: أن يشعر القارىء بالراحة التامة والثقة الأكيدة بدقة الترجمة وصدق النقل.

وأسأل الله العلي القدير أن يكتب لعملي هذا قبولاً حسناً، وأن ينفع به، وأن يجعله ذخـراً لكل من ساهم فيه بكثير أو قليل، وأن يجزيهم خير الجزاء؛ إنه نعم المولى ونعم الوكيل، والحمد لله رب العالمين، وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم.

عمان في شهر رمضان سنة **١٤١١**هـ

الموافق آذار سنة **١٩٩١**م

وكتبه الطالب المسلم الأمريكي

نوح حا ميم كلر

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time of either of them (N: or the Friday prayer (jumu'a) and midafternoon prayer in the time of the Friday prayer), and permissible to similarly join the sunset prayer (maghrib) and nightfall prayer ('isha) during the time of either, provided one joins them during a journey in which prayer may be shortened (def: f15.8(a,b,c,d)).	والعشاء كذلك في كلّ سفر تُقصرُ الصلاةُ فيه.

فالنص العربي المكتوب أعلاه يقابله من الإنكليزية ما معناه: «يجوز أن يجمع بين صلاة الظهر وصلاة العصر في وقت أي منهما (الشيخ نوح: وبين صلاة الجمعة وصلاة العصر في وقت صلاة الجمعة)، ويجوز كذلك أن يجمع بين صلاة المغرب وصلاة العشاء في وقت أي منهما؛ بشرط أن يجمعهما في سفر يجوز أن تقصر الصلاة فيه (تعريفه f15.8 (a, b, c, d))»، وهذا الأخير هو رقم الفقرة التي تبيّن شروط السفر الذي تُقصر الصلاة فيه.

ويلاحظ أيضاً تعليق الشيخ نوح علي سلمان المشار إليه بالحرف (N:) المثبت (بين القوسين) بالإنكليزية فقط دون المتن العربي.

ولعل القارىء يستطيع أن يلمس هنا ما في هذا الأسلوب من اليسر والسهولة والبعد عن المصطلحات الفنية التي قد تحول دون فهم المقصود.

ثم إنني أضفت في الترجمة الإنكليزية في كثير من المواضع عناوين فرعية غير موجودة في الأصل العربي، وعندما نقلها الشيخ نوح علي سلمان إلى العربية؛ راعى فيها اصطلاح الفقهاء، ولذلك نجد أحياناً عدم المطابقة التامة بين العنوانين، وأمثّل لذلك بما جاء في باب الصيد والذبائح في الصفحة ٣٦٦، فقد عنونت له بالإنكليزية بكلمة (Hunting)؛ يعني الصيد، بينما وضع الشيخ نوح له عنواناً: أحكام الصيد... وهكذا.

دقة الترجمة:

ثم إنني عرضت هذا الكتاب على عدد ممن يتقنون العربية والإنكليزية معاً لمراجعته؛ زيادة في التوثيق، وتحرياً لمزيد من الدقة، وقدمته بعد ذلك

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التفسيرية لا الحرفية، وهذا الأمر ينسحب أيضاً على النصوص القرآنية، حيث كنت أولاً أقرأ النص القرآني باللغة العربية، ثم أنظر ما تيسر من كتب معاني القرآن المترجمة إلى اللغة الإنكليزية، ثم أراجع معاني هذا النص في التفاسير المختلفة؛ كـ «تفسير الجلالين بحاشية الجمل»، أو «تفسير ابن كثير»، أو «تفسير القرطبي»، ثم أنقل إلى الإنكليزية أقرب المعاني إلى موضع الاستشهاد، ولعل من المفيد هنا أن أشير إلى أن ترجمة النص القرآني إلى أي لغة أجنبية تفقده ميزة احتماله للمعاني والوجوه المتعددة بآن واحد، فلا يمكن أن نأخذ إلا وجهاً واحداً من تلك الوجوه عند الترجمة؛ لأنه تفسير للقرآن بتلك اللغة وليس ترجمة للقرآن، إذ لا يسمّى قرآناً بالمعنى الاصطلاحي إلا نصه العربي.

نصوص الحديث الشريف:

ثم إنني سلكت المسلك المذكور نفسه في ترجمة نصوص الحديث الشريف، ورجعت من أجل ذلك إلى واحدٍ أو أكثر من كتب السنّة التالية: «فتح الباري» للحافظ ابن حجر، و«شرح صحيح مسلم» للإمام النووي، و«النهاية في غريب الحديث» لابن الأثير، و«فيض القدير شرح الجامع الصغير» لعبد الرؤوف المناوي، و«دليل الفالحين لطرق رياض الصالحين» لابن علان البكري، و«الفتوحات الربانية على الأذكار النووية» له أيضاً.

النصوص الفقهية:

وأما النصوص الفقهية؛ فإنني نسجت فيها على نفس المنوال؛ ساعياً قدر المستطاع إلى اليسر والسهولة اللتين تعينان القارىء على الفهم ثم التطبيق، ولعل المثال التالي (المأخوذ من الصفحة **١٩٣** و **١٩٤**) من الكتاب يوضح هذا الأمر بصورة جلية:

f15.9 It is permissible to join the noon prayer (zuhr) and midafternoon prayer ('asr) during the	f15.9 يجوز الجمع بين الظهر والعصر في وقت أحدهما وبين المغرب

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ما قاله، ثم عنوان الكتاب والجزء والصفحة، فإن كان هناك حذف في الكلام؛ أشرت إلى موضعه بثلاث نقاط [. . .]، ثم قلت في آخر الكلام: «محرَّر من المصدر الفلاني»؛ وإن لم يكن هناك حذف؛ استغنيت عن هذه النقاط، وقلت في آخره: «نُقل من المصدر الفلاني»، وفي كلتا الحالتين أضفت في آخر النص المترجم بالإنكليزية رقم مصدره كـ (y29) في ثبت المراجع المشار إليها في آخر الكتاب، والتي تُبيِّن اسم الكتاب الكامل، وأسماء حواشيه إن وُجِدَتْ، وأسماء المؤلف والمحشِّي والمحقِّق والناشر، وعدد أجزائه، ومتى طُبع، وأين، وإن كان مصوَّراً؛ فمتى طُبع الأصل.

وبالجملة؛ فليس في الكتاب من جهالة في نسبة النصوص إلى مصادرها.

وسيلاحظ القارىء أني قرنت كل فقرة من فقرات الكتاب بعلامة مؤلفة من حرف ورقم؛ مثال ذلك: (e1.12)، وهو حكم تنجس القلتين من الماء، فحرف (e) يشير إلى كونه من كتاب الطهارة، ورقم (1) يشير إلى أنه أول باب من هذا الكتاب، وأما رقم (12)؛ فيشير إلى أنه الموضوع الثاني عشر من هذا الباب. وفائدة اقتران فقرات الكتاب بهذه العلامات هي تسهيل استعمال الفهارس، وسهولة إحالة القارىء على مسائل الكتاب، وسأبين ذلك فيما بعد.

منهج الترجمة:

أما طريقة الترجمة؛ فهي تفسيرية كما سبق ذكره، وسأوضح هذا بالنسبة لترجمة ثلاثة أنواع من النصوص إلى معانيها بالإنكليزية، وهي: نصوص القرآن الكريم، ونصوص الحديث الشريف، والنصوص الفقهية.

نصوص القرآن الكريم:

ذكرت فيما سبق أنني اعتمدت في نصوص كتابي هذا أسلوب الترجمة

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وأخيراً وضعت بالإنكليزية قائمة بأسماء المراجع الواردة في الكتاب، وهي ١٣٦ مرجعاً.

طريقة تحرير النصوص، واصطلاحات ضبطها:

ذكرت أن المتن الفقهي الأساسي هو «عمدة السالك» الذي ألفه الشيخ أحمد بن النقيب المصري، وقد أثبتُّ كامل النص العربي، وضبطت أفعاله بالشكل التام، في حين ضبطت أواخر الكلمات الأخرى، وعند نقله إلى الإنكليزية تركت ترجمة بعض الأحكام نادرة الوقوع؛ إلا أن تكون مهمة، وقد وضعت ما لم أترجم من النص العربي بين معقوفتين [ ].

وأما شرح المتن ـ وهو «فيض الإله المالك»، تأليف الشيخ عمر بركات ـ؛ فقد أدخلت بعضه في ثنايا المتن، وميّزته في النص العربي بوضعه بين قوسين، وتركِهِ من غير تشكيل، وأما في النص الإنكليزي؛ فوضعته بين قوسين وأشرت إليه بالحرف (O:) الكبير.

وأثبتُّ تعليقات الشيخ عبد الوكيل الدروبي في اللغتين بين قوسين، وأشرت إليها بالحرف (ع:) في النص العربي، وبالحرف (A:) في النص الإنكليزي.

وأما تعليقات الشيخ نوح علي سلمان؛ فقد أثبتها بين قوسين، وأشرت إليها بالحرف (ح:) في النص العربي، وبالحرف (N:) في النص الإنكليزي.

وكثيراً ما اقتصرت على ذكر ملاحظات الشيخين بالإنكليزية فقط.

وأما ملاحظاتي أنا المترجم؛ فقد وضعتها بين قوسين، وأشرت إليها بالحرف (n:) الصغير في الإنكليزية، وبالحرف (ت:) في العربية، وأحياناً قد توجد هذه الملاحظات في إحدى اللغتين دون الأخرى.

وأما ما أخذ من المصادر الأخرى؛ فقد ذكرت قبل كل قول قائله، ثم

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وأضفت بعد المتن أبواباً؛ كملخص «كتاب الكبائر» للإمام الذهبي، الذي يلحق بباب الشهادة من «عمدة السالك»، حيث ورد فيه أنه لا تقبل شهادة صاحب كبيرة، فأردت أن أوضح للقارىء هذه المسألة بسرد الكبائر، و«كتاب حفظ اللسان» من «كتاب الأذكار» للإمام النووي؛ لأن الأحكام المتعلقة بالغيبة المحرمة ـ مثلاً ـ لها في حياة المسلم اليومية أهمية توازي أو تزيد على أهمية أحكام سنن الوضوء المتضمنة في «عمدة السالك»... وهكذا، و«كتاب الأمر بالمعروف والنهي عن المنكر»، و«كتاب الغرور»؛ اللذان لخصهما ابن قدامة المقدسي من «منهاج القاصدين» لابن الجوزي، وهو تهذيب لـ «إحياء علوم الدين»، وفي العقيدة اخترت «ترجمة عقيدة أهل السنة في كلمتي الشهادة» لحجة الإسلام الإمام الغزالي، وبعده حديث جبريل عليه السلام؛ بشرحين: أحدهما للإمام النووي، والثاني للشيخ محمد بن عبد الله الجرداني (تلميذ العلامة الباجوري) يفسران معاني الإسلام والإيمان والإحسان.

وفي آخر الكتاب أضفت ملاحق تتعلق بأمور مذكورة في المتن احتاجت إلى زيادة التوضيح، وهي ستون مبحثاً مقتبسة من علماء أهل السنة؛ كالإمام النووي، والغزالي، والقرطبي، والسيوطي، والبغوي، وأبي اسحاق الشيرازي، والعز بن عبد السلام، وابن حجر العسقلاني، وابن كثير، وتقي الدين السبكي، وابن حجر الهيتمي، ومحمد أمين ابن عابدين، والحافظ المناوي، وابن علان البكري، وعبد الوهاب الشعراني، وغيرهم. وليس لهذه الملاحق ترتيب فيما بينها غير ترتيب ورودها في نصوص الكتاب التي تتعلق بها.

ثم أفردت باباً خاصّاً باللغة الإنكليزية في ترجمة الأعلام المذكورين في الكتاب، وهو يشتمل على ترجمة ٣٩٥ علماً.

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بما رجحه النووي في «منهاج الطالبين».

ولما كان الفهم هو أول واجبات ناقل مثل هذه النصوص؛ شرح الله صدري أن أقرأه على الأستاذ الشيخ عبد الوكيل الدروبي بجامع درويش باشا بدمشق الشام، وكذلك راجعته مع الشيخ نوح علي سلمان مفتي القوات المسلحة الأردنية في عمّان، فنقّحت كامل النص العربي، واستعرضته كلمة كلمة مع كل من الشيخين جزاهما الله خيراً في مجالس متعددة على مدار خمس سنوات، وأجازني كل منهما خطيّاً بشرحه وترجمته، وقد صورت الإجازتين في الصفحات الأولى من مصنفي هذا.

ثم إنني بعد أن اطمأننت إلى تمكني من استيعاب مادة الكتاب وفهمها وهضمها على وجه أحسبه حسناً، عملت على توصيل هذا الفهم إلى القارىء باللغة الإنكليزية بطريقة سهلة عصرية تناسب القارىء الغربي، فاعتمدت في عملي هذا ترجمة تفسيرية لا حرفية للنصوص، أغنيتها بما استفدته من كتاب «فيض الإله المالك في حل ألفاظ عمدة السالك وعدة الناسك» للشيخ عمر بركات تلميذ الشيخ العلامة إبراهيم الباجوري، وما استفدته أيضاً من الشيخ عبد الوكيل الدروبي، والشيخ نوح علي سلمان، وبهذا أغنيت القارىء الغربي عن الخوض في تعقيدات المصطلحات الفنية الفقهية التي قد يصعب عليه فهمها.

هذا؛ وقد أضفت إلى مباحث الكتاب أبواباً أخرى:

منها ثلاثة قبل ترجمة المتن، وهي: «كتاب العلم» مقتبس من «المجموع شرح المهذب» للإمام النووي، و«كتاب مشروعية التقليد» من كتاب «اللامذهبية أخطر بدعة تهدد الشريعة الإسلامية» للدكتور محمد سعيد البوطي، و«كتاب الحكم الشرعي» من كتب الأصول وبخاصة كتاب «علم أصول الفقه» للشيخ عبد الوهاب خلاف.

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غير أنـه من الضروري أن نشير في هٰذا المقام إلى أن هٰذه المكتبة الضخمة تنحصر الاستفادة منها بالمسلمين العرب دون غيرهم من الذين لا يجيدون العـربية أو لا يتكلمونها، ولا سيما المسلمين في العالم الغربي، الذين لا يعرفون في معظم الأحيان عن هٰذا الدين العظيم إلا مبادىء وأوليات لا تفي بحاجتهم كمسلمين جدد ينتظرون أن يجدوا في الإسلام نظاماً شاملاً يستوعب كل مناحي الحياة، فإذا أراد أحدهم أن يتوسع في معرفة تفاصيل هذا الدين الحنيف؛ لم يجد أمامه إلا منشورات تخدم أغراض بعض الفئات المنحرفة؛ كالقاديانيين والمستشرقين وغيرهم.

ومن هنا أحببتُ أن أُقدم لإخواني المسلمين الذين يحسنون الإنكليزية مصنفاً يعينهم على معرفة الأحكام الفقهية التي تتوقف عليها صحة عباداتهم ومعـاملاتهم بيسر ووضوح، فرأيت أن أقوم بترجمة كتاب فقهي معتَمَد عند الشـافعية هو «عمـدة السـالك وعدة الناسك»، مع إضافة بعض النصوص الأخرى؛ تكميلاً للفائدة؛ راجياً من الله تعالى أن يَسْلُكَني في عداد من أخبر عنهم رسول الله ﷺ بقوله: «من دعا إلى هدى؛ كان له من الأجر مثل أجور من تبعه لا ينقص ذلك من أجورهم شيئاً».

وصف مضمون الكتاب:

يعدّ المتن الأساسي «عمدة السالك» بحق من أرقى وأوثق المتون في مذهب الإمام الشافعي رضي الله عنه؛ ذلك أن المؤلف ـ وهو الشيخ العلامة أحمـد بن النقيب المصـري (المتـوفى ٧٦٩هـ) رحمـه الله ـ اقتصر على الصحيح من المذهب عند الرافعي والنووي؛ مقدماً لتصحيح النووي؛ لأنه العمدة في المذهب، وقد اتبع في ترتيبه موسوعة النووي «المجموع: شرح المهذب» مع «التكملة» التي كتبها شيخ ابن النقيب الإمام الحافظ تقي الدين السبكي؛ فـ «عمدة السالك» هو ملخص لأحكام «المجموع» تصحيحاً له

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بسم الله الرحمن الرحيم

إن الحمد لله؛ نحمده، ونستعينه، ونستغفره، ونعوذ بالله من شرور أنفسنا وسيئات أعمالنا، من يهده الله؛ فلا مضلَّ له، ومن يضلل؛ فلا هادي له.

وأشهد أن لا إله إلا الله وحده لا شريك له، وأشهد أنّ محمداً عبده ورسوله صلى الله عليه وعلى آله وصبحه وسلم تسليماً كثيراً.

أما بعد؛ فإن الله تعالى قد بعث خير الخلق بدين الحق لِيُظْهِرَهُ على الدين كله رحمة للعالمين، وحفظ القرآن العظيم، والسنة الشريفة، والشريعة المطهرة؛ برجال من العلماء العاملين، الذين وقفوا حياتهم على خدمة هذا الدين؛ طلباً لمرضاة رب العالمين.

وإن الله عز وجل جعل الفقه في الدين، والعلم بأحكام الشرع؛ سبباً لرضوانه، ومقياساً للتفاوت بين عباده المؤمنين، فقال سبحانه وتعالى: ﴿**قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ والَّذِينَ لا يَعْلَمونَ**﴾، وجعل سبحانه وتعالى خشيته حقَّ الخشية ثمرةً من ثمرات العلم، فقال جل وعلا: ﴿**إِنَّما يَخْشَى اللَّهَ مِنْ عِبادِهِ العُلَماءُ**﴾، وحث كذلك رسول الله ﷺ على السعي في طلب العلم والجد في أخذه، فقال ﷺ: «مَنْ يُرِدِ اللَّهُ بِهِ خَيْراً يفقِّهْهُ في الدِّينِ».

ومن ثم أقبل علماء هذه الأمة في كل العصور على كتاب الله عز وجل وسنة رسوله ﷺ؛ حفظاً، ودراسةً، واستنباطاً، فكان أن قدّموا هذا التراث الفقهي الضخم الذي تفخر به أمة الإسلام، وتزهو به على غيرها من الأمم، ولله الفضل والمنة.

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ترجمة انكليزية لكتاب

عمدة السالك وعدة الناسك

فقه اسلامي

تأليف

الشيخ أحمد ابن النقيب المصري

المتوفى سنة ٧٦٩ هجرية

النص العربي مقابل ترجمته بالانكليزية
مع ملاحق في الفقه والعقيدة والأخلاق

ترجمه وعلق عليه

نوح حاسيم كلر

أمانه للنشر
amana publications
Beltsville, Maryland U.S.A

THE SHIP OF SALVATION

The Principles and Jurisprudence of the School of al-Imam al-Shafi'i

سَفِينَةُ النَّجَاءِ

Translated and Compiled by:
Abdullah Muhammad al-Marbuqi

بسم الله الرحمن الرحيم

وصلى الله على سيدنا محمد وآله وسلم

والحمد لله رب العالمين

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Limited Edition

1430 H – 2009

Matn Safīnat al-najāʾ: Arabic and English.

Sālim ibn ʿAbdullah ibn Saʿd ibn Samīr al-Haḍramī al-Shāfiʿī.

The Ship of Salvation:

A classic manual of Islāmic Doctrine and Jurisprudence

In Arabic with English text, commentary and appendices,

Edited and translated by:

ʿAbdullah Muḥammad al-Marbūqī al-Shāfiʿī.

Cover designed by: Mawlānā Yusūf ibn Yaʿqūb

Ṣafar 1430 H

إِنَّ لِلَّهِ عِبَاداً فُطَرَاءَ طَلَّقُوا الدُّنْيَا وَخَافُوا الفِتَنَا
نَظَرُوا فِيهَا فَلَمَّا عَلِمُوا أَنَّهَا لَيْسَتْ لِحَيٍّ وَطَنَا
جَعَلُوهَا لُجَّةً وَاتَّخَذُوا صَالِحَ الأَعْمَالِ فِيهَا سُفُنَا

Indeed Allah ﷻ Has Intelligent Servants,
Who Have Divorced the World and Who Fear Temptations,
They Pondered in the World and When They Knew,
That it is Not a Homeland for a Living Person,
They Took it as a Deep Sea and They Made,
Good Actions in the World Their ***Ships.***

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Transliteration Key

ا	a	ر	r	ف	f
ب	b	ز	z	ق	q
ت	t	س	s	ك	k
ث	th	ش	sh	ل	l
ج	j	ص	ṣ	م	m
ح	ḥ	ض	ḍ	ن	n
خ	kh	ط	ṭ	و	w
د	d	ظ	ẓ	ه	h
ذ	dh	غ	gh	ي	y

Long wovels		Short wovels	
ا	ā	ـَ	a
ي	ī	ـِ	i
و	ū	ـُ	u
Diphtong		**Doubled**	
ـَ و	aw	ـُوَّ	uwwa
ـَ ي	ay	ـِيَّ	iyya

The letter *hamzah* "ء" is transliterated as a right half ring (ʾ) and is not expressed when at the beginning.
The letter ʿ*ayn* "ع" is transliterated as a left half ring (ʿ).
ـة is transliterated as "*ah*" in pause form and "*at*" in construct form.
ال is transliterated as "*al*" in both; pause and construct form, "*al*" is used with all letters; *hurūf al-shamsiyyah* or *hurūf al-qamariyyah*.

Honorific

ﷻ Glorified and Most High.
ﷺ May Allah's blessings and peace be upon him.
عليه السلام May peace be upon him.
رضي الله عنه May Allah be pleased with him/her.
رضي الله عنهم May Allah be pleased with them

Translator's Preface

الحمد للـــه رب العالمين ، والصلاة والسلام على عبده ورسوله محمد وآله وصحبه أجمعين . أما بعد .

In the name of Allah, the Merciful, the Compassionate.

All praise is to Allah, the Lord of all the worlds. Peace and blessings be upon His noble Slave and Messenger, Muḥammad and upon his family and Companions.

وعَنْ أَمِيرِ الْمُؤمِنِينَ أَبِى حَفْص عُمَرَ بْنِ الخَطَّابِ ﷺ قَالَ: سَمِعْتُ رَسُول اللَّـــهِ ﷺ يَقُولُ: «**إِنَّمَا الأَعْمَالُ بِالنِّيَّات وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى ، فَمَنْ كَانَتْ هِجْرَتُهُ إِلَى اللَّـــهِ وَرَسُولِهِ فَهِجْرَتُهُ إِلَى اللَّـــهِ وَرَسُولِهِ ، وَمَنْ كَانَتْ هِجْرَتُهُ إِلَى دُنْيَا يُصِيبُهَا وَ امْرَأَةٍ يَنْكِحُهَا فَهِجْرَتُهُ إِلَى مَا هَاجَرَ إِلَيْهِ**» (متفق عليه).

Amīr al-Muʾminīn Abū Ḥafs Sayyidunā ʿUmar ibn al-Khaṭṭab ﷺ narrated that he heard Rasūlullah ﷺ saying, "Verily the reward for deeds depend upon intentions and indeed every

person shall receive what he intended for. Thus, he whose emigration was for Allah and His Messenger, his emigration will be considered for Allah and His Messenger. He whose emigration was towards the world or to be married to a woman, his emigration will be for whatever he migrated for."

This book has been prepared for the beginner, especially those students studying at a "madrasah". Many Arabic terminologies have been maintained with the translation in the bracket.

Footnotes provide assistance for teacher in explaining the text. The students are required to be familiar with the text of *Safīnat al-najāʾ*. It is better if the students can memorize the Arabic text so that they gain acquaintance with the jurisprudence or at least be able to read it fluently.

Every effort was made to present a precise and accurate translation with proper explanations. The explanations were mostly derived from "*Kāshifat al-sajāʾ sharh Safīnat al-najāʾ*", "Reliance of the Traveller" and "*al-Iqnāʿ fī halli alfāẓi matn Abī Shujāʿ*". The additional chapter of Ḥajj and ʿUmrah was taken from the "*Al-Fiqh al-manhaji ʿalā madhhab al-Imām al-Shāfiʿī,*" and "Reliance of the Traveller".The measurements and conversions were based on the book, "*al-Maqādīr al-sharʿiyyah*" by Dr. Najm al-dīn al-Kurdī. The biographical notes were taken from the book, "Reliance of the Traveller".

I would like to take this opportunity to pay a particular tribute to my mother. It is through her sacrifice and duʿā that I was able to reach this stage. It is incumbent upon me to extend my deepest gratitude to my elders: Muftī Ibrahīm Desai and Mawlānā Muḥammad Ṭaha Karan for their encouragement and support.

This work is completed with the tremendous help and assistant of my ustadh, Mawlānā Muḥammad ibn Harun ʿAbasoomar, my brother Hāfiẓ Luqmān Hasbi, my friends Hāfiẓ Reeaz Iqbal and Hāfiẓ Ziyād Danka. This book could not have been published without significant aid from Mawlānā Ibrahim Muḥammad and Mawlānā Imran Hatia. May Allah ﷻ reward them and all those who were involved directly or indirectly in completing this task, here and in the hereafter.

Lastly, I beseech Almighty Allah ﷻ for His acceptance and that He ﷻ makes this a source of benefit for all. Āmīn.

ʿAbdullah Muḥammad al-Marbūqī al-Shāfiʿī
Shah Alam, Selangor
Ṣafar 1430 H

سفينة النجاء

في أصول الدين والفقه
على مذهب الإمام الشافعي

The Ship of Salvation

The Doctrine and Jurisprudence
of the School of al-Imām al-Shāfiʿī

Muqaddimah

« مَنْ يُرِدِ اللَّـــهُ بِهِ خَيْراً يُفَقِّهْهُ فِي الدِّينِ » (البخاري)

For whomsoever Allah ﷻ intends goodness, He gives him the understanding of Dīn. [al-Bukhārī]

بِسْمِ اللَّـــهِ الرَّحْمٰنِ الرَّحِيْمِ

الْحَمْدُ لِلَّـــهِ رَبِّ الْعَالَمِينَ وَبِهِ نَسْتَعِينُ عَلَى أُمُورِ الدُّنْيَا وَالدِّينِ وَصَلَّى اللَّـــهُ وَسَلَّمَ عَلَى سَيِّدِنَا مُحَمَّدٍ خَاتَمِ النَّبِيِّينَ وَآلِهِ وَصَحْبِهِ أَجْمَعِينَ وَلاَ حَوْلَ وَلاَ قُوَّةَ إلاَّ بِاللَّـــهِ الْعَلِيِّ الْعَظِيمِ.

In the name of Allah, the Merciful, the Compassionate.

All praise is to Allah, the Lord of all the worlds. We seek help from Him in worldly affairs and in matters of Dīn. Salutation and peace on our Master, Muḥammad ﷺ, the Seal of Prophethood, and upon all his family and Companions. There is no power and might except through Allah, the Most High, the Most Great.

Islam and Iman

Islam and Iman

فصل : أَرْكَانُ الإِسْلامِ خَمْسَةٌ :

(1) شَهَادَةُ أَنْ لا إِلَهَ إِلاَّ اللَّـــهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّـــهِ (2) وَإِقَامُ الصَّلاةِ (3) وَإِيتَاءُ الزَّكَاةِ (4) وَصَوْمُ رَمَضَانَ (5) وَحِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلا.

Section: The Integrals of Islām are Five:

1. To bear witness that there is no god except Allah and that Muḥammad ﷺ is the messenger of Allah.
2. To establish ṣalāh.[1]
3. To discharge zakāh.[2]
4. To fast in the month of Ramaḍān.[3]
5. To perform ḥajj for those who are able.[4]

---

[1] The most virtuous physical worship is ṣalāh, then fasting, then ḥajj and then zakāh. As for worship pertaining to the heart like *imān* (belief), *maʿrifah* (gnosis), *tafakkur* (reflection), trust in Allah ﷻ, patience, hope, contentment with Allah's decree, love of Allah ﷻ, repentance, purification of blameworthy traits like greed, anger, pride, malice etc. these are far more superior than physical worship. The most virtuous of them being *īmān*.

[2] Zakāh literally means growth, blessings, purification or praise. In Sacred Law it is the name for a particular amount of property that must be paid to certain kinds of recipients under certain conditions.

[3] Fasting was made farḍ in Shaʿbān, the second year Hijrī. Rasulullah ﷺ fasted for nine complete Ramaḍāns.

[4] Both ḥajj and ʿumrah are wājib in the Shāfiʿī's madhhab (school of thought).

فصل : أَرْكَانُ الإِيمَانِ سِتَّةٌ :

(1) أَنْ تُؤْمِنَ بِاللّـــهِ (2) وَمَلائِكَتِهِ (3) وَكُتُبِهِ (4) وَرُسُلِهِ (5) وَبِالْيَوْمِ الآخِرِ

(6) وَبِالْقَدَرِ خَيْرِهِ وَشَرِّهِ مِنَ اللَـــهِ تَعَالَى .

Section: The Integrals of Īmān (Faith) are Six:

1. To believe in Allah.[5]
2. To believe in His Angels.[6]
3. To believe in His Books.[7]

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[5] **[Īmān *Mujmāl* (in brief)]** To believe in Allah's ﷻ existence, His sole godhood, that no one else participates in His attribute of divinity or in the rights He has over His creation, His oneness and uniqueness and that He is characterized by every perfection and exalted above any imperfection or impossibility. **[Īmān *Mufaṣṣal* (in detail)]** It is wājib to know the attributes of Allah ﷻ: (1) *al-Wujūd* (Being), (2) *al-Qidām* (Pre-eternity), (3) *al-Baqāʾ* (Everlastingness), (4) *Mukhālafatuh taʿāla bi al-hawādith* (Absolute dissimilarity to created things), (5) *Qiyāmuh taʿāla bī nafsih* (Self-subsistence), (6) *al-Wahdāniyah* (Oneness), (7) *al-Qudrah* (Power), (8) *al-Irādah* (Will), (9) *al-ʿIlm* (Knowledge), (10) *al-Hayāh* (Life) (11) *al-Samʿ* (Hearing), (12) *al-Baṣr* (Sight), (13) *al-Kalām* (Speech).

[6] To believe that the Angels are the honourable servants of Allah ﷻ, who do not disobey Him and do as they are commanded. They are created from light, not characterized by gender, neither male nor female, nor do they eat or drink. It is wājib to know ten of them: (1) ***Jibrīl***, (2) ***Mīkāʾīl***, (3) ***Isrāfīl***, (4) ***ʿIzrāʾīl***, (5) ***Munkar***, (6) ***Nakīr***, (7) ***Riḍwān***, (8) ***Mālik***, (9) ***Raqīb***, and (10) ***ʿĀ tīd***.

[7] To believe in all the Books revealed by Allah to His messengers. It is wājib to know four books in particular: (1) the ***Tawrah*** of Nabī Mūsā

4. To believe in His Messengers.[8]
5. To believe in the Final Day.[9]
6. To believe in Destiny, good and evil, is from Allah the Exalted.[10]

ﷺ, (2) the ***Zabur*** of Nabī Dāwud ﷺ, (3) the ***Injīl*** of Nabī ʿĪsā ﷺ and (4) the **Qurʾān** of Nabī Muhammad ﷺ.

[8] To believe in the Prophets and Messengers of Allah ﷻ, that Allah ﷻ sent them to man and jinn to guide them to the path of the Truth. Four attributes are necessary for all Messengers (1) Truthfullness, (2) Trustworthiness, (3) Conveying the message, and (4) Intelligence. It is wājib to know twenty-five of them: (1) ***Adām***, (2) ***Idrīs*** (Enoch), (3) ***Nūh*** (Noah), (4) ***Hūd***, (5) ***Ṣalīh***, (6) ***Lūṭ*** (Lot), (7) ***Ibrāhīm*** (Abraham), (8) ***Ismāʿīl*** (Ishmael), (9) ***Ishāq*** (Isaac), (10) ***Yaʿqūb*** (Jacob), (11) ***Yūsuf*** (Joseph), (12) ***Shūʿaib***, (13) ***Ayyūb*** (Job), (14) ***Dhul Kiflī*** (Ezekiel), (15) ***Mūsā*** (Moses), (16) ***Hārūn*** (Aaron), (17) ***Dāwud*** (David), (18) ***Sūlaymān*** (Soloman), (19) ***Ilyās*** (Elias), (20) ***al-Yāsaʿ*** (Elisha), (21) ***Yūnus*** (Jonah), (22) ***Zakariyyā*** (Zacharias), (23) ***Yahyā*** (John), (24) ***ʿĪsā*** (Jesus), and (25) **Muḥammad** (Peace and Salutation upon him and upon all of them).

[9] To believe that everyone will die, and will then be resurrected. It also means to believe without doubt in *Jannah* (Heaven) and *Jahannam* (Hell), the *Mīzān* (Scale), the *Ṣirāṭ* (Path - the bridge over the Fire), the Questioning in the grave, the Reckoning (after the Resurrection), the Recompense (in Paradise), Punishment (for some sinful believers) and Torment (eternal for the unbeliever). Some will be put in Hell out of justice and some in Paradise out of Allah's sheer generosity.

[10] To believe that Allah ﷻ has ordained both good and evil before creating the creation and that all that has been and all that will be exists only through Allah's *Qaḍāʾ* (Decree), *Qadr* (Foreordinance) and *Irādah* (Will).

فصل : وَمَعْنَى لا إِلَهَ إلاَّ اللَّـــهُ لا مَعْبُودَ بِحَقٍّ فِي الْوُجُودِ إلاَّ اللَّـــهُ .

Section: The meaning of the Kalimah is “In reality none is worthy of worship except Allah”.

Al-Ahkam al-Sharʿiyyah

Note: *Al-Ahkam al-Sharʿiyyah* - The Rulings of the Sacred Law:

In the Shāfiʿī Madhhab (school of thought), the actions of those who are obligated to observe the precepts of religion take one of five rulings:

1. The *Wājib* (obligatory) action: One will be rewarded for performing them and will be liable for punishment upon abandoning them.
2. The *Mandūb* (recommended) action: One will be rewarded for performing them and will not be liable for punishment upon abandoning them.
3. The *Mubāḥ* (permissible) action: One will not be rewarded for performing them and will not be liable for punishment upon abandoning them.
4. The *Makrūh* (offensive) action: One will be rewarded for abandoning them and will not be liable for punishment upon performing them.
5. The *Ḥarām* (forbidden) action: One will be rewarded for abandoning them and will be liable for punishment upon performing them.

Taharah

Taharah

فصل : عَلامَاتُ الْبُلُوغِ ثَلاثٌ :

(1) تَمَامُ خَمْسَ عَشْرَةَ سَنَة فِي الذَّكَرِ وَالأُنثَى (2) وَالاحْتِلامُ فِي الذَّكَرِ وَالأُنثَى لِتِسْعِ سِنِينَ (3) وَالْحَيْضُ فِي الأُنثَى لِتِسْعِ سِنِينَ .

Section: The Signs of Puberty are Three:[1]

1. Reaching the age of 15 (lunar) years for a male or a female.
2. Experiencing a wet dream by a 9 year old boy or girl.
3. Menstruation for a 9 year old girl.[2]

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[1] When a child reaches the age of seven and is *mumayyiz* (discerning) i.e. he can eat, drink and clean himself after using the toilet unassisted, he is ordered to perform ṣalāh and all other injunctions pertaining to ṣalāh (e.g. wuḍūʾ). When he reaches ten, he will be beaten for neglecting it, not severely, but so as to discipline the child, and not more than three strikes. ṣalāh and other injuctions of Sharīʿah become wājib when a child reaches the age of puberty.

[2] Pregnancy is not a sign of puberty, rather an emission of sexual fluid prior to pregnancy is.

فصل : شُرُوطُ إِجْزَاءِ الْحَجَرِ ثَمَانِيَةٌ :

(1) أَنْ يَكُونَ بِثَلاثَةِ أَحْجَارٍ (2) وَأَنْ يُنْقِيَ الْـــمَحَلَّ (3) وَأَنْ لا يَجِفَّ النَّجَسُ (4) وَلا يَنْتَقِلَ (5) وَلا يَطْرَأَ عَلَيْهِ آخَرُ (6) وَلا يُجَاوِزَ صَفْحَتَهُ وَحَشَفَتَهُ (7) وَلا يُصِيبَهُ مَاءٌ (8) وَأَنْ تَكُونَ الأَحْجَارُ طَاهِرَةً .

Section: The Conditions for Using a Stone[3] (to clean the private parts) are Eight:[4]

1. Three[5] stones should be used.[6]
2. It should purify.[7]
3. The impurity should not be completely dry.[8]
4. The impurity should not have spread out.[9]
5. No other impurity should come upon it.

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[3] Stones suffice to clean oneself, though it is best to follow this up by washing with water.

[4] It is wājib to use water if one of these conditions is not found.

[5] It is wājib to use either three stones or even three sides of one stone when one is sufficient to remove impurities. Otherwise one needs to repeat using a stone that suffices in removing the impurity. It is sunnah to use an odd number of stones (meaning three, five, seven etc.).

[6] Anything that is solid, pure and removes filth. Something deserving respect (e.g. paper; an instrument of knowledge) or something edible can not replace the use of stones.

[7] It means to remove the filth so that nothing remains but a trace that could not be removed unless one were to use water. When this has been done, any remaining effect of impurity is excusable.

[8] If the impurity becomes dry, using a stone will no longer suffice.

[9] Impurity should not reach another part of the body.

6. The impurity should not go beyond the inner buttock[10] and the head of the penis.
7. Water should not splash onto the stone.[11]
8. The stones to be used should be pure.

Note: The Sunnah Way for Using a Stone:

1. Begin to wipe from front to back on the right side with the first stone, similarly wipe the left with the second, and wipe both sides and the anus with the third. Each wiping must begin at a point on the skin that is free of impurity.
2. It is sunnah (recommended) to add an odd number of stones e.g. five, seven and so on.
3. It is makrūh (offensive) to use the right hand to clean the impurity.

[10] Inner buttock refers to that which is enfolded when standing.
[11] It will not be valid to use a wet stone.

فصل : فُرُوضُ الوُضُوءِ سِتَّةٌ :

الأَوَّلُ النِّـــيَّـــةُ **الثَّانِي** غَسْلُ الْوَجْهِ **الثَّالِثُ** غَسْلُ الْيَدَيْنِ مَعَ المِرْفَقَيْنِ **الرَّابِـــعُ** مَسْحُ شَيْءٍ مِنَ الرَّأْسِ **الْـــخَامِسُ** غَسْلُ الرِّجْلَيْنِ مَعَ الْكَعْبَيْنِ **السَّادِسُ** التَّرتِيبُ .

Section: The Obligatory Acts of Wuḍūʾ (Ritual Ablution) are Six:

1. Intention.[12]
2. Washing the face.[13]
3. Washing both hands and arms including the elbows.[14]
4. Wiping any part of the head.[15]
5. Washing the feet including the ankles.
6. *Tartīb* (to observe the above-mentioned sequence).

فصل : النِّـــيَّـــةُ قَصْدُ الشَّيْءِ مُقْتَرِناً بِفِعْلِهِ وَمَحَلُّهَا القَلْبُ وَالتَّلَفُّظُ بِهَا سُنَّةٌ وَوَقْتُهَا عِنْدَ غَسْلِ أَوَّلِ جُزْءٍ مِنَ الْوَجْهِ والتَّرْتِيبُ أَنْ لا يُقَدَّمَ عُضْوٌ عَلَى عُضْوٍ .

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[12] The person performing ablution either intends removing a state of *ḥadath* (ritual impurity) or purification for the ṣalāh.
[13] Washing the entire face, from the point where the hairline usually begins to the chin in length, and from ear to ear in width.
[14] Washing both arms completely, up-to and including the elbows once.
[15] The minimum is to wipe part of a single hair, provided this part does not hang below the limit of the head (i.e. below the hairline).

Section: Intention is to intend something simultaneously with the action; its place is in the heart. To make a verbal intention is a sunnah; its time is at the beginning of washing the first portion of the face. *Tartīb* (sequence) is to observe the sequence of the wuḍūʾ, such that no latter limb of wuḍūʾ should precede a former limb.

Note: The Sunnah Way to Perform Wuḍūʾ (Ritual Ablution):

1. Recite *taʿawwudh*: I take refuge in Allah from the accursed Shaitan (to recite *Aʿudhubillah* completely), and *basmalah*: In the name of Allah, Most Merciful, Most Compassionate (to recite *Bismillah* completely).
2. Wash the hands up-to and including the wrists three times.
3. Use the *miswāk* (toothstick), and then rinse the mouth and nose out three times, with three handfuls of water. One takes in a mouthful from a handful of water and snifts up some of the rest of the handful into the nostrils thrice.
4. Wash the entire face, from the point where the hairline usually begins to the chin in length, and from ear to ear in width, three times. It is obligatory to wash all facial hair – inner, outer, as well as the skin beneath the hair, whether the hair is thick or thin – such as the eyebrows, moustache and so forth except for a thick beard.

5. Wash both arms completely, up-to and including the elbows, three times. It is sunnah to pass the fingers through each other.
6. Wipe the head by passing the wet hands from the front of the head, sliding the paired hands to the back up to the nape of the neck, and then return them to point of commencement, three times.
7. Wipe the inside of the ears with the fingertips and their outside with the thumbs, with fresh water, three times.
8. Wash the feet up-to and including the ankles, three times. Allow the water to pass between the toes by using the little finger of the left hand, beginning with the little toe of the right foot, and ending with the little toe on the left.
9. During wuḍūʾ, it is sunnah:

   - to wash the limbs successively,
   - to begin with the right when washing the arms and legs, but both hands, cheeks, or ears, are washed simultaneously,
   - to begin with the top of the face and not to splash the water onto it,
   - to avoid splashing water onto oneself,
   - to face the qiblah, not to talk except for a necessity, and
   - not to waste water.

Note: The Cleanliness of the Body:

It is sunnah (1) to trim the fingernails and toenails, (2) to clip moustache to the extent that the pink of the upper lip is visible, it should not be plucked or shaved, (3) to pluck (or to shave) the hair of the underarms and nostrils, and to shave the pubic hair (4) to apply kuhl (an antimonic compound), (5) to apply henna for women.

Circumcision is wājib for both men and women.

It is ḥarām for both; men and women to dye their hair black, except with the intention of jihād.

فصل : الماءُ قَليلٌ وَكثِيرٌ : الْقَلِيلُ مَا دُونَ الْقُلَّتَيْنِ . وَالْكَثِيرُ قُلَّتَانِ فَأَكْثَرُ الْقَلِيلُ يَتَنَجَّسُ بِوُقُوعِ النَّجَاسَةِ فِيهِ وَإِنْ لَمْ يَتَغَيَّرْ وَالْـــمَاءُ الْكَثِيرُ لا يَتَنَجَّسُ إلاَّ إِذَا تَغَيَّرَ طَعْمُهُ أَوْ لَوْنُهُ أَوْ رِيحُهُ .

Section: Water[16] is Either a Little or Abundant.[17]

- A little amount of water is that which is less than two *qullahs*.

[16] The definition of *māʾ al-mutlaq* (general water) is that water which is without any attributes.

[17] It is not permissible to remove hadath (wuḍūʾ or ritual bath) or remove impurity except with "general water".

- Abundant water that which is two *qullahs* (approximately 190 litres) or more.
- A little amount of water will become impure when any impurity[18] falls into it, even though the water does not change.[19]
- Abundant water will not become impure except when its taste, colour or smell changes.

فصل : مُوجِبَاتُ الْغُسْلِ سِتَّةٌ :

(1) إِيلاجُ الْحَشَفَةِ فِي الْفَرْجِ (2) وَخُرُوجُ الْـمَنِيِّ (3) وَالْـحَيْضُ (4) وَالنِّفَاسُ (5) وَالْوِلادَةُ (6) وَالْـمَوْتُ .

Section: The Things Make a Ritual Bath Compulsory are Six:

1. Insertion the head of the penis into the vagina.[20]
2. Discharge of semen.[21]

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[18] If an impurity which is so small (e.g. impurity on the leg of a fly) that it is indiscernible by eyesight (meaning an average look that is neither a negligent glance nor a detailed inspection) or a dead creature without flowing blood falls into it, in both cases the water remains purifying. This applies to both running or stagnant water.

[19] Even though none of the water's characteristics (i.e. taste, colour or smell) have changed.

[20] Insertion of the head of the penis into the front or back private part of a male or female human, or animal, adult or minor, living or dead, will necessitate a ritual bath.

3. Menstruation.[22]
4. Postnatal bleeding.[23]
5. Childbirth.[24]
6. Death.[25]

فصل : فُرُوضُ الغُسْلِ اثْنَانِ :

(1) النِّـــيَّـــةُ (2) وَتَعْمِيمُ الْبَدَنِ بالْـــمَاءِ .

Section: The Compulsory Acts of a Ritual Bath are Two:

1. Intention.[26]
2. To ensure that water reaches the entire body.[27]

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[21] Male sperm and female sexual fluid are recognized by the fact that they (1) come in spurts by contractions, (2) with sexual gratification and (3) when moist, smell like bread dough, and when dry, like egg-white.
[22] Periodic discharge of blood from the vagina.
[23] Blood discharged after giving birth.
[24] Ritual bath becomes wājib even in the case of dry birth or miscarriage.
[25] It is wājib to give a bath to a Muslim who is non-martyr. It is not wājib to give a bath to a disbeliever, though it is permissible. It is ḥarām to give a bath and to offer ṣalāh upon a martyr.
[26] The intention is of removing *hadath* or *janābah* (major ritual impurity) or removing the impurity of haiḍ (menstruation). One bath will suffice with the intention of removing both major ritual impurity and the sunnah of the Friday prayer, though if only one intention is made, the bath counts for that one but not the other.
[27] The water reaches all of the hair and skin, to the roots of the hair, under the nails and the outwardly visible portion of the ear canals, including the area under the foreskin of an uncircumcized man, and the

Note: The Sunnah Way to Perform a Ritual Bath:

4. To begin in the name of Allah, the Merciful, the Compassionate (to recite *Bismillah* completely).
5. To remove any dirt or impurity on the body.
6. To perform wuḍūʾ as the wuḍūʾ of ṣalāh.
7. To pour water over the head three times intending to remove a major hadath (ritual impurity) or haiḍ (menstruation).
8. To pour water over the right side of the body three times and then left side three times, ensuring that water reaches all joints and folds, and to rub oneself.
9. It is sunnah to apply musk (or any other fragrance) on a piece of cotton and insert it into the vagina if the bath was taken because of haiḍ.

فصل : شُرُوط الوُضُوءِ عَشَرَةٌ :

(1) الإِسْلامُ (2) وَالتَّمْيِيزُ (3) وَالنَّـــقَاءُ عَنِ الْحَيْضِ وَالنِّفَاسِ (4) وَعَمّا يَمْنَعُ وُصُولَ الـــمَاءِ إِلَى الْبَشَرَةِ (5) وَأَنْ لا يَكُونَ عَلَى الْعُضْوِ مَا يُغَيِّرُ الـــمَاءَ (6)

private part of a non-virgin woman which is normally exposed when she squats to relieve herself.

وَالْعِلْمُ بِفَرْضِيَّتِهِ (7) وَأَنْ لا يَعْتَقِدَ فَرْضاً مِنْ فُرُوضِهِ سُنَّـــةً (8) وَالـــمَاءُ الطَّهُورُ (9) وَدُخُولُ الْوَقْتِ (10) وَالْـــمُوَالاةُ لِدَائِم الْحَدَثِ .

Section: The Conditions of Wuḍūʾ are Ten:[28]

1. Islām .
2. The age of understanding.[29]
3. Cleanliness from menstruation and postnatal bleeding.
4. Being free from that which prevents the water from reaching the skin.
5. Nothing should be upon the limb that will change the (qualities of the) water.
6. Knowledge of it (wuḍūʾ) being obligatory.
7. Not to assume the farḍ (obligatory) acts as sunnah (recommended).[30]
8. Pure water.
9. – 10. Entering of the time (of ṣalāh)[31] and Continuity, for a person who constantly remains in the state of impurity.

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[28] The conditions for the validity of wuḍūʾ, these conditions are also applied for a ritual bath.

[29] A child reaches the stage of mumayyiz (discerning) when he can eat, drink and clean himself after using the toilet unassisted.

[30] For the general public, it is suffice to know some of its acts are farḍ and some are sunnah.

[31] Wuḍūʾ or a ritual bath should be performed after the entering of the ṣalāhs' time for farḍ ṣalāh or at a particular time for sunnah ṣalāh (e.g. dhuhā).

فصل : نَوَاقِضُ الْوُضُوءِ أَرْبَعَةُ أَشْيَاءَ :

الأَوَّلُ الْخَارِجُ مِنْ أَحَدِ السَّبِيلَيْنِ مِنْ قُبُلٍ أَوْ دُبُرٍ رِيحٌ أَوْ غَيْرُهُ إلاَّ الْـــمَنِيَّ **الثَّانِي** زَوَالُ الْعَقْلِ بِنَومٍ أَوْ غَيْرِهِ إلاَّ نَوْمَ قَاعِدٍ مُمَكِّنٍ مَقْعَدَهُ مِنَ الْأَرْضِ **الثَّالِثُ** الْتِقَاءُ بَشَرَتَيْ رَجُلٍ وَامْرَأَةٍ كَبِيرَيْنِ أَجْنَبِيَيْنِ مِنْ غَيْرِ حَائِلٍ **الرَّابِـــعُ** مَسُّ قُبُلِ الآدَمِيِّ أَوْ حَلْقَةِ دُبُرِهِ بِبَطْنِ الرَّاحَةِ أَوْ بُطُونِ الأَصَابِعِ.

Section: The Factors that Nullify the Wuḍūʾ are Four:

1. Anything that exits from either the front or the rear private parts, whether wind or anything else,[32] except semen.[33]
2. Loss of intellect[34] through sleep or other causes,[35] except sleep while firmly seated on the ground.
3. Skin-to-skin contact between an adult,[36] non-mahram (marriageable), male and female without any barrier.[37]

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[32] Or anything else whether common or uncommon such as a worm or stone but not *manī* (semen).

[33] An example of this being someone firmly seated who sleeps and has a wet dream, or someone who looks at something lustfully and sperm or sexual fluid are emitted.

[34] Meaning the loss of the ability to distinguish.

[35] Or other causes like insanity, drunkenness etc. excludes drowsing and daydreaming, which do not break wuḍūʾ. Among the signs of drowsing is that one can hear the words of those present, even though without comprehension.

[36] Adult means the age that usually stirs up sexual desire in a person. Wuḍūʾ will not break if this is only found in one of the two.

4. Touching the private parts of a human with the palm or inner surface of the fingers.[38]

فصل : مَنِ انْتَقَضَ وُضُوءُهُ حَرُمَ عَلَيْهِ أَرْبَعَةُ أَشْيَاءَ :

(1) الصَّلاةُ (2) والطَّوَافُ (3) وَمَسُّ الْـــمُصْحَفِ (4) وَحَمْلُهُ .

وَيَحْرُمُ عَلَى الجُنُبِ سِتَّةُ أَشْيَاءَ :

(1) الصَّلاةُ (2) والطَّوَافُ (3) ومَسُّ الـــمُصْحَفِ (4) وَحَمْلُهُ (5) وَاللُّبْثُ فِي الْـــمَسْجِدِ (6) وَقِرَاءَةُ الْقُرْآنِ .

ويَحْرُمُ بِالْحَيْضِ عَشَرَةُ أَشْيَاءَ :

(1) الصَّلاةُ (2) والطَّوَافُ (3) ومَسُّ الـــمُصْحَفِ (4) وَحَمْلُهُ (5) وَاللُّبْثُ فِي الْـــمَسْجِدِ (6) وَقِرَاءَةُ الْقُرْآنِ (7) وَالصَّوْمُ (8) وَالطَّلاقُ (9) وَالْـــمُرُورُ فِي الْـــمَسْجِدِ إِنْ خَافَتْ تَلْوِيثَهُ (10) وَالاسْتِمْتَاعُ بِمَا بَيْنَ السُّرَّةِ والرُّكْبَةِ .

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[37] The wuḍūʾ will break even if they touch without sexual desire, or unintentionally, and even if be with the tongue or a malfunctional surplus limb. Touching does not include contact with teeth, nails, hair or a severed limb. Wuḍūʾ is also broken by touching an aged person or a corpse of the opposite sex.

[38] Those parts of the palm which touch each-other when the hands are put together palm to palm.

Section:

The Forbidden Actions for a Person in the State of Minor Impurity (in need of wuḍūʾ) are Four:

(1) Ṣalāh, (2) ṭawāf, (3) touching or (4) carrying the Qurʾān.[39]

The Forbidden Actions for a Person in the State of Major Impurity (in Need of Ritual Bath) are Six:

(1) Ṣalah, (2) ṭawāf, (3) touching, (4) carrying or (5) reciting the Qurʾān and (6) to remain in the masjid.

The Forbidden Actions for a Person in the State of Menstruation are Ten:

(1) Salat, (2) ṭawāf, (3) touching or, (4) carrying the Qurʾān, (5) to remain in the masjid, (6) reciting the Qurʾān, (7) fasting, (8) divorce, (9) to pass through the masjid for a woman who thinks her blood might soil the masjid, and (10) to take sexual pleasure from what is between the navel and the knees.

فصل : أَسْبَابُ التَّيَمُّمِ ثَلاثَةٌ :

(1) فَقْدُ الْـــمَاءِ (2) وَالمــَرَضُ (3) وَالاحْتِيَاجُ إِلَيْهِ لِعَطَشِ حَيَوَانٍ مُحْتَرَمٍ .

وَغَيْرُ الْـــمُحْتَرَمِ سِتَّةٌ :

[39] It is not permissible to touch the Qurʾān, whether its writing, the spaces between its lines, its margins, binding, the carrying strap attached to it, or the bag or box it is in. However, it is permissible to carry a Qurʾān in baggage and to carry money, rings, or clothes on which Qurʾān is written.

(1) تَارِكُ الصَّلاةِ (2) وَالزَّانِي الْـــمُحْصَنُ (3) وَالْـــمُرْتَدُّ (4) وَالْكَافِرُ الْحَرْبِيُّ (5) وَالْكَلْبُ الْعَقُورُ (6) وَالْخِنْـــزِيرُ .

Section: The Causes of Tayammum (Dry Ablution) are Three:

1. Absence of water.[40]
2. Illness.[41]
3. Need for water exists by (oneself or) worthy animals.[42]

   The following six people or animals are classified unworthy:

   1. A person who forsakes ṣalāh.
   2. A convicted married adulterer.
   3. An Apostate.
   4. A non-Muslim from a non-Muslim country that has war with the Muslim country.
   5. A vicious dog.
   6. A pig.

[40] If there is a little water that is insufficient for attaining purity, water should be used as much as possible and then tayammum should be performed for the rest of the limbs.

[41] An ailment that a person fears water would cause, (1) harm to life or limb, (2) disability, (3) becoming seriously ill, (4) an increase in one's ailment, (5) a delay in recovering from one's illness, (6) considerable pain, or (7) a bad effect from the water such as a radical change in one's skin colour or a visible part of the body.

[42] There is fear of one's own thirst, or that of worthy companions and animals with one, even if be in the future.

فصل : شُرُوطُ التَّيَمُّمِ عَشَرَةٌ :

(1) أَنْ يَكُونَ بِتُرَابٍ (2) وَأَنْ يَكُونَ التُّرَابُ طَاهِرًا (3) وَأَنْ لا يَكُونَ مُسْتَعْمَلا (4) وَأَنْ لا يُخَالِطُهُ دَقِيْقٌ وَنَحْوُهُ (5) وَأَنْ يَقْصِدَهُ (6) وَأَنْ يَمْسَحَ وَجْهَهُ وَيَدَيْهِ بِضَرْبَتَيْنِ (7) وَأَنْ يُزِيلَ النَّجَاسَةَ أَوَّلا (8) وَأَنْ يَجْتَهِدَ فِي القِبْلَةِ قَبْلَهُ (9) وَأَنْ يَكُوْنَ التَّيَمُّمُ بَعْدَ دُخُولِ الْوَقْتِ (10) وَأَنْ يَتَيَمَّمَ لِكُلِّ فَرْضٍ .

Section: The Conditions of Tayammum are Ten:

1. It must be performed with (dust of) the earth.[43]
2. The dust must be pure.
3. The dust must not be used (i.e. already used on a limb or has been dusted off a limb).
4. The dust must not be mixed with flour or anything like flour.[44]
5. A person should intend the earth.[45]
6. He should wipe his face and both hands with two strikes of dust.

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[43] It does not matter whether the earth is red, black, yellow or salty in which nothing grows. It is not permissible to perform tayammum with earth that has been turned to ashes or with clay pottery that has been pounded and softened.

[44] Like saffron or lime.

[45] Therefore, if the wind blew earth onto a person and one then passed one's hands over one's face and arms, the tayammum will not be valid even though one stood in the wind with intention of having sand blown over one.

7. He should first remove any impurity.
8. He should determine the direction of the qiblah before commencing the tayammum.[46]
9. He should make tayammum after the entering of the time (of the ṣalāh).
10. He should make tayammum for every farḍ (ṣalāh).[47]

فصل : فُرُوضُ التَّيَمُّمِ خَمْسَةٌ :

الأَوَّلُ نَقْلُ التُّرَابِ **الثَّانِي** النِّـــيَّـــةُ **الثَّالِثُ** مَسْحُ الوَجْهِ **الرَّابِـــعُ** مَسْحُ اليَدَيْنِ إِلَى المِرْفَقَيْنِ **الْـــخَامِسُ** التَّرتِيبُ بَيْنَ المَسْحَتَيْنِ .

Section: The Integrals of Tayammum are Five:

1. Transfer of earth (to the body).[48]
2. Intention.[49]
3. Wiping of the face.[50]

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[46] The preferred view is that tayammum will be correct if it has been performed after the entering of the time of ṣalāh even before a person determines the direction of the qiblah.

[47] Several sunnahs ṣalāh can be performed with the farḍ ṣalāh, either before or after the farḍ ṣalāh.

[48] Therefore, it will not suffice to merely pass the hands over the face or arms with the intention of tayammum when they already have dust on them.

[49] The intention of making ṣalāh permissible – it will not suffice to make the intention of removing the hadath.

4. Wiping of the two hands including the elbows.
5. Following the sequence between both wipings.[51]

فصل : مُبْطِلاتُ التَّيَمُّمِ ثَلاثَةٌ :

(1) مَا أَبْطَلَ الْوُضُوءَ (2) الرِدَّةُ (3) وَتَوَهُّمُ الـــمَاءِ إِنْ تَيَمَّمَ لِفَقْدِهِ .

Section: The Factors That Nullify Tayammum are Three.

1. Those things which nullify the ablution.
2. Apostacy.
3. Presumption that one can now obtain water (in the case where tayammum was made due to lack of water).[52]

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[50]It is not necessary to make the earth reach the skin under the hair of the face and arms. It is however necessary to pass the hands over that part of the beard which is visible.

[51] It is necessary to pass the hand over the face before passing them over the arms.

[52] This will apply even if one sees a mirage (thinking it to be water), or sees people who may have water, but it will not break if something prevents usage of the water for wuḍūʾ. For example, one sighted water but it is only sufficient for drinking or an enemy prevents one from acquiring it.

Note: The Sunnah Way to Perform Tayammum (Dry Ablution):

1. Begin in the name of Allah, Most Merciful, Most Compassionate (to recite Bismillah completely).
2. Wipe the upper face before the lower.
3. Wipe the right arm before the left.
4. For wiping the arms, hold the palms up, placing the left hand crosswise under the right with the left hand's fingers touching the back of the fingers of the right hand, passing the left hand up-to the right wrist. Then, curling the fingers around the side of the right wrist, one passes the left hand to the right elbow, then turns the left palm so it rests on the top of the right forearm with its thumb pointed away from one before passing it back down to the wrist, where one wipes the back of the right thumb with the inside of the left thumb. One then wipes the left arm in the same manner, followed by interlacing the fingers, rubbing the palms together, and then dusting the hands off lightly.
5. One separates the fingers when striking the earth each of the two times, and one must remove one's ring for the second, before wiping the arms.

فصل : الَّذِي يَطْهُرُ مِن النَّجَاسَاتِ ثَلاثَةٌ :

(1) الْخَمْرُ إِذَا تَخَلَّلَتْ بِنَفْسِهَا (2) وَجِلْدُ المَيْتَةِ إِذَا دُبِغَ (3) وَمَا صَارَ حَيَوَاناً .

Section: Three Types of Impurities That Can Be Purified:

1. Wine[53] that becomes vinegar on its own.[54]
2. The hide of a dead animal that is tanned.[55]
3. Creatures that are born out of filth.[56]

فصل : النَجَاسَاتُ ثَلاثٌ :

(1) مُغَلَّظَةٌ (2) وَمُخَفَّفَةٌ (3) وَمُتَوَسِّطَةٌ .

الـــمُغَلَّظَةُ نَجَاسَةُ الكَلْبِ وَالْخِنْزِيْرِ وفَرْعِ أَحَدِهِمَا .

وَالمـــُخَفَّفَةُ بَوْلُ الصَّبِيِّ الَّذِي لَمْ يَطْعَمْ غَيْر اللَّبَنِ وَلَمْ يَبْلُغِ الحَوْلَيْنِ .

وَالْمُتَوَسِّطَةُ سَائِرُ النَجَاسَاتِ .

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[53] Wine or any liquid intoxicant is impure, but solid intoxicants are pure although they are unlawful to take, eat or drink.

[54] "On its own" without anything being mixed with it. If anything was mixed with the wine before it became vinegar, then turning it to vinegar does not purify it.

[55] Tanning means removing from a hide all excess blood, fat, hair, and so forth by using an acrid substance, even if be impure. Other measures such as using salt, earth, or sunlight, are insufficient. Hides of dog or pig cannot be purified by tanning. Any hair that remains after tanning has not been purified. However, a little is excusable.

[56] Such as worms that grow in carrion.

Section: Impurities are of Three Types:

1. *Mughallaẓah* (heavy).
2. *Mukhaffafah* (light).
3. *Mutawassiṭah* (moderate).

Heavy impurity is the impurity from a dog, pig, or their offspring.

Light impurity is the urine of a baby (boy) which only feeds on milk[57] and is not yet two years of age.[58]

All other remaining impurities are **moderate impurities**.[59]

فصل :

الْمُغَلَّظَةُ تَطْهُرُ بِسَبْعِ غَسَلاتٍ بَعْدَ إِزَالَةِ عَيْنِهَا إِحْدَاهُنَّ بِتُرَابٍ .

وَالْمُخَفَّفَةُ تَطْهُرُ بِرَشِّ الْمَاءِ عَلَيهَا مَعَ الْغَلَبَةِ وَإِزَالَةِ عَيْنِهَا .

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[57] Whether the milk of his mother or an animal's milk, pure or impure, it will not change the ruling of it being considered a light impurity.

[58] Making "*taḥnīk*" (introducing something sweet, such as a date, into the mouth of a newborn child) or giving a child medicine will not change the ruling.

[59] Example of a moderate impurity: urine, excreta, blood, pus, vomit, wine, any liquid intoxicant, *wadī*, *madhī*, slaughtered animals that may not be eaten, unslaughtered dead animals (other than aquatic life, locusts or human beings), the milk of animals that may not be eaten (other than human), the hair of unslaughtered dead animals and the hair of animals that may not be eaten (other than human) when separated from them during their life.

وَالْمُتَوَسِّطَةُ تَنْقَسِمُ عَلَى قِسْمَيْنِ عَيْنِيَّةٌ وَحُكْمِيَّةٌ :

- الْعَيْنِيَّةُ الَّتِي لَهَا لَوْنٌ وَرِيْحٌ وَطَعْمٌ فَلا بُدَّ مِن إِزَالَةِ لَوْنِهَا وَرِيْحِهَا وَطَعْمِهَا.
- وَالحُكْمِيَّةُ الَّتِي لا لَوْنَ وَلا رِيْحَ وَلا طَعْمَ لَهَا يَكْفِيْكَ جَرْيُ المَاءِ عَلَيْهَا.

Section:

- **Heavy impurity** becomes pure by removing it and then washing it seven times,[60] one of which should be with earth.[61]
- **Light impurity** will be purified by removing the actual impurity and sprinkling adequate water upon it (the amount of water sprinkled should be greater than the amount of urine).
- **Moderate impurity** is of two kinds: (1) that which has a substance and (2) that without a substance.

1. That which has a substance is that which has a colour, smell and taste. It is necessary to remove its colour, smell and taste.[62]

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[60] Something that becomes impure by contact and that is restricted to contamination by traces of moisture from dog or pig, whether saliva, urine or anything moist from them, or any of their dry parts that have become moist. If something dry such as the animal's breath or hair touches a person, it need only be removed.

[61] Earth cannot be substituted with something else like soap or detergent etc.

[62] It is wājib to remove all of its taste, even if it be difficult, and to remove both colour and smell if not difficult. If any of the smell or

2. The one which has no substance is the one that does not have a colour, smell and taste. It is sufficient that water flows over it.[63]

فصل :

أَقَلُّ الحَيْضِ يَوْمٌ وَلَيْلَةٌ وَغَالِبُهُ سِتٌّ أَو سَبْعٌ وَأَكْثَرُهُ خَمْسَةَ عَشَرَ يَوْمًا بِلَيَالِيْهَا .

أَقَلُّ الطُّهْرِ بَيْنَ الْحَيْضَتَيْنِ خَمْسَةَ عَشَرَ يَوْمًا وَغَالِبُهُ أَرْبَعَةٌ وَعِشْرُونَ يَوْمًا أَو ثَلاثَةٌ وَعِشْرُونَ يَوْمًا وَلا حَدَّ لأَكْثَرِهِ .

أَقَلُّ النِّفَاسِ مَجَّةٌ وَغَالِبُهُ أَرْبَعُونَ يومًا وَأَكْثَرُهُ سِتُّونَ يَوْمًا .

Section:

- The minimum menstrual period is a day and a night.[64] It generally lasts for six or seven days and the maximum period is 15 days and nights.[65]

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colour alone is difficult to remove, then the fact that one of these two remains does not affect the purity. However, if both the colour and smell remain in a spot, it is not considered pure.

[63] If the effects of sun, fire, or wind remove the traces of the impurity, the ground is still not pure until water has been poured over it.

[64] It the blood ceases to flow in less than twenty-four hours, then it is not considered haiḍ (menstruation) and the woman must make-up the ṣalāh she omitted during it. If it ceases at twenty-four hours, within fifteen days, or between the two (the blood discharged discontinuously

- The minimum interval of purity between two menstruations is 15 days. Generally it lasts for 23 or 24 days and there is no maximum limit to the number of days between two menstruations.
- The minimum postnatal bleeding is a single discharge of blood. Generally it lasts for 40 days and the maximum period is 60 days.

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within 15 days and the duration of the blood discharged is 24 hours or more), then it is haiḍ.

[65] If it exceeds fifteen days, then she is a woman with istihāḍah (chronic vaginal discharge).

Salah

Salah

فصل : أَعْذَارُ الصَّلاة اثْنَانِ :

(1) النَّوْمُ (2) والنِّسْيَانُ .

Section: The Valid Excuses for Delaying the Ṣalāh from its Prescribed Time are Two:[1]

(1) Sleep[2] and (2) forgetfulness.[3]

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[1] A third excuse is for a person who delayed the ṣalāh to combine two ṣalāhs during a journey.

[2] A person was asleep before the time of ṣalāh commenced and remained asleep until the time ended. When any ṣalāh is due but not yet performed, and one wishes to lie down for a while and he is certain to awaken in time to carry out this duty, it will be makrūh for him to sleep or lie down. However, if he is not at all certain as to whether he will wake up in time or not, it is ḥarām.

[3] A person forgot that he did not perform the ṣalāh and only remembered after the time of ṣalāh expired. This should not be due to unmindfulness due to engrossment in playing chess etc. in which case he will be sinful.

فصل : شُرُوطُ الصَّلاةِ ثَمَانِيَةٌ :

(1) طَهَارَةُ الْحَـــدَثَيْنِ (2) وَالطَّهَارَةُ عَنِ النَّجَاسَةِ فِي الثَّوْبِ وَالْبَدَنِ وَالْمَـــكَانِ

(3) وَسَتْرُ الْعَوْرَةِ (4) وَاسْتِقْبَالُ الْقِبْلَةِ (5) وَدُخُوْلُ الْوَقْتِ (6) وَالْعِلْمُ بِفَرْضِيَّتِهَا

(7) وَأَنْ لا يَعْتَقِدَ فَرْضًا مِن فُرُوضِهَا سُنَّةً (8) وَاجْتِنَابُ الْمُـــبْطِلاتِ .

Section: The Conditions of the ṣalāh are Eight:[4]

1. Purity from the two ritual impurities.[5]
2. Purity of the clothing, the body,[6] and the place[7] (of performing ṣalāh).
3. Covering the ʿawrah (private parts).[8]
4. Facing the qiblah.[9]

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[4] The author does not mention Islām and *Mumayyidh* as a condition because they are well known.

[5] Purification from minor and major ritual impurity (*hadath* and *janabah* through wuḍūʾ and ritual bath respectively as well as from haiḍ and nifas).

[6] One's ṣalāh is invalid if one is holding the end of a rope connected with something impure.

[7] One's ṣalāh is valid if performed on the pure portion of a rug which is affected with some impurities, even if the rug or bed moves when one moves. The principle is that it is not permissible for a person in ṣalāh to support or carry any impurity but it is permissible for him to be supported by it, provided he is not in direct contact with the impurity.

[8] It is a necessary condition that the clothing prevents the colour of the skin from being exposed and covers the ʿawrah from all sides including above. It is not necessary to cover the ʿawrah from below. A thin garment through which the colour of the skin is visible is not sufficient.

5. The commencement of the time of ṣalāh.[10]
6. Knowledge of it being farḍ.
7. Not to regard any of its farḍ acts as sunnah.[11]
8. To abstain from those factors that nullifies the ṣalāh.

الأَحْدَاثُ اثْنَانِ أَصْغَرُ وَأَكْبَرُ :

فَالأَصْغَرُ مَا أَوْجَبَ الْوُضُوءَ وَالأَكْبَرُ مَا أَوْجَبَ الغُسْلَ .

Ritual Impurities are of two types: (1) minor ritual impurities and (2) major ritual impurities.

(1) A minor ritual impurity is that which makes wuḍūʾ wājib and (2) a major impurity is that which is makes bath wājib.

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[9] This is a necessary condition for the five farḍ ṣalāh which must be performed while facing the proper direction of qiblah whether a person is a musāfir (traveller) or a muqīm (non-traveller), riding in a vehicle or not. A musāfir may perform sunnah ṣalāh without facing the direction of qiblah.

[10] A person must be certain about the commencement of the time of ṣalāh. If a person is uncertain about the commencement of the time of the ṣalāh which he has performed, that particular ṣalāh will not be correct, even if the ṣalāh was in fact carried out in its required time, unless he applies his ijtihad (discretion) to determine the time of the ṣalāh, in which case it will be correct. If he applies ijtihad and the ṣalāh was carried out before or after the time of the ṣalāh, the ṣalāh performed will be considered a qaḍāʾ ṣalāh if he has qaḍāʾ ṣalāh in his responsibility otherwise it will be considered a nafl ṣalāh.

[11] A person's ṣalāh is not invalidated if he thinks that all of the actions in ṣalāh are farḍ.

العَوْرَاتُ أَرْبَعٌ :

عَوْرَةُ الرَّجُلِ مُطْلَقًا وَالأَمَةِ فِي الصَّلاَةِ مَا بَيْنَ السُّرَّةِ وَالرُّكْبَةِ .

وَعَوْرَةُ الحُرَّةِ فِي الصَّلاةِ جَمِيعُ بَدَنِهَا مَا سِوَى الْوَجْهِ وَالْكَفَّيْنِ .

وَعَوْرَةُ الحُـــرَّةِ وَالأَمَةِ عِنْدَ الأَجَانِبِ جَمِيعُ الْبَدَنِ .

وَعِنْدَ مَحَارِمِهِمَا وَالنِّسَاءِ مَا بَيْنَ السُّرَّةِ وَالرُّكْبَةِ .

The ʿAwrahs (Private parts) are Four Types:

1. The ʿawrah of a man generally[12] and that of a slave-girl in ṣalāh is the area between the navel and the knees.[13]
2. The ʿawrah of a free woman in ṣalāh includes the whole body except the face and the two palms.
3. The ʿawrah of a free woman and that of a slave girl in the presence of a stranger is the entire body.
4. The ʿawrah of a free woman and a slave girl in the presence of a mahram (unmarriageable kin) or women is the area between the navel and the knees.

[12] Men includes young boys, even if they are not yet of the age of understanding. It generally means in all conditions; wether in ṣalāh or outside ṣalāh.

[13] The knees and the navel themselves are not part of the ʿawrah, but it is wājib to cover them in order to fulfil the command of covering the ʿawrah completely.

Note: Adhān (The Call for ṣalāh) and Iqāmah (The Call to Commence the ṣalāh)

- Adhān and Iqāmah are both sunnah for the farḍ ṣalāh, wether praying alone or in a second jamaah of ṣalāh.
- To call out the adhān is better than being the imām for the ṣalāh.
- The words of the adhān:

اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ ، اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ ،

أَشْهَد أَنْ لا إِلَه إِلاَّ اللَّهُ ، أَشْهَد أَنْ لا إِلَه إِلاَّ اللَّهُ ،

أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ ،

حَيَّ عَلَى الصَّلاَة ، حَيَّ عَلَى الصَّلاَة ،

حَيَّ عَلَى الفَلاحِ ، حَيَّ عَلَى الفَلاحِ ،

اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ ، لا إِلَه إِلاَّ اللَّهُ .

- It is sunnah to recite the two testifications in a low voice before calling it aloud:

أَشْهَد أَنْ لاَ إِلَه إِلاَّ اللَّهُ ، أَشْهَد أَنْ لاَ إِلَه إِلاَّ اللَّهُ ،

أَشْهَد أَنَّ مُحَمَّدًا رَسُول اللَّهِ ، أَشْهَد أَنَّ مُحَمَّدًا رَسُول اللَّهِ ،

- To add in the ṣubh ṣalāh before the final takbir (*Allahu Akbar*):

الصَّلاَةُ خَيْرٌ مِنَ النَّوْمِ ، الصَّلاَةُ خَيْرٌ مِنَ النَّوْمِ

- The words of the iqāmah:

اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ ،

أَشْهَدُ أَنْ لاَ إِلَه إِلاَّ اللَّهُ ، أَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ ،

حَيَّ عَلَى الصَّلاَة ، حَيَّ عَلَى الفَلاحِ ،

قَدْ قَامَتِ الصَّلاَةُ ، قَدْ قَامَتِ الصَّلاَةُ ،

اللَّهُ أَكْبَرُ اللَّهُ أَكْبَرُ ، لاَ إِلَه إِلاَّ اللَّهُ .

When giving the adhān and iqāmah, it is mustaḥab (recommended):

- To be in the state of wuḍūʾ, to stand, to face the qiblah, to turn the head (not the chest or feet) to the right when saying, "حَيَّ عَلَى الصَّلاَة" and to the left when saying, "حَيَّ عَلَى الفَلاحِ".

- To call out the adhān calmly and slowly, pausing for an interval after each phrase of the adhān equal to the duration of the phrase (except for repetitions of "*Allahu akbar*"),

which are said in pairs and to give iqāmah rapidly without pausing.

- To repeat each phrase after the muadhdhin, even if in the state of *janābah* (major ritual impurity), during menstruation, or when reciting the Qurʾān.
- It is makrūh to call out the adhān in the state of hadath (minor ritual impurity), more severe to do so in a state of janabah (major ritual impurity), and even worse to give iqāmah while in either of these two states.
- After the words "حَيَّ عَلَى الصَّلاَة" and "حَيَّ عَلَى الْفَلاحِ" one replies:

لاَ حَوْلَ وَلاَ قُوَّةَ إلاَّ بِاللَّهِ

- After the words "الصَّلاَةُ خَيْرٌ مِنَ النَّوْمِ" one replies:

صَدَقْتَ وَبَرَرْتَ

- After the words "قَدْ قَامَتِ الصَّلاَةُ" one replies:

أَقَامَهَا اللَّـــهُ وَأَدَامَهَا

- To recite the following duʿā after the adhān:

اللَّهُمَّ رَبَّ هَذِهِ الدَّعْوَةِ التَّامَّةِ وَالصَّلاَةِ الْقَائِمَةِ آتِ سَيِّدَنَا مُحَمَّدًا الْوَسِيلَةَ وَالْفَضِيلَةَ وَابْعَثْهُ مَقَامًا مَحْمُودًا الَّذِي وَعَدْتَهُ إِنَّكَ لاَ تُخْلِفُ الْمِيعَاد .

The conditions for the muadhdhin:

- (1) Islām, (2) m*umayyidh* (the age of understanding), (3) sanity and, (4) male if the adhān is for a jamāʿah of men.

فصل : أَرْكَانُ الصَّلاةِ سَبْعَةَ عَشَرَ :

الأَوَّلُ النِّـــيَّـــةُ **الثَّانِي** تَكْبِيرَةُ الإِحْرَام **الثَّالِثُ** القِيَامُ عَلَى القَادِرِ فِي الْفَرْضِ

الرَّابِـــعُ قِرَاءَةُ الفَاتِحَةِ **الْـــخَامِسُ** الرُّكُوعُ **السَّادِسُ** الطُّمَأْنِينَة فِيهِ **السّابعُ**

الاعْتِدَالُ **الثَّامِنُ** الطُّمَأْنِينَة فِيهِ **التَّاسِعُ** السُّجُودُ مَرَّتَيْنِ **العَاشِرُ** الطُّمَأْنِينَة فِيهِ **الحَادِي**

عَشَرَ الْجُلُوسُ بَيْنَ السّجْدَتَيْنِ **الثَّانِي عَشَرَ** الطُّمَأْنِينَة فِيهِ **الثَّالِثَ عَشَرَ** التَّشَهُّدُ

الأَخِيرُ **الرَّابِـــعَ عَشَرَ** القُعُودُ فِيهِ **الْـــخَامِسَ عَشَرَ** الصَّلاةُ عَلَى النَّبِيِّ ﷺ فِيهِ

السّادِسَ عَشَرَ السّلاَمُ **السَّابعَ عَشَرَ** التَّرتِيبُ .

Section: The Integrals of the ṣalāh are Seventeen:

1. Intention.[14]
2. *Takbīrat al-iḥrām* (The opening statement: "*Allahu Akbar*").[15]

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[14] To make intention in the heart is wājib and mustaḥab to utter it with the tongue. The intention should be simultaneous with the *takbīrat al-iḥrām* and remains till the completion of the takbīr.

[15] *Takbīrat al-iḥrām* can only be in Arabic with the word, "*Allahu akbar*," or "*Allahul akbar*". The minimal valid audibility is that it can be heard through normal hearing. The imām calls out the *takbīr* aloud every time in ṣalāh. It is mustaḥab to raise the hands from the beginning of the *takbīrat al-iḥrām* to shoulder level, meaning that one's fingertips are even with the tip of the ears, thumbs with the earlobes, and palms with one's shoulders, fingers slightly outspread, the palms face the direction of qiblah and the hands are uncovered (i.e. not hidden beneath a shawl). After the takbīr, one places the hands below the chest and above the navel, grasping the left wrist with the right hand, and fixing

3. Standing in the farḍ ṣalāh for those who have the ability.[16]
4. Recitation of Sūrah al-Fātiḥah.[17]
5. Rukuʿ (bowing).[18]
6. Remaining motionless for a moment therein (rukuʿ).
7. Iʿtidāl (Straightening up after rukuʿ).[19]
8. Remaining motionless for a moment therein (iʿtidāl)
9. Two sajdahs (prostrations).[20]
10. Remaining motionless for a moment therein (sajdah).
11. Sitting between the two sajdahs.[21]
12. Remaining motionless for a moment therein (sitting).

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one's gaze on the place where one's forehead will prostrate. The complete *takbīrat al-iḥrām* must be made while standing.

[16] Standing is a rukn (integral) in all farḍ ṣalāh for one who can stand, whether by himself or assisted by another, however it is not a rukn in nafl ṣalāh. Standing requires that the spine be straight. One is not standing if one leans so forward that the backbone is no longer straight, or bends so that one is closer to rukuʿ (bowing) than to standing.

[17] Sūrah al-Fātiḥah can be recited from memory or by looking into the muṣḥaf etc. It is wājib to recite it in every rakʿah of ṣalāh whether loudly or silently, whether an imām, a follower or alone.

[18] The best method is to raise one's hands and say, "*Allahu Akbar*" so that a person begins raising the hands as he starts the takbīr and when the hands are at shoulder level, he bows. It is mustaḥab to prolong the words of takbīr until one reaches the next posture in every takbīr so that no part of the ṣalāh is without dhikr. Thereafter, the hands are placed on the knees, fingers apart, with back and neck extended, leg straight and elbows out, although women keep them close, then one recites tasbih three times.

[19] The iʿtidāl is to return to the posture one was in before the rukuʿ, whether one was standing or sitting. It is wājib to intend nothing by one's movement except iʿtidāl.

[20] In every rakʿah.

[21] In every rakʿah and to intend nothing but sitting by one's movement.

13. Recite tashahhud at the end of ṣalāh.
14. Sitting therein (tashahhud).
15. Ṣalāh upon Nabi ﷺ therein (tashahhud).
16. Salām.[22]
17. To follow the sequence (of the above integral postures of ṣalāh).

[22] Ending the ṣalāh with salām. Someone who is not a masbūq (latecomer) to a jamāʿah ṣalāh may sit as long as he wishes after the imām's salām to supplicate, finishing with his own salām whenever he wishes.

Note: Description of the Ṣalāh:

Sunan Before Commencing the Ṣalāh:

To stand for the ṣalāh after the completion of the iqāmah, to be in the first row, to make the row straight, especially for the imām when he should enjoin upon the jamāʿah to do so and to fill up the first row first, then the second, and so on.

Commencing the Ṣalāh:

One starts to make the ***takbīrat al-iḥrām*** with the intention in the heart. It is mustaḥab to recite the duʿā iftitah after the *takbīrat al-iḥrām*.

After the ***duʿā iftitaḥ***, it is mustaḥab to recite the *taʿawwudh*. ***Taʿawwudh*** is mustaḥab in every rakʿah and more emphasized in the first rakʿah. Then a person recites **Sūrah al-Fātiḥah** in every rakʿah and the basmalah is one of its verses. One says "***Āmīn***" at the end of the al-Fātiḥah, when following an imām, one says "Āmīn" when he does, and then a second time when he completes his own recital of the al-Fātiḥah.

If one is the imām or praying alone, it is mustaḥab in the first and second rakʿah only to recite one complete **sūrah** even if it be short after the al-Fātiḥah. It is mustaḥab to recite the Qurʾān in a tartīl (distinct and pleasant way) observing the rules of tajwīd

and to reflect upon its meanings and lessons. One recites a longer sūrah in the first rakʿah than in the second.

Then one makes **rukuʿ** (bows) from the waist. The best way is to raise one's hands and say, "*Allahu akbar*" so that a person begins raising the hands as he starts the takbir and when the hands are at shoulder level, he bows. It is mustaḥab to prolong the words of takbir until one reaches the posture of rukuʿ.

Then one makes ***iʿtidāl*** (straightening up), the best way is to raise the hand lifting them from the knees as one starts straightening up, raising them to shoulder level and the head together, saying, "*samiʿallahu liman ḥamidah*." When one is standing upright, one says, "*Rabbanā lakal ḥamd.*"

Then one makes **sajdah** (prostrates), the best way is to say, "*Allahu Akbar*," and to put the knees down first, then the hands, and then the forehead and nose, keeping the hands directly under one's shoulders, with the fingers together, extended towards the direction of qiblah, and the hands uncovered. For men to maintain a one span gap between the two knees and two feet whilst women keep them together. For men to keep the stomach away from the thighs, and forearms from the sides, whilst women keep them together, and to recite "*tasbīh*" three times. It is commendable to supplicate before Allah ﷻ while prostrating.

Then one **raises the head and sits before prostrating a second time**, the best way is to say, "*Allahu akbar*," as one raises

the head, to sit in "*iftirāsh*," which is to place the left foot on its side and to sit upon it while keeping the right foot on the bottom of its toes, heel up. To place both one's hands on the thighs near the knees, fingers extended and held together and to recite the duʿā, "*Rabbighfirlī, warḥamnī, wajburnī, warfaʿnī, warzuqnī, wahdinī, waʿāfinī, waʿfuʿannī.*"

Then one **prostrates again just as before** and after this one raises the head, saying, "*Allahu akbar*," as one first raises it, prolonging the takbir until one is standing upright.

It is sunnah, here and in each rakʿah that is not followed by the tashahhud, to briefly rest in the ***iftirāsh*** style of sitting before rising. Then one rises, supported by both hands, palms down, and prolonging the takbir until standing. This is called "***jilsat al-istirāhah***" and is not done after "*sajdah al-tilawah*".

Then one performs the second rakʿah of the ṣalāh just like the first, except for the initial intention, the *takbīrat al-iḥrām*, and duʿā iftitah.

If one's **ṣalāh exceeds two rakʿahs**, one sits in iftirāsh after the first two rakʿahs and recites the tashahhud and the ṣalāh upon the Nabi ﷺ, but not upon his family (which is done in the final tashahhud). Then one rises, saying, "*Allahu akbar*," and supported on one's hands as before. When standing, one raises the hands to shoulder level (which one does here, but not after rising form the first or third rakʿah), and then goes on to perform

the remainder of the ṣalāh as one did in the second rakʿah, except that one recites the al-Fātiḥah to oneself and does not recite a sūrah after it.

One sits at the end of one's ṣalāh for the **last tashahhud** in the "***tawarruk***" style of sitting, with one left posterior on the ground and left foot on its side, emerging from under the right, which is vertical.

In the two tashahhuds, the left hand rests on the left thigh near the knee, its fingers extended and held together. The right hand is similarly placed, but is held closed with its thumb touching the side of the index finger, which alone is left extended. One raises the index finger and points with it when one says the words, "*illallah*," in the tashahhud.

Closing the ṣalāh:

Then one says the final "***salām***". The best way is to say, "*Assalāmu ʿalaykum waraḥmatullah*," and to turn the head to the right enough to show the right cheek to those behind. One thereby intends to finish the ṣalāh and intends to make salām to the Angels and Muslims whether human or jinn on the right. Then turns one's head to the left and repeat the salām, intending to greet those on the left. The follower may intend one of the salāms to be a response to the salām of the imām.

It is mustaḥab **to make dhikr and duʿā silently after ṣalāh**. Al-Imām al-Shāfiʿī mentioned in al-Umm, “I prefer that the imām and follower make dhikr after the salām, and do so silently, unless the imām wants to be learned from, in which case he says the dhikr aloud until he believes that the congregation has learned from him, after which he will say it silently.”

The imām turns for dhikr and duʿā so that his right side is towards the jamāʿah and his left side towards the qiblah. He leaves his place as soon as he finishes. If there are no women (in which case he waits for them to leave first). It is mustaḥab for the followers to remain seated until the imām stands.

فصل : النِّـــيَّـــةُ ثلاَثُ دَرَجَاتٍ :

إِنْ كَانَتِ الصَّلاَةُ فَرْضاً وَجَبَ قَصْدُ الْفِعْلِ وَالتَّعْيِينُ وَالفَرْضِيّةُ .

وَإِن كَانَتْ نَافِلَةً مُؤَقَّتَةً كَرَاتِبَةٍ أَوْ ذَاتِ سَبَبٍ وَجَبَ قَصْدُ الْفِعْلِ وَالتَّعْيِينُ.

وَإِنْ كَانَتْ نَافِلَةً مُطْلَقَةً وَجَبَ قَصْدُ الْفِعْلِ فَقَطْ .

الْفِعْلُ أُصَلِّي وَالتَّعْيِينُ ظُهْرًا أَوْ عَصْرًا وَالْفَرْضِيَّةُ فَرْضًا .

Section: There are Three Degrees of Intention:

If the ṣalāh is farḍ, it is compulsory to intend:[23]

a. The act of ṣalāh – the intention of performing ṣalāh.
b. The actual ṣalāh that is being offered e.g. Ẓuhr or ʿAṣr.
c. It being a farḍ ṣalāh.

If the ṣalāh is a periodic nafl like "*rawātīb*"[24] or it has a specific reason[25], it is compulsory to intend:

a. The act of ṣalāh – the intention of performing ṣalāh.
b. The actual ṣalāh that is being offered e.g. sunnah before ṣubh or "*Istisqā*'" (ṣalāh seeking rain).

If the ṣalāh is a muṭlaq nafl,[26] it is compulsory to intend:

a. The act of ṣalāh – the intention of performing ṣalāh.

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[23] It is sufficient for a person to make intention to offer the farḍ ṣalāh of Ẓuhr.

[24] Those sunnah ṣalāh performed either before or after the five farḍ ṣalāh.

[25] Like the ṣalāh of ʿEid al-Fiṭr or ṣalāh al-istisqāʾ (seeking rain). It is sufficient that a person makes intention to offer ṣalāh of 'Eid al-Fiṭr or al-istisqāʾ.

[26] Those nafl ṣalāh that have no time or cause. A person performs them when one wants for additional rewards. It is sufficient to merely make the intention of performing ṣalāh for these ṣalāh.

فصل : شُرُوطُ تَكْبِيرَةِ الإِحْرَامِ سِتَّةَ عَشَرَ :

(1) أَنْ تَقَعَ حَالَةَ الْقِيَامِ فِي الفَرْضِ (2) وَأَنْ تَكُونَ بِالْعَرَبِيَّةِ (3) وَأَنْ تَكُونَ بِلَفْظِ الْجَلاَلَةِ (4) وَبِلَفْظِ أَكْبَرُ (5) والتَّرتِيبُ بَيْنَ اللَّفْظَيْنِ (6) وَأَنْ لا يَمُدَّ هَمْزَةَ الْجَلاَلَةِ (7) وَعَدَمُ مَدِّ باءِ أَكبَرُ (8) وَأَنْ لا يُشَدِّدَ الْبَاء (9) وأَنْ لا يَزِيدَ وَاوًا سَاكِنَةً أَوْ مُتَحَرِّكَةً بَيْنَ الكَلِمَتَيْنِ (10) وَأَنْ لاَ يَزِيدَ وَاوًا قَبْلَ الْجَلاَلَةِ (11) وَأَنْ لاَ يَقِفَ بَيْنَ كَلِمَتَي التَّكْبِيرِ وَقْفةً طَوِيلَةً وَلاَ قَصِيرَةً (12) وَأَنْ يُسْمِعَ نَفْسَهُ جَمِيعَ حُروفِهَا (13) وَدُخولُ الْوَقْتِ فِي الْمؤَقَّتِ (14) وَإِيقَاعُهَا حَالَ الاسْتِقْبَالِ (15) وَأَنْ لاَ يُخِلَّ بِحَرْفٍ مِن حُروفِهَا (16) وَتَأخِيرُ تَكْبِيرَةِ المَأْمُومِ عَنْ تَكْبِيرَةِ الْإِمَامِ .

Section: The Conditions of *Takbīrat al-iḥrām* are Sixteen:

1. That it is pronounced while standing in the farḍ ṣalāh.
2. That it be in Arabic.
3. That it be with the word "*Allahu*".
4. That it be with the word "*akbar*".
5. The sequence between these two words "*Allahu akbar*" is followed.
6. Not to lengthen the *hamzah* of the word "*Allah*".[27]

[27] By reciting it as "*Āllahu akbar*," this can result in the meaning changing.

7. Not to lengthen the letter of "*ba*" of "*akbar*".[28]
8. Not to double the letter of "*ba*".[29]
9. Not to add a "*waw*" *sakin* or *mutaharrik* between these two words.[30]
10. Not to add a "waw" before the word "Allah".
11. Not to pause for a long or short while between these two words.
12. To hear oneself uttering its entire letters.[31]
13. Entering of the time of ṣalāh.
14. For it to occur while facing towards the qiblah.
15. Not to change even a single letter.
16. To delay the takbir of the maʾmūm (follower) till after the takbir of the imām.

فصل : شُرُوطُ الْفَاتِحَةِ عَشَرَةٌ :

(1) التَّرتِيبُ (2) والمُوَالاَةُ (3) وَمُرَاعَاةُ حُرُوفِهَا (4) وَمُراعَاةُ تَشْدِيدَاتِهَا (5) وَأَنْ لاَ يَسْكُتَ سَكْتَةً طَوِيلَةً وَلا قَصيرَةً يَقْصِدُ بِهَا قَطْعَ الْقِرَاءَةِ (6) وَقِرَاءَةُ كُلِّ

[28] By reciting it as "*Allahu akbār*," this can result in the meaning changing.
[29] By reciting it with the *tashdīd*.
[30] By reciting it as "*Allahū akbar*" or "*Allahu wakbar*".
[31] That one can hear them oneself, given normal hearing and lack of extraneous noise. There is no need to raise one's voice if there is lot of noise.

آياتِهَا وَمِنهَا البَسْمَلَةُ (7) وَعَدَمُ اللَّحْنِ الـــمُخِلِّ بِالمَعْنَى (8) وَأَنْ تَكُونَ حَالَةَ الْقِيَامِ فِي الْفَرْضِ (9) وَأن يُسْمِعَ نَفْسَهُ القِرَاءَةَ (10) وَأَنْ لا يَتَخَلَّلَهَا ذِكْرٌ أجْنَبِيٌّ.

Section: The Conditions of Sūrah al-Fātiḥah are Ten:

1. Sequence.
2. Continuity.[32]
3. To perfect (pronunciation of) it's letters.
4. To perfect it's tashdīds.
5. Not to pause for a long or short while with the intention of terminating the recitation.
6. Reciting all its verses including the "*basmalah*".
7. Not to commit a mistake that alters the meaning.[33]
8. To recite it while standing in the farḍ ṣalāh.[34]
9. To hear one's own recitation.

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[32] The al-Fātiḥah is not considered to be interrupted if a one replies to the "*Āmīn*" of the imām, reminding him of the right ayat (verse) when he errs, prostrates with the imām in "*sajdah tilāwah*", forgetfully falls silent or absentmindedly adds some dhikr in it.

[33] If one omits one of the al-Fātiḥah's letters, fails to double a letter that should be doubled, or substitutes a wrong letter for the right one, it invalidates one's recital of that particular word, and one must recite that word again. This will not invalidate one's ṣalāh unless it changes the meaning and was done deliberately. Mistakes in a harakah (short vowel) are not harmful as long as they do not alter the meaning.

[34] Its entire letters should be recited while standing.

10. No foreign dhikr or recitation should be recited in-between (the al-Fātiḥah).

فصل : تَشْدِيدَاتُ الفَاتِحَةِ أرْبَعَ عَشْرَةً :

بِسْم اللّـــهِ فَوْق اللامِ الرَّحْمن فَوْقَ الرَّاءِ الرَّحِيمِ فَوْقَ الرَّاءِ . الْحَمْدُ لِلّهِ فَوْقَ لامِ الْجَلالَةِ رَبِّ الْعَالَمِينَ فَوْقَ البَاءِ . الرَّحْمنِ فَوْقَ الرَّاءِ الرَّحِيمِ فَوْقَ الرَّاءِ. مَالِكِ يَوْمِ الدِّين فَوْقَ الدَّالِ . إِيَّاكَ نَعْبُدُ فَوْقَ اليَاءِ وَإِيَّاكَ نَسْتَعِينُ فَوْقَ اليَاءِ. إِهْدِنَا الصِّرَاطَ الْمُسْتَقِيمَ فَوْقَ الصَّادِ . صِرَاطَ الَّذِيْنَ فَوْقَ اللامِ أَنْعَمْتَ عَلَيْهِمْ غَيْرِ المَغْضُوبِ عَلَيْهِمْ وَلا الضَّالِّينَ فَوْقَ الضَّادِ وَاللامِ.

Section: There are 14 tashdīds that are recited on various word of Sūrah al-Fātiḥah which are demonstrated in the following diagram:

بسم الـــلّه الرّحمن الرّحيم . الحمد لـــلّه ربّ العالمين . الرّحمن الرّحيم. مالك يوم الدّين . إيـــّاك نعبد وإيـــّاك نستعين . إهدنا الصّراط المستقيم. صراط الّذين أنعمت عليهم غير المغضوب عليهم ولا الضّالّـــين .

فصل : يُسَنُّ رَفْعُ الْيَدَيْنِ فِي أَرْبَعَةِ مَوَاضِعَ :

(1) عِنْدَ تَكْبِيرَةِ الإِحْرَامِ (2) وَعِنْدَ الرُّكُوعِ (3) وَعِنْدَ الاعْتِدَالِ (4) وَعِنْدَ الْقِيَامِ مِنَ التَّشَهُّدِ الأَوَّلِ .

Section: It is Sunnah to Raise the Hands in Four Places:[35]

1. During the *takbīrat al-iḥrām*.[36]
2. When going into *rukūʿ*.[37]
3. When straightening up (*iʿitidāl*).[38]
4. When standing up from the first *tashahhud*.

فصل : شُرُوطُ السُّجُودِ سَبْعَةٌ :

(1) أَنْ يَسْجُدَ عَلَى سَبْعَةِ أَعْضَاءٍ (2) وَأَنْ تَكُونَ جَبْهَتُهُ مَكْشُوفَةً (3) وَالتَّحَامُلُ بِرَأسِهِ (4) وَعَدَمُ الْهُوِيِّ لِغَيْرِهِ (6) وَأَنْ لا يَسْجُدَ عَلَى شَيْءٍ يَتَحَرَّكُ بِحَرَكَتِهِ (7) وَارْتِفَاعُ أسَافِلِهِ عَلَى أعَالِيهِ (8) والطُّمَأنِينَةُ فِيهِ .

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[35] It is from the "*sunan hayʾah*" of the ṣalāh, the wisdom being to show respect and reverence to Allah ﷻ.

[36] Begin raising the hands at the beginning of the takbīr and put them down at the end of the takbīr, means that raising of the hands must be simultaneous with the takbīr from the beginning till the end.

[37] A person starts raising his hands at the beginning of takbīr and prolongs the takbīr until he places his hands upon his knees, fingers spread apart and backbone and head are straight.

[38] A person begins raising his hand with the raising of the head and the takbīr; when he straightens, he lowers his hands.

خَاتِمَةٌ أَعضَاءُ السُّجُودِ سَبْعَةٌ :

الْجَبْهَةُ وَبُطُونِ الْكَفَّيْنِ وَالرُّكْبَتَانِ وَبُطُونُ أصَابع الرِّجْلَيْنِ .

Section: The Conditions of Sajdah (Prostration) are Seven:

1. To prostrate upon seven limbs.[39]
2. The forehead should be exposed.[40]
3. To make sajdah by resting on the head.[41]
4. Not to intend anything but sajdah.[42]
5. Not to prostrate on something that moves with one's own movement.
6. That one rear's be higher than one's head.
7. Remain motionless for a moment whilst prostrating.

The Seven Limbs of Prostration are:

The forehead, both palms, both knees and the portion under the toes of each foot.

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[39] It is sunnah to place the nose on the ground, however, sajdah will be in order if the nose does not touch the ground.

[40] If one is wearing a bandage over the forehead because of an injury, sajdah may be made on the bandage without the need of repeating it afterwards with the condition that the bandage was put on while one was in the state of purity.

[41] The weight of the head and neck should be applied to the place of sajdah so that the forehead is firmly stationed on the ground.

[42] If one merely fell down after the iʿtidāl, this will not be regarded as sajdah. The person will have to return to iʿtidāl and then go into sajdah.

فصل : تَشْدِيدَاتُ التَّشَهُّدِ إِحْدَى وَعِشْرُونَ :

خَمْسٌ فِي أَكْمَلِهِ وَسِتَّةَ عَشَرَ فِي أَقَلِّهِ .

التَّحِيَّاتُ عَلَى التَّاءِ وَالْيَاءِ الْمُبَارَكَاتُ الصَّلَوَاتُ عَلَى الصَّادِ الطَّيِّبَاتُ عَلَى الطَّاءِ وَالْيَاءِ لِلَّـــهِ عَلَى لامِ الْجَلالَةِ. السَّلامُ عَلَى السِّين عَلَيْكَ أَيُّهَا النَّبِيُّ عَلَى الْيَاءِ وَالنُّونِ وَالْيَاءِ وَرَحمَةُ اللَّـــهِ عَلَى لامِ الْجَلالَةِ وَبَرَكَاتُهُ . السَّلامُ عَلَى السِّين عَلَيْنَا وَعَلَى عِبَادِ اللَّـــهِ عَلَى لامِ الْجَلالَةِ الصَّالِحِينَ عَلَى الصَّادِ. أَشْهَدُ أَنْ لا إِلهَ عَلَى لامِ أَلِفٍ إلا اللَّـــهُ عَلَى لامِ أَلِفٍ وَلامِ الْجَلالَةِ. وَأَشْهَدُ أَنَّ عَلَى النُّونِ مُحَمَّدًا رَسُولُ اللَّـــهِ عَلَى مِيمِ مُحَمّدٍ وَعَلَى الرَّاءِ وَعَلَى لامِ الْجَلالَةِ.

Section: There are 21 tashdīds that are recited in tashahhud, five are their completion and 16 are minimal of the tashahhud[43], all are demonstrated in the following diagram:

[43] The minimal tashahhud is:

التحيّات للّـــه . سلام عليك أيّها النبّـــيّ ورحمة اللّـــه وبركاته . سلام علينا وعلى عباد اللّـــه الصالحين . أشهد أن لاّ إله إلاّ اللّـــه وأشهد أنّ محمّدا رّسول اللّـــه

التحيّات المباركات الصلوات الطيّبات للّـــه . السلام عليك أيّها النبـــيّ ورحمة اللّـــه وبركاته . السلام علينا وعلى عباد اللّـــه الصالحين . أشهد أن لاّ إله إلاّ اللّـــه وأشهد أنّ محمّدا رسول اللّـــه .

فصل : تَشْدِيدَاتُ أَقَلِّ الصَّلاةِ عَلَى النَّبِيِّ أَرْبَعٌ :

اللَّهُمَّ عَلَى اللامِ وَالْمِيمِ صَلِّ عَلَى اللامِ عَلَى مُحَمَّدٍ عَلَى الْمِيمِ .

Section: There are 4 tashdīds for the minimal ṣalāh upon Nabi ﷺ:

اللّهمّ صلّ على محمّد .

فصل : أَقَلُّ السَّلامِ السَّلامُ عَلَيْكُمْ .

تَشْدِيدُ السَّلام عَلَى السِّينِ .

Section: The minimal salām is "*Assalāmu ʿalaykum*":

There is one tashdīd in salām: السلام عليكم

فصل : أَوْقَاتُ الصَّلاةِ خَمْسٌ :

أَوَّلُ وَقْتِ **الظُّهْرِ** زَوَالُ الشَّمْسِ وَآخِرُهُ مَصِيرُ ظِلِّ الشَّيْءِ مِثْلَهُ غَيْرَ ظِلِّ الاستِوَاءِ .

وَأَوَّلُ وَقْتِ **الْعَصْرِ** إِذَا صَارَ ظِلُّ كُلِّ شَيْءٍ مِثْلَهُ وَزَادَ قَلِيلا وَآخِرُهُ غُرُوبُ الشَّمْسِ . وَأَوَّلُ وَقْتِ **الْمَغْرِبِ** غُرُوبُ الشَّمْسِ وَآخِرُهُ غُرُوبُ الشَّفَقَ الأَحْمَرِ . وَأَوَّلُ وَقْتِ **العِشَاءِ** غُرُوبُ الشَّفَقِ الأَحْمَرِ وَآخِرُهُ طُلُوعُ الْفَجْرِ الصَّادِقِ. وَأَوَّلُ وَقْتِ **الصُّبْحِ** طُلُوعُ الْفَجْرِ الصَّادِقِ وَآخِرُهُ طُلُوعُ الشَّمْسِ .

الأَشْفَاقُ ثَلاثَةٌ أَحْمَرُ وَأَصْفَرُ وَأَبْيَضُ .

الأَحْمَرُ مَغْرِبٌ وَالأَصْفَرُ وَالأَبْيَضُ عِشَاءٌ وَيُنْدَبُ تَأخِيرُ صَلاةِ الْعِشَاءِ إِلَى أَنْ يَغِيبَ الشَّفَقُ الأَصْفَرُ وَالأَبْيَضُ .

Section: The Times of ṣalāh are Five:[44]

- The time of Ẓuhr begins after the sun descends from its zenith (*zawāl*) and it ends when an object's shadow equals its length in addition to the length of its shadow at the time of *zawāl*.
- The time of ʿAṣr begins when the object's shadow equals its length in addition to the length of its shadow at the time of *zawāl*, and ends when the sun sets.
- The time of Maghrīb begins from sunset and ends with the disappearance of the red horizon.
- The time of ʿIshāʾ begins from the setting of the red horizon and it ends at ṣubh sadiq.
- The time of Ṣubh begins from the dawn until sunrise.

There are three types of horizons; red, yellow and white:

- The red horizon is at the time of Maghrīb, while the yellow and white are at the time of ʿIshāʾ. It is sunnah to delay the ṣalāh of ʿIshāʾ till the yellow and white horizons disappear.

[44] It is best to pray every prayer at the beginning of its time, taking the necessary steps at its outset, such as purification, clothing one's ʿawrah, giving the adhan and iqamah, and then praying. If less than one rakʿah of one's ṣalāh occurs within the proper time (meaning that one does not raise one's head from the second sajdah of the rakʿah before the time ends) and the remainder takes place after it, then the entire ṣalāh is considered as qaḍāʾ. It is not permissible to intentionally delay the ṣalāh until part of it is prayed after the time has terminated.

فصل : تَحْرُمُ الصَّلاةُ الَّتِي لَيْسَ لَهَا سَبَبٌ مُتَقَدِّمٌ وَلا مُقَارِنٌ فِي خَمْسَةِ أَوْقَاتٍ :

(1) عِنْدَ طُلُوعِ الشَّمْسِ حَتَّى تَرْتَفِعَ قَدْرَ رُمْحٍ (2) وَعِنْدَ الاسْتِوَاءِ فِي غَيْرِ يَوْمِ الْجُمُعَةِ حَتَّى تَزُولَ (3) وَعِنْدَ الاصْفِرَارِ حَتَّى تَغْرُبَ (4) وَبَعْدَ صَلاةِ الصُّبْحِ حَتَّى تَطْلُعَ الشَّمْسُ (5) وَبَعْدَ صَلاةِ الْعَصْرِ حَتَّى تَغْرُبَ .

Section: There are 5 times in a day during which it is ḥarām[45] to offer those ṣalāhs which do not have an immediate or preceding cause:[46]

1. At the time of sunrise until the sun rises to the extent of the height of a spear.
2. At the time when the sun is at its zenith until it declines, except on Fridays.
3. At the time the sun becomes yellow/pale until sunset.
4. After Ṣubh ṣalāh until sunrise.
5. After ʿAṣr ṣalāh until sunset.

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[45] It is neither ḥarām nor makrūh to offer ṣalāh within the Sanctuary of Makkah at any time.

[46] The ṣalāh is unlawful and invalid and it will not discharge a person from a vow. It is permissible at the above times to offer ṣalāh that are performed for a particular reason, such as the *salat al-janazah* (funeral ṣalāh), *taḥiyyat al-masjīd* (greeting the mosque), sunnah after wuḍūʾ, and is also permissible to make *qaḍāʾ* ṣalāh though one may not perform the two rakʿahs that are sunnah before entering the state of iḥrām.

فصل : سَكَتَاتُ الصَّلاةِ سِتَّةٌ :

(1) بَيْنَ تَكْبِيرَةِ الإحْرَامِ وَدُعَاءِ الافْتِتَاحِ (2) وَبَيْنَ دُعَاءِ الافْتِتَاحِ وَالتَّعَوُّذِ (3) وَبَيْنَ الفَاتِحَةِ وَالتَّعَوُّذِ (4) وَبَيْنَ آخِرِ الفَاتِحَةِ وَآمِين (5) وَبَيْنَ آمِينَ وَالسُّورَةِ (6) وَبَيْنَ السُّورَةِ وَالرُّكُوعِ .

Section: The Pauses in ṣalāh are Six:[47]

1. Between the *takbīrat al-iḥrām* and the "*duʿā iftitah*" (the opening duʿā).[48]
2. Between the "*duʿā iftitah*" (the opening duʿā) and *taʿawwudh*[49].
3. Between the *taʿawwudh* and Sūrah al-Fātiḥah.
4. Between the completion of Sūrah al-Fātiḥah and saying, "*Āmīn*".
5. Between "*Āmīn*" and the sūrah.
6. Between the sūrah and bowing (rukuʿ).

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[47] It is mustaḥab to pause for the duration of one tasbih (duration of reciting one "*subḥānallah*").

[48] It is mustaḥab for the imām to remain silent for the time that a follower can recite Sūrah al-Fātiḥah and for him to engage in the recitation of the Qurʾān or duʿā silently.

[49] Taʿawwudh is to recite "*Aʿūdhubillahi minash shaiṭānir rajīm*".

فصل : الأَرْكانُ الَّتِي تَلْزَمُهُ فِيهَا الطُّمَأنِينَةُ أَرْبَعَةٌ :

(1) الرُّكُوعُ (2) والاعْتِدَالُ (3) وَالسُّجُودُ (4) وَالْجُلُوسُ بَيْنَ السَّجْدَتَيْنِ .

الطُّمَأنِينَةُ هِيَ سُكُونٌ بَعْدَ حَرَكَةٍ بِحَيْثُ يَسْتَقِرُّ كُلُّ عُضْوٍ مَحَلَّهُ بِقَدْرِ سُبْحَانَ اللَّـــهِ .

Section: There are Four Postures in Which Ṭumaʾnīnah (Composure) is Compulsory:

1. In rukuʿ.
2. In iʿtidāl (when straightening up after rukuʿ).
3. In sajdah.
4. While sitting between the two sajdahs.

Ṭumaʾnīnah (composure) is a pause after movements to such an extent that every limb remains in its place for the duration of reciting one "*subḥānallah*".

فصل : أَسبَابُ سُجُودِ السَّهْوِ أَرْبَعَةٌ :

الأَوَّلُ تَرْكُ بَعْضٍ مِنْ أَبْعَاضِ الصَّلاةِ أَوْ بَعْضِ الْبَعْضِ **الثَّاني** فِعْلُ مَا يُبْطِلُ عَمْدُهُ وَلا يُبْطِلُ سَهْوُهُ إِذَا فَعَلَهُ نَاسِياً **الثَّالِثُ** نَقْلُ رُكْنٍ قَوْلِيٍّ إِلَى غَيْرِ مَحَلِّهِ **الرَّابِـــعُ** إِيقَاعُ رُكْنٍ فِعْلِيٍّ مَعَ احْتِمَالِ الزِّيَادَةِ .

Section: The Causes for Sajdah Sahw[50] (Prostration of Forgetfulness) are Four:

1. Leaving out some of the "*sunan abʿaḍ*" (main sunnah), either completely or partly.[51]
2. To forgetfully do an action that would nullify the ṣalāh if it was done intentionally.[52]
3. To recite a verbal integral of ṣalāh in an inappropriate place.[53]
4. To perform a physical integral with the possibility of it being an extra integral.[54]

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[50] The sajdah sahw, even if there are numerous reasons for it in one ṣalāh, is only two sajdahs (prostrations).

[51] If one misses a *sunnat abʿaḍ* (main sunnah) even purposely, one performs sajdah sahw. If one misses anything besides a rukn (integral) or sunnat abʿaḍ (main sunnah), then one does not postrate for it. If one forgets the first tashahhud and stands up, it is not permissible to retun to it. If one intentionally returns to it, this invalidates one's ṣalāh, but if one returns to it absentmindedly or out of ignorance, one merely prostrates for it, though one must stand up as soon as one remembers.

[52] Such as turning the head, taking one or two steps, lengthening a short integral like iʿtidāl or a little speech, provided it is not the type of action whose unintentional performance also invalidates the ṣalāh such as much speech or action, since doing it would in any case invalidate the ṣalāh.

[53] Such as reciting a part or all of the al-Fātiḥah or tashahhud at the wrong place. This will not apply to the *tasbīḥāt* even though one did so purposely.

[54] When one is uncertain whether he or she has prayed three rakʿahs or four, one should assume that he or she did not perform it.

فصل : أَبْعَاضُ الصَّلاةِ سَبْعَةٌ :

(1) التَّشَهُّدُ الأَوَّلُ (2) وَقُعُودُهُ (3) وَالصَّلاةُ عَلَى النَّبِيِّ ﷺ فِيهِ (4) وَالصَّلاةُ عَلَى الآلِ فِي التَّشَهُّدِ الأَخِيرِ (5) وَالْقُنُوتُ (6) وَالصَّلاةُ وَالسَّلامُ عَلىَ النَّبِيِّ ﷺ (7) وآلِهِ وَصَحْبِهِ فِيهِ .

Section: The Sunan Abʿaḍ[55] (Main Sunnahs) of ṣalāh are Seven:

1. The recitation of the first tashahhud.[56]
2. The sitting therein (in the first tashahhud).
3. The recitation of *ṣalāh* upon Nabi ﷺ therein (in the first tashahhud).[57]
4. The recitation of *ṣalāh* upon his family in the final tashahhud.
5. The recitation of duʿā Qunūt.
6. The recitation of *ṣalāh* and *salām* upon Nabi ﷺ (in duʿā Qunūt).
7. The recitation of *ṣalāh* and *salām* upon his family and his Companions therein (in duʿā Qunūt).

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[55] Sunan abʿaḍ are those sunnah acts that if omitted can be compensated for by sajdah sahw. On the other hand, those sunnah acts that cannot be compensated for by sajdah sahw are called sunan hayʾah.

[56] If the imām left out the first tashahhud, it is not permissible for the follower to act contrary to the imām i.e. the follower will have to also follow the imām in this act.

[57] If the imām lengthens the first tashahhud for a valid reason and the follower completed the first tashahhud before the imām, the follower should not continue and recite the ṣalāh upon the family of Nabī ﷺ, rather he should occupy himself with duʿā.

فصل : تَبْطُلُ الصَّلاةُ بِأَرْبَعَ عَشْرَةَ خَصْلَةً :

(1) بِالْحَدَثِ (2) وَبِوُقُوعِ النَّجَاسَةِ إِنْ لَمْ تُلْقَ حَالا مِنْ غَيْرِ حَمْلٍ (3) وَانْكِشَافِ الْعَوْرَةِ إِنْ لَمْ تُسْتَرْ حَالا (4) وَالنُّطْقِ بِحَرْفَيْنِ أَوْ حَرْفٍ مُفْهِمٍ عَمْدًا (5) وَبِالْمُفْطِرِ عَمْدًا (6) وَالأَكْلِ الْكَثِيرِ نَاسِيا (7) وَثَلاثِ حَرَكَاتٍ مُتَوَالِيَاتٍ وَلَوْ سَهْوًا (8) وَالْوَثْبَةِ الْفَاحِشَةِ (9) وَالضَّرْبَةِ الْمُفْرِطَةِ (10) وَزِيَادَةِ رُكْنٍ فِعْلِيٍّ عَمْدًا (11) وَالتَّقَدُّمِ عَلَى إِمَامِهِ بِرُكْنَيْنِ فِعْلِيَّيْنِ (12) وَالتَّخَلُّفِ بِهِمَا بِغَيْرِ عُذْرٍ (13) وَنِيَّةِ قَطْعِ الصَّلاةِ وَتَعْلِيقِ قَطْعِهَا بِشَيْءٍ (14) وَالتَّرَدُّدِ فِي قَطْعِهَا .

Section: The Factors Which Nullify the ṣalāh are Fourteen:

1. Hadath (ritual impurity).[58]
2. Impurity falling on the body or clothes[59] if not removed immediately[60]without carrying it.[61]
3. Exposing of the ʿawrah if it was not covered immediately.[62]

[58] Even unintentionally, if a person forgot to perform wuḍūʾ and offers a ṣalāh, this ṣalāh will not be valid.

[59] If an imām led a jamāʿah while there was impurity on his clothes, the entire jamāʿah will have to repeat the ṣalāh if the impurity was visible to others or if it was in such a place that all could have seen it. If it was not visible, the imām alone will have to repeat the ṣalāh.

[60] Not more than the minimum amount of one tasbih.

[61] By removing the impurity – for example with the side of a stone or a stick without carrying the stone or stick.

4. Intentionally uttering one or two letters which can be clearly understood.[63]
5. To break the fast intentionally (in ṣalāh).[64]
6. To forgetfully eat a lot.[65]
7. Three consecutive motions even if involuntarily.[66]
8. Extra movement that is contrary to the habit of a sane person.[67]
9. An excessive strike of the hand.[68]

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[62] When the ʿawrah of a person becomes exposed even slightly, the ṣalāh is invalidated. However, if it was exposed because of wind and it is covered up immediately with little movement, the ṣalāh remain valid. If much movement is done to cover the exposed part, the ṣalāh will be invalidated.

[63] The ṣalāh is invalidated when two or more letters worth of sounds such as laughter, crying, groaning, clearing the throat, blowing, sighing, or similar are audible. If the need to cough arises involuntarily, a person should try his utmost to suppress it. However if after trying hard, the need still subsists, he may cough for relief even if a sound of two or more syllables is formed.

[64] Any action that invalidates the fast like inserting a stick into the body cavity.

[65] The ṣalāh is invalidated when any (even if a little) substance reaches the body cavity intentionally. It also invalidates the ṣalāh if it occurs absentmindedly or in ignorance of its prohibition, provided the amount of the substance is commonly acknowledged to be much, though not invalidated if it is little.

[66] The ṣalāh is invalidated by adding, even if absentmindedly, a motion that is not one of the actions of ṣalāh, provided it is both considered by ʿ*urf* (common acknowledgement) to be much and uninterruptedly consecutive, such as three steps or successively moving three separate body parts – like the head and two hands, though an up-and-down motion is considered as just one – or three or more consecutive motions.

[67] Such as jumping, it invalidates the ṣalāh.

10. To intentionally add an extra physical integral of ṣalāh.[69]
11. To precede the imām in two physical integrals of ṣalāh.[70]
12. To delay with the two integrals without an excuse.[71]
13. The intention of terminating the ṣalāh by suspending its termination on a foreign action.[72]
14. By doubting its termination.[73]

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[68] One or two slight movements do not invalidate the ṣalāh. If a person only moves a finger e.g. to scratch an itching place on the body, the ṣalāh does not break even if he moves his finger tip many times.

[69] When a person intentionally performs extra integral e.g. three sajdahs or two rukuʿs in one rakʿah.

[70] To complete two integrals before the imām does invalidates the ṣalāh. If one does so absentmindedly or in ignorance of its prohibition, it does not invalidate the ṣalāh, but the rakʿah is not counted and one must now add an additional rakʿah after the imām finishes with salām to complete the ṣalāh.

[71] Without an excuse, it is makrūh to lag behind the imām until he completed an integral, and it invalidates one's ṣalāh to lag behind the imām until he completed two integrals. If the imām bows and straightens-up while without excuse one has not yet bowed, it does not invalidate one's ṣalāh until the imām actually begins going down towards prostration and one still not bowed.

[72] To decide to break one's ṣalāh if such and such a thing happens, regardless whether the event will definitely occur during the ṣalāh or whether it may happen, such as, "I will stop if Zayd enters."

[73] Not to know whether one has terminated or not; means one hesitates in one's heart, saying, "Shall I stop intending ṣalāh or continue?" The mere thought of how it would be if one were to hesitate during the ṣalāh is of no consequence, rather the occurrence of doubt that negates one's resolve and certainty is what is considered here.

Note: Sunan Rawātib – The Sunnah ṣalāh Before and After the Farḍ ṣalāh:

The optimal numbers of these are:

- Two rakʿahs before Ṣubh ṣalāh.
- Four rakʿahs before and after Ẓuhr ṣalāh.
- Four rakʿahs before ʿAsr ṣalāh.
- Two rakʿahs after Maghrīb ṣalāh.
- Two rakʿahs after ʿIshāʾ ṣalāh.

The *sunnah muakkadah* (emphasized sunnah) consist of ten rakʿahs:

- Two rakʿahs before Ṣubh ṣalāh.
- Two rakʿahs before and after Ẓuhr ṣalāh.
- Two rakʿahs after Maghrīb ṣalāh.
- Two rakʿahs after ʿIshāʾ ṣalāh.

It is recommended to pray two rakʿahs before Maghrīb ṣalāh.

The sunan of Jumuʿah are the same as for Ẓuhr ṣalāh.

Witr ṣalāh – The Final ṣalāh at Night:

The best time for Witr is after the sunnah of ʿIshāʾ ṣalāh, unless one intends to offer the Taḥajjud ṣalāh. Witr is a minimum of one rakʿah and the optimal is to perform eleven rakʿahs. Three rakʿahs is the minimal optimal number of rakʿah and one

separates them by completing two rakʿahs with salām and then performs the final rakʿah. One recites *Sūrah al-ʿAlā* in the first rakʿah, *Sūrah al-Kāfirūn* in the second rakʿah, and *Sūrah al-Ikhlaṣ*, *Sūrah al-Falāq* and *Sūrah al-Nās* in the third rakʿah.

Tarāwīḥ ṣalāh:

It is sunnah to perform tarāwīḥ, which is twenty rakʿahs of group prayer on each night of Ramaḍān.

Ḍuḥā ṣalāh:

It is sunnah to pray the Ḍuḥā ṣalāh (midmorning prayer), which minimum of two rakʿahs, is optimum eight rakʿahs, and a maximum of twelve. One completes a pair of rakʿahs with salām.

Taḥajjud ṣalāh:

Nafl ṣalāh (superogatory prayer) at night is an emphasized sunnah, even if one can only do a little. The last part of the night is the best time to offer taḥajjud ṣalāh.

Taḥiyyat al-masjid:

It is sunnah for one who enters a masjid to greet the masjid by praying two rakʿahs each time he enters. One is no longer entitled to pray it after sitting.

فصل : الَّذِي يَلْزَمُ فِيهِ نِيَّةُ الإِمَامَةِ أَرْبَعٌ :

(1) الْجُمُعَةُ (2) وَالــمُعَادَةُ (3) وَالــمَنْذُورَةُ جَمَاعَةً (4) وَالــمُتَقَدِّمَةُ فِي الــمَطَرِ .

Section: The Intention of Being an Imām is Compulsory[74] in Four Conditions:

1. The Friday Prayer.[75]
2. To repeat the farḍ or nafl ṣalāh in its time hoping for reward.[76]
3. A vowed ṣalāh that is to be performed in congregation.[77]
4. A ṣalāh offered before its time due to rain.[78]

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[74] The intention of being an imām is compulsory upon the imām during *takbīrat al-iḥrām*. As for the follower, the intention of being a follower is wājib if he intends to follow the imām even in the middle of ṣalāh besides in these four conditions in which case it is wājib for him to intend being a follower during *takbīrat al-iḥrām*.

[75] If the imām leaves out the intention of being an imām during *takbīrat al-iḥrām*, his ṣalāh will not be valid.

[76] To repeat the farḍ ṣalāh that was performed in its time or nafl ṣalāh, which was sunnah to perform in jamāʿah (except Witr ṣalāh in the month of Ramaḍān because there is no repetition for Witr). And to repeat them (once) both on their time with jamāʿah (in the entire ṣalāh) hoping for the reward of jamāʿah.

[77] If a person leaves out the intention of being an imām during *takbīrat al-iḥrām*, his ṣalāh alone is valid but he will be sinful.

[78] A group of people who are gathered because of rain and they perform *jamaʿ taqdim*, if the imām left out the intention of being an imām, his ṣalāh will not be valid.

فصل : شُرُوطُ الْقُدْوَةِ أَحَدَ عَشَرَ :

(1) أَنْ لا يَعْلَمَ بُطْلانَ صَلاةِ إِمَامِهِ بِحَدَثٍ أَوْ غَيْرِهِ (2) وَأَنْ لا يَعْتَقِدَ وُجُوبَ قَضَائِهَا عَلَيْهِ (3) وَأَنْ لا يَكُونَ مَأْمُوماً (4) وَلا أُمِّـــيًّا (5) وَأَنْ لا يَتَقَدَّمَ عَلَيْهِ فِى الـــمَوْقِفِ (6) وَأَنْ يَعْلَمَ انْتِقَالاتِ إِمَامِهِ (7) وَأَنْ يَجْتَمِعَا فِي مَسْجِدٍ أَوْ فِي ثَلاثِمائَةِ ذِرَاعٍ تَقْرِيباً (8) وَأَنْ يَنْوِي القُدْوَةَ أَوِ الـــجَمَاعَةَ (9) وَأَنْ يَتَوَافَقَ نَظمُ صَلاتِهِمَا (10) وَأَنْ لا يُخَالِفَهُ فِي سُنَّةٍ فَاحِشَة الـــمُخَالَفَة (11) وَأَنْ يُتَابِعَهُ .

Section: The Conditions for Following an Imām[79] are Eleven:

1. The maʾmūm (follower) shouldn't know of any invalidity of the ṣalāh of his imām due to ritual impurity or anything else.[80]

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[79] **Ṣalāh jamāʿah is *farḍ al-kifayah*** (communal obligation) upon all males, free persons, muqīm (non-travellers), sane individuals and those that have reached the age of puberty for the five farḍ ṣalāh and sunnah for female, such that the rite of the ṣalāh be public in a manner that the manifestation of obedience to Allah's command are evident. If held in houses where the rite of ṣalāh is not public, the obligation remains unfulfilled though a house with a sign on it is sufficient. It is best for men to offer ṣalāh in jamāʿah at the masjid and better for women to pray at home than at the masjid.

[80] It is valid for a Shāfiʿī to follow an imām of a different madhhab whenever the follower is not certain that the imām has omitted an obligatory component of ṣalāh. However, if certain that the imām has omitted one, it is not valid to follow him. The validity is based solely on **the madhhab of the follower** as to whether or not something obligatory has been omitted. Example, a Shāfiʿī followed a Hanafi imām who touched his private part. According to the madhhab of the

2. It should not be such that according to the madhhab of the maʾmūm, the ṣalāh of the imām is invalid and has to be repeated.[81]
3. The imām should not be a follower.[82]
4. Nor an illiterate person.[83]
5. The maʾmūm should not stand ahead of the imām.[84]
6. The maʾmūm should be aware of the movements of his imām.[85]
7. The imām and the maʾmūm are in the same masjid[86] or approximately 300 arm lengths apart.[87]

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follower the wuḍūʾ of the imām is invalidated but not in the madhhab of the imām.

[81] It should not be such a follower following the ṣalāh of a person which will have to be repeated, like a person offering ṣalāh with tayammum because of cold, a muqīm who made tayammum in a place where normally water can be found easily or a person who does not find neither water for wuḍūʾ nor earth for tayammum. In these situations, the ṣalāh should be repeated, although the ṣalāh was valid according to the madhhab of the imām.

[82] It invalidates one's ṣalāh to take a maʾmūm as one's imām when the maʾmūm is concurrently praying behind an imām, though if his imām finishes with salām and the maʾmūm is still praying, he may then be taken as one's imām.

[83] A qari, one who recites Qurʾān properly, may not follow one who is unable to recite Al-Fātiḥah properly, irrespective of him being unable to recite other verses properly beside Al-Fātiḥah or not.

[84] The follower's ṣalāh is invalid if his heel is in front of the imām's. His heel should be behind the imām's heel, even if it be a little, but not more than three arms length, in which case, the merit of jamāʿah is lost.

[85] Whether by seeing the imām, or hearing his *muballigh* (the person who repeats the imām's takbīr in a loud voice so people can hear).

[86] Whenever an imām leads a follower in a masjid, the jamāʿah is valid even if they are at a distance from each other. Multiple interconnected

8. The maʾmūm intends to follow the imām or the congregation.[88]
9. The imām and the maʾmūm conform to each other in the movement of ṣalāh.[89]
10. The maʾmūm should not differ with the imām regarding those sunnahs which do not permit contradiction.[90]

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masjid openings unto each other are considered as one masjid. So too, is the masjid's outer courtyard, even when there is a walkway between the courtyard and masjid.

[87] When the imām and maʾmūm are not in a masjid, but are in an open expanse such as a desert or large house, their jamāʿah is valid as long as the distance between them does not exceed approximately 144 meters. If they are farther apart than this, their jamāʿah is not valid.

[88] The follower intends to follow the imām whether at the *takbīrat al-iḥrām* or thereafter. If the follower neglects to do so, his ṣalāh is as if he had performed it alone. It invalidates one's ṣalāh to purposely omit the intention to follow the imām while at the same time praying behind him and following his motions by awaiting them for a long period of time. Awaiting the motion of the imām for a short period of time or performing one's own ṣalāh simultaneously with his does not invalidate it.

[89] A person who is offering a farḍ ṣalāh cannot follow a person who is offering a *salat al-kusuf* (eclipse ṣalāh). The jamāʿah is valid when (1) the imām is performing a farḍ ṣalāh and the follower is performing a nafl ṣalāh or vice versa, (2) the imām is performing the Ẓuhr and the follower is praying the ṣubh or vice versa, (3) the imām is praying while sitting and the follower is praying standing, or vice versa and, (4) the imām is performing qaḍāʾ ṣalāh while the follower is performing his current one or vice versa.

[90] If the imām omits a sunnah that the maʾmūm cannot add without considerably lagging behind, such as the first tashahhud, then it is unlawful for the maʾmūm to perform the missing sunnah. He must follow the imām. If he performs it anyway intentionally knowing that it is unlawful, it invalidates his ṣalāh. If the sunnah omitted by the imām can be done without much of a lag, such as *jilsat al-istirāḥah*, then the

11.The maʾmūm should follow his imām.[91]

فصل : صُوَرُ الْقُدْوَةِ تِسْعٌ :

تَصِحُّ فِي خَمْسٍ :

(1) قُدْوَة رَجُلٍ برَجُلٍ (2) وَقُدْوَة امْرَأَةٍ بِرَجُلٍ (3) وَقُدْوَة خُنْثَى برَجُلٍ (4) وَقُدْوَة امْرَأَةٍ بِخُنْثَى (5) وَقُدْوَة امْرَأَةٍ بِامْرَأَةٍ .

Section: The Forms of Following the Imām are Nine:

Five of which are valid:

1. For a male to follow a male.
2. For a female to follow a male.
3. For a hermaphrodite to follow a male.
4. For a female to follow a hermaphrodite.
5. For a female to follow a female.

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maʾmūm may add it without ceasing his participation in the jamāʿah. This also applies to when the imām omits the Qunūt in Subh ṣalāh, which the maʾmūm may perform it if he can catch up with the imām before the imām raises his head from second sajdah. If the imām raises his head before the maʾmūm makes sajdah even once and he has not intended to cease his participation in the jamāʿah, then the maʾmūm´s ṣalāh is invalid.

[91] It invalidates one's ṣalāh to say *takbīrat al-iḥrām* simultaneously with the imām, or to be uncertain as to whether one did so or not. It is makrūh to perform some other part of the ṣalāh simultaneously with the imām, thereby losing the merit of jamāʿah.

وتَبْطُلُ فِي أَرْبَعٍ :

(1) قُدْوَة رَجُلٍ بِامْرَأَةٍ (2) وَقُدْوَة رَجُلٍ بِخُنْثَى (3) وَقُدْوَة خُنْثَى بِامْرَأَةٍ (4) وَقُدْوَة خُنْثَى بِخُنْثَى .

Four of which are invalid:

1. A man following a woman.
2. A man following a hermaphrodite.
3. A hermaphrodite following a woman.
4. A hermaphrodite following a hermaphrodite.

فصل : شُرُوطُ جَمْعِ التَّقْدِيمِ أَرْبَعَةٌ :

(1) البَداءَةُ بِالأُولَى (2) وَنِيَّةُ الْجَمْعِ فِيهَا (3) وَالـــمُوَالاةُ بَيْنَهُمَا (4) وَدَوامُ الْعُذْرِ .

Section: The Conditions of Jamaʿ Taqdīm[92] are Four:

1. To begin with the first ṣalāh.[93]
2. To intend joining the ṣalāhs.[94]

[92] It is permissible to join Ẓuhr ṣalāh and ʿAsr ṣalāh during the time of either of them. Similarly it is permissible to join the Maghrīb ṣalāh and Isha ṣalāh, provided one joins them during a journey in which ṣalāh may be shortened or because of severe rain.

[93] If one prays the second of the two ṣalāhs before the first, then that ṣalāh is invalid and must be repeated after the first, if one still wants to join them.

3. Performing them consecutively.[95]
4. The continuity of the excuse.[96]

فصل : شُرُوطُ جَمْعِ التَّأخِيرِ اثْنَانِ :

(1) نِيَّةُ التَّأخِيرِ وَقَدْ بَقِيَ مِنْ وَقْتِ الأُولَى مَا يَسَعُهَا (2) وَدَوامُ الْعُذْرِ إِلَى تَمَامِ الثَّانِيَةِ .

Section: The Conditions of Jamaʿ Taʾkhīr are Two:

1. To have the intention of delaying a ṣalāh up-to after its time and to have this intention in its proper time.[97]
2. The remaining of the excuse until the completion of the second ṣalāh.

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[94] That the intention to join the two ṣalāhs occurs before finishing the first, either coinciding with the *takbīrat al-iḥrām* or occurring during the ṣalāh.
[95] Not to pause at length between them.
[96] That continues until one finishes both ṣalāhs.
[97] To make the intention before the end of the first ṣalāh's time by an interval which could contain at least one rakʿah. If one neglects this intention, one has sinned, and praying the first ṣalāh during the second ṣalāh's time is considered qaḍāʾ.

فصل : شُرُوطُ الْقَصْرِ سَبْعَةٌ :

(1) أَنْ يَكُونَ سَفَرُهُ مَرْحَلَتَينِ (2) وَأَنْ يَكُونَ مُبَاحا (3) وَالْعِلْمُ بِجَوَازِ الْقَصْرِ (4) وَنِيَّةُ الْقَصْرِ عِنْدَ الإِحْرَامِ (5) وَأَنْ تَكُونَ الصَّلاةُ رُبَاعِيَّةً (6) وَدَوَامُ السَّفَرِ إِلَى تَمَامِهَا (7) وَأَنْ لا يَقْتَدِيَ بِمُتِمٍّ فِي جُزْءٍ مِنْ صَلاتِهِ .

Section: The Conditions of Qaṣr (to shorten the ṣalāh)[98] are Seven:

1. His journey should be at least two marhalahs[99] (approximately 81 kilometers one way).
2. The journey should be a permissible one in Sharīʿah.[100]
3. Knowledge of the permissibility of *qaṣr*.
4. Intention of *qaṣr* during *takbīrat al-iḥrām*.[101]
5. The ṣalāh should be a four rakʿahs ṣalāh.

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[98] It is permissible to shorten the Ẓuhr, ʿAsr, and Isha ṣalāh to two rakʿahs each. To shorten the ṣalāh of a musāfir (except a sailor and a perpetual traveller) is more virtuous if the journey reaches three marhalahs.

[99] The journey's destination must be known. If a wife travelling with her husband or a soldier with his leader does not know the destination, they may not shorten their ṣalāh as long as they have not yet travelled the distance that permits shortening. When they have travelled it, then only may they shorten it. If they know the destination and the journey meets the condition, then they may shorten their ṣalāhs from the beginning of the journey.

[100] Travelling for a reason that is not disobedience to Allah ﷻ as there is no concession to shorten ṣalāh on such a journey.

[101] It not being valid if made after *takbīrat al-iḥrām*.

6. The continuity of travel till the completion of the two rakʿah ṣalāh.[102]
7. That he should not follow one who is performing ṣalāh completely in any portion of his ṣalāh.

[102] The ṣalāh takes place from start to finish while on the journey. If one's vehicle arrives before the ṣalāh is completed, one will have to perform the full ṣalāh.

Salat al-Jumuʿah

فصل : شُرُوطُ الْجُمُعَةِ سِتَّةٌ :

(1) أَنْ تَكُونَ كُلُّهَا فِي وَقْتِ الظُّهْرِ (2) وَأَنْ تُقَامَ فِي خِطَّةِ الْبَلَدِ (3) وَأَنْ تُصَلَّىٰ جَمَاعَةً (4) وَأَنْ يَكُونُوا أَرْبَعِينَ أَحْرَاراً ذُكُوراً بَالِغِينَ مُسْتَوْطِنِينَ (5) وَأَنْ لا تَسْبِقَهَا وَلا تُقَارِنَهَا جُمُعَةٌ فِي تِلْكَ الْبَلَدِ (6) وَأَنْ يَتَقَدَّمَهَا خُطْبَتَانِ .

Section: The Conditions of Jumuʿah[1] are Six:

1. The complete ṣalāh be performed in the time of Ẓuhr.[2]
2. It should be within a district of the town.[3]
3. To perform the ṣalāh in congregation.
4. There should be forty free males who are mature and permanent residents of the town.[4]
5. No other congregation of Jumuʿah in the same town should be offered either before it or at the same time.[5]

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[1] To attend the ṣalāh of Jumuʿah is farḍ ʿayn. It is the most virtues of ṣalāh, and its day, Jumuʿah, is the best day of the week.

[2] If the jamāʿah commenced the Jumuʿah ṣalāh late and they doubt before commencing if they will be able to finish it within its time, then they must begin it as a Ẓuhr ṣalāh.

[3] In places where there is no hardship upon anyone to pray at one location.

[4] Permanent residents means that they live there and do not leave except when they need to. The minimum according to Imām Abū ḥanīfah *rahimahullah* is three participants besides the imām.

6. To deliver two khuṭbahs before the ṣalāh.

Note: Sunan and Adab of Jumuʿah:

- It is mustaḥab to perform a sunnah bath and makrūh not to do so before going to the Jumuʿah ṣalāh, though it may be performed anytime after dawn.
- It is also mustaḥab to clean the teeth with miswāk, trim the nails, remove body hair, eliminate offensive odours, and wear perfume and one's finest clothes (white being the best).
- To arrive early to the masjid, the best time being from dawn on.
- To come on foot in tranquility and dignity, and not to ride to the masjid unless there is an excuse.
- To sit near to the imām and to recite dhikr, Qurʾān and ṣalāh in abundance upon Nabi ﷺ.
- It is recommended to recite *Sūrah al-Kahf* and ṣalāh upon Nabi ﷺ on the night before Jumuʿah and during its day.
- It is recommended to supplicate to Allah ﷻ excessively on Jumuʿahs, seeking the moment when duʿās are answered.

[5] There be no other Jumuʿah ṣalāh prior to or simultaneous with the *takbīrat al-iḥrām* of the ṣalāh. That jamāʿah where the intention was made later, will have to perform Ẓuhr ṣalāh.

فصل : أَرْكانُ الْخُطْبَتَينِ خَمْسَةٌ :

(1) حَمْدُ اللَّـــهِ فِيهِمَا (2) وَالصَّلاةُ عَلَى النَّبِيِّ ﷺ فِيهِمَا (3) وَالْوَصِيَّةُ بِالتَّقْوَى فِيهِمَا (4) وَقِرَاءَةُ آيَةٍ مِنَ الْقُرْآنِ فِي إِحْدَاهُمَا (5) وَالدُّعَاءُ لِلْمُؤْمِنِينَ وَالـــمُؤْمِنَاتِ فِي الأَخِيرَةِ .

Section: The Integrals of the Two Khuṭbahs are Five:

1. Praising Allah ﷻ in both the khuṭbahs.[6]
2. Ṣalāh upon Nabi ﷺ in both the khuṭbahs.[7]
3. Enjoining taqwa in both the khuṭbahs.[8]
4. Recitation of one verse of the Qurʾān in one of the khuṭbahs.[9]
5. To make duʿā for the believers, males and females in the second khuṭbah.[10]

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[6] Saying "*Alhamdulillah*" (praise be to Allah) i.e. this particular utterance being prescribed.

[7] Ṣalāh upon Nabī ﷺ (Blessings on the Prophet ﷺ), which is also a prescribed utterance.

[8] Enjoining taqwa (fear of Allah ﷻ), for which a particular expression is not prescribed, it being sufficient to say, "Obey Allah".

[9] That conveys an intended meaning, such as a promise, threat, exhortation, or similar.

[10] The duʿā must be for their ākhirah (hereafter) as duʿās for this world alone do not fulfil the integral of the khuṭbah.

فصل : شُرُوطُ الْخُطْبَتَيْنِ عَشَرَةٌ :

(1) الطَّهارَةُ عَنِ الْحَدَثَيْنِ الأَصْغَرِ وَالأَكْبَرِ (2) وَالطَّهَارَةُ عَنِ النَّجَاسَةِ فِي الثَّوْبِ وَالْبَدَنِ وَالْمَكانِ (3) وَسَتْرُ الْعَوْرَةِ (4) وَالْقِيَامُ عَلَى الْقَادِرِ (5) وَالْجُلُوسُ بَيْنَهُمَا فَوْقَ طُمَأْنِينَةِ الصَّلاةِ (6) وَالْمُوَالاةُ بَيْنَهُمَا (7) وَالْمُوَالاةُ بَيْنَهُمَا وَبَيْنَ الصَّلاةِ (8) وَأَنْ تَكُونَ بِالْعَرَبِيَّةِ (9) وَأَنْ يَسْمَعَهَا أَرْبَعُونَ (10) وَأَنْ تَكُونَ كُلُّهَا فِي وَقْتِ الظُّهْرِ .

Section: The Conditions for Delivering the Two Khuṭbahs are Ten:

1. Purity from minor and major ritual impurities.[11]
2. Purity from impurity on the clothes, body and place.
3. Covering the ʿawrah (private parts).[12]
4. To stand; this applies to those who have the ability to.
5. To sit between the two khuṭbahs for the duration that one pauses between two postures in ṣalāh.
6. Continuity between the two khuṭbahs.

[11] If the khāṭib (speaker) breaks his wuḍūʾ during khutbah, the khutbah has to be repeated. But there is no harm if the khāṭib breaks his wuḍūʾ after delivering both the khutbahs and before performing ṣalāh.

[12] The khāṭib's ʿawrah (private parts) should be covered. However, this is not a condition for the listener (for the validity of the khutbah). Similarly, the conditions of purity, to be in the place of ṣalāh and to understand the khutbah are not conditions for the maʾmūm.

7. Continuity between the two khuṭbahs and the ṣalāh.[13]
8. The khuṭbah should be in the Arabic language.[14]
9. Forty people should hear the khuṭbah.[15]
10. It should be done in the time of Ẓuhr.

[13] The pause between these integrals should not be too long but should rather be according to the common understanding of people and not more than the shortest two rakʿahs of ṣalāh.
[14] All the integrals of the khuṭbah should be in the Arabic Language.
[15] Forty people including an imām.

Note: The Sunan of the Khuṭbah:

- The Khāṭib (speaker) stand on a *minbar* (pulpit) or a high place and that it be to the right of the *miḥrab* (prayer niche) and that the khāṭib stand on the right side of the minbar.
- The khāṭib says, "Assalāmu ʿalaykum" to those present when he enters the masjid and again when he ascends the minbar and reaches his seat there.
- The khāṭib sits until the *muadhdhīn* has completed the second adhān.
- When speaking, the khāṭib lean on a sword, bow or stick which is in his left hand. It is desirable for him to put his other hand on the minbar. If he does not have a sword or the like, he keeps his hand still by placing the right upon the left, or dropping them to his sides. He does not move them or fidget with one, as the aim is stillness and humility.
- The khāṭib face the jamāʿah during both khuṭbahs and should not turn to the right or left during the khuṭbahs, for it is a reprehensible innovation. It is desirable for the listener to face the khāṭib.

Janazah

فصل : الَّذِي يَلْزَمُ لِلْمَيِّتِ أَرْبَعُ خِصَالٍ :

(1) غُسْلُهُ (2) وَتَكْفِينُهُ (3) وَالصَّلاةُ عَلَيْهِ (4) وَدَفْنُهُ .

Section: There are Four Things Compulsory for the Preparation of the Deceased:[1]

1. To wash the deceased.[2]
2. To shroud the deceased.[3]
3. To perform ṣalāh upon the deceased.[4]
4. To bury the deceased.[5]

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[1] For the Muslim deceased who did not die in the state of iḥrām nor as a martyr. When a person dies, it is mustaḥab (recommended) that his closest maḥram (unmarriageable kin) closes his eyes and jaws in order to make his joints flexible, gently removes his clothes and covers him with a light cloth and places something heavy on his stomach.

[2] It is mustaḥab that the one washing the deceased be trustworthy so that he can be relied on to wash the deceased completely and so forth. If he notices something good, it is sunnah to mention it, but if he notices something bad, it is unlawful to mention it as this is backbiting.

[3] It is ḥarām to look at the ʿawrah of the deceased or touch it except with a cloth. It is mustaḥab not to look at or directly touch the other parts of the body save with a cloth.

[4] It is wājib to perform ṣalāh over the deceased. However, it is ḥarām to give a bath and to offer ṣalāh upon a martyr. The obligation is fulfilled if a single Muslim male who has reached the age of *mumayyiz* (discrimination) prays over the deceased. It is recommended to perform the janazah ṣalāh (funeral prayer) in a jamāʿah (group). It is mustaḥab to pray it at a masjid and makrūh to offer the ṣalāh at a cemetery.

فصل : أَقَلُّ الْغُسْلِ تَعْمِيمُ بَدَنِهِ بِالْمَاءِ وَأَكْمَلُهُ أَنْ يَغْسِلَ سَوْأَتَيْهِ ، وَأَنْ يُزِيلَ الْقَذَرَ مِنْ أَنْفِهِ ، وَأَنْ يُوَضِّئَهُ وَأَنْ يَدْلُكَ بِالسِّدْرِ ، وَأَنْ يَصُبَّ بِالْمَاءِ عَلَيْهِ ثَلاثا .

Section: The **minimum** wash is to pass water over the entire body and the **best** is to wash the private organs, to remove filth from the nose, to wash the limbs of wuḍūʾ, to rub the body with lotus leaves and to pour water over the body thrice.[6]

[5] Then the deceased is buried obligatorily. It is best to bury him in the cemetery.

[6] It is wājib for the one washing the deceased to cover the ʿawrah of the deceased. It is sunnah that no one be present except him (one washing) and his assistant. Incense should be burned from the start of washing till the finish. It is best to wash the body under a roof, and best that cold water be used, heating it when necessary so as to remove filth that could not otherwise be removed or when the weather is cold, since the deceased suffers from it just as a living person would.

فصل : أَقَلُّ الْكَفَنِ ثَوْبٌ يَعُمُّهُ ، وَأَكْمَلُهُ لِلرَّجُلِ ثَلاثُ لَفَائِفَ ، وَلِلْمَرْأَةِ قَمِيصٌ وَخِمَارٌ وَإِزَارٌ وَلِفَافَتَانِ .

Section: The minimum shrouding is one cloth that covers the whole body. The perfect shroud for a male is three cloths and for a female, a shirt, a scarf, an upper garment and two cloths.[7]

[7] It is mustaḥab to scent the shroud with incense, to sprinkle on it an aromatic compound of camphor, reed perfume etc., to place cotton and perfume on the apertueres of the body such as the eyes, mouth, nostril, and ears and on places that touch the ground in prostration, and to perfume the entire body except if a person dies while in a state of iḥrām .

فصل : أَرْكَانُ صَلاةِ الْجَنَازَةِ سَبْعَةٌ :

الأَوَّلُ النِّـــيَّـــةُ **الثَّانِي** أَرْبَعُ تَكْبِيرَاتٍ **الثَّالِثُ** الْقِيَامُ عَلَى الْقَادِرِ **الرَّابِـــعُ** قِرَاءَةُ الْفَاتِحَةِ **الْـــخَامِسُ** الصَّلاةُ عَلَى النَّبِيِّ ﷺ بَعْدَ الثَّانِيَةِ **السَّادِسُ** الدُّعَاءُ لِلْمَيِّتِ بَعْدَ الثَّالِثَةِ **السَّابِعُ** السَّلامُ .

Section: The Integrals of ṣalāh Janazah (Funeral Prayer) are Seven:[8]

1. Intention.[9]
2. Four takbirs.[10]
3. To stand for those who are able.
4. Recitation of Sūrah al-Fātiḥah.[11]
5. Ṣalāh upon Nabi ﷺ after the second takbir.[12]

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[8] The conditions of janāzah ṣalāh (funeral prayer) are the same as other ṣalāh, but in addition require: that the deceased's body has been washed before the ṣalāh and that the imām and the maʾmūm do not stand ahead of the body during the ṣalāh.

[9] It suffices that one merely intends to pray four takbīrs over the particular deceased person as a farḍ kifāyah act. The intention must coincide with the *takbīrat al-iḥrām*.

[10] One says, "*Allahu Akbar*", four times in the janāzah ṣalāh, raising one's hand to shoulder level at each one, and it is mustaḥab each time to fold the right hand over the left.

[11] After *takbīrat al-iḥrām*, it is wājib to recite Sūrah al-Fātiḥah. It is mustaḥab to recite taʿawwudh before it and "*Amin*" after it, but not to recite the "*duʿā iftitah*" or a sūrah therein.

[12] It is wājib to recite ṣalāh upon Nabī ﷺ after which it is sunnah to supplicate for the believer. It is also sunnah to recite ṣalāh upon the

6. Duʿā for the deceased after the third takbir.[13]
7. Salām.[14]

فصل : أَقَلُّ الدَّفْنِ حُفْرَةٌ تَكْتُمُ رَائِحَتَهُ وَتَحْرُسُهُ مِنَ السِّبَاعِ ، وَأَكْمَلُهُ قَامَةٌ وَبَسْطَةٌ ، وَيُوضَعُ خَدُّهُ عَلَى التُّرَابِ وَيَجِبُ تَوْجِيهُهُ إِلَى الْقِبْلَةِ .

Section: The **minimum depth** for a grave is a hole that conceals the odour of the body and protects it from animals. The **perfect depth** is the height of a man with his arms raised and fingers open, his chest should be placed on the soil, and it is wājib to make him (the deceased) face the qiblah.[15]

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family of Rasulullah ﷺ and to say, "*Alhamdulillah*" before the ṣalāh upon Nabī ﷺ.

[13] The supplication for the deceased, the minimum being, "O Allah, forgive this deceased".

[14] Then one says, *"Assalāmu ʿalaykum"* twice, the first being wājib and the second sunnah.

[15] It is mustaḥab for the person burying the deceased: (1) to say, *"Bismillahi wa ʿala millati Rasūlillah* ﷺ*"*, (2) to supplicate to Allah for the forgiveness of the deceased, (3) to place a block as a pillow for him and to pull-back the shroud enough to lay his cheek directly on the surface of the block and, (4) to place the deceased upon his right side.

فصل : يُنْبَشُ الـــمَيِّتُ لأَرْبَعِ خِصَالٍ :

(1) لِلْغُسْلِ إِذَا لَمْ يَتَغَيَّرْ (2) وَلِتَوْجِيهِهِ إِلَى الْقِبْلَةِ (3) وَلِلمَالِ إِذَا دُفِنَ مَعَهُ (4) وَلِلمَرْأَةِ إِذَا دُفِنَ جَنِينُهَا مَعَهَا وَأَمْكَنَتْ حَيَاتُهُ .

Section: There are Four Factors That Permit the Exhumation of the Deceased:

1. To give a bath as long as the (body of the) deceased has not decomposed.[16]
2. To make the deceased face towards the qiblah.[17]
3. For wealth if it was buried with the deceased.[18]
4. For a woman when her foetus is buried with her and there is a possibility that it is still alive.[19]

[16] It is wājib to exhume a deceased who was buried without been given a bath or tayammum contrary if the deceased was buried without being shrouded. In such a case he should not be exhumed.
[17] As long as the body of the deceased has not decomposed.
[18] It is wājib to exhume a deceased even after the body of the deceased has decomposed; to take that wealth that has been buried with the deceased whether the owner demands it or not.
[19] That foetus which is six months of age or more because it is necessary to remove a living baby from the womb of the deceased before burial.

فصل : الاسْتِعَانَاتُ أَرْبَعُ خِصَالٍ :

(1) مُبَاحَةٌ (2) وَخِلافُ الأَوْلَى (3) وَمَكْرُوهَةٌ (4) وَوَاجِبَةٌ .

فَالْمُبَاحَةُ هِيَ تَقْرِيبُ الْمَاءِ **وَخِلافُ الأَوْلَى** هِيَ صَبُّ الْمَاءِ عَلَى نَحْوِ الْمُتَوَضِّىءِ

وَالْمَكْرُوهَةُ هِيَ لِمَنْ يَغْسِلُ أَعْضَاءَهُ **وَالْوَاجِبَةُ** هِيَ لِلْمَرِيضِ عِنْدَ الْعَجْزِ .

Section: There are Four Rulings for Seeking Assistance:

1. Permissible.
2. Undesirable.
3. Makrūh (disliked).
4. Wājib (compulsory).

- **It is permissible** to ask for water to be brought close.[20]
- **It is undesirable** to ask for water to be poured towards the one making wuḍūʾ.[21]
- **It is makrūh** for someone else to wash the limbs.
- **It is wājib** for a sick person who is incapable.[22]

[20] For the purpose of making wuḍūʾ.

[21] Because this is the ʿ*ibadah* (act of worship), it is preferable to show the humility and slavery in the ʿibadah and this is attained by doing it by oneself.

[22] It is wājib for one who is incapable to seek assistance even though by paying the normal salary for that task.

Zakah

Zakah

فصل : الأَمْوَالُ الَّتِي تَلْزَمُ فِيهَا الزَّكاةُ سِتَّةُ أَنْوَاعٍ :

(1) النَّعَمُ (2) وَالنَّقْدَانِ (3) وَالْمُعَشَّرَاتُ (4) وَأَمْوَالُ التِّجَارَةِ وَاجِبُهَا رُبْعُ عُشْرِ قِيمَةِ عُرُوضِ التِّجَارَةِ (5) وَالرِّكَازُ (6) وَالْمَعْدِنُ.

Section: The Wealth upon Which Zakāh is Compulsory are Six Types:[1]

1. Livestock.[2]
2. Money.[3]
3. Crops.[4]

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[1] Zakāh is wājib on every Muslim (male, female, adult or child) who has possessed a zakāh-payable amount for one lunar year.

[2] Zakāh on livestock is limited to camels, cattle, sheep and goats. Zakāh is wājib when one has owned (1) a zakāh-payable number of livestock, (2) for one lunar year and (3) has been grazing them on unowned open range pasturage for the entire year. There is no zakāh on cattle that were fed fodder or grain only even if they could have otherwise been grazed.

[3] Zakāh is wājib for anyone who has possessed the zakāh-payable amount of gold or silver for one lunar year. Niṣab, the minimum that necessitates zakāh for gold is 20 mithqals (84.8 grams), on which 2.5% is due and for silver is 200 dirhams (594 grams), on which 2.5% is due. While there is a considerable difference between the value of the gold and silver zakāh minimum, the minimum for monetary currency should correspond with that of silver, since it is more beneficial for the poor.

[4] The zakāh for crops is only on the staple types that people cultivate, dry, and store, such as wheat, barley, millet, rice etc. There is no zakāh on fruit except for raw dates and grapes. There is no zakāh on vegetables nor is there zakāh on seasonings such as cumin or coriander

4. Wealth acquired from business in which two and half percent of the value of the commodity should be discharged.[5]
5. Treasure troves.[6]
6. Mines.[7]

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since the aim in using them is preparation of food, not nourishment. The minimal quantity on which zakāh is payable for crops is 618.8 kilograms of net dried weight, free of husks or chaff. The zakāh for crops that have been watered without effort, as by rain and the like, is 10 percent of the crop. The zakāh for crops that have been watered with effort, such as on land irrigated by ditches is 5 percent of the crop.
One is obligated to pay zakāh as soon as one possesses the zakāh-payable amount of grain, or when the ripeness and wholeness of a zakāh-payable amount of dates or grapes is apparent, otherwise, one is not obligated.

[5] Zakāh on trade goods is wājib for anyone who: (1) has possessed trade goods for a year, (2) whose value at the zakāh year's end equals or exceeds the zakāh minimum of gold or silver, (3) that the trade goods have been acquired through a transaction, or received as a gift given in return for something else, or such as an article rented from someone in order to rent them out to others at a profit, or land rented from someone in order to rent it out to others at a profit and, (4) that at the time of acquisition, the owner intended to use the goods for trade.

[6] An immediate zakāh of twenty percent is due when one finds a treasure trove that was buried in pre-Islamic time or by non-Muslims, ancient or modern, if it amounts to the zakāh minimum and the land is not owned. If such a treasure is found on owned land, it belongs to the owner of the land. If found in a masjid or street, or if it was buried in Islamic times, it is considered as a lost and found article.

[7] A zakāh of 2.5 percent is immediately due on (1) the zakāh minimum or more of gold or silver (excluding anything else such as iron, lead, crystal, emerald, or other, on which there is no zakāh), (2) extracted from a mine located on land permissible for the miner to work or owned by him, and, (3) that this amount of ore has been gathered by working at the site one time, or several times uninterrupted by abandoning or neglecting the project. The zakāh is only paid after the ore is refined into metal.

Note: The Zakāh of ʿEid al-Fiṭr:

- The zakāh of ʿEid al-Fiṭr is wājib for every free Muslim, male, female or child, provided that one has the necessary amount of food (2.036 kgs of wheat) or in money value thereof for the day of ʿEid for himself and those whom one is obliged to support, what one needs to clothe them, and in excess of one's debts and housing expenses.
- The Zakāh of ʿEid al-Fiṭr becomes wājib when the sun sets on the night before the ʿEid.
- The zakāh of ʿEid al-Fiṭr consists of 2.036 kgs of the main staple of the area in which it is given, of the kinds of crops on which zakāh is payable (if the main staple is bread, only wheat may be given).
- It is permissible to give the zakāh of ʿEid al-Fiṭr to deserving recipients anytime during Ramaḍān, though the best time is on the day of ʿEid al-Fiṭr before the ṣalāh. It is not permissible to delay giving it until after the day of the ʿEid, that is one may give it until sunset, and is a sin to delay until after this, and one must make it up.

Note: The Eight Categories of Recipients:

1. *Faqīr* (destitute) – someone who does not have wealth or earning that is sufficient for himself.
2. *Miskīn* (poor) – someone who has something to spend for his needs but it is not sufficient.
3. *ʿĀmil* – Zakāh collector.
4. *Muallafat al-qulūb* – those whose hearts are to be reconciled.
5. *Riqāb* – those slaves who are purchasing their freedom.
6. Those in debt
7. *Sabīlullah* (those fighting for Allah) – people enganged in Islāmic military operations for whom no salary has been allotted in the army roster.
8. *Ibn al-sabīl* – the traveller in need of money.

Saum

Saum

فصل : يَجِبُ صَوْمُ رَمَضَانَ بِأَحَدِ أُمُورٍ خَمْسَةٍ :

أَحَدُهَا بِكَمَالِ شَعْبَانَ ثَلاثِينَ يَوْما **وَثَانِيهَا** بِرُؤْيَةِ الْهِلالِ فِي حَقِّ مَنْ رَآهُ وَإِنْ كَانَ فَاسِقا **وَثَالِثُهَا** بِثُبُوتِهِ فِي حَقِّ مَنْ لَمْ يَرَهُ بِعَدْلِ شَهَادَةٍ **وَرَابِعُهَا** بِإِخْبَارِ عَدْلِ رِوَايَةٍ مَوْثُوقٍ بِهِ سَوَاءٌ وَقَعَ فِي الْقَلْبِ صِدْقُهُ أَمْ لا أَوْ غَيْرِ مَوْثُوقٍ بِهِ إِنْ وَقَعَ فِي الْقَلْبِ صِدْقُهُ **وَخَامِسُهَا** بِظَنِّ دُخُولِ رَمَضَانَ بِالاجْتِهَادِ فِيمَنِ اشْتَبَهَ عَلَيْهِ ذَلِكَ .

Section: Fasting of Ramaḍān Becomes Compulsory With the Attainment of One of Five Things:

1. On completion of thirty days of Shaʿban.
2. By sighting the moon for the person who sees it, even though he is a *fāsiq* (sinner).[1]
3. The testimony of a just person (non-fāsiq) for those who do not sight it.[2]

[1] For those who do not see it, it only becomes wājib when the sighting is established by the testimony of an upright witness.

[2] The testimony of a single witness that the new moon has been seen is sufficient to establish that the month of Ramaḍān has come, provided the witness is upright (male, and responsible for the duties of Islam which excludes boys who have reached the age of discernment but not puberty) and together with the decree of the ruler.

4. The informing of a just person whose information is reliable, whether the heart is inclined to it being or not, and also with the information of an unreliable source if one is inclined to it being true.
5. With the perception that Ramaḍān has commenced (this is) for that person who is doubtful of it.[3]

[3] If it is difficult to learn which month it is, for someone imprisoned or the like such as someone being held in a dark place who cannot tell night from day, or someone who does not know when Ramaḍān has come because of being in a land without habituations or people who know when it is, then such a person is obliged to reckon Ramaḍān as best as he can and to fast it. Such a fast is valid if it remains unknown as to whether the month fasted actually coincided with Ramaḍān, or if it did coincide with it, or if the month fasted occurred after it, though if the month fasted was before Ramaḍān, it is not valid.

فصل : شَرْطُ صِحَّتِهِ أَرْبَعَةُ أَشْيَاءَ :

(1) إِسْلامٌ (2) وَعَقْلٌ (3) وَنَقَاءٌ مِنْ نَحْوِ حَيْضٍ (4) وَعِلْمٌ بِكَوْنِ الْوَقْتِ قَابِلاً لِلصَّوْمِ .

Section: The Conditions for the Validity of Fasting are Four:

1. Islām .[4]
2. Sane.
3. Purity from haiḍ (menstruation).[5]
4. Knowledge of its appropriate time.

فصل : شَرْطُ وُجُوبِهِ خَمْسَةُ أَشْيَاءَ :

(1) إِسْلامٌ (2) وَتَكْلِيفٌ (3) وَإِطَاقَةٌ (4) وَصِحَّةٌ (5) وَإِقَامَةٌ .

[4] A non-Muslim will not be asked to fast nor would it be valid if he did, though he is punished in the next life for not doing so.

[5] A woman whose period ends during a day of Ramaḍān is mustaḥab to fast the rest of the day and is wājib to make-up the fast and the fast-days prior to it when missed during her period or postnatal bleeding.

Section: The Conditions for Fasting Becoming Wājib are Five:

1. Islām .
2. Mukallaf (reaching the age of puberty and sanity).[6]
3. Ability.[7]
4. Health.[8]
5. Muqīm (non traveller).[9]

فصل : أَرْكَانُهُ ثَلاثَةُ أَشْيَاءَ :

(1) نِيَّةٌ لَيْلا لِكُلِّ يَوْمٍ فِي الْفَرْضِ (2) وَتَرْكُ مُفْطِرٍ ذَاكِرا مُخْتَارا غَيْرَ جَاهِلٍ مَعْذُورٍ (3) وَصَائِمٌ .

[6] A child of seven is ordered to fast, and at ten is beaten for not fasting (not severely, but so to discipline the child, and not more than three blows).

[7] One is capable of bearing the fast. Someone whom fasting exhausts because of advanced years or having an illness from which he is unlikely to recover are not required to fast.

[8] The illness that permits not fasting being that which fasting would worsen, delay recovery from, or cause one considerable harm with, the same dispensation applying to someone who needs to take medicine during the day that breaks the fast and that he can not delay taking until night.

[9] It is permissible not to fast when traveling, even when the intention to fast has been made the night before, provided that the journey is at least 80.64 km one way, and that one leaves town before dawn. If one leaves after dawn, one is not entitled to omit the fast. It is preferable for travellers not to fast if fasting would harm them, though if not, then fasting is better.

Section: The Integrals of Fasting of Ramaḍān are Three:

1. To make an intention at night for each day of the farḍ (fast).
2. To refraining from intentionally doing things which break the fast, for the one who is conscious of his fast and is not ignorant.
3. The fasting person himself.

فصل :

وَيَجِبُ مَعَ الْقَضَاءِ لِلصَّوْمِ الْكَفَّارَةُ الْعُظْمَى وَالتَّعْزِيرُ عَلَى مَنْ أَفْسَدَ صَوْمَهُ فِي رَمَضَانَ يَوْماً كَامِلاً بِجِمَاعٍ تَامٍّ آثِمٍ بِهِ لِلصَّوْمِ .

وَيَجِبُ مَعَ الْقَضَاءِ الإِمْسَاكُ لِلصَّوْمِ فِي سِتَّةِ مَوَاضِعَ :

الأَوَّلُ فِي رَمَضَانَ لا فِي غَيْرِهِ عَلَى مُتَعَدٍّ بِفِطْرِهِ **وَالثَّانِي** عَلَى تَارِكِ النِّيَّةِ لَيْلاً فِي الْفَرْضِ **وَالثَّالِثُ** عَلَى مَنْ تَسَحَّرَ ظَانّا بَقَاءَ اللَّيْلِ فَبَانَ خِلافُهُ **وَالرَّابِعُ** عَلَى مَنْ أَفْطَرَ ظَانّا الغُرُوبَ فَبَانَ خِلافُهُ أَيْضاً **وَالْخَامِسُ** عَلَى مَنْ بَانَ لَهُ يَوْمُ ثَلاثِينَ مِنْ شَعْبَانَ أَنَّهُ مِنْ رَمَضَانَ **وَالسَّادِسُ** عَلَى مَنْ سَبَقَهُ مَاءُ الْمُبَالَغَةِ مِنْ مَضْمَضَةٍ وَاسْتِنْشَاقٍ .

Section:

Major kaffārah (expiation) and specified punishment are compulsory, together with making-up the fast for he who breaks his fast of Ramaḍān a complete day by having complete intercourse in which he becomes sinner in his fast.[10]

There are six situations in which it is compulsory for one to abstain from things which break the fast[11] and also necessitate the making-up of that fast later.

1. Breaking his fast with a wrong act from his side in the month of Ramaḍān only.[12]
2. Upon one who omits the intention at night for the farḍ fast.
3. Upon one who has *sahur* (a meal before dawn) thinking that the night still remains, but it was not so.
4. Upon one who breaks the fast thinking that the sun has set but it was not so.[13]

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[10] The legal occasion of the offense is the particular day of fasting, so that if it were committed on two separate days, two separate expiations would be necessary, though if it were committed twice in one day there would be only one expiation.
The expiation consist of freeing a sound Muslim slave, or if not possible, then to fast the days of two consecutive months. If this is not possible, then the expiation is to feed sixty poor persons (509 grams of food to each poor person). If one is unable to do this, the expiation remains as an unperformed obligation upon the person concerned.
The woman with whom intercourse is performed is not obliged to expiate it.

[11] Wājib to fast the remainder of the day.

[12] Like a person who is intoxicated from the night until the morning of Ramaḍān, it is binding for him to abstain from things which break the fast and also to recover that fast later.

5. Upon one who has reckoned the 30th of Shaʿbān to be the first of Ramaḍān.
6. Upon one who was excessive in gargling and in putting water into the nostrils to such an extent that the water goes down the throat.[14]

فصل : يَبْطُلُ الصَّوْمُ بِرِدَّةٍ وَحَيْضٍ وَنِفَاسٍ أَوْ وِلادَةٍ وَجُنُونٍ وَلَوْ لَحْظَةً وَبِإِغْمَاءٍ وَسُكْرٍ تَعَدَّى بِهِ إِنْ عَمَّا جَمِيعَ النَّهَارِ .

Section: Fasting is nullified with apostasy, menstruation, postnatal bleeding, childbirth, insanity even for a moment, unconsciousness and unlawful intoxicants if they last for the entire day.

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[13] It is best to hasten breaking the fast when one is certain that the sun has set.

[14] If some water slips down when a lot has not been used, it does not break the fast.

فصل : الإِفْطَارُ فِي رَمَضَانَ أَرْبَعَةُ أَنْوَاعٍ :

(1) وَاجِبٌ كَمَا فِي الْحَائِضِ وَالنُّفَسَاءِ (2) وَجَائِزٌ كَمَا فِي الْمُسَافِرِ وَالْمَرِيضِ (3) وَلا وَلا كَمَا فِي الْمَجْنُونِ (4) وَ مُحَرَّمٌ كَمَنْ أَخَّرَ قَضَاءَ رَمَضَانَ مَعَ تَمَكُّنِهِ حَتَّى ضَاقَ الْوَقْتُ عَنْهُ .

Section: The Breaking of the Fast in Ramaḍān are Four Types (In Respect to Rulings):

1. Wājib, like for a woman who experiences haiḍ and postnatal bleeding.
2. Permissible, like a traveller and a sick person.
3. That which is neither wājib nor permissible, like insanity.
4. Ḥarām, like he who delays the making-up of Ramaḍān despite having the capability to do so, until the time does not permit it.[15]

[15] Someone obliged to make-up some fast-days of Ramaḍān is recommended to do so consecutively and immediately. It is not permissible for a person with some unperformed fast-days of Ramaḍān to delay making them up until the next Ramaḍān unless there is an excuse for delaying.

وَأَقْسَامُ الإِفْطَارِ أَرْبَعَةٌ أَيْضا :

مَا يَلْزَمُ فِيهِ الْقَضَاءُ c وَالْفِدْيَةُ وَهُوَ اثْنَانِ **الأَوَّلُ** : الإِفْطَارُ لِخَوْفٍ عَلَى غَيْرِهِ **وَالثَّانِي** : الإِفْطَارُ مَعَ تَأْخِيرِ قَضَاءٍ مَعَ إِمْكَانِهِ حَتَّى يَأْتِيَ رَمَضَانُ آخَرُ **وَثَانِيهَا** : مَا يَلْزَمُ فِيهِ الْقَضَاءُ دُونَ الْفِدْيَةِ وَهُوَ يَكْثُرُ كَمُغْمى عَلَيْهِ **وَثَالِثُهَا** : مَا يَلْزَمُ فِيهِ الْفِدْيَةُ دُونَ الْقَضَاءُ وَهُوَ شَيْخٌ كَبِيرٌ **وَرَابِعُهَا** : لا ولا وَهُوَ الْمَجْنُونُ الَّذِي لَمْ يَتَعَدَّ بِجُنُونِهِ .

The Types of Breaking the Fast are Four:

1. The things that make qaḍāʾ and fidyah[16] wājib are two:
   - Breaking the fast due to the fear of harm for others.[17]
   - Breaking the fast and thereafter delaying to make-up for it until the next Ramaḍān comes.[18]
2. Those for which qaḍāʾ is compulsory but not the fidyah, like one who is unconscious.
3. Those for which fidyah is compulsory but not the qaḍāʾ, like a very old man.
4. That which is neither wājib nor permissible,[19] like the insane person who's insanity is not caused by transgression.

[16] One must pay 509 grams of food to the poor for each fast-day missed, in addition to making it up.

[17] A woman who is breast-feeding a baby or is pregnant and apprehends harm to herself or her child may omit the fast and make it up later, though if she omits it because of fear of harm for the child alone not for herself then she must give 509 grams of food in charity for each day missed as an expiation in addition to making-up each day.

[18] When making-up, if a fast-day is delayed until a second Ramaḍān comes, then one must pay an additional 509 grams to be paid for that day.

[19] A person who is forced, his fast will not break because he is not responsibled for what he has been forced to do.

فصل : الَّذِي لا يُفْطِرُ مِمَّا يَصِلُ إِلَى الْجَوْفِ سَبْعَةُ أَفْرَادٍ :

(1) مَا يَصِلُ إِلَى الْجَوْفِ بِنِسْيَانٍ (2) أَوْ جَهْلٍ (3) أَوْ إِكْرَاهٍ (4) وَبِجِرْيَانِ رِيقٍ بِمَا بَيْنَ أَسْنَانِهِ وَقَدْ عَجَزَ عَنْ مَجِّهِ لِعُذْرِهِ (5) وَمَا وَصَلَ إِلَى الْجَوْفِ وَكَانَ غُبَارَ طَرِيقٍ (6) وَمَا وَصَلَ إِلَيْهِ وَكَانَ غَرْبَلَةَ دَقِيقٍ (7) أَوْ ذُبَابا طَائِراً أَوْ نَحْوَهُ .

Section: The Things Which by Reaching the Stomach, Do Not Break the Fast are Seven:

1. – 3. That which reaches the body cavity[20] out of forgetfulness, ignorance or force.[21]

4. The mixing of saliva with what is between the teeth[22] and he is unable to discharge it, he is therefore excused.

5. The dust of the road which reaches to the body cavity.

6. - 7. The dust of sifted flour or flies etc. which reach the body cavity.

[20] Through an open passage-way

[21] The deliberate intake of anything besides air or saliva into the body cavity breaks the fast.

[22] Food etc. provided this is after having cleaned between them after eating, by using a toothpick or the like between them.

Hajj and ʿUmrah

Hajj and 'Umrah.

The Conditions for Ḥajj being Wājib are Six:

1. Islām.
2. Sanity.
3. Reached puberty.
4. Free person.
5. The way towards Makkah is safe.[1]
6. Having ability (Sufficient provision and conveyance for the journey).[2]

[1] Safety for one's person and property from predators and enemies, whether the latter be non-Muslims or highway robbers, even when the amount is inconsiderable including ḥajj fees.

[2] To be able to pay for the provision and transportation for the journey, with money one has that is in excess of the amount one requires to support and cloth the members of one's family. This applies to one who is travelling there and back, and while obtaining lodgings for oneself, and that is in excess of any money one owes for debts, even those not yet due. It is also a condition that one have sufficient time to travel to Makkah al-Mukarramah means that one can reach Makkah and having sufficient time to perform all the rituals of ḥajj.

The Integrals of Ḥajj are Six:

1. ***Iḥrām*** – to make the intention of performing ḥajj in the heart and to recite the talbiyah.
2. ***Wuqūf*** – To stay in ʿArāfah; even if it be for a little while after zawāl of the 9th of Dhul Ḥijjah until the dawn of the 10th of Dhul Ḥijjah.
3. To make "***ṭawaf al-Ifāḍah***" which is performed after the stay in ʿArāfah.[3]
4. ***Saʿī*** **-** going between ṣafā and Marwah.[4]
5. ***Ḥalq*** – shaving or shortening the hair.[5]
6. ***Tartīb*** (sequence).

The Integrals of ʿUmrah are Five:

1. IḤrām – to make the intention of performing ʿumrah in the heart.
2. To make ṭawaf of ʿumrah.

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[3] On the 10th Dhul ḥijjah, one enters Makkah and performs ṭawāf al-Ifāḍah, which is an integral without which the ḥajj remains unfinished (meaning that, it may not be compensated for by merely slaughtering, though the time it may be performed is anytime thereafter.).

[4] Seven times, one begins at ṣafā and ends at Marwah

[5] The best way for men is to shave the entire head, though one may confine oneself by removing, by any means, three hairs thereof from the head, not something such as the beard or moustache, or may merely shorten it, for which the optimal is to clip a little less than two centimetres from all the hair. As for women, it is optimal for them to shorten their hair in the latter way, it being makrūh (offensive) for a woman to shave her head.

3. Saʿī - going between S□afā and Marwah.
4. Shaving or shortening the hair.
5. Tartīb (sequence).

The Wājibat (Requisites)[6] of Ḥajj are Five:

1. One enters iḥrām at the miqat (proper site).
2. Staying the night at Muzdālifah.[7]
3. Stoning the three "*al-Jamrat*" (the stoning site).
4. Staying the night following the ʿEid[8] at Mīnā.[9]
5. *ṭawāf al-wadaʿ*

[6] Arkān (integrals) and wājib (requisites) are synonyms except in this chapter, the integral means that ḥajj will not exist except with it, and the requisite means the dam (expiation) becomes compulsory by leaving it.

[7] When the sun sets on 9 Dhul ḥijjah, those on ḥajj go forth to Muzdālifah occupied with dhikr and talbiyah proceeding with tranquillity and dignity, and they join the Maghrīb and ʿIshāʾ at Muzdālifah.

[8] *Ayyām al-tashrīq* – 11, 12, 13 of Dhul ḥijjah.

[9] When finished with the *ṭawāf al-Ifāḍah* and going between ṣafā and Marwah, [doing the latter if one had not yet previously performed it after the *ṭawāf qudūm* (arrival circumambulation)], one is obliged to return to Mina to stay overnight there and to stone on the days following the ʿEid (*Ayyām al-Tashrīq*). It is desirable to arrive before noon to perform the Ẓuhr prayer there as the Prophet ﷺ did, and to spend the night there.
One picks up twenty-one pebbles from Mīnā on the days after the ʿEid, taking care to shun the three places of stoning.

Unlawful Things While in Iḥrām are Ten:

1. Men wearing sewn garments.
2. Men covering their head.
3. Combing hair.
4. Shaving hair or plucking it.
5. Trimming nails.
6. Applying perfume.
7. Killing a game animal.
8. Performing nikāh.
9. Having sexual intercourse
10. Sexual foreplay other than intercourse.

The Expiations of Ḥajj and ʿUmrah are Four Categories:

(I) **Dam tartīb wa taqdīr** – expiation consist of alternatives in a fixed precedence order and predetermined amount:

- One must slaughter a sheep and distribute its meat to the poor in the ḥarām, or if unable to slaughter, then,
- One must fast three days during the Ḥajj and seven more at home, making ten days, or if one fails to do so while there, as is obligatory,
- They become a makeup fast that must be performed before the other seven fasted at home by an interval equal to the days of oneʿs journey home.

There are nine things which necessitate this type of expiation:

1. Performing an ʻumrah first (tamattuʻ ḥajj).
2. Performing ḥajj and ʻumrah simultaneously (qiran).
3. Not standing at ʻArāfah.
4. To miss stoning at the stoning sites of Mīnā on the three days after the ʻEid, the time for which ends at sunset on the third day if one does not leave early.
5. To miss all three nights at Mīnā after the ʻEid, though if one only misses a single night, one distributes 509 grams of wheat to the poor of the ḥarām, and if two nights, then double this amount.
6. To miss spending the night at Muzdalifah.
7. Not entering iḥrām at the mīqāt (proper site).
8. Breaking one's vow.
9. Not performing the Ṭawāf al-Wadaʻ (farewell circumambulation).

(II) **Dam takhyīr wa taqdīr** – expiation in which one is free to choose one of three predetermined alternatives namely:

- To slaughter and distribute a sheep.
- To fast three days, even if unconsecutive, wherever one wishes.

- To give 2.036 kgs of wheat to each of six of the poor of the ḥarām.

There are eight things which necessitate this type of expiation:

1. Removal of three hairs at one time and place, meaning that the interval between removing each is not considered long, and one has remained at the same place, though if their removal does not occur at a single time and place, one must pay 509 grams of wheat to the poor or fast one day for each hair, even if their number exceeds three.
2. Trimming three nails at one time and place, with the same rules and restriction as just mentioned.
3. Men wearing sewn garments or covering their head, or women covering their faces.
4. Using oil.
5. Using scent.
6. Sexual foreplay other than intercourse.
7. Having sexual intercourse a second time after having spoiled one's ḥajj by an initial sexual intercourse.
8. Having sexual intercourse between partial and full release from iḥrām.[10]

[10] The release from iḥrām in ḥajj is in two stages, partial and full:
Partial release from iḥrām occurs when any two of the three rites of stoning, cutting the hair and ṭawāf are performed. Doing any two of them accomplishes partial release from iḥrām, rendering permissible all

(III) **Dam tartīb wa taʿdīl** – expiation in a fixed precedence order of alternatives involving estimate-based substitutes:

It is necessary due to two things:

1. Being prevented by another from completing all the integrals of the ḥajj or ʿumrah, in which case one must release oneself from iḥrām by:

- One must slaughter a sheep and distribute its meat to the poor in the ḥarām, or if unable to slaughter, then,
- One must fast three days during the ḥajj and seven more at home, making ten days, or if one fails to do so while there as is obligatory,
- They become a makeup fast that must be performed before the other seven fasted at home by an interval.

2. Having spoiled one's ḥajj or ʿumrah by sexual intercourse[11] in which case one must slaughter a camel, or if unable to,

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things that were made unlawful by iḥrām except those relating to women, such as sexual intercourse, getting married, or touching with desire.
Full release from iḥrām occurs when all three rites have been performed, and it renders permissible everything made unlawful by iḥrām, though one still has to stone at the three jamrat and stay overnight at Mīnā during the days following the ʻEid (*Ayyām al-Tashrīq*).

[11] If one intentionally has sexual intercourse before finishing one's ʿumrah, or while on ḥajj before partial release from iḥrām. It is wājib to pay the expiation for the male, not the female.

then one must slaughter, (2) a cow, but if not possible, then, (3) seven sheep, but if not possible, then, (4) one estimates the cost of a camel and how much food this would buy, and then gives that much food to the poor in the ḥarām, but if not possible, then, (5) one fasts one day for every 509 grams of food that would have been given had (4) been done. (One may fast anywhere, but it is not permissible to delay it without an excuse.)

(IV) **Dam takhyīr wa taʿdīl -** expiation in which one is free to choose between alternatives consisting of estimate-based substitutes.

It is necessitated by two things:

1. Killing a game animal while in iḥrām, one may fulfil the expiation either by slaughtering a domestic animal that is like the wild animal which was killed, or to distribute funds to the poor, which equal the value of the game animal or to buy food equal to the animal's value and to distribute it as charity or to fast one day for each 509 grams of food. Although if the animal was a pigeon, one is obliged to slaughter a sheep which is obligatory for killing even a single pigeon.

2. Destroying a tree of the ḥarām, where, if it is large in relation to other trees of its kind, one slaughters and distributes a cow, and if small, one slaughters a sheep.

To Visit the Tomb of Rasūlullah ﷺ

It is mustaḥab when one has finished the ḥajj to visit the tomb of Rasūlullah ﷺ in al-Madīnah al-Munawwarah.

وَاللَّـــهُ أَعْلَمُ بِالصَّوَابِ.

Allah knows best.

Khatimah

نَسْأَلُ اللَّـــهَ الْكَرِيمَ بِجَاهِ نَبِيِّهِ الْوَسِيمِ أَنْ يُخْرِجَنِي مِنَ الدُّنْيَا مُسْلِما وَوَالِدَيَّ وَأَحِبَّائِي وَمَنْ إِلَيَّ انْتَمَى وَأَنْ يَغْفِرَلِي وَلَهُمْ مُقْحَمَاتٍ ولَـــمَما وَصَلَّى اللَّـــهُ عَلَى سَيِّدِنَا مُحَمَّدِ بْنِ عَبْدِ اللَّـــهِ بْنِ عَبْدِ الْمُطَّلِبِ بْنِ هَاشِمِ بْنِ عَبْدِ مَنَافٍ رَسُولِ اللَّـــهِ إِلَى كَافَّةِ الْخَلْقِ رَسُولِ الْمَلاحِمِ حَبِيبِ اللَّـــهِ الْفَاتِحِ الْخَاتِمِ ، وَآلِهِ وَصَحْبِهِ أَجْمَعِينَ ، وَالْحَمْدُ لِلَّـــهِ رَبِّ الْعَالَمِينَ .

تم بعون اللَّـــه تعالى متن سفينة النجاء.

We ask Almighty Allah through the dignity of His graceful prophet that He takes me, my parents, my beloved ones, and those who were related to me, from this world as Muslims, and that He forgives me and them for our recklessness and weakness. Peace be upon our master Muḥammad ibn ʿAbdullah ibn ʿAbdul Muṭṭalib ibn Hāshim ibn ʿAbd Manaf, the Messenger of Allah to the entire creation, the Warrior Prophet, the Beloved of Allah, the Conqueror and the Seal, and peace be upon his entire family and all his Companions. All praise is due to Allah, Lord of all the worlds.

The text of "*Safinat al-najā*'" (The Ship of Salvation) is complete with the help of Allah the Exalted.

Appendices

Appendix 1: Selected Duʿāsand Adhkar

Duʿā for Seeking Knowledge:

اَللَّهُمَّ إِنِّي أَسْأَلُكَ عِلْماً نَافِعاً وَرِزْقاً طَيِّباً وَعَمَلاً مُتَقَبَّلاً.

Duʿā for all conditions:

اَللَّهُمَّ إِنِّي أَسْأَلُكَ العَفْوَ وَالْعَافِيَةَ ، اَللَّهُمَّ إِنِّي أَسْأَلُكَ

الهُدَى وَالتُّقَى وَالْعَفَافَ وَالْغِنَى.

Ṭahārah – Purification

Duʿā before commencing wuḍūʾ:

أَعُوذُ بِاللَّـهِ مِنَ الشَّيْطَانِ الرَّجِيمِ .

Duʿā when beginning wuḍūʾ:

بِسْمِ اللَّـهِ الرَّحْمَٰنِ الرَّحِيمِ .

اَلْحَمْدُ لِلَّـهِ عَلَى الْإِسْلَامِ وَنِعْمَتِهِ ، الْحَمْدُ لِلَّـهِ الَّذِي جَعَلَ الْـمَاءَطَهُورًا وَالْإِسْلَامَ نُورًا ، رَبِّ أَعُوذُ بِك مِنْ هَمَزَاتِ الشَّيَاطِينِ وَأَعُوذُ بِكَ رَبِّ أَنْ يَحْضُرُونَ .

Duʿā after wuḍūʾ:

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّـهُ وَحْدَهُ لَا شَرِيكَ لَهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ .

اَللَّهُمَّ اجْعَلْنِي مِنَ التَّوَّابِيْنَ ، وَ اجْعَلْنِي مِنَ الْـمُتَطَهِّرِيْنَ ، وَاجْعَلْنِي مِنْ عِبَادِكَ الصَّالِـحِيْنَ ، سُبْحَانَكَ اللَّهُمَّ وَبِحَمْدِكَ أَشْهَدُ أَن لَّا إِلٰهَ إِلَّا أَنْتَ ، أَسْتَغْفِرُكَ ، وَأَتُوبُ إِلَيْكَ .

Duʿā entering toilet:

بِسْمِ اللَّـهِ ، اَللَّهُمَّ إِنِّي أَعُوذُبِكَ مِنَ الْـخُبُثِ وَالْخَبَائِثِ .

Duʿā leaving toilet:

غُفْرَانَكَ الْحَمْدُ لِلَّـهِ الَّذِي أَذْهَبَ عَنِّي الْأَذَى وَعَافَانِي.

Ṣalāh – Prayer

Duʿā after adhān:

اللَّهُمَّ رَبَّ هَذِهِ الدَّعْوَةِ التَّامَّةِ وَالصَّلاَةِ الْقَائِمَةِ ، آتِ

سَيِّدَنَا مُحَمَّدًا الْوَسِيلَةَ وَالْفَضِيلَةَ وَابْعَثْهُ مَقَامًا مَحْمُودًا الَّذِي

وَعَدْتَهُ ، إِنَّكَ لاَ تُخْلِفُ الْمِيعَاد .

Duʿā Iftitah:

اللَّـهُ أَكْبَرُ كَبِيرًا وَالْحَمْدُ لِلَّـهِ كَثِيرًا وَسُبْحَانَ اللَّـهِ بُكْرَةً

وَأَصِيلًا ، وَجَّهْت وَجْهِي لِلَّذِي فَطَرَ السَّمَاوَاتِ وَالْأَرْض

حَنِيفًا مُسْلِماً ، وَمَا أَنَا مِنْ الْمُشْرِكِينَ ، إِنَّ صَلَاتِي وَنُسُكِي

وَمَحْيَايَ وَمَمَاتِي لِلَّـهِ رَبِّ الْعَالَمِينَ ، لَا شَرِيكَ لَهُ وَبِذٰلِكَ

أُمِرْتُ وَأَنَا مِنْ الْـمُسْلِمِينَ .

Duʿā during ruku:

سُبْحَان رَبِّي الْعَظِيم وَبِحَمْدِهِ (3 times)

اللَّهُمَّ لَك رَكَعْت وَبِك آمَنْت وَلَكَ أَسْلَمْتُ ، خَشَعَ لَكَ

سَمْعِي وَبَصَرِي وَمُخِّي وَعَظْمِي وَعَصَبِي وَمَا اسْتَقَلَّتْ بِهِ

قَدَمِي .

Duʿā during ʿitidal:

رَبّنَا وَلَك الْحَمْد حَمْدًا كَثِيرًا طَيِّبًا مُبَارَكًا فِيهِ ، مِلْءَ

السَّمَوَاتِ وَمِلْءَ الْأَرْضِ وَمِلْءَ مَا شِئْت مِنْ شَيْءٍ بَعْدُ .

Duʿā during sitting between two sajdahs:

رَبِّ اغْفِرْ لِي وَارْحَمْنِي وَاجْبُرْنِي وَارْفَعْنِي وَارْزُقْنِي وَاهْدِنِي

وَعَافِنِي وَاعْفُ عَنِّي .

Duʿā during sajdah:

سُبْحَانَ رَبِّيَ الْأَعْلَى وَبِحَمْدِهِ (3 times)

اللَّهُمَّ لَك سَجَدْت وَبِك آمَنْت وَلَك أَسْلَمْت ، سَجَدَ

وَجْهِي لِلَّذِي خَلَقَهُ وَصَوَّرَهُ وَشَقَّ سَمْعَهُ وَبَصَرَهُ بِحَوْلِهِ

وَقُوَّتِهِ ، تَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ .

Al-Tashahhud:

التَّحِيَّاتُ الْمُبَارَكَاتُ الصَّلَوَاتُ الطَّيِّبَاتُ لِلَّـهِ ، السَّلَامُ عَلَيْكَ أَيُّهَا النَّبِيُّ وَرَحْمَةُ اللَّـهِ وَبَرَكَاتُهُ ، السَّلَامُ عَلَيْنَا وَعَلَى عِبَادِ اللَّـهِ الصَّالِحِينَ ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّـهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّـهِ.

Al-Salat al-Ibrahimiyyah:

اللَّهُمَّ صَلِّ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِ سَيِّدِنَا مُحَمَّدٍ ، كَمَا صَلَّيْت عَلَى سَيِّدِنَا إِبْرَاهِيمَ وَعَلَى آلِ سَيِّدِنَا إِبْرَاهِيمَ ، وَبَارِكْ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِ سَيِّدِنَا مُحَمَّدٍ ، كَمَا بَارَكْت

عَلَى سَيِّدِنَا إبْرَاهِيمَ وَعَلَى آلِ سَيِّدِنَا إبْرَاهِيمَ ، فِي الْعَالَمِينَ إنَّك حَمِيدٌ مَجِيدٌ .

Duʿā after tashahhud before salām:

اللَّهُمَّ اغْفِرْ لِي مَا قَدَّمْتُ وَمَا أَخَّرْتُ ، و مَا أَسْرَرْت وَمَا أَعْلَنْت ، وَمَا أَسْرَفْت وَمَا أَنْتَ أَعْلَمُ بِهِ مِنِّي ، أَنْتَ الْمُقَدِّمُ وَأَنْتَ الْمُؤَخِّرُ لَا إلَهَ إلَّا أَنْتَ .

اللَّهُمَّ إنِّي ظَلَمْت نَفْسِي ظُلْمًا كَثِيرًا وَلَا يَغْفِرُ الذُّنُوبَ إلَّا أَنْتَ فَاغْفِرْ لِي مَغْفِرَةً مِنْ عِنْدِك وَارْحَمْنِي إنَّكَ أَنْتَ الْغَفُورُ الرَّحِيمُ .

Duʿā Qunūt:

اللَّهُمَّ اهْدِنِي فِيمَنْ هَدَيْتَ وَعَافِنِي فِيمَنْ عَافَيْتَ وَتَوَلَّنِي

فِيمَنْ تَوَلَّيْتَ وَبَارِكْ لِي فِيمَا أَعْطَيْتَ وَقِنِي شَرَّ مَا قَضَيْتَ

فَإِنَّك تَقْضِي وَلَا يُقْضَى عَلَيْكَ وَإِنَّهُ لَا يَذِلُّ مَنْ وَالَيْتَ وَلَا

يَعِزُّ مَنْ عَادَيْتَ تَبَارَكْتَ رَبَّنَا وَتَعَالَيْتَ فَلَكَ الْحَمْدُ عَلَى مَا

قَضَيْتَ أَسْتَغْفِرُك وَأَتُوبُ إلَيْكَ وَصَلَّى اللَّـهُ عَلَى سَيِّدِنَا

مُحَمَّدٍ وَعَلَى آلِهِ وَصَحْبِهِ وَسَلَّمَ .

Duʿā and Dhikr after ṣalāh:

It is especially recommended to recite dhikr and duʿā after ṣalāh silently:

Istighfār – recite three times.

أَسْتَغْفِرُ اللَّـهَ الْعَظِيمَ .

Dhikr to be recited one times

اللَّهُمَّ أَنْتَ السَّلامُ وَمِنْك السَّلامُ تَبَارَكْتَ يَا ذَا الْجَلالِ

وَالإِكْرَامِ ، اَللَّهُمَّ لَا مَانِعَ لِـمَا أَعْطَيتَ ، وَلا مُعْطِيَ لِ ـمَا

مَنَعْتَ، وَلا يَنْفَعُ ذَا الْجَدِّ مِنْكَ الْجَدّ .

Ayat al-kursi

اللهُ لاَ إِلَهَ إِلاَّ هُوَ الْحَيُّ الْقَيُّومُ لاَ تَأْخُذُهُ سِنَةٌ وَلاَ نَوْمٌ لَهُ مَا

فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ مَنْ ذَا الَّذِي يَشْفَعُ عِنْدَهُ إِلاَّ

بِإِذْنِهِ يَعْلَمُ مَا بَيْنَ أَيْدِيهِمْ وَمَا خَلْفَهُمْ وَلاَ يُحِيطُونَ بِشَيْءٍ

مِنْ عِلْمِهِ إِلاَّ بِمَا شَاءَ وَسِعَ كُرْسِيُّهُ السَّمَاوَاتِ وَالأَرْضَ

وَلاَ يَئُودُهُ حِفْظُهُمَا وَهُوَ الْعَلِيُّ الْعَظِيمُ ۞

Sūrah al-Ikhlās

بسم الله الرحمن الرحيم

قُلْ هُوَ اللهُ أَحَدٌ ۞ اللهُ الصَّمَدُ ۞ لَمْ يَلِدْ وَلَمْ يُولَدْ ۞ وَلَمْ

يَكُنْ لَهُ كُفُوًا أَحَدٌ ۞

Sūrah al-Falaq

بسم الله الرحمن الرحيم

قُلْ أَعُوذُ بِرَبِّ الْفَلَقِ ۞ مِنْ شَرِّ مَا خَلَقَ ۞ وَمِنْ شَرِّ غَاسِقٍ إِذَا وَقَبَ ۞ وَمِنْ شَرِّ النَّفَّاثَاتِ فِي الْعُقَدِ ۞ وَمِنْ شَرِّ حَاسِدٍ إِذَا حَسَدَ ۞

Sūrah al-Nas

بسم الله الرحمن الرحيم

قُلْ أَعُوذُ بِرَبِّ النَّاسِ ۞ مَلِكِ النَّاسِ ۞ إِلَهِ النَّاسِ ۞ مِنْ شَرِّ الْوَسْوَاسِ الْخَنَّاسِ ۞ الَّذِي يُوَسْوِسُ فِي صُدُورِ النَّاسِ ۞ مِنَ الْجِنَّةِ وَالنَّاسِ ۞

Dhikr each to be recited 33 times:

سُبْحَانَ اللَّـهِ .

اَلْحَمْدُ لِلَّـهِ .

اَللَّـهُ أَكْبَرُ .

Dhikr to be recited one time:

لَا إِلٰه إلاَّ اللَّـهُ وَحْدَهُ لَا شَرِيكَ لَهُ ، لَهُ الْـمُلْكُ وَلَهُ الْحَمْدُ ، وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ .

Prophetic Duʿā:

- اَللَّهُمَّ آتِنَا فِي الدُّنْيَا حَسَنَةً وَفِي الْآخِرَة حَسَنَةً وَقِنَا عَذَابَ النَّارِ ، اللَّهُمَّ إِنِّي أَسْأَلُكَ الْهُدَى وَالتُّقَى وَالْعَفَافَ وَالْغِنَى، اَللَّهُمَّ اغْفِرْ لِي وَارْحَ ـمْنِي وَاهْدِنِي وَعَافِنِي وَارْزُقْنِي ، اَللَّهُمَّ مُصَرِّفَ الْقُلُوبِ صَرِّفْ قُلُوبَنَا عَلَى طَاعَتِكَ ، اللَّهُمَّ أَعُوذُ بِك مِنْ جَهْدِ الْبَلَاءِ وَدَرَكِ الشَّقَاءِ وَسُوءِ الْقَضَاءِ وَشَمَاتَةِ الْأَعْدَاءِ ، اَللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنَ الْعَجْزِ وَالْكَسَلِ وَالْجُبْنِ وَالْهَرَمِ

وَالْبُخْلِ وَأَعُوذُ بِك مِنْ عَذَابِ الْقَبْرِ وَأَعُوذُ بِكَ مِنْ

فِتْنَةِ الْمَحْيَا وَالْمَمَاتِ وخَلْعِ الدِّيْنِ وَغَلَبَةِ الرِّجَالِ .

- اَللَّهُمَّ إِنِّي ظَلَمْتُ نَفْسِي ظُلْمًا كَثِيرًا كَبِيرًا وَإِنَّهُ لَا يَغْفِرُ

الذُّنُوبَ إِلَّا أَنْتَ فَاغْفِرْ لِي مَغْفِرَةً مِنْ عِنْدِك وَارْحَمْنِي

إِنَّكَ أَنْتَ الْغَفُورُ الرَّحِيمُ اَللَّهُمَّ اغْفِرْ لِي خَطِيئَتِي

وَإِسْرَافِي فِي أَمْرِى وَمَا أَنْتَ أَعْلَمُ بِهِ مِنِّى .

- اَللَّهُمَّ اغْفِرْ لِي جَدِّى وَهَزْلِي وَخَطَأِى وَعَمَدِي وَكُلَّ

ذَلِكَ عِنْدِي اللَّهُمَّ اغْفِرْ لِي مَا قَدَّمْتُ وَمَا أَخَّرْتُ ، و مَا

أَسْرَرْت وَمَا أَنْتَ أَعْلَمُ بِهِ مِنِّي ، أَنْتَ الْـمُقَدِّمُ وَأَنْتَ الْـمُؤَخِّرُ وَأَنْتَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ .

- اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنْ شَرِّ مَا عَمِلْتُ ، وَمِنْ شَرِّ مَا لَمْ أَعْمَل اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنْ زَوَالِ نِعْمَتِك وَتَحَوُّلِ عَافِيَتِكَ وَفَجْأَةِ نِقْمَتِكَ وَجَمِيعِ سَخَطِكَ .
- للَّهُمَّ آتِ نَفْسِي تَقْوَاهَا ، وَزَكِّهَا أَنْتَ خَيْرُ مَنْ زَكَّاهَا ، أَنْتَ وَلِيُّهَا وَمَوْلَاهَا ، اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنْ عِلْمٍ لَا يَنْفَعْ ، وَمِنْ قَلْبٍ لَا يَخْشَعْ ، وَمِنْ نَفْسٍ لَا تَشْبَعْ وَمِنْ

دَعْوَةٍ لَا يُسْتَجَابُ لَهَا ، اللَّهُمَّ إِنِّي أَسْأَلُكَ الْهُدَى وَالسَّدَادَ.

- اَللَّهُمَّ أَصْلِحْ لِي دِينِي الَّذِى هُوَ عِصْمَةُ أَمْرِى وَأَصْلِحْ لِي دُنْيَاىَ الَّتِي فِيهَا مَعَاشِي وَأَصْلِحْ آخِرَتِي الَّتِي فِيهَا مَعَادِي وَاجْعَلِ الْحَيَوةَ زِيَادَةً لِى فِي كُلِّ خَيْرٍ وَالْمَوْتَ رَاحَةً لِي مِنْ كُلِّ شَرٍّ .
- اَللَّهُمَّ إِنِّي أَعُوذُ بِك مِنْ شَرِّ الْغِنَى وَالْفَقْرِ اللَّهُمَّ إِنِّي أَعُوذُ بِك مِنْ مُنْكِرَاتِ الْأَخْلَاقِ وَالْأَعْمَالِ وَالْأَهْوَاءِ

وَسِيءِ الْأَسْقَامِ وَمِنْ شَرِّ سَمْعِي وَبَصَرِى وَمِنْ شَرِّ لِسَانِي وَمِنْ شَرِّ قَلْبِى وَمِنَ الْخِيَانَةِ فَإِنَّهَا بِئْسَتِ الْبِطَانَةِ.

- اللَّهُمَّ اكْفِنِي بِحَلَالِك عَنْ حَرَامِك وَاغْنَنِي بِفَضْلِك عَمَّنْ سِوَاك يَا مُثَبِّتَ الْقُلُوبَ ثَبِّتْ قَلْبِى عَلَى دِينِكَ اَللَّهُمَّ إِنِّي أَسْأَلُكَ الْعَافِيَةَ فِي الدُّنْيَا ، وَالْآخِرَةِ اَللَّهُمَّ إِنِّي أَسْأَلُكَ مُوجِبَاتِ رَحْمَتِكَ وَعَزَائِمَ مَغْفِرَتِكَ وَالسَّلَامَةَ مِنْ كُلِّ اِثْمٍ وَالْغَنِيمَةَ مِنْ كُلِّ بِرٍّ وَالْفَوْزَ بِالْجَنَّةِ وَالنَّجَاةَ مِنَ النَّارِ .

- اللَّهُمَّ اغْفِرْ لِأُمَّةِ مُحَمَّدٍ مَغْفِرَةً عَامَّةً ، سُبْحَانَ رَبِّك رَبِّ الْعِزَّةِ عَمَّا يَصِفُونَ وَسَلَامٌ عَلَى الْمُرْسَلِينَ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ .

Duʿā Janāzah Ṣalāh – to be recited in third takbīr:

اللَّهُمَّ اغْفِرْ لَهُ وَارْحَمْهُ وَعَافِهِ وَاعْفُ عَنْهُ .

وَأَكْرِمْ نُزُلَهُ وَوَسِّعْ مَدْخَلَهُ وَاغْسِلْهُ بِالْمَاءِ وَالثَّلْجِ وَالْبَرَدِ، وَنَقِّهِ مِنْ الْخَطَايَا كَمَا يُنَقَّى الثَّوْبُ الْأَبْيَضُ مِنْ الدَّنَسِ ، وَأَبْدِلْهُ دَارًا خَيْرًا مِنْ دَارِهِ ، وَأَهْلًا خَيْرًا مِنْ أَهْلِهِ وَزَوْجًا خَيْرًا مِنْ زَوْجِهِ ، وَأَدْخِلْهُ الْجَنَّةَ وَأَعِذْهُ مِنْ عَذَابِ الْقَبْرِ وَفِتْنَتِهِ وَمِنْ عَذَابِ النَّارِ .

Takbīr to be recited on ʿEid:

اللَّـهُ أَكْبَرُ اللَّـهُ أَكْبَرُ اللَّـهُ أَكْبَرُ ، لاَ إِلَهَ إِلَّا اللَّـهُ وَاللَّـهُ أَكْبَرُ ، اللَّـهُ أَكْبَرُ وَلِلَّـهِ الْحَمْدُ .

اللَّـهُ أَكْبَرُ كَبِيرًا وَالْحَمْدُ للَّـهِ كَثِيرًا وَسُبْحَانَ اللَّـهِ بُكْرَةً وَأَصِيلاً ، لاَ إِلَهَ إِلاَّ اللَّـهُ وَلاَ نَعْبُدُ إِلاَّ إِيَّاهُ مُخْلِصِينَ لَهُ الدِّينَ وَلَوْ كَرِهَ الْكَافِرُونَ ، لاَ إِلَهَ إِلاَّ اللَّـهُ وَحْدَهُ صَدَقَ وَعْدَهُ وَنَصَرَ عَبْدَهُ وَأَعَزَّ جُنْدَهُ وَهَزَمَ الأَحْزَابَ وَحْدَهُ لاَ إِلَهَ إِلاَّ اللَّـهُ وَاَللَّـهُ أَكْبَرُ ، اَللَّـهُ أَكْبَرُ وَلِلَّـهِ الْحَمْدُ .

Sayyid al-istighfār – The Paragon Of Istighfār :

Recite Morning and Evening

اللَّهُمَّ أَنْتَ رَبِّي لا إِلَهَ إِلاَّ أَنْتَ خَلَقْتَنِي ، وأنا عَبْدُكَ وأنا

عَلَى عَهْدِكَ وَوَعْدِكَ ما اسْتَطَعْتُ ، أَعُوذُ بِكَ مِنْ شَرِّ ما

صَنَعْتُ أَبُوءُ لَكَ بِنِعْمَتِكَ عَلَيَّ وَأَبُوءُ بِذَنْبِي ، فاغْفِرْ لِي فَإِنَّهُ

لا يَغْفِرُ الذُّنُوْبَ إِلاَّ أَنْتَ .

It is sunnah to end the duʿā with ṣalāh (Salutation) and Hamd (Praise):

وَصَلَّى اللَّـهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِه وسَلَّمَ

وَالْحَمْدُ لِلَّـهِ رَبِّ الْعَالَمِيْنَ

Appendix 2: Authorized Books in Shāfiʿī Madhhab

The main aspect in the foundation of the madhhab is the verdict of the al-Imām. The ʿUlamāʾ and the books constitute the basis and source of strength of the madhhab. The ʿUlamāʾ explain and elaborate the original verdict of the Imām and disseminate them while the books preserve and ensure that the authentic views of the madhhab are transmitted to a later generation.

Imām al-ḥarāmain ʿAbd al-Malik ibn ʿAbdullah al-Juwaynī (478 H) has gathered all four main fiqh books of *al-qawl al-jadīd* (new verdict) of *al-Imām al-Shāfiʿī* (204 H) namely ***al-Umm, al-Imlaʾ, al-Mukhtaṣar*** by ***al-Imām al-Buwaiṭī*** (231 H) and ***al-Mukhtaṣar*** by ***al-Imām al-Muzānī*** (264 H) in one book entitled ***Nihāyat al-Maṭlab***.

This book of *Imām al-ḥarāmain* has been abridged three times by his student, *Hujjat al-Islām al-Imām al-Ghazālī* (505 H). The first abridgement is ***al-Basīt, al-Wasīt*** the second and finally ***al-Wajīz***. *Al-Imām al-Rāfiʿī* (623 H) summarized *al-Wajīz* and entitled it ***al-Muḥarrar***. *Al-Imām al-Rāfiʿī* also had writen a commentary of *al-Wajiz* in two books namely *Sharh al-kabir* or ***Fath al-ʿAziz fi sharh al-Wajīz*** and *Sharh al-ṣaghīr*.

Al-Imām al-Nawawī (676 H) abridged *Fath al-ʿAziz* in his book, ***Rauḍat al-ṭālibīn wa ʿumdat al-muftiyyīn***. This was later

abridged by Ibn al-Muqrī (837 H) in ***Rauḍ al-ṭalib*** and *Shaykh al-Islām Zakariyyā al-Anṣārī* (925 H) compiled a commentary on it, naming it ***Asna al-maṭālib sharh Rauḍ al-ṭālib***. Beside *ar-Rauḍ, Rauḍah al-ṭālibīn* also has been abridged by *al-Imām Aḥmad ibn ʿUmar al-Muzajjad* (930 H) in the book entitled, ***al-ʿUbab*** and *al-Imām Ibn Ḥajar al-Makkī* prepared a commentary named ***al-Īʿāb sharh al-ʿUbāb***. *Al-Sharaf al-Muqrī ṣāḥib al-Rauḍ* abridged it second time in a book entitled ***al-Irshād***. A commentary on it was prepared by *al-Imām Ibn Ḥajar al-Makkī* named ***Fath al-jawād sharh al-Irshād***.

Al-Imām al-Nawawī had abridged *al-Muharrar* and entitled it ***Minhāj al-ṭālibīn***. It was thereafter abridged by *Shaykh al-Islām Zakariyyā al-Anṣārī* in his book ***Manhaj al-ṭullab*** and he authored a commentary on it namely ***Fath al-Wahhāb bi sharḥ Manhaj al-ṭullab***. Al-Imām al-Jauharī abridged *al-Manhaj* and named it ***al-Nahj***.

Tarjīḥ (preference) in the madhhab rests upon the verdicts of al-*Shaykhayn*; *al-Imām al-Rāfiʿī* and *al-Imām al-Nawawī*. This is the unanimous view of *muhaqqiqs* (researchers) of the madhhab. If these two Imāms have a difference opinion, the verdict of *al-Imām al-Nawawī* will be given preference over the verdict of *al-Imām al-Rafiʿī.*

If the writings of *al-Imām al-Nawawī* differ, generally the the order of what will be given preference to is (1) *al-Tahqīq*, (2)

al-Majmūʿ, (3) *al-Tanqīḥ*, (4) *al-Rauḍah*, (5) *al-Minhāj* and his *fatāwā* (legal verdicts), (7) *Sharh Muslim*, and finally (8) *Taṣḥīḥ al-Tanbīh* and its *nukāt* (marginal note). The view on which of his books are unanimous will be given preference over the view on which only a few of his books are unanimous. The view discused under its relevant chapter is given preference over that which is discussed in another chapter.

Al-Imām al-Subkī (765 H) mentioned regarding *al-Minhaj* of *al-Imām al-Nawawī*, "In this era, this book is the most excellent book for students and many scholars to understand the madhhab." There are almost one hundred commentaries of the *al-Minhāj*. It has been abridged, explained, annotated and compiled in the form of poetry. The four main commentaries of *al-Minhaj* are (1***) Tuḥfat al-muhtāj*** by *al-Imām Aḥmad ibn ʿAlī ibn Ḥajar al-Haytamī al-Makkī* (974 H), (2) ***Nihāyat al-muhtāj ilā sharh al-Minhāj*** by *al-Imām Shams al-Dīn Muḥammad ibn Aḥmad ibn Hamzah al-Ramlī* (1004 H), (3) ***Mughnī al-muhtāj ilā maʿrifat al-maʿāni alfāẓ sharh al-Minhāj*** by *al-Imām Shams al-Dīn Muḥammad ibn Aḥmad al-Khāṭib al-Shirbīnī* (977 H) and (4) ***Kanz al-rāghibīn sharh Minhāj al-ṭālibīn*** by *al-Imām Jalāl al-Dīn Muḥammad ibn Aḥmad al-Maḥallī* (864 H).

The above mentioned books hold an authoritative position in the madhhab. However, if there is difference opinion, preference is given to ***al-Tuḥfah*** of *al-Imām Ibn Ḥajar al-*

Haytamī and ***al-Nihayah*** of *al-Imām Shams al-Dīn al-Ramlī*. Thereafter, preference is given to ***Sharh al-ṣaghīr ʿalā al-Bahjah*** and then, ***Fath al-Wahhāb bi sharh Manhaj al-ṭullāb*** both by *Shaykh al-Islām Zakariyyā al-Anṣārī*. Finally, preference is given to *Sharh al-Imām al-Khāṭib al-Shirbīnī* and *Sharh al-Imām al-Maḥallī.*

Among the books of ***al-Imām Ibn Ḥajar***, the order of merit is al-*Tuḥfah, Fatḥ al-Jawād, al-Imdād,* the *fatāwā* (legal opinions) and *sharh al-ʿUbāb* have the same merit, however, giving preference to the commentary is better.

The order of merit among the ***ḥawāshī*** (marginal notes) is *ḥāshiyah ʿalā Sharh al-Manhaj* by *al-Imām ʿAlī al-Ziyādī* (1024 H) then *Ibn Qasim al-ʿAbbādī* (994 H) on al-Tuḥfah, then *Shaykh ʿUmairah* (957 H) marginal note on *al-Maḥallī*, then the verdict of *Shaykh ʿAlī al-Shabramillisī* (1087 H) on *al-Nihāyah*. Thereafter, *Ḥāshiyah al-Halabī, al-Shaubarī, al-ʿAnānī.* Their opinions are taken if they do not differ with the original standpoint.

Despite this, deriving rulings from the book alone without studying under the ʿUlamāʾ is not permissible. Rasūlullah ﷺ said:

إنما العلم بالتعلم

Knowledge is acquired through
learning from the scholar.

Appendix 3: ʿAlam – Biographical Notes

Al-Imām al-Shāfiʿī

Al-Imām al-Shāfiʿī is *Muḥammad ibn Idrīs ibn al-ʿAbbās ibn ʿUthmān ibn Shafiʿ ibn al-Sāʾib ibn ʿAbdullah ibn ʿAbd Yazid ibn Hāshim ibn al-Muttalib ibn ʿAbd Manaf, Abu ʿAbdillah al-Qurashī al-Makkī al-Shāfiʿī* , the offspring of the House of the Prophet, the peerless one of the great mujtahid imāms and jurisprudent par excellence, the scrupulously pious ascetic and Friend of Allah.

He was born in Ghazza, Palestine in 150 H, the year of al-Imām Abū Hanīfah's death, and moved to Makkah at the age of two, following his father's death, where he grew up. He was early a skillful archer, then he took to learn language and poetry until he gave himself to fiqh, beginning with hadīth. He memorized the Qurʾān at age seven, then al-Imām Mālik's Muwaṭṭaʾ at age ten, at which time his teacher would deputize him to teach in his absence. At age thirteen he went to see al-Imām Mālik, who was impressed by his memory and intelligence.

al-Imām Mālik ibn Anas and al-Imām Muḥammad ibn al-Hasan al-Shaybānī were among his most prominent teachers and he took position against both of them in fiqh.

Like al-Imām Abu Hanīfah and al-Imām al-Bukhārī, he recited the entire Qurʾān each day at prayer, and twice a day in the month of Ramaḍan.

al-Imām al-Muzānī said: "I never saw one more handsome of face than al-Shāfiʿī . If he grasped his beard it would not exceed his fist." al-Imām Ibn Rahuyah described him in Makkah as wearing bright white clothes with an intensely black beard. al-Imām al-Za`farani said that when he was in Baghdad in the year 195 he dyed his beard with henna.

Abu `Ubayd al-Qasim ibn Sallam said: "If the intelligence of an entire nation was brought together he would have encompassed it." Similarly, al-Muzani said: "I have been looking into al-Shāfiʿī's Riṣalāh for fifty years, and I do not recall a single time I looked at it without learning some new benefit."

Someone criticized al-Imām Aḥmad ibn Hanbal for attending the fiqh sessions of al-Shāfiʿī and leaving the hadīth sessions of al-Imām Sufyan ibn ʿUyaynah. Imām Aḥmad replied: "Keep quiet! If you miss a hadīth with a shorter chain you can find it elsewhere with a longer chain and it will not harm you. But if you do not have the reasoning of this man [al-Shāfiʿī], I fear you will never be able to find it elsewhere."

Yūnus ibn Abī Yaʿlā said: "Whenever al-Shāfiʿī went into tafsīr, it was as if he had witnessed the revelation." Aḥmad ibn

Ḥanbal also said: "Not one of the scholars of hadīth touched an inkwell nor a pen except he owed a huge debt to al-Shāfiʿī ."

Two schools of legal thought or madhāhīb are actually attributed to al-Imām al-Shāfiʿī, englobing his writings and legal opinions (fatāwā). These two schools are known in the terminology of jurists as "*al-Qadīm*" (The Old) and "*al-Jadīd*" (The New), corresponding respectively to his stays in Iraq and Egypt. The most prominent transmitters of the Qawl al-Jadīd among al-Shāfiʿī's students are al-Buwayṭī, al-Muzānī, al-Rabīʿ al-Murādī, and al-Bulqīnī, in Kitab al-Umm (The Motherbook). The most prominent transmitters of the Qawl al-Qadīm are al-Imām Aḥmad ibn Ḥanbal, al-Karābīsī, al-Zaʿfarānī, and Abū Thawr.

Al-Subkī related that the Shāfiʿī scholars considered al-Rabīʿs narration from al-Shāfiʿī sounder from the viewpoint of transmission, while they considered al-Muzānī's sounder from the viewpoint of fiqh, although both were established hadīth masters.

Al-Imām Al-Shāfiʿī is the author of some 113 works, it was nonetheless al-Shāfiʿī's hope that "people would learn this knowledge without ascribing a single letter of it to me," and as Shaykh al-Islām Zakariyyā al-Anṣārī remarked, "Allah granted his wish, for one seldom hears any position of his, save that it is ascribed to others of his school with the words, al-Rāfiʿī or al-

Nawawī or al-Zarkashī says …" and the like. He studied and taught Sacred Law in Cairo until his death at fifty-three year of age in 204 H. the end of a lifetime of service to Islām and the Muslims by one of the greatest in knowledge of the Qurʾān and Sunnah.

Imām al-ḥarāmain

Imām al-ḥarāmain (The Imām of the Two Sanctuaries) Abū Maʿālī ʿAbd al-Mālik ibn ʿAbdullah ibn Yūsuf al-Juwaynī, a scholar in tenets of faith and the Imām of the Shāfiʿī school of his time, originally from Juwain (in present-day Afghanistan), born in 419 H. He was educated by his father, and after his death read his father's entire library and then took his place as teacher at Nishapur, though he was later forced to travel to Baghdad because of trouble between the Ashʿaris, Muʾtazilites, and Shiites. After meeting the greatest scholar of Baghdad, he went on to Makkah, living in the Sacred Precint for four years, after which he moved to Madīnah and taught and gave fatāwā (formal legal opinions), gaining his nickname, the Imām of the Two Sanctuaries, i.e. Makkah and Madīnah.

At length he returned to Persia, where the vizier Niẓām al-Mulk, having built a first Niẓāmiyyah Academy in Baghdad for Abū Ishaq al-Shīrāzī to teach in, built a second one for Imām al-

ḥarāmain at Nishapur. It was here the Imām wrote in earnest, completing his fifteen-volume "*Nihāyat al-maṭlab fi dirāyat al-madhhab*" which no one in the field of Islāmic law had ever produced the like of, as well as other works in tenet of faith, Ashʿari theology, fundamentals of Islām ic legal methodology, and Shāfiʿī law. Among his greates legacies to Islām and the Muslim was his student al-Imām al-Ghazālī, who is said to have surpassed even the Imām at the end of his life. He died in Nishapur in 478 H.

Al-Imām Abū Ishaq al-Shīrāzī

Al-Imām Abū Ishaq, Ibrāhīm ibn ʿAlī ibn Yūsuf al-Shīrāzī al-Fayruzābādī is a Shāfiʿī Imām, teacher, and debater. Born in Fayruzābād, Persia, in 393 H, he studied in Shiraz and Basra before coming to Baghdad where he displayed his genius in Sacred Law, becoming the mufti of the Muslim Ummah (Islām ic Community) of his time, the sheikh of the Niẓāmiyyah Academy which the vizier Niẓām al-Mulk built in Baghdad to accommodate al-Imām Abū Ishaq's students.

He was known for the persuasiveness with which he could urge a case in discussions, and he authored many works, among the most famous of them his two-volume *al-Muhadhdhab fī fiqh al-Imām al-Shāfiʿī* which took him fourteen years to produce,

and which furnished the basic text for al-Imām al-Nawawī's *al-Majmūʿ Sharh al-Muhadhdhab*. He died in Baghdad in 476 H.

Al-Imām al-Ghazālī

Hujjatul Islām (Proof of Islām) Abu Hamid Muḥammad ibn Muḥammad al-Ghazālī al-Ṭūsī is the Shāfiʿī Imām and Sufi adept born in Tabiran, near Ṭūs (just north of present-day Mashhad, Iran) in 450 H. The Imām of his time, nicknamed al-Shāfiʿī the Second for his legal virtuousity, he was a brilliant intellectual who first studied jurisprudence at Ṭūs, and then travelled the Islāmic world, to Baghdad, Damascus, Jerusalem, Cairo, Alexandria, Makkah and Madīnah, taking fiqh from its master, among them Imām al-ḥarāmain al-Juwaynī, with whom he studied until the Imām's death, becoming at his hands a scholar in Shāfiʿī law, logic, tenet of faith, debate and in the rationalistic doctrines of the philosophical school of his time, which he was later called upon to refute. When Imām al-ḥarāmain died, al-Imām al-Ghazālī debated the Imāms and scholars of Baghdad in the presence of the vizier Niẓām al-Mulk, who was so impressed that he appointed him to a teaching post at the Niẓāmiyyah Academy in Baghdad, where word of his brilliance spread, and scholars journeyed to him.

His worldly success was something of a mixed blessing, and in mid-carreer, after considerable reflection, he was gripped by an intense fear for his soul and his fate in the afterlife, and he resigned from his post, travelling first to Jerusalem and then to Damascus to purify his heart by following the way of Sufism. In Damascus he lived in seclusion for some ten years, enganged in spiritual struggle and the remembrance of Allah, at the end of which he emerged to produce his masterpiece *Ihyā ʿulūm al-dīn*, the work shows how deeply al-Imām al-Ghazālī personally realized what he wrote about, and his masterly treatment of hundreds of questions dealing with the inner life that no one had previously discussed or solved is a performance of sustained excellence that shows its author's well-disciplined, legal intellect and profound appreciation of human psychology. He also wrote nearly two hundred other works, on the theory of government, Sacred Law, refutation of philosophers, tenet of faith, Sufism, Qurʾānic exegesis, scholastic theology, and bases of Islām ic jurisprudence. He died in Tabiran in 505 H.

Al-Imām al-Rāfiʿī

Abū al-Qāsim ʿAbd al-Karīm ibn Muḥammad al-Rāfiʿī of Qazvin, Persia, born in 557 H is the imām of his time in Sacred Law and Qurʾānic exegesis. He represents, with al-Imām al-Nawawī, the principle reference of the late Shāfiʿī School. His main work, a commentary on al-Imām al-Ghazālī al-Wajiz entitled *Fath al-ʿAzīz fī sharh al-Wajīz* was later to furnish the textual basis for al-Imām al-Nawawī's Minhāj al-ṭālibīn. Al-Imām Taj al-Dīn al-Subkī noted of its author, "Al-Imām al-Rāfiʿī was steeped to repletion in the sciences of Sacred Law, Qurʾānic exegesis, hadīth, and fundamentals of Islāmic legal methodology, towering above his contemporaries in the transmission of evidence, in research, guidance, and in attainment…. It was as if jurisprudence had been dead, and he revived it and spread it, raising its foundation after ignorance had killed and buried it." He authored works in Sacred Law and history, and taught Qurʾānic exegesis and hadīth in Qazvin, where the hadīth master Imām Mundhīrī was among his students. Known as a pure-hearted ascetic who followed the mystic path, al-Imām al-Nawawī observed of him that he "had a firm standing in righteous and many miracles were vouchsafed to him." He died in Qazvin in 623 H.

Al-Imām al-Nawawī

Al-Imām Muhy al-Dīn Abū Zakariyyā Yahyā ibn Sharaf al-Nawawī, born in the village of Nawa on the Horan Plain of southern Syria in 631 H. He was the imām of the later Shāfiʿī School, the scholar of his time in knowledge, piety, and abstinence, a hadīth master (hāfiẓ), biographer, lexicologist, and Sufi. When he first came to Damascus in 649 H., he memorized the text of al-Imām Abū Ishaq al-Shīrāzī; al-Tanbīh in four and a half month, then the first quarter of al-Muhadhdhab, after which he accompanied his father on ḥajj, then visited Madīnah, and then returned to Damascus, where he assiduously devoted himself to mastering the Islām ic sciences. He took Shāfiʿī Law, hadīth, tenets of faith, fundamentals of jurisprudence, Arabic and other subjects from more than twenty-two scholars of the time, including Abū Ibrāhīm Ishaq al-Maghrībī, ʿAbd al-Rahman ibn Qudāmah al-Maqdisī, and others, at a period of his life in which, as al-Imām al-Dhahabī notes, "his dedication to learning, night and day, became proverbial." Spending all his time in either worship or gaining Sacred Knowledge, he took some twelve lessons a day, only dozed off in the night at moments when sleep overcame him, and drilled himself on the lessons he learned by heart while walking along the street. Fastidious in detail and deep in understanding of the subjects he thus mastered. He authored

many great works in Shāfiʿī jurisprudence, hadīth, history, and legal opinion, among the best known of which are his *Minhāj al-ṭālibīn*, which has become a main reference for the Shāfiʿī School, *Riyāḍ al-ṣālihīn* and *Kitab al-adhkār* in hadīth, and his eighteen-volume *Sharh Ṣahīh Muslim*.

He lived simply, and it is related that his entire wardrobe consisted of a turban and an ankle-length shirt with a single button at the collar. After a residence in Damascus of twenty-seven years, he returned the books he had borrowed from charitable endowments, bade his friends farewell, visited the graves of his Shaykhs who had died, and departed, going first to Jerusalem and then to his native Nawa, where he became ill at his father's home and died at forty-four years of age in 676 H, young in years but great in benefit to Islām and the Muslims.

Shaykh al-Islām Zakariyyā al-Anṣārī

Shaykh al-Islām Abū Yahya Zakariyya ibn Muḥammad ibn Aḥmad al-Anṣārī, born in Sanika, Egypt, in 823 H, is known as the shaykh of shaykhs. He was the Shāfiʿī scholar of his time, a hadīth master (hāfiẓ), judge and Qurʾānic exegete. He was educated in Cairo in circumstances of such poverty that he used to have to leave the mosque by night to look for watermelon rinds, which he would wash and eat.

When his knowledge later won him fame and recognition, he was to receive so many gifts that his income before his appointment to the judiciary amounted to nearly three thousand dirhams a day, which he spent to gather books, teach and give financial help to the students who studied with him. When Sultan Quytubay al-Jurkasi appointed him as head of the judiciary in Cairo, he accepted the post with reluctance after being repeatedly asked, but when the sultan later committed a wrong act and he sent him a letter upbraiding him, the sultan dismissed him and he returned to teaching. He authored works in Sacred Law, the sciences of Qurʾān and hadīth, logic, Arabic, fundamentals of jurisprudence, and Sufism, and was the Shaykh of al-Imām Ibn Ḥajar Haytamī. He died in 926 H at one hundred years of age.

Al-Imām Ibn Ḥajar al-Haytamī

Shihab al-Dīn Abū al-ʿAbbās Aḥmad ibn Muḥammad ibn ʿAlī ibn Hajar al-Haytamī al-Makkī is born in 909 H in Abū Haytam, western Egypt. He was the Shāfiʿī Imām of his time, a brilliant scholar of in-depth applications of Sacred Law, and with al-Imām Aḥmad al-Ramlī, represents the foremost resource for fatwa (legal apinion) for the entire late Shāfiʿī School. He was educated at al-Azhar, but later moved to Makkah, where he authored major works in Shāfiʿī jurisprudence, hadīth, tenets of

faith, education, hadīth commentary, and formal legal opinion. His most famous works include *Tuhfah al-muḥtāj bi sharh al-Minhāj*, a commentary on al-Imām al-Nawawī's *Minhāj al-ṭālibīn* whose ten volumes represent a high point in Shāfiʿī scholarship; the four volume *al-Fatāwā al-kubrā al-fiqhiyyah*; and *al-Zawājir ʿan iqtirāf al-kabāʾir*, which with its detailed presentation of Qurʾān and Hadīth evidence and masterful legal inferences, remains unique among Muslim works dealing with taqwa (godfearingness) and is even recognized by Hanafi scholars like al-Imām Ibn ʿĀbidīn as a source of authoritative legal texts valid in their own school. After a lifetime of outstanding scholarship, the Imām died and was buried in Makkah in 974 H.

Al-Imām Muḥammad al-Shirbīnī al-Khāṭib

Shams al-Din Muḥammad ibn Aḥmad al-Shirbīnī al-Khāṭib of Cairo is a Shāfiʿī Imām and Qurʾānic exegete of knowledge and piety, he studied in Cairo under al-Imām Aḥmad al-Ramlī, as well as Nur al-Dīn al-Maḥallī, Aḥmad Burullusi and others, who authorized him to give formal legal opinion and instruction. He educated a multitude of scholars and his works won recognition in their author's lifetime for their outstanding clarity and reliability, among the most famous of them his four-volume

Mughnī al-muḥtaj ilā maʿrifat maʿānī alfāz al-Minhāj, a commentary on al-Imām al-Nawawī's Minhāj al-ṭālibīn, and his Qurʾānic exegesis *al-Sirāj al-munīr fi al-iʿāna ʿalā maʿrifa baʿd kalām Rabbina al-Hakīm al-Khabīr*. He died in Cairo in 977 H.

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Notes

Notes

سفينة النجاة

The Ship of Salvation

***1*Introduction: The Reliance of the Traveller**

A classical manual of Islamic Sacred Law by Ahmad Ibn Naqib Al Misri (D. 769/1368), with the English text, commentary and appendices translated by Noah Ha Mim Keller.

*1*BOOK A: SACRED KNOWLEDGE

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*2*Chapter A1.0: The Knowledge of Good and Bad

@A1.1: (Abd al-Wahhab Khallaf:) There is no disagreement among the scholars of the Muslims that the source of legal rulings for all the acts of those who are morally responsible is Allah Most Glorious.

@A1.2: Unaided Intellect Cannot Know Allah's Rules
The question arises. Is it possible for the mind alone, unaided by Allah's messengers and revealed scriptures, to know rulings, such that someone not reached by a prophet's invitation would be able through his own reason to know Allah's rule concerning his actions? Or is this impossible?

@A1.3: The position of the Ash`aris, the followers of Abul Hasan Ash`ari, is that the mind is unable to know the rule of Allah about the acts of those morally responsible except by means of His messengers and inspired books.
For minds are in obvious disagreement about acts. Some minds find certain acts good, others find them bad.
Moreover, one person can be of two minds about one and the same action. Caprice often wins out over the intellect, and considering something good or bad comes to be based on mere whim.
So it cannot be said that an act which the mind deems good is therefore good in the eyes of Allah, its performance called for, and its doer rewarded by Allah; or that whatever the mind feels to be bad is thus bad in the eyes of Allah, its non-performance called for and its doer punished by Allah.

@A1.4: Meaning of Good and Bad
The basic premise of this school of thought is that the good of the acts of those morally responsible is what the Lawgiver (syn. Allah or His messenger (Allah bless him and give him peace)) has indicated is good by permitting it or asking it be done. And the bad is what the Lawgiver has indicated is bad by asking it not be done.
The good is not what reason considers good, nor the bad what reason considers bad. The measure of good and bad, according to this school of thought, is the sacred Law not reason (dis:W3).

@A1.5: Those Unreached by Prophets Are Not Responsible
According to this school, a person is not morally obligated by Allah to do or refrain from anything unless the invitation of a prophet and what Allah has legislated have reached him (n:w4 discusses Islam's relation to previous prophets' laws).
No one is rewarded for doing something or punished for refraining from or doing something until he knows by means of Allah's messengers, what he is obliged to do or obliged to refrain from.
So whoever lives in such complete isolation that the summons of a prophet and his Sacred Law do not reach him, is not morally responsible to Allah for anything and deserves neither reward nor punishment.
And those who lived in one of the intervals after the death of a prophet and before a new one had been sent were not responsible for anything and deserve neither reward nor punishment.
This view is confirmed by the word of Allah Most High:
"We do not punish until we send a messenger"
(Koran 17:15).
(.Ilm usul al-fiqh (y71) 96-98)

*2*Chapter A2.0: The Superiority of Sacred Knowledge over Devotion

@A2.1: Koranic Evidence
(Nawawi:) Allah most High says:
-1- "Say, Are those who know and those who do not know equal?'" (Koran 39:9).

-2- "Only the knowledgeable of His slaves fear Allah" (Koran 35:28).
-3- "Allah raises those of you who believe and those who have been given knowledge whole degrees" (Koran 58:11).
@A2.2: Hadith Evidence
The Prophet (Allah bless him and give him peace) said:
-1- "Whoever Allah wishes well, He gives knowledge of religion."
-2- "The superiority of the learned Muslim over the devotee is as my superiority over the least of you."
Then the Prophet (Allah bless him and give him peace) said,
"Allah and His angels, the inhabitants of the heavens and the earths, even the ant in its anthill and the fish, bless for those who teach people what is good."
-3- "When a human being dies, his work comes to an end except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him."
-4- "A single learned Muslim is harder on the Devil than a thousand worshippers."
-5- "Whoever travels a path seeking knowledge Allah makes easy for him a path to paradise.
"Angels lower their wings for the seeker of knowledge out of pleasure in what he seeks.
"Those in the heavens and the earth, and the very fish in the water ask Allah to forgive the person endowed with Sacred Knowledge.
"The superiority of the learned Muslim over the devotee is like the superiority of the moon over all the stars.
"The learned are the heirs of the prophets. The prophets have not bequeathed dinar nor dirham, but have only left Sacred Knowledge, and whoever takes it has taken an enormous share."
-6- "He who calls others to guidance shall receive the like of the reward of those who follow him without this diminishing their own reward in the slightest. And he who calls others to misguidance shall bear the like of the sins of those who follow him without this diminishing their own sins."
-7- "He who goes forth to seek Sacred Knowledge is in the way of Allah [syn jihad def:09] until he returns."
-8- "This world and what is in it are accursed [dis: w5] except for the remembrance of Allah, that which Allah loves, someone with Sacred Knowledge or someone learning it."

@A2.3
'Ali ibn Abi Talib (Allah be well pleased with him) said,
"The religious scholar is greater in reward than the fighter in the way of Allah who fasts the day and prays the night."

@A2.4
Abu Darda' (Allah be well pleased with him) said,
"Teaching Sacred Knowledge for a brief time is better than spending a night in prayer."

@A2.5
Yahya ibn Abi Kathir said,
"Studying Sacred Knowledge is a prayer."

@A2.6
Sufyan al-Thawri and Shafi'i said,
"There is nothing after what is obligatory that is superior to seeking Sacred Knowledge."

@A2.7: Other Reasons
(Nawawi:) There are similar statements from whole groups of early Muslims I have not mentioned that are like those I have quoted, the upshot of which is that they concur that devoting one's time to Sacred Knowledge is better than devoting it to voluntary fasting or prayer, better than saying "Subhan Allah" (lit. "Exalted is Allah above any limitation"), or other supererogatory devotions.
Among the proofs for this, besides the foregoing, is that:
-1- the benefit of Sacred Knowledge affects both its possessor and the Muslims, while the above mentioned supererogatory works are confined to oneself;
-2- Sacred Knowledge validates, so other acts of worship require it, though not vice

versa;
-3- scholars are the heirs of the prophets, while devotees are not characterized as such;
-4- the devote follows the scholar, being led by and imitating him in worship and other acts, obeying him being obligatory and not the other way around;
-5- the benefit and effect of Sacred Knowledge remain after its possesser departs, while supererogatory works cease with the death of their doer;
-6- knowledge is an attribute of Allah Most High;
-7- Sacred Knowledge, meaning the knowledge we are discussing, is a communal obligation (def: c3.2), and it is thus better than the supererogatory. The Imam of the Two Sanctuaries
(A: Juwayni) says in his book alGhiyathi that "the communal obligation is superior to the personal obligation in that the person performing it fulfills the need of the Islamic Nation (Umma) and lifts the obligation from it, while the obligation of the individual is restricted to himself." And success is through Allah (alMajmu' (y108), 1.18-22).

2 Chapter a3.0: The Blame-worthiness of seeking sacred knowledge for other than Allah

@A3.1: Meaning of for Other Than Allah
(Nawawi:) Know that what we have mentioned about the merit of seeking Sacred Knowledge only applies to the seeker who thereby intends Allah Himself, not some end concerned with this world.
Whoever seeks it for a worldly aim such as money, leadership, rank, prestige, fame, people inclining towards him, defeating opponents in debate, or similar motive, is blameworthy. (A When the basic reason is Allah but other motives play a role, they diminish the merit in the proportion that they enter into it.)

@A3.2: Koranic Evidence
Allah Most High says:
-1- "Whoever wants to cultivate the afterlife We shall increase for him his village, while whoever wants to cultivate this world, we shall give him of it, but he will have no share in the next (Koran 42:20).
-2- "Whoever wants the present world We hasten for him therein whatever We will, for whomever We want, and then consign him to hell, roasting in it condemned and rejected". (Koran 17:18).
-3- "Verily, your Lord is ready at ambush" (Koran 89:14).
-4- "They were not ordered except to worship Allah, making their religion sincere unto Him as pure monotheists" (Koran 98:5).
@A3.3: Hadith Evidence
The Prophet (Allah bless him and give him peace) said:
-1- "The first person judged on Resurrection Day will be a man martyred in battle. "He'll be brought forth, Allah will reacquaint him with His blessings upon him and the man will acknowledge them, where-
upon Allah will say, 'What have you done with them?' to which the man will respond, 'I fought to the death for you.'
"Allah will reply, `You lie. You fought in order to be called a hero, and it has already been said.' Then he will be sentenced
and dragged away on his face to be flung into the fire.
"Then a man will be brought forward who learned Sacred Knowledge, taught it to others, and who recited the Koran. Allah
will remind him of His gifts to him and the man will acknowledge them, and then Allah will say. `What have you done with them?' The man will answer. `I acquired Sacred Knowledge, taught it, and recited the Koran, for Your sake.'
"Allah will say, `You lie. You learned so as to be called a scholar, and read the Koran so as to be called a reciter, and it has already been said. `Then he will be sentenced and dragged away on his face to be flung into the fire."
-2- "Anyone who seeks Sacred Knowledge to argue with fools, vie with scholars, or draw people's attention to himself, will take a place in hell."
-3- "The most severely tortured on Resurrection Day shall be the scholar who did not benefit from his knowledge."

@A3.4 Sufyan al-Thawri said.
"No servant increased in knowledge and then in desire for the things of this world, save that he increased in distance from Allah." (Ibid.,1.23-24)

*2*Chapter: a4.0: Personally Obligatory Knowledge

@A4.1: Faith
(Nawawi:) There are three categories of Sacred Knowledge. The first is the personally obligatory (fard al-`ayn, def:c2.1), which is a morally responsible individual's learning the knowledge that the obligatory acts he must perform cannot be accomplished without, such as how the ablution (wudu) and prayer are done and so forth. Its obligatory character is how groups of scholars have interpreted the hadith in the Musnad of Abu Ya'la al-Mawsuli, from Anas, who relates that the Prophet (Allah bless him and give him peace) said,
"Seeking knowledge is an obligation upon every Muslim."
The meaning of this hadith, though the hadith itself is not well authenticated (A: being weak (dis:p9.5)), is true.

@A4.2: A Muslim's Responsibility in Tenets of Faith
As for the basic obligation of Islam, and what relates to tenets of faith, it is adequate for one to believe in everything brought by the Messenger of Allah (Allah bless him and give him peace) and to credit it with absolute conviction free of any doubt. Whoever does this is not obliged to learn the evidences of the scholastic . The Prophet (Allah bless him and give him peace) did not require of anyone anything but what we have just mentioned, nor did the first four caliphs, the other prophetic Companions, nor others of the early Muslim community who came after them.
Rather, what befits the common people and vast majority of those learning or possessing Sacred Knowledge is to retrain from discussing the subtleties of scholastic theology, lest corruption difficult to eliminate find its way into their basic religious convictions. Rather, it is fitter for them to confine themselves to contentment with the above-mentioned absolute certainly.
Our Imam Shafi'i (Allah Most High have mercy on him) went to the greatest possible lengths in asserting that engaging in scholastic theology is forbidden. (A: What he meant thereby was the heretical scholastic theology that proliferated in his time and put rationalistic theories ahead of the Koran and sunna, not the science of theology (`ilm al-tawhid) by which Ash`ari and Maturidi scholars (dis: x47) have clarified and detailed the tenets of faith of Sunni Islam, which is an important part of the Islamic sciences.) He insistently emphasized its unlawfulness, the severity of the punishment awaiting those who engage in it, the disgrace of doing it, and the enormity of the sin therein by saying,
"For a servant to meet Allah with any other sin than idolatry (shirk) is better than to meet Him guilty of anything of scholastic theology."
His other statements expressing the same meaning are numerous and well known. But if someone has doubts (Allah be our refuge) about any of the tenets of faith in which belief is obligatory (def: books u and v), and his doubt cannot be eliminated except by learning one of the theologians' proofs, then it is obligatory for him to learn it in order to remove the doubt and acquire the belief in question.

@A4.3: Belief in Problematic Scriptural Expressions
Scholars disagree about the Koranic verses and hadiths that deal with the attributes of Allah (n: such as His `hand' (Koran 48:10), His `eyes' (52:48) or His `nearness' (50:16) ) as to whether they should be discussed in terms of a particular figurative interpretation (ta'wil, def:w6) or not. Some say that they should be figuratively interpreted as befits them (n: interpreting His `hand.' for example, as an allusion to His omnipotence). And this is the more well known of the two positions of the scholastic theologians.
Others say that such verses should not be given a definitive interpretation, but rather their meaning should not be discussed, and the knowledge of them should be consigned to Allah Most High, while at the same time believing in the transcendence of Allah Most High, and that the characteristics of created things do not apply to Him. For example,

it should be said we believe that "the All-merciful is 'established' [Ar. istawa, dis:v1.3] on the Throne" (Koran 20:5), but we do not know the reality of the meaning of that, nor what is intended thereby, though we believe of Allah Most High that "there is nothing whatsoever like unto Him" (Koran 42:11), and that He is above indwelling in created things (hulul, dis:w7), or having the characteristics of temporal, contingent existence (huduth, dis:w8). And this is the path of the early Muslims, or the vast majority of them, and is the safest, for a person is not required to enter into discussions about this.
When one believes in Allah's transcendence above created things, there is no need for debate on it, or for taking risks over what there is neither pressing necessity nor even any real call for. But if the need arises for definitive interpretations to refute someone making unlawful innovations and the like, then the learned may supply them, and this is how we should understand what has come down to us from scholars in this field. And Allah knows best.

@A4.4: Works
A person is not obliged to learn how to perform ablution, the prayer, and so forth, until the act itself is obligatory for him. As for trade, marriage, and so forth, of things not in themselves obligatory, the Imam of the Two Sanctuaries (A: Juwayni), Ghazali, and others say that learning their means and conditions is personally obligatory for anyone who wants to do them. It has also been said that one should not call this knowledge "personally obligatory," but rather say, "It is unlawful to undertake them until one knows the conditions for their legal validity." And this expression is more accurate.

@A4.5: When One Must Learn Rites and Duties
It is obligatory for one to know what is permissible and what is unlawful of food, drink, clothing, and so forth, of things one is unlikely to be able to do without. And likewise for the rulings on treatment of women if one has a wife.

@A4.6: How Much One Must Teach One's Children
Shafi'i and colleagues (Allah have mercy on them) say that fathers and mothers must teach their children what will be obligatory for them after puberty. The guardian must teach the child about purification, prayer, fasting, and so forth; and that fornication, sodomy, theft, drinking, lying, slander, and the like are unlawful; and that he acquires moral responsibility at puberty and what this entails. It has been said that this education is merely recommended, but in fact it is obligatory, as the plain content of its scriptural basis (n: mentioned below) shows. Just as it is mandatory for a guardian to wisely manage his charge's property, this is even more important. The merely recommended is what exceeds this, such as teaching him the Koran, Sacred Law, etiquette, and teaching him what he needs to earn a living.
The evidence for the obligation of teaching a young child is the word of Allah Mighty and Majestic,
"O you who believe, protect yourselves and families from a fire" (Koran 66:6).
'Ali ibn Abi Talib (Allah be well pleased with him), Mujahid, and Qatada say it means.
"Teach them that with which they can save themselves from hell,"

@A4.7: Knowledge of the Heart
As for knowledge o the heart, meaning familiarity with the illness of the heart such as envy, pride, and the like (dis:book p.r. and s). Ghazali has said that knowledge of their definitions, causes, remedy, and treatment is personally obligatory. (A: And this is what Ghazali meant when he said that Sufism (Tasawwuf, dis:w9) is personally obligatory for every Muslim. He did not mean that taking a way (tariqa) and sheikh are obligatory, but rather the elimination of unlawful inner traits, which one could conceivably accomplish through the companionship of a single sincere brother.)
Others hold that if the morally responsible individual is endowed with a heart free of all these unlawful diseases, it suffices him, and he is not obliged to learn what will cure them. But if not safe from them he must reflect: if he can purify his heart from them without instruction then he must purify it, just as he must shun fornication and the like without learning the evidence proving he must. But if he cannot rid himself of these unlawful traits except through learning the above mentioned knowledge, then he is

personally obliged to. And Allah knows best (al-Majmu' (y 108), 1.24-26).
*2*Chapter A5.0: Communally Obligatory Knowledge

@A5.1: Religious Sciences
(Nawawi) The second category (in of Sacred Knowledge) is what is communally obligatory (fard al-kifaya, def:c3.2), namely the attainment of those Sacred Sciences which people cannot do without in practicing their religion, such as memorizing the Koran and hadith, their ancillary disciplines, methodological principles, Sacred Law, grammar, lexicology, declension, knowledge of hadith transmitters, and of scholarly consensus (ijma'. def:b7) and nonconsensus.

@A5.2: This-Worldly Knowledge
As for learning which is not Sacred Knowledge but is required to sustain worldly existence, such as medicine and mathematics, it too is a communal obligation (ibid.,1.26).

*2*Chapter A6.0: Recommended Knowledge

@A6.1
(Nawawi:) The third category is the supererogatory (def: c4.2), such as in-depth research into the bases of evidences, and elaboration beyond the amount required by the communal obligation, or such as an ordinary Muslim learning the details of nonobligatory acts of worship for the purpose of performing them; though not the work of scholars in distinguishing the obligatory from the nonobligatory, which is a communal obligation in respect to them. And Allah knows best (ibid, 1.27).

*2*Chapter A7.0: Subjects that are Not Sacred Knowledge

@A7.1 (Nawawi:) Having mentioned the categories of Sacred Knowledge the subjects it excludes are those that are unlawful offensive, or permissible.

@A7.2: Unlawful Knowledge
Unlawful knowledge includes:
-1- learning sorcery (dis: p3), since according to the most reliable position, it is unlawful, as the vast majority of scholars have decisively stated:
-2- philosophy (dis:w10);
-3- magic (Sha`badha, meaning sleight of hand, etc.);
-4- astrology (dis:p41);
-5- the sciences of the materialists (dis:w11).
-6- and anything that is a means to create doubts (n: in eternal truths), Such things vary in their degree of unlawfulness.

@A7.3: Offensive Knowledge
Offensive knowledge includes such things as post-classical poetry which contains romance and uselessness.

@A7.4: Permissible Knowledge
Permissible knowledge includes post-classical poetry which does not contain stupidity or anything that is offensive, incites to evil, hinders from good; not yet that which urges one to do good or helps one to do it (n: as the later would be recommended) (ibid., 1.27).

*1*BOOK B: THE VALIDITY OF FOLLOWING QUALIFIED SCHOLARSHIP
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*2*Chapter B1.0: Introduction

@B1.1
(Muhammad sa'id Buti:) What is the proof that it is legally valid and even obligatory to accept the authority of qualified scholarship (taq lid) when one is not capable of issuing expert legal opinion (ijtihad) on matters of Sacred Law? There are several aspects to it (n: discussed in the sections that follow) (al-Lammadhhabiyya akhtar bid a tuhaddidu al-sharia al-Islamiyya (y33), 70).

@B1.2: Meaning of Qualified Scholarship
(n:) For the key term qualified to issue expert legal opinion (Ar. mujtahid. this ability being ijtihad) please turn to book o and read o22.1(d) the qualifications of an Islamic judge (qadi). The difference between the qualifications for the Imam of a school and those for a judge or a mufti is that the former's comptence in giving opinion is absolute, extending to all subject matters in the Sacred Law, while the competence of the judge or mufti is limited respectively to judging court cases or to applying his Imam's ijtihad to particular questions.
No age of history is totally lacking people who are competent in ijtihad on particular questions which are new, and this is an important aspect of Sacred Law to provide solutions to new ethical problems by means of sound Islamic legal methodology in applying the Koranic and hadith primary texts. But while in this specific sense the door of ijtihad is not and cannot be closed, Islamic scholarship has not accepted anyone's claims to absolute ijtihad since Imams Abu Hanifa Malik, Shafi'i, and Ahmad. If one studies the intellectual legacy of these men underscholars who have a working familiarity with it, it is not difficult to see why.
As for those who decry "hidebound conservatism" and would open the gate of ijtihad for themselves while lacking or possibly not even knowing the necessary qualifications, if such people have not studied the rulings of a particular school and the relation between these rulings, the Koranic and hadith primary texts, and the school's methodological principles, they do not know how ijtihad works from an observer's standpoint, let alone how to employ it. To ask them for example which of two equally authenticated primary texts that conflict on a legal question should be given precedence, and why, is like asking an aspiring drafting student for the particulars of designing a suspension bridge. Answers may be forthcoming, but they will not be the same as those one could get from a qualified contractor. To urge that a mujtahid is not divinely protected from error (ma'sum) is as of little relevance to his work as the fact that a major physicist is not divinely protected from simple errors in calculus; the probability of finding them in his published work is virtually negligible.
Regarding other, long-dead schools, such as the Zahiriyya, the difference between their work and that of the four living schools is firstly one of quality, as their positions and evidence have not been re-examined and upgraded by succeeding generations of first-rank scholars like those of the four schools (dis:w12), and secondly the lack of verification of the actual positions of their Mujtahid's through reliable chains of transmitters, as described below at b7.6.
*2*Chapter B2.0: The Koranic Evidence for Following Scholars

@B2.1
(Muhammad Sa'id Buti;) The first aspect of it is the word of Allah the Majestic. "Ask those who recall if you know not" (Koran 16:43).
By consensus of all scholars (ijma.def:b7), this verse is an imperative for someone who does not know a ruling in Sacred Law or the evidence for it to follow someone who does. Virtually all scholars of fundamentals of Islamic law have made this verse their principle evidence that it is obligatory for the ordinary person to follow the scholar who is a mujtahid.

@B2.2
Similar to the above verse in being evidence for this is the word of Allah Most High: "Not all of the believers should go to fight. Of every section of them, why does not one part alone go forth, that the rest may gain knowledge of the religion to admonish their people when they return, that happily they may take warning" (Koran 9:122).
Allah Most High prohibited the people to go out altogether in military expeditions and jihad and ordered a segment of them to engagse solely in becoming knowledgeable in the religion of Allah, so that when their brothers returned to them, they would find someone qualified to give them legal opinion on the lawful and unlawful and to explain the rule of Allah the Glorious and Exalted (ibid., 71).

*2*Chapter B3.0: The Practice of the Prophetic Companions (Sahaba)

@B3.1
(Muhammad Sa'id Buti:) A second aspect is the consensus of scholars that the Companions of the Prophet (Ar. Sahaba, anyone who personally met the Prophet (Allah bless him and give him peace) and died while believing in Islam) were at various levels of knowledge in religion; not all of them were capable of giving formal legal opinion (fatwa), as Ibn Khaldun has noted, nor was the religion taken from all of them.

@B3.2: Religion Was Only Taken from Some Companions
Rather, there were those of them capable of legal opinion and ijtihad and these were a small minority in relation to the rest, and there were those of them who sought legal opinion and followed others therein, and these were the vast majority of them. (n: Suyuti, in Tadrib al-rawi, quotes Ibn Hazm's report that most of the Companions legal opinions came from only seven of them:'Umar, Ali, Ibn Mas'ud, Ibn Umar Ibn Abbas, Zayd ibn Thabit, and Aisha; and this was from thousands of the Companions (Tadrib al-rawi fi sharh Taqrib al-Nawawi(y109), 2,219).)

@B3.3: Those Giving Opinions Did Not Mention Evidence
Nor did the individual Companion giving a legal opinion necessarily mention the evidence for it to the person who had asked about it, Al-Amidi notes in his book al-lhkam: "As for scholarly consensus [ijma dis: b7.2] it is that ordinary people in the times of the Companions and those who immediately followed them, before there were dissenters, used to seek the opinion of mujtahids and would follow them in rules of Sacred Law.
"The learned among them would unhesitatingly answer their questions without alluding to mention of evidence. No one censured them for doing this; a fact that establishes scholarly consensus on the absolute permissibility of the ordinary person following one capable of ijtihad."

@B3.4: Prophet Dispatched Scholars to Various Peoples
The Prophet (Allah bless him and give him peace) used to dispatch the most knowledgeable of the Companions to places whose inhabitants knew nothing more of Islam than its five pillars. The latter would follow the person sent to them in everything he gave his judgment upon and had them do, of works, acts of worship, dealing with one another, and all matters of the lawful and unlawful.
Sometimes such a person would come across a question on which he could find no evidence in the Koran or sunna, and he would use his own personal legal reasoning and furnish them an answer in light of it, and they would follow him therein.

@B3.5: Succeeding Generations Followed Companions Example
As for the era of those who came after them (Ar. tabi'in, those who had personally learned from one or more of the Companions but not the Prophet himself (Allah bless him and give him peace)), the scope f legal reasoning had expanded, and the Muslims of this time followed the same course as had the Companions of the Prophet (Allah bless him and give him peace), except that the legal efforts were represented by the two main schools of thought, that of juridical opinion (ra'y) and that of hadith (n: the former in iraq, the latter in Medina) because of the methodological factors we previously mentioned
when we quoted Ibn Khaldun.
There were sometimes discussions and sharp disputes between leading representatives of the two schools, but the ordinary people and learners not at the main figures' level of understanding were unconcerned with this disagreement, and followed whomever they wanted or whomever was near to them without anyone censuring them for this (al-Lamadhhabiyya akhtar bid'a tuhaddidu al-shari'a al-Islamiyya (y33), 71-73).
*2*Chapter B4.0: The Rational Evidence for Following Specialists

@B4.1 (Muhammad Sa'id Buti:) A third aspect is the obvious rational evidence, which we express in the words of Sheikh `Abdullah Diraz, who says: "The logical proof is that, assuming that a person does not have the qualifications for ijtihad, when an instance of a particular religious ruling arises, he will either not worship by any means at all, which all concur is impermissible, or, if he worships by means of something, it will either be by examining the proof that verifies the ruling or by following a competent authority.
"The former is inadmissible because it would lead, in respect to him and all others like him, to in-depth examination of the evidences for all such instances, preoccupation with which would obviate the earning of livelihoods, disrupting trades and occupations, running the world by neglect of tillage and offspring, and preventing any one's following another's ijtihad, placing everyone under the most extreme hardship. The sole remaining alternative is to follow another, which is the means through which one must worship in such a case" (ibid.,73).
*2*Chapter B5.0: The Obligatoriness of Following Qualified Scholarship

@B5.1: Mujtahid's Opinion Is Evidence to Nonspecialists
(Muhammad sa'id Buti:) Because scholars accept the evidence from Koran, sunna, and reason as complete and intersubstantiative that the ordinary person or learned one not at the level of textual deduction and ijtihad is not entitled but to follow a qualified mujtahid who has a comprehensive grasp of the evidence -they say that a formal legal opinion (fatwa) from a mujtahid is in relation to the ordinary person just as a proof from the Koran and sunna is in relation to the Mujtahid for the Koran just as it obligates the scholar throughly versed in it to hold to its evidences and proofs, also obligates (n:in the verse quoted above at b2.1) the uninformed person to adhere to the formal legal opinion of the scholar
and his ijtihad (ibid.,73).

*2*Chapter B6.0: Why Qualified Scholars Differ on Legal Questions

@B6.1: Mujtahid's Opinion Is Evidence to Nonspecialists
(Salih Mu'adhdhin:) Muslims of the Sunna and Community are in agreement that we have arrived at all the rulings of Sacred Law through evidence that is either of unquestionably established transmission (qat'i al-wurud) or probabilistically established transmission (zanni al-wurud). The suras of the Koran, all of its verses, and those hadiths which have reached us by so many channels of transmission that belief in them is obligatory (mutawatir,def:o22.1(d(II))) are all of unquestionably established transmission, since they have reached us by numerous means, by generation from generation, whole groups, from whole groups such that it is impossible that the various channels could all have conspired to fabricate them.
As for the evidentiary character of these texts, regardless whether they are of unquestionably or probabilistically established transmission, they are of two types. The first type, unquestionable as evidence (qat'i al-dalala), is a plain text that does not admit of more than one meaning, which no mind can interpret beyond its one meaning,

which no mind can interpret beyond its one meaning, and which there is no possibility to construe in terms of other than its apparent sense. This type includes Koranic verses that deal with fundamental tenets of faith in the oneness of Allah, the prayer, zakat, and fasting; in none of which is there any room for disagreement, nor have any differences concerning them been heard of or reported from the Imams of Sacred Law. Everything in this category is termed unquestionable as evidence.
The second type, probabilistic as evidence (zanni al-dalala), is a text that can bear more than one meaning, whether because it contains a word that can lexically have two different meanings, or because it was made by way of figure of speech or metaphor, or because it can be interpreted in other than its apparent sense in the context without this contradicting what was intended by the Wise Lawgiver. It is here that we find scope for scholarly difference of opinion to a greater or lesser extent depending on the number of meanings a text can imply, how much interpretation it will bear, and so forth.
All of the derivative rulings of Sacred Law are of this type, probabilistic as evidence, so we naturlly find differences among Islamic legal scholars as to their interpretation, each scholar interpreting them according to his comprehension and the broadness of his horizons, while not giving the text a reading it does not imply, and then corroborating his interpretation with evidence acceptable to scholars. Scholarly differences are thus something natural, even logically necessary, as a result of the factors we have just described.
Allah Mighty and Majestic has willed that most texts of the Sacred Law be probabilistic as evidence because of a wisdom He demands, namely, to give people more choice and leave room for minds to use ijtihad in understanding His word and that of His messenger (Allah bless him and give him peace).

@B6.2: Example of a Question on which Scholars Differ
We conclude this short summary with an example to clarify what we have said. Consider the word of Allah.
"Divorced women shall wait by themselves for three periods" (Koran 2:228).
as opposed to His saying, in the same sura,
"Those who forswear their women have a wait of four months"(Koran 2:226).
Allah's saying "three" in the former and "four" in the latter are texts that are decisive as evidence, in that neither admits of more than one interpretation, namely, the well-known numbers.
But in contrast with this, when Allah says "periods" (Ar.quru') in the first, and "months"(ashhur) in the second, we find that the former word can have more than one sense in its Arabic lexical root meaning, while months cannot, the latter being decisive in meaning and incapable of bearing another interpretation. Concerning this question, Imam Qurtubi says in his Koranic exegesis: "Scholars differ about the word periods. Those of kufa hold that it means menstrual periods, and this is the position of 'Umar, 'Ali, and Ibn Mas'ud. But those of the Hijaz hold it means the intervals of purity between menstrual periods, and this is the view of `A' isha, Ibn `Umar, and Shafi'i."
Considering this, is it not natural that there should be various opinions about understanding the verse "three periods" but only one about understanding Allah's saying "four months"? If Allah had wanted all opinions to coincide on this question. He might have said for example, "three menstrual periods" (hiyad) or
"three intervals of purity between menstrual periods" (athar), just as He said "four months." And all the texts of Sacred Law that can bear more than one meaning are comparable to this example ('Umdat al-salik (y90). 11-13).

*2*Chapter B7.0: Scholarly Consensus (Ijma`)

@B7.1: Meaning of Consensus
('Abdal-Wahhab Khallaf:) Scholarly consensus (ijma') is the agreement of all the mujtahids (def:o22.1(d)) of the Muslims existing at one particular period after the Prophet's death (Allah bless him and give him peace) about a particular ruling regarding a matter or event. It may be gathered from this that the integral elements of scholarly consensus are four, without which it is invalid:
(a) that a number of mujtahids exist at a particular time:

(b) that all mujtahids of the Muslims in the period of the thing or event agree on its ruling, regardless of their country, race, or group, though nonmujtahids are of no consequence;
(c) that each mujtahid present his opinion about the matter in an explicit manner, whether verbally, by giving a formal legal opinion on it, or practically, by giving a legal decision in a court case concerning it;
(d) and that all mujtahids agree on the ruling, for if a majority of them agree, consensus is not effected, no matter how few those who contradict it, nor how many those who concur.
@B7.2: Scholarly Consensus Is Legally Binding
When the four necessary integrals of consensus exist, the ruling agreed upon is an authoritative part of Sacred Law that is obligatory to obey and not lawful to disobey. Nor can mujtahids of a succeeding era make the thing an object of new ijtihadm because the ruling on it, verified by scholarly consensus, is an absolute legal ruling which does not admit of being contravened or annulled.

@B7.3: Koranic evidence
The proof of the legal authority of scholarly consensus is that just as Allah Most Glorious has ordered the believers, in the Koran, to obey Him and His Messenger, so too He has ordered them to obey those of authority (ulu al-amr) among them, saying,
"O you who believe, obey Allah and obey the Prophet and those of authority among you" (koran 4:59).
such that when those of authority in legal expertise, the Mujtahids, agree upon a ruling, it is obligatory in the very words of the Koran to follow them and carry out their judgement.
And Allah threatens those who oppose the Messenger and follow other than the believers' way, saying,
"Whoever contraverts the Messenger after guidance has become clear to him and follows other than the believers' way, We shall give him over to what he has turned to and roast him in hell, and how evil an outcome" (Koran 4:115).

@B7.4: Hadith Evidence
A second evidentiary aspect is that a ruling agreed upon by all the mujtahids in the Islamic Community (Umma) is in fact the ruling of the Community, represented by its mujtahids, and there are many hadiths that have come from the Prophet (Allah bless him and give him peace), as well as quotes from the Companions, which indicate that the Community is divinely protected from error, including his saying (Allah bless him and give him peace) :
-1- "My Community shall not agree on an error."
-2- "Allah is not wont to make my Community concur on misguidance."
-3- "That which the Muslims consider good, Allah considers good." (`Ilm usul al-fiqh (y71), 45-47)

@B7.5: Scholarly Consensus and the Four Sunni Schools
(n: Another hadith that scholars quote in connection with the validity of scholarly consensus is the following, given with its commentary.)
The Prophet (Allah bless him and give him peace) said,
"Allah's hand is over the group, and whoever dissents from them departs to hell."
"Allah's hand is over the group, and whoever dissents from them departs to hell."
Allah's hand is over the group (al-`Azizi:) Munawi says, "Meaning His protection and preservation of them, signifying that the collectivity of the people of Islam are in Allah's fold, so be also in Allah's shelter, in the midst of them, and do not separate yourselves from them. "The rest of the hadith, accordng to the one who first recorded it (n: Tirmidhi), is, and whoever dissents from them departs to hell.
Meaning that whoever diverges from the overwhelming majority concerning what is lawful or unlawful and on which the Community does not differ has slipped off the path of guidance and this will lead him to hell (al-Siraj al-munir sharh al-Jami' al-saghir (y18), 3.449).

B7.6: Why One May Not Follow Other Than the Four Schools
(n: In addition to its general interest as a formal legal opinion, the following serves

in the present context to clarify why other than the four Sunni schools of jurisprudence do not necessarily play a role in scholarly consensus.) (`Abd al-Rahman Ba'alawi:) Ibn Salah reports that there is scholarly consensus on its being unlawful to follow rulings from schools other than those of the four Imams, meaning in one's personal works, let alone give court verdicts or formal legal opinions to people from the, because of the untrustworthiness of the ascription of such rulings to the scholars who reportedly gave them, there being no channels of transmission which obviate the possibility of textual corruption and spurious substitutions.
The Zaydis, for example, who trace themselves to Zayd ibn 'Ali Husayn (n:son of 'Ali and Fatima), the beatitude of Allah be upon them, despite the fact that Zayd was one of Imams of the religion and a renowned figure well qualified to give guidance to those seeking it, his followers identify him with extreme permissiveness on many questions, ascriptions based on failure to check as to what his positions actually were (n: by naming the intermediate transmitters and establishing their reliability). It is quite otherwise with the four schools, whose Imams (Allah reward them) have spent themselves in checking the positions of their schools, explaining what could be rigorously authenticated as the position of the person it was attributed to, and what could not be. Their scholars have thus achieved safety from textual corruption and have been able to discern the genuine from the poorly authenticated (Bughya al-mustarshidin fi talkhis fatawa ba'd al-a'imma min al-muta'akhkhirin (y19), 8).

*1*BOOK C: THE NATURE OF LEGAL RULINGS

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*2*Chapter C1.0: Kinds of Rulings
@C1.1: Meaning of a Legal Ruling
('Abd al-Wahhab Khallaf:) A legal ruling is a statement from the Lawgiver (syn. Allah or His messenger (Allah bless him and give him peace)) concerning the acts of those morally responsible which:
-1- requires something;
-2- allows a choice;
-3- or gives stipulations.

@C1.2: Injunctive Rulings
An injunctive ruling is one that enjoins the morally responsible individual to either do or refrain from an act, or gives him an option to do or refrain from it.
An example of enjoining one to do an act is Allah's saying,
"People owe Allah to make pilgrimage to the House" (Koran 3:97).
An example of enjoining one to refrain from an act is His saying,
"Let no people mock another people" (Koran 49:11).
And an example of giving an option to do or refrain from an act is His saying,
"When the prayer is finished, go forth in the land" (Koran 62:10).

@C1.3: Stipulative Rulings
As for stipulatory rulings, they entail that something is made a legal reason (sabab) for another thing, a condition (shart) for it, or a preventive (mani) of it.
An example of being stipulated as reason for something is Allah's saying,
"O believers, when you go to pray, wash your faces and wash your forearms to the elbows" (Koran 5:6),
which stipulates wanting to pray as a reason for the obligation of performing ablution (wudu).
An example of something being made a condition for another thing is His saying.
"People owe Allah to make pilgrimage to the House, whoever is able to find a way" (Koran 3:97),
which implies that the ability to get to the House (n: Kaaba) is a condition for the obligatoriness of one's pilgrimage. Another example is the Prophet's saying (Allah bless him and give him peace),
"There is no marriage unless there are two witnesses,"
which means the presence of two witnesses is a condition for the validity of a marriage.
An example of being made a preventive of something is the Prophet's saying (Allah bless him and give him peace),
"The killer does not inherit,"
which entails that an heir's killing the deceased is preventive of his inheriting an estate division share from him ('Illm usul al-fiqh (y71), 100-102).

*2*Chapter C2.0: Types of Human Act

@C2.1: Obligatory
(N:) The obligatory (fard) is that which the Lawgiver strictly requires be done, Someone who performs an obligatory act out of obedience to Allah is rewarded, while a person who refrains from it without excuse deserves to be punished.
(A: In the Shafi'i school there is no difference between obligatory (fard) and requisite (wajib) except in the pilgrimage, where nonperformance of a requisite does not invalidate the pilgrimage, but necessitates an expiation by slaughtering. For any conditions necessary for its validity and all of its integrals (rukn, pl. arkan) are obligatory, since it is unlawful to intentionally perform an invalid act of worship.)

@C2.2: Recommended or Sunna
The sunna (n: or recommended (mandub)) is that which the Lawgiver asks be done, but does not strictly require it. Someone who performs it out of obedience to Allah is

rewarded, though someone who refrains from it is not punished.

@C2.3: Permissible
The permissible (mubah) is what the Lawgiver has neither requested nor prohibited, so the person who does it is not rewarded or punished. Rather, doing or not doing it are equal, though if a person does it to enable him to perform an act of obedience to Allah, or refrains from it for that reason, than he is rewarded for it. And if he does such an act to enable him to perform an act of disobedience, he is sinning.

@C2.4: Offensive
The offensive (makruh) is that which the Lawgiver has interdicted but not strictly forbidden. A person who refrains from such an act out of obedience to Allah is rewarded, while the person who commits it does not deserve to be punished.

@C2.5: Unlawful
The unlawful (haram) is what the Lawgiver strictly forbids. Someone who commits an unlawful act deserves punishment, while one who refrains from it out of obedience to the command of Allah is rewarded.
(n: Scholars distinguish between three levels of the unlawful:
-1- minor sins (saghira, pl. sagha'ir), which may be forgiven from prayer to prayer, from one Friday prayer (jumu'a) to another, and so forth, as in mentioned in hadith;
-2- enormities (kabira, pl. kaba'ir), those which appear by name in the Koran or hadith as the subject of an explicit threat, prescribed legal penalty, or curse, as listed below at book p;
-3- and unbelief (kufr), sins which put one beyond the pale of Islam (as discussed at o8.7) and necessitate stating the Testification of Faith (Shahada) to reenter it. Repentance (def: p77) is obligatory for all three (al-Zawajir 'an iqtiraf al-kaba'ir (y49), 1.5-9).)

@C2.6: Ruling of an Act Varies with the Situation
(Nawawi:) There is no doubt that the merit of an act varies. Fasting, for example, is unlawful on 'Eid Day, obligatory before it, and recommended after it. The prayer is highly desirable most of the time, but offensive at some times and situations, such as when restraining oneself from using the lavatory. Reciting the Koran is desirable, but offensive when bowing in the desirable, but offensive when bowing in the prayer or prostrating. Dressing one's best is good on the 'Eid or on Friday, but not during the drought prayer. And so forth.
Abul Qasim al-Junayd (Allah have mercy on him) said, "A sincere person changes forty times a day, while the hypocritical show-off stays as he is forty years."
The meaning of this is that the sincere person moves with what is right, wherever it may lead, such that when prayer is deemed better by the Sacred Law, then he prays, and when it is best to be sitting with the learned, or the righteous, or guests, or his children, or taking care of something a Muslim needs, or mending a broken heart, or whatever else it may be, then he does it, leaving aside what he usually does. And likewise for fasting, reciting the Koran, invoking Allah, eating or drinking, being serious or joking, enjoying the good life or engaging in self-sacrifice, and so on. Whenever he sees what
is preferred by the Sacred Law under the circumstances, he does it, and is not bound by a particular habit or kind of devotion as the show-off is. The Prophet (Allah bless him and give him peace) did various things of prayer, fasting, sitting for Koran recital and invocation, eating and drinking, dressing, riding, lovemaking with his wives, seriousness and jest, happiness and wrath, scathing condemnation for blameworthy things, leniency in punishing those who deserved it and excusing them, and so on, according to what was possible and preferable for the time and circumstances (al-Majmu' (y108), 1.17-18).

*2*Chapter C3.0: Obligatory Acts

@C3.1: Time-Restricted Versus Non-Time-Restricted
('Abd al-Wahhab khallaf:) Obligatory acts are distinguished in four ways, according to various considerations.

One distinction is whether current performance is time-restricted or non-time-restricted.
A time-restricted obligatory act is one the Lawgiver demands be done at a particular time, such as the five obligatory prayers, for each of which the time for current performance is set, such that the particular prayer is not obligatory before it, and the individual is guilty of serious sin if he delays it past its time without excuse.
A non-time-restricted obligatory act is one which the Lawgiver strictly demands, but does not specify a time for its current performance, such as the expiation obligatory for someone who swears and oath and breaks it (def: 020).
@C3.2: Personally Obligatory Versus Communally Obligatory
A second distinction between obligatory acts is made on the basis of who is called upon to perform them, namely whether an act is personally obligatory or communally obligatory.
A personally obligatory (fard al-'ayn) act is what the Lawgiver requires from each and every morally responsible person. It is insufficient for someone to perform such an act on another's behalf, such as the prayer, zakat (def: h1.0), pilgrimage, keeping agreements, and avoiding wine or gambling.
A communally obligatory (fard al-kifaya) act is what the Lawgiver requires from the collectivity of those morally responsible, not from each one of them, such that if someone undertakes it, then the obligation has been fulfilled and the sin and responsibility (n: of nonperformance) is lifted from the rest, while if no one undertakes it, then all are guilty of serious sin for neglecting the obligation, Examples include commanding the right and forbidding the wrong (def: book q), praying over the dead, building hospitals, lifesaving, fire fighting, medicine, industries people require, the existence of Islamic courts and judges, issuing formal legal opinions, responding to someone who says "as-Salam 'alaykum," and testifying in court.
The Lawgiver requires that these obligatory acts exist in the Islamic Community regardless of who does them. But He does not require they be done by each person, or some particular one, since the interests of the Community are realized by the existence of these things through the efforts of some of those morally responsible, and do not entail every particular person's performance of them.
Someone able through himself or his property to perform the communally obligatory act is obliged to perform it, and someone unable to do it himself is obliged to urge and have the person do it who can. If the obligatory act is done, all are cleared of the sin, and if neglected all the guilty of serious sin. The person capable of it is guilty because he neglected a communally obligatory act he could have done, and the rest are guilty because they neglected to urge him and have him perform the obligatory act he was capable of.
When an individual is the only one available who can perform a communally obligatory act, it becomes personally obligatory for him.

@C3.3: Acts of Defined Amount Versus Undefined Amount
A third way Obligatory acts are distinguished is by the amount of them required, that is, whether the act is of a defined amount or an undefined amount.
Obligatory acts of defined amount are those for which the Lawgiver has determined a particular quantity, such that the subject is not free of the obligation until he has done the amount stipulated by the Lawgiver, as with the five obligatory payers, or zakat.
Obligatory acts of undefined amount are those which the Lawgiver has not stipulated the amount of, but rather demands them from the subject in an undetermined quantity, such as spending in the way of Allah, cooperating with one another in good works, feeding the hungry, helping those in distress, and so forth.

@C3.4: Specific Obligation Versus Alternatives
A fourth distinction between obligatory acts is whether an act is a specific obligation, or an obligation to choose between certain alternatives.
Specific obligations are those in which the Lawgiver demands the act itself, such as the prayer, fasting in Ramadan, paying for merchandise, rent from a tenant, or returning something wrongfully taken; such that the individual is not free of the obligation until he does that very act.
An obligation to choose between certain alternatives is when the Lawgiver requires the

performance of one of a given number of actions, such as one of the options in expiating a broken oath, where Allah Most High requires the person who has broken his oath to feed ten poor people, clothe them, or free a slave ('abd,def:w13), and the obligation consists of doing any of these three things ('Ilm usul al-fiqh (y71), 106, 108-11).

*2*Chapter C4.0: Recommended Acts

@C4.1: Confirmed Sunnas (Sunna Mu'akkada)
(`Abd al-Wahhab Khallaf:) Recommended acts are divided into three categories.

@C4.2: Supererogatory Works
The first is recommended acts whose demand is confirmed. Someone who neglects such an act does not deserve punishment, but does deserve censure and blame. This includes the sunnas and recommended acts that are legally considered to complete obligatory acts, such as the call to prayer (adhan) or performing the obligatory prayers,in a group, as well as all religious matters that the Prophet (Allah bless him and give him peace) diligently performed and did not omit except once or twice to show that they were not obligatory, like rinsing out the mouth when performing ablution, or reciting a sura or some verses of the Koran after the Fatiha during the prayer. This category is called the confirmed sunna (sunna mu akkada) or sunna of guidance.

@C4.3: Desirable Acts
The second category is those acts whose performance is sanctioned by sacred Law such that the person who performs them is rewarded, though someone who omits them deserves neither punishment nor blame. This includes acts the Prophet (Allah bless him and give him peace) did not diligently perform, but did one or more times and then discontinued. It also includes all voluntary acts, like spending on the poor, fasting on Thursday of each week, or praying rak'as (units) of prayer in addition to the obligatory and confirmed sunna prayers.
This category is called the extra sunna or supererogatory (nafila).

@C4.4: Superlatively Recommended Acts
The third category consists of the superlatively recommended, meaning those acts considered part of an individual's perfections. It includes following the Prophet (Allah bless him and give him peace) in ordinary matters that proceeded from him as a human being, as when a person eats, drinks, walks, sleeps, and dresses like the Prophet used to. Following the example of the Prophet (Allah bless him and give him peace) in these and similar matters is an excellence and considered among one's refinements, as it shows one's love for the Prophet and great attachment to him. But someone who does not follow the Prophet (Allah bless him and give him peace) in matters like these is not considered a wrongdoer, because they are not part of his lawgiving (A: though such acts are rewarded when one thereby intends to follow the prophet (Allah bless him and give him peace), and every desirable practice one performs means a higher degree in paradise which the person who neglects it may not attain to).
Acts of this category are called desirable (mustahabb), decorum (adab), or meritorious (ibid., 112).

*2*Chapter C5.0: Unlawful Acts

@C5.1: Unlawful in Itself Versus Extrinsically Unlawful
(`Abd al-Wahhab Khallaf:) The unlawful is of two kinds. The first is the originally unlawful in itself, meaning the Sacred Law forbids it from the outset, such as adultery, theft, prayer without ritual purity, marrying a member of one's unmarriageable kin while knowing them to be such, selling unslaughtered dead animals, and so forth, of things that are intrinsicallu unlawful because they entail damage and harm, the prohibition applying from the outset to the very act.
The second is the unlawful because of an extrinsic reason, meaning that the initial ruling of an act was that it was obligatory, recommended, or permissible, but an extrinsic circumstance became linked with it that made it unlawful, such as a prayer performed in a garment wrongly taken, or a sale in which there is fraud, or a marriage

whose sole purpose is to allow the woman to remarry her previous husband who has pronounced a threefold divorce against her, or fasting day after day without breaking the fast at night, or an unlawfully innovated divorce (def:n2.3), and so forth, of things unlawful because of an external circumstance. The prohibition is not due to the act itself. But because of something extrinsic to the act; meaning the act is not damaging or harmful in itself, but something has happened to it and become conjoined with it that makes it entail damage or harm.

@C5.2 One consequence of the above distinction is that an intrinsically unlawful act is uncountenanced by the Law to begin with, so it cannot be a legal cause or reason, or form the basis for further legal cosequences, Rather, it is invalid, Because of this, prayer without ritual purity is invalid, marriage to a close unmarriageable relative when one knows them to be such is invalid, and the sale of an unslaughtered dead animal is invalid. And something legally invalid is without other legal efficacy.
But an act that is unlawful because of an extrinsic circumstance is intrinsically lawful, and can thus be a legal reason and form the basis for further legal consequences, since its prohibition is accidental to it and not essential. Because of this a prayer while wearing a garment wrongfully taken is legally valid, though the person is guilty of serious sin for having taken it; a sale in which there is fraud is legally valid (N: though the buyer has the option to cancel the sale and return the merchandise for a full refund); and an unlawfully innovated divorce is legally effective.
The reason for this is that the prohibition of an act because of an extrinsic event or circumstance does not vitiate either the basis of its being a legal cause or its identity, provided all its integrals and conditions exist. As for intrinsic unlawfulness, it negates the basis of an act's being a legal cause and vitiates its identity by the nonexistence of one of its integrals or conditions, so that it is no longer something that is of legal consideration (ibid., 113-14).

*2*Chapter C6.0: Dispensation (Rukhsa) and Strictness ('Azima)

@C6.1: Strictness
(`Abd al-Wahhab khallaf:) Strictness is what Allah initially legislates, of general rulings not concerned with one circumstance rather than another, or one individual rather than another.

@C6.2: Dispensation
Dispensation is when what is normally forbidden is made permissible because of neccessity or need.
For example, if someone is forced to make a statement of unbelief (kufr) it is made permissible, to ease his hardship, for him to do so as long as faith remains firm in his heart. Likewise with someone who is forced to break his fast in Ramadan, or forced to destroy the property of another; the normally prohibited act which he is forced to do becomes permissible for him, to ease the hardship. And it is made permissible for someone forced by extreme hunger or severe thirst to eat from an unslaughtered dead animal or drink wine. (A: The latter is not permissible even under such conditions in the Shafi'i
school) Dispensation also includes being permitted to omit an obligatory act when an excuse exists that makes its performance a hardship (dis: c7.2. second par.) upon the individual. Thus, someone who is ill or travelling in Ramadan is permitted not to fast. And someone who is travelling is permitted to shorten prayers of four rak'as to only two rak'as (ibid., 121-22).

@C6.3: Interschool Differences Considered As Dispensations
(n:) Since it is permissible for a Muslim to follow any of the four Imams in any of his acts of worship, comparison of their differences opens another context from discussing dispensation and strictness, a context in which classical scholars familiar with various schools often use the term "dispensation " to refer to the ruling of the school easiest on a particular legal question, and "strictness" to refer to the ruling of the school that is most rigorous. Which school this is varies from question to question. The following entry discusses how and when it is permissible for ordinary Muslims to

use dispensation in the sense of following easier rulings from a different school, while entry c6.5 discusses the way of greater precaution (al-ahwat fi al-din) taken by those Muslims who purposely select the strictest school of thought on each legal question because of its being more precautionary and closer to godfearingness (taqwa).

@C6.4: Conditions for Following Another School

Scholars frequently acknowledge that the difference of the Imams is a mercy, and their unanimity is a decisive proof, Sheikh `Umar Barakat, the commentator of 'Umdat al-salik, says:

"It is permissible to follow each of the four Imams (Allah be well pleased with them), and permissible for anyone to follow one of them on a legal question, and follow a different one on another legal question. It is not obligatory to follow one particular Imam on all legal questions" (Fayd al-llah al-Malik (y27), 1.357).

This does not, however, imply that it is lawful to indiscriminately choose dispensations from each school, or that there are no conditions for the above mentioned permissibility. Imam Nawawi was asked for a formal legal opinion on whether pursuing dispensations in such a manner was permissible;

(Question:) "Is it permissible for someone of a particular school to follow a different school in matters that will be of benefit to him, and to seek out dispensations?"

He answered (Allah be well pleased with him), "It is not permissible to seek out dispensations [A: meaning it is unlawful, and the person who does is corrupt (fasiq)], and Allah knows best" (Fatawa al-Imam al-Nawawi (y105), 113).

But when forced by necessity or hardship to take such a dispensation (A: even retroactively as when one has finished the action, and then makes the intention to have followed another Imam's school of thought on the question), then there is nothing objectionable in it, provided that one's act of worship together with its prerequisites is valid in at least one of the schools. One may not simply piece together (taliq) constituent parts from various schools in a single act of worship, if none of the schools would consider the act valid. An example is someone who performs an ablution that is minimally valid in the Shafi'i school by wetting only a few hairs of his head in the ablution sequence, something not permitted by Hanafis, and then prays behind an imam without himself reciting the Fatiha, something permitted by Hanafis but not shafiis. His ablution, the necessary condition for his prayer is inadequate in the Hanafi school and his performance of the prayer is inadequate school, with the result that neither considers his prayer valid, and in fact it is not, Whoever follows a ruling mentioned in this volume from another school must observe the conditions given at w14 and make sure his worship is valid in at least one school, which for prayer can best be achieved by performing all recommended measures in the present volume relating to purity, for example, e5,e11, and so on, as if obligatory.

@C6.5: Way of Greater Precaution in Religion

A second way to use differences between schools is to take the way of greater precaution by following whoever is most rigorous on a given question. For example, when performing the purificatory bath (ghusl), rinsing the mouth and nostrils with water is a nonobligatory, sunna measure according to the Shafi'i school, but obligatory and necessary for the purificatory bath's validity according to Hanafis.

The way of greater precaution is for the Shafi'i to perform it as diligently as if it were obligatory, even though omitting it is permitted by his school. (`Abd al-Wahhab Sha'rani:) My brother, when you first hear of the two levels of this scale (n: dispensation and strictness), beware of jumping to the conclusion that there is absolute free choice between them, such that an individual may without restriction choose either dispensation or strictness in any ruling he wishes. It does not befit a person able to perform the stricter ruling to stoop to taking a dispensation permissible to him. (A: The more rigorous is always preferable in the Shafi'i school even when the dispensation is permissible.) For as you know my brother, I do not say that the individual is free to choose between taking the dispensation or taking the stricter ruling when he is able to perform the stricter ruling obligatory for him. I take refuge in Allah from saying such a thing, which is like making a game of religion. Of an absolute certainty, dispensation are only ofr someone unable to perform the stricter ruling, for in such a case, the dispensation is the stricter ruling in relation to him.

Moreover, I hold that mere sincerely and honesty demand of anyone who follows a particular school not to take a dispensation that the Imam of his school holds is

permissible unless he is someone who needs to; and that he must follow the stricter ruling of a different Imam when able to, since rulings fundamentally refer back to the word of the Lawgiver, no one else; this being especially necessary when the other Imam's evidence is stronger, as opposed to what some followers do.
We find among the dictums of the Sufis that one should not follows a position in Sacred Law for which the evidence is weaker except when religiously more precautionary than the stronger position.
For example, the Shafi'i opinion that (n:a male's) ablution is nullified by touching a girl who is a child or touching the nails or hair of a woman: though this position is considered weaker by them (n: than the position given at e7.3), it is religiously more precautionary, so performing ablution for the above-mentioned things is better (al-Mizan al-kubra (y1230,:10-11).
(A Because more rigorous rulings necessarily meet the requirements of less rigorous ones (though not vice versa), following more rigorous rulings from another school is unconditionally valied, unlike following its dispensations. And Allah knows best.)

*2*Chapter C7.0: Things One May Be Held Legally Responsible For

@C7.1: Conditions of a Valid Legal Responsibility
('Abd al-Wahhab Khallaf:) Three conditions must exist in any act that it is legally valid to make an individual responsible for. The first is that the act be well enough known to the individual that he can perform it in the way required of him. It should be noted that the individual's knowledge of what he is responsible for means the possibility of his knowing it, not his actual knowledge of it. Whenever a person reaches puberty, of sound mind and capable of knowing the rulings of Sacred Law by himself or by asking those familiar with them, then he is considered to know what he is responsible for, and rulings are carried out on him, their consequences exacted of him, and the excuse of being ignorant of them is not accepted from him.
The second condition is that it is known that the ruling has been imposed by someone who possesses the authority to do so and whose rules the individual is obliged to observe, since it is through this knowledge that the individual's will can be directed to obey him. This is the reason that in any proof for a ruling of Sacred Law the first point discussed is why it is legally binding for individuals.
The third condition is that the act the subject is responsible for be possible and within the capacity of the subject to do or to refrain from. This condition in turn implies two things: first, that it is legally invalid to impose something impossible, whether impossible in itself or impossible because of another thing; and second, that it is invalid to ask that a particular individual be responsible for someone else's performing an act or refraining from one, since someone else's action or inaction is not within the individual's own capacity. Hence, a person is not responsible for his father's paying zakat, his brother's performing the prayer, or his neighbor's refraining from theft. As regards others, all a person is obliged to do is to advise, to command the right and forbid the wrong, for these are acts he is capable of.
Nor is it legally valid to make a person responsible for various innate human states which are the results of natural causes that are not of the person's acquisition or choice, such as emotional arousal when angry; turning red when embarassed; love, hate, grief, elation, or fear when reasons them exist; digestion; breathing; being short or tall, black or white; and other innate traits with which people are born and whose presence or absence is subject to natural laws, not to the individual's will and choice, and which are thus beyond his capacity and not among the things possible for him. And if some primary texts have reached us that apparently show that there is responsibility for some of the things that are not within a person's capacity, these are not as they seem. For example, the order of the Prophet (Allah bless him and give him peace), "Do not become angry," is outwardly an order to refrain from something natural and unacquired, namely, anger when motives for it exist. But the real meaning is "Control yourself when angry and restrain yourself from its bad consequences."

@C7.2: Legal Responsibility Lifted by Hardship
From the condition that an act must be within the individual's capacity before he can be held accountable for it, one should not jump to the conclusion that this implies there will not be any hardship whatsoever for the individual in the act. There is no

contradiction between an act's being within one's capacity and its being hard. Nothing a person is responsible for is completely free of hardship, since moral responsibility is being obliged to do that in which there is something to bear with, and some type of difficulty.
Hardship, however, is of two types. The first is that which people are accustomed to bear, which is within the limits of their strength, and were they to continue bearing it, it would not cause them harm or damage to their persons, possessions, or other concerns. The second is that which is beyond what people are accustomed to bear and impossible for them to continually endure because they would be cut off, unable to go on, and damage and harm would affect their persons, possessions, or one of their other concerns. Examples include fasting day after day without breaking it at night, a monastic life, fasting while standing in the sun, or making the pilgrimage on foot. It is a sin for someone to refuse to take a dispensation and insist on the stricter ruling when this will probably entail harm (`Ilm usul al-fiqh (y71), 128-33).

*2*Chapter C8.0: Who May Be Held Legally Responsible

@C8.1: Intellect and Puberty
(`Abd al-Wahhab Khallaf:) Two conditions must exist in an individual for it to be legallly valid to hold him responsible.
The first condition is that he is able to understand the evidence that he is responsible for something, such that it is within his capacity to understand legal texts from the Koran and sunna by which the ruling is imposed, whether by himself of through another (dis: b5.1). Since human reason is something hidden, unobservable by outward sense perception, the Lawgiver has conjoined responsibility for rulings with something manifest and perceptible to the senses from which reason may be inferred, namely, puberty.
Whoever reaches puberty without showing signs of impaired intellectual faculties, his capacity for responsibility exists. And conversely, neither an insane person nor child are responsible, because of their lack of intellect, which is the means of understanding the evidence that something is a ruling. Nor are those responsible who are in a state of absentmindedness or sleeping, because while they are heedless or asleep it is not within their capacity to understand. The Prophet (Allah bless him and give him peace) said,
"The pen has been lifted from three: the sleeper until he awakens, the child until his first wet dream, and the insane person until he can reason."
The second condition (n:for the legal validity of holding someone responsible) is that he be legally eligible for the ruling. Eligibility is of two types, eligibility for obligation, and eligibility for performance.

@C8.2: Eligibility for Rights and Duties
Eligibility for obligation is the capacity of a human being to have rights and duties. This eligibility is established for every person by the mere fact of being human, whether male, female,fetus, child, of the age of discrimination, adolescent, intelligent, foolish, sane or insane, healthy or ill; because its basis is an innate attribute found in man. Every human being, whoever he or she may be, has eligibility for obligation and none lacks it because one's eligibility for obligation is one's humanness.
There are only two human states in relation to eligibility for obligation, partial and full. One could have partial eligibility for obligation by being entitled to possess rights over others but not have obligations towards them, like a fetus in its mother's womb, which has rights, since it can be an heir, inherit a bequest, and the proceeds of an endowment (waqf) can accrue to it, but it does not have any obligations to others. Full eligibility for obligation means a person has rights upon others and obligations towards them. Every human being acquires it at birth.

@C8.3: Eligibility for Acts of Legal Consequence
Eligibility for performance is the capacity of an individual for words and actions that are legally significant, such that if an agreement or act proceeds from him, it legally counts and entails the rulings applicable to it. If he prays, fasts, makes the pilgrimage, or does anything obligatory; it is legally acknowleged and discharges the

obligation. And if he commits a crime against another's person, possessions, or honor, he is held accountable for his crime and is bodily or financially penalized.
So eligibility for performance is responsibility, and its basis in man is intellectual discrimination.
There are three states which a person may have in relation to eligibility for performance:
-1- A person could completely lack or lose eligibility for performance, like a young child during his childhood or an insane person during his insanity (regardless of his age), neither of whom has eligibility for performance because they lack human reason, and for neither of whom are there legal consequences entailed by their words or actions. Their agreements and legal dispositions are null and void, the limit of which is that if either of them commits a crime against another's person or possessions, he is responsible for paying the indemnity out of his own property, but not subject to retaliation in his own person. This is the meaning of the scholars' expression, "The intentional act of a child or insane person is an honest mistake."
-2- A person could have partial eligibility for performance, an example of which is the child who has reached the age of mental discrimination (def: f1.2) but not puberty (k13.8), or the retarded person, who is not disturbed in intellect nor totally bereft of it, but rather is weak-minded and lacking in intellect, so that the Sacred Law treats him as it does the child with discrimination. Because each of these two possesses the basis of eligibility for performance by the fact of having discrimination, those of their legal actions which are absolutely beneficial to them, such as accepting gifts or alms, are valid without their guardian's permission.
As for those of their legal actions which are wholly harmful to them, such as giving donations or waiving their rights to something, these are not in any way valid, even with the guardian's permission.
The gift, bequest, endowment, and divorce of such persons are not valid, and the guardian's permission is irrelevant to these actions. The legal actions of the child with discrimination or the retarded person which are between absolute benefit and absolute harm to him are valid, but only on condition that the guardian gives his permission for them. If the guardian gives permission for the agreement or disposition, it is implemented, and if he does not permit it, the action is invalid.
-3- Or a person could have full eligibility for performance by the fact of having reached puberty sound of mind.
Events, however, may befall this eligibility. They include those that happen to a person without affecting his eligibility for performance by eliminating or diminishing it, but which alter some rulings concerning him because of considerations and interests that arise through these events, not because of loss or lessening of eligibility for performance. Examples include the foolhardy and the absentminded person. Both have reached puberty with normal intelligence and have full eligibility for performance, but to protect their own property from loss and prevent them from becoming a financial burden on others, they are declared legally incompetent in financial dealings such that neither their financial transactions nor donations are valid. This is not because of a lack or lessening of their eligibility for performance, but rather to protect their own property. A debtor has likewise reached puberty with normal intelligence and possessess full eligibility for performance, but to protect the rights of his creditors, he is declared legally incompetent to make transactions with his money that infringe on the rights of his creditors, such as charitable donations (`Ilm usul al-fiqh (y71) 134-40).

*1*BOOK D: AUTHOR'S INTRODUCTION TO `UMDAT AL-SALIK

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*2*Chapter D1.0: Author's Introduction

@D1.1
In the name of Allah, Most Merciful and Compassionate.
Praise be to Allah, Lord of the Worlds. Allah bless our liegelord Muhammad, his folk,

and his Companions one and all.
@D1.2: A Description of the Book
This is a summary of the school of Imam Shafi'i (the mercy and bliss of Allah Most High be upon him) in which I have confined myself to the most dependable positions (al-sahih) of the school according to Imam Rafi'i and Imam Nawawi, or according to just one of them. I may mention a difference of opinion herein, this being when their recensions contend (dis: w12), giving Nawawi's position first (0: as he is the foremost reference of the school), and then as opposed to it, that of Rafi'i (n:generally left untranslated because it is the weaker position where mentioned).

@D1.3: The Title
I have named it The Reliance of the Traveller and Tools of the Worshipper.
(O: Reliance means that which is depended upon, since the author meant that this text should be a reliable resource work for whoever goes by it, because it contains the most dependable positions of the school and omits the weak ones.
Traveller (salik) derives from travel (suluk), meaning to proceed along, the allusion being to the spiritual journey, meaning one's seeking knowledge of the rules of religion with seriousness and effort, to thereby reach Allah Most High and be saved from perdition.
Tools are physical instruments their owner depends on in his work, like those of a carpenter. The tools here are knowledge of the rules of Sacred Law found in this text which the validity of worship depends upon.)

@D1.4 I ask Allah to give benefit through it, and He is my sufficiency, and best to rely on.
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*2*Chapter E1.0: Water

@E1.1: Legal Categories of Water
Water is of various types:
-1- purifying;
-2- pure;
-3- and impure.
@E1.2: Purifying
Purifying means it is pure in itself and it purifies other things.
(O: Purification (Ar. tahara) in Sacred Law is lifting a state of ritual impurity (hadath, def:e7), removing filth (najasa, e14), or matters similar to these, such as

purificatory baths (ghusl) that are merely sunna or renewing ablution (wudu) when there has been no intervening ritual impurity.)

@E1.3: Pure

Pure means it is pure in itself but cannot purify other things (O: such as water that has already been used to lift a state of ritual impurity).

@E1.4: Impure

Impure means it is neither purifying nor pure. (O: Namely:

-1- less than 216 liters of water (qullatayn) which is contaminated by filth (najasa), even when none of the water's characteristics (n: i.e. taste, color, or odor) have changed.

-2- or 216 liters or more of water when one of its characteristics of taste, color, or odor have changed (n:through the effect of the filth. As for the purity of water that has been used to wash away filth, it is discussed below at e14.14).)

@E1.5: Only Plain Water Is Purifying

It is not permissible (O: or valid) to lift a state of ritual impurity or remove filth except with plain water (O: not used water (def:(2) below), or something other than water like vinegar or milk), meaning purifying water as it comes from nature, no matter what quality it may have (O: of taste. such as being fresh or saline (N: including seawater); of color, such as being white, black, or red; or of odor, such as having a pleasant smell).

@E1.7: Used or Changed Water Is Not purifying

It is not permissible to purify (def: e1.2(O:)) with:

-1- water that has changed so much that it is no longer termed water through admixture with something pure like flour or saffron which could have been avoided;

-2- less than 216 liters of water that has already been used for the obligation (dis:c2.1(A:), end) of lifting a state of ritual impurity, even if only that of a child;

-3- or less that 216 liters of water that has been used to remove filth, even if this resulted in no change in the water.

@E1.8: Slight Change Does Not Affect Water

It is permissible to purify with water:

-1- (non-(1) above) that has been only slightly changed by saffron or the like;

-2- that has been changed by proximity with something such as aloes or oil that are (O: i.e. even if) fragrant;

-3- that has been changed by something impossible to prevent, such as algae, tree leaves falling in it, dust, or the effects of standing too long;

-4- (non-(2) of the previous ruling) that has already been used for a nonobligatory use such as the sunnas of rinsing out the mouth, renewing ablution when there has been no intervening state of ritual impurity, or a sunna purificatory bath;

-5- or water that has already been used (n: to lift a state of ritual impurity) and has now been added together until it amounts to 216 liters or more.

@E1.9: Water Is Affected by User's Contact

With less than 216 liters, if a person performing ablution (after washing his face once) or the purificatory bath (after making intention for it) makes the intention in his heart to use his hands to scoop up the water, then the introduction of his hands into this amount of water does not make the water used.

But if not (O: if he does not make this intention at all, or does so after putting his hands in the water, which is less than 216 liters), then the rest of the water is considered as already used (n: and no longer purifying. But in the Maliki school (dis: c6.4 (end)), it is valid (though offensive) to lift a state of ritual impurity with water that has already been used for that purpose (al-Sharh al-saghir'ala Aqrab al-Malik ila madhhab al-Imam Malik (y35), 1.37)).

@E1.10: 216 or More Liters of Water (Qullatayn)

As for 216 liters or more of water, even if two or more persons in a state of major ritual impurity (janaba, def; e10) are immersed in it, whether simultaneously or serially, their impurity is lifted and the water does not thereby become used (n: but remains purifying).

@E1.11: 216 Liters Remains Purifying Even After Use
Qullatayn (lit. "two great jars") roughly equal five hundred Baghdad ritls, and their volume is one and a quarter dhira in height, width, and length.
(n: The definition of qullatayn as being 216 liters is based on estimating the dhira' at fortyeight centimeters. Metric equivalents of Islamic weights and measures are given at w15.)

@E1.12: 216 Liters Becomes Impure by Change from Impurities
Two hundred and sixteen liters of water does not become impure by mere contact with filth, but only becomes so by changing (n: in taste, color, or smell) because of it, even when (O: this change is) only slight.

@E1.13: 216 Liters Becomes Pure If the Change Disappears
If such change (n: in 216 liters or more of water) disappears by itself (O: such as through standing at length) or by water is used or impure) then the water in again purifying.

@E1.14 But the 216 liters of water does not become purifying if the change disappears by (O: putting) such things as musk (O: in it, or ambergris, or camphor, which mask the Scent; or putting saffron and the like in which mask the color) or vinegar (O: which masks the taste) or earth.

@E1.15: Contact with Filth Makes Under 216 liters Impure
Less than 216 liters becomes impure by mere contact with filth, whether the water changes or not, unless filth falls into it whose amount (N: before it falls in is so small that it) is indiscernible by eyesight (A eyesight, here and for all rulings, meaning an average look, not a negligent glance nor yet a minute inspection), or if something dead falls into it of creatures without flowing blood, such as flies and the like, in both of which cases it remains purifying. This is equally true of running or still water.

@E1.16: Reaching 216 Liters Purifies Less Than 216 Liters
When less than 216 liters of impure water is added to (O: even if with impure water) until is amounts to 216 liters or more and no change (def: below) remains in it, then it is (O: has become) purifying.

@E1.17: Meaning of Change in Water
Change, resulting from something pure or impure, means in color, taste, or smell. (N: But the least change caused by filth makes water (n: even if more than 216 liters) impure, while change caused by something pure does not hurt as long as it can still be termed water. For example, when sugar and tea, it has become pure but not purifying. As for a slight discoloration by tea leaves, or a slight sweetness from sugar, this does not negate water's being purifying.)

*2*Chapter E2.0: Containers and Utensils

@E2.1: Unlawfulness of Gold or Silver Vessels and Utensils
Purification is permissible with water from any pure container, except those of gold or silver, or those to which enough gold or silver has been applied that any of it could be collected from the vessel by heating it with fire (N: meaning that if the vessel were exposed to fire, the metallice coat would melt and seperate from the container, even if not drop by drop). Such containers or utensils are unlawful for men or women to use in purification, eating, drinking, or other use (O: of any type whatever). It is unlawful to acquire such a container or utensil even if one does not use it. Even a small eye-liner stick of silver is unlawful.

@E2.2: Vessels soldered or decorated with gold or silver
Vessels soldered with gold are absolutely unlawful.
It is unlawful to use a vessel to which much def:14.5) silver solder has been applied by way of decoration; permissible to use a vessel to which only a little silver solder

has been applied by way of a needed repair; and offensive but not unlawful to use a vessel to which only a little silver has been applied for decoration, or much out of neccessity.
Solder means that a part of the vessel has been broken and then silver is put there to hold it together.

@E2.3 It is offensive to use the vessels of non-Muslims (N: before washing them) (O: to be certain of the purity of the vessels used, since non-Muslims are not as concerned about purity as Muslims are) or wear their clothers (O: for the same reason).

@E2.4 It is permissible to use a vessel made of any precious gem, such as a ruby or emerald.

*2*Chapter E3.0: Using a Toothstick (Siwak)
@(O: In Sacred Law it refers to the use of a twig or the like on the teeth and around them to remove an unpleasant change in the breath or similar, together with the intention (n: of performing the sunna).)

@E3.1: Times of Use
Using a toothstick is recommended any time, except after noon for someone who is fasting, in which case it is offensive. (A: Using toothpaste is also offensive then, and if any reaches the stomach of someone fasting, it is unlawful (n: if the fast is obligatory, as this breaks a fast).)

@E3.2 It is especially desirable to use the toothstick for every prayer, for reading (O: the Koran, hadith, or a lesson), ablution, yellowness of teeth, waking from sleep, entering one's house, and for any change of breath from eating something with a bad odor or from not eating. (A: When there exists a demand for an act, such as using the toothstick before reading the Koran, and an equal demand not to, as when it is after noon on a fast-day, then the proper course is not to do it.)

@E3.3: Acceptable Types
Anything coarse is adequate (n: to fulfill the sunna) except rough fingers, though the best is a twig from the arak (n: a desert shrub) that is dried (N: meaning previously cut from the shrub long enough to have dried) and then moistened.

@E3.4: Directions for Use
It is best to clean the teeth laterally, beginning on the right and paying particular attention to the bases of the back teeth, and to intend the sunna thereby.

*2*Chapter E4.0: The Body

@E4.1: Sunnas of the Body
It is sunna:
-1- to trim the fingernails and toenails;
-2- to clip one's mustache (O: when it grows long. The most one should clip is enough to show the pink of the upper lip. Plucking it out or shaving it off is offensive.) (A: Shaving one's beard is unlawful according to all Imams except Shafi'i, who wrote two opinions about it, one that it is offensive, and the others that it is unlawful. A weak chain of narrators ascribes an opinion of offensiveness to Imam Malik. It is unbelief (kufr) to turn from the sunna in order to imitate non-Muslims when one believes their way to be superior to the sunna);
-3- for those used to it, to pluck away the hair of the underarms and nostrils, though if plucking the underarms is a hardship, then shaving them; and to shave the public hair;
-4- and to line the eyes with kohl (n: an antimonic compound that one should be careful to see contains no lead), each eye an odd number of times, preferably three.

@E4.2: Cutting the Hair
It is offensive to shave part of the head and leave part unshaven (A: though merely cutting some of the hair shorter than another part is not objectionable). There is no

harm in shaving it all off (O: but it is not recommended except for the rites of hajj and umra (n: the greater and lesser pilgrimages)).

@E4.3: Circumcision Is Obligatory
Circumcision is obligatory (O: for both men and women. For men it consists of removing the prepuce from the penis, and for women, removing the prepuce (Ar. bazr) of the clitoris (n: not the clitoris itself, as some mistakenly assert). (A: Hanbalis hold that circumcision of women is not obligatory but sunna, while Hanafis consider it a mere courtesy to the husband.)

@E4.4: Dyeing Hair, Etc.
It is unlawful for men or women to dye their hair black, except when the intention is jihad (O: as a show of strength to unbelievers). Plucking out gray hair is offensive. It is sunna to dye the hair with yellow or red. (N: It is unlawful for a woman to cut her hair to disfigure herself (n:e.g. for mourning), though if done for the sake of beauty it is permissible.) It is sunna for a married woman to dye all of her hands and feet with henna (n: a red plant dye). but it is unlawful for men to do so unless it is needed (N: to protect from sunburn, for example).

*2*Chapter E5.0: Ablution (Wudu)

@(N: Meaning to wash certain parts of the body with water, with the intention of worship.) (O: The legal basis for ablution, prior to scholarly consensus, is the word of Allah Most High.
"O believers, when you go to pray, wash your faces, and wash your forearms to the elbows, wipe your heads, and [wash] your feet to the two anklebones" (Koran 5.6)
and the hadith related by Muslim.
"A prayer is not accepted without purification.")

@E5.1: The Six Obligatory Integrals of Ablution
Ablution has six obligatory integrals:
(a) to have the intention when one starts washing the face;
(b) to wash the face;
(c) to wash the arms up to and including the elbows;
(d) to wipe a little of the head with wet hands;
(e) to wash the feet up to and including the anklebones;
(f) and to do these things in the order mentioned.
The sunnas of ablution are all its actions besides the above. (N: The obligatory minimum is to perform (b), (c), (d), and (e) once, though the sunna is to perform them each three times.)
@E5.2: The Intention
The person performing ablution intends:
-1- to lift a state of lesser ritual impurity (hadath) (O: since the purpose of ablution is to eliminate that which prevents prayer and the like);
-2- to purify for the prayer;
-3- or to purify for something not permissible without purification, such as touching a Koran, or something else.
(N: The simple intention to perform the obligation of ablution suffices in place of all the above.)

@E5.3: Intention of Those Incapable of Normal Abultion
The above intentions are not used by three types of people when performing ablution:
-1- a woman with chronic vaginal discharge (def:e13.6);
-2- a person unable to hold back intermittent drops of urine coming from him (n: or with some similar state of chronic annulment of ablution (e13.7));
-3- or a person intending to perform dry ablution (tayammum,def:e12).
Such people merely intend permission to perform the obligation of the prayer as they begin their ablution. (O: The intention to lift a state of minor ritual impurity is inadequate for these people because their state of impurity is not lifted.) (n: Rather the Sacred Law gives them a dispensation to perform the prayer and so forth without lifting it.)

@E5.4: Conditions for the Intention of Ablution
The necessary condition of ablution is that the intention for it exist in the heart and that it accompany one's washing the first part of the face.
It is recommended to pronounce it aloud, and that it be present in the heart from the first of ablution (O: during the preliminary sunnas before washing the face, so as to earn their reward). It is obligatory that this intention persist in the heart until one washes the first part of the face (O: as that is the first part of the face (O: as that is the first integral). If one confines oneself to making the intention when washing the face, it suffices, but one is not rewarded for the previous sunnas of rinsing the mouth and nostrils and washing the hands (N: provided that one merely intended cleanliness or something else by them and the intention of worship did not come to one's mind).

@E5.5: How to perform Ablution (The Basmala and Pre-Abultion Supplications)
It is recommended to begin ablution by mentioning (n: in Arabic, like the other invocations in this volume (def:wl)) the name of Allah Most High (O: by saying "In the name of Allah," which is the minimum.
The optimum is to say, "In the name of Allah. Most Merciful and Compassionate," Before this, it is sunna to say, "I take refuge in Allah from the accursed Devil," and to add after the Basmala: "Praise to Allah for Islam and its blessings. Praise to Allah who made water purifying and Islam a light. My Lord, I take refuge in You from the whispering of devils and take refuge in You lest they come to me." It is sunna to say all the above to oneself.)
If one internationally or absentmindedly omits saying the name of Allah (n: at the first of ablution), then one pronounces it during it (O: by saying, "In the name of Allah, first to last").

@E5.6: Washing the Hands
It is recommended to wash the hands three times. (O: By saying "three times," the author indicates the sunna character of performing such acts thrice, and that it is an independent sunna (N: rewarded apart from the sunnas it is conjoined with).)
If one has doubts as to whether or not one's hands are free of filth, it is offensive to dip them into less than 216 liters of water without first washing them three times. (O: When sure they are pure, it is not offensive to immerse them. When sure they are impure, it is unlawful to dip them into this amount of water (N: since it spoils it by making it impure).)

@E5.7: Cleaning the teeth, rinsing out nose and mouth
One next uses the toothstick (def:e3), and then rinses the mouth and nose out three times, with three handfuls of water. One takes in a mouthful from a handful of water and snuffs up some of the rest of the handful into the nostrils (n: swishing the water around the mouth, and expelling the water of the mouth and the nose simultaneously), then again rinses the mouth and then the nostrils from a second handful of water, followed by rinsing the mouth and then the nostrils from the third handful of water. One lets the water reach as much of the mouth and nostrils as possible, unless fasting, when one goes lightly.

@E5.8: Washing the Face
Then one washes the face three times, face meaning from the point where the hairline usually begins to the chin in height, and from ear to ear in width.

@E5.9: Beard and facial hair
It is obligatory to wash all facial hair-inner, outer, and the skin beneath, whether the hair is thick or thin or thin-such as eyebrows, mustache, and so forth; except for the beard, since:
-1- if it is thin its inner and outer hair and the skin beneath must be washed;
-2- but if thick, then the outer hair is enough, though it is recommended to saturate it by combing it from beneath with wet fingers.
It is obligatory to cause the water to flow over the outer(O: hair of the) part of the beard that hangs below the chin (O: though not its inner hair).

It is obligatory to wash part of the head in every direction beyond the bounds of the face, to make sure everything has been completely covered.
It is sunna to use new water to saturate one's beard (O: if it is thick) by combing it from beneath with the fingers.

@E5.10: Washing the Arms
Then one washes the hands up to and including the elbows three times.
(If the arm has been amputated between the hand and elbow, it is necessary to wash the remaining forearm and the elbow, If amputated at the elbow, then the end of the upper arm must be washed. If it has been amputated between the elbow and shoulder, then it is recommended to wash the rest of the upper arm.)

@E5.11: Wiping the Head
Then one wipes the head with wet hands, beginning at the front of the head, sliding the paired hands back to the nape of the neck, and then returning them to where one began. (O: This is an explanation of the best way, for otherwise, fulfilling the obligation does not depend on starting at the front, but may be from any part of the head.) One does this three times.
If one is bald, or one's hair never grew, or is long, or braided, then it is not recommended to slide the hands back to the front.
Each of the following suffices as wiping the head:
-1- to place the hand on the head without moving it so that one wets any of what is referred to by "wiping the head," the minimum of which is part of a single hair, provided this part does not hang below the limits of the head;
-2- to drip water on the head without making it flow over it;
-3- or to wash the head
(If it is difficult to remove one's turban, then after wiping the minimum of the head required, one may finish by wiping the turban.)

@E5.12: Wiping the ears
One then wipes the ears inside and out with new water, three times, and then the ear canals with one's little fingers with more new water, three times (O: though this second sunna is not separately mentioned in the more well known books, which speak of the two sunnas together, making "wiping the ears" include the ear canals).

@E5.13: Washing the Feet
Then one washes the feet up to and including the anklebones three times.

@E5.14: Doubts about Washing a Limb Three Times
If one does not know whether one washed a particular limb or the head three times (N: as is sunna), then one assumes one has washed it the least number that one is sure of, and washes as many additional times as it takes to be certain one has reached three.

@E5.15: Beginning with the Right, Etc.
One begins with the when washing arms and legs, but not the hands, cheeks, and ears, which are washed right and left simultaneously.

@E5.16: Washing More Than the Obligatory Area
One washes more than is obligatory of the face by adding part of the head and neck, and likewise with the arms and legs by washing above the elbows and ankles, the maximum of which is the whole upper arm or lower leg.

@E5.17: Washing Without Pause Between Successive Limbs
One washes the parts of the body successively and without pausing between them (O:such that in normal weather the last part would not dry before one began the next), though if one pauses between them, even for a long time, one's ablution is still valid without renewing the intention.

@E5.18: Supplication After Ablution
After finishing, one says: "I testify that there is no god but Allah, alone, without partner, and I testify that Muhammad is His slave and messenger. O Allah, make me one

of the oftrepentant, one of the purified, one of Your goodly slaves. O Allah, I declare Your exaltedness above every imperfection and Your Praise. I testify ther is no god but you. I ask Your forgiveness and turn to You in repentance."
There are supplications said for each limb washed, but these are not authenticated as being of the sunna.

@E5.19: Other Recommended Measures
Other recommended measures (adab) include:
-1- facing the direction of prayer;
-2- not to talk during ablution for other than a necessity;
-3- and to begin with the top of the face and not slap water upon it.

@E5.20 If another person is pouring one's water (N: or if using a tap) one begins washing the arms from the elbows, and the feet from the anklebones. If pouring one's own water (N: from a jug, for example), one begins washing the arms from the fingers and the feet from the toes.
@E5.21 One should take care that water reaches the inner corners of the eyes, and the heels (N: up to the level of the anklebones) and similar places it is feared one may neglect, especially during the winter.
@E5.22 One moves one's ring when washing the hand to allow water to reach the skin beneath. (O: If the water cannot otherwise get under it, it is obligatory to move the ring.)

@E5.23 One saturates between the toes using the little finger of the left hand. One begins with the little toe of the right foot, coming up through the toes from beneath, and finishes with the little toe of the left.

@E5.24: Things Offensive in Ablution
It is offensive:
-1- to have another person wash one's limbs, unless there is some excuse (O: such as old age or the like);
-2- to wash the left before the right;
-3- or to waste water.

@E5.25: Minimal Amounts of Water for Ablution and Bathing
It is recommended:
-1- not to use less than 0.51 liers (mudd) of water for ablution;
-2- not to use less than 2.03 liters (sa') of water for the purificatory bath (ghusl);
-3- not to dry off the parts washed in ablution (N: unless there is an excuse such as illness or cold weather) or shake the water off one's hands;
-4- not to ask another to pour water for one's ablution;
-5- and not to wipe the neck.

@E5.26: Water-Repellent Substances Prevent Ablution
If dirt under the nails prevents the water (O: of ablution or the purificatory bath from reaching the skin beneath) then the ablution (O: or bath) is not valid.
(N: The same is true of waterproof glue, paint, nail polish, and so forth on the nails or skin: if it prevents water from reaching any part of the nails or skin, no matter how small, one's ablution or purificatory bath is not valid.)

@E5.27: Doubts About Having Washed a Part in Ablution
If one has doubts during the course of the ablution that one has washed a particular limb or the head, then it is obligatory to wash it again and everything that follows it in the ablution sequence. But if these doubts arise after one has finished ablution, one need not repeat anything. (A: The same is true of the purificatory bath (ghusl).)

@E5.28: Renewing Ablution When not Obligatory
It is recommended to renew the ablution (N: when there has been no intervening state of minor ritual impurity) when one has performed any prayer, obligatory or nonobligatory, will it.

@E5.29: Ablution Recommended After Making Love
Ablution is recommended for someone in a state of major ritual impurity (janaba) who wishes to eat, drink, sleep or make love again. And Allah knows best.

*2*Chapter E6.0: Wiping Footgear

@(N: Wiping one's footgear (Ar. khuff) with wet hands is a dispensation that can take the place of the fifth ablution integral of washing the feet. The footgear Muslims generally use for this are ankle-high leather socks that zip up and are worn inside the shoes.)

@E6.1: Duration of Periods of Permissibility
Wiping footgear is permissible for 72 hours (lit. "three days and nights") to a traveller on a lawful trip (N: one not undertaken for purposes of disobeying Allah) that fulfills the conditions permitting one to shorten prayers on journeys (def:f15.1-5).
Wiping them is permissible to a nontraveller for 24 hours (lit. "a day and a night"). (n: At the end of these periods, one removes the footgear to perform ablution, or, if one has ablution at the time, to wash the feet, before putting them on again and starting a new period of permissibility, as at e6.7)
The beginning of the period is reckoned from the time of the first minor ritual impurity (hadath) that occurs after having put them on while in a state of ablution.
Wiping footgear is permissible for only 24 hours:
-1- when one has wiped one has wiped both of a pair of footgear for ablution or just one of the pair (n: leaving the other for later) when not on a trip, and then begun travelling;
-2- or (O: When one has wiped both of a pair of footgear or just one) when on the trip and then finished travelling;
-3- or when one is in doubt as to whether one first wiped one's footgear for ablution while travelling or whether it was while not travelling.
Wiping footgear is permissible for 72 hours if one's ablution is nullified when not travelling and one then lifts that state of minor ritual impurity by wiping them for the ablution while travelling.

@E6.2 When one doubts as to whether or not the permissible period for wiping them has expired, then one may not wipe them while the doubt exists. (A: Because dispensations cannot be taken unless one is certain (N: of their necessary conditions).) If one has doubts(n: when near the end of the permissible period for wiping them, for example, and uncertain exactly when it began) about whether one nullified one's ablution at the time of the noon prayer, or whether it was at the time of the midafternoon prayer, then one proceeds on the assumption that it was at the time of the noon prayer.

@E6.3: Major Ritual Impurity (Janaba) During the Period
If a state of major ritual impurity (janaba) occurs during the permissible period for wiping footgear, then one must take them off for the purificatory bath (ghusl).

@E6.4: Conditions for Permissibility of Wiping Footgear
The conditions for the permissibility of wiping footgear are:
(a) that one have full ablution when one first puts them on;
(b) that they be free of filth;
(c) that they cover the whole foot up to and including the anklebones;
(d) that they prevent water (N: if dripped on them drop by drop from directly) reaching the foot (O:- if water reaches the foot through the holes of a seam's statues, it does not affect the validity of wiping them, though if water can reach the foot through any other place, it violates this condition); (e) and that they be durable enough to keep walking around upon a travellers do in attending to their needs (O: when encamping, departing, etc.);
-no matter whether they are of leather, felt, layers of rags (N: including thick, heavy wool socks that prevent water from reaching the foot (A: not modern dress socks (n:due to non(d) and (e) above), which are not valid to wipe in any school, even if many are worn in layers)), wood, or other; nor whether they have a cleavage laced up with

eyelets (O: provided none of the foot shows).
One may not wipe footgear if wearing just one of a pair, washing the other foot. Nor if any of the foot shows through a hole in them.

@E6.6: How to Wipe Footgear
It is sunna to wipe the footgear on the top, bottom, and heel in lines (N: as if combing something with the fingers), without covering every part of them or wiping them more than once.
One puts the left hand under the heel and the right hand on top of the foot at the toes, drawing the right hand back towards the shin while drawing the left along the bottom of the foot in the opposite direction towards the toes.
It is sufficient as wiping the footgear to wipe any part of their upper surface 9n: with wet hands), from the top of the foot up to the level of the anklebones. It is not sufficient to only wipe some of the bottom, heel, side of the foot, or some of the footgear's inner surface that faces the skin.
@E6.7: When Foot Shows
When on an ablution that was performed by wiping the footgear, and then some part of the foot shows because of taking them off, or through a hole, it's sufficient (N: to complete one's ablution) to merely wash the feet again (O: without repeating the ablution).

*2*Chapter E7.0: The Four Causes of Minor Ritual Impurity (Hadath)

@(N: Meaning the things that nullify one's ablution.)

@E7.1: Anything That Exits from the Private Parts
The first is anything that exits from the front or rear private parts, whether a substance (O: such as urine or feces) (N: or the mucus that exits from the vagina with or without sexual stimulation, though not a woman's sexual fluid that appears through orgasm, discussed below) or wind, and whether something usual or something uncommon such as a worm or stones. But not a male's sperm or female's sexual fluid (Ar. maniyy, that which exits with orgasmic contractions, whether a man's or a woman's (def:e10.4)), which necessitates the purificatory bath (N: as it causes major ritual impurity) but does not necessarily nullify ablution, an example of this being someone firmly seated (dis: e7.2 second paragraph) who sleeps and has a wet dream, or someone who looks at something lustfully and sperm or sexual fluid come. Otherwise, if one makes love to one's spouse, or has an orgasm while lying asleep, ablution is nullified (n: respectively) by touching the spouse's skin (e7.3) or by sleep (below).

@E7.2: Loss of Intellect Through Sleep, Etc.
The second cause of minor ritual impurity is loss of intellect (O: meaning the loss of the ability to distinguish, whether through insanity, unconsciousness, sleep, or other. Loss of intellect excludes drowsing and daydreaming, which do not nullify ablution. Among the signs of drowsing is that one can hear the words of those present, even if uncomprehendingly).

@E7.2: Sleep while seated
Sleep while firmly seated on the ground (A: or any other surface firm enough to prevent a person's breaking wind while seated on it asleep) does not nullify ablution, whether riding mounted, leaning on something which if removed would cause one to fall, or otherwise seated.
If one sleeps when firmly seated and one's rear moves from its place before one awakens, this nullifies one's ablution. But not if:
-1- one's rear moved after or during awakening, or if one is uncertain about whether it happened
before awakening or during;
-2- one's arm dropped to the ground while one was firmly seated;
-3- or when one drowses while not firmly seated, hearing but not comprehending, or if one is uncertain as to whether one drowsed or slept, or uncertain as to whether one slept while firmly seated or not firmly seated.

@E7.3: Contact of Man and Woman's Skin
The third cause of minor ritual impurity is when any, no matter how little, of the two skins of a man and woman touch (N: husband and wife, for example) when they are not each other's unmarriageable kin (Ar. mahram, def:m6), even if they touch without sexual desire, or unintentionally, and even if with tongue or a nonfunctional or surplus limb; though touching does not include contact with teeth, nails, hair, or a severed limb.
Ablution is also nullified by touching AN AGED person or a corpse (N: of the opposite sex) but not by touching a member of one's unmarriageable kin, or a child who is younger than the age that usually evokes sexual interest.
One's ablution is not nullified when one is uncertain about:
-1- whether one touched a male or female;
-2- whether one touched hair or skin;
-3- or whether the person one touched was one's unmarriageable kin or not.

@E7.4: Touching Human Private Parts with Hand
The fourth cause of minor impurity is touching human private parts with the palm or inner surface of the fingers only (N: i.e those parts which touch when the hands are put together palm to palm), whether one touches the private parts:
-1- absentmindedly;
-2- without sexual desire;
-3- in the front or rear;
-4- of a male or female;
-5- of oneself or another, even if deceased, or a child;

@E7.4: Meaning of hand
but not if one touches them with one's finger tips, the skin between the fingers, with the outer edge of the hand, or touches the corresponding parts of an animal.

@E7.5: Things That Do Not Nullify Ablution
Ablution is not nullified by vomiting, letting blood, nosebleed, laughing during the prayer, eating camel meat, or other things (N: not discussed above).

@E7.6: Doubts About Whether Ablution Has Been Nullified
When certain that a minor ritual impurity has occurred, but uncertain whether one subsequently lifted it (N: with ablution), then one is in a state of minor ritual impurity (A: because in Sacred Law, a state whose existence one is certain about does not cease through a state whose existence one is uncertain about).
When certain that one had ablution, but uncertain that it was subsequently nullified, then one still has ablution.

*2*Chapter E8.0: Actions Unlawful During Minor Ritual Impurity

@E8.1: Touching the Koran Is Unlawful Without Ablution (5)
The following are unlawful for someone in a state of minor ritual impurity:
-1- to perform the prayer;
-2- to prostrate when reciting the Koran at verses in which it is sunna to do so (def; f11.13);
-3- to prostrate out of thanks (f11.19);
-4- to circumambulate the Kaaba (j5);
-5- or to carry a Koran, even by a strap or in a box, or touch it, whether its writing, the spaces between its lines, its margins, binding, the carrying strap attached to it, or the bag or box it is in.
(n: Other aspects of proper manners (adab) towards the Book of Allah are treated below at w16.) (A: The opinion expressed in Fiqh al-sunna that it is permissible to touch the Koran without ritual purity is a deviant view contrary to all four schools of jurisprudence and impermissible to teach (dis:r7.1(3), except to explain that it is oberrant) (n:Though in the Hanifi school. it is permissible for someone in a state of minor ritual impurity to touch or carry a Koran that is inside a cover not physically attached to it, such as a case or bag, as opposed to something joined to it, like a binding (al-Lubab fi sharh al-Kitab (y88), 1.43). And Allah knows best.)

@E8.2: Carrying the Koran, Etc.
It is also unlawful (n: when without ablution) to touch or carry any of the Koran written for the purpose of study, even a single verse or part of one, as when written on a slate or the like.
(O: But this is permissible for nonstudy purposes such as when the Koran is intended to be an amulet (def:w17). It is not prohibited to touch or carry such an amulet even if it contains whole suras, or even, as Sheikh (N:Shirbini) al-Khatib has said, if it contains the whole Koran.)
It is permissible to carry a Koran in one's baggage and to carry money, rings, or clothes on which Koran is written.
It is permissible to carry books of Sacred Law, hadith, or Koranic exegesis which contain Koran, provided that most of their text is not Koran (O:because the non-Koranic part is the purpose, though this is unlawful if half or more is Koran).
Boys who have reached the age of discrimination (def:f1.2(O:)) may touch or carry the Koran while in a state of minor ritual impurity (O:because of the need to learn it and the hardship of their keeping ablution, and likewise for young girls, though this is for study alone, as opposed to nonstudy, when it is unlawful. As for children under this age, their guardian may not give a Koran to them) (A:as this is an insult to it. Also,teachers should remind children that it is unlawful to moisten one's fingers with saliva to turn its pages).
Someone in a state of minor or major impurity may write Koran if he does not touch or carry what he has written.

@E8.3 When one fears that a Koran may burn, get soaked, that a non-Muslim may touch it,or that it may come into contact with some filth, then one must pick it up if there is no safe place for it, even if one is in a state of minor or major ritual impurity, though performing the dry ablution (tayammum, def:e12) is obligatory if possible.

@E8.4 It is unlawful to use a Koran or book of Islamic knowledge as a pillow (O:except for fear of theft, when it is permissible to do so). And Allah knows best.
*2*Chapter E9.0: Going to Lavatory

@E9.1: Recommended Measures
It is recommended when one intends to use the lavatory:
-1- to put something on one's feet, unless there is an excuse (O:such as not having shoes);
-2- to cover the head (O:even if only with a handkerchief or other);
-3- to set aside anything on which there is the mention of Allah Most High. His messenger (Allah bless him and give him peace), or any revered name (O:like those of prophets or angels). If one enters with a ring (O:on which something worthy of respect is written), one closes one's hand around it;
-4- to ready stones (N: or other suitable material (def:e9.5)) (O:if one uses them) to clean oneself of filth (N:though water alone is sufficient);
-5- to say before entering:
"In the name of Allah. O Allah, I take refuge in You from demons, male and female," and after leaving,
"[O Lord,] Your forgiveness: Praise be to Allah who rid me of the hurt and gave me health";
-6- to enter with the left foot first and depart with the right foot first (and this, together with (3) and
-5- above, are not only for indoors, but recommended outdoors as well);
-7- not to raise one's garment until one squats down to the ground (O: to keep one's nakedness covered as much as possible) and to lower it before one stand up;
-8- to put most of one's weight on the left foot while squatting;
-9- not to spend a long time;
-10- not to speak;
-11- when finished urinating, for men to squeeze the penis with the left hand from base to head (O: recommended because this is where the urethra is, and for women to squeeze their front between thumb and forefinger) (N: so urine does not exit later and nullify one's ablution) pulling lightly three times (O: this being recommended when one thinks the urine has stopped, though if one thinks it has not, this is obligatory);

-12- not to urinate while standing (O: which is offensive) unless there is an excuse (N: such as when standing is less likely to spatter urine on one's clothes than sitting, or when sitting is a hardship);
-13- not to clean oneself with water in the same place one relieved oneself, if it might spatter, though if in a lavatory one need not move to a different place;
-14- to distance oneself from others if outdoors and to screen oneself;
-15- not to urinate into holes, on hard places, where there is wind, in waterways, where people gather to talk, on paths, under fruit trees, near graves, in still water, or in less than 216 liters of running water;
-16- and not to relieve oneself with one's front or rear facing the sun, moon, or the Sacred Precinct in Jerusalem.

@E9.2: Prohibitions
It is unlawful to urinate on anything edible, bones, anything deserving respect, a grave or in a mosque, even if into a receptacle.

@E9.3
It is unlawful to urinate or defecate with one's front or rear towards the direction of prayer when outdoors and there is no barrier to screen one, though this is permissible when one is indoors within a meter and a half of a barrier at least 32 cm. high, or in a hole that deep. When one is not this close to such a barrier at least 32 cm. high, or in a hole that deep. When one is not this close to such a barrier, it is not permissible except in a lavatory, where, if the walls are farther from one than the maximal distance or are shorter than the minimal height, relieving oneself with front or rear towards the direction of
prayer is permissible, though offensive.

@E9.4: The Obligation of Cleaning Oneself of Filth
It is obligatory to clean oneself of every impure substance coming from one's front or rear, though not from gas, dry worms or stones, or excrement without moisture.

@E9.5: Use of dry substances or water
Stones suffice to clean oneself, though it is best to follow this by washing with water. Anything can take the place of stones that is a solid, pure, removes the filth, is not something that deserves respect or is worthy of veneration, nor something that is edible (O: these being five conditions for the validity of using stones (N: or something else) to clean oneself of filth without having to follow it by washing with water).
But it is obligatory to wash oneself with water if:
-1- one has washed away the filth with a liquid other than water, or with something impure;
-2- one has become soiled with filth from a separate source;
-3- one's waste has moved from where it exited (n: reaching another part of one's person) or has dried;
-4- or if feces spread beyond the inner buttocks (N: meaning that which is enfolded when standing), or urine moved beyond the head of the penis, though if they do not pass beyond them, stones suffice.

@E9.5: How to clean oneself
It is obligatory (N: when cleaning oneself with a dry substance alone) to both remove the filth, and to wipe three times, even when once is enough to clean it, doing this either with three pieces (lit. "stones") or three sides of one piece. If three times does not remove it, it is obligatory to (N: repeat it enough to) clean it away (O: as that is the point of cleaning oneself. Nawawi says in al-Majmu' that cleaning oneself (N: with a dry substance) means to remove the filth so that nothing remains but a trace that could not be removed unless one were to use water) (N: and when this has been done, any remaining effects of filth that could have been done, any remaining effects of filth that could have only been removed with water are excusable). An odd number of strokes is recommended. One should wipe from front to back on the right side with the first piece, similarly wipe the left with the second, and wipe both sides and the anus with the third. Each stroke must begin at a point on the skin that is free of impurity.

It is offensive to use the right hand to the oneself of filth.

@E9.6: Cleaning before or after ablution
It is best to clean oneself of filth before ablution, though if one waits until after it to clean, the ablution is nevertheless valid(N: provided that while cleaning, the inside surface of the hand (def: e7.4 does not touch the front or rear private parts). If one waits until after one's dry ablution (tayammum, def:e12) to clean away filth, the dry ablution is not valid (A: because lack of filth is a condition for it).

*2*Chapter E10.0: Major Ritual Impurity (Janaba)

@E10.1: Causes
The purification bath (ghusl, def:e11) is obligatory for a male when:
-1- sperm exists from him;
-2- or the head of his penis enters a vagina;
and is obligatory for a female when:
-1- sexual fluid (def: below) exits from her;
-2- the head of a penis enters her vagina;
-3- after her menstrual period;
-4- after her postnatal lochia stops or after a child is born in a dry birth.
(n: The Arabic term maniyy used in all these rulings refer to both male sperm and female sexual fluid, i.e that which comes from orgasm, and both sexes are intended by the phrase sperm or sexual fluid wherever it appears below.)

@E10.3 When a woman who has been made love to performs the purificatory bath, and the male's sperm afterwards leaves her vagina, then she must repeat the ghusl if two conditions exist:
(a) that she is not a child. but rather old enough to have sexual gratification (A: as it might otherwise be solely her husband;s sperm);
(b) and that she was fulfilling her sexual urge with the lovemaking, not sleeping or forced.

@E10.4: Meaning of Sperm and Female Sexual Fluid
Male sperm and female sexual fluid are recognised by fact that they:
(a) come in spurts (n: by contractions);
(b) with sexual gratification;
(c) and when moist, smell like bread dough, and when dry, like egg-white.
When a substance from the genital orifice has any one of the above characteristics, then it is sperm or sexual fluid and makes the purificatory bath obligatory. When not even one of the above characteristics is present, it is sperm or sexual fluid. Being white or thick are not being yellow or thin are not necessary for it to be considered female sexual fluid.

@E10.5: Things Not considered Sperm
The purificatory bath is not obligatory:
-1- when there is an unlustful discharge of thin, sticky, white fluid (madhy) caused by amorous play or kissing;
-2- or when there is a discharge of the thick, cloudy white fluid (wady) that exits after urinating (O: or carrying something heavy).

@E10.6: Doubts About Whether Discharge Is Sperm
If one does not know whether one's discharge is sperm or whether it is madhy (def:(1) above), then one may either:
-1- consider it sperm, and perform the purificatory bath (O: in which case washing the portions of clothes and so forth affected with it is not obligatory, a it is legally considered a pure substance);
-2- or consider it madhy, and wash the affected portions of the body and clothes (N: which is obligatory, as it is legally considered filth), and perform ablution, though not the purificatory bath.
The best course in such cases of uncertainity is to do all of the above(O: of bathing, washing the affected portions, and ablution, so as to take due precaution in one's

worship).

@E10.7: Actions Unlawful on Major Ritual Impurity (Janaba)
All things unlawful for someone in minor ritual impurity (def: e8.1) are also unlawful for someone in a state of major ritual impurity (N: or menstruation). In addition, it is likewise unlawful for such a person:
-1- to remain in a mosque;
-2- or to recite any of the Koran, even part of a single verse, though it is permissible to use its invocations (dhikr) when the intention is not koran recital (O: such as saying in disasters, "Surely we are Allah's, and unto Him we will return," and the like). If one intends Koran recital, it is disobedience, but if one intends it primarily as invocation (dhikr), or as nothing in particular, it is permissible.
It is permissible to pass through a mosque (A: though not to enter and leave by the same door (Ar. taraddud), which is unlawful) when one is in a state of major ritual impurity, but this is offensive when there is no need.

*2*Chapter E11.0: How to Perform the Purification Bath (Ghusl)

@E11.1: Steps
When performing the purificatory bath, one:
-1- begins by saying, "In the name of Allah, Most Merciful and Compassionate";
-2- removes any unclean matter on the body (O: pure or impure);
-3- performs ablution (wudu) as one does before the prayer;
-4- pours water over the head three times, intending the purificatory bath, or to lift a state of major ritual impurity (janaba) or menstruation, or to be permitted to perform the prayer, and running the fingers through one's hair to saturate it;
-5- and then pours water over the body's right side three times, then over the left side three times, ensuring that water reaches all joints and folds, and rubbing oneself.
-6- If bathing after menstruation, a woman uses some musk to eliminate the afterscent of blood (O: by applying it to a piece of cotton and inserting it, after bathing, into the vagina as far as is obligatory (def: (b) below) for her to wash). (N: What is meant thereby is a substance that removes the traces of filth, by any means, and it is fine to use soap.)

@E11.1: Obligatory Features
Two things(N: alone) are obligatory for the validity of the purificatory bath:
(a) having the intention ((4) above) when water is first applied to the parts that must be washed;
(b) and that water reaches all of the hair and skin (N: to the roots of the hair, under nails, and the outwardly visible portion of the ear canals, though unlike ablution the sequence of washing the parts is not obligatory), even under the foreskin of the uncircumcized man, and the private parts of the nonvirgin woman which are normally disclosed when she squats to relieve herself.
(n: In the Hanafi school, rinsing out the mouth and nostrils (defL e5.7) is obligatory for the validity of the purificatory bath (al-Lubab fi sharh al-Kitab (y88) 1.14) It is religiously more precautionary for a Muslim never to omit it, and Allah knows best.)

@E11.2: Nullifying Ablution (Wudu) Before Finishing Bath
If one begins the purificatory bath while on ablution (wudu) but nullifies it (def:e7) before finishing, one simply completes the bath (N: though one needs a new ablution before praying).

@E11.3: Removing Filth from Body before Bathing
If there is filth (najasa) on the body, one washes it off by pouring water on it and then performs the purificatory bath, though washing oneself a single time suffices for both removing it and for the purificatory bath.

@E11.4: Performing Bath for Two Reasons at Once
When a woman who is obliged to both lift a state of major ritual impurity (janaba) and purify after menstruation performs the purificatory bath for either of these, it

suffices for both.
Whoever performs the bath one time with the intention to (n: both) lift a state of major ritual impurity and fulfill the sunna of the Friday prayer bath has performed both, though if he only intends one, his bath counts for that one but not the other.

@E11.5: Times When Purificatory Bath Is Sunna
The purificatory bath is sunna:
-1- for those who want to attend the Friday prayer (def:f18) (O: the bath's time beginning at dawn);
-2- on the two 'eids (f19) (O: the time for it beginning from the middle of the night);
-3- on days when the sun or moon eclipse;
-4- before the drought prayer (f21);
-5- after washing the dead (O: and it is sunna to perform ablution (wudu) after touching a corpse);
-6- after recovering one's sanity or regaining consciousness after having lost it;
-7- (N: before) entering the state of pilgrim sanctity (ihram, def:j3), when entering Mecca, for standing at 'Arafa (j8), for circummambulating the Kaaba (j5) and going between Safa and Marwa (j6), for entering Medina, at al-Mash'ar al-Haram (j9.2), and for each day of stoning at Mina (j10) on the three days following 'Eid al-Adha.

*2*Chapter E12.0: Dry Ablution (Tayammum)

@(N: When unable to use water, dry ablution is a dispensation to perform the prayer or similar act without lifting one's minor or major impurity, by the use of earth for one's ablution.)

@E12.1: Conditions for Validity
Three conditions must be met for the legal validity of performing dry ablution.
(a) The first is that it take place after the beginning of the prayer's time if it is for an obligatory or a nonobligatory one that has a particular time. The act of lifting earth to the face and arms (N: the first step of dry ablution) must take place during that time. If one performs dry ablution when unsure that the prayer's time has come, then one's dry ablution is invalid, even if it coincides with the correct time (dis e6.2(A:)). If one performs dry ablution in midmorning for the purpose of making up a missed obligatory prayer, but the time for noon prayer comes before one has made up the missed obligatory prayer, then one may pray it (N: the noon prayer) with that dry ablution (N: because one did not perform dry ablution for it before its time, but rather performed dry ablution for a different prayer in that prayer's time, which clarifies why this does not violate the conditions of praying with dry ablution), or one could pray a different missed prayer with it (O: as one is not required to specify which obligatory prayer the dry ablution is for).
(b) The second condition is that dry ablution must be performed with plain, purifying earth that contains dust, even the dust contained in sand; though not pure sand devoid of dust; nor earth mixed with the likes of flour; nor gypsum pottery shards (O: which are not termed earth), or earth that has been previously used, meaning that which is already on the limbs or has been dusted off them.
(c) The third condition is inability to use water. The person unable to use water performs dry ablution, which suffices in place of lifting all forms of ritual impurity permitting the person in a state of major ritual impurity (janaba) or woman after her menstrual period to do everything that the purificatory bath (ghusl) permits them to do. If either of them subsequently has a minor ritual impurity (hadath), then only the things prohibited on minor impurity are unlawful for them (def:e8.1) (N: not those prohibited on major impurity (e10.7), that is, until they can again obtain water to life their state of major impurity, when they must, for the dry ablution is only a dispensation to pray and so forth while in states of impurity and is nullified by finding water).

@E12.2: The Three Causes of Inability to Use Water
Inability to use water has (O: three) causes (n: lack of water, fear of thirst, and illness).

@E12.3: Lack of Water
The first is lack of water. When one is sure there is none, one performs dry ablution without searching for it. If one thinks there might be some, one must look through one's effects and inquire until one has asked all of one's party or (N: if too numerous) there is no time left except for the prayer. One does not have to ask each person individually, but may simply call out, "Who has water, even for a price?" Then one looks around,if on level ground. If not level, one checks on foot within the range at which one's group could be expected to respond to a cry for help, provided there is no threat to life or property. Or one may climb a nearby hill.

@E12.4: Certainty of getting water at end of prayer time
The search for water must occur after the particular prayer's time has come.
When one checks, does not find water, performs dry ablution, (N: prays an obligatory prayer with it,) and remains at the place, one need not search again before performing dry ablution for another obligatory prayer (N: when the next prayer's time comes), provided one made sure there was no water the first time, and nothing has happened to change one's mind. But if one did not make sure, or if something has happened to suggest that there might now be water, like the appearance of rain clouds or riders, one is obliged to check again for water.

@E12.5 When sure that one can obtain water by waiting until the last of a prayer's time, then it is better to wait. But if one thinks otherwise, then it is better to perform dry ablution (n: and pray) at the first of the time.

@E12.6: Buying water
(N: This entry's rulings apply equally to obtaining water for purification and to obtaining clothing to fulfill the prayer's condition of covering one's nakedness (def:f5).)
If a person gives or loans one water, or loans one a bucket (O: when it is the sole means of the water) then one must accept it;though not if the person loans or gives one the price of these things (O: because of the burden of accepting charity that it involves.
If one finds water or a bucket for sale at the usual price for that locality and time, then one is obliged to buy it, provided one's money is in excess of one's debts, even if they are not due until a future date; and provided one's money exceeds the amount required for the journey's expenses, round trip.
When someone has water he does not need but will not sell, one may not simply take it from him by force, except when compelled by thirst (N: provided the water's owner is not also suffering from thirst, and provided one pays him the normal price for it in that locality and time, because one's need does not eliminate another's rights).

@E12.7: Only enough water for partial ablution or bath
If one finds some water, but not enough to complete purification, one must use it as far as it will go, and then perform dry ablution in place of the rest. For minor ritual impurity, one uses the water on the face, then the arms, and so forth, in the usual ablution sequence. For major ritual impurity (janaba), one begins wherever one wishes, though it is recommended to start at the top of the body.

@E12.8: Fear of Thirst
The second cause of inability to use water is fear of one's own thirst, or that of worthy companions and animals with one, even if in the future (O: worthy meaning those whose killing is unlawful, such as a trained hunting dog or other useful animal, while unworthy includes non-Muslims at war with the Muslims, apostates from Islam (def:08), convicted married adulterers, pigs, and biting dogs).
Ablution (N: as well as the purificatory bath (ghusl)) is unlawful in such a case. One should conserve one's water for oneself and others, and may perform dry ablution for prayer with no need to make up the prayer later (A: provided lack of water predominates in that place (dis:e12.19(N))).

@E12.9: Illness
The third cause is an ailment from which one fears (N: that performing a normal

ablution or purificatory bath would cause) :
-1- harm to life or limb;
-2- disability;
-3- becoming seriously ill;
-4- an increase in one's ailment;
-5- a delay in recovering from one's illness;
-6- considerable pain;
-7- or(n: a bad effect from the water such as) a radical change in one's skin color on a visible part of the body.

@E12.9a: Meaning of Illness
One may depend on one's own knowledge (N: as to whether one of the above is to be apprehended)
(O: if one is knowledgeable in medicine) (N: though it is not a condition that one be knowledgeable in medicine, for one's own previous experience may be sufficient to establish the probability that one of them will occur if a full ablution or bath (ghusl) is performed). Or one may depend on a physician whose information concerning it is acceptable (A: meaning one with skill in medicine whose word can be believed, even if he is not a Muslim).

@E12.10: Ablution on a cast or bandage
(n:Rulings e12, 11-13 below have been left in Arabic and deal with a person who has injuries that prevent a normal ablution or bath for one of the above reasons. Strictness on the question (`azima) is to follow the Shafi'is, while dispensation (rukhsa) is to follow the Hanafi school ((2) below).
-1- The Shafi'i school is the hardest in this matter, insisting on a full ablution except for the injured part, where a full dry ablution must be performed at the proper point in the ablution sequence in place of washing the injured part, as at e12.11 below.
If someone has a cast or dressing harmful to remove, as at e12.12, it must be first applied when one has ablution, and thereafter one must wipe it with water when one comes to it in the ablution sequence in addition to performing a complete dry ablution at that point.
Finally, when someone with such a bandage on the members of dry ablution (the face or arms) recovers and has his cast or dressing removed, he is obliged to make up (repray) all the prayers he performed with such an ablution, as at e12.13(O:).
-2- The Hanafi school requires someone with an injury who wants to pray to make a complete ablution (N: or bath, if needed). But if this would entail harm, such as one of the things mentioned above at e12.9. then when he comes to the injury in the ablution sequence, he is merely required to wipe it with wet hands so as to cover more than half of the injury. If this would also entail harm, or if he has a bandage that cannot be removed without harm or he cannot reapply the dressing by himself and has no one to help him to do so, then he simply wipes more than half the bandage when he comes to it in his ablution. He may pray with such an ablution and need not repeat the prayer later (al-Hadiyya al-'Ala'iyya (y4) (43-44).
It is not necessary that he be free of minor or even major impurity (janaba) at the time the dressing is applied (al-Lubab fi sharh al-Kitab (y88), 1.41).
-3- (N: There is strong evidence for performing dry ablution (tayammum) in place of washing such an injury. To add it at the proper point of the ablution sequence as a precautionary measure (dis: c6.5) would not interfere with the validity of following the Hanafi position just discussed.)

@E12.14: Fear of illness from extreme cold
If it is cold that one fears an illness or one of the things previously mentioned(12.9) from the use of water and one lacks means of heating the water or warming one's limbs up afterwards, then one performs the dry ablution (N: prays), and repeats the prayer later.

@E12.15: Ablution When Lacking Both Water and Earth
When one lacks both water and earth, one is obliged to pray the obligatory prayer by itself, and later make up the prayer when one again finds water or finds earth, if in a

place where dry ablution suffices as purification for a prayer that need not be made up later (N: such as in the desert
(dis:e12.19(N:))).

@E12.16: Obligatory Integrals of Dry Ablution
Dry ablution has seven obligatory integrals:
(a) the intention, one intending permission to perform the obligation of the prayer, or that which requires dry ablution (N: such as carrying the Koran when there is no water for ablution). It is inadequate to intend to lift a state of minor ritual impurity (dis:e5.3 9O:)) or intend the obligation of dry ablution.
If one is performing dry ablution for an obligatory prayer, one must intend its being obligatory, though need not specify whether, for example, it is for the noon prayer or the midafternoon prayer. If one were to intend it for the obligation of performing the noon prayer, one could (N: instead) pray the midafternoon prayer with it (N: though not both, as at e12.20).
If one intends a dry ablution for both an obligatory prayer and a nonobligatory prayer, then both may be prayed with that same dry ablution. But if one's intention is merely for a nonobligatory prayer, a funeral prayer (janaza), or simply prayer, then one may not pray an obligatory prayer with that dry ablution. If one intends an obligatory prayer, one may pray nonobligatory prayers only, or pray them before and after an obligatory prayer during the obligatory prayer's time, or after the obligatory prayer's time has expired.
The intention must occur when one conveys the earth (O:meaning when one first strikes the earth) and must continue until one wipes part of the face;
(b and c) that one's hands contact the earth and convey it (N: up to the face and arms, after having shaken the excess dust from one's hands);
(d and e) to wipe the face (N: not missing under the nose) and arms including the elbows;
(f) to do the above in the order mentioned;
(g) and that the dry ablution be performed by striking the earth twice, once for wiping the face, and a second time for wiping the arms.
It is not obligatory to make the earth reach under the hair (N: of the arms and face).

@E12.17: Sunnas of Dry Ablution
The sunnas of dry ablution are:
-1- to say, "In the name of Allah, Most Merciful and Compassionate";
-2- to wipe the upper face before the lower;
-3- to wipe the right arm before the left;
How to wipe arms:
-4- and for wiping the arms, (N: holding the palms up,) to place the left hand crosswise under the right with left hand's fingers touching the backs of the fingers of the right hand, sliding the left hand up to the right wrist. Then, curling the fingers around the side of the right wrist, one slides the left hand to the right elbow, then turns the left palm so it rests on the top of the right forearm with its thumb pointed away from one before sliding it back down to the wrist, where one wipes the back of the right thumb with the inside of the left thumb. One then wipes the left arm in the same manner, followed by interlacing the fingers, rubbing the palms together, and then dusting the hands off lightly.
(N: This method is not obligatory, but rather any way will suffice that wipes all of both arms.)

@E12.18 One separates the fingers when striking the earth each of the two times,and must remove one's ring for the second (N: before wiping the arms).

@E12.19: Things Which Nullify Dry Ablution
Dry ablution is nullified by both the things which nullify ablution (def: e7) and by the mere belief that one can now obtain water when this belief occurs before one begins praying, such as by seeing a mirage or a troop of riders.
This belief also nullifies dry ablution when it occurs during one's prayer if the prayer is one which must be later made up, like that of someone at home who performs dry ablution for lack of water (N: because if one performs dry ablution in a place

where water is generally available during the whole year, it is obligatory to make up one's prayer, in view of the fact that the dry ablution has been performed for a rare excuse. The rule is that whoever performs the prayer without full ritual purity because of a rare excuse is obliged to make up his prayer, as when the water of a city or village is cut off for a brief period of time during which those praying perform dry ablution, while if one has performed it in a place where water is seldom available during the year, it is not obligatory to make up one's prayer, as when one performs dry ablution in the desert). But if not of those prayers that must be made up later, such as that of a (N: desert) traveller who has performed dry ablution, then it(N: the belief that one can now obtain water, when it occurs during prayer) does not (N: nullify one's dry ablution) and one finishes the prayer, which is adequate, though it is recommended to interrupt it in order to begin again after one has performed ablution.

@E12.20: Each Dry Ablution Permits Only One Obligatory Prayer
One may not perform more than one obligatory prayer with one dry ablution, whether one of the prescribed obligatory prayers or one vowed (def: j18), though one may pray any number of nonobligatory prayers or funeral prayers with it.

*2*Chapter E13.0: The Menstrual Period

@E13.1: Minimal and Maximal Duration
The minimal age for menstruation is about 9 full years. There is no maximal age for the end of it, as it is possible until death.
The minimal mentrual period is a day and a night. It generally lasts 6 or 7 days. The maximal period is 15 days.
The minimal interval of purity between two menstruations is 15 days. There is no maximal limit to the number of days between menstruations.

@E13.2: Dusky-Colored Discharge, Intermittence, Etc.
Whenever a woman who is old enough notices her bleeding, even if pregnant, she must avoid what a woman in her period avoids (defL e13.4). If it ceases in less than 24 hours (lit. "the minimum"), then it is not considered menstruation and the woman must take up the prayers she has omitted during it.
If it ceases at 24 hours, within 15 days, or between the two, then it is menstruation.
If it exceeds 15 days, then she is a woman with chronic vaginal discharge (dis:e13.6).
Yellow or dusky colored discharge is considered menstrual flow.
If a woman has times of intermittent bleeding and cessation during an interval of 15 days or less, and the times of bleeding collectively amount to at least 24 hours, then the entire interval, bleeding and nonbleeding, is considered menstruation.

@E13.3: Postnatal Bleeding (Nifas)
Postnatal bleeding (nifas) lasts at least a moment, generally 40 days, and at most 60. If it exceeds this, the woman is considered to have chronic vaginal discharge (dis:e13.6)

@E13.4: Actions Unlawful During Menstruation
All things unlawful for someone in a state of major ritual impurity (janaba) (dis:e10.7) are unlawful for a woman during her menstruation and postnatal bleeding. It is also unlawful for her to fast then, and the (N: obligatory) fast-days she misses must be made up later, though not missed prayers.
It is unlawful for her:
-1- to pass through a mosque when she thinks some of her blood might contaminate it (N: and it is unlawful for her to remain in the mosque under any circumstances (n: when menstruating or during
postnatal bleeding)) :
-2- to make love, or take sexual enjoyment from what is between her navel and knees;
-3- to be divorced;
-4- or to perform purification with the intention to raise a state of ritual impurity.
When her bleeding ceases, then fasting, divorce, purification, and passing through the mosque are no longer unlawful for her, though the other things remain unlawful for her

until she performs the purificatory bath (ghusl, def:e11).

@E13.5 If a woman claims to be having her period, but her husband does not believe her, it is lawful for
him to have sexual intercourse with her.

@E13.6: Women with Chronic Vaginal Discharge
A woman with chronic vaginal discharge (N: preparing to pray) should wash her private parts, apply something absorbent to them and a dressing, and then perform ablution (N: with the intention discussed above at e5.3). She may not delay (N: commencing her prayer) after this except for reasons of preparing to pray such as clothing her nakedness, awaiting the call to prayer (adhan), or for a group to gather for the prayer. If she delays for other reasons, she must repeat the purification.
She is obliged to wash her private parts, apply a dressing, and perform ablution before each obligatory prayer (N: though she is entitled, like those mentioned below, to perform as many nonobligatory prayers as she wishes, carry and read the Koran, etc. until the next prayer's time comes (n: or until her ablution is broken for a different reason), when she must renew the above measures and her ablution).

@E13.7: People with Chronic Annulment of Ablution
People unable to hold back intermittent drops of urine coming from them must take the same measures (def: above) that a woman with chronic vaginal discharge does. (N: And likewise for anyone in a state of chronic annulment of ablution, such as continually breaking wind, excrement, or madhy (def:e10.5) though washing and applying an absorbent dressing are only obligatory when filth exits.)
(A: If a person knows that drops of urine will not stop until the time for the next prayer comes, then he takes the above measures and performs the prayer at the first of its time.)

*2*Chapter E14.0: Filth (Nasaja)

@E14.1: Things That Are Filth
Filth means:
-1- urine;
-2- excrement;
-3- blood;
-4- pus;
-5- vomit;
-6- wine;
-7- (Alcohol used in cosmetics, surgery, etc.) any liquid intoxicant (n: including, for the Shafi'i school, anything containing alcohol such as cologne and other cosmetics, though some major Hanafi scholars of this century, including Muhammad Bakhit al-Muti'i Egypt and Badr al-Din al-Hasani of Damascus, have given formal legal opinions that they are pure (tahir) because they are not produced or intended as intoxicants. (N: Other scholars hold they are not pure, but their use is excusable to the extent strictly demanded by necessity.) While it is religiously more precautionary to treat them as filth, the dispensation exists when there is need, such as for postoperative patients who are unable for some time after their surgery to wash away the alcohol used to sterilize sutures. And Allah knows best.)
(N: As for solid intoxicants, they are not filth, though they are unlawful to take,eat, or drink);
-8- dogs and pigs, or their offspring;
-9- wady and madhy (def:e10.5);
-10- slaughtered animals that (N: even when slaughtered) may not be eaten by Muslims (def:16);
-11- unslaughtered dead animals other than aquatic life, locusts, or humans (A: which are all pure, even when dead, though amphibious life is not considered aquatic and filth when dead);
-12- the milk of animals (other than human) that may not be eaten:
-13- the hair of unslaughtered dead animals;
-14- (Non-meat products of an unslaughtered animal) and the hair of animals (other

than human) that may not be eaten, when separated from them during their life (N: or after their death. As for before it is separated from them, the hair is the same as the particular animal, and all animals are pure during their life except dogs and swine). (n: In the Hanafi school, the hair of an unslaughtered dead animal (other than swine), its bones, nails (hoofs), horns, rennet and all parts unimbued with life while it was alive (A: including its ivory) are pure (tahir). That which is separated from a living animal is considered as if from the unslaughtered dead of that animal (Hashiya radd al-muhtar ala al-Durr al-mukhtar sharh Tanwir al-absar(y47, 1.206-7).)

@E14.2: Rennet in Cheese-Making
Rennet (n: a solidifying substance used in cheese-making) is pure if taken from a slaughtered (def:j17) suckling lamb or kid that has eaten nothing except milk.

@E14.3: That which comes from the mouth of a sleeping person is impure if from the stomach, but pure if from the saliva ducts.

@E14.5: Some Pure Substances
The following are pure:
-1- seminal fluid that has reached the stages of gestation in the womb, becoming like a bloodclot and then becoming flesh;
-2- the moisture (N: mucus) of a woman's private parts (O: as long as it remains inside the area that need not be washed in the purificatory bath (def: e11.1(b). end) though if it exit, it is impure);
-3- the eggs of anything;
-4- the milk, fur, wool, or feathers of all animals that may be eaten, provided they are separated from the animal while living or after properly slaughtered;
-5- human milk, male sperm, and female sexual fluid (def:e10.4).
@E14.6: Forms of Filth That Can Become Pure
No form of filth can become pure, except:
-1- wine that becomes vinegar;
-2- the hide of an unslaughtered dead animal that is tanned;
-3- new animate life that comes from filth (O:such as worms that grow in carrion);
-4- (n: and for the Hanafis, filth which is transformed [molecularly changed] into a new substance, such as a pig becoming soap, etc. (al-Hadoyya al-Ala'iyya (y), 54)).
Wine that becomes vinegar without anything having been introduced into it is pure, as are the sides of the container it touched when it splashed or boiled. But if anything was introduced into the wine before it became vinegar, then turning to vinegar does not purify it. (A: In the Hanafi school it is considered pure whether or not anything has been introduced into it.)
Tanning means removing from a hide all excess blood, fat, hair and so forthby using an acrid substance, even if impure. Other measures such as using salt, earth, or sunlight, are insufficient. Water need not be used while tanning, though the resultant hide is considered like a garment affected with filth, in that it must be washed with purifying water before it is considered pure. Hides of dogs or swine cannot be purified by tanning. Any hair that remains after tanning has not been made pure, though a little is excusable.

@E14.7: Purifying Something After Contact with Dogs or Swine
Something that becomes impure by contact.(def:below) with something from dogs or swine does not become pure except by being washed seven times, one of which (recommended not to be the last) must be with purifying earth (def: e12.1 (b)) mixed with purifying water, and it must reach all of the affected area. One may not substitute something else like soap or glasswort in place of earth.
(n: The contact referred to is restricted, in the Shafi'i school, to contamination by traces of moisture from dogs or swine, whether saliva, urine, anything moist from them, or any of their dry parts that have become moist (Mughni al-muhtaj ila ma'rifa alfaz al- Minhaj (y73), 1.83). (A: If something dry such as the animal's breath or hair touches one's person, it need only be brushed away.) In the Maliki school, every living animal is physically pure, even dogs and swine (al-Fiqh 'ala al-madhahib al-arba'a (y66), 1.11) (A: and they consider the above sevenfold washing as merely a sunna). While more precautionary to follow the Shafi'i school, the dispensation exists for

those who have difficulty in preventing contamination from dogs, provided their prayer with its prerequisites is considered valid in the Maliki school (dis:c6.4(end) and w14.1(6)). And Allah knows best.)

@E14.9 The urine of a baby boy who has fed on nothing but human milk can be purified from clothers by sprinkling enough water on the spot to wet most of it, though it need not flow over it. The urine of a baby girl must be washed away as an adult's is.

@E14.10: Washing Away Filth
As for kinds of filth that are "without substance" (N: i.e. without discernible characteristic (najasa hukmiyya) such as a drop of dry urine on a garment that cannot be seen), it is sufficient (N: to purify it) that water flow over it.
But if it is a substance (N: with discernible characteristic (najasa 'ayniyya)). it is obligatory to remove all taste of it, even if difficult, and to remove both color and odor if not difficult. If the odor alone is difficult to remove, or the color alone, then the fact that one of these two remains does not affect a spot's purity, though if both the odor and color of the filth remain in the spot, it is not considered pure.

@E14.11: Water Must Flow When Washing with Under 216 Liters
When using less than 216 liters of water to purify a spot affected by filth, it is obligatory that the water flow over it (N: and it may not be simply immersed in the water (dis: e1.15), though this would be permissible with more than 216 liters), but is not obligatory to wring it out. After one purifies it is recommended to wash it a second and third time.
@E14.12: Filth on Floor or Carpet
When the ground (A: or floor, or carpet) is affected with liquid filth (A: like wine or urine), it is enough to drench the place with water and is not necessary that the filth sink into the ground. If the effects of sun, fire, or wind remove the traces of the filth, the ground is still not pure until one drenches it with water.

@E14.13: Liquids Affected with Filth
Liquids other than water, such as vinegar or milk, cannot be purified after they become affected with filth. But if a solid is affected, such as shortening, one discards the filth that fell into it and the shortening around it, and the remainder is pure.

@E14.14: Whether Water That Washes Filth Is Pure or Impure
Water used to wash away filth is impure when:
-1- it changes (def: e1.17);
-2- its weight increases;
-3- (O: or if neither of the above have occurred, but some trace (N: i.e. an inexcusable amount (def: E14.10, second par)) of filth remains on the place to be purified);
-but if none of the above occurs, then it is not impure (O: i.e then the water is pure but not purifying to other things); though if it amounts to (N: or is added to until it amounts to) 216 or more liters (dis E1.16), then it is purifying. If less, it is considered the same as the spot it washed: if the spot is pure (N: i.e an inexcusable trace does not remain) then the water is pure, but if the spot is still impure, then the water is impure.

@E14.15: A Garment Damp with Filth Touching a Dry One
(n: the Hanafi school, if a garment's damp spot of filth, whose quantity is too slight to wring out any drops, touches another dry, pure garment, the latter does not become impure (Maraqi al-falah sharh Nur al-idah(y126), 31).)

*1*BOOK F: THE PRAYER (SALAT)

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*2*Chapter F1.0: Who Must Pray
@(O: The legal basis for the prayer, prior to scholarly consensus, is Koranic verses such as the word of Allah Most High,
"And perform the prayer" (Koran 2:43),
and hadiths such as the word of the Prophet (Allah bless him and give him peace) :
"On the night I was taken from Mecca to Jerusalem [dis: Koran 17:1], Allah imposed fifty obligatory prayers upon my community. So I kept petitioning Him in the matter, asking they be lightened, until He made them but five each day and night";
a hadith related by Bukhari, Muslim, and others.)

@F1.1: The prayer is only obligatory for Muslims who have reached puberty, are sane, and in purity (O: meaning not during menstruation or postnatal bleeding).
Those who lose their reason through insanity or illness do not have to make up the prayers they miss while in this state, and nor do converts to Islam (N: make up prayers form before their Islam).
An apostate from Islam (murtadd, def:o8) who then returns must make up every prayer missed. (n: w18 discusses why making up prayers missed without excuse is obligatory.)

@F1.2: When a child with discrimination (O: meaning he can eat, drink, and clean

himself after using the toilet unassisted) is seven years of age, he is ordered to perform the prayer, and when ten, is beaten for neglecting it (N: not severely, but so as to discipline the child, and not more than three blows).

@F1.3: Someone raised among Muslims who denies the obligatoriness of the prayer, zakat, fasting Ramadan, the pilgrimage, or the unlawfulness of wine and adultery, or denies something else upon which there is scholarly consensus (ijma`, def:b7) and which is necessarily known as being of the religion (N: necessarily known meaning things that any Muslim would know about if asked) thereby becomes an unbeliever (kafir0 and is executed for his unbelief (O: if he does not admit he is mistaken and acknowledge the Obligatoriness or unlawfulness of that which there is scholarly consensus upon. As for if he denies the obligatoriness of something there is not consensus upon, then he is not adjudged an unbeliever).

@F1.4: A Muslim who holds the prayer to be obligatory but through lack of concern neglects to perform it until its proper time is over has not committed unbelief (dis: w18.2).
Rather, he is executed, washed, prayed over, and buried in the Muslim's cemetery (O: as he is one of them. It is recommended, but not obligatory, that he be asked to repent (N: and if he does, he is not executed)).

@F1.5: No one has an excuse to delay the prayer beyond its time except:
-1- someone asleep (N: when its time first came who remained so until the time ended);
-2- someone who forgot it;
-3- or someone who delayed it to combine two prayer during a journey (dis:f15.12).
*2*Chapter F2.0: Prayer Times and Making Up Missed Prayers

@F2.1: Prayer Times
The prescribed prayers are five:
-1- The time for the noon prayer (zuhr) begins after the sun's zenith for that day, and ends when an object's shadow, minus the length of its shadow at the time of the sun's zenith, equals the object's height.
-2- The time for the midafternoon prayer (`asr) begins at the end of the noon prayer's time, and ends at sunset, though when an object's shadow (N: minus the length of its shadow at the sun's zenith) is twice as long as the object's height, the preferred time is over and the merely permissible time remains.
-3- The time for the sunset prayer (maghrib) begins when the sun has completely set. It only;y lasts long enough to perform ablution (wudu), clothe one's nakedness, make the call to prayer (adhan) and call to commence (iqama) and to pray five moderate length rak'as (units) of prayer. It is a sin to delay commencing the sunset prayer beyond this, and if one does, one is making up a missed prayer (O: i.e., according to the position the author has adopted, which contradicts the more reliable opinion that one's prayer is not a makeup until after the red has disappeared from the sky), though if one begins it within the right time, one may continue until the red disappears from the sky.
-4- The time for the nightfall prayer (`isha) begins when the red of sunset leaves the sky, and ends at true dawn (n:true dawn being when the sky around the horizon begins to grow light. Before this, a dim light sometimes appears overhead for some minutes followed by darkness, and is termed the deceptive dawn (al-kadhib) (Al-Iqna' fi hall alfaz Abi Shuja' (y7), 1.95). But after a third of the night has passed, the preferred time for nightfall prayer has ended and the merely permissible remains.
-5- And the time for the dawn prayer (subh) begins at true dawn and ends at sunrise, though the preferred time for it ends when it becomes light outside, after which the merely permissible remains. (n: Prayer times vary a little each day with the season and the year, and from one town to another through the effects of latitude and longitude. One can keep abreast of the changes by obtaining the whole year's times in a printed calendar from one's local Muslim association or mosque, or by using the pocket computer mentioned below at w19, which discusses how one fasts and prays at northerly latitudes (including much of North America and Europe during teh summer months) lacking the features that legally define the true prayer and fasting times, such as nightfall or true dawn.)

F2.2 it is best to pray every prayer at the first of its time, taking the necessary steps at its outset, such as purification, clothing one's nakedness, giving the call to prayer (adhan and call to commence (iqama), and then praying.

@F2.3 If less than one rak'a of one's prayer occurs within the proper time (A: meaning that one does not life one's head from the second prostration of the rak'a before the time ends) and the remainder takes place after it, then the whole prayer is considered a make-up. If one rak'a or more takes place within the prayer's time and the remainder is after it, then the prayer is considered a current performance, though it is unlawful to intentionally delay the prayer until part of it occurs after the time is finished.

@F2.5 It is permissible to relay (N: for knowledge that a prayer's time has come) on a knowledgeable, dependable muezzin (caller to prayer). If one lacks someone to inform one of the time, then one may reason on the basis of reciting a scheduled period of invocation or Koran recital (Ar.wird) (n:referring to those whose wirds normally take the whole time between two prescribed prayers such that when they finish, they know the time for the second prayer has come. The legal basis of wirds is discussed at w20), and the like (N:including modern clocks, and prayer time calendars issued by experts on the times in various localities.

MAKING UP MISSED PRAYERS

@F2.6 When enough of a prayer's time has elapsed to have performed the prayer during it and someone who has not yet prayed loses their reason or their menstrual period begins they are obligated to make up that missed prayer (O: as soon as they are able).

@F2.7 Whenever a prescribed prayer is missed for a valid reason (def:f1.5). it is recommended to make it up immediately.
If missed without a valid reason, it is obligatory to make it up (dis: w18) immediately (A: meaning during all one's time that is not occupied by necessities, In the Shafi'i school, it is not even permissible for such a person to perform sunna prayers(N:before having finished making up the missed ones). The same applies to making up missed obligatory fasts (N: by fasting a day in place of each day missed), and it is unlawful to delay doing so until the following Ramadan(dis:i1.33).

@F2.8It is recommended that missed prayers be made up in the order they were missed. (n:The call to prayer (adhan) and call to commence (iqama) when making up missed prayers are discussed at f3.5, and whether to recite prayers aloud or to oneself at f8.25.)

@F2.9 It is recommended to make up missed prescribed prayers before performing the current one, unless one fears its time will pass, in which case it is obligatory to pray the current one first.
If one begins making up a missed prayer thinking that there will be time for both it and the current prescribed prayer, but finds that there is only enough time left for the latter, then one must discontinue the make-up in order to perform the current one.

@F2.10 If one has a prayer to make up and finds the current prayer being performed by a group, it is recommended to perform the make-up by oneself before praying the current one.

@F2.11 If one misses one or more of the five prayers but does not remember which of them it was, then one must pray all five, intending for each one making up the missed prayer.

@F2.12 (n:If someone finds he has been consistently mistaken day after day in praying, for example, the dawn prayer(subh) before its time, or some similar timing error, then each prayer performed after the first day of the whole series of prayers thus mistakenly prayed is considered the make-up of the day before it, and when such a person discovers the error, he has only one prayer to make up, namely the one on the

last day prior to learning of the mistake (Mughni al-muhtajila ma'rifa ma'ani alfaz al-Minhaj (y73), 1.127).)

*2*Chapter F3.0: The Call to Prayer (Adhan) and Call to Commence (Iqama)

@F3.1 The call to prayer (adhan) and call to commence(iqama) are two sunnas for the prescribed prayers, even when praying alone or in the second group to pray (N: in a mosque, for example), such that there is public congnizance (O: of both the call to prayer and to commence, whether in a large or small town).

@F3.2 To give the call to prayer (adhan) is better than being the imam for a group prayer (O: though to be imam is superior to giving the call to commence (iqama)).

@F3.3 When praying alone in a mosque where a group has already prayed, one does not raise one's voice in giving the call to prayer, though if no group has yet prayed, one raises it. The same applies to a second group to pray: they do not raise their voice.

@F3.4 It is sunna for a group of women who are praying together to give the call to commence without giving the call to prayer.

@F3.5 When making up one or more missed prescribed prayers, one gives the call to prayer only for the first (N: in the series), but gives the call to commence for each one.

@F3.6 The words of the call to prayer and call to commence are well known.
(n: The words of the call to prayer mean: "Allah is greatest, Allah is greatest. Allah is greatest, Allah is greatest. I testify there is no god but Allah. I testify there is no god but Allah. I testify that Muhammad is the Messenger of Allah. I testify that Muhammad is the Messenger of Allah. Come to the prayer. Come to the prayer. Come to success. Come to success. [n: At this point, before the dawn prayer only, one adds: "Prayer is better than sleep. Prayer is better that sleep. "] Allah is greatest. Allah is greatest. There is no god but Allah."
The words of the call to commence mean: "Allah is greatest, Allah is greatest. I testify there is no god but Allah. I testify that Muhammad is the Messenger of Allah. Come to the prayer. Come to success. The prayer is commencing. The prayer is commencing. Allah is greatest, Allah is greatest. There is no god but Allah.")

@F3.7 Each word (N: of both of them) must be recited in the order mentioned above.
If one remains silent for long or speaks at length between the words of the call to prayer (O: or call to commence), it is not valid and must be begun again, though a short remark or silence while calling it does not invalidate it.
When giving the call to prayer or call to commence by oneself, the minimal auditbility permissible is that one can hear oneself. The minimum when calling them for a group is that all their contents can be heard at least one other person.

@F3.8 It is not valid to give the call to prayer before a prayer's time has come, except for the dawn prayer, when it is permissible to give the call to prayer from the middle of the night onwards (N: as is done in Mecca and Medina).

@F3.9 When giving the call to prayer and call to commence, it is recommended to have ablution (wudu), stand, face the direction of prayer, and to turn the head(not the chest or feet) to the right when saying, "Come to the prayer," and to the left when saying, "Come to success."
It is offensive to give the call to prayer while in a state of minor ritual impurity (hadath), more offensive to do so in a state of major ritual impurity(janaba), and even worse to give the call to commence(iqama) while in either of these two states.
It is recommended:
-1- to give the call to prayer from a high place near the mosque;
-2- to put one's fingertips in one's ears while calling it;
-3- to take one's time in giving the call to prayer (A: pausing for an interval after each sentence equal to the sentence's length) (O: except for repetitions of "Allah is

Greatest," which are said in pairs);
-4- and to give the call to commence rapidly, without pause.

@F3.10 It is obligatory for the muezzin (O: or person giving the call to commence) :
(a) to be Muslim;
(b) to have reached the age of discrimination (def:f1.2);
(c) to be sane;
(d) and if calling for a men's group prayer, to be male.
It is recommended that he be upright (def:o24.4) and have a strong, pleasant voice.
It is offensive for a blind person to give the call to prayer unless a sighted person is with him (O: to tell him when the time has come).

@F3.11 When one hears the call to prayer (N: or call to commence), it is recommended to repeat each phrase after the muezzin, even if in a state of major ritual impurity (janaba), during menstruation, or when reciting impurity (janaba), during menstruation, or when reciting the Koran (N: and a fortiori when reading or reciting something else).
One does not repeat the phrases "Come to the prayer" or "Come to success," but rather says after them, "There is no power or strength except through Allah." And at the call to prayer at dawn, one does not repeat "Prayer is better than sleep,"but instead says, "You have spoken the truth, and piously."
When the person giving the call to commence says, "The prayer is commencing," one replies,"May Allah establish it and make it endure as long as the heavens and earth, and make me one of the righteous of its folk."
If one hears it while making love, going to the lavatory, or performing the prayer, one says the words when finished.

@F3.12 It is recommended for the muezzin, after he finishes, and those hearing him to bless the Prophet (Allah bless him and give him peace). (A: It is unobjectionable in the Shafi'i school for the muezzin to do so as loudly as the call to prayer.) Then one adds, "O Allah, Lord of this comprehensive invitation and enduring prayer, grant our liegelord Muhammad a place near to You, an excellence and exalted degree, and bestow on him the praiseworthy station that You have promised him."

*2*Chapter F4.0: Purity of Body, Clothes, and Place of Prayer

@F4.1 It is a necessary condition (shart) for the validity of prayer that one have purity (N: absence of filth (najasa, def:e14.1)) in:
(a) body:
(b) clothing, whether or not it moves with the person (N:who is praying);
(c) anything that touches the body or clothing (O: though if one's chest overhangs something impure while prostrating without touching it, this does not hurt);
(d) and the place on which one is standing during the prayer.

@F4.2 One's prayer is invalid if one is holding the end of a rope connected with something impure.
One's prayer is valid if performed on the pure portion of a rug which is affected with some filth (N: on another part) or on a bed whose legs rest on something impure, even if the rug or bed moves when one's own portion moves. (N: The rule illustrated by these examples is that it is not permissible for the person praying to support or carry something affected by filth, but is persmissible for him to be supported by it, provided he is not in direct contract with the filth.)

@F4.3 Impure substances (najasa) other than blood (dis:below) that are indiscernible by (A:average) vision are excusable, though if visually discernible, they are inexcusable. (A: That which is seen by a normal look is not excusable, while that which can only be seen by minute scrutiny is excusable.)

@F4.4 As for blood or pus, if it is from another, (O: human or otherwise,) then only a little (def:below) is excusable, though if from the person praying, it is excusable whether much or little regardless if from a squeezed pimple, a boil, a sore, being bled, cupped, or something else.

@F4.5 (N: In rulings of Sacred Law, the application of key descriptive terms like little, much, near, far, briefly, at length, and so forth, is governed by the concept of common acknowledgement ('urf). To know whether something is little or much, which could be stipulations in a particular ruling, we stop to reflect whether it is commonly acknowledged as such, namely, whether most people would describe it as such when speaking about it.
Common acknowledgement also takes into consideration what is normal or expected under the circumstances. For example, a few drops of animal blood on the clothes of a butcher would be little, while the same amount on the clothes of student would be much.)

@F4.7 If one prays with (N: an inexcusable amount of) something impure (N: on one's person, place, or clothes) that one did not know of or forgot, and notices it after finishing, one must repeat the prayer, It invalidates the prayer if noticed during it.

@F4.8 If one gets some mud on oneself from the street and but is not certain it contains, filth, then it is is considered pure (N: the rule being that the initial presumption for all things is that they are pure, as long as their impurity has not been decisively established).

@F4.9 Someone unable to remove filth from his person or who is being held in an impure place must pray and later make up the prayer when capable of purity. (N: When being held in an impure place,) one bows the head as close to the ground as possible without actually contacting the filth, which is unlawful to place the forehead upon.

@F4.10
If one loses track of a spot of filth on a garment, then, all of it must be washed without trying to decide where the spot might be, though if someone reliable knows where it is and informs one, one may accept this.

@F4.11 If a spot of filth is on one of two garments (N: one of which the person wants to pray in) and the person is not sure which then he may reason and choose the one he believes is pure (N: to pray in), regardless of whether another pure one is available or whether he can wash one to use.(N: But it is not obligatory to try to decide which is pure. Rather, he may wash one, or both, and pray in them, or pray in some other garment.)
If one washes the garment believed to have filth on it, then one may pray wearing both garments, or pray in each garment alone, though if one makes no attempt to decide which garment is impure, but rather performs a prayer in each one separately, then neither prayer is valid.

@F4.12 If one loses track of its location on a small plot of ground in open country, one may pray wherever one wishes.
But if one loses track of the location of filth on the ground or in a room (bayt, lit. "house," meaning a one-room dwelling), then all the ground or floor must be washed (def:e14.12) before one may pray on any of it.

@F4.14 It is offensive to pray:
-1- in a bathhouse or its outer room where clothes are removed;
-2- in the middle of a path;
-3- at a rubbish dump;
-4- at a slaughterhouse;
-5- in a church;
-6- in places where taxes (dis: p32) are gathered or taken;
-7- in places likely to be contaminated by wine;
-8- on top of the Kaaba;
-9- or towards a tomb(dis:w21).

@F4.15 Prayer is unlawful in a garment or on land wrongfully taken, being legally valid (dis:c5.2), but without reward.

*2*Chapter F5.0: Clothing One's Nakedness

@F5.1 Clothing one's nakedness (O: from the eyes of men as well as jinn (def:w22) and angels, for these too see people in this world) is obligatory, by scholarly consensus (ijma,b7), even when alone, except when there is need to undress. (O: Zarkashi states (A: and it is the authoritative position for the school) that the nakedness it is obligatory to clothe when alone consists solely of the front and rear private parts for, men, and of that which is between the navel and the knees for women.)

@F5.2 Clothing one's nakedness is a necessary condition for the validity of the prayer (O: when one is able).
Seeing a hole in one's clothes after a prayer is like seeing a spot of filth (n; meaning the prayer must be repeated, as at f4.7, unless one covers the hole immediately, as below at f5.5).

@F5.3 The nakedness of a man (O: man meaning the counterpart of the female, including young boys, even if not yet of the age of discrimination) consists of the area between the navel and knees. The nakedness of a woman (O: even if a young girl) consists of the whole body except the face and hands. (N: The nakedness of woman is that which invalidates the prayer if exposed (dis:w23). As for looking at women, it is not permissible to look at any part of a woman who is neither a member of one's unmarriageable kin (mahram, def:m6.1) nor one's wife, as is discussed below in the book of marriage (m2).)

@F5.4 It is a necessary condition that one's clothing:
(a) prevent the color of the skin form being perceptible (n:Nawawi notes, "A thin garment beneath which the blackness or whiteness of the skin may be seen is not sufficient, nor a garment of thick, gauze like fabric through which part of the nakedness appears"(al-Majmu'(y108), 3.170));
(b) enclose the body as a garment, for a prayer, performed without clothes in a small tent would not be valid;
(c) and conceal the nakedness from view on all sides and above, though it need not do so from below.

@F5.5 One's prayer is valid when there is a tear through which one,s nakedness shows that one covers with one's hand (A: immediately, i.e. one must do so before enough time passes to say "Subhan Allah") (O: that is, one must cover it with one's hand when not prostrating, at which point not covering it is excusable)

@F5.6 It is recommended for a woman to wear a covering over her head (khimar), a full length shift, and a heavy slip under it that doesn't cling to the body. (O: She should not wrap it so tightly about herself that it hinders standing, sitting, and other postures connected with the actions of prayer. She is recommended to pray in three garments even though the headcover and shift lone are sufficient as a covering .)

@F5.7 It is recommended for a man to pray in his best clothes, and to wear an ankle-length shirt and a turban (O: and a shawl over head and shoulders, a mantle, and a wraparound or loose drawers (N: under the ankle-length shirt)). If the does not wear all of these, it is desirable to wear two, namely the ankle-length shirt with either the mantle, the wraparound, or the loose drawers.

@F5.8 If only wearing enough to clothe one's nakedness, one's prayer is valid, though it is recommended to place something on one's shoulders even if only a piece of rope. If one does not have clothes but is able to conceal part of one's nakedness, one must cover the front and rear private parts. If only one of these two can be covered, it must be the front. If one has no clothes at all, then one performs the prayer without clothes and need not make it up later.

*2*Chapter F6.0: Facing the Direction of Prayer (Qibla)

@F6.1 Facing the direction of prayer (QIBLA) is a necessary condition for the prayer's

validity, with the sole exceptions of praying in extreme peril (dis:f16.5) and nonobligatory prayers performed while travelling.

@F6.2 (N: The rulings below deal with nonobligatory prayers, not the five prescribed ones, which must be performed while facing the proper direction for prayer(qibla) whether one is riding in a vehicle or not (dis:w24).)
A traveller may perform nonobligatory prayers riding or walking, even on short trips. When riding and able to face the direction of prayer, prostrate, and bow, as when on a ship, one is obligated to. If not able, the one is only required to face the direction of prayer, during the first Allahu Akbar of the prayer, provided this is not difficult, as when one's mount is stationary or when one can turn oneself or one's mount the proper direction. If it is difficult, as one's mount is not properly saddle broken, or if the reins are not in one's hands, as when riding in a pack train with each animal tied to the one ahead of it, then it is not obligatory to face the direction of prayer at any point of the prayer's performance, and one merely nods in the direction of travel instead of bowing and prostrating. One's nod for prostration must be deeper than the nod for bowing. One does not have to bow to the limit of one's capacity, nor bow the forehead until it touches the mount's back, though this is permissible if oneself, though this is permissible if one trouble oneself to do so.
When praying while walking, one must stop to bow and prostrate on the ground (O: if easy, though if walking in mud, water, or snow, one may simply nod), and may walk during the rest of the prayer, though it is obligatory to face the direction of prayer during the first Allah Akbar and at each bowing and prostration.
Such prayers (O: whether riding or walking) are only valid on condition.
(a) that one's journey continue for the prayer's duration;
(b) and that one not turn from the direction of travel towards anything but the direction of prayer.
If one reaches home while thus praying, or the destination, or a town where one intends to stay, then one must face the direction of prayer, and bow and prostrate on the ground or on one's mount if stopped.

@F6.3 When at the Kaaba, one must pray directly towards the Kaaba itself. One's prayer is invalid if one merely faces the semicircular wall (N:Hijr Isma'il) that is to one side of it, or directs any part of the body outside the outline of the Kaaba, unless one is standing at the end of a long row of people praying at the periphery of al Masjid al-Haram(n:the mosque of the Kaaba), a row which, if the people in it were to advance, some of them would be facing outside the Kaaba's outline. To pray in such a row is valid for everyone in it.

@F6.5 For knowledge of the proper direction it is obligatory to rely to rely on the prayer niche (mihrab) of mosque in a city or village through which many people pass. At every place the Prophet (Allah bless him and give him peace) faced to pray and established where he stood, it is obligatory to pray facing as he did, without reconsidering the direction of prayer or turning right or left, though in other places one may use personal reasoning as to whether to turn right or left.

@F6.6 If one does not find an informant to tell one of the proper direction of prayer by having seen the Kaaba in that direction, then one employs personal reasoning, using other evidence.
(n: To establish the direction of prayer in cities far from Mecca one may use a world globe and a piece of string, since in North America, Australia, and other regions, using a flat world map will yield the woring direction because of the curvature of the earth, and the error factor is often considerable. One puts the end of the string on the position of Mecca on the globe, the other end on one's own city, and pulls the string taut, observing the bearing of the string and drawing a line in the same direction on a local map, which can be oriented with a compass and used to indicate the proper direction to pray.)
If one does not know how to use other evidence, (O: and it is a communal obligation (def:c3.2) for someone to know,) or one is blind, then one follows another (O:reliable sighted person acquainted with the evidence)

@F6.7 If, after praying one becomes certain one was mistaken, then the prayer must be repeated. (n:In the Hanafi, Maliki, and Hanbali schools, the criterion for facing the direction of prayer is merely that some portion of the person's face be directed towards the Kaaba (al-Fiqh 'ala al-madhahib al-arba'a (y66), 1.195). (A: This takes in 180 degrees, from far left to far right, such that when the Kaaba's anywhere between, one is considered to be facing the direction of prayer .)

*2*Chapter F7.0: Placing a Barrier in Front of One's Prayer Place

@F7.1 It is recommended to put a barrier at least 32 cm, high in front of oneself when performing the prayer, or to spread out a mat, or if one cannot, to draw a line (N:on the ground, straight out, perpendicular to one's chest) about a meter and a half (O: or less) in front of one. It is then unlawful for a anyone to pass (O: between the person praying and such a barrier, even when there is no other way to pass (dis:p75.27)). If someone tries to pass between oneself and the barrier, it is recommended to gently him back. If he persists, one may push him back as hard as necessary, as one would an attacker (def: 07.3). Where he to die as a result, one would not be subject to retaliation (03) or have to pay an indemnity(04) to his kin.

@F7.2 If there is no barrier, or if the person praying is farther than a meter and a half from it, then passing in front of him is merely offensive, and the person praying is not entitled to push him.

@F7.3 (A: Passing in front of a person without a barrier, in a mosque for example, is limited to the length of his prostration, and it is not Unlawful or offensive to pass in front of him when farther than that.)

@F7.4 When one notices a gap in row of people performing a group prayer, one is entitled to pass in front of others to fill it.

*2*Chapter F8.0: Description of the Prayer

@F8.1 (n: Special vocabulary:
Allahu Akbar: Allah is greatest.
Ameen: a one-word supplication meaning "Answer our prayer."
as-Salamu 'alaykum: Peace be upon you.
Fatiha: the opening sura of the Koran.
Follower: someone praying in group behind an imam.
Integral(ruku) : one of the legally essential elements found within an action that compose it.
Imam: someone leading a group prayer.
Rak'a: one complete cycle of the words and actions of the prayer.
Sura: a chapter of the Koran.
Ta'awwudh : to say in Arabic, "I take refuge in Allah from the accursed Devil.")

MEASURES RECOMMENDED BEFORE PRAYER

@F8.2 It is recommended:
-1- to stand for the prayer after the end of the call to commence (iqama);
-2- to be in the first row;
-3- to make the rows straight, especially if one is the imam (O: when one should order the group to do so);
-4- and to fill up the first row first, then the second, and so on (O: meaning there should not be a second row when the first one is not full (A: as to pray in such a second row is the same as not praying with a group, and is rewarded as if one had prayed alone), nor gaps within one row, nor a distance in excess of a meter and a half between rows).
It is superior to stand on the imam's right (A: though the sunna is for the imam to be in the middle) (N: and if one arrives at a group prayer in which the row extends to the right, one's rewards is greater for standing on the left, since one is performing the sunna).

THE INTENTION

@F8.3 Then one makes the intention with one's heart.
If it for an obligatory prayer, one must intend performing the prayer, and that it is obligatory, and know which one it is, such as the noon. midafternoon, or Friday prayer. The intention must coincide with one's first Allahu Akbar, obligatory existing in the mind and recommended to be uttered with the tongue (N: before the first Allahu Akbar) as well. One intends it from the first of the phrase " Allahu akbar" to the last of it. It is not obligatory to specify the number of rak'as or that it is for Allah Most High, or whether it is a current performance or a makeup prayer, though specifying these is recommended.
(A: some scholars hold that the mere determination to perform a particular prayer existing in the mind before hand is sufficient. Such an intention could be expressed, for example, by walking to the mosque after hearing the call to the noon prayer (dis: w25).)
If the intention is for a nonobligatory prayer that has a particular time, one must intend which one it is, such as for 'Eid, the eclipse prayer, assuming the state of pilgrim sanctity (ihram), the sunna prayers before and after the noon prayer, and so forth.
If it is for a nonobligatory prayer that is wholly supererogatory, unconnected with a particular time, one may simply intend to perform prayer.

@F8.5 It immediately invalidates one's prayer:
-1- to cease to intend praying;
-2- to decide that one will cease to;
-3- not to know whether one has ceased to or not (O: meaning one hestiates in one's heart, saying, "Shall I stop intending or continue?" The mere thought of how it would be if one were to hesitate during the prayer is of no consequence, but rather the occurrence of doubt that negates one's resolve and certainty);
-4- to intend during the first rak'a to stop when one reaches the second;
-5- or to decide to interrupt one's prayer if such and such a thing happens, regardless whether the event will definitely occur during the prayer or whether it merely may happen, such as, " I'll stop if Zayd comes in ."

@F8.6 If one knowingly begins the noon prayer (N: for example) before its time has come, one's prayer is not legally considered to have begun. If one does so unknowingly, it is validly begun, but counts as a nonobligatory prayer.
THE OPENING ALLAHU AKBAR
@F8.7 The Allahu Akbar (n: an integral) that begins the prayer can only be in Arabic and must be pronounced "Allah akbar" or "Allahu akbar."
One's prayer is not legally considered to have begun if one omits any of its letters, pauses between the two words, adds the letter waw between them, or says "Allahu akbar" with a long a between the final b and r.
If unable to pronounce it because of being a mute or similar, one must move the tongue and lips according to one's capacity.

@F8.9 The minimal valid auditability for saying "Allah akbar," reciting the Koran, and all invocations (dhikr), is that one can hear them oneself, given normal hearing ands lack of extraneous noise.The imam speaks aloud (def: below) every time he says "Allahu akbar" in the prayer.

@F8.10(A: Throughout the rulings, aloud (jahran) means that someone beside or behind the speaker could distinguish his words, while to oneself (sirran) means that the speaker can distinguish his own words, but such a person could not.)

@F8.11 It is obligatory that one be standing when one opens an obligatory prayer with "Allahu akbar." If a single letter of it occurs while not standing, the prayer is not considered to have validly begun as an obligatory prayer, but is considered to have begun as a supererogatory prayer, provided one is ingnorant that it is unlawful, though not if one knows. (N: The latecomer to a group prayer should take careful note of this, and not bow or make other prayer movements until he has completed the opening Allah

Akbar while standing.)

@F8.12It is recommended to lift the hands to shoulder level when one say's Allahu akbar"(O:meaning that one's fingertips are even with the tops of the ears, thumbs with the earrlobes, ands palms with one's shoulders), fingers slightly outspread. If one intentionally or absentmindedly does not lift one intentionally or absentmindedly does not lift the hands at the first of saying " Allahu Akbar," one may do so during it, though not afterwards. The palms face the direction of prayer(qibla) and the hands are uncovered.
After the opening Allahu Akbar, one places the hands between the chest and navel, grasping the left wrist with the right hand, and fixing one's gaze on the place where one's forehead will prostrate. (O: One does this when not reciting the Testification of Faith (Tashahhud, def;f8.45), where one only looks at the place of prostration until one says "except Allah," and then looks at the index finger.) (A: It is offensive to close one's eyes while praying unless it is more conducive to awe and humility towards Allah.)

THE OPENING SUPPLICATION (ISTIFTAH)

@F8.13 Then one recites (N: to oneself) the Opening Supplication (Istiftah), which means: "I turn may face to Him who created the heavens ands earth, a pure montheist, in submission, and an not of those who associate others with Him. My prayer, worship, life, and death are for Allah, Lord of the Worlds, who has no partner. Thus I have been commanded, and I am of those who submit."
This is recommended for anyone performing an obligatory or supererogatory prayer, even if seated; no matter whether a child, woman, or traveller (O: alone or in a group, imam or follower), though not for a funeral prayer.

@F8.14 If one intentionally or absentmindedly omits the Opening Supplication (Istifath) and begins saying "I take refuge, etc." (Ta'awwudh), one may not return to the Opening Supplication.

@F8.14 When (N: joining a group that has already begun, and) the imam says "Ameen" just after one's opening Allahu Akbar, one says "Ameen" with him and then recites the Opening Supplication (Istiftah).
If one says the opening Allahu Akbar and the imam finishes the prayer with Salams before one has sat down with the group, then one recites the Opening Supplication (Istiftah). But if one has already sat down when the imam finishes with Salams and one rises (N: to finish one's prayer), then one does not recite it (O: the Opening Supplication).
If one joins the group while the imam is standing, and one knows it is possible (O: to recite the Opening Supplication) together with saying I take refuge," and so on (Ta'awwudh) and the Fatiha (N: all before the imam will finish his recital and bow), then one may recite the Opening Supplication, though if one has doubts (N: that there is enough time), one omits both the Opening Supplication and Ta'awwudh, and begins reciting the Fatiha. If the imam bows, before one finishes (O: the Fatiha), one bows with him, provided one has omitted the Opening Supplication and Ta'awwudh, though if one did not omit them, then one must recite as much (A: as many letters) of the Fatiha as one recited of them, since if one bows before having recited that much, it invalidates one's prayer.
If one recites what we have just said is enough of the Fatiha to permit one to bow with the imam (n: when one is a latecomer, for otherwise it is obligatory to recite it all, as at f12.17(O:)), but one holds back from bowing with him without excuse, then if the imam straightens up from bowing before one has oneself bowed, one has missed that rak'as (N: and must rise after the group has finished to perform it).
SAYING "I TAKE REFUGE, ETC. " (TA'AWWUDH)

@F8.16 After the Opening Supplication, it is recommended to recite the Ta'awwudh, saying, "I take refuge in Allah form the accursed Devil."
It is said in every rak'a and especially recommended in the first, whether one is imam, follower, or praying by oneself, and whether the prayer is obligatory, supererogatory,

or even a funeral prayer. It is said to oneself in both the prayers recited to oneself and those recited aloud.

THE FATIHA

@F8.17 Then one recites the Fatiha (def:w1.16) in every rak'a(n: an integral), whether one is imam, follower, or praying alone.
The Basmala (n: the words "In the name of Allah, Most Merciful and Compassionate") is one of its verses. (n: In the other three schools, it is recited to oneself even when the rest is recited aloud (Sharah al-sunna (y22), 3.54).)
It is obligatory to recite the Fatiha's verses in order and without interruption. It is considered to be interrupted and must be begun again if one deliberately pauses, at length during it, or pauses briefly but thereby intends to cease reciting, or mizes with it some words of invocation (dhikr) or Koran that are not in the interests of the prayer.
One's recital of the Fatiha is not considered to be interrupted if one speaks words during it that are in the interests of the prayer, such as saying "Ameen" in response to the imam's Ameen, or reminding him of the right words when he errors, or prostrating with him as a sunna for his Koran recital (def: F11.14).
Nor is it interrupted if one forgetfully falls silent during it or absentmindedly adds some words of invocation (dhikr).

@F8.18
If one omits one of the Fatiha's letters (Ar. harf, a consonant or long vowel (A: mistakes in a short vowel (haraka) do not harm as long as they do not alter the meaning)), fails to double a letter that should be doubles, or substitutes a wrong letter for the right one, it invalidates (O: one's recital of that particular word, and one must recite the word again (dis: s3.3). But it does not invalidate one's prayer unless it changes the meaning and was done deliberately).
SAYING "AMEEN"

@F8.19
After reciting (n: the last words of the Fatiha) " nor of the lost, " one says "Ameen" to oneself in prayers spoken to oneself and aloud in those recited aloud.
When following an imam, one says "Ameen" when he does, and then a second time (N: to oneself) when finished with one's own recital of the Fatiha.
RECITING A SURA

@F8.20
If one is the imam or praying by oneself, it is recommended in the first and second rak'as only to recite one complete sura (O: even if short) the Fatiha.
It is recommended to recite:
-1- the suras from al-Hujurat (Koran 49) to al-Naba'(Koran 78) for the dawn (subh) and noon (zuhr) prayers;
-2- the suras from al-Naba'(Koran 78) to al-Duha (Koran 93) for the midafternoon ('as) and nightfall ('isha) prayers;
(provided that there are a restricted number of followers (O: meaning no others are praying behind the imam) who do not mind the length of these ((1) and (2) above) recitations, though if otherwise, the imam should be brief)
-3- the suras from al-Duha (Koran 93) to the end (Koran 114) for the sunset prayer (maghrib);
-4- al-Sajda (Koran 32) for the dawn prayer on Friday (n: in the first rak'a' when the group may prostrate during the recital, as at f11.14), and al-Insan (Koran 76) (n:in the second rak'a);
-5- and al-Kafirun (Koran 109) (n: in the first rak'a) and al-Ikhlas (Koran 112) (n: in the second) for the sunna prayers that accompany the sunset and dawn prayers (def:f10.2), for the two rak'as after circumambulating the Kaaba (j5), and for the guidance prayer (istikhara, f10.12).

@F8.21It is recommended to r recite the Koran in a distinct, pleasant way (tartil) (O: i.e. to recite it as revealed by Allah, observing the proper rules of Koranic

recitation) and to reflect upon its lessons and meanings (dis:w26).

@F8.22It is offensive for a follower to recite a sura when praying behind an imam whose recital is audible to him, though it is recommended for the follower to recite the sura during prayers that are not recited aloud, or those recited aloud if he cannot hearing, or can hear it, but uncomprehendingly.

@F8.23 One recites a longer sura in the first rak'as than in the second.

@F8.24If a latecomer to a group prayer misses the first two rak'as with the group and then performs them alone after the imam has finished the group prayer with Salams, he is recommended to recite the suras to himself during them.

@F8.25 The imam (or person praying by himself) recites the Fatiha and suras aloud for the dawn prayer (subh), Friday prayer (jumu'a), prayer on the two 'Eids (def: f19), drought prayer (f21), lunar eclipse prayer (f20), the group prayer that is sunna on the nights of Ramadan (tarawih, f10.5), and for the first two rak'as of the sunset (maghrib) and nightfall ('isha) prayers.
In other prayers, the Fatiha and suras are recited to oneself.
When making up at night (lays, from sunset to true dawn) a prayer that one missed during the day or night, one recites aloud. When making up in the daytime (nahar, from dawn to sunset) a prayer that one missed during the day or night, one recites to oneself. At dawn, however (N: from true dawn to sunrise), all makeup prayers are recited aloud. (N: The upshot is that one recites aloud in all prayers that are made up at times when one normally recites aloud, and recites to oneself at the times one normally recites to oneself.)

STANDING

@F8.27 Standing is an integral in all obligatory prayers (O: for anyone who can stand, whether by himself or assisted by another, though it is not an integral in nonobligatory prayers).
Standing requires that the spine be upright. One is not standing if one inclines forward so that the backbone is no longer straight, or bends so that one is closer to bowing (def: f8.29) than to standing. If a person's back is bowed with age or the like so that this normal posture resembles someone bowing, then he stands as he is, but must bend a little further for bowing if able to.
It is offensive in prayer to stand on one foot, for both feet to be held together (A: though this is sunna for women), or for one foot to be ahead of the other.
To stand at length (A: reciting the Koran in prayer) is better than to prostrate or bow at length (A: therein).

@F8.28It is permissible to pray nonobligatory prayer seated (O: any way one wishes, though the iftirash (def: f8.37) style of sitting is best or lying down, even when able to stand (A: but the merit is less than to do so standing).

BOWING

@F8.29 Then one bows from the waist (n: an integral).
The minimum is to bow as far as an average size person needs to when he wants to put his hands on his knees. It is obligatory that one repose therein, minimally meaning to remain motionless for a moment after having moved. It is also obligatory that one intend nothing by the motion but bowing.

@F8.30 The optimal way is to raise one's hands and say "Allahu akbar" so that one begins raising the hands as one starts saying it, and when the hands are at shoulder level, one bows.
Whenever one says "Allahu akbar" during a movement from one prayer posture to another, it is recommended to prolong the words until one reaches the next posture (A: so that one's prayer is not devoid of invocation (dhikr) at any point).
Then one puts the hands on the knees, fingers apart, with back and neck extended, legs

straight, and elbows out, though women keep them close.
One then says, "My Lord Most Great is exalted above all limitation," three times, the least that is optimal. If praying alone, or the imam of a limited number of followers who do not mind the extra length, one may increase the number of times one says this to five, seven, nine, or eleven.
When finished, (O:however many times one has said it,) it is recommended to say, "O Allah, to You I bow, in You I believe, to You I submit. My hearing, sight, mind, bones nerves, and all that my feet bear up are humbled before You."

STRAIGHTENING UP

@F8.31Then one lifts one's head, the minimum of which is to return to standing as one was before bowing, and, then remain motionless for a moment. (n: Each is an integral.) It is obligatory to intend nothing by one's movement except straightening up.

@F8.32The optimal way is to raise the hands (A: lifting them from the knees as one starts straightening up, raising them to shoulder level) and the head together, saying,"Allah hears whoever praises Him,"
This is said whether one is imam, follower, or praying alone. When one is standing upright, one says.
"Our Lord, all praise is Yours, heavenful, earthful, and whatever-else-You-will-full."
(O: If following an imam or praying alone, one says this to oneself. If imam, one says"Allah hears whoever praises Him" aloud, but the rest to oneself.)
Those we have previously mentioned who wish to add to the words of bowing may add here "O You who deserve praise and glory, the truest thing a slave can say (and all of us are Your slaves) is, 'None can withhold what You bestow, non can bestow what You withhold, and the fortune of the fortunate avails nothing against You."

PROSTRATION

@F8.33Then one prostrates (n: an integral). The conditions for its validity are:
(a) that an uncovered portion of the forehead touch a part of the place prayer (N: it is not obligatory that any of the other limbs of prostration be uncovered);
(b) that one remain motionless for a moment while prostating
(c) that the place of prostration bear the weight of the head;
(d) the one's higher than one's head;
(e) that one not prostrate on something joined to one's person that moves with one's motions, such as a sleeve or turban;
(f) that nothing but prostration be intended by one's motion;
(g) and that part of each knee, the bottom of the toes of each foot, and the fingers of each hand be placed on the ground.
(O: In our school, it is not Obligatory that the nose touch the ground in prostration, though it is desirable)

@F8.34 If one cannot fully prostrate so that one's forehead touches the ground (N: a pregnant woman, for example), then it is not necessary to stack up pillows on the place of prostration to touch the forehead on them. One merely bows as low as one can.
If one has put a bandage on the foreheads because of an injury that affects all of it, and there is hardship in removing it (O: severe enough to permit dry ablution (tayammum) (def: e12.9)), then one may prostrate upon it and need not make up the prayer.

@F8.35 The optimal way to prostrate is to say "Allahu akbar" and:
-1- to put the knees down first, then the hands, and then the forehead andnose (O: the order is called for, and any other order is offensive);
-2- to prostrate with the hands directly under one's shoulders, fingers together, extended towards the direction of prayer (qibla), hands uncovered;
-3- for men to keep 1 span (n: about 23 cm) between the two knees and two feet (O: though a woman's are kept together);
-4- for men to keep the stomach apart from the thighs, though women keep them together;
-5- and to say three times, " My Lord Most High is exalted above all limitation."

Those we have previously mentioned who wish to add to the words of bowing may increase the number of times this is said as previously described (O: namely, in odd numbers up to eleven) and add:
"O Allah, I prostrate myself to You, believe in You, and surrender to You. My face prostrates to Him, and surrender to you. My face prostrates to Him who created it and gave it form, who opened its hearing and vision by His Power and strength. Allah is exalted in perfection, the Best of Creators."
It is commendable to supplicate Allah while prostrating.

SITTING BETWEEN PROSTRATIONS

@F8.36 Then one raises the head (N: and sits back before prostrating a second time. Sitting at this point is an integral). It is obligatory to sit motionlessly for at least a moment and to intend nothing but sitting by one's movement.

@F8.37 The optimal way is:
-1- to say "Allahu akbar" (N:as one raises the head);
-2- to sit in ifirash, which is to place the left foot on its side and sit upon it while keeping the right foot resting on the bottom of its toes, heel up;
-3- to place one's two hands on the thighs near the knees, fingers extended and held together;
-4- and to say, "O Allah forgive me, have mercy on me, pardon me, set me right, guide me, and sustain me."

@F8.38There are two other ways of sitting back (iq'a') (O: between the two prostrations, or at the first and second Testifications of Faith (Tashahhud, def:f8:45)).
One way is to sit back on the heels with the bottom of the toes and knees upon the ground. This is recommended between the two prostrations, though iftirash (def: f8.37) is better.
The other way is to simply sit on the ground, palms down, and knees, drawn up. This is offensive in any prayer.'

@F8.39 Then one prostrates again just as before. (O: The first rak'a is only completed when one has performed the second prostration,because each prostration is a separate integral, as is the moment of motionlessness in each.)

@F8.40 After this one raises the head, saying "Allah akbar" (O: as one first raises it, drawing out the words until one is standing upright).
It is sunna, here land in each rak'a that is not followed by the Testification of Faith (Tashahhud), to briefly rest in the iftirash style of sitting (f8.37) before rising. Then one (O: quickly) raises, helping oneself up with both hands (O: palms down), and prolonging the Allah Akbar until standing. If the imam omits this brief sitting, the follower performs it anyway. It is not done after a Koran recital prostration (def: f11.13).

@F8.41Then one performs the second rak'a of the prayer just like the first, except for the initial intention, the opening Allah Akbar, and Opening Supplication (Istiftah).

@F8.42If one's prayer exceeds two rak'as one sits in iftirash (def:f8.37) after the first two rak'as and recites the Testification of Faith (Tashahhud, f8.45) and the Blessings on the Prophet (Allah bless him and give him peace), though not upon him family (N: which is done only in the final Testification of Faith at the end of the prayer).
Then one rises, saying "Allah akbar" and leaning on one's hands (n: as before). When standing, one lifts the hands to shoulder level (A: which one does here, but not after rising from the first or third rak'a) and then goes on to perform the remainder of the prayer as one did the second rak'a, except that one recites the Fatiha to oneself and does not recite a sura after it.

TESTIFICATION OF FAITH (TASHAHHUD)

@F8.43 One sits back (n: an integral) at a the last of one's prayer for the Testification of Faith in the tawarruk style of sitting, with one's (O: left) posterior on the ground and left foot on its side, emerging from under right, which is vertical. (O: The wisdom in the difference between the ways of sitting during the two Testifications of Faith, namely, iftirash (f8.37) in the first and tawarruk in the second, is that a latecomer to group prayer may know by observing the former that the prayer has not finished and by the latter that it nearly has. Imam Malik holds the sunna in both testifications to be the tawarruk style of sitting; while Abu Hanifa holds that the iftirash style is sunna for both. May Allah have mercy on them all for explaining the Deity's command without the slightest loss.)
However one sits here (O: in the final Testification of Faith (Tashhud)) and in the foregoing (O: Testification of Faith, as well as between the two prostration) is permissible, though iftirash and tawarruk are sunna.
A late comer to a group prayer sits in iftirash at the end of his imam's prayer and sits in tawarruk at the end of his own.
Similarly, the person who must perform a forgetfulness prostration (def: f11) sits in iftirash for his last Testification of Faith, prostrates for forgetfulness, and then sits in tawarruk for his Salams.

@F8.44 In the two Testifications of Faith, one's left hand rests on the left thigh near the knee, its fingers extended and held together. The right hand is similarly placed, but is held closed with its thumb touching the side of the index finger, which alone is left extended. One lifts the index finger and points with it when one says the words "except Allah" One does not move it while it is thus raised (O: following the sunna from a hadith related by Abu Dawud. It is offensive to move it here, though some hold that it is recommended, the evidence for which is also from the sunna, in a hadith related by Bayhaqi, who states that both hadiths are rigorously authenticated (sahih). Precedence is given to the former hadith, which negates moving the finger, over the latter hadith, which affirms it, because scholars hold that what is sought in prayer is lack of motion, and moving it diminishes one's humility. The Prophet's moving it (Allah bless him and give him peace) was merely to teach people that it was permissible (A: as it was the Prophet's duty (Allah bless him a nd give him peace) to distinguish for his Community the acts that were offensive from those that were unlawful, and he was given the reward of the obligatory for doing such offensive acts.) Moreover, Bayhaqi says that the meaning of moving it in the latter hadith is simply raising it. So there is no actual contradiction).

@F8.45 The minimal Testification of Faith (Tashahhud) is to say: "Greetings to Allah. Peace be upon you, O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon Allah"s righteous slaves. I testify there is no god except Allah, and that Muhammad is the Messenger of Allah."
The optimal way is to say: "Greetings, blessings, and the best of prayers to Allah. Peace be upon you O Prophet, and the mercy of Allah and His blessings. Peace be upon us and upon Allah's righteous slaves. I testify that there is no god except Allah, and that Muhammad is the Messenger of Allah."
Its words (N:minimal or optimal) are obligatory (O: i.e when one can recite the Arabic, one may not use other words) and their order is a condition. If one cannot say it, one must learn. If one cannot learn (O: because there is no teacher, or there is, no teacher, or there is, but one is unable), then one may translate it (O: to any language one wishes).
One then says the Blessings on the Prophet (Allah bless him and give him peace) (n: an integral after the final Testification of Faith, but merely sunna after the first one, as at f9.15 below).
The minimum is to say, "O Allah, bless Muhammad." (n: One confines oneself to this minimum at the first Testification of Faith, as mentioned above at f8.42.)
The optimal way is to say: "O: Allah, bless Muhammad and the folk of Muhammad as You blessed Ibrahim and the folk of Ibrahim. O Allah, show grace to Muhammad and the folk of Muhammad as You did to Ibrahim and the folk of Ibrahim in the worlds, for You are truly the Most Praiseworthy and Noble."
(A: It is desirable to add before each mention of the names Muhammad and Ibrahim the

word sayyidina ("our liegelord"). The hadith " Do not liegelord me in the prayer" is a forgery containing corrupt Arabic)

@F8.46 It is recommended afterwards (O: after the second Testification of Faith (Tashahhud) of the prayer, though not after the first) to supplicatae Allah for any permissible thing one wishes concerning one's religion or this world. One of the best supplications is: "O Allah, forgive me what I have done and what I may do, what I have hidden and what I have made known, my excesses and what You know better than I. Only You put one ahead or behind. There is no god but You."
It is recommended (O: if one is imam) that such supplications be briefer than the Testification of Faith with its Blessings on the Prophet (Allah bless him and give him peace) (O: though if one is alone, one may supplicate as long as one wishes, if not afraid of forgetting (N: that one is still in the prayer)).

CLOSING THE PRAYER WITH SALAMS

@F8.47 Then one says the final Salams (n: an integral). The minimum is to say "as-Salamu `alaykum" (peace be upon you), and it must occur while one is sitting. (O: It is inadequate to say "Salam `alaykum" without the first word being definite (n: i.e. as-Salamu), since this has not reached us through any hadith texts, and invalidates the prayer if done intentionally.)
The optimal way is to say, "Peace be upon you, and the mercy of Allah" (O: though to add the words "and His grace" (was barakatuhu) is not sunna) and to turn the head to the right enough to show the right cheek. (N: to those behind). One thereby intends to finish the prayer and intends greetings of peace to the angels and Muslims (whether human or jinn (deff:w22)) on the right. One then turns one's head to the left and repeats the Salam, intending to greet to those on the left. A follower intends one of the two Salams as a response to the imam's, depending on which side the imam is on, or if the follower is directly behind him, he may intend either Salam as a response to him.

@F8.48 When one is a latecomer to a group prayer, it is recommended not to stand up to finish one's missed rak`as until the imam has said both Salams. It is permissible to stand after he has said just one, but if one stands before he has said the first Salam it invalidates one's prayer, unless one purposely intended to cease participation in the group prayer before doing so.
A latecomer, if making his first Testification of Faith while the group is making their last one, may sit at length (O: for dhikr or supplications) after the imam's Salams before he stands up to finish his own rak`as, though it is offensive. If he does this when not at the point of his first Testification of Faith, it invalidates his prayer if intentional.
@F8.49 Someone who is not a latecomer to a group prayer may sit as long as he wishes after the imam's Salams to supplicate, finishing with his own Salams whenever he wants (O:because the imam's leadership ends with the imam's first Salam, so there is no harm in the follower taking his time, as he is now praying alone, and someone praying alone may do so as long as he likes.

@F8.50 It is recommended to invoke Allah Most High (dhikr) to oneself and to supplicate after the prayer. (O: Shafi'i says in al-Umm, "I prefer that the imam and follower invoke Allah (dhikr) after the Salams, and do so silently, unless the imam wants to be learned from, in which case he says the invocations aloud until he believes that he has been learned from, after which he says them to himself.") (n: The following invocations are listed in the commentary and have been written in full and vowelled by the translator in the facing column of Arabic. Their order is sunna, as the commentator notes below.
-1- Ayat al-Kursi (Koran 2:255) (said once);
-2- al-Ikhlas (Koran 112) (once);
-3- al-Falaq (Koran 113) (once);
-4- al-Nas (Koran 114) (once);
-5- "I ask Allah's forgiveness"(three times) :
-6- "O Allah, You ar peace, from You is peace, You are exalted through Yourself above

all else, O You of Majesty and Beneficence";
-7- "O Allah, none can withhold what You bestow, none can bestow what You withhold, and the fortune of the fortunate avails nothing against You";
-8- "Allah is exalted above any limitation or imperfection"(thirty-three times);
-9- "Praise be to Allah" (thirty-three times);
-10- "Allah is greatest" (thirty-three times (A: or thirty-four) times);
(N: (8), (9), and (10) above are also recommended before going to sleep at night, in which case "Allah is greatest" is said thirty-four times)
-11- and "There is no god but Allah, alone, without partner. His is the dominion, His the praise, and He has power over all things."
(O: It is recommended to begin the supplication with the Koran when called for, like Ayat al-Kursi and so forth, then, (5) through (10) above.) One should invoke the Blessings on the Prophet (Allah bless him and give him peace) at the beginning (O: and middle) and end of one's supplications

@F8.51 The imam turns for (N: postprayer) invocation and supplications so that his right side is towards the group and his left side towards the direction of prayer (qibla). He leaves his place as soon as he finishes, if there are no women (N: in which case he waits for them to leave first). It is recommended that the followers remain seated until the imam stands. (A: In the Shafi'i school, the invocations are recommended to precede the postprayer sunna rak'as)

@F8.52 It is recommended for those who perform nonobligatory prayers after the prescribed prayer to first wait till after some conversation: it being better to pray them elsewere, and best to perform them in one's home. (O: However, it is better to perform certain nonobligatory prayers in the mosque, such as those before the Friday prayer, those after circumambulating the Kaaba, and those before entering the state of pilgrim sanctity (ihram) if there is a mosque at the site. (A: Others that are better in the mosque include.)
-1- the midmorning nonobligatory prayer (duha, def:f10.6);
-2- the guidance prayer (istikhara, f10.12);
-3- the two rak'as that are sunna before departing on a journey and when arriving from one;
-4- prayers performed during a period of spiritual retreat in a mosque (i'tikaf,i3);
-5- confirmed sunna prayers (sunna mu'akkada, f10.2) that one is afraid of missing if one does not pray them in the mosque;
-6- and the sunna rak'as before the sunset prayer.))

@F8.33 While performing the dawn prayer (subh) it is sunna to lift one's hands supplicate after straightening up from bowing in the second rak'a.
One says: " O Allah, guide me among those You guide, grant me health and pardon among those You grant health and pardon, look after me among those You lookafter, grant me grace in what You have given me, and protect me from the evil [A: here, one turns the palms down for a moment] of what You have ordained; for You decree and non decrees against You, and non is based whom You befriend. O our Lord, who are above all things sacred and exalted, all praise is Yours for what You decree. I ask Your forgiveness and turn to You in repentance."
It is commendable to add "and none is exalted whom You are at enmity with" (A: after the above words "and non is based whom You befriend"). If one is imam, one pluralizes the singular pronominal suffix so that, for example, ihadina ("guide us") and so forth (dis:w1.27).
The words of this supplication are not set and may be accomplished by pronoucing any supplication (O: and praise) or Koranic verse containing a supplication, such as the last verses of al-Baqara (Koran 2:285-86), though the above words are better. After this, one invokes the Blessings on the Prophet (Allah bless him and give him peace).
It is recommended to raise one's hands throughout the supplication (O: palms up when asking the good, palms down when asking Allah to avert affliction). One does not stroke the face or chest with one's hands after the supplication (O: as opposed to other supplications, for which it is recommended to wipe the face with the hands, as is mentioned in hadith).
The imam says the supplications aloud. The follower says "Ameen" after each

supplication that is audible to him and participates in the praises and so forth by responding with similar expressions. If the imam is inaudible, the follower himself the supplication. When praying alone one says it to oneself. When disasters (O: such as drought or an epidemic) befall the Muslims, they similarly supplicate in every prescribed prayer (O: after straightening up from bowing in the last rak'a).
*2*Chapter F9.0: What Invalidates, Is Offensive, or Obligatory in Prayer

@F9.1: Extraneous Speech
The prayer is invalidated (if one has no excuse (def:below)) by uttering two or more letters or when two or more letters worth of sounds such as laughter, crying, groaning, clearing the throat, blowing, sighing, or similar are audible.
It is also invalidated by much (O: i.e. more than six words worth of) sound, even when there is a valid excuse such as blurting out words unthingly, laughter or coughing overcoming one, absentmindedly speaking, or when one speaks because as a new Muslim one does not know it is unlawful during the prayer; though with such an excuse a slight amount of speech does not invalidate the prayer.
One's prayer is invalid if one speaks knowing that it is unlawful but ignorant of the fact that it invalidates the prayer, and is also invalid if one says "Aah" during it out of fear of hell.
When it is impossible to recite the Fatiha(N: to oneself) (A: or the final Testification of Faith (Tashahhud) or Salams) except by clearing one's throat, one may do so even when it approximates two letters, though if it is merely impossible to recite aloud, then one may not clear one's throat, but must instead recite to oneself.
(A: Some things which are not commonly known to invalidate the prayer, such as clearing the throat, do not invalidate the prayer of ordinary people, whose ignorance of them is excusable, though a scholar has no such excuse.)

@F9.2 If one notices (N: during the prayer) a blind person about to fall into a well, or the like, then one must speak up to alert him if there is not a nonverbal means of warning him of it.

@F9.3 No form of invocation of Allah (dhikr) invalidates the prayer unless it is a direct address such as "Allah have mercy on you" or "And upon you be peace", though it does not invalidate the prayer if it refers to someone not present, such as "Allah have mercy on Zayd" (O: nor is it invalidated by addressing Allah or the Prophet (Allah bless him and give him peace)).

@F9.4 When something happens to one during the prayer. (O: such as someone asking permission to enter, or having to remind the imam that he has forgotten something), then if one is male, one says "Subhan Allah" (O: intending only invocation (dhikr) thereby, as one may not merely intend to inform, nor lack any particular intention thereby,for these invalidate the prayer), or if female, one claps the right palm on the back of the left hand, not palm to palm.
If one recites a Koranic expression such as "O Yahya, take the book" (Koran 19:12), intending only to inform (O: without intending invocation) or not intending anything in particular, this invalidates the prayer, though not if the intention is Koran recital or recital and informing together.

A SUBSTANCE REACHING THE BODY CAVITY

@F9.5 The prayer is invalidated when any (even if a little) substance (A: other than saliva) reaches the body cavity intentionally. It also invalidates the prayer if it occurs absentmindedly or in ignorance of its prohibition, provided the amount of the substance is commonly acknowledge to be much (def:f4.5), though not if it is little.

EXTRANEOUS MOTION

@F9.6 Adding surplus action that is an Integral, such as bowing, invalidates the prayer if done intentionally, but does not invalidate it if done because one has forgotten (O: that one has already performed it).
The prayer is not invalidated by intentionally or absentmindedly adding a surplus

spoken Integral such as repeating one's recital of the Fatiha or the Testification of Faith (Tashahhud) or reciting them in the wrong place.

@F9.7The prayer is invalidated by adding, even if absentmindedly, a motion that is not one of the actions of prayer, provided it is both (O: considered by common acknowledgement (def:f4.5) to be) much and uninterruptedly consecutive, such as three steps (O: or successively moving three separate body parts like the head and two hands, though an up-and-down motion is considered just one) or three or more consecutive motions.
The prayer is not invalidated by action that is not much, such as two steps, or is much but is separated so that the subsequent motion is considered to be unconnected with the preceding one. But if a (O: slight) action is grossly improper, such as jumping, it invalidates the prayer.

@F9.8 Slight actions such as scratching oneself, or turning a rosary (subha, dis: w27) do not affect the validity of the prayer, nor does remaining silent at length.

THINGS OFFENSIVE IN PRAYER

@F9.9 It is offensive to perform the prayer while one is holding back from urinating or defecating, (O: If enough time remains to perform the prayer, the sunna is to relieve oneself first, even when one fears missing praying with a group, since it diminishes one's awe and humility in prayer.)

@F9.10 It is offensive to pray in the presence of food or drink one would like to have, unless one fears that prayer's time will end.
It is offensive during the prayer:
-1- to interlace the fingers;
-2- to turn (N: the head when there is no need. As for turning the chest from the directions of prayer (qibla), it invalidates the prayer except when there is an excuse such as in extreme peril, or when performing a nonobligatory prayer during a journey);
-3- to look to the sky;
-4- to look at something distracting;
-5- to gather one's clothes or hair with the hand, tuck one's haira under a turban, or wipe the dust from one's forehead;
-6- to yawn, though if it overcome one, one should cover mouth with the hand;
-7- to exaggerate in lowering one's head while bowing;
-8- or to put one's hands on the hips.

@F9.11 It is offensive during the prayer to spit to the front of one or to the right. Rather, one should expectorate to the left, in the left, in the hem of one's garment, or under the foot (N: when one is praying in a desert or similar). (O: It is unlawful to spit in a mosque except into the left hem of one's garment (N: or a handkerchief. The slight motions necessary to take out one's handkerchief and return it do not harm, as they are inconsiderable).)

THINGS OBLIGATORY IN PRAYER

@F9.12 The prayer has conditions (def: f9.13), integrals (f9.14), main sunnas (f9.15), and ordinary sunnas.

THE CONDITIONS OF PRAYER

@F9.13 The prayer's conditions are eight:
(a) purification from minor and major ritual impurity (hadath ands janaba) (A: through ablution (wudu, def: e5) and the purificatory bath (ghusl, e11) respectively, as well as from menstruation and postnatal bleeding by bathing after them);
(b) that one be free of filth (najasa, e14) (A: in body, clothes, and place of prayer (f4));
(c) that one's nakedness be clothed(f5);
(d) the one be facing the direction of prayer (qibla,f6);

(e) that one avoid the actions prohibited in prayer, i.e. extraneous speech, eating, and excessive motion (f9.1-7);
(f) knowing or believing that the prayer's time has come (f2);
(g) knowing that the prayer is obligatory;
(h) and knowing how it is performed.
Whenever one violates any of these conditions, one's prayer is invalidated, such as:
-1- (non-(a) above)) when a state of ritual impurity occurs during the prayer, even if absentmindedly;
-2- (non-(b)) when some filth containing moisture affects a garment during the prayer, but one does not immediately shed the garment; or when some dry filth affects it, but one throws it off with the hand or sleeve (O: since in that case one is supporting it and in contact with it (dis: f4.2 (N:)));
-3- (non-(c)) when the wind discloses a art of one nakedness and its cover gets beyond reach;
-4- or (non-(g)) when one believes that some elements of the prayer are obligatory and some are merely recommended, but does not know which are obligatory.
One's prayer is not invalidated if one thinks that all the prayer's parts are obligatory, or (2) above) if one immediately sheds the garment affected by moist filth, brushes off dry filth, or((3) above) immediately re-coveres one's nakedness.

THE INTEGRALS OF PRAYER

@F9.14 The prayer's integrals (ruku, pl, arkan) are seventeen:
(a) the intention (def: f8.3);
(b) the opening Allahu Akbar (f8.7);
(c) standing (f8.27);
(d) the Fatiha (f8.17);
(e) bowing (f8.29);
(f) remaining motionless a moment therein;
(g) straightening back up after bowing (f8.31);
(h) remaining motionless a moment therein;
(i) prostration (f8.33);
(j) remaining motionless a moment therein;
(k) sitting back (f8.36) between the two prostrations;
(l) remaining motionless a moment therein;
(m) the prayer's final Testification of Faith (Tashahhud) (f8.45);
(n) sitting therein (f8.43);
(o) the Blessings on the Prophet (Allah bless him and give him peace) after the prayer's final Testification of Faith (f8.45);
(p) saying "as-Salamu 'alaykum" the first of the two times it is said at the end of the prayer (f8.47);
(q) and the proper sequence of the above integrals.

THE MAIN SUNNAS OF PRAYER
@F9.15 The prayer's main sunnas (A: meaning those which if omitted call for a forgetfulness prostration (def:f11)) are six:
(a) the prayer's first Testification of Faith (Tashahhud) (N: in prayers that have two);
(b) sitting during it;
(c) the Blessings on the Prophet (Allah bless him and give him peace) after it (f8,45);
(d) the blessings on his family in the prayer's final Testification of Faith (Tashahhud);
(e) the supplication (f8.53) after bowing in the final rak'a of the dawn prayer (subh);
(f) and standing therein.

OTHER SUNNAS

@F9.16 All other parts of the prayer are ordinary sunnas (O: and missing one is not compensated by a forgetfulness prostration).

*2*Chapter F10.0: Super-rogitory Prayer

@F10.1 The prayer is the best of the body's spiritual works (O: prayer referring to the prescribed prayer, and body excluding worship connected with the heart, such as faith in Allah, which is better than the works of the body), and supererogatory prayers are the best of voluntary spiritual works (O: though scholarly work in Islamic religious knowledge, meaning beyond what is obligatory to ensure the validity of one's worship, is superior to nonobligatory prayer because it fulfills a communal obligation (fard alkifaya, def:c3.2)).
Supererogatory prayers that the Sacred Law stiplulates be prayed in groups, such as the prayer on the two 'Eids (f19), the prayer at solar and lunar eclipses, and the drought prayer, are better than those it does not stipulate be prayed in groups,namely, all others besides these. But the sunna rak'as before and after the prescribed prayers (O: whether confirmed sunna (sunna mu'akkada, def: below) or otherwise) are superior to the group prayer that is sunna on the nights of Ramadan (tarawih).

THE SUNNA PRAYERS BEFORE AND AFTER THE PRESCRIBED PRAYERS

@F10.2 It is sunna to diligently perform the nonobligatory prayers that are offered before and after the prescribed ones.
The optimal number of these is two rak'as before the dawn prayer (subh), four before and after the noon prayer (zuhr), four before the midafternoon prayer ('asr), two after the sunset prayer (maghrib), and two after the nightfall prayer ('isha).
The confirmed sunnas (dis:c4.1) of these (O: confirmed (mu'akkada) meaning those which the Prophet (Allah bless him and give him peace) did not omit whether travelling or at home) consist of ten rak'as:
-1- two before the dawn prayer (subh);
-2- two before and after the noon prayer (zuhr);
-3- two after the sunset prayer (maghrib);
-4- and two after the nightfall prayer('isha).
It is recommended to pray two rak'as before the sunset prayer.
The sunnas of the Friday prayer (jumu'a) are the same as those of the noon prayer (zuhr) (dis:w28.1).
The time for the nonobligatory rak'as that come before prescribed prayers is that of the prescribed prayers. It is proper (adab) to pray such a sunna before the prescribed prayer, though if prayed after it,it is still a current performance (A: not a makeup, and one must intend it, for example, as the sunna before noon prayer(zuhr)). The time for nonobligatory rak'as that come after the prescribed prayer begins when one has performed the prescribed prayer and ends with the end of the prayer's time.

WITR (THE FINAL PRAYER AT NIGHT)

@F10.3 The minimal performance for witr (lit, "odd number") is one rak'a (O: even if one omit the sunnas after the nightfall prayer('isha)), (A: A witr of at least three rak'as is obligatory (wajib) in the Hanafi school, and one should never omit it.)
The optimal way is to perform eleven rak'as and (O: if one perform more than three) one should finish with Salams (def: f8.47) after every pair. The least considered optimal is three rak'as (O: and one separates them by) finishing two times with Salams (N: i.e. by finishing two rak'as with Salams and then performing the final rak'as). One recites al-A'la (Koran 87) in the first rak'a al-Kafirun (Koran 109) in the second, and al-Ikhlas, al-Falaq, and al-Nas (Koran 112,113, and 114) in the third.
It is permissible to (n: serially) join all the rak'as of any witr prayer that has from three to eleven rak'as by finishing them once with Salams (O: in the final rak'a, In that case and also when one's witr is only a single rak'a onw merely intends whereas in other witrs prayer in pairs (n: until one reaches the last one), one intends each pari as two rak'as of witr).
When joining the rak'as of witr one may limit oneself to a single Testification of Faith (Tashahud) (A: in the final rak'a), or may recite two Testifications, one in the last rak'a and one in the next to last, and to thus recite two Testifications is superior (A: if one separates the final two rak'as from one another by finishing the next to the last rak'a with Salams (N: before praying the final rak'a by itself), for otherwise it is better to recite a single Testification, as making witr resemble the

sunset prayer (maghrib) is offensive). More than two Testifications (A: in a joined witr) invalidates the whole prayer.

@F10.4 The best time for witr is just after the sunna rak'as that follow the nightfall prayer ('isha), unless one intends to offer the night vigil prayer (tahajjud; to rise at night after having slept, to pray some nonobligatory rak'as), in which case it is best to pray witr after the night vigil prayer (A: provided that one usually manages to get up when one has made such an intention. If not, then it is better to perform witr after the sunnas of the nightfall prayer ('isha)).
When one has already performed witr, but decides to pray the night vigil prayer (tahajjud), one performs the latter's rak'as two by two, and there is no need to repeat the witr, or " make it an even number" by performing one rak'as before the night vigil prayer. However, it is recommended not to intend performing prayer between witr and dawn.

TARAWIH

@F10. It is recommended to perform tarawih, which is twenty rak'as of group prayer on each night of Ramadan. (O: As well as being sunna to pray tarawih alone, it is also sunna to pray it in a group.) One finishes each pair of rak'as with Salams.
It is recommended to pray witr in a group after tarawih, unless one intends the night vigil prayer (tahajjud), in which case one should postpone witr until after it. During the second half or Ramadan, in the last rak'a (N: of witr), it is recommended to supplicate as one does in the dawn prayer (def: f8.53), and then one adds: "O Allah, we ask Your help, Your forgiveness, and Your guidance. In You we believe, on You we rely, You we praise with every good, we are grateful to You and not ungrateful, and disown and abandon him who commits outrages against You. O Allah, You alone do we worship, to You we pray and prostrate, You we strive for and hasten to obey, hoping for Your mercy and fearing Your punishment. Truly, Your earnest punishment shall overtake the unbelievers."
The time for witr and tarawih is between the nightfall prayer ('isha) and dawn.

THE MIDMORNING PRAYER (DUHA)

@F10.6 It is recommended to pray the midmorning prayer (duha), which minimally consists of two rak'as, is optimally eight rak'as, and maximally twelve. One finishes each pair of rak'as with Salams. Its time is after the sun is well up until hust before the noon prayer (zuhr). (O: The preferable time for its performance is after a quarter of the day has passed.)

@F10.7 When one misses (O: even intentionally) any supererogatory prayer that has a specified time, such as the two 'Eids, duha, witr, or the Sunnas before and after the prescribed prayers, it is recommended to make it up at any time afterwards.
If one misses a supererogatory prayer that is contingent upon some passing event, such as the eclipse prayer, drought prayer, greeting the mosque, or the prayer for guidance (istikhara. def: 10.12), one does not make it up.

THE NIGHT VIGIL PRAYER (TAHAJJUD)

@F10.8 Supereogatory prayer at night is a confirmed sunna (def: f10.2 (O:)), even if one can only do a little. Wholly supererogatory prayers (O: meaning those unconnected with a particular time or reason) at night are better than during the day. If one divides the night into six parts, the fourth and fifth part are the best for prayer. If divided in half, the second half is best. If divided into thirds, the middle part is best. Praying the entire night, every night, is offensive.
It is recommended to begin one's night vigil prayers (tahajjud) with two brief rak'as to have intended the night vigil prayer before going to sleep, and not to make a practice of more prayer than one can regularly perform without harm to oneself.
(A: It is a sunna to recite the suras of the night vigil prayer sometimes aloud, sometimes to oneself.)

@F10.9 One (O: who is performing wholly supererogatory prayers, whether in the night or day) finishes every two rak'as with Salams, though one may also:
-1- join three or more rak'as by finishing but once with Salams;
-2- pray a single supererogatory rak'a by itself;
-3- recite the Testification of Faith (Tashahhud) every two rak'as (O: without finishing them with Salams), or every three, or every four, even if the Testifications of Faith grow very numerous (A: before finishing the series of rak'as with Salams). (N: This is if not praying witr (dis: f10.3, end));
-4- or confine oneself to just one Testification of Faith (Tashahhud) in the final rak'a (O: in which case one recites a sura in each of the rak'as and finishes with Salams after the above mentioned final Testification of Faith), though it is not permissible to recite the Testification of Faith in every rak'a (O: without finishing with Salams).
When one's intention (N: in a wholly supererogatory prayer) is to perform a specific number of rak'as (O: four or more), then one may change one's mind as to the number and pray fewer rak'as, or more, provided one changes the intention before (O: having added or substracted any). Thus it is permissible to intend four but finish after two, if one intends to subtract two, though it invalidates the prayer to purposely finish it after two without having made the intention to curtail the planned four rak'as. If one absentmindedly finishes with Salams, one goes on to complete the four and performs the forgetfulness prostration (def:f11) at the end.

GREETING THE MOSQUE

@F10.10 It is recommended for whoever enters a mosque to greet the mosque by praying two rak'as each time he enters, even if many times within an hour. One is no longer entitled to pray if after sitting. It is accomplished anytime one enters a mosque and prays two rak'as, whether one intends merely performing two supererogatory rak'as fulfilling a vow, the sunna rak'as before or after a prescribed prayer, the prescribed prayer alone, or the prescribed prayerr together with the intention of greeting the mosque. (O: If one enters the mosque when one does not have ablution (wudu), it is sunna to say four times, "Allah is far exalted above any limitation, praise be to Allah, there is no god but Allah, Allah is greatest.")

@F10.11 It is offensive to begin any nonobligatory prayer, whether greeting the mosque, the sunna rak'as before a prescribed prayer, or other, when the imam has begun the prescribed prayer or the muezzin has begun the call to commence (iqama).

THE GUIDANCE PRAYER (ISTIKHARA)

@F10.12 (n: the translator has added the following text from Imam Nawawi's Riyad al-salihin:) Jabir (Allah be well pleased with him) relates that "the Prophet (Allah bless him and give him peace) used to teach us the guidance prayer (istikhara) for all matters, as he would a sura of the Koran, saying :
" 'When a matter concerns one of you, pray two nonobligatory rak'as [dis: f8.20(5)] and say; "O Allah, I ask You to show me what is best through Your knowledge, and bring it to pass through Your power, and I ask You of Your immense favor; for You are all-powerful and I am not, You know and I do not, and You are the Knower of the Unseen. O Allah, if You know this matter to be better for me in my religion, livelihood, and final outcome [or perhaps he said, " the short t and long term of my case"], then bring it about and facilitate it for me, and bless me with abundance therein. And if You know this matter to be worse for me in my religion, livelihood, and final outcome [or perhaps he said, "the short and long term of may case"], then keep it from me, and keep me from it, and bring about the good for me whatever it may be, and make me pleased with it," and then one should mention the matter at hand.'" (Riyad al-salihin (y107), 325-26)

@F10.13 A nonobligatory prayer at home is superior to one performed at the mosque (dis: f8.52).

@F10.14 It is offensive for one to single out the night before Friday (lit, "night of

Friday," i.e Thursday night, since in Arabic the night of a given date comes before its day) as a special night for prayer.

@F10.15 It is an offensive, blameworthy innovation (bid'a def:w29) to perform any of the following spurious prayers:
-1- twelve rak'as between the sunset prayer (maghrib) and nightfall prayer ('isha) on the first Thursday night of the month of Rajab;
-2- one hundred rak'as in the middle of the month of Sha'ban;
-3- (O: two rak'as after each of three times of reciting Ya Sin (Koran 36) on the night of mid-Sha'ban;
-4- or the so-called prayer of 'Ashura' on 10 Muharram.)

*2*Chapter F11.0: Prostrations of Forgetfulness, Koran Recital, or Thanks

@F11.1: The Forgiveness Prostration
The two reasons for the forgetfulness prostration are nonperfomance of something called for (O: such as a main sunna (f9.15)), or performance of something uncalled-for (O: such as absentmindedly adding a rak'a to one's prayer).

@F11.2 (n: As for nonperfomance,) if one misses an integral of the prayer (def:f9.14) and does not remember it until doing what comes after it, then one must (A: it still in the same rak'a) go back to it, perform it and what comes after it, and (A: it is sunna to) prostrate for it at the end of one's prayer (O: provided one is not a follower. As for a follower who misses an integral, he continues following the imam until the imam finishes with Salams, and then the follower rises alone and performs a makeup rak'a. One is only obligated to reperform a missed integral (A: in the same rak'a i.e. when praying by oneself) if one's forgetfulness of it doesn't continue (A: until the next rak'a). If one's forgetfulness continues and one goes on to perform the integral (A: during the course of the subsequent rak'a) then the same integral (A: of the following rak'a) takes the missed integral's place (A: in which case the rak'a containing the omission does not count and one does not return to it, but performs the rest of the prayer and then adds a makeup rak'a at the end, after which one performs the forgetfulness prostration before one finishes with Salams)).

@F11.3 (O: If there is a surplus action, such as when one absentmindedly goes from standing to prostration without having bowed, but then remembers, in such a case one stands up and bows, and performs the forgetfulness prostration (N: at the end of the prayer). This (N: having stood twice before bowing) is a surplus action.
One does not prostrate for forgetfulness when there is no surplus action, as when one omits the final prostration of the prayer, but remembers it before one finishes with Salams and performs it, in which case one does not prostrate for it because there has not been an addition.)

@F11.4 If one misses a main sunna (def: f9.15), even purposely, one perform a forgetfulness prostration. If one misses anything besides an integral or main sunna, then one does not prostrate for it.

@F11.5 One does not prostrate for (A: either intentionally or absentmindedly) doing an uncalled for action of the type which when done intentionally does not invalidate the prayer (O: such as turning the head, or taking one or two steps), though reciting a part or all of the Fatiha or Testification of Faith (Tashahhud) at the wrong place in the prayer are exceptions to this in that, although intentionally reciting them at the wrong place does not invalidate the prayer, it does call for a forgetfulness prostration.

@F11.6 One performs a forgetfulness prostration for unintentionally doing an uncalled-for action of the type which when done intentionally invalidates the prayer (O : Such as a small amount of extraneous speech), provided it is not the type of action whose unintentional performance also invalidates the prayer (O: such as much extraneous speech or action (def:f9))
(N: since doing it would in any case invalidate the prayer and obviate the need for a

forgetfulness prostration).
Straightening back up after bowing (f8.31), and sitting between prostration (f8.36) are two brief integrals. To intentionally make them lengthy invalidates one's prayer, though to do so absentmindedly merely calls for a forgetfulness prostration
(A: An exception to this is standing at length after bowing in the final rak'a of any prayer, as this does not invalidate the prayer even when done intentionally, and even if one does not supplicate therein.)

@F11.7 If one forgets the first Testification of Faith (Tashahhud) and stands up it is unlawful to return to it. If one intentionally returns to it, this invalidates one's prayer (O: because one has interrupted an obligatory act (A: the Integral of standing) for the sake of something nonobligatory (A: the main sunna of the first Testification of Faith (Tashahhud))).
But if one returns to it absentmindedly or out of ignorance, one merely prostrates for it, though one must (O: interrupt the Testification of Faith that one has returned to, and) stand up as soon as one remembers.
If one (A: has omitted the first Testification of Faith and started to rise, but) checks oneself before standing and sits down again, this does not call for a forgetfulness prostration (O: as it is not a full surplus action (def: f11.3)). But if one intentionally rises and then returns to sitting after having been closer to standing, one's prayer is invalid. If not (O: i.e. if one had not yet been that close, or had, but returned absentmindedly or in ignorance of its prohibition), it is not (O: invalid).
The same applies to omitting the supplication of the dawn prayer (f8.53), where placing the forehead on the ground is as standing up is in the above ruling(N; that is, one may return to the omitted supplication as long as one has not yet completed one;s (A:first) prostration).

@F11.8 When praying behind an imam who misses the first Testification of Faith (Tashuhhud) by standing, the follower may not remain seated to recite it by himself (O: as this is a gross contravention of his leadership and invalidates the prayer when done purposely and in awarness of its prohibition) unless he has made the intention to cease his participation in the group prayer and finish alone.
But if the imam omits the first Testification of Faith (Tashahhud) and the follower stands up with in, and then the imam sits, down, it is unlawful for the follower to follow him therein, Rather, the follower should either cease his participation in the group prayer, or else remain standing and wait for the imam to rise before they continue the prayer together. If the follower intentionally sits back down when the imam does (O: knowing it is unlawful) when his prayer is invalid.If the imam is sitting for the Testification of Faith and the follower absentmindedly stands up, then he must sit again, in deference to his imam's leadership (O: because following him in what is correct takes priority over starting an obligatory integral, which is also why the late comer to group prayer may omit both standing and reciting the Fatiha (n: to bow when the imam bows, as above at f8.15)).
@F11.9 One does not perform the forgetfulness prostration when one is uncertain (A: i.e. does not know or believe) that one did something that calls for a forgetfulness prostration, or that one added a surplus integral, or did something uncalled for. But if uncertain whether one omitted a main sunna (def: F9.15), or performed the forgetfulness prostration, or whether one prayed three rak'as or four (A: and this includes being uncertain (N: i.e not knowing or believing it probable) that one performed one or more of a rak'a integrals, since without all seventeen integrals (def:

f9.14), the rak'a remains unperformed), then one proceeds on the assumption that one did not yet do it (O: returning to the original basis, which was that one had not done it) and one finishes with a forgetfulness prostration.
When one's doubt (A: that one has performed an extra rak'a) is resolved before finishing the prayer with Salam, one also prostrates for forgetfulness because of the rak'a one prayed while uncertain, which was presumed to have possibly been extra (A: i.e the final rak'a, which one performed thinking it might be extra). But if performing it would have been obligatory in any case, as when one is uncertain during the third rak'a (A: of a four-rak'a prayer) as to whether it is the third or fourth

rak'a (A: both of which would be obligatory for the prayer in any case), but one remembers during it that it is the third, then one does not prostrate for one's forgetfulness, though if one did not remember which it was until rising for the fourth rak'a (A: which one presumed might be the fifth), one prostrates for forgetfulness. (A: The same applies to prayers of less than four rak'as.)

@F11.10 The forgetfulness prostration, even if there are numerous reasons for it in one prayer, is only two prostrations.

@F11.11 If one comes late to a group prayer and the imam performs a forgetfulness prostration at the end of the group's prayer, one performs it with the group, and once again at the end of one's own prayer. A follower does not prostrate for forgetfulness when he makes an individual mistake (A: the imam did not make) while following (n: unless he omits an integral, as discussed above at f11.2(O:)), though he does prostrate if his mistake occured before joining the group or after the imam finished with Salams.
If the imam makes a mistake, even if it was before one joined the group prayer, then one must prostrate for it with the group out of deference to the imam's leadership. one does not it invalidates one's prayer.If the imam neglects to perform a forgetfulness prostration, the follower does so anyway. If one comes late to group prayer, absentmindedly finishes with Salams with the imam, and then remembers (O: the rest of the prayer that one has to complete), one performs the remainder and prostrates for forgetfulness.

@F11.12 The forgetfulness prostration is a sunna. It is performed before one's final Salams, whether the reason is a surplus action or an omitted one. One is no longer entitled to perform it if one deliberately finishes with Salams before it, or absentmindedly finishes with Salams and there is a lengthy interval before one recalls that one was supposed to have performed it; though if this interval is brief and one wishes, then one may prostrate, and one has thereby returned to the prayer and must again finish it with Salams.

THE KORAN RECITAL PROSTRATION

@F11.13 To prostrate for recital of appropriate verses of the Koran is sunna for the person reciting, listening, or merely hearing.
@F11.14
One prostrates for one's own recital if praying by oneself or if one is imam (O: but it invalidates one's prayer to intentionally and with knowledge of its prohibition recite a verse for the purpose of prostrating during the prayer (N: if one prostrates therein), except for al-Sajda (Koran 32) recited in the dawn prayer (subh) on Friday. (A: Though if such a verse merely occurs in the course of one's prayer, as when one is reciting a particular sura containing it, one may prostrate)). But if either of them prostrates upon hearing someone else's recital, it invalidates their prayer. A follower prostrates with his imam. The follower's prayer is invalid if he prostrates for his own recital, the recital of someone besides the imam, or does not prostrate when the imam does.

@F11.15There are fourteen prostration verses, two of them in al-Hajj (Koran 22). They do not include the prostration at Sad (Koran 38:24), which is a prostration of thinks, not of Koran recital, and is only performed outside of prayer. To purposely prostrate for it during the prayer invalidates the prayer.

@F11.16When one prostrates for reciting while in the prayer, it is recommended to say "Allahu akbar" before prostrating and again when rising. It is obligatory to stand again after it (O: or to sit up again if performing a nonobligatory prayer seated) and recommended to then recite more of the Koran before one bows.
When one prostrates for reciting while outside of the prayer, it is obligatory to say an opening Allahu Akbar (O: and to finish with Salams, The four integrals of both the prostration of Koran recital (A; outside of prayer) and of the prostration of thanks are:

(a) the intention;
(b) the opening Allahu Akbar;
(c) the prostration;
(d) and the final Salams (A: which can only be performed in a sitting position).
Whether in or out of prayer, the things that invalidate a normal prayer invalidate the prostrations of recital or thanks, and the conditions of the prayer,i.e. ablution (wudu), clothing nakedness, the entry of the proper time which is when the the last letter of a prostration verse has been recited - facing the direction of prayer (qibla), and so forth, are also conditions of these prostrations). It is recommended to say "Allahu akbar" when one prostrates and rises, though not to recite the Testification of Faith (Tashahhud) therein.

@F11.17If one delays the recital prostration past its time and the interval is brief (O: meaningless than the time of two brief, medium-length rak'as) then one is still entitled to prostrate. If longer than that, one does not make it up. When one repeats a prostration verse within one sitting or within one rak'a and one has missed the prostration at its first mention, then it is accomplished b a single prostration (O: though if one prostrates for the first, one still prostrates for the subsequent times, as the reason to do so has been renewed).

@F11.18When reciting the Koran, whether during the prayer or not, it is recommended to ask Allah for mercy at the verses mentioning mercy, and to seek refuge in Him (Ta'awwudh) at verse mentioning punishment.

THE PROSTRATION OF THANKS

@F11.19Whenever a manifest blessing appears in one's life (O: such as a child, wealth, or prestige), it is recommended to prostrate out of thanks to Allah, and likewise when an affliction is averted (O: such as being saved from drowning, regaining health, or the reappearance of someone lost or the death of a tyrant)), or when one sees someone Allah has afflicted with disobedience or illness, though in the latter case one should prostrate in private (O: so as not to sadden the person). The prostration of thanks is the same as the Koran recital prostration outside of the prayer (O: regarding its integrals and conditions (def: f11.16)). It invalidates one's prayer if performed during it.

@F11.20It is unlawful to prostrate without occasion merely to humble oneself to Allah to draw near to Him (O: because it is a reprehensible innovation (bid'a def: w29.3)).

@F11.21 The recital prostration's requirements of facing the direction of prayer (qibla), purity, and clothing nakedness are the same those of nonobligatory prayers.
*2*Chapter F12.0: Group Prayer and the Imam

@F12.1: Group Prayer
Group prayer is a communal obligation (def:c3.2) upon all male nontravellers for the five current prescribed prayers, such that the rite of the prayer be public. (O: In a small town, it is enough to merely gather somewhere and pray. In a city, the prayer must be held in public places such that the manifestations of obedience to Allah's command are evident. If held in houses where the rite of prayer is not public, the obligation remains unfulfilled (A: though a house with a sign on it is sufficient).)

@F12.2 Group prayer is sunna for women, travellers, and for makeup prayers in which the imam and followers are performing the same type of prayer; though it is not sunna for a follower's makeup prayer to be performed behind an imam's current prescribed prayer, or for a makeup prayer to be performed behind a different type of makeup (O: such as a follower making up the noon prayer (zuhr) behind an imam who is making up the midafternoon prayer ('asr)).

@F12.3 It is personally obligatory to perform the Friday prayer (jumu'a) in a group (A: for every male Muslim who is not travelling).

@F12.4 The group prayer for which the demand is the strongest is the dawn prayer (subh), then the nightfall prayer ('isha), and then the midafternoon prayer ('isha), and then the midafternoon prayer ('asr). The minimal number of people for a group prayer is an imam and a follower.
It is best for men to perform group prayer at the mosque (O: as the act of going to the mosque makes the group prayer evident). The best mosque in which to pray is the one with the most people. If there is a nearby mosque attended by few people, then it is better to go to a distant one attended by more, unless the imam there commits reprehensible innovations (bid'a def:w29.3), is immoral, does not consider one of the integrals of the prayer to be an integral (n: though this does not matter if it is the result of the imam's following a different school of jurisprudence, as below at

f12.29(N:)), or if one's going to the farther mosque will make group prayer impossible at the one nereby (A: as when one is one of the only two people who are likely to come), in all of which cases it is better to pray at the nearby mosque.
It is better for women to pray at home than at the mosque (A; whether they are young or old). It is offensive for an attractive or young woman to come to the mosque to pray (O: or for her husband to permit her), though not offensive for women who are not young or attractive when this is unlikely to cause temptation. (N: The author's words here must be interpreted in the light of the following details: If a woman's going to group prayer or elsewhere will definitely lead to temptation between the sexes, it is unlawful for her to go. If such temptation can be definitely prevented, her going to attend group prayer remains sunna, as is attested to by the hadiths that have reached us on the subject. If temptation is feared but not certain to occur, her going becomes offensive. Whether such temptation is likely to occur is something that differs with different times, places, and people. An old woman is not like a young one, nor a righteous society like one in which temptation between the sexes is the rule; nor is a special prayer place set aside for women at a mosque like a prayer place which they share with men. This is why 'A'isha(Allah be well pleased with her) said.
"Had the Prophet (Allah bless him and give him peace) seen what women do now, he would have forbidden them the mosque as the women of Bani Isra'il were forbidden."
a hadith reported Bukhari and Muslim.
The temptation between the sexes whose occurrence is to be feared when they intermingle is of various degrees, the least of which is a person's appreciating and admiring the other, then being attracted to enamored with the other, and finally, those indecencies which are not hidden from anyone. Islam is eager to eliminate evil at its inception and extirpate temptation from its outset, and the word of Allah Most High.
"Tell believers to lower their eyes and to guard their private parts"(Koran 24:30), explains both the starting point and final outcome of the temptation of men through women and the temptation of women through men.)

@F12.5 There is no demand to go to group prayer (O: whether communally obligatory (dis: f12.1), personally obligatory (f12.3), or sunna (f12.2)), when there is a valid excuse not to, such as:
-1- hardship due to rain or snow that soaks clothing;
-2- hardship due to heavy mud (O: from getting soiled or slipping when walking through it);
-3- (O: severe) winds at night (O: or dawn);
-4- severe heat or cold (O: because of the hardship of moving in them, and likewise intense darkness at night, which is an excuse not to attend);
-5- being in the presence of food or drink that onewants to have (O: as they obviate the awe and humility befitting they prayer. One should eat enough to take the edge off one's hunger (A: and then go to join the group));
-6- holding back from going to the toilet or breaking wind (O; as one should relieve oneself first, even if one fears missing the group prayer);
-7- hazard to one's person;
-8- hazard to one's property (O: from theft or seizure, whether it belongs to oneself or to another whose property one is obliged to protect. It also includes bread one has put in the oven that would burn if one were to leave and attend the prayer);
-9- hardship from an ailment (O: even when one is able to attend, if it entails a hardship comparable to that of walking in the rain. If one is suffering from a slight

indispostion such as a toothache or the like, it is not an excuse);
-10- taking care of a sick person (O: who would suffer harm if one left to pray, whether a relative, friend, or total stranger) or taking care of someone ill who is strongly attached to one's staying with him;
-11- the death of relative, friend, (O: or spouse);
-12- fear of missing the impending departure of the party one intends to travel with;
-13- having eaten something with a bad odor(O: such as raw onions or garlic, though not if cooked as this eliminates the smell);
-14- or fear of meeting someone who will try to collect a debt one owes him and one is unable to pay.
(O: The demand for group prayer is not eliminated by other the above excuses.)

@F12.6 It is a condition of a valid group prayer that the follower intend to follow the imam (O: whether at the opening Allahu Akbar or thereafter). If the follower neglects to do so, his prayer is as if he had performed it alone. It invalidates one;s prayer to purposely omit the intention to follow the imam while at the same time praying behind him and following his motions by awaiting them at length, though awaiting them shortly or performing one's own prayer simultaneously with his does not invalidate it.
It invalidates one's prayer to take a follower as one's imam when the follower is concurrently praying behind an imam (O: though if his imam finishes with Salams and the follower is still praying, he may then be taken as one's imam.).

@F12.7The imam intends the prayer as imam. If he neglects this intention then his own prayer counts as if he had prayed alone (N: though his follower's prayer counts as a group prayer), the imam having lost the reward for praying in a group.
In the Friday prayer (jumu'a), it is a necessary condition for the prayer's validity that the imam intend leading as imam.

@F12.8When going to a group prayer, it is recommended to walk with tranquillity. (O: It is sunna not to gambol about, speak of disapproved things, or engage in acts which are offensive in the prayer itself, such as looking right or left.)
It is recommended to diligently seek the spiritual merit of being at the group prayer's opening Allahu Akbar, meaning that one says it just after the imam does.

@F12.9If one has begun a nonobligatory prayer when the call commence (iqama) is given, one should finish it before joining the group, as long as one does not fear the group will finish before one can join them. If afraid they will, then one interrupts the nonobligatory prayer to join them.
If one has begun praying a prescribed prayer alone and the call to commence (iqama) is given for a group prayer, it is recommended to turn one's prayer into a supererogatory prayer of two raka's and pray the prescribed prayer with the group. Were one to merely change one's intention to that of following their imam, it would count as a valid group prayer for one, but it is offensive. In such a case if one reaches the end of one's prayer before the group, one may either wait for them to finish with one while sitting in the final Testification of Faith (Tashahhud), or else finish with Salams as soon as one reaches the end of one's prayer. (O: One may not follow the imam in what is in excess of one's own prayer.)

@F12.10It is permissible to start praying with a group, and then cease one's participation in praying with them (A: by a silent intention) and finish one's prayer alone, though this is offensive when there is no excuse, such as being ill, or unable to endure the imam's lengthy Koran recital because of weakness or having business to attend to (N: or a pressing emergency).)

@F12.11When one arrives late to a group prayer in which the imam is already bowing, it is obligatory for one to say the opening Allahu Akbar while standing upright, after which one says a second Allahu Akbar before one bows to join the group (O: though if one only says it once, intending the opening Allahu Akbar thereby, then omitting the second Allahu Akbar of bowing does no harm, as it is sunna). If any part of one's opening Allahu Akbar occurs when one is not standing upright (def: f8.27), one's prayer is invalid.

A latecomer is considered to have performed the rak`a if he manages to say "Allahu akbar," bow, and remains motionless a moment therein before the imam straightens up beyond the definitional limit of bowing (f8.29). If one is uncertain as to whether the imam straightened up past the limits of bowing before one reached that position, or whether it was after, then one has not performed the rak`a (O: as one assumes, when uncertain, that one had not yet reached it). Nor does the rak`a count for such a follower when it does not count for the imam, such as when the imam nullifies his ablution (wudu), or has overlooked something impure on his person, or has mistakenly added a fifth rak`a to his prayer.
If one does not join the group until the imam has straightened up from bowing, or thereafter, then one follows his motions, saying "Allah akbar" with him and repeating "Subhan Allah" and the Testification of Faith (Tashahhud) when he does, even when this does not correspond to the rak`a in which one's own Testification of Faith would be if one were praying alone.
If one joins the group just as the imam is prostrating or sitting in the final Testification of Faith, then one prostrates or sits with him (N: after having recited one's opening Allahu Akbar while standing) without (A: a second) Allahu Akbar (O: though one does say "Subhan Allah" in prostration and recite the Testification of Faith with the imam, in deference to his leadership).
If the final Testification of Faith of the imam coincides with one's own first Testification, then when the imam finishes with Salams, one stands up with an Allahu Akbar to finish one's prayer; though if the imam's final Testification does not coincide with one's first Testification, one rises to finish without an Allahu Akbar.

@F12.12Whenever one joins the group before the imam finishes with Salams, one has attained the merit of the group prayer. (N: But it is less than the merit of praying with the group from the beginning or joining them in the middle, though joining them at the end is better than praying alone.)

@F12.13That rak`as one performs before the imam finishes with Salams are the first rak`as of one`s prayer, and those performed after the imam finishes are the last. Hence, if the imam performs the dawn prayer's supplication (def: f8.53) in the rak`a in which one joins the group, one repeats it in one's own second rak`a.

@F12.14It is obligatory for one to follow the imam's leadership in prayer actions, such that each of one's movements begins after the imam begins it and before he finishes (N: the following integral). (O: It is highly desirable that) one follows the imam's spoken integrals in the same way, with the sole exception of saying "Ameen" (def:

@f8.19), which should be simultaneous with his.
It invalidates one's prayer to say one's opening Allahu Akbar simultaneously with the imam, or to be uncertain as to whether one did so or not. It is offensive to perform some other part of the prayer simultaneously with the imam, and one thereby loses the merit of group prayer.

@F12.15It is offensive to proceed to an integral ahead of the imam, as when one bows before he does, and one is recommended to return to following him.
(N: An "integral" in rulings concerning the person who gets ahead of the imam or lags behind him refers to integrals that are physical actions, such as standing, bowing, straightening up, prostrating, or sitting up between prostrations. It does not refer to spoken integrals such as reciting the Fatiha, or to remaining motionless for a moment in the various positions.)
It is unlawful, though it does not invalidate the prayer, to completely finish an integral before the imam comes to it, as when one bows, straightens up, and then waits for him to straighten up.
It invalidates one's prayer to completely finish two integrals before the imam does, if one does so intentionally (O: and knowing it is unlawful). If one does so absentmindedly (O: or in ignorance of its prohibition), it does not invalidate the prayer, but the rak`a does not count (O: and one must add an additional rak`a after the imam finishes with Salams).

LAGGING BEHIND THE IMAM

@F12.16If there is no excuse (def: below), it is offensive to lag behind the imam until he completely finishes an integral (def: f12.15(N:)) ahead of one, and it invalidates one's prayer to lag behind the imam until he finishes to integrals.
If the imam bows and straightens up while (N: without excuse) one has not yet bowed, it does not invalidate one's prayer until the imam actually begins going down towards prostration and one still has not bowed (O: since lagging means that the imam has finished two integrals before the follower has reached the first of them). This invalidates one's prayer even before the imam reaches prostration, as he has completed two integrals.

@F12.17When one lags behind the imam for a valid reason, such as one's slow recital (O: the imam being fast in his recital) due to one's inability (A: whether natural inability or being a non-Arabic-speaker), not merely to unfounded misgivings (waswasa, def: s3.3), and the imam bows, then it is obligatory for one to finish the Fatiha (O: one is not entitled in such a case to simply omit the rest of the Fatiha and bow with the imam, as a latecomer is entitled to do (dis: f8.15, third par.)), after which one rapidly performs the elements of the prayer to catch up with the imam, provided the imam is not more than three (O: long) integrals ahead of one. (O: Long excludes the integrals of straightening up after bowing and sitting between prostrations, which are short. Rather, the imam's being three integrals ahead of one means he has bowed, prostrated once, and begun the second prostration, while the follower still has not bowed.)
If one is further behind than that (O: as when he has started to stand up while one is still standing for recital), then one follows from where one is (N: the number of rak`as one has done) and performs the ones missed after the imam finishes with Salams.

@F12.18When the imam is bowing or in the final Testification of Faith (Tashahhud), and becomes aware of someone coming to join the group prayer, it is recommended that he wait for the latecomer (N: so the rak`a counts for him if they are bowing, or so the group prayer counts for him if they are in the final Testification of Faith), provided:
(a) that the person has entered the mosque or place of prayer;
(b) that the wait is not excessively long;
(c) and that the imam's intention is obedience to Allah, not to give distinction or honor to the latecomer, such as by waiting for the noble but not the lowly.
Waiting for a latecomer is offensive in other than bowing and the final Testification of Faith.

@F12.19When a mosque has an imam assigned to it (O:by the person in charge of the mosque, or as a condition of an endowment (waqf, def:k30)), and the mosque is not in a busy location, it is offensive for another to commence the group prayer without the imam's permission (O: because the imamate is his, no one else's, and because of the alienation and hurty feelings it involves). It is not offensive for another to do so in a mosque at a busy location or one to which no imam has been assigned.

@F12.20When one has already performed one's prescribed prayer alone or in a group, and finds another group prayer being performed, it is recommended to repeat one's prayer with them, intending the obligatory prayer. (A: The first fulfills one's obligation of the prescribed prayer, but one intends repeating, e.g., the noon prayer (zuhr).) Its reward is that of a supererogatory prayer.
@F12.21
The imam is recommended to keep his recital of sura brief (O: not necessarily the absolute minimum, but not the maximum desirable for someone praying alone). When leading a group composed solely of those who do not mind lengthy prayers, he is recommended to lengthen the recital.
(O: The imam should not prolong the recital when he does not know how everyone feels, and of those present some generally prefer lengthy rak`as and some do not, or when praying in a mosque at a busy location where people often join the prayer after the imam has begun.)

@F12.22When the imam stops reciting the Koran because of uncertainty, it is recommended for the follower to remind him of what comes next. (N: When he does not stop but merely hesitates, the follower does not remind him, so as not to fluster him.) If the imam forgets an invocation (dhikr), the follower says it so the imam can hear. If he forgets an action, the follower should remind him of it by saying "Subhan Allah" (n: with the intention of invocation, as at f9.4(O:)). If the imam remembers having missed the action, he performs it. But if he does not remember having missed it. It is not permissible for him to perform it just because the followers or others are reminding him, even if they are numerous. (A: The more reliable opinion is that if their number reaches four or more, he must act upon it.)

@F12.23If the imam omits an obligatory element of the prayer (O: and does not return to it and perform it), then it is obligatory for the follower to cease his participation (def: f12.10) in the group prayer.
If the imam omits a sunna that the follower cannot add without considerably lagging behind, such as the first Testification of Faith (Tashahhud), then it is unlawful for the follower to perform the missing sunna (O:rather, he must follow the imam). If he performs it anyway (O: intentionally and knowing it is unlawful), it invalidates his prayer, though he is entitled to cease his participation in the group prayer to perform the sunna in the course of finishing his own prayer alone. IF the sunna omitted by the imam can be done without much of a lag, such is sitting briefly before rising for a new rak`a (def: f8.40), then the follower may add it without ceasing his participation in the group. (O: This also applies to when the imam omits the dawn prayer's supplication (f. 8.53), which the follower may perform it he can catch up with the imam before the imam lifts his head from the second prostration, though if the imam lifts his head before the follower has prostrated even once and the follower has not intended to cease his participation in the group prayer, then the follower's prayer is invalid.)

@F12.24Whenever the imam ceases his prayer because of his ablution (wudu) being nullified, or another reason, he may choose a successor to finish leading the prayer, provided the successor is eligible (def: F12.27) to lead the group. If the group performs a whole integral (f12.15(N:)) after the imam has stopped leading, then he may no longer choose a successor.
Any follower may be picked as the successor (O: even if he came late to the group prayer). If a latecomer, he leads the group beginning at the same point in the prayer where the imam left off. When he finishes leading them in their prayer, he stands (O: to finish his own), and indicates to them to cease following his leadership, or better yet, indicates for them to remain waiting for him (A: in their final Testification of Faith (Tashahhud)) until he comes to it after finishing his own rak`as. If he does not know which rak`a the imam was in, then he should observe (O: by looking left or right to see if the followers are sitting or) whether they are ready to rise. If they are, he rises, and if not, then he sits in a Testification of Faith.
It is permissible for the successor to be someone who has not been praying with the group, provided he is picked in the first or third rak`a (if the prayer has four rak`as), though he may not be picked in the second or fourth rak`a (A: because the order of the person's prayer will not correspond to theirs, for such a person is not committed to the imam's order).
The followers need not intend to follow the successor. They may each simply break off and finish alone. If the imam chooses someone but they put forward someone else, their choice takes precedence.
THE IMAMATE

@F12.25The one with the best right to be imam (N: in order of preference, when there is a disagreement) is:
-1- the most learned in Sacred Law (A: i.e. the rulings concerned with prayer) (O: even if he has not memorized any of the Koran except the Fatiha, since the need in prayer for knowledge of its rules is practically unlimited, while the only Koran recital required is the Faitha);
-2- he who has memorized the most Koran:
-3- the most godfearing (O: because leading the prayer is an embassage between the servant and Allah Most High, and best befits him most honored by Allah);

-4- he who has been a Muslim longest;
-5- the noblest in lineage;
-6- he with the best life history or reputation;
-7- the cleanest in person and clothes;
-8- he with the best voice;
-9- and the most handsome.
When only one of the above is present, he is chosen. If all people present or some of them possess one or more of these characteristics, then someone from the first of the list takes priority over those listed after him. If two are equal and each insists on being the imam, they draw lots. (N: It is permissible for a less qualified person to lead, even when a better qualified one is present.)
The imam assigned to a mosque or a person living in the house where the prayer takes place, even if only renting, takes precedence over everyone on the list, from the most learned on down, though he may select anyone else he wishes to lead the prayer. The sultan and those under him, of Islamic judges, regional governors, and so on, take precedence over even the imam of the mosque, the householder, and others.
The following take precedence even when the latter is more learned in Sacred Law:
-1- a nontraveller over a traveller;
-2- an upright person (def: o24.4) over a corrupt one;
-3- and an adult over a child.
A slighted and a blind person are equally eligible to lead the prayer.

@F12.26It is offensive for someone to lead a group at prayer when most of the group dislike him for a reason recognized by Sacred Law (O: such as wrongdoing, not taking precautions against filth (najasa), having a blameworthy income, keeping the company of oppressors or the immoral, and so forth. If a minority dislike him, it is not offensive, for nobody lacks someone who dislikes him).

@F12.27It is not permissible (O: or valid) to follow an imam who is non-Muslim, insane, in a state of ritual impurity (def: e7,e10), or who has filth (najasa) on his clothing or person, or is a woman leading men, or someone who omits or mispronounces (def: f8.18) a letter of the Fatiha leading someone who knows it, or a mute, or someone who slurs the words so the letters are indistinct from one another, or someone with a lisp. If after the prayer one finds out that the imam was one of the above, then one must make up the prayer, unless the imam had filth upon him that was concealed, or he was in a state of ritual impurity (N: in which cases one need not make it up).

@F12.28The group prayer is valid:
-1- When the imam is performing a supererogatory prayer and the follower is performing a prescribed prayer, or vice versa;
-2- when the imam is performing the noon prayer (zuhr) and the follower is praying the dawn prayer (subh) (A: i.e. when the type of prayer differs), or vice versa;
-3- when the imam is praying while sitting and the follower is praying standing, or vice versa;
-4- and when the imam is performing a makeup prayer and the follower is performing a current one, or vice versa.
(n: But a person shortening his prayer because of travelling may not pray behind an imam who is performing the full number, as at f15.8(f).)

@F12.29It is valid for a Shafi`i to follow the leadership of an imam who follows a different school of jurisprudence whenever the follower is not certain that the imam has omitted an obligatory element of the prayer, though if certain the imam has omitted one, it is not valid to follow him. The validity is based solely on the belief of the follower as to whether or not something obligatory has been omitted. (N: One should mention the position of the Malikis and Hanbalis here, which is that the criterion for the validity of following the imam is the imam's school of jurisprudence, such that if his prayer is valid in his own school, it is permissible to follow him as imam. How close this is to the spirit of the Law, which strives for Muslim unity.)

@F12.30It is offensive to take an immoral person (def: o24.3(A:)) as imam (O: because he might not be concerned about the things that are obligatory in the prayer), or

someone who stutters over the letter f or the letter t, or who makes inconsequential mistakes in the Arabic vowelling (O: that do not change the meaning).

RULES AND CONDITIONS OF FOLLOWING

@F12.31When there are two or more male followers, it is sunna for them to stand behind the imam. A single male follower stands on the imam's right, and if a second follower arrives, the newcomer stands to the imam's left and says his opening Allahu Akbar, after which the two followers move back (O: little by little). If they cannot move back (O: for lack of room) then the imam moves forward.

@F12.32When there are men, boys, and women present, the men form the front row or rows, then the boys, and then the wome. (A: This is also the rule for husband and wife: the wife prays in a separate row behind the husband.) (O: If the men's back row is incomplete, it should be completed with boys (A: and a latecomer may not remove the boys to make a place for himself unless they are directly behind the imam). Those who form a new row behind a row that is incomplete do not attain the merit of group prayer.)
A woman leading women in prayer stands in the middle of their first row.

@F12.33It is offensive for the imam's place to be higher or lower than the follower's unless the imam wishes to teach the followers the actions of prayer. If the imam and follower are not in a mosque, it is obligatory that part of the imam's body be level with part of the follower's when both are of average height.

@F12.34A latecomer to a group prayer who does not find a place in the last row should stand behind it, begin his prayer with the opening Allahu Akbar, and then indicate to someone in the row to stand with him, by drawing him back; and it is recommended that the person selected cooperate by stepping back (A: this is only if the latecomer does not expect anyone else to come).

@F12.35The follower's prayer is invalid if his heel is farther forward than the imam's. (O: He should be farther back than the imam's heel, even if only a little, but not more than 1.44 meters, for otherwise the merit of group prayer is lost (A:i.e. unrewarded, though not legally invalid).)

@F12.36Whenever an imam leads a follower in a mosque, the group prayer is valid no matter if they are at a distance from each other, and no matter whether they are in the same chamber or not, as when one of them is on the roof (even if the door is closed) and the other is in the mosque's well, provided that (O: both places open onto the mosque, and that) the follower can know when the imam is performing the motions of the prayer, whether by seeing the imam, or hearing his backup man (muballigh, the person who repeats the imam's Allahu Akbars and Salams in a loud voice so people can hear). Multiple interconnected mosques opening onto each other are considered as one mosque (O: and so are the mosque's outer courtyards, even when there is a walkway between the courtyard and mosque).

MAXIMAL DISTANCES BETWEEN THE IMAM AND FOLLOWERS

@F12.37 When the imam and follower are not in a mosque, but are in an open expanse such as a desert or large house, their group prayer is valid as long as the distance between them does not exceed approximately 144 meters. If farther apart than this, their group prayer is not valid. If there are rows of people behind the imam, this distance is the maximum that is valid between each row and the one in front of it, even if there are miles between the imam and the last row, or a fire, river that would have to be swum to reach him, or busy street between them.
If the imam is in one building and the follower in another, such as two houses, or if there is a house, inn, or school where the imam is in a courtyard and the follower is under a covered porch, or vice versa, then the maximum allowable distance is the same as for outdoors (def: above), provided that there is nothing between the imam and follower that obstructs passage to the imam, such as a latticework window (O: and

provided that there is nothing that prevents the follower from seeing him, such as a closed door) >
The group prayer is valid when the imam is in a mosque and the follower is in an adjoining space, provided that there is 144 meters or less between the follower and the edge of the mosque, and that between the follower and the mosque there is not a barrier lacking a breach in it, breach meaning, for example, when the follower is standing before a wall's open gate. If such a person's group prayer with the imam is thus valid, then the prayer of those behind him or in the row with him is also valid, even when (O: these others are numerous, and) the group extends beyond the area fronting the gate. Such a person's group prayer is not valid if he turns from the gate, or if the wall of the mosque, a window, or a closed door (locked or not) lies between him and the imam.

*2*Chapter F13.0: Times When the Prayer is Forbidden

@F13.1 (O: The rules below apply to prayers that are wholly supererogatory, i.e. which are not performed for any particular occasion or reason, and apply to prayers performed for a reason that will occur after the prayer, such as the two sunna rak`as before entering the state of pilgrim sanctity (ihram).)

@F13.2 The prayer is unlawful and invalid:
-1- from sunrise until the sun is a spear's length above the horizon (N: meaning when a distance equal to the sun's diameter appears between the sun and the horizon);
-2- from the time the sun is at its highest point in the sky until it moves on;
-3- from when the sun yellows before sunset until after it has set;
-4- after praying the current dawn prayer (subh);
-5- and after praying the current midafter-noon prayer (`asr).

@F13.3 It is permissible at the above times to offer nonobligatory prayers that are performed for a particular reason, such as the funeral prayer, greeting the mosque (def: f10.10), or the two rak`as that are sunna after ablution (wudu); and is also permissible to make up missed prayers; though one may not perform the two rak`as that are sunna before entering the state of pilgrim sanctity (ihram).

@F13.4 It is not offensive to pray within the Meccan Sacred Precinct (Haram) at any time. Nor is it offensive to pray when the sun is at its zenith on Fridays (N: whether in the Sacred Precinct or elsewhere).

*2*Chapter F14.0: The Prayer of a Sick Person

@F14.1 Someone unable to stand may pray the prescribed prayer seated (O: and need not make it up), unable meaning that standing involves manifest hardship, will cause illness or the worsening of a present illness, or cause vertigo, as when one is on a ship.
Such a person may sit for the prayer any way he likes, though the iftirash style of sitting (def: f8.37) is recommended. It is offensive in prayer to simply sit on the ground, palms down and knees drawn up, or to sit with legs outstretched (A: when there is no excuse).

@F14.2When seated for the prayer, the minimal bowing is to incline until the forehead is farther forward than the knees. The optimal way is to incline until the forehead is as far forward as the place where the head rests in prostration. When unable to bow or prostrate, one comes as close to the ground with the forehead as one can. When unable to do this, one performs them by nodding.
@F14.3If an abscess or the like prevents one from sitting, then one "sits" standing (A: meaning ordinary standing, with the intention of sitting (N: so that one stands between prostrations and for the Testification of Faith (Tashahhud))).

@F14.4If one is capable of standing but suffers from a painful swelling of the eyes or something similar (O: such as a wound that can be treated by having the patient remain lying down) and a reliable physician (O: in terms of knowledge and expertise in medicine, who can be believed) tells one that praying while on one's back will enable

one to be treated, then it is permissible to pray while lying down (O: without having to make up the prayer) >

@F14.5If unable to stand and unable to sit, one lies on one's right side (O: the right is recommended) facing the direction of prayer (qibla) with the face and front of the one's body, though one must bow and prostrate if possible (O: meaning one stands up enough to bow, then bows, then prostrates; or else sits up and bows).
If this is not possible, one bows and prostrates by merely nodding one's head (O: bringing one's forehead as near to the ground as possible), deeper for prostration than for bowing.
If unable to even nod, one merely glances down with the eyes for bowing and prostration. If one cannot, one goes through the integrals of the prayer in one's mind.
If unable to speak (O: to recite the Fatiha) one recites it in one's heart.
The obligation of prayer exists as long as one is able to reason (dis: f1.1, second par.).

@F14.6If one is standing during the prayer and becomes unable to remain standing, one sits to finish the prayer. If this occurs during the Fatiha, one may not interrupt reciting it, but must continue to do so as one proceeds to sit.
If one's condition improves enough (O: i.e. if seated during a prescribed prayer because of illness and a recovery of strength enables one to now stand), then one must stand to complete the prayer.

*2*Chapter F15.0: Shortening or Joining Prayers for Travel or Rain

@(A: The two travel dispensations of shortening and joining prayers have no effect on each other; one may take both together, either, or none. It is superior in our school not to take dispensations that are permissible.)

SHORTENING PRAYERS WHILE TRAVELLING

@F15.1 It is permissible to shorten the current prescribed prayers of noon (zuhr), midafternoon (`asr), and nightfall (`isha) to two rak`as each, when one:
(a) is travelling for a reason that is not disobedience to Allah (O: as there is no dispensation to shorten prayers on such a trip);
(b) on a journey of at least 48 Hashemite miles (n: approximately 81 km./50 mi.) one way.
One may also shorten the above prayers when one both misses them and makes them up on the trip, though one must pray the full number if one misses them while not travelling and makes them up on the trip, or misses them on the trip and makes them up while not travelling.

@F15.2 This distance (n: 81 ka/50 mi. one way) holds for travel by water as well as by land. If such a distance is traversed in an instant (O: preternaturally, because of a miracle (karama, def: w30)), one may still shorten the prayer. (O: The brevity of the time taken to travel the distance is of no consequence.)

@F15.3When there are two routes to a destination and one of them is less than the distance that permits shortening prayers but one chooses the longer way for a legitimate purpose such as safety, convenience, or recreation (O: provided that recreation is merely the reason for taking that route, not the reason for the trip itself, which must have some other legitimate purpose such as trade, for an outing is not a legitimate purpose) then one may shorten prayers. But if the only reason for choosing the longer way is to take the dispensation, then doing so is not valid and one must pray the full number. (A: Purely recreational trips whose purpose is not disobedience are permissible, but there are no travel dispensations in them, though if undertaken in order to gain religious knowledge, to visit a fellow Muslim, or visit the grave of a righteous or learned Muslim (dis: g5.8), these and similar purposes are legitimate and permit the dispensations.)

@F15.4 The journey's destination must be known. If a wife travelling with her husband

or a soldier with his leader does not know the destination, they may not shorten their prayers (N: as long as they have not yet travelled the distance that permits shortening. When they have travelled it, then they may). If they know the destination and the journey meets the conditions (def: f15.1), then they may shorten their prayers (N: from the beginning of the journey).

@F15.5Someone whose journey constitutes an act of disobedience, such as a woman travelling against her husband's wishes, may not shorten their prayer but must pray the full number. (O: The same applies to someone who undertakes a legitimate trip and then changes the purpose of it to disobedience.) (N: Though shortening prayers is permissible for someone who commits an act of disobedience while on a legitimate trip, as when someone travels for trade, but then sins by drinking wine, for example.)

THE BEGINNING OF THE JOURNEY

@F15.6 If one's city has walls, one may begin shortening prayers as soon as one has passed them, whether or not there are other buildings outside them. If there are no walls, one may shorten one's prayers after passing beyond the last buildings, excluding farms, orchards, and cemeteries. (N: When the buildings of a city extend to the next city, one's journey begins at the former's city limits, or at what people commonly acknowledge (def: f4.5) to be the edge of town.) A desert dweller may begin shortening prayers when he passes beyond his people's tents. (O: A person living in a valley begins shortening prayers when he has traversed the distance of the valley's width. Someone living on a hill begins when he comes down from it. A person living in a gorge begins when he climbs up out of it.)

THE END OF THE JOURNEY

@F15.7When the trip ends one must pray the full number of rak`as for each prayer.
A trip ends when one reaches one's hometown. It also ends:
-1- by the mere intention to stay in a place at least 4 full days, not counting the day one arrives or the day one departs;
-2- or by staying that long without the intention, so that after one has stayed 4 full days, not counting the days of arrival and departure, one prays the full number of rak`as, unless one is staying in a place in order to fulfill a purpose that one expects to accomplish and intends to leave as soon as one does. As long as this is the case, one may shorten one's prayers for up to 18 days. If longer than this, one prays the full number. This holds for both jihad (def: o9) and other purposes.
When one reaches one's destination and intends to stay there for a significant amount of time (O: 4 days), one must pray the full number of rak`as, but if not (O: as when not intending to stay at all, or intending 3 days or less), then one may continue shortening prayers for either 4 days (O: if one learns that one cannot accomplish one's purpose during them), or 18, if one can expect one's purpose to be accomplished at any moment.

THE CONDITIONS FOR SHORTENING THE PRAYER

@F15.8The conditions for shortening the prayer while travelling are:
(a) (O: that the trip be legitimate (def: f15.5);
(b) that it be at least 81 km./50 mi. one way;
(c) that the destination be known (f15.4));
(d) that the prayer take place from start to finish while one the trip (A: if one's vehicle arrives before the prayer is finished, one prays the full number);
(e) that the intention to shorten the prayer coincide with the opening Allahu Akbar (O: it not being valid if made after this);
(f) that no portion of the prayer be performed while following an imam who is praying the full number of rak'as;
(g) (O: that one be aware of the permissibility of shortening prayers for travel;
(h) and that the intention be free of things which nullify it (A: such as vacillation or doubts (dis: below))).
One must pray the full number of rak`as if:

-1- (non-(d) above) the intention to stay at the place for 4 days occurs during the prayer;
-2- (non-(h)) one is uncertain whether one's intention was to shorten, but one soon recalls that one did intend it;
-3- (non-(h)) one vacilates in the intention between shortening the prayer or not doing so;
-4- or (non-(f)) one does not know whether one's imam is shortening or not, though if one does not know the imam's intention, it is valid to intend that if the imam shortens the prayer, one will shorten, and if he prays the full number, one will pray the full number, and then to do this.

JOINING TWO PRAYERS DURING A JOURNEY

@F15.9It is permissible to join the noon prayer (zuhr) and midafternoon prayer (`asr) during the time of either of them (N; or the Friday prayer (jumu`a) and midafternoon prayer in the time of the Friday prayer), and permissible to similarly join the sunset prayer (maghrib) and nightfall prayer (`isha) during the time of either, provided one joins them during a journey in which prayer may be shortened (def: F15.8(a,b,c,d)). If one stops travelling (A: to rest, for example) during the time of the first of the two prayers, then this is the best time to join them, but if one is travelling steadily during the first time, the time of the second is better.

@F15.10The conditions for joining two prescribed prayers on a trip in the time of the first of them are:
(a) that the trip continue (A: until one finishes both prayers);
(b) that the first of the two be prayed first;
(c) that the intention to join the two prayers occur before finishing the first, either coinciding with the opening Allahu Akbar, or occuring during the prayer;
(d) and that one not separate the two prayers by waiting between them, though a short interval (A: meaning one that could contain two rak`as of the briefest possible) is of no consequence, nor is a brief search for water (dis: e12.3) by someone who has performed dry ablution (tayammum).
If one prays the second of the two prayers before the first (non-(b) above,), then that prayer is invalid (O: and must be repeated after the first, if one still wants to join them).
One must wait to perform the second of the two prayers until its own time if:
-1- (non-(a) above) one finishes one's journey before performing the second prayer;
-2- (non-(c)) one neglects to intend joining them during the first prayer;
-3- or (non-(d)) one waits at length between them.
@F15.11
If one has performed both prayers and the journey subsequently ends (A: whether in the time of the first prayer or the time of the second), they are and remain valid.

@F15.12The necessary condition for joining two prayers in the time of the second of them (A: in addition to f15.8 (a,b,c,d)) is that one make the intention to do so before the end of the first prayer's time (O: by an interval which could contain at least one rak`a). If one neglects this intention, one has sinned, and praying the first prayer during the second prayer's time is considered making it up.

@F15.13When joining two prayers in the time of the second, it is recommended (A: not obligatory) :
-1- to pray the first one before the second;
-2- to not pause at length between them;
-3- and that the intention to join them be present during the prayer one performs first.

JOINING PRAYERS BECAUSE OF RAIN

@F15.14It is permissible for a nontraveller to pray the noon prayer (zuhr) and the midafternoon prayer (`asr) at the time of the noon prayer (N: or the Friday prayer (jumu`a) and midafternoon prayer at the time of the Friday prayer), and to similarly

pray the sunset prayer (maghrib) and nightfall prayer (`isha) at the time of the sunset prayer if:
(a) it is raining hard enough to wet one's clothing (O: and like rain in this is melted snow or hail);
(b) one is praying with a group in a mosque (O: or other place of prayer);
(c) the mosque is far (O: from one's door, i.e. far by common acknowledgement (def: f4.5));
(d) it is raining when the first prayer begins, when it ends, and when the second prayer begins;
(e) and conditions f15.10 (b,c,d) exist.

@F15.15(A: If one arrives during the second of two prayers joined because of rain and does not finish one's own first prayer before the group finishes their second, then one is no longer entitled to join one's prayers for rain. It is a necessary condition that one pray at least part of the second prayer with them though one may hurry through one's own first prayer alone to catch up with and join them during their second.)

@F15.16If the rain stops after one finishes the two prayers or during the second one, both prayers are and remain valid.

@F15.17It is not permissible to join two prayers in the time of the second of them because of rain.

@F15.18(n: In the Shafi`i school, there are no valid reasons other than travel or rain for joining prayers, though others exist in the Hanbali school, as discussed in what follows.)
(`Abd al-Rahman Jaziri:) The hanbalis hold that the above mentioned joining between the noon prayer (zuhr) and midafternoon prayer (`asr), or between the sunset prayer (maghrib) and nightfall prayer (`isha) is permissible, whether in the time of the first prayer of each of these two pairs, or in the time of the second prayer of each of them, though it is superior not to join them.It is a necessary condition for the permissibility of joining them that the person praying be:
-1- a traveller on a trip in which shortening prayers is permissible;
-2- a sick person for whom not to join prayers would pose a hardship;
-3- a woman who is nursing an infant, or who has chronic vaginal discharge (dis: e13.6), since she is permitted to join prayers to obviate the hardship of purification for every single prayer;
-4- someone with an excuse similar to the woman with chronic discharge, such as a person unable to prevent intermittent drops of urine coming from him (e 13.7);
-5- or someone who fears for himself, his property, or his reputation, or who fears harm in earning his living if he does not join prayers; the latter giving leeway to workers for whom it is impossible to leave their work. (al-Fiqh `ala al-madhahib al-arba`a (y66), 1.487)

PRAYING THE SUNNA RAK`AS WHEN ONE JOINS PRAYERS

@F15.19(O: When one wants to join the midafternoon prayer (`asr) and noon prayer (zuhr) in the time of the noon prayer, one first prays the sunnas that come before the noon prayer, followed by the noon prayer, the midafternoon prayer, the sunnas that come after the noon prayer, and then the sunnas that come before the midafternoon prayer. Similarly, when one joins the nightfall prayer (`isha) with the sunset prayer (maghrib), one prays the sunnas that come before the sunset prayer, and postpones those that follow the sunset prayer until after one has prayed the nightfall prayer, after which one prays the sunnas that come before and after the nightfall prayer, and then witr. Their order is sunna.)

*2*Chapter F16.0: The Prayer of Peril
@F16.1The prayer of peril may be performed when the Muslims are engaged in permissible fighting (O: whether obligatory, as when fighting non-Muslims or highwaymen whom the caliph (def: o25) is fighting, or permissible, as when fighting someone who is trying to take one's property or that of others).

@F16.2When the enemy is not in the direction of prayer (qibla), the imam divides the Muslim force into two groups. One group faces the enemy while the other prays a rak`a, the group makes the intention to cease following his leadership in the prayer and then finishes their second rak`a alone as individuals while the imam remains standing at the beginning of his second rak`a, reciting the Koran and awaiting the second group.
Then this first group goes to relieve the others in facing the enemy, and the others come and begin their group prayer behind the imam, who is still standing and who remains so long enough for the second group to recite the Fatiha and a short sura. At the end of this rak`a when the imam sits in the Testification of Faith (Tashahhud), the group rises and performs their second rak`a without him (while he remains sitting at the end of his second rak`a waiting for them to reach the same point in their own prayer). When they catch up with him, he closes the prayer with Salams.
If this prayer is the sunset prayer (maghrib), the first group prays two rak`as following the imam's lead, and the second group follows him in the third rak`a. If it is a prayer with four rak`as, then each group follows the imam for two rak`as. The imam may also divide the Muslim force into four groups and have each group pray one rak`a behind him.

@F16.3When the enemy is visible in the direction of prayer (qibla) and the Muslims are numerous, the imam arranges them in two or more rows, opens the group prayer with "Allahu akbar," and (O: after reciting the Faitha with all of them) he bows and straightens up with everyone following his lead. Then he prostrates together with the row nearest him, while the other row remains standing. When the imam and his row stand after their second prostration, the other row performs its own prostrations and rises to catch up with the imam and his row, who have remained standing waiting for them.
In the second rak`a all bow and straighten up together, but when the imam prostrates, the second row, who remained standing on guard before, prostrate with him while the row nearest him remain standing on guard. When those who have prostrated with the imam sit back (O: after their prostration, for the Testification of Faith (Tashahhud)) then the row nearest him (O: who have been standing on guard) prostrate (O: and catch up with the others in the Testification of Faith (Tashahhud)).

@F16.4It is recommended to remain armed during the prayer of peril.

@F16.5When the peril is great, in actual combat, Muslims may pray walking or riding, facing the direction of prayer (qibla) or not, in a group or singly, and nodding in place of bowing and prostration when they are unable to perform them, nodding more deeply for prostration than for bowing. If forced to strike blow after blow during the prayer, this is permissible. Shouting is not.

*2*Chapter F17.0: Unlawful Clothing and Jewelry

@F17.1(A: It is offensive for men to wear tight clothing that discloses the size of the parts of their body which are nakedness (def: f5.3), and this is unlawful for women.)

@F17.2It is unlawful for men to wear silk or use it in any way, even to line clothing, though it is permissible to use it as padding in a cloak, pillow, or mattress.
@F17.3
Women may wear and use silk, and it is permissible for a guardian to dress a child in it before puberty.

@F17.4It is permissible for men to use fabric composed partly of silk as long as the weight of the silk is half or less of the weight of the fabric; to embroider with silk thread where (O: the width of) the design does not exceed four fingers (O: though the length does not matter); to have a silk fringe on a garment; or a silk collar; or to cover a silk mattress with a handkerchief or the like and sit on it.
It is also permissible for men to use silk when there is need to in severe heat or cold, to clothe their nakedness with it for the prayer when there is nothing else, or to use it when suffering from itching or for protection from lice. (O: The upshot is that when there is real need for it, one may use it.

Otherwise, it is an enormity (def: c2.5(2)). Imam Ghazali attributes its prohibition to its effeminacy and softness, which are unbecoming of men.)

@F17.5It is permissible to wear a garment affected by something impure (najasa, def: e14.1) when not in prayer (O: or other activities requiring purity, provided one is not in a mosque. As for wearing such a garment in a mosque, one may not, since it is not permissible to carry something impure into the mosque when there is not some need, such as having to take one's shoes inside).
It is unlawful to wear leather taken from the carcass of an unslaughtered animal (n: before tanning, as at e 14.6) except when there is pressing need, such as in the event of a sudden outbreak of war (A: when there is nothing else) and the like.

@F17.6It is unlawful for men to wear gold jewelry, even the teeth of a ring's setting that holds its stone. (O: Unlike silk, there is no difference for the prohibition of gold between small and large amounts.) Nor may men wear objects painted or plated with gold, though if these tarnish so that the gold is no longer apparent, then they are permissible.

@F17.7It is permissible to repair teeth with gold.

@F17.8It is unlawful (A: for both sexes) to wear a silver ring (A: the sunna for men being to do so on the little finger, of either hand), and (A: for men) to decorate battle weapons with silver, but not ridding gear such as saddles and the like, nor an inkwell, writing utensil case, work knife, penknife, or lamp fixture-even if in a mosque- nor to have silver jewelry other than rings, such as a necklace, armband, bracelet (O: because these resemble the habits of women and it is unlawful for men to imitate women), or a crown.
It is not permissible to use silver (A: or gold) to embellish the ceiling or walls of a house or mosque (O: even those of the Kaaba, because it is wasteful, and no one has reported that the early Muslims did so), though if the amount is so slight that none could be melted off by applying fire, then it may remain. If more that that, then not (O: i.e. it must be removed) >

@F17.9(O: It is offensive to use cloth for interior decoration in houses (A: meaning that if curtains and the like are used merely for decoration, it is offensive, though there is nothing wrong with using them to screen a room from view), even for shrines at the tombs of the righteous and learned. It is unlawful to decorate walls with pictures (n: of animate life, as at p44).)

@F17.10It is permissible for both men and women to decorate copies of the Koran and to embellish writing with silver (O: out of reverence for it). It is permissible for women to have copies of the Koran decorated with gold, but this is unlawful for men.

@F17.11All gold jewelry is permissible for women, even on shoes and woven into fabric, provided it is not wasteful. But if a woman is wasteful, such as when she has a 720-gram anklet of gold (O:meaning that it (N: i.e. the weight of a piece, though there is no limit to the number of average -weight pieces) exceeds the customary), then it is unlawful (O: since gold is only permitted to women for the sake of beauty, and when gold exceeds what is normal it is repulsive and devoid of beauty. (A: and zakat must be paid on such wasteful jewelry (n: as opposed to jewelry that is not wasteful, on which no zakat is due (dis: h4.4)))).

*2*Chapter F18.0: The Friday Prayer (Jumu`a)

@F18.1(O: Attending the Friday prayer is personally obligatory. It is the finest of prayers, and its day, Friday, is the best day of the week. Its integrals and conditions are the same as other prayers (def: F9.13-14).)

@F18.2 Anyone obliged to pray the noon prayer (zuhr) is obliged to pray the Friday prayer (jumu`a), except for women and for travellers on a trip that is not disobedience (def: f15.5), even if the trip is less that 81 km/50 mi. one way (n: though one's

departure for the journey must have taken place before dawn on Friday, as at f18.6). Valid excuses for not attending group prayer (def: f12.5), such as illness or taking care of a sick person, excuse one from attending the Friday prayer (jumu`a).

@F18.3Eligible Muslims living in a village where there are not forty men (n: the minimum required for a valid Friday prayer, as at f18.7(e)) must go to a larger town for the Friday prayer, when the two places are close enough that the call to prayer (adhan) from the larger town is audible to them under normal circumstances, given a calm wind and no interference. Audible means that the call of a man with a loud voice standing in the larger town on the side facing the village could be heard by a man with normal hearing standing on the side of the village facing the town. If such a a call would be inaudible, then the villagers are not obliged to go to pray the Friday prayer (A: but merely pray the noon prayer (zuhr)).

@F18.4 A Muslim present at the mosque who is not obliged to pray the Friday prayer may leave (A: instead participating in it, such as a traveller merely wanting to pray the noon prayer (zuhr) and go), except for the following, who must pray the Friday prayer:
-1- someone with an illness for whom waiting for the Friday prayer poses no hardship, provided that he has arrived after its time has begun (O: namely noon, for if he arrives before this, or if waiting is a hardship, then he may leave);
-2- someone who is blind;
-3- or someone whose excuse is muddy terrain (dis: f12.5(2)).
Those present at the mosque who are not obliged to pray the Friday prayer (A: other than the above mentioned) may choose between performing the Friday prayer and the noon prayer, (zuhr) (O: even when the fact that they are present eliminates their excuse).
If they want to perform the noon prayer (zuhr) in a group(O;as is sunna) and their excuse from the friday prayer is not obvious to onlookers, then they should conceal their group prayer rather than that display it. (O: which would be offensive under the circumstances).
If a person is not obliged to perform the Friday prayer, but believes the reason for his excuse may disappear, such as sick person (A: hoping to recover before the prayer ends), then he should postpone his noon prayer (zuhr) until he can no longer hope to attend the Friday prayer. But if one's excuse from the obligation of attending the Friday prayer is not expected to cease, such as being a woman, then it is recommended to pray the noon prayer (zuhr) at the first of its time.

@F18.5 The noon prayer (zuhr) of someone obliged to perform the Friday prayer is not valid until he has missed the Friday prayer (A: by its having finished without his having attended).
-1- there is a place on his route where the Friday prayer will take place:
-2- or he is going to travel with a group (O: of people not obliged to pray the Friday prayer) who are departing, such that his staying behind would entail harm for him.

@F18.7In addition to the usual conditions for the prayer (def: f9.13), a valid Friday prayer (jumu`a) also requires:
(a) that it be a group prayer;
(b) that it take place during the time of noon prayer(zuhr);
(c) that it follow two sermons (khutba, def: f18.9);
(d) that its site be located among the dwellings of the community;
(e) that there be a minimum of forty participants who are male, have reached puberty, are sane, and are local residents, meaning they live there and do not leave except when they need to (n: though the minimum according to Abu Hanifa is three participants besides the imam (al-Lubab fi sharh al-Kitab (y88), 1.111));
(f) and that, in places where it is no hardship for everyone to pray at one location, there be no other Friday prayer prior to or simultaneous with it (O: i.e. in the opening Allahu Akbar of the prayer (dis: below)).
The imam is counted as one of the forty ((e) above).
A group performing the Friday prayer must finish it as a noon prayer (zuhr) if:
-1- (non-(e) above) the number of participants diminishes during it to less than forty;
-2- or (non-(b)) if its time ends during the prayer (O: with the coming of the

midafternoon prayer's time). If the group has doubts before starting the Friday prayer that they will be able to finish it within its time, then they must begin it as a noon prayer (zuhr).

@F18.8In places where having everyone assemble in one location is a hardship, as in Cairo or Baghdad, it is valid to hold as many Friday prayers as are needed. In places where it poses no hardship, such as Mecca or Medina, if two Friday prayers are held, the first of them (A: to open with "Allahu akbar") is the Friday prayer, and the second is invalid (A: and must be reprayed as a noon prayer). If two are held in such a place and it is not clear which was first, they should start over together as one Friday prayer.

THE SERMON (KHUTBA)

@F18.9 The integrals of the sermon (khutba) are five (O: and their order is sunna) (n: (a), (b), and (c) below are required in each of the two sermons, while (d) may be in either, and (e) must occur in the second, as mentioned below) :
(a) saying "al-Hamdu lillah" (praise be to Allah), this particular utterance being prescribed;
(b) the Blessings on the Prophet (Allah bless him and give him peace), which is also a prescribed utterance;
(c) enjoining godfearingness (taqwa), for which a particular expression is not prescribed, it being sufficient to say "Obey Allah";
(the above (O: integrals (a), (b), and (c)) are obligatory in each of the two sermons)
(d) reciting one verse of the Koran (O: that conveys an intended meaning, such as a promise, threat, exhortation, or similar) in at least one of the two sermons;
(e) and to supplicate for believers (O: male and female) in the second of the two sermons (O: which must be for their hereafter, as supplications of this world alone do not fulfill the integral).
(n: The following sermon, added her by the translator from the commentary at m2, has been related by two chains of transmission, one ascribing it to Ibn Mas`ud, and the other through him to the Prophet (Allah bless him and give him peace) :
"Praise is truly Allah's. We praise Him, seek His help, and ask His forgiveness. We seek refuge in Allah from the evils of our selves and our bad actions. Whomever Allah guides none can lead astray, and whomever He leads astray has no one to guide him. I testify that there is no god but Allah alone, without any partner, and that Muhammad is His slave and messenger. Allah bless him and give him peace, with his folk and Companions. O you who believe: fear Allah s He should be feared, and do not die other than as Muslims.
"`O people, fear your Lord who created you from one soul and created its mate from it, and spread forth from them may men and women. And be mindful of your duty to Allah, by whom you ask of one another, and to the wombs (that bore you), for verily, Allah is vigilant over you'" (Koran 4:1).
(n: This sermon fulfills conditions (a), (b), (c), and (d) above (A: and the rest of the sermon may be in any language), and after sitting briefly, one rises and says, "al-Hamdu lillah," the Blessings on the Prophet (Allah bless him and give him peace), enjoins the people to fear Allah, and must add a supplication for the Muslims ((e) above), such as saying, "O Allah, forgive the believers" (Ar. Allahumma-ghfir lil-mu'minin wal-mu'minat).)

@F18.10 The conditions of the two sermons are:
(a) that the speaker be in a state of purity (O: from minor (def: e7) and major (e10) ritual impurity and from filth (najasa, e14.1));
(b) that his nakedness be clothed;
(c) that the two sermons occur during the noon prayer's time (zuhr) before performing the two rak`as of the Friday prayer;
(d) that the speaker be standing during them (O: if able);
(e) that he sit down between the two;
(f) and that his voice be loud enough for the forty required participants (def: f18.7(e)) to hear (O: the sermons' integrals).
@F18.11 The sunnas of the sermon include:

-1- that the speaker stand on a pulpit (minbar) or high place (O: and that it be to the right of the prayer niche (mihrab) and that the speaker stand on the right side of the pulpit);
-2- that he say "as-Salamu `alaykum" to those present when he enters the mosque and (O: again) when he ascends the pulpit (O: and reaches his seat there);
-3- that he sit until the muezzin has finished (A: the second (dis: w28.2) call to prayer (adhan));
-4- that when speaking, he lean on a sword, bow, or stick (O: which is in his left hand. It is desirable for him to put his other hand on the pulpit. If he does not have a sword or the like, he keeps his hands still be placing the right upon the left, or dropping them to his sides. He does not move them or fidget with one, as the aim is stillness and humility);
-5- and that he face the group during both sermons (O: and not turn to the right or left during them, for it is a reprehensible innovation. It is desirable for the listeners to face the speaker).

DESCRIPTION OF THE FRIDAY PRAYER

@F18.12 The Friday prayer (jumu`a) consists of two rak`as. It is sunna for the imam to recite al-Jumu`a (Koran 62) in the first rak`a (A: meaning the entire sura, the sunna being to make the sermon brief and the rak`as long, though wisdom must be used in deciding how much those present will accept) and al-Munafiqun (Koran 63) in the second rak`a (O: following the sunna from a hadith reported by Muslim, who also reported that the Prophet (Allah bless him and give him peace) sometimes recited al-A`la (Koran 87) in the first rak`a of the Friday prayer and al-Ghashiya (Koran 88) in the second).

@F18.13A latecomer who joins the group prayer in time to bow and remain motionless a moment therein while the imam is still bowing in the second rak`a is legally considered to have attended the Friday prayer (A: though such a person must rise after the imam has finished with Salams to pray the rak`a he missed). If the latecomer joins the group after this point, he has missed the Friday prayer, but (O: obligatorily) intends performing the Friday prayer anyway and follows the imam (O: in case the imam has omitted an integral and has to repeat a rak`a, in which event the latecomer will have attended the Friday prayer). (N: But if this does not happen, then) when the imam finishes with Salams, the latecomer rises and completes his prayer as a noon prayer (zuhr).

RECOMMENDED MEASURES FOR THOSE ATTENDING THE FRIDAY PRAYER

@F18.14It is recommended to perform a purificatory bath (ghusl) (O: and offensive not to) before going to the Friday prayer, though it may be performed anytime after dawn. If one is unable to bathe, one may perform the dry ablution (tayammum).
It is also recommended to clean the teeth with a toothstick (siwak, def: e3), trim the nails, remove (O: bodily) hair, eliminate offensive odors, wear perfume and one's finest clothes (white being the best), and for the imam to dress better than anyone else. (A: Because of the time taken by these measures, it is offensive to visit others on Friday mornings.)
It is offensive for women who attend the Friday prayer to wear perfume or fine clothes.
It is recommended:
-1- to arrive early (O: which is recommended for everyone besides the imam, so as to take a seat and wait for the prayer), the best time being from dawn on;
-2- to come on foot in tranquility and dignity, and not to ride to the mosque unless there is an excuse (O:such as old age, weakness, or being so far from the mosque that the fatigue of walking would obviate one's humility and presence of mind in the prayer);
-3- to sit near to the imam;
-4- and to invoke Allah (dhikr) (O: both on the way and at the mosque before the sermon), and to recite the Koran and invoke Blessings (O: on the Prophet (Allah bless him and give him peace)).

@F18.15 It is offensive (O: for anyone but the imam, when there is no need) to step

over people to reach a place among them, unless one sees a vacant spot that cannot be reached otherwise. It is unlawful to make someone sitting in the mosque rise and then sit in his place, though if someone voluntarily rises it is permissible (O: for another to sit there).

@F18.16It is offensive to give another person one's place in the front row, in closeness to the imam, or to put others ahead of oneself in performing any act of worship (O: as is proved by the rigorously authenticated (sahih) hadith,
"People keep staying behind until Allah keeps them behind."
As for Allah's saying,
"...preferring others to themselves, though poverty be their lot" (Koran 59:9),
it refers to things that relate to the physical self, such as feeding a hungry person when one needs the food, in which case preferring another to one self is desirable, without a doubt).
It is permissible to send someone to the mosque to save a place for oneself there by spreading something out (O: such as a rug, for no one else may pray on it), though it is permissible for another to move it aside and sit down in its place.

@F18.17It is offensive, though not unlawful, for someone sitting in the mosque to speak or to rise and perform the prayer while the imam is giving the sermon (khutba). (O: The more reliable position is that prayer is unlawful during the sermon (N: for the person already sitting in the mosque, as opposed to someone who has just arrived, as next discussed).)
A latecomer who arrives (O: when the imam is speaking or seated on the pulpit) should pray two brief rak`as to greet the mosque (O: if the prayer is being held in a mosque. If held elsewhere, one should intend them as the two rak`as that are sunna before the Friday prayer, though if one has already prayed these at home, one should simply sit down without praying.
It is offensive for a latecomer to simply omit the two rak`as of greeting the mosque, though if one enters the mosque at the end of the imam's sermon and believes that praying them will prevent one's participating in the opening Allahu Akbar with the group, then one should remain standing until they rise and incorporate one's greeting the mosque into the obligatory prayer (dis: f10.10)).

@F18.18It is recommended to recite al-Kahf (Koran 18) and invoke Blessings on the Prophet (Allah bless
him and give him peace) on the night before Friday and during its day.

@F18.19It is recommended to supplicate Allah much on Fridays, seeking the moment when prayers are answered (O: in view of the hadith related by Bukhari and Muslim, "There is a moment on Friday when the slave shall not ask Allah for anything save that He will give it to him"), which lies between the time the imam first sits on the pulpit and when the prayer finishes. (A: Others hold that the moment occurs after the midafternoon prayer (`asr).)

*2*Chapter F19.0: The Prayer on the Two `Eids

@(N: Meaning `Eid al-Fitr at the end of Ramadan, and `Eid al-Adha on 10 Dhul Hijja.)
@F19.1The prayer on the two `Eids is a confirmed sunna (def: c4.1) and is recommended to be prayed in a group.
Its time begins at sunrise, and it is recommended to take place after the sun is a spear's length (def: F13.2(1)) above the horizon (O: the time for its current performance continuing) until noon.

@F19.2It is best to perform it in the mosque if there is room, though if there is not, then it is better to hold it outdoors.
RECOMMENDED MEASURES FOR THE `EID PRAYER

@F19.3It is recommended not to eat anything on `Eid al-Adha until one performs the prayer, though one should eat an odd number of dates before the prayer on `Eid al-Fitr.

@F19.4It is recommended to perform the purificatory bath (ghusl) after dawn, even if one does not attend the prayer, though it may be performed from midnight on. It is recommended to wear perfume, dress one's best, for young boys to come in their good clothes, and for women who do not attract men's attention to attend, though without wearing perfume or fine clothes. It is offensive for an attractive woman to attend (dis: f12.4(N:)).
It is sunna:
-1- to come early after the dawn prayer (subh) on foot;
-2- to return home by a different route (N: than one came);
-3- for the imam to delay his arrival until the time of the prayer;
-4- and to call the people to prayer with the words "The prayer is gathering," as one also does for the eclipse prayer (def: f20) and the drought prayer (f21).

DESCRIPTION OF THE `EID PRAYER

@F19.5The `Eid prayer consists of two rak`as.
(A: In addition to the opening Allahu Akbar,) one says "Allahu akbar " seven times in the first rak`a after the Opening Supplication (Istiftah, def: f8.13) and before saying "I take refuge, etc." (Ta'awwudh, F8.16); and five times in the second rak`a, not counting the Allahu Akbar for rising from prostration, before saying the Ta`awwudh.
One raises one's hands (f8.12) each time one says "Allahu akbar."
One invokes Allah Most High (N: to oneself) between each Allahu Akbar (O: saying "Glory be to Allah, praise be to Allah, there is no god but Allah, Allah is greatest"), placing the right hand upon the left (A: each time one says this invocation).
Missing or adding repetitions of "Allahu akbar" does not necessitate a forgetfulness prostration at the end of one's prayer. If one forgets them and proceeds directly to the Ta`awwudh, one does not return to them.

@F19.6It is recommended to recite Qaf (Koran 50) in the first rak`a and al-Qamar (Koran 54) in the second. Or if one wishes, one way recite al-A`la (Koran 87) in the first rak`a and al-Ghashiya (Koran 88) in the second. (A: Or one may recite al-Kafirun (Koran 109) in the first rak`a and al-Ikhlas (Koran 112) in the second.)

@F19.7After the two rak`as, the imam gives two sermons (khutba) like those of the Friday prayer (O: in the integrals (def: f18.9), not conditions (n: which here exclude f18.10(c,d,e))).
It is recommended to open the first sermon by saying "Allahu akbar" nine times and to open the second by saying it seven times. It is permissible for the imam to sit during the sermons.

@F19.8There are two types of Allahu Akbars (A: said for the `Eids), unrestricted and restricted.
The unrestricted, meaning those not confined to a particular circumstance but rather recited in mosques, homes, and the street, are sunna to recite from sunset on the night before each `Eid until the imam commences the `Eid prayer with the opening Allahu Akbar.
The restricted, meaning those recited after prayers (O: whether the five prescribed prayers or the nonobligatory), are sunna for `Eid al-Adha only, from the noon prayer (zuhr) on `Eid day until the dawn prayer (Subh) on the last of the three days that follow it, which is the fourth day of the `Eid. (N: The more reliable position is that the time for them begins from dawn of the Day of `Arafa (n: 9 Dhul Hijja) and ends at the midafternoon prayer (`asr) on the last of the three days that follow `Eid al-Adha.)
They are recited (O: by men, by women (who say them to themselves), by both nontravellers and travellers, and whether one is praying by oneself or in a group) after the current prescribed prayers or making up prescribed prayers missed during the `Eid or before, and after prayers performed to fulfill a vow, funeral prayers (janaza), and supererogatory prayers. If one misses a prayer during the `Eid but does not make it up until after the `Eid, then one does not recite "Allahu Akbar" after it.
One says, "Allahu akbar, Allahu akbar, Allahu akbar" (N: and then, "there is no god but Allah. Allahu akbar, Allahu akbar, praise be to Allah"). It is commendable to add, as people are accustomed to. "Allah is ever greatest, etc." (O: namely: "Much praise be to

Allah. Glory to Him morning an evening. There is no god but Allah. Him alone we worship, making our religion sincerely His though the unbelivers be averse. There is no god but Allah alone. He fulfilled His promise, gave victory to His slave, strengthened His army, and vanquished Confederates alone.
There is no god but Allah. Allah is ever greatest")

@F19.9It is recommended to say "Allahu akbar" on the first ten days of Dhul Hijja whenever one sees a head of livestock (O: out of reverence for its Creator).

*2*Chapter F20.0: The Eclipse Prayer

@(O: Eclipse refers to both that of the moon and sun.)

@F20.1The eclipse prayer is a confirmed sunna (def: c4.1) (O: and missing it is not permissible, but rather is offensive).

@F20.2(O: Like the drought prayer, it has no call to prayer (adhan) (n: besides that mentioned at F19.4(4)).)

@F20.3It is recommended to be performed in a group at the mosque.
It is recommended for women without attractive figures to attend (O: in their household clothes, that is, women advanced in years and the like. As for women who have attractive figures, it is desirable for them to perform it in their homes (dis: f12.4(N:))).

DESCRIPTION OF THE ECLIPSE PRAYER

@F20.4The eclipse prayer consists of two rak'as. The minimum is:
(a) to open with "Allahu akbar";
(b) to recite the Fatiha;
(c) to bow;
(d) to straighten up;
(e) to recite the Fatiha again;
(f) to bow again;
(g) to (O: straighten up and) remain motionless a moment;
(h) and to prostrate, then sit up, and then prostrate again.
This is one rak'a. comprising standing twice, reciting (O: the Fatiha) twice, and bowing twice.
One then prays the second rak'a like the first.
It is not permissible to lengthen the amount of time one stands or bows merely because eclipse has not yet passed, or to shorten the rak'as to less (O: than the above way after having intended it) because the eclipse has passed.

@F20.5The optimal way is that after reciting the Opening Supplication (Isiftah, de: f8.13), the Ta'awwudh (f8.16), and the Fatiha, one:
(a) recite al-Baqara (Koran 2) for the first Koran recital;
(b) recite Al 'Imran (Koran 3) after the second time one recites the Fatiha (A: in the first rak'a);
(A: then, in the second rak'a)
(c) recite al-Nisa (Koran 4) for the third recital;
(d) and recite al-Ma'ida (Koran 5) for the fourth recital.
Or one may recite comparable amounts of the Koran in place of the above suras.
One bows and says "Subhana Rabbiya al-`Adhim' ("How far above any limitation is my Lord Most Great") after the first of the four Koran recitals for a period equal to reciting one hundred verses of al-Baqara (N: about 20 minutes); after the second recital for the length of eighty of its verses;after the third for the length of seventy verses; and after the fourth for the length of fifty verses. The other parts of the eclipse prayer are the same as other prayers.

@F20.6After praying, it is recommended that the imam give two sermons like those of the Friday prayer (O: in integrals (def:f18.9) and conditions (f18.10), except that here

the sermons follow the prayer, as opposed to those of the Friday prayer, which precede it).
@F20.7One may no longer perform the eclipse prayer if one has not yet begun it when the eclipse passes, when the sun sets while still eclipsed, or when the sun rises while the moon is still eclipsed. But if one has begun the prayer and the eclipse passes or the sun sets while still in eclipse, one nevertheless completes the prayer.

*2*Chapter F21.0: The Drought Prayer

@F21.1The drought prayer is a confirmed sunna (def: c4.1) (O: even for someone travelling, or praying alone), and is recommended to be prayed in a group.

@F21.2When the land is parched or the water supply is cut off or diminished, the imam (A: i.e. the caliph (def: o25) or his representative) warns people against wrongdoing and orders them to repent for their sins, give charity (O: because this influences the acceptance of prayers), settle their differences with enemies (O: if the enmity is not for Allah's sake. Otherwise, it is not objectionable, for servering ties with the corrupt is something that one should do), and fast for three days (O: which must be consecutive, for this is obligatory if the caliph orders it). Then, on the fourth day while still fasting, they come out to an empty expanse (lit. "desert") in their work clothes, accompanied by those of the women who do not have attractive figures (dis:f12.4(N:)). livestock, men and women advanced in years, infants and small children, the pious, and those related to the Messenger of Allah (Allah bless him and give him peace); and they ask Allah to give them rain because of those present (O: i.e. by virtue of their spiritual grace (baraka), interceding through them). Each mentions to himself the good works he has done and intercedes through them.
Non-Muslim subjects of the Islamic state who attend are not hindered from doing so, but may not mix with us.

DESCRIPTION OF THE DROUGHT PRAYER

@F21.3The drought prayer consists of two rak'as like those of the 'Eid (def: f19.5). The imam then gives two sermons like those of the `Eid, except that in place of each Allahu akbar (f19.7), the imam says, "I ask forgiveness of Allah Most Great, whom there is no god but He, the Living, the Ever Subsistent, and I turn to Him in repentance." During the sermons, the imam frequently asks Allah's forgiveness (istighfar), blesses the Prophet (Allah bless him and give him peace), supplicates Allah, and recites the verses, "Ask forgiveness of your Lord - verily He is soft-forgiving - and He will loose the sky upon you in torrents, aid you with wealth and sons, and make gardens and rivers yours" (Koran 71:10-12).
In the second sermon (O: about a third of the way through it) the imam turns toward the direction of prayer (qibla) and switches his cloak around (O: by putting the right side of it on his left and vice versa.
It is also sunna to turn it upside down. Both sunnas can be effected by putting the lower left corner on the right shoulder and lower right corner on the left shoulder. The wisdom therein is the favorable portent of a change of state). The people do likewise.
He should supplicate to his atmost, both to himself and aloud. (O: Those present raise their hands with the backs of the hands up. The sunna supplication is: "O Allah, send us rain, raining wholesomely, healthily, torrentially, widespread, pouringly, in sheets,drenchingly, continuously till Judgement Day. O Allah, give us rain and make us not of those who despair. Allah, servants and cities are in distress, hunger, and want, from which we can ask none but You for relief. O Allah, make the crops grow and the milk of the livestock flow, and send down the sky's blessings upon us and bring forth for us the blessings of the earth. Raise from us the affliction that none but You can lift.")
If they pray but are not given any rain, they repeat the prayer (O: until given rain). If they prepare (O: and gather), but are given rain before the prayer, they pray in thanks and ask for more.

@F21.4It is recommended for those whose land is flourishing to supplicate after prayers

for those whose land is parched. (O: This being the middle course. The minimum is to make a supplication, while the optimum is to take the above measures of performing two rak'as with the two sermons, the supplications, and asking for forgiveness.)
@F21.5At the first rainfall of the year, it is recommended to uncover part of the body for the rain to strike.

@F21.6It is recommended to glorify Allah when thunder is heard (O: saying, "Glory to Him the thunder and the angels glorify, in awe of Him,") and when lightening is seen (O: saying, "Glory to Him who shows you the lightening that you may have fear and hope").

@F21.7If it rains so much that harm is feared, it is recommended to supplicate as has come in the sunna:
"O Allah, around us, not upon us. O Allah upon the hills and bluffs, the valley floors and copses of trees."

*1*BOOK G: THE FUNERA; PRAYER (JANAZA)

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*2*Chapter G1.0: Visiting the Sick and Dying

@G1.1 It is recommended for everyone to frequently remember death, particularly if one is ill, and to prepare for it by repenting (def:p77) (O: because of the hadith. "Remember often the Ender of Pleasures,"
meaning death, a hadith related by Tirmidhi, Ibn Hibban, and Hakim, the latter two classifying it as rigorously authenticated (sahih). Nasa'i's version has the addition. "for truly, it is not remembered in a plentitude save it diminishes it, and not remembered in a dearth save it increases it,"
"plentitude" meaning of wives and this-worldly goods, and "dearth" meaning of spiritual works).

@G1.2
It is recommended to visit the ill, even if the malady is only sore eyes, whether the person is a friend or enemy. If the sick person is a non-Muslim subject of the Islamic state (dhimmi, def;o11) then if he is a relative or neighbor, visiting him is recommended. If not, visiting him is merely permissible.

@G1.3
It is offensive to sit lengthily with a sick person. It is recommended not to continuously visit (O: but only from time to time) unless one is a relative or similar person (O: of his friends) whom the sick person is fond of, or someone (O: of the righteous) from whose presence others derive spiritual blessing (baraka), for any of whom visiting the sick person is recommended at any time as long as there is no objection (O: by the sick person to long visits).

@G1.4
If the visitor has hopes that the patient will survive, he supplicates for him (O: saying, "O Allah, Lord of Men, remove the harm and heal- for You are the Healer besides whom there is no other-with a cure that will not leave behind pain or sickness,') and then leaves. But if the visitor sees little hope of a recovery, he should encourage the sick person to repent and to make his bequests (def:L1-3) (O: by telling him, e.g. "You should repent of all your sins so that Allah Most High heals you, for repentance is reason for cures. And you should make some provision for bequests, as it prolongs one's life. A person should make bequests while alive and only die after having done so for there is no one who does not pass on").

INSTRUCTING THE DYING PERSON

@G1.5
If the visitor sees the person is dying, he should make him desirous of Allah's mercy (O: since hope should predominate over fear in this state) and should turn him to face the direction of prayer (qibla) by laying him on his right side, or if impossible, on his left. If this too is impossible, he is laid on his back (O: with his face and feet towards the direction of prayer (qibla) by laying him on his right side, or if impossible, on his back (O: with his face and feet towards the direction of prayer (qibla) by proping up his head a little, feet meaning the bottoms of them).
The visitor should then instruct the dying person to say" There is no god but

Allah,"letting him hear it (N: so he can repeat it) but without irritating insistence, and without telling him "Say...." When he says it, then he is let be until he himself speaks of something else.
It is recommended that the person instructing him to say it be neither his heir nor enemy.

IMMEDIATE MEASURES AFTER DEATH

@G1.6
When he dies, it is recommended that the kindliest to him of his unmarriageable kin (mahram) close his eyes. It is recommended:
-1- to close his jaws (O: with a wide bandage tied above his head so his mouth is not left open);
-2- to make his joints flexible (O: by bending the forearm to the upper arm, calf to thigh, thigh to stomach, and then straightening them, and to similarly flex the fingers in order to facilitate washing and shrouding him. If the joints are flexed at this point, they remain flexible, but if not, it becomes impossible afterwards) :
-3- to (O:gently) remove his clothes, and to cover him with a light cloth (O: tucking the edge under his head and feet so they do not become uncovered);
-4- and to place something heavy on his stomach (O: to prevent bloating).

@G1.7 It is recommended to hasten in paying off the debts of the deceased (dis: L4.2-3) or having them waived (n: by creditors). It is recommended to hurry in implementing his bequests, and in readying him for burial (O: haste being recommended (N: in readying him and burying him) when it is unlikely that the body will rapidly change, but obligatory when this is likely).

@G1.8 When someone dies suddenly (O: or is believed to have died), the body is left until it is certain he is dead (O: by a change in odor or the like).

@G1.9 Washing the dead person, shrouding him, praying over him, carrying him, and burying him are communal obligations (def:c3.2)

***2*Chapter G2.0: Washing the Body**

@G2.1 Then the body is washed (O: obligatorily).

WHO SHOULD WASH THE BODY

@G2.2 when the deceased is male, the best suited to wash the body (A: anyone may wash it, but it is not permissible (N: being offensive) for a non-Muslim to wash the body of a Muslim, and non-Muslim relatives are as though nonexistent in the following priority list) is:
-1- the father of the deceased;
-2- the father's father;
-3- the son;
-4- the son's son;
-5- the brother;
-6- the father's brother;
-7- the son of the father's brother;
-8- those named in the sequence given at L10.6(12-14);
-9- men related to the deceased;
-10- men not related to him;
-11- his wife;
-12- and his unmarriageable female relatives (mahram, def:m6.1).

@G2.3 If the deceased is female, the best suited to wash the body is:
-1- one of her female relatives (O: meaning the women of her immediate family, such as her daughter or mother);
-2- other women;
-3- her husband;

-4- and then a member of her unmarriageable male relatives (mahram, def:m6.2) (O: in the above (g2.2) order).

@G2.4 If the deceased is a non-Muslim, then his non-Muslim relatives are better suited to wash him.

@G2.5 It is recommended that the washer be trustworthy (O: so that he can be relied on to wash the deceased completely and so forth. If he notices something good, it is sunna to mention it, but if he notices something bad, it is unlawful to mention it, as this is slander(ghiba, def:r2.2)).

HOW TO WASH THE BODY

@G2.6 It is obligatory for the washer to keep the nakedness (def:f5.3) of the deceased clothed (f5.4) while washing him.
It is sunna that no one be present except the washer and his assistant. (O: It is preferable that the body be washed while clothed in an anklelength shirt into which the washer inserts his hand from the sleeve if ample enough, while pouring water over the garment and washing the body under it. If the sleeve is not wide enough for this, he tears open the seam from the side under the arm. It is obligatory that the body be covered from naval to knees.) Incense should be burned from the start of washing to the finish (O: as is sunna).
It is best to wash the body under a roof, and best that cold water be used, except when necessary (O: to heat it, such as to clean away filth that could not otherwise be removed, or when the weather is cold, since the deceased suffers from it just as a living person would).

@G2.7 It is unlawful to look at the nakedness of the deceased (def:f5.3) or touch it, except with a cloth (O:or similar, since direct contact without there being something in between is not permissible). It is recommended not to look at or directly touch the other parts of the body save with a cloth.

@G2.8 It is recommended:
-1- to force out waste from the stomach;
-2- to clean the private parts of filth (O: which is recommended when one is not certain anything has exited from those parts, though if it has, cleaning is obligatory);
-3- to give the body ablution (wudu) (O: like the ablution of a living person, turning the head when rinsing the mouth and nostrils so that no water reaches the stomach);
-4- to make the intention of performing the purificatory bath (ghusl), and then to wash the head, beard, and body each three times with water infused (with sidr(n:i.e. lote tree(Rhamus spina christi) leaves), taking care each time to press the hand on the stomach (N: in a downward stroke) (O: leaning on it to force its contents out, but gently so as not to hurt the deceased. If the hair of the head or beard is matted, it should be gently combed with a wide-toothed comb so as not to pull any out. If hair comes out as a result, the washer should return it and place it in the shroud to be buried with the deceased).

@G2.9 (O: It is sunna:)
-1- that the place of washing be on an incline so the head is highest and the water flows down away from it;
-2- that there be an incense burner present with incense in it;
-3- to put one's right hand on the shoulder of the deceased with the thumb on the nape of his neck so that the head does not
loll, and brace his back up against one's right knee;
-4- to have the helper pour abundant water during the process to obviate offensive odors from waste leaving the body;
-5- to stroke the stomach firmly and effectively with one's left hand;
-6- and when finished, to lay the deceased down again on his back with his feet towards the direction of prayer (qibla).)

@G2.10 If the body is not clean after three times, one washes it again, reaching an odd number of washings. (O: If clean after an even number of washings, it is sunna to add another. If clean after an odd number, one does not add any.) It is sunna to add a little camphor to the water, especially for the last washing.
The obligatory minimum for this purificatory bath (ghusl) is that water reach all external parts of the body (O: and it is obligatory to remove any filth (najasa, def: el4.1), if present). The body should be dried with a cloth afterwards.
If anything leaves the body after washing, only the affected area need be washed. (O: It is not necessary to repeat the ablution (wudu) of bath (ghusl), even if the excretion is from the front or rear private parts.)

*2***Chapter G3.0: Shrouding the Body**

@G3.1 Then the body is shrouded (O: obligatorily).

@G3.2 If the deceased is male it is recommended that he be wrapped in three washed (O; not new) white shrouds, without an ankle-length shirt or turban, each shroud covering the whole body (O: unless the deceased was in a state of pilgrim sanctity (ihram), in which case the head of the male or face of the female must be left uncovered). It is permissible to add (O: beneath the shrouds) an ankle-length shirt and a turban. It is unlawful to use silk (N: to shroud a man).
If the deceased is a woman it is recommended that she be dressed in a wraparound, headcover, and a shift, and that she be wrapped in two shrouds (O: like those used for men in being white and washed, each of which covers her (O: entire body). It is offensive for a woman's shroud to be made of silk, or fabric dyed with saffron or safflower.
The obligatory minimum for shrouding a man or woman is to completely cover their nakedness. (O: For a man it is obligatory to cover the navel, the knees, and what lies between them, and for a woman, her entire body.)

@G3.3 It is recommended:
-1- to send the shrouds with incense (O: from aloes and the like)
-2- to sprinkle them with hunut (O: an aromatic compound of camphor, reed perfume, and red and white sandalwood) and camphor;
-3- to place cotton and hunut on the apertures of the body (O: such as the eyes, mouth, nostrils, and ears) and on places that touch the ground in prostration (O: the forehead, nose, palms, bottoms of the feet, and the knees);
-4- and it is commendable to perfume the entire body.

@G3.4 If a person dies while in a state of pilgrim sanctity (Ihram, def:j3), it is unlawful to scent th body, to dress it in a garment with any sewing in it (A: if male), and to cover the head of a male's body or the face of a female's.

@G3.5 It is not recommended to prepare a shroud for oneself, unless to ensure that it comes from a lawful source or from the effects of a virtuous person (O: meaning those who worship much, or religious scholars who apply their knowledge in their lives. In such a case, one may procure it for the blessing therein (tabrruk, di:w31)).

***2*Chapter G4.0: The Prayer Over the Dead**

@G4.1 Then the deceased is prayed over (O: obligatorily).
The obligation is fulfilled if a single Muslim male (O: who has reached the age of discrimination) prays over the deceased. It is not fulfilled by a prayer of women alone when there is a male available, though if there is no one besides women, they are obliged to pray and their prayer fulfills the obligation.

@G4.2
It is recommended to perform the funeral prayer in a group. It is offensive to pray it at a cemetery (O: though not in a mosque, which is preferable).

WHO SHOULD LEAD THE FUNERAL PRAYER

@G4.3 The person best suited to lead the funeral prayer as imam is the one who is best suited to wash the deceased (dis:g2.2) except for women, who have no right to lead (dis:f12.27). The family member responsible for the deceased is given preference in leading the prayer even over the sultan (O: or imam of the mosque).
The older of two persons (O: meaning more years in Islam, provided he is upright (def:o24.4)) takes precedence over the more learned in Sacred Law (O: when they are at the same level (n: of the g2.2 precedence order), such as two sons or two brothers, since the purpose is to pray for the deceased, and the supplication of an older person is more likely to be answered) and (n: the older) is given precedence over any others (A: at that level), though if they are of the same age, then one is chosen according to the order used for the imamate of other prayers(def:f12.25).
The responsible family member is given precedence in leading the funeral prayer even when the deceased has stipulated some other nonfamily member to be the imam.

PLACING THE BODY FOR THE FUNERAL PRAYER

@G4.4 It is recommended (N: in the funeral prayer itself, where the deceased, enshrouded, is on a bier in front of the imam and lying on his right side facing the direction of prayer (qibla)) that the imam stand by the head of the deceased, if male, and by the posterior, if female (O: because this better screens her from view).

@G4.5 If there are several bodies, it is best to perform a separate funeral prayer for each individual, though it is permissible to pray for all of them in a single prayer by putting the biers directly in front of the imam (O: one after another (N: parallel with the rows of worshippers), each body facing the direction of prayer (qibla)). The closest body to the imam (O: if the dead differ in gender) should be an adult male, then a boy, then a woman (O: though if all are male, all female, or all boys), then the best Muslim, then the next best (O: in piety, abstinence from this world, godfearingness, and all praiseworthy traits), and so forth.
If bodies are brought successively, the first one brought is placed closest to the imam, even if a prior arrival is less virtuous or is a boy, though not if a female, whose body should be placed further from the imam than that of a male brought subsequently.

DESCRIPTION OF THE FUNERAL PRAYER

@G4.6 Then one intends to perform the prayer, One must keep in mind its obligatory character, though need not explicity intend it as a communal obligation (def: c3.2). (O: One may confine oneself to merely intending to pray four Allahu akbars over the particular deceased person as an obligatory act, without intending its being in fulfillment of a communal obligation. The intention must coincide with one's opening Allahu akbar.)
It is valid for someone to perform a funeral prayer for a dead person who is absent (dis:g4.18) while following an imam who is praying over a dead person who is present.

@G4.7 One says"Allahu akbar" four times in the funeral prayer, raising one's hands (O: to shoulder level) at each one, and it is recommended between each one to fold the right hand over the left. The funeral prayer is not invalidated by adding a fifth Allahu akbar, even intentionally, though if the imam adds one the follower does not do likewise, but simply waits to finish with him when he says his Salams.

@G4.8 After the first Allahu akbar it is obligatory to recite the Fatiha. It is recommended to say "I take refuge, etc." (Ta'awwudh, def:f8.16) before it and "Ameen" after it, though not to recite the Opening Supplication (Istiftah, f8.13) or a sura therein. (A: It is obligatory that the Fatiha be recited in the funeral prayer and that the other spoken elements be uttered, but as for each occuring after its respective Allahu akbar, the only one which must obligatorily be in its place is the Blessings on the Prophet (Allah bless him and give him peace), which must come after the second Allahu akbar.)

@G4.9 After the second Allahu akbar (N: and one, remains standing throughout the funeral prayer), it is obligatory to say the Blessings on the Prophet (Allah bless him and give him peace), after which it is sunna to supplicate for the believers.(O: It is also sunna to bless the folk of the Prophet after the blessings upon him (Allah bless him and give him peace) and to say "al-Hamdulillah" before it.)

@G4.10 After the third Allahu akbar one supplicates for the deceased. The recommended supplication is:
"O Allah, this is Your slave, and son of Your slave. He has left the zephyr of this world and its spaciousness, in which were the things and people he loved, for the darkness of the grave and that which he will meet. He testified that there is no god but You alone without a partner, and that Muhammad is Your slave and messenger. You know him better than we. O Allah, he has gone to remain with You, and You are the best to remain with. He is now in need of Your mercy, and You have no need to torment him. We come to You in desire for You, interceding for him. O Allah, if he did well, treat him the better, and if he did wrong, disregard it and through Your mercy show him Your good pleasure and protect him from the trial and torment of the grave. Make his grave spacious for him and distance the earth from his sides, and through Your mercy protect him from Your torment until You raise him and send him safely to Your paradise, O Most Merciful of the Merciful." (n: This is the optimal supplication, The minimum is mentioned below at g4.13(f).)

@G4.11 It is commendable to say before the above: "O Allah, forgive those of us who are alive and those who are young head those present and those who are and those who are old, those who are male and those who are female. O Allah, let those of us You give life live by Islam, and let those of us You take back die in a state of faith."
If it is the funeral of a child, one may add to this: "O Allah, send him ahead to smoothe the way for his parents, and make him a reason for reward, a treasure, admonition, reflection, and intercessor. Make the scales of their good deeds heavy through him, and fill their hearts with patience."

@G4.12 After the fourth Allahu akbar, it is sunna to say, "O Allah, do not withhold from us his recompense, nor try us after him, but forgive us and him."
Then one says "as-Salamu 'alaykum" twice (O: the first one being obligatory and the second sunna).

@G4.13 The integrals of the funeral prayer are seven:
(a) the intention;
(b) standing;
(c) saying "Allahu akbar" four times;
(d) the Fatiha;
(e) the Blessings on the Prophet (Allah bless him and give him peace);
(f) the supplication for the deceased, the minimum being "O Allah, forgive this deceased";
(g) and the first of the two times one says "as-Salamu 'alaykum" to finish the prayer.

@G4.14 The conditions of the funeral prayer are the same as other prayers (def:f9.13), but in addition require:
(a) that the deceased's body has been washed before the prayer;
(b) and that the imam and those praying do not stand ahead of the body during the prayer (N: i.e closer to the direction of prayer (qibla)).
It is offensive to perform the funeral prayer over a body before it has been shrouded. If someone dies under a pile of rubble, and it is impossible to take out the body and wash it (non-(a) above), then he is not prayed over.

@G4.15 A latecomer to the funeral prayer whom the imam has preceded by having already said "Allahu akbar" a number of times recites (O: the Fatiha) after his own opening Allahu akbar, and then says "Allahu akbar" each time the imam does, though he performs the integrals in order from the point at which he began (O: reciting the Fatiha after his first Allahu akbar, the Blessings on the Prophet (Allah bless him and give him peace) after the second, and the supplication for the deceased after his third), and

when the imam finishes with Salams, the latecomer goes on to complete his remaining number of times of saying "Allahu akbar" and the other spoken elements, and then finishes with his own Salams.
It is recommended that the body not be lifted until the latecomer finishes his prayer.
If the latecomer joins the group with his opening Allahu akbar, and the imam immediately says the (O: second) Allahu akbar (N: before the latecomer has had a chance to recite the Fatiha), then the latecomer (N: omits the Fatiha and) says "Allahu akbar" with the imam. Here the latecomer has performed the first two Allahu akbars (O: both the second one which he performed with them, and the first one which lacked the Fatiha), and he is no longer obliged to recite the Fatiha. If the imam's Allahu akbar occurs while such a latecomer is reciting the Fatiha, he discontinues it and says "Allahu akbar" with the imam.
If the imam says " Allahu akbar" and the follower does not say it until the imam has said it a second time, it invalidates the follower's prayer.

REPEATING THE FUNERAL PRAYER

@G4.16 When one has performed a funeral prayer over someone, it is recommended that one not repeat it.

@G4.17 Someone who has missed praying (O: a funeral prayer until after the deceased has been buried) may pray it at the grave (O: and such a prayer is legally valid whether the deceased was buried before the funeral prayer had been performed over him, or whether after, though it is unlawful to bury a Muslim before his funeral prayer, and anyone who knows of it is guilty of a sin), but only on condition that the person praying at the grave had reached puberty and was sane on the day the deceased died (O: as he was thus one of those responsible for the communal obligation of praying over the deceased). Otherwise, he may not pray there.

PRAYING OVER THE DEAD WHO ARE NOT PRESENT

@G4.18 It is permissible to perform the funeral prayer for an absent person whose body is out of town, even if not far (O: and even if the body is not in the direction of prayer (qibla) which the person praying faces (non-(g4.14(b))). But such a prayer does not lift the communal obligation from the people of the town where the deceased died).
It is not permissible to perform the funeral prayer over someone, who is absent (O: from the place of prayer) when the body is in the same town (A: though this is permissible if it is at the edge of a large city and is a problem to reach).

@G4.19 If part of the body of a person whose death has been verified is found, then it is obligatory to wash, shroud, and pray over it (O: even if the part is a fingernail or hair, as there is no difference between a little and a lot (A: provided that the part was separated from him after death (N: and provided the rest of him has not been prayed over, for if it has, then it is not obligatory to pray over the part))).

BURYING MARTYRS

@G4.20 It is unlawful to wash the body of a martyr (O: even if in a state of major ritual impurity (janaba) or the like) or perform the funeral prayer over him. A martyr (shahid) means someone who died in battle with non-Muslims (O: from fighting them, as opposed to someone who died otherwise, such as a person killed out of oppression when not in battle, or who died from fighting non-polytheists, such as (N: Muslim) transgressors).
It is recommended that war gear be removed from the body (O: such as a breastplate and the like), and it is best to bury the martyr in the rest of his bloodstained clothes (O: since it is the effect of worship), though the responsible family member may nevertheless remove the garments and shroud the body before burial.

BURYING THE STILLBORN

@G4.21 A premature baby (A: meaning one born before six full months) that dies is treated as an adult if it gave a cry (O: sneeze, or cough when it left the mother) or showed movement (O: treated as an adult meaning it is obligatory to wash, shroud, pray over, and bury the baby, since its life and death have been verified). If it did not, then:
-1- if it had reached four months in the womb (O: which is the time at which the spirit is breathed into it) then it is washed before burial but not prayed over;
-2- but if it had not, it is only obligatory to bury it.

CARRYING THE DECEASED TO THE GRAVE

@G4.22 The burial should take place immediately after the funeral prayer and not be delayed to wait for anyone besides the responsible family member, provided he is (O: reasonably) nearby, if it is not be feared that the condition of the body will change (O: though if this is feared, then the family member is not awaited).

@F4.23 It is best that the bier be carried by its poles, sometimes by four (O: men) (N: one pole on the shoulder of each, the poles being parallel with the bier and supporting it, two ends forward and two ends fat) and sometimes by five, the fifth man between the two forward poles. It is recommended that the bearers walk faster than usual, though they should not trot.

@G4.24 It is recommended for men to follow the bier to the place of burial close enough behind to be considered part of the funeral procession. It is offensive to follow it with fire or incense burners, which are likewise offensive at the burial.

***2*Chapter G5.0: Burial**

@G5.1 Then the deceased is buried (O: obligatorily). It is best to bury him in the cemetery. It is unlawful to bury someone where another person has been buried unless the previous body is completed disintegrated (O: such that nothing of it remains, neither flesh nor bone). It is also unlawful to bury two people in the same grave unless absolutely necessary, as when there
has been much killing or death, in which case a wall of earth is made between the two bodies as a barrier. If the bodies differ in gender, this is even more imperative, especially, when two people (O: of the same gender or not) are not related.
If someone dies on a ship and it is impossible to bury him on land, the body is placed (O: tightly lashed) between two planks (O: to obviate bloating) and thrown into the sea (O: so that it reaches shore, even if the inhabitants are non-Muslims, since a Muslim might find the body and bury it facing the direction of prayer (qibla)).

DIGGING THE GRAVE

@G5.2 The obligatory minimum for a grave is that it conceal the odor of the body and that it protect it from (O: being dug up and eaten by) animals.It is recommended to dig the grave wider than the obligatory minimum and that its depth equal the height of an average man with his arm fully extended upward. A lahd (O: i.e. a grave with a lateral hollow large enough for the body dug into the side of the bottom of the grave that is towards the direction of prayer (qibla)) is superior to a shaqq (O: meaning a simple trench dug down into the middle of the floor of the grave with low block walls raised along the trench's sides, in which the deceased is placed before the walls are ceilinged with blocks (N: and the earth is shovelled back into the grave on top of the them)), unless the earth is soft, in which case the shaqq is preferable (O: so as not to cave in on the deceased).
It is offensive to bury the deceased in a coffin (O: or to put in a pillow for him, because all of this wastes money without being of any benefit) unless the earth is soft (O: quick to for) or moist (O: in which cases it is not offensive. If otherwise, then even if a coffin was stipulated by the deceased in his will, it is not provided).

BURYING THE BODY

@G5.3 Men should bury the dead, even if the deceased is female, in which case the best suited is the husband, if able, and then (n: for either sex) those listed in the funeral prayer preference order (g4.3), except that (A: when two are on the same level, such as two sons or brothers) the most learned in Sacred Law is preferred to the oldest, unlike the order for the prayer (O: the purpose thereof being knowledge of the rules of burial, which a learned person is likely to know better than others). It is recommended that the number of men (O: burying the deceased) be an odd number.

@G5.4 It is preferable to conceal it (O: the grave) with a cloth while placing the body in it (N: a blanket is stretched over the grave about half a meter above the level of the ground, helpers holding each corner, while another person stands down in the grave at the foot end, ready to take the body from the bier). (O: This is especially necessary when burying a female, and is done because something might be disclosed of the deceased that is desirable to conceal.) The head of the deceased is placed near the foot of the grave (O: foot meaning the end which will accomodate the feet when the body is in place), and the body is slid from the bier head-first. It is recommended for the person burying the deceased (N: who is standing in the grave taking the body, and there may be more than one) :
-1- to say (O: to the deceased), "In the name of Allah and according the religion of the Messenger of Allah (Allah bless him
and give him peace) ";
-2- to supplicate Allah for (O: the forgiveness of) the deceased;
-3- to place a block as a pillow for him, and to pull back the shroud enough to lay his cheek directly on the surface of the block (O: as it is more expressive of lowliness);
-4- and to place the deceased upon his right side.
It is obligatory that the body be placed facing the direction of prayer (qibla) (O: and this is absolutely necessary. If buried facing the other way, or lying on his back, he is disinterred and reburied facing the direction of prayer).

@G5.5 The lateral hollow dug into the side of the grave (N: in the lahd (def: g5.2)) for the body is walled up with blocks (A: after the body has been placed in it, before filling in the grave. It is sunna to use nine blocks).

@G5.6 The person at the graveside sprinkles three scoops of earth (O: using two hands) into the grave. (O: it is sunna to say with the first, "Of it We created you all." with the second, "To it We shall make you all return," and with the third, "And from it We shall bring you forth again" (Koran 20:55).) Then the grave is filled in, using shovels, after which one stays for a moment:
-1- to instruct the deceased (dis: w32) (N: the answers he will need to know when Munkar and Nakir (u3.3) question him in the grave as to his Lord, religion, and prophet);
-2- to supplicate for him (O: such as to say: "O Allah, make him steadfast. O Allah, teach him his pleas");
-3- and to ask forgiveness for him.

THE FINISHED GRAVE

@G5.7 One should raise the grave's surface (O: up to) 1 span (n: about 23 cm.) above the ground (O: so that it can be known, visited, and respected), except in countries at war with the Muslims (O: where it is not raised but rather concealed, so as not to be meddled with), and to make its top flat is better (O: than mounding it). No earth should be added (O: when levelling it) to what was excavated from it. It is recommended to sprinkle water over the grave and to put pebbles on it.
It is offensive:
-1- to whiten the grave with plasters
-2- to build (O; a cupola or house) over it;
-3- to put khaluq (O: a perfume) on the grave (O: as it is of no benefit and wastes money) or rose water;
-4- to place an inscription on it (O: whether it is the name of the deceased or something other, on a board at the head of the grave or on something else; unless the deceased is a friend of Allah (wali, def: w33) or religious scholar, in which case his

name is written so that he may be visited and honored, it then not being offensive);
-5- or to put a pillow or mattress under the deceased.

VISITING GRAVES

@G5.8 It is recommended for men to visit graves (dis: w34) (O: of Muslims, especially on Fridays. As for visiting graves of non-Muslims, it is merely permissible. The spirit of the dead person has a connection with his grave that is never severed, but is stronger from the midafternoon prayer (`asr) on Thursday until sunrise on Saturday, which is why people often visit graves on Friday and on Thursday afternoon).
There is no harm in wearing one's shoes when visiting (O: to walk between graves). The visitor walks up to the grave as close as he would if the deceased were alive, and says, "Peace be unto you, abode of a believing folk; Allah willing, we will be joining you."
It is sunna to recite (O: as much of the Koran as is easy) and to supplicate Allah (O: to forgive the deceased, while facing the direction of prayer, as supplications benefit the dead and are more likely to be answered if made after reciting the Koran). (n: w35 discusses whether the spiritual reward for reciting the Koran may be donated to the deceased.)

@G5.9 It is offensive for women to visit graves (O: because of their lack of fortitude and excessive grief, though this does not apply to visiting the Prophet's tomb (Allah bless him and give him peace) which they should do. And like the Prophet (Allah bless him and give him peace) in this is their visiting the graves of the prophets, righteous, and learned).

***2*Chapter G6.0: Consoling Next of Kin**

@G6.1 It is recommended to console all the relatives of the deceased, except young women who are not (O: the consoler's) unmarriageable kin (O: since only her unmarriageable relatives (mahram, def: m6.2) may console her, console meaning to enjoin steadfastness and encourage it by mentioning the reward in the hereafter, to warn against overburdening oneself with grief, and to pray for forgiveness for the deceased and the lightening of the burden of those bearing the misfortune) when there has been a death in the family, for approximately three days after the burial.
It is offensive to sit for it (O: that is, for the extended family of the deceased to be seated and gather in one place for people to come and console them, because it is an innovation (muhdath, syn, bid'a. def. w29.3) that the Prophet (Allah bless him and give him peace) did not do, nor those after him. It is offensive for either men or women).
If one is absent (O: whether one is the consoler or person to be consoled) and then arrives after a period (O: of three days), one should console (N: the deceased's relatives) or be consoled (N: if one of them).

@G6.2 It is recommended to say:
-1- to a Muslim who has lost a Muslim relative, "May Allah greaten your reward, perfect your consolation, and forgive your deceased";
-2- to a Muslim who has lost a non-Muslim relative. "May Allah greaten your reward and perfect your consolation";
-3- and to a non-Muslim who has lost a Muslim relative, "May Allah perfect your consolation and forgive your deceased."

@G6.3 It is permissible to weep before someone dies, but better not to afterwards (O: since the Prophet (Allah bless him and give him peace) wept for his son Ibrahim before his death. It is only considered better not to weep afterwards because it is sorrow for something that has already passed).

@G6.4 It is unlawful to eulogize the dead, lament in a raised voice, slap one's cheeks (n: as a display of grief), rend one's garments, or dishevel one's hair.

@G6.5 It is recommended for distant relatives and neighbors to prepare enough food for the deceased's close family relatives to suffice them for a day and night, and to urge

them to eat.

@G6.6 For the deceased's family to prepare food and gather people over it is an unpraiseworthy innovation (bid'a, def:w29.3).

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Giving to Those Not In Need, Etc. h9.7

<u>*2*Chapter H1.0: Who Must Pay Zakat</u>

@(Muhammad Shirbini Khatib:) Lexically zakat means growth, blessings an increase in good, purification, or praise. In Sacred Law it is the name for a particular amount of property that must be payed to certain kinds of recipients under the conditions mentioned below. It is called zakat because one's wealth grows through the blessings of giving it and the prayers of those who receive it, and because it purifies its giver of sin and extolls him by testifying to the genuineness of his faith (al-Iqna fi hall alfaz Abi Shuja (y7), 1.183).)

@H1.1 Zakat is obligatory:
(a) for every free Muslim (O: male, female, adult, or child);
(b) who has possessed a zakat-payable amount (Ar.nisab, the minimum that necessitates zakat, def; for livestock h2.4-5; for grain and dried foodstuffs h3.4; for gold, silver, and other money h4.2; and for trade goods h5.1);
(c) for one lunar year.

@H1.2 Non-Muslims are not obliged to pay zakat, nor apostates from Islam (murtadd, def:o8) unless they return to Islam, in which case they must pay for the time they spent out of Islam, though if they die as non-Muslims their property is not subject to zakat(N:because their property is considered to belong to the Muslim common fund (bayt al-mal) from the moment such people leave Islam).

@H1.3 The guardian of a child or insane person is obliged to pay zakat from their property (N: if they owe any). It is a sin for the guardian not to pay the zakat due on their property, and when the child or insane person becomes legally responsible (O: upon reaching puberty or becoming sane), he is obliged to pay the amount that his guardian neglected to pay (O: of zakat in the past).

@H1.4 Zakat is due from the owner of property that has been:
-1- wrongfully seized from him;
-2- stolen;
-3- lost;
-4- fallen into the sea;
-5- or loaned to someone who is tardy in repayment;
-only if the owner regains possession of it, whereupon he must pay zakat on it for the whole time it was out of his hands (O: for the year or years that no zakat was paid in the absent property, since his having regained it establishes that it belonged to him the whole time, and his ownership of it not vitiated by the mere fact of its not having been in his possession during these years, provided that it has remained a zakat-payable amount (nisab) during them. If it has diminished through expenditure to less than the zakat-payable amount, then no zakat need be paid on it). If the owner cannot regain the property, there is no zakat on it.

@H1.5 If a landlord rents someone a house for two years for 40 dinars, which he accepts in advance and retains possession of until the end of the two years, then at the end of the first of the two years he only pays zakat on 20 dinars, but at the end of the second year he pays one year's zakat on the 20 which he paid zakat on at the end of the first year (N: as the 20 has now been in his possession a second year) and pays two years' zakat on the 20 for which he did not previously pay zakat (N: as it has remained in his possession for two full years).

@H1.6
Someone with only the zakat-payable amount (O: of gold or silver) must pay zakat on this amount even when he is in debt for an amount equal to it, for debts do not remove the obligation of zakat.

@H1.7 Zakat is not due on anything besides:
-1- livestock (def: h2.1);
-2- (n: some) food crops (h3.2);
-3- gold and silver (A: or their monetary equivalents);
-4- trade goods;
-5- mined wealth (n: meaning gold or silver exclusively, as at h6.1) :
-6- and wealth from treasure trovers (A: buried in pre-Islamic times).

@H1.8 Zakat is paid from the property itself, though it is permissible to take it from another lot of property (N: on condition that the amount paid is from the same type of property (n: of the five types mentioned above) that the zakat is due on, such that one may not, for example, pay money for zakat due on wheat (n: but must pay wheat. An exception to this is trade goods, which are appraised, and zakat may be paid on them with money, as at h5.1(O:) below)).

THE ZAKAT YEAR

@H1.9 By the mere fact that a full lunar year transpires (O: i.e. begins and ends while zakat-payable property is in the owner's possession), the poor now own the portion of it that the owner is obliged to pay as zakat. Thus, if someone has had 200 dirhams (n: the minimal zakat-payable amount of silver) in his possession for years without paying zakat, he is only obliged to pay zakat on it for the first year (O: because after that year, the amount owned by the poor (n: 5 dirhams) has diminished the money he possesses to less than the zakat-payable amount).

@H1.10 If all one's property were destroyed after having been in one's possession a full year but before it was possible to pay zakat (O: to deserving recipients), then there is no obligation to pay zakat on it (O: because it was destroyed through no fault of the owner); but if only part of the property has been destroyed, such that this diminishes the rest to less than the zakat-payable amount, then one must take the percentage due on the original amount (n; 2.5 percent, for example) from the remaining property, and no zakat is paid on the amount destroyed.
If all or part of one's property is destroyed after having been in one's possession a

full year and after it was possible to have paid zakat on it (O: by there being both property and recipients), then one must pay the zakat due on both the remainder and the property destroyed.

@H1.11 Zakat is not obligatory if a person's ownership of the property ceases during the year, even if only for a moment, and it then returns to his possession; or if it does not return; or if the person dies during the year.

@H1.12 The zakat year beings on property purchased or inherited when the buyer or inheritor takes possession of it, though if a person relinquishes his ownership of property during the zakat year merely to avoid paying zakat on it, this is offensive (O: as the learned differ about its unlawfulness). The more reliable opinion is that it is unlawful, though the transaction would be legally valid (dis: c5.2). But if such a person sells the property after possessing it a full year and before paying zakat on it (O: as when he sells it all, or sells part and the rest is not enough to require zakat), then the sale of the proportion of the property that was owed as zakat is invalid (O: because it belonged to someone else (n: i.e. the recipients, as at h1.9), and it is not valid to sell another's property without his consent), although the sale of the proportion of the property that was not owed as zakat is valid.

*2*Chapter H2.0: Zakat on Livestock

@H2.1 Zakat on livestock is restricted to camels, cattle, sheep, and goats.

@H2.2 Zakat is obligatory when one has owned:
(a) a zakat-payable number of livestock;
(b) for one year;
(c) and has been grazing them (n: on unowned open range, as dicussed below) for the entire year.
There is no zakat on work animals, for example, those trained to plow or bear loads (O: since the purpose in having them is utility, like clothes or household furnishings, and is not production).
Grazing means they have been grazed on open range pasturage(O: open range excluding pasturage growing on land that a person owe (A: as it would then be considered fodder)). If the livestock have been given fodder for a period long enough that they would have been unable to survive had they not eaten during it, then there is no zakat on them, though if fed with it for less than such a period, then this does not affect the necessity of paying zakat on them. (A: There is no zakat on cattle that have been solely fed fodder or grain, even if they could have otherwise been grazed.) (n: It is religiously more precautionary (def: c6.5) and of greater benefit to the poor to follow Imam Malik on this question. Malik holds that zakat is obligatory whenever one has possessed a zakat-payable number of livestock for a year, whether or not they are work animals, and whether they have been grazed on open pasturage or fed with fodder for the entire year (al-Sharh al-saghir ala Aqrab al-masalik ila madhhab al-Imam Malik(y35), 1.592).)

ZAKAT ON CATTLE

@H2.4 For cattle,the minimum on which zakat is payable is 30 head, for which it is obligatory to pay a yearling, meaning a male calf in its second year (A: though a female may take its place, being worth more).
The zakat due on 40 head is a two-year-old female that has entered its third year (A: a male will not suffice).
The zakat on 60 head is 2 yearling males. Zakat on additional numbers is figured in the same way:
on 30 head, a yearling male, and on 40 head, a two-year-old female (N: according to which of the two alternatives accommodates the last 10 head (dis:h2.6)).

ZAKAT ON SHEEP AND GOATS

@H2.5 For sheep or goats (n: the Arabic ghanam meaning both), the minimum on which

zakat is payable is 40, on which it is obligatory to pay a shah, meaning either a one-year-old sheep (O: in its second year) or a two-year-old goat (O: in its third year). The zakat on 121 sheep or goats is 2 shahs on 201 sheep or goats is 3,on 400 sheep or goats is 4 and for every additional 100 the zakat is 1 shah.

CALCULATING THE NUMBER OF ANIMALS

@H2.6 Numbers (O: of camels, cattle or sheep) which are between zakat quantities (N: i.e. which number more than the last relevant zakat quantity but do not amount to the next highest one) are not counted, and no zakat is due on them.

@H2.7 New offspring of a zakat-payable quantity of livestock that are born during the year are counted for the zakat of the year their mothers are currently in, no matter whether their mothers survive or die.
Thus, if one owned 40 sheep or goats which gave birth to 40 young a month before the year's end, but then the 40 mothers died, one's zakat on the offspring would be 1 shah.

@H2.9 If a group of livestock are all female, or are both male and female, then only a female animal may be paid as zakat, except as mentioned above (h2.4) for 30 cattle, where a yearling male is acceptable.

@H2.10 If a group of livestockare all male, then a male animal may be paid as zakat.

@H2.11 If all the livestock are below the minimum age that may be given as zakat (def: h2.4-5), then one of them is given anyway. But if the herd is mixed, with only some of them underage, then only an animal of the acceptable age may be paid.

@H2.12 If the animals of the herd are defective, an animal is taken which is of the average defectiveness (O: of the group, defective meaning with defects that permit return for refund when sold as merchandise (def: k5.3)).

@H2.13 If the herd is composite, such as sheep and goats, then either kind may be paid as zakat, though the value of the animal given must correspond to the average value of the members of the herd.

@H2.14 The following are not taken as zakat unless the owner wishes to give them:
-1- a pregnant female (O: because of its superiority);
-2- one that has given birth (O: because of the high yield of milk);
-3- a stud (O: as it is for insemination, and the owner would suffer its loss);
-4- a superior quality animal;
-5- or one fattened for eating.

ZAKAT ON JOINTLY OWNED PROPERTY OR VENTURES WITH SHARED FACILITIES

@H2.15 Two people pay zakat jointly as a single person if:
-1- they jointly own a zakat-payable amount of livestock or something else (O: such as fruit, grain, money, or trade goods), as when two people inherit it;
-2- or when the property is not jointly owned, as when each owner has, for example, 20 head of cattle (N: of a herd amounting to the zakat minimum of 40), but they share the same place to bed them down, to gather them before grazing, to pasture, water, or milk them, or share the same stud, employ the same shepherd, or similar, such as having the same watchman (O: for orchards and fields), the same drying or threshing floor (O: for fruit or grain), the same store, or the same warehouse.

***2*Chapter H3.0: Zakat on Crops**

@H3.1 (N: The rulings of this section apply to the farmers who raise the crops. As for those who buy agricultural produce with the intention to sell it, their produce is no longer considered as crops are, but is rather a type of trade goods, and the zakat on it must be paid accordingly (def; h5).)

@H3.2 There is no zakat on grains or legumes except the staple types that people cultivate, dry, and store, such as wheat, barley, millet, rice, lentils, chickpeas, broad beans, grass peas, and Sana'i wheat. There is no zakat on fruit except for raw dates and grapes (O: the zakat on grapes being taken in raisins, and on dates, in cured dates). There is no zakat on vegetables. Nor is there zakat on seasonings such as cumin or coriander (O:since the aim in using them is preparation of food, not nourishment).
@H3.3
One is obliged to pay zakat as soon as one possesses the zakat-payable amount (def: below) of grain, or when the ripeness and wholeness of a zakat-payable amount of dates or grapes is apparent. Otherwise, one is not obliged.

THE ZAKAT-PAYABLE AMOUNT OF CROPS

@H3.4 The minimal quantity on which zakat is payable for crops is 609.84 kilograms of net dried weight, free of husks or chaff, though for rice and Sana'i wheat, which are stored in the kernal, the zakat minimum, including husks, is 1219.68 kilograms of dried weight. Zakat is not taken from grain until it has been winnowed (O: made free of straw), nor from fruits until they are dried (n: made into raisins and dates).
The produce for the entire year (N: i.e the agricultural year) is added together in calculating the zakat minimum (N: when, for example, the season's first crop alone is less than the zakat minimum). When one crop is harvested after another-due to varietal differences or the location of the two fields-in the same year, and of the same kind of crop (n: such as spring wheat and winter wheat), zakat is payed from them as if they were a single quantity. Different varieties of grain are also calculated additively when harvested at the same time, though the fruit or grain of a different year. Grapes are not calculated cumulatively with dates, nor wheat with barley (O: as they are different from one another).

@H3.5 The zakat for crops that have been watered without effort, as by rain and the like, is 10 percent of the crop (N: i.e of the net dried storage weight of the grain, raisins, or dates). The zakat for crops that have been watered with effort such as on land irrigated by ditches (O: or a waterwheel) is 5 percent of the crop.
If a crop has been raised without irrigation for part of the year and irrigated for part of it, then the zakat is adjusted (O: according to the period, meaning how much of the time the fruit or crops were growing). (N: It is more reliable to consult agricultural experts as to how much of the crop's water came from rain and how much came from irrigation. If 50 percent of the water came from each, for example, one would pay 7.5 percent of the crop as zakat, as this is the mean between the above two percentages.)

@H3.6 After one has paid zakat once on a crop (N: if one is the farmer), there is nothing further due on it (O: as there is no repetition of zakat on one's crops when they are in storage, unlike the repetition of it on money), even if it remains in one's possession for years.

@H3.7 It is unlawful for the grower to consume dates or grapes or otherwise dispose of them or sell them before they have been assessed (O: i.e estimated as to how much there is, and the owner made responsible for the portion to be paid as zakat), and if he does, he is responsible for the loss (O: since part of it belongs to the poor (dis:h1.9)).

@H3.9 If an act of God destroys the fruit after assessment, there is no zakat on it.

***2*Chapter H4.0: Zakat on Gold, Silver, and Other Money**

@H4.1 Zakat is obligatory for anyone who has possessed the zakat-payable amount of gold or silver for one year.

THE ZAKAT-PAYABLE AMOUNTS OF GOLD, SILVER, AND OTHER MONEY

@H4.2 The zakat-payable minimum for gold is 84.7 grams, on which 2.1175 grams (2.5 percent) is due. The zakat-payable minimum for silver is 592-9 grams, on which 1408225 grams (2.5 percent) is due. There is no zakat on less that this.
(N: One must pay zakat (n: 2.5 percent) on all money that has been saved for a year if it equals at least the market value of 592.9 grams of silver (n:that is current during the year). While there is a considerable difference between the value of the gold zakat minimum and the silver zakat minimum, the minimum for monetary currency should correspond to that of silver, since it is better for the poor.)

@H4.3 Zakat is exacted proportionately (2.5 percent) on any amount over these minimums, whether the gold or silver is in coins,ingots, jewelry prepared for uses that are unlawful or offensive (dis:f17.6,8,11), or articles which are permanent acquisitions.

@H4.4 There is no zakat on (n: gold or silver) jewelery that is for permissible use.

***2*Chapter H5.0: Zakat on Trade Goods**

@H5.1 A zakat of 2.5 percent (O: like that of gold and silver as merchandise is assessed according to its value in them) is obligatory for anyone who:
(a) has possessed trade goods for a year (N: whether the merchandise itself remains, or whether there is sale and replacement, as below at h5.4-5);
(b) whose value (n: at the zakat year's end, as at h5.3) equals or exceeds the zakat minimum (N: 592.9 grams of silver if bought with monetary currency or silver, and 84.7 grams of gold if bought with gold, these being reckoned according to the values of silver and gold existing during the year);
provided:
(c) that the trade goods have been acquired through a transaction (O: such as a purchase, or acquired by a woman as her marriage payment (Mahr, def:m8), or received as a gift given in return for something else (dis:k31.4), or such as articles rented from someone in order to rent them out to others at a profit, or land rented from someone in order to rent it out to others at a profit);
(d) and that at the time of acquisition, the owner intended to use the goods for trade.
There is no zakat on the trade goods if (non-(c) above) the owner acquired them by estate division (irth, def:L1) or received them as a gift, or if (non-(d)) he acquired them by purchase but at the time did not intend using them for trade.

THE BEGINNING OF THE ZAKAT YEAR FOR TRADE GOODS

@H5.2 When the owner buys trade goods that cost (N: at least) the gold or silver zakat minimum, the year of the merchandise's possession is considered to have begun at the beginning of the gold or silver's zakat year (N: so that a merchant's zakat is figured yearly on his total business capital and goods). But the year of the merchandise's possession is considered to have begun at the moment of purchase if:
-1- the owner has bought the merchandise for less than the zakat minimum (O: provided the price of the merchandise plus his remaining money do not amount to the zakat minimum);
-2- or he has bought it(N: in exchange) for nonmonetary goods (N: provided these are not also trade goods, as at h5.4, for if they are, the zakat year continues from the zakat year of the previous goods).

ESTIMATING WHETHER THE VALUE OF ONE'S TRADE GOODS AMOUNTS TO THE ZAKAT MINIMUM OR NOT

@H5.3 Merchandise is appraised (A: at its current market value) at the end of the zakat year:
-1- in terms of the same type of money that it was purchased with, if bought with money (N: i.e if purchased with silver or monetary currency, we see if the merchandise's market value at the year's end has reached the silver zakat minimum (def:h5.1(b)); or if with gold, we see if its market value has reached the gold minimum) even if it had been purchased for less than the zakat minimum (N: at the beginning of the year) (O: so that if it has now reached the value of the zakat minimum, one pays zakat on it, and if

not, then there is no zakat);
-2- or in terms of its value in local monetary currency, if the merchandise was acquired by other than paying money for it (O: such as in exchange for goods, or acquired by a woman as her marriage payment (mahr), or by a husband in exchange for releasing his wife from marriage (def:n5)). If its value equals the zakat minimum (h5.1(b)), then zakat is paid. But if not, then there is no zakat on it until the end of the next year, when it is reappraised and zakat is paid if its value amounts to the zakat minimum, and so on (N: in the following year).
It is not a condition that the value of the trade goods amount to the zakat minimum except at the end of the year(O: not at the beginning, middle, or during the whole of the year).

@H5.4 If trade goods are exchanged for other trade goods during the course of the year, this does not interrupt their possession (O: because zakat on merchandise is based on the value, and the value of the previous merchandise and the new merchandise is the same, so the year of its possession is not interrupted by merely transferring it from one set of goods to another), though the zakat year of the funds which a professional money changer exchange, for other funds is interrupted by each exchange (N: and he pays no zakat as long as he keeps changing his business capital).

@H5.5 If merchandise is sold during the zakat year at a profit and its price is kept until the end of the year, then zakat on the merchandise's original value is paid at the end of that zakat year, but the zakat on the profit is not paid until the profit has been possessed for a full year. (n: A second position in the Shafi'i school is that the zakat on the profit is simply paid in the current zakat year of the merchandise, just as one pays zakat on the offspring of livestock (dis:h2.7) in the current year of their mothers (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 1.399).)

***2*Chapter H6.0: Zakat on Mines and Treasure Troves**

@H6.1 A zakat of 2.5 percent is immediately due on:
(a) the zakat minimum or more of gold or silver (def:h4.2) (O:gold or silver excluding anything else, such as iron, lead, crystal, turquoise, cornellian, emerald, antimony, or other, on which there is no zakat);
(b) extracted from a mine (O: i.e a site at which Allah has created gold or silver) located on land permissible for the miner to work or owned by him;
(c) and that this amount of ore has been gathered by working the site one time, or several times uninterrupted by abandoning or neglecting the project.
The zakat is only paid after the ore is refined into metal.
If the person stops working the site for a justifiable reason, such as to travel (O: not for recreation, but for something such as an illness) or to fix equipment, then he adds (O: the ore collected after the interruption to that collected before, in calculating the zakat minimum). Ore found on someone else's land belongs to the owner of the land.

ZAKAT ON TREASURE TROVES

@H6.2 An immediate zakat of 20 percent is due when one finds a treasure trove that was buried in pre-Islamic times (N: or by non-Muslims, ancient or modern) if it amounts to the zakat minimum (def: h4.2) and the land is not owned. If such a treasure if found on owned land, it belongs to the owner of the land. If found in a mosque or street, or if it was buried in Islamic times, it is considered as a lot and found article (def: k27).

***2*Chapter H7.0: The Zakat of `Eid Al-Fitr**

@H7.1: Who Must Pay It
The zakat of `Eid al-Fitr is obligatory for every free Muslim, provided:
(a) that one has the necessary amount (O: 2.03 liters of food);
(b) and that on the night before the `Eid and on the ~Eid itself, this is in excess of what one needs to feed oneself and those whom one is obliged to support (def:m12.1), what one needs to clothe them, and in excess of one's debts and housing expenses. If

one's excess amounts to only part of the required zakat, one must pay as much of it as one has.

@H7.2: Paying the Zakat of `Eid Al-Fitr for One's Dependents
Someone obligated to pay the zakat of 'Eid al-Fitr must also pay it for every person he is obliged to support, such as his wife and family (O: e.g. his young son, grandson, father, or mother), if they are Muslim and if he has enough food (O: 2.03 liters per person above his own expenses and theirs), though he is not obliged to pay it for his father's wife when supporting his father because of the father's financial difficulties, even though he is obliged to support her (dis: m12.5).

@H7.3If one is obligated to pay the zakat of 'Eid al-Fitr but only has enough to pay part of it, then one begins by paying one's own, then that of one's wife, young child, father, mother, and then one's adult son (O: without an income, as when he is chronically ill or insane, for otherwise one is not obligated to support him).

@H7.4 A wealthy woman married to a man too poor to pay her ~Eid al-Fitr zakat is not obliged to pay her own (A: though it is sunna for her to pay this and all forms of zakat to her husband, even if he spends it on her).

@H7.5 The zakat of ~Eid al-Fitr becomes obligatory when the sun sets on the night before the `Eid (n: meaning on the evening of the last day of Ramadan).

@H7.6: What Type of Food Must Be Given
The zakat of `Eid al-Fitr consists of 2.03 liters of the main staple of the area in which it is given, of the kinds of crops on which zakat is payable (def:h3.2). (A: If the main staple is bread, as in many countries, only wheat may be given, and is what is meant by the expression giving food here and in all texts below dealing with expiations (e.g. j3.22(2)).) (N: The Hanafi school permits paying the poor the wheat's value in money, both here and for expiations.) It is permissible to give the best quality of the staple food of the area, but not to give less than the usual quality (O: such as by giving barley where
wheat is the main staple).

@H7.7
It is permissible to give the zakat of `Eid al-Fitr (N: to deserving recipients (dis: h8.26) ) anytime during Ramadan, though the best time is on the day of `Eid al-Fitr before the prayer (def:f19.1). It is not permissible to delay giving it until after the day of the `Eid (O: that is, one may give it until sunset), and is a sin to delay until after this, and one must make it up (N: by paying it late).

<u>*2*Chapter H8.0: Giving Zakat to Deserving Recipients</u>

@H8.1 It is unlawful to delay paying what is due from a zakat-payable amount of property when:
(a) it has been possessed for one year;
(b) one can find the) O: eight) categories (O: of eligible recipients, or some of them) so as to be able to pay it;
(c) and the property is present (O: within 81 km./50 mi.);
-unless one is awaiting a poor person more deserving than those present, such as relative (O: of the person paying zakat whom he is not obliged to support), a neighbor, or a more righteous or needy person (O: than those present. Under these circumstances it is not unlawful to delay giving it because there is an excuse, unless withholding it involves considerable harm for those present).
@H8.2: Paying Zakat In Advance
Zakat, on all types of property that a year's possession of the zakat minimum makes giving obligatory, may be payed for the current year (A: alone) before the year's end whenever the property owner possesses the zakat minimum. This zakat in advance is considered valid only when the year ends and:
(a) the recipient it still among the types eligible for zakat (O: meaning, for example, that his state has not changed from poverty to wealth);

(b) the zakat giver is still obligated to pay it;
(c) and the property is still as it was (O: i.e. the zakat minimum still exists and has not been destroyed or sold).
The zakat in advance is not valid if (N: before the end of the year) :
-1- (non-(a) above) the poor person who accepted it dies, or becomes financially independent for some other reason than having accepted the zakat;
-2- (non-(b)) the giver dies;
-3- or (non-(c)) the property diminishes to less than the zakat minimum by more than the amount given in advance (O: such as when the giver takes out 5 dirhams as zakat in advance from 200 dirhams, but his holdings are subsequently reduced by 10 (N: to 190 dirhams, which is less than the zakat minimum)), even when this reduction is because of sale.
When the zakat in advance is not valid, the giver may take it back if he has explained that the money has been given in advance (O: by merely having said, "This is my zakat in advance," or if the recipient knows it). If what was given as zakat still exists, the recipient gives it back together with any increment organically connected with it, such as additional weight gained by a head of livestock while in the recipient's possession. But the property owner is not entitled to take back an increment that is not organically connected to the zakat, such as its offspring (O: born from the animal while in the recipient's possession).
If the zakat given in advance no longer exists, then the giver is entitled to take back a substitute (O: whether it be the substitute for a commodity that is fungible (mithli, def: k20.3 (1)), such as silver dirhams, or whether for a nonfungible (mutaqawwim) commodity such as sheep or goats, in which case its price is the market value at the time the zakat in advance was accepted, not the time it ceased to exist).
After the return of the zakat in advance, the zakat giver pays the zakat from his wealth again if he is still obliged to. The zakat in advance that is paid from the zakat-payable amount (nisab) is considered as if still part of the giver's property (O: only in respect to calculating whether the giver's total property equals the zakat-payable amount. It is not actually considered as still belonging to the zakat giver, sincethe recipient is entitled to dispose of it by sale or otherwise while it is in his possession). Thus, if the zakat giver paid a sheep in advance as zakat on 120 head, and one of the sheep then gave birth to a new lamb, the giver would now be obliged to pay another sheep (O: it being as if he owns the (N: next highest) zakat-payable amount of 121 head (dis:h2.5)).

@H8.3: Authorizing Another to Distribute One's Zakat
It is permissible for the zakat giver to personally distribute his zakat to eligible recipients or to authorize an agent (wakil, def:k17) to do so. It is permissible for the zakat giver to pay his zakat to the imam (A: i.e. the caliph (o25) or his representative), and this is superior unless the imam is unjust, in which case it is better to distribute it oneself.

@H8.4: The Prayer of the Recipient for the Zakat Giver
It is recommended for the poor person (O: receiving zakat when the owner is distributing it) or the agent assigned to deliver the zakat to recipients (N: if the imam has gathered it by means of agents to distribute to the poor) to supplicate for the giver, saying, "May Allah reward you for what you have given, bless you in what you have retained, and purify it for you."

@H8.5: The Intention of Zakat
Making the intention of zakat is a necessary condition for the validity of giving it. The intention is made when zakat is paid to the poor person or the one being authorized to distribute it, and one must intend giving it as the zakat of one's property. (O: It is permissible to make the intention before paying the money.) When the owner has made this intention, it is not necessary that the agent distributing it also make an intention before giving it(O: because the owner's intention is sufficient, whether the agent is an ordinary individual or is the ruler. It is also permissible for the owner to authorize an agent to both make the intention and distribute the zakat).

@H8.6 It is recommended that the imam dispatch a zakat worker, (O: to collect zakat

funds from those obliged to pay, to make this easier for them. Such an agent must be) an upright Muslim (def: o24.4) who knows the rulings of zakat, and who is not of the Hashimi or Muttalibi clans of Quraysh.

@H8.7: The Eight Categories of Recipients
It is obligatory to distribute one's zakat among eight categories of recipients (O: meaning that zakat goes to none besides them), one-eighth of the zakat to each category. (n: In the Hanafi school, it is valid for the giver to distribute his zakat to all of the categories, some of them, or to confine himself to just one of them (al-Lubab fi sharh al-Kitab(y88), 1.155).)

@H8.8: The Poor The first category is the poor, meaning someone who:
(a) doe not have enough to suffice himself (O: such as not having any wealth at all, or having some, but (N: he is unable to earn any, and) what he has is insufficient to sustain him to the end of his probable life expectancy if it were distributed over the probable amount of remaining time; insufficient meaning it is less than half of what he needs. If he requires ten dirhams a day,for example but the amount he has when divided by the time left in his probable life expectancy is four dirhams a day or less, not paying for his food, clothing, housing, and whatever he cannot do without, to a degree suitable (dis:f4.5) to someone of his standing without extravagance or penury, then he is poor - all of which applies as well to the needs of those he must support (def;m12.1).) (N: A mechanic's tools or scholar's books are not sold or considered part of his money, since he needs them to earn a living);
(b) and is either:
-1- unable to earn his living by work suitable to him (O: such as a noble profession befitting him (N: given his health and social position), as opposed to work unbefitting him, which is considered the same as not having any. If such an individual were an important personage unaccustomed to earning a living by physical labor, he would be considered "poor". This also includes being able to do work suitable to one, but not finding someone to employ one);
-2- or is able to earn his living, but to do so would keep him too busy to engage in attaining knowledge of Sacred Law. (n: Nawawi notes, "If able to earn a living at work befitting him except that he is engaged in attaining knowledge of some subject in Sacred Law such that turning to earning a living would prevent the acquisition of this knowledge (dis: w36), then it is permissible for him to take zakat because the attainment of knowledge is a communal obligation, though zakat is not lawful for someone able to earn a living who cannot acquire knowledge, even if he lives at a school. What we have just mentioned is the most correct and well known position. Darami mentions three positions concerning someone engaged in attaining religious knowledge:
-that he deserves charity even when able to earn a living;
-that he does not deserve it;
- and that if he is an outstanding student who can be expected to develop a good comprehension of the Sacred Law and benefit the Muslims thereby, then he deserves charity, but if not, then he does not.
"Darami mentioned this in the chapter of "Voluntary Charity" (al-Majmu' (y108), 6, 190-91).)
But if one's religious devotions are what keeps one too busy to earn a living one is not considered poor.

@H8.9 Someone separated from his money by at least 81 km/50 mi is eligible for zakat. (N: This was in the past. In our day it is fitter to say that he must be far from his money in terms of common acknowledgement (def: f4.5).) (O: Such a person's absent property is as if nonexistent, and his "poverty" continues until the money is present. Likewise, someone owed money on a debt not yet due who does not have any other money is given zakat when it is distributed (N: to suffice him) until the debt becomes due.)

@H8.10 People whose needs are met by the expenditures of those who are obliged to support them such as their husbands or families are not given zakat (N: for poverty) (O: though it is permissible for a third party to give zakat to such a dependent by virtue of the dependent's belonging to some category other than the poor or those short of money (def: below), as when the person belongs to a category such as travellers

needing money (h8.18) or those whose hearts are to be reconciled (h8.14)).

@H8.11: Those Short of Money
The second category is people short of money, meaning someone who has something to spend for his needs but it is not enough, as when he needs five dirhams, but he only has three or four. The considerations applicable to the poor person also apply to someone short of money (O: namely, that he is given zakat if he cannot earn a living by work befitting him (def: h8.8(b)), or if he can earn a living but attainment of knowledge of Sacred Law prevents his doing so; though if he is able to earn a living but extra devotions prevent him from doing so, then he may not take zakat).

@H8.12: How Much the Poor are Given
A person who is poor or short of money is given as much as needed of tools and materials (O: if he has a trade, such as the tools of a carpenter) with which he can earn a living, or property with which he can engage in trade (O: if a merchant), each according to the demands of his profession. This amount varies, depending on whether, for example, he is a jeweller, clothier, grocer, or other.
If the recipient has no trade (O: i.e. is unable to do any work, whether for wages, by trading, or other), then he is given enough zakat to fulfill his needs from the present till the end of his probable life expectancy (O: based on (N: the average lifespan for someone like him in) that locality). Another position is that such a person is given enough for just one year.
These measures are obligatory when abundant zakat funds are available, whether the imam distributes them or a property owner. But if there is not much zakat available (O: meaning if the owner or imam distribtes funds that are too little to last the poor person for his probable life expectancy or for even one year), it is distributed as is, an eighth to each category.

@H8.13: Zakat Workers
The third category consists of zakat workers, the above-mentioned agents (h8.6) dispatched by the imam. These include the person collecting it, the clerk (O: recording what the owners give), the person who matches the payees to recipients, and the one who distributes it to recipients.
The zakat workers receive an eighth of the zakat funds. If this amount is more than it would cost to hire someone to do their job, then they return the excess for distribution to the other categories of recipients. But if less (N: than the cost of hiring someone), then enough is taken from the zakat funds to make up the difference. All of this applies only if the imam (A: caliph) is distributing the zakat (O: and has not alloted a fee to the zakat workers from the Muslim common fund (bayt al-mal)). If the property owner is distributing the zakat (O: or if the imam has alloted the workers a fee from the common fund) then the zakat funds are divided solely among the other categories of recipients.

@H8.14: Those Whose Hearts are to be Reconciled
The fourth category is those whose hearts are to be reconciled. If they are non-Muslims, they are not given zakat, but if Muslims, then they may be given it (O: so that their certainly may increase, or if they are recent converts to Islam and are alienated from their kin).
Those to be reconciled include:
-1- the chief personages of a people (O: with weak Islamic intentions) whose Islam may be expected to improve, or whose peers may be expected to enter Islam;
-2- or the heads of a people who collect zakat for us from Muslims living near them who refuse to pay it, or who fight an enemy for us at considerable expense and trouble to themselves.

@H8.15: Those Purchasing their Freedom
The fifth category is slaves who are purchasing their freedom from their owners. They are given enough to do so if they do not have the means.

@H8.16: Those in Debt
The sixth category is those who have debts (O: and they are of three types) :

-1- A person who incurs debts in order to settle trouble (O: between two people, parties, or tribes) involving bloodshed (O: as when there has been a killing but it is not known who the killer is, and trouble has arisen between the two sides) or to settle trouble concerning property (O: such as bearing the expense when trouble occurs over it) is given zakat even if he is affluent.
-2- A person who incurs debts to support himself or his dependents is given zakat if he is poor, but not if affluent. If he incurs a debt (O: for something lawful) but spends it on something unlawful, and then repents (O: and is felt to be sincere in this, and the original reason is known to have been something lawful), then he is given zakat.
-3- (O: And a third type, not mentioned by the author, which (n: given persons P,Q, and R) is when R incurs a debt by guaranteeing (daman, def; k15) to P that Q will pay P (n: what Q owes him). If R finds that neither he nor Q can pay, then R is given zakat (n: because he has gone into debt in order to guarantee Q's debt), even if the reason R agreed to guarantee Q was not charity (N: but was rather that Q would pay him back).)

@H8.17: Those Fighting for Allah
The seventh category is those fighting for Allah, meaning people engaged in Islamic military operations for whom no salary has been allotted in the army roster (O: but who are volunteers for jihad without remuneration). They are given enough to suffice them for the operation, even if affluent; of weapons, mounts, clothing, and expenses (O: for the duration of the journey, round trip, and the time they spend there, even if prolonged. Though nothing has been mentioned here of the expense involved in supporting such people's families during this period, it seems clear that they should also be given it).

@H8.18: Travellers Needing Money
The eighth category is the traveller in need of money, meaning one who is passing among us (O: i.e. through a town in Muslim lands where zakat is collected), or whose journey was not undertaken for the purpose of disobeying Allah. If such a person is in need, he is given enough to cover his personal expenses and transportation, even if he possesses money back home.

@H8.19: Paying Zakat to Recipients
A person who qualifies as a member of two or more of the above categories is only given zakat for one of them.

@H8.20 When the (N: eight) categories of recipients exist in the town where zakat is collected, it is unlawful and invalid to give it to recipients elsewhere (O: as it must be paid to those present if the property owner is distributing his own zakat. The other schools of jurisprudence permit giving it elsewhere). But if the imam (A: caliph) is distributing the zakat, he may give it to recipients in a different place.
If the zakat giver's property is in the desert, or none of the eight categories of eligible zakat recipients exist in his own town, then the zakat should be distributed in the nearest town.

@H8.21 Each category of recipients must receive an equal share, one-eighth of the total (dis:h8.7(n:)) (A: though one may give various individuals within a particular category more or less), except for zakat workers, who receive only their due wage (def:h8.13). If one of the categories does not exist in one's town, their eighth is distributed over the other categories such that each of them gets oneseventh. If two categories of recipients do not exist in the town, then each of the remaining categories receive a sixth of the zakat, and so on (O: such that if there were only one category in town, all the zakat would be paid to it).
It is obligatory to give zakat to every individual member of a category if the owner is distributing zakat and the individuals are of a limited, known number, or if the imam is distributing zakat and it is possible to give it out person by person and include them all because of the abundance of funds. If the owner is distributing zakat and the recipients in each category are not of a limited, known number, then the fewest permissible for him to give to in one category of zakat workers, in which a single person is enough.

@H8.22 It is recommended to give one's zakat to relatives other than those one is obliged to support (def: m12.1).

@H8.23It is recommended to distribute zakat to recipients in proportion to their needs, giving someone who needs 100 dirhams, for example, half of what one gives to someone who needs 200.

@H8.24 It is not permissible to give zakat to a non-Muslim, or to someone whom one is obliged to support (def: m12.1), such as a wife or family member.

@H8.25 It is not valid for one to give zakat to a poor person on condition that he return it to one to pay off a debt he owes, or to tell the recipient, "O hereby make the money you owe me zakat, so keep it for yourself." But it is permissible:
-1- for the giver to pay his zakat (O: to a poor person who owes him money) when the giver's intention is that the recipient should pay him back with it;
-2- for the zakat giver to tell the poor person,"Pay me the money you owe me so that I can give it to you as zakat";
-3- or for the poor person to tell his creditor, "Give me (O: zakat) so that I can pay it back to you (O: for the debt I owe you) ";
though it is not obligatory to fulfill these promises (O: meaning the outcomes alluded to in (2) and (3) above).

@H8.26 All of the above rulings concerning zakat (h8.2-25) apply to the zakat of 'Eid al-Fitr (def; h7) (O: in details, in giving it to deserving recipients (N: the eight categories described in this section), and in giving it in advance). It is permissible for a group of people to pool their zakat of `Eid al-Fitr,mix it, and collectively distribute it, or for one of them to distribute it with the others permission. (O: The author mentions this to inform people that anyone can distribute their zakat of `Eid al-Fitr to all categories of recipients, no matter how little it is.)

<u>*2*Chapter H9.0: Voluntary Charity</u>

@H9.1 Giving voluntary charity is recommended at all times; especially during Ramadan, before praying for something one needs, (O: when there is an eclipse, illness, or journey,) and at all noble times and places (O: e.g. times such as the first ten days of Dhul Hijja or the days of `Eid and places such as Mecca or Medina).

@H9.2 It is superior to give charity to righteous people (O: meaning those who give Allah and His slaves their due), to one's relatives (A: which is better than giving to the righteous), even those of them who are one's enemies (A: and this is better than giving to one's friends among them), and to give from the best of one's wealth (O: meaning that which is lawful, which is better than giving what is from a doubtful source, or giving what is of poor quality, either of which are offensive to give as charity. It is unlawful to give property that has been unlawfully obtained (N: if one knows its rightful owner. If not, one must give it as charity (A: or taxes (def: p32)) to remove it from one's possession)).

@H9.3 It is unlawful to give as charity money needed to support one's dependents or needed to pay a debt that is currently due (O: because supporting one's dependents or paying a current debt are obligatory, and obligatory acts take precedence over recommended ones).

@H9.4 It is recommended to give away in charity everything one owns that is in excess (O: of personal expenses and the expenses of those one is obliged to support), provided one can be patient with the resultant poverty. (O: But if one cannot be patient, it is offensive to give away what is in excess of one's needs.)

@H9.5 It is offensive to ask for anything besides paradise with the words "For the sake [lit. "By the countenance (O: i.e. entity) "] of Allah," though if someone does, it is offensive not to give to him.

@H9.6 It is unlawful to remind a recipient of charity that one has given him (mann, dis:p36), and it eliminates the reward.

@H9.7 (O: It is permissible to give charity to a person not in need, or to a relative of the Prophet (Allah bless him and give him peace). It is offensive for a person not in need to accept charity,and preferable that he avoid it. It is unlawful for such a person to accept it if he pretends to be needy, and is unlawful for him to ask for charity. It is permissible to give charity to a non-Muslim (n: but not zakat, as above at h8.24).)

***1*BOOK I: FASTING**

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*2*Chapter I1.0: Fasting Ramadan
@(O: The month of the fast is the best of months, and it is one of the distinctive features of this Community (Umma); that is, as now practiced, a fact not contradicted

by the word of Allah Most High,
"Fasting is prescribed for you, as it was prescribed for those before you" (Koran2:183),
the resemblance interpreted as referring to fasting without other qualification, not to its amount and time. Fasting Ramadan is one of the pillars of Islam (def: u2) by scholarly consensus (ijma'). Bukhari and Muslim relate that the Prophet (Allah bless him and give him peace) said,
"Islam is built upon five: testifying there is no god but Allah and that Muhammad is the messenger of Allah, performing the prayer, giving zakat, making the pilgrimage to the House [Kaaba], and fasting Ramadan.")

@I1.1: Who Must Fast Ramadan

Fasting Ramadan is obligatory for:
(a) every Muslim (O: male or female) who:
(b) has reached puberty;
(c) is sane;
(d) is capable of bearing the fast;
(e) and if female, is not in the period of menstruation or postnatal bleeding (nifas).

@I1.2: Those Not Obliged to Fast Ramadan

The following are not required to fast:
-1- (non-(a) above) a non-Muslim (O: meaning that we do not ask him to, nor would it be valid if he did (N: though he is punished in the next life for not doing so));
-2- (non-(b)) a child;
-3- (non-(c)) someone insane;
-4- or (non-(d)) someone whom fasting exhausts because of advanced years or having an illness from which he is unlikely to recover.
None of the above-mentioned is obliged to fast or to make up missed fast-days, though someone who misses a fast because of (4) above must give 0.51 liters of food (def: h7.6 (A)) for each fast-day he misses.

@Il.3 The following are not required to fast, though they are obliged to make up fast-days missed (A:making up, according to our school, meaning that one fasts a single day for each obligatory fast-day missed) :
-1- those who are ill (N: the illness that permits not fasting being that which fasting would worsen, delay recovery from, or cause one considerable harm with; the same dispensation applying to someone who needs to take medicine during the day that breaks the fast and that he can not delay taking until night);
-2- those who are travelling (def:i1.7);
-3- a person who has left Islam (murtadd, def:o8);
-4- or a woman who is in her menses or period of postnatal bleeding.
If the ill person or traveller take it upon themselves to fast, it is valid, though a fast by someone who has left Islam, or a woman in menstruation or period of postnatal bleeding is not valid. When not fasting on a day of Ramadan, if a non-Muslim becomes a Muslim, an insane person regains his sanity, or a child reaches puberty, it is recommended but not obligatory that they fast the rest of that day and make up the fast later. A child who reaches puberty while fasting on a day of Ramadan is obliged to fast the rest of the day, and is recommended to make it up.
A woman whose period ends during a day of Ramadan is recommended to fast the rest of the day is obliged to make up the fast (O: and the fast-days prior to it missed during her period or postnatal bleeding).

@I1.4If the testimony of a witness (O: that the new moon has been seen during the previous night) is made during a day (N: that was initially) uncertain as to whether it was the first of Ramadan, then it is obligatory (O: for people) to fast the rest of the day and to make it up later.

@I1.5A child of seven is ordered to fast, and at ten is beaten for not fasting (N: with the reservations mentioned at f1.2).

@I1.6Excessive hunger or thirst, meaning likely to cause death or illness, are legitimate excuses not to fast, even when they occur on a day one has already begun to fast, as soon as the fast becomes a hardship.

@I1.7It is permissible not to fast when travelling, even when the intention to fast has been made the night before, provided that the journey is at least 81 km./50 mi one way, and that one leaves town (def:f15.6) before dawn. If one leaves after dawn, one is not entitled to omit the fast. It is preferable for travellers not to fast if fasting would harm them, though if not, then fasting is better.

@I1.8A woman who is breast-feeding a baby or is pregnant and apprehends harm to herself or her child may omit the fast and make it up later, though if she omits it because of fear (A: of harm) for the child alone (O: not for herself) then she must give 0.51 liters of food (def:h7.6(A:)) in charity for each day missed,as an expiation (A: in addition to making up each day).

@I1.9: Sighting the New Moon
Fasting Ramadan is only obligatory when the new moon of Ramadan is sighted (O: i.e in respect to the person who sees it, though for those who do not see it, it only becomes obligatory when the sighting is established by the testimony of an upright witness (def:o24.4)). If it is too overcast to be seen, then(n:the preceding lunar month of) Sha'ban is presumed to last for thirty days, after which people begin fasting Ramadan. If the new moon is sighted during the day (O: before noon on the last of the thirty days), it is considered as belonging to the following night (O: and the ruling for that day does not change).
If the moon is seen in one city but not another, then if the two are close (O: i.e. in the same region), the ruling (n: that the new month has come) holds for both. But if the two are not close, then not (O: i.e. the people far from the place where it was seen are not obliged to fast), not close meaning in different regions, such as the Hijaz, Iraq, and Egypt.

@I1.10The testimony of a single witness (N: that the new moon has been seen) is sufficient to establish that the month of Ramadan has come, provided the witness is upright (Def o24.4), male, and responsible for the duties of Islam (O: which excludes boys who have reached the age of discernment but not puberty).

@I1.11
If a person knows by calculations of lunar movements or the positions of the stars that the next day is Ramadan, fasting is nevertheless not obligatory (O: for him or the public), though it is permissible for him alone.

@I1.12If it is difficult to learn which month it is, for someone imprisoned or the like (O: such as someone being held in a dark place who cannot tell night from day, or someone who does not know when Ramadan has come because of being in a land without habitations or people who know when it is), then such a person is obliged to reckon Ramadan as best he can and to fast it. Such a fast is valid if it remains unknown as to whether the month fasted actually coincided with Ramadan, or if it did coincide withit, or if the month fasted occurred after it, though if the month fasted was before Ramadan, it is not valid.

@I1.13: The Conditions of a Valid Fast
The conditions of a valid fast are:
(a) the intention;
(b) and refraining from things which break the fast.

@I1.14: The Intention
One must make the intention to fast for each day one fasts. If the intended fast is obligatory, then the intention must:
(a) be specific (O: as to the fast being for Ramadan, a vow, an expiation, or whatever);
(b) and be made in the night prior to dawn.(n: For Hanafis, the intention for a day of Ramadan (but not a makeup) is valid if made before midway between true dawn and sunset of the day itself (al-Hadiyya al-`Ala'iyya (y4), 171).)
The optimal way is to intend (O: in one's heart) to fast the following day as a current

performance of the obligation of Ramadan in the present year for Allah Most High (O: fast and of Ramadan being unanimously considered as integeral to the intention, though scholars differ concerning the obligatoriness of intending it as a current performance, an obligation, or for Allah Most High).

@I1.15One's intention is valid if on the night before a day of uncertainty (N: as to whether it will be the first day of Ramadan), someone one trusts but who does not have all the qualifications of an acceptable witness (def:i1.10) informs one of having seen the new moon, and relying on this information one intends to fast the next day to fulfill the obligation of Ramadan. and the next day turns out to be Ramadan. But one's fast is not valid if one makes the intention without anyone having informed one of sighting the new moon, no matter whether if one's intention is firm or whether undecided, as when one intends that if the following day is Ramadan, one will fast, but if not, one will not.

@I1.16One's fast is valid if on the night before 30 Ramadan, one intends that if the following day is of Ramadan, one will fast, but if not, one will not, and then the next day is of Ramadan (O: since it already is Ramadan and the initial presumption is that it will remain so (dis:e7.6(A:))).

@I1.17Nonobligatory fasts are valid by merely making the intention to fast before noon (O: without needing to specify the type of fast).
@I1.18: Things Which Invalidate the Fast
Each of the following things invalidates the day's fast when one knows they are unlawful (A: during an obligatory fast) and remembers one is fasting (A: but does them deliberately anyway); and they obligate one to both make up the fast-day later and fast the remainder of that day:
-1- eating;
-2- drinking (N: and smoking (A: though not if there is some smoke in the air that one unintentionally inhales));
-3- taking snuff (O: up the nose that reaches the sinuses, a ruling likewise applicable to oil or water preparation);
-4- suppositories(O: vaginal or anal);
-5- pouring (O: water, oil, or other) into the ears until it reaches the eardrum;
-6- inserting a finger or something else into the anus or vagina further than the area disclosed when one squats(O: to relieve oneself);
-7- anything that enters the body cavity, whether stabbed into it (O: such as a knife or spear thrust which penetrates it) or whether medicine (N: though intramuscular or intravenous injections of medicine do not break one's fast);
-8- vomiting (N: if it is deliberate and one is able to prevent it, though if nausea overcomes one, vomiting does not break one's fast);
-9- sexual intercourse (O: if deliberate, even if there is no orgasm), or orgasm from stroking a nongenital region or from masturbation (O: no matter whether such orgasm is produced by unlawful means, like one's own hand (dis:w37), or whether by lawful means, such as the hand of one's wife);
-10- using so much water to rinse out the nose and mouth that some reaches the stomach (O: i.e. if any reaches the body cavity because of using an abundance of water, it breaks the fast, though if some water slips down when an abundance has not been used, it does not break it. Nor does it harm to swallow one's saliva after rinsing the mouth out, even if able to expectorate it);
-11- swallowing saliva that has left the mouth, such as when threading a needle and one moistens the end of the thread, and then remoistens it, swallowing some of the saliva that the thread had been previously wetted with;
-12- swallowing saliva that has been qualitatively altered, such as when threading a needle and one wets the end, and some dye from the thread remains in the mouth and is swallowed (A: so people who use toothpaste should take care to eliminate it from the mouth before dawn on fastdays);
-13- swallowing saliva that has been made impure by contact with filth (najasa), such as when one's mouth is bloodied and one spits out the saliva until it is clear and colorless, but neglects to wash one's mouth out (O: before swallowing the saliva, which breaks the fast because the mouth is still affected by impurity (n: and water is

necessary to purify it, as at e14.10));
-14- allowing phlegm or mucus at the back of the mouth to be swallowed when one could have spit them out (n: though in the Hanafi school this does not break the fast, even if intentional (al-Hadiyya al-`Ala'yya (y4), 180));
-15- or to continue making love, even for a moment, after dawn has arrived.

@I1.19: The Criterion for Things Which Invalidate the Fast
The criterion as to whether something invalidates the fast is (N: whether it comes under any one of three headings) :
-1- a substance, even if not much, that reaches the body cavity through an open passageway (O: substance excluding odors, and open excluding anything else, such as absorption through pores). (N: The deliberate introduction of anything besides air or saliva into the body cavity breaks the fast, though if the person fasting does so absentmindedly or under compulsion, it does not break it);
-2- sexual intercourse (O: meaning inserting the head of the penis into the vagina);
-3- or orgasm, whether as the result of touching (O: such as kissing, contact, lying between the thighs, or something else), or because of masturbation;
-provided that one is aware that these acts are unlawful and that one remembers one is fasting (N: and provided they are done deliberately and voluntarily).

@I1.20: THE EXPIATION FOR VITIATING A FAST-DAY BY SEXUAL INTERCOURSE
In addition to making up the fast, an expiation is obligatory for fast-days of Ramadan that are (A: deliberately) vitiated by sexual intercourse. (O: The legal occasion of the offense is the particular day of fasting, so that if it were committed on two separate days, two separate expiations would be necessary, though if it were committed twice in one day there would be only one expiation.)
The expiation consists of freeing a sound Muslim slave (dis:k32), or if not possible, then to fast the days of two consecutive months. (A: In our school the expiation is only for sexual intercourse, though the Hanafis hold it is obligatory for vitiating the fast for other reasons as well.) If this is not possible, then the expiation is to feed sixty unfortunates (N:0.51 liters of food (def: h7.6 (A:)) to each unfortunate). If one is unable to do this, the expiation remains as an unperformed obligation upon the person concerned.
The woman who is made love to is not obliged to expiate it.

@I1.21: THINGS THAT DO NOT BREAK THE FAST
The fast remains valid if any of the things which break it are done absentmindedly (O: not remembering the fast), out of ignorance (O: that doing the things which break the fast are unlawful, whether this is due to being a new Muslim, or to being born and raised far from Islamic scholars), or under compulsion. Not is it broken by:
-1- involuntary vomiting;
-2- having a wet dream, or orgasm as a result of thinking or looking at something (A: unless the latter two usually cause orgasm, in which case one has broken one's fast by not avoiding them);
-3- some water reaching the body cavity as a result of rinsing out the mouth or nose, provided not much (def: f4.5) water was used;
-4- saliva carrying down some food particles from between one's teeth, provided this is after having cleaned between them (O: after eating, by using a toothpick or the like between them), if one is unable to spit them out;
-5- gathering saliva in the mouth and swallowing it, bringing saliva as far forward as the tongue (O: but not to the lips) and then swallowing it, or coughing up phlegm from the throat and spitting it out;
-6- the arrival of dawn when there is food in one's mouth which one spits out;
-7- the arrival of dawn when one is lovemaking and one immediately disengages;
-8- or when sleeps all day or has lost consciousness, provided one regains consciousness for at least a moment of the day.

@I1.22: EATING OR DRINKING WHEN UNCERTAIN OF THE TIME OF DAWN OR SUNSET
Making up the fast-day is obligatory if one eats, thinking it is night, but then finds that it is day; or eats, presuming (N: but uncertain) that the sun has set, and the question (O: as to whether one ate before sunset or after) continues and remains

unresolved (dis:e7.6 (A:)).
It is not obligatory to make up a fast-day on which one ate on the presumption that dawn had not yet come, and the question (O: as to what the case was) remains unresolved (A: since the initial certainty was that it was night).

@I1.23: INVOLUNTARY ACTS WHICH INVALIDATE THE FAST
A fast-day is invalidated by;
-1- insanity, even for a moment;
-2- being unconscious the entire day;
-3- or the appearance of menstrual or postnatal flow.
(N: The insane person is not obliged to make up such a day's fast, while the others are.)

@I1.24: RECOMMENDED MEASURES WHILE FASTING
A predawn meal is recommended, even if it is slight or consists of water alone (O: and the time for it begins from the middle of the night onwards). It is best to delay it to just before dawn, as long as one does not apprehend dawn's arrival while still eating (O: though when one does not know when dawn is, it is not the sunna to thus delay it).

@I1.25It is best to hasten breaking the fast when one is certain that the sun has set. One should break it with an odd number of dates, though if one has none, water is best. It is recommended to say after doing so, "O Allah, for You I fasted, and upon Your bounty I have broken the fast."

@I1.26It is recommended in Ramadan:
-1- to be especially generous (O: in giving charity);
-2- to improve one's relations with family and relatives;
-3- to recite the Koran much;
-4- to spend periods of spiritual retreat (i'tikaf, def:13) in the mosque, especially during the last ten days of Ramadan;
-5- to break the fast of others after sunset, even if only with water (O: because of the hadith related by Tirmidhi that the Prophet (Allah bless him and give him peace) said,
"He who breaks another's fast earns the same reward as the one who fasted without diminishing the latter's reward in the slightest");
-6- and if in a state of major ritual impurity (janaba), to perform the purificatory bath (ghusl) before dawn.

@I1.27It is recommended to avoid:
-1- slander (def: r2.2), lying, and foul language (N: which are always unlawful, but even worse when fasting);
-2- the pleasure of the senses (O: i.e. those that do not break the fast, such as smelling fragrant plants or looking at them, because of the gratification therein which is incompatible with the wisdom of the fast, even though they are permissible when not fasting) (A: and while it is recommended not to use perfume during a fastday, it does not hurt to use it on the night before);
-3- and medicinal bloodletting (N: or blood donating) or cupping (O: as these, like the fast, weaken a person and could have a synergistic debiliating effect).
If someone abuses one while fasting; one should say tohim,"I am fasting"

@I1.28: THINGS THAT ARE UNLAWFUL OR OFFENSIVE WHILE FASTING
It is unlawful to kiss (O: or embrace, or pet with the hand) on fast-days for those it sexually arouses.

@I1.29 It is unlawful not to eat or drink anything (wisal) between fast-days, though it is not unlawful if one has some water, even a mouthful, before dawn.

@I1.30 It is offensive during the fast to taste food, or to use a toothstick (def: e3) after noon.

@I1.31 It is offensive during the fast to line the eyes with kohl (def:e4.1(4)) or to bathe.

@I1.32 It is offensive (dis:w38) for anyone (O: whether fasting or not) to keep silent all day until night
(O: when there is no need to) (A: need including the necessity of restraining the tongue from useless talking (dis:r1.1)).

@I1.33: MAKING UP MISSED FAST-DAYS
Someone obliged to make up some fastdays of Ramadan is recommended to do so consecutively and immediately. It is not permissible for a person with some unperformed fast-days of Ramadan to delay making them up until the next Ramadan unless there is an excuse (N: for delaying). If one delays until the next Ramadan, one must pay 0.51 liters of food (def: h7.6(A:)) (N: to the poor) for each fast-day missed, in addition to making it up If making up a fast-day is delayed until a second Ramadan comes, then one must pay double this amount for each day. And so forth; every year that passes upon an unfulfilled fast day adds 0.51 liters to be paid for that day. (O: But if one's excuse for not performing them persists, such as travel or illness, then it is permissible for one to delay making them up as long as the excuse is present, even it is lasts for years. One is not obliged to pay the penalty fee for this delay even if several Ramadans go by, but is merely obliged to make up the missed fastdays).
If someone dies with unperformed fast-days which he could have fasted but did not, then each fast-day is paid for (N: by the responsible family member) with 0.51 liters of food (N: or he can fast for him (A: in place of paying for each day)). (O: As for someone who dies after two Ramadans elapse upon his missed fast-days, each fast is paid for with 1.02 liters (n: double the above) of food (N: or the family member can both fast a day and pay 0.51 liters for each day (A:i.e the family member may fast in the deceased's stead for the initial nonperformance of the fast-day, though he cannot fast in place of paying the 0.51 liters of food for each year that making up a fast-day was delayed before the deceased's death, because this is the legal expiation for the delay). As for someone who died before his excuse (n: for not fasting) ceased to exist, nothing at all is obligatory for him).)

<u>*2*Chapter I2.0: Voluntary Fasting</u>

@I2.1: DAYS ON WHICH FASTING IS RECOMMENDED
It is recommended to fast:
-1- on six days of the month of Shawwal, and that they be the six consecutive days immediately following `Eid al-Fitr(O: their being consecutive and their immediately following the 'Eid are two separate sunnas), though it is permissible to fast them nonconsecutively;
-2- on 9 and 10 Muharram;
-3- on the full moon (lit. "white") days of every lunar month, which are the thirteenth and the two days that follow it;
-4- on Mondays and Thursdays;
-5- on the first nine days of Dhul Hijja;
-6- during the inviolable months, which are four: Dhul Qa'da, Dhul Hijja, Muharram, and Rajab;
-7- (n: and on every other day, a fast described by the Prophet (Allah bless him and give him peace) as "the most beloved fast to Allah" (Riyad al-salihin (y107), 466)).
The best fast-days, after Ramadan, are those of Muharram, then Rajab, then Sha'ban. (O: In general, the best month for fasting, after Ramadan and the inviolable months, is Sha'ban (A: there being no objection to fasting an entire month or just part of one).
It is recommended to fast on the Day of `Arafa (O: 9 Dhul Hijja), unless one is a pilgrim present at `Arafa (def:j8), when it is better not to fast. It is not offensive for such a person to fast, though it is better for him not to.

@I2.2: FASTS THAT ARE OFFENSIVE OR UNLAWFUL
It is offensive to fast every day of the year (O: besides the two `Eids and the three days following `Eid al-Adha (n: these being unlawful to fast (dis: below) rather than offensive)) if this harms one (O: in body or mind) or causes one not to do something

one should do (O: for oneself or others, even if merely recommended). If not, then it is not offensive.

@I2.3It is unlawful and not valid to fast (O: whether voluntarily, as a vow, or as a makeup) on the two `Eids or the three days following `Eid al-Adha.

@I2.4It is also unlawful and invalid to fast on a day of uncertainty (N: as to whether it is the first day of Ramadan), meaning that on 30 Sha'ban, someone who does not have the necessary qualifications of a witness (def:i1.10) mentions having seen the new moon of Ramadan. Otherwise (O: when no one has mentioned seeing it, or when an acceptable witness has), then it is not considered a day of uncertainty.
Fasting on a day of uncertainty is not valid as a day of Ramadan, though it can validly fulfill a vow or a makeup fast. Voluntary fasting on such a day is only valid when one would have fasted anyway because it falls on a day one habitually fasts, or when one has been fasting each day since before mid-Sha'ban. If neither of these is the case, then it is unlawful and invalid to fast on it.
It is unlawful to fast during the days after mid Sha'ban unless one would have fasted anyway because they fall on days one habitually fasts, or unless one has been fasting each day since before mid-Sha'ban.
@I2.5(Nawawi: (n: with commentary by Muhammad Shirbini Khatib)) It is offensive to single out Fridays or Saturdays ((Shirbini:) or Sundays for fasting, i.e. to single out one of the above-mentioned days when they do not coincide with days one normally fasts. The fast of someone who usually fasts every other day and whose fast coincides with one of these days or with a day of uncertainty is not offensive, because of the hadith related by Muslim,
"Do not single out Friday for fasting unless it happens to coincide with a fast one of you performs,"
similar days being analogous to Fridays in this respect) (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 1.447)).

@I2.6Once begun, it is unlawful to interrupt either an obligatory fast-day or an obligatory prayer, whether it is current, a makeup, or vowed; though if it is nonobligatory (O: whether wholly supereogatory or linked with a particular event or time), then one may interrupt it (O: but it is offensive to do so if there is no excuse).

<u>*2*Chapter I3.0: Spiritual Retreat (I`tikaf)</u>

@I3.1It is sunna, at any time, to make spiritual retreat (i'tikaf) in the mosque.

@I3.2: LAYLAT AL-QADR
Spiritual retreat (i'tikaf) is especially recommended in Ramadan, particularly in the last ten days of it, seeking Laylat al-Qadr (lit. "the Night of the Divine Decree") (O: which is, as Allah Most High says,"better than a thousand months" (Koran 97:3). meaning that spiritual works therein are better than works of a thousand months lacking Laylat al-Qadr. Indicating its excellence, the Prophet (Allah bless him and give him peace) said, "He who prays on Laylat al-Qadr in faith and expectation of its reward will be forgiven his previous sins").
Laylat al-Qadr could be on any night of Ramadan (n: or any other month of the year, according to some (dis:w39)). It probably occurs within the last ten nights, more likely on the odd numbered ones (N: remembering that the night of an Islamic date comes before the day of that date), the twenty first and twenty third of which are the likeliest(n:though most scholars hold it to be the twenty-seventh (Mughni al-Muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y730, 1.450)). On Laylat al-Qadr it is recommended to frequently repeat, "O Allah, You are oft-relenting and love to forgive, so forgive me."

@I3.3: HOW TO PERFORM SPIRITUAL RETREAT
At minimum, spiritual retreat (i'tikaf) consists of:
(a) staying, with the intention of spiritual retreat, for more than the least amount of time that can be considered repose (A: i.e. a moment);
(b) while being Muslim, sane, conscious, and free of major ritual impurity (O: i.e. of

menstruation, postnatal bleeding, and major impurity (janaba));
(c) in a mosque, even when this stay is no more than entering the periphery and then leaving by the same entrance (taraddud), though to merely pass through is insufficient. Optimally, the spiritual retreat (i'tikaf) should be accompanied by fasting, take place in the Friday congregational mosque (O: because of the size of the group prayer therein, and so as not to have to leave to attend the Friday prayer), and be no less than a day.

@I3.4: VOWING SPIRITUAL RETREAT IN PARTICULAR MOSQUES
If one vows (def: j18) to make spiritual retreat (i'tikaf) in:
-1- al-Masjid al-Haram (n: in Mecca);
-2- al-Masjid al-Aqsa (n:in Jerusalem);
-3- or Masjid al-Medina;
then the vow cannot be fulfilled elsewhere. Spiritual retreat (i'tikaf) in al-Masjid al-Haram fulfills a vow to make spiritual retreat in either of the other two (n: al-Aqsa or Medina), but not vice versa (N: they do not fulfill a vow to make a spiritual retreat in al-Masjid al-Haram). Spiritual retreat in Masjid al-Medina fulfills a vow to do so in al-Masjid al-Aqsa, but not vice versa. If one vows to make a spiritual retreat in any mosque besides these three, the vow can be fulfilled in any mosque whatever (O: since none besides these three is superior to any other).

@I3.5
Spiritual retreat (i'tikaf) is invalidated by lovemaking and by orgasm as a result of touching.

@I3.6: VOWS TO SPEND A CERTAIN CONSECUTIVE PERIOD IN SPIRITUAL RETREAT
If one vows to make spiritual retreat for a consecutive period, then one is obligated to do so. The consecutiveness of such a period is not nullified by leaving the mosque for something necessary such as eating (even when it is possible to do so in the mosque), drinking (provided it is not possible to do so in the mosque), using the lavatory, attending to an illness, the onset of a menstrual period, or similar things; though one's spiritual retreat is interrupted by leaving the mosque to visit a sick person, perform a funeral prayer (janaza), or attend the Friday prayer (jumu'a).

@I3.8
Touching another with sexual desire is unlawful for someone in spiritual retreat (i'tikaf).

@I3.9
It is not permissible for a wife to make spiritual retreat without her husband's permission.
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*2*Chapter J1.0: Who Must Perform Hajj and `Umra

@(O: Hajj and `umra are obligtory because of the word of Allah Most High: "People owe Allah to make pilgrimage to the House, whoever is able to find a way" (Koran 3:97), and, "Complete the hajj and 'umra for Allah" (Koran 2:196), meaning, "Perform both of them completely.")

@J1.1 (n: This section uses the following special vocabulary in addition to some of the terms previously mentioned at f8.1:
'Arafa: (syn.'Arafat) the name of a plain about thirteen miles to the eastsoutheast of Mecca.
Hajj: the pilgrimage to Mecca.
Ihram: the state of consecration that pilgrims enter for hajj and 'Umra.
Labbayk: a litany meaning, "Ever at Your service, O Allah, ever at Your service."
al-Masjid al-Haram: the Holy Mosque in Mecca that encompasses the Kaaba.
Safa and Marwa: two hillocks connected by a course adjoining al-Masjid al-Haram.
'Umra: the lesser pilgrimage or visit to Mecca that may be performed at any time of the year.)

@J1.2Both hajj and 'umra are obligatory, though neither is obligatory more than once in a person's lifetime unless one vows (def:j18) more than that.

@J1.3They are only obligatory for someone who:
(a) is Muslim;
(b) has reached puberty;
(c) is sane;
(d) and is able (def:j1.6-10) to make them.

@J1.4The hajj or `umra of someone considered unable (non-(d) above) is valid (O: i.e. if he undertakes the hardship, travels, and stands at 'Arafa (def:j8), it fulfills the obligation), though not that of a non-Muslim, or a child below the age of

discrimination (f1.2) who is unaccompanied by a guardian. It is valid for a child of the age of discrimination to enter the state of ihram with his guardian's permission (O: guardian meaning the person with lawful disposal over the child's property).
It is also valid for the guardian to enter ihram on behalf of an insane person or a child below the age of discrimination, in which case the guardian has his charge do as much as he is able, by having him (O: telling him to) perform the purificatory bath (ghusl), remove clothing that has seams, and put on hajj garments; and forbidding him the things prohibited while in the state of ihram, such as perfumes and the like (def; j3.5), after which he takes him to the various places of the hajj rites (O: it being insufficient for the guardian togo alone), and performs the acts that the charge cannot do himself, such as entering into ihram (n: which the charge, lacking discrimination, is unable to make a legally valid intention for), the two rak'as after circumambulating the Kaaba, and stoning at Mina. (N: But the hajj of someone who has not reached puberty does not fulfill the obligation Islam imposes, since even though itis valid, it is supererogatory.)

@J1.5: WHO IS CONSIDERED ABLE TO PERFORM THE HAJJ
Those able to perform the hajj are of two types: those able to perform the hajj in person, and those able to fulfill the hajj by sending someone in their stead.

@J1.6: THOSE ABLE TO PERFORM THE HAJJ IN PERSON
The conditions for being considered able to perform the hajj in person are:
(a) to be healthy (O: enough to ride there without serious harm);
(b) to be able to obtain provisions for the trip;
(c) to have enough money to afford water at the going price at the places people travel through because of the water there;
(d) to have transportation suitable to someone like oneself (O: though if one cannot find any, or if it is more than the usual price (A: usual meaning that the fare to the hajj is no more than the fare to another destination of comparable distance). then one is not obliged to perform the hajj);
(all of the above (O: (b), (c) and (d)) apply equally to the journey there and back)
(e) to be able to pay for (b), (c), and (d), round trip, with money one has that is in excess of the amount one requires to support the members of one's family and clothe them while one is travelling there and back, and obtain leadings for oneself; and that is in excess of any money one owes for debts, even those not yet due (O: scholars concur that a debtor is not obliged to perform the hajj even when his creditor does not mind postponing the debt until after the hajj, and that a person is not obliged to perform the hajj when someone is willing to loan him the money to do so (N: though such a person's hajj would be valid, as previously discussed (j1.4)));
(f) and that a route exist that is safe for one's person and property from predators and enemies, whether the latter be non-Muslims or whether highwaymen wanting money, even when the amount is inconsiderable (A: including so called hajj fees, which are not countenanced by Sacred Law). If there is no route except by sea, then one must take it if it is usually safe, but if not, then it is not obligatory. (N: These are the conditions for the obligatoriness of the hajj or`umra, meaning that if one of them is lacking, the hajj and `umra are not obligatory for that year, though if one performs them anyway, one's performance validly fulfills the rites which Islam imposes, as mentioned above at j1.4)

@J1.7The above conditions apply equally to a woman, who in addition requires someone to accompany her to protect her, such as a husband, an unmarriageable male relative (mahram, def: m6.2), or some (O: two or more) reliable women, even if they are not accompanied by any of their unmarriageable male relatives.

@J1.8If the above conditions are met, but there is no longer time to reach Mecca, then the hajj is not obligatory. But if time remains, it is obligatory.

@J1.9It is recommended to perform hajj as soon as possible (N: i.e. to perform it the first year that one is able to, and likewise for `umra). One is entitled to delay it, but if one dies without performing it after having been able to, one dies in disobedience, and it is obligatory to take out the cost for it from the deceased's

estate (n: just as debts are, as at L4.3(1)) to pay for someone to make it up (A: in the deceased's place (dis:below)).

@J1.10: THOSE ABLE TO PERFORM THE HAJJ BY SENDING SOMEONE IN THEIR STEAD
The second type of being able to perform hajj is when one may fulfill it by sending another in one's place, the necessary conditions for which are:
(a) that one is unable to ride there (O: at all, or is able, but with great difficulty) because of chronic illness or old age;
(b) and that one either has the money (n: to hire someone to go in one's place) or (N: if lacking the money) has someone to obey one (O: by agreeing to perform the rites of hajj for one (N: at their own expense, as a charitable donation)), even if not a family member- in which case one is obliged to either hire someone (N: in the former instance) or give permission to someone (N: in the latter instance) to perform hajj in one's place.
One may also have someone perform a nonobligatory hajj for one under such conditions.

@J1.11: THE PRIORITY OF THE OBLIGATORY HAJJ OVER ANY OTHER
It is not permissible for someone who has not yet performed his own obligatory hajj:
-1- to perform the hajj for someone else;
-2- to perform a nonobligatory hajj;
-3- or to perform hajj in fulfillment of a vow or as a makeup.
(N: If he does any of these, it counts instead as his own obligatory hajj).

@J1.12The order of performing hajj (O: or `umra) must be:
-1- the obligatory hajj first;
-2- then a makeup hajj (def:j3.14:(c)) if any is due;
-3- then a hajj in fullfillment of a vow, if any has been made;
-4- and then a supererogatory hajj, or one in another person's place.
If one tries to change this order, for example, by commencing a hajj with the intention for a supererogatory performance or a vow when one has not yet made the obligatory hajj, the intention is invalid, and the hajj counts instead as fulfilling the obligatory one. Te same is true for the other types (A:i.e if one extends any of the types in the order just mentioned when a prior type exists unperformed, then one's hajj counts as fulfilling the prior one, regardless of the intention).
@J1.13: WAYS OF PERFORMING THE HAJJ
It is permissible to enter ihram with the intention for any of four ways of performing the hajj, which are, in order of superiority:
-1- hajj before `umra (ifrad);
-2- `umra first (tamattu');
-3- hajj and `umra simultaneously (qiran);
-4- and the unconditional intention to perform hajj and `umra (itlaq).

@J1.14: HAJJ BEFORE `UMRA (IFRAD)
Hajj before `umra (ifrad) means to perform hajj (O: i.e enter ihram for hajj) first (O: before subsequently entering ihram for `umra) at the ihram site for people from one's country (def: j2), then (O: after having completed one's hajj) to go outside the Sacred Precinct (Haram) and enter ihram for `umra. (O: There is no special place for the second ihram: if one went to the closest place outside of the Sacred Precinct, it would suffice for this ihram of `umra.) (N: People generally go to the Mosques of `A' isha (Allah be well pleased with her) al-Tan'im because it is close.)

@J1.15: UMRA FIRST (TAMATTU')
'Umra first (tamattu') (N: perhaps the easiest and most practical way to perform hajj in our times, since one does not have to remain in a state of ihram throughout the week or more that one is generally there between the initial `umra and subsequent hajj) means to perform the `umra first (O: before the hajj) by:
(a) entering ihram for it from the ihram site for people of one's own country;
(b) during the hajj months (def:j1.19);
(c) and then (O: after finishing the `umra) performing hajj within the same year from Mecca (O: meaning to intend hajj from Mecca (n: by entering ihram there), if one wants to have to slaughter (n: in expiation, as at j12.6(I)), which relives one of the

necessity to return to the ihram site of people of one's country, though if one returns to that site to enter ihram for hajj, then one is no longer obliged to slaughter and one's ihram is valid).
It is recommended to enter ihram for hajj on 8 Dhul Hijja if one is performing `umra first (tamattu') and has an animal to slaughter. But if one does not have an animal, (O: one eners ihram) on 6 Dhul Hijja (O: so that one's (N: three day expiatory) fast (N: in place of slaughtering (def: j12.6(I) ) takes place before standing at `Arafa (A: since in the Shafi'i school, being in ihram for hajj is obligatory during these three days of fasting though for the Hanafi school, these days may be fasted before entering ihram for hajj, after one's umra), thus fasting on the sixth, seventh, and eighth, and not on the Day of `Arafa' (N:the ninth) if one was able to fast on the sixth, though if not then fasting the day of Arafa is mandatory because of the previous inability. If one does not fast it, it is a sin and the delayed fast day is a makeup, as its obligatory time is before the Day of `Arafa). One enters ihram for hajj in Mecca from the door of one's lodgings. Then one proceeds in a state of ihram to al-Masjid al-Haram as a Meccan would (O: to perform a farewell circumambulation (tawaf al-wada'. def: j11.2) of the Kaaba, which is desirable (mustahabb) for non-Mecans who are leaving Meca to go to `Arafa. For Meccans, the farewell circumambulation is obligatory when leaving Mecca, even for a short distance).

@J1.16: HAJJ AND `UMRA SIMULTANEOUSLY (QIRAN)
Hajj and `umra simultaneously (qiran) means to enter ihram intending both (O: hajj and 'umra) at the ihram site for people of one's country, and then perform only the rites of hajj (O: Such that one does not perform an additional circumambulation or a second going between Safa and Marwa (def:j6), but rather once is sufficient to fulfill the obligation of both hajj and `umra, because the actions of the `umra have been incorporated into the actions of the hajj. The author mentions a second way of performing hajj and `umra simultaneously (qiran) by saying:)
Or the person may enter ihram first for `umra, and then before beginning his circumambulation (O: even if only by a single step), incorporate into his intention for `umra the intention to perform hajj, this taking place in the months of hajj.

@I1.17: THE OBLIGATION TO SLAUGHTER OR FAST FOR THOSE PERFORMING THE `UMRA FIRST (TAMATTU') OR HAJJ AND `UMRA SIMULTANEOUSLY (QIRAN)
A Person performing `umra first (tamattu') or performing hajj and 'umra simultaneously (qiran) is obliged to slaughter (N: a shah (def:h2.5) or to fast, as mentioned below), though if the person performing hajj and `umra simultaneously (qiran) lives within the Sacred Precinct (Haram) or within 81 km./50 ml. of it, or if the person performing `umra first (tamattu') returns to the ihram site for people of his country(N:after his umra) to enter ihram for hajj, orlives within 81 km./50mi. of the Sacred Precinct - in any of these cases he is not obliged to slaughter.
If one (O: performing `umra first (tamattu') or hajj and `umra simultaneously (qiran)) is obliged to slaughter but:
-1- lacks an animal there (O: i.e. in the Sacred Precinct (Haram), which is the place of the obligation to slaughter, lacks meaning absolutely, as when there is not an animal available that meets slaughter specifications (def:j14.2));
-2- or (O: there is an animal, but one lacks) its price (O: or has the price but needs the money for expenses and the like);
-3- or finds that it is being sold for more than the normal price for that locality and time;
-then one must fast three days of the hajj (O: For our school it is insufficient to fast them before the hajj, as opposed to the school of Abu Hanifa, in which it is permissible to fast them before the hajj (A: i.e. when performing the `umra first (tamattu'), fasting them after having finished the initial `umra and before entering ihram for hajj).) It is recommended that these days be before the Day of 'Arafa (O: time permitting, as when one fasts from 1 Dhul Hijja after having entered ihram for hajj. It is unlawful to delay these fast-days till after the Day of `Arafa), and one must fast seven additional days after returning home (n: making a total of ten fast-days).
The time for current performance of the three fast-days ends after the Day of `Arafa (O: and it is not permissible to fast any of them on `Eid-al-Adha or on the three days

following Eid), and if one thus delays them, it is obligatory to make them up before the other seven fast-days, by an interval between the three and seven fast-days equal to the interval that would have separated them had they been a current performance, namely the time taken by the trip (O: from Mecca to home) plus four days (O: equal to the `Eid and the three days that follow it).

@J1.18: THE UNCONDITIONAL INTENTION TO PERFORM HAJJ AND `UMRA (ITLAQ)
The unconditional intention to perform hajj and `umra (itlaq) means to merely intend entering into the performance of rites, without specifying at the time of ihram that it is for hajj, `umra,or hajj and `umra simultaneously (qiran). After this, one may use it (O: the ihram, made unconditional by the intention) as one wishes (O: meaning to perform hajj only, `umra only, or hajj and `umra simultaneously (qiran) (A:though one may not use the unconditional intention as a way to perform `umra first (tamattu') without having to either return to the ihram site to enter ihram for hajj, or to slaughter or fast (def :1.17))).
@J1.19: THE TIME OF YEAR TO ENTER IHRAM FOR HAJJ OR `UMRA
It is not permissible to enter ihram for hajj other than during its months, namely, Shawwal, Dhul Qa'da, and the first ten nights of Dhul Hijja (A: with their days). If one enters ihram for hajj during non-hajj months, one's ihram counts for `umra. Entering ihram for `umra is valid at any time of the year except for a person on hajj encamped at Mina for stoning (def:j10).
*2*Chapter J2.0: Sites for Entering Ihram

@J2.1The sites for entering ihram for hajj or `umra are as follows:
-1- (N: people going to hajj from the West by plane must enter ihram before boarding it, or during the flight before it passes the airspace that is even (def:j2.3) with the city of Rabigh, on the western coast of the Arabian Peninsula, this generally being announced on the plane);
-2- Medina residents (N: or those travelling through Medina to Mecca) enter ihram at Dhul Hulayfa;
-3- residents of the Syria-Palestine region, Egypt,and North Africa enter ihram at al-Juhfa;
-4- residents of al-Tihama in Yemen enter ihram at Yalamlam;
-5- residents of Najd of Yemen and the Najd of the Hijaz enter ihram at Qarn;
-6- and residents of Iraq and Khurasan enter ihram at Dhat `Iraq, preferably at al-`Aqiq.

@J2.2Someone at Mecca, even if merely passing through, enters ihram for hajj in Mecca, and for `umra must go (N: at least) to the nearest place outside of the Sacred Precinct (Haram), of which the best is al-Ji'rana, then al-Tan'im, and then al-Hudaybiya. Someone residing closer to Mecca than the ihram site is to Mecca should enter ihram (O: for hajj or `umra) at his residence.

@J2.3When coming by a route lacking an ihram site, one enters ihram when even with (O: on the left or right) the ihram site that is nearest.

@J2.4For someone residing farther from Mecca than the ihram site is,to enter ihram at the ihram site is superior (A: than for him to enter ihram at his own residence).

@J2.5: THE EXPIATION FOR NEGLECTING TO ENTER IHRAM AT THE PROPER SITE:
Someone intending hajj, `umra,or both, who passes the ihram site (O: intentionally, absentmindedly,or in ignorance of it) and enters ihram somewhere closer to Mecca,is obliged to slaughter (def:j12.6(I)), though if he returns to the proper site and enters ihram there before having performed a single rite, he is no longer obliged to slaughter.

<u>*2*Chapter J3.0: Ihram (The State of Pilgrim Sanctity)</u>

@J3.1: MEASURES RECOMMENDED PRIOR TO IHRAM
When one wishes to enter ihram,it is recommended (even for a woman in menstruation) to perform the purificatory bath (ghusl), intending bathing for ihram. If there is not

much water, one merely performs ablution (wudu). It is also recommended to shave pubic hair, pluck the underarms, clip the mustache. (O: trim the nails,) clean oneself of dirt, and wash the head.

@J3.2: OBLIGATORY MEASURES BEFORE IHRAM
Then (O: if male) one:
(a) sheds any garments that have sewing in them (O: taking them off being obligatory for ihram, which is incomplete if one does not remove them before entering it);
(b) puts on a clean white mantle (Ar. rida', the rectangular piece of cloth worn over the shoulders that covers the upper body of a man in ihram) and wraparound (izar, the cloth worn around the lower body), and sandals (O: that do not enclose the foot, but rather reveal the toes and heels, as opposed to sandals that cover the toes, for wearing such sandals obliges one to slaughter (def: j12.6(II)));
(c) and it is recommended to perfume the body, though not one's clothes.
The above measures (j3.1) apply equally to women, although women do not divest themselves of sewn garments (O: a woman being obliged to cover all of her body except the face and hands, which, in ihram as well as in prayer, are not considered nakedness). It is recommended that she dye her hands and face with henna (O: a measure that is desirable, and whose nonperformance is without consequence). (A: But women do not use perfume.)
All of the foregoing are done before entering ihram.

@J3.3: ENTERING IHRAM
One then prays two rak'as, provided it is not a time when the prayer is forbidden (def:f13), intending the sunna of ihram. (O: It is sunna to recite al-Kafirun (Koran 109) in the first rak'a and al-Ikhlas (Koran 112) in the second.) Then one rises to start travelling to Mecca. As soon as one begins travelling to Mecca, one has entered ihram.
Ihram (O: which is an integral of hajj and 'umra) is the intention to enter into the performance of the rites (O: of hajj, 'umra, or both (qiran)). One intends in one's heart to perform the hajj for Allah Most High, if one wants to perform hajj; or to perform 'umra if one wants to; or both together if one wants to perform them simultaneously (qiran). It is recommended that one also pronounce this intention with the tongue.

@J3.4: CHANTING "LABBAYK"
Then one chants "Labbayk" (n: as described below), raising the voice (O:enough to (N: at least) hear oneself, the raising being relative. For the duration of the time one is in ihram one raises it enough for those nearby to hear), though a woman should lower her voice when saying it (O: as raising the voice is offensive for a woman) saying: "Ever at Your service, O Allah, ever at Your service. Every at our service, You have no partner, ever at Your service. Verily, all praise, blessings, and domination are Yours. You have no partner" (O: saying this three times).
Then (O: after chanting the above) one recites the Blessings on the Prophet (Allah bless him and give him peace) in a softer voice, asking Allah Most High for paradise (O: saying, "O Allah, I ask You for paradise and its blessings," and asking for His good pleasure and acceptance (ridwan)) and seeking refuge in Him from hell (O: saying, "I take refuge in You from Your wrath, and hell," and asking Him for whatever one wishes of the good of this world and the next).
It is desirable to chant "Labbayk" for the duration of one's ihram, whether standing, sitting, riding, walking, lying down, and even in a state of major ritual impurity (janaba), or for a woman in menstruation. It is particularly desirable when:
-1- changing from one state, time, or place to another, such as when going uphill or down, or getting on or off a vehicle;
-2- meeting groups of people;
-3- at the approach of dawn, night, or daytime;
-4- after prayer;
-5- and in all mosques.
One does not chant "Labbayk" while circumambulating the Kaabba or going between Safa and Marwa (O: as these have their own particular invocations). It is undesirable to stop chanting it in order to speak, though if someone greets one with "as-Salamu

'alaykum," it is recommended (O: but not obligatory) to return his greeting.
When one sees something pleasing (O: or displeasing) during ihram, it is recommended to say, "Ever at Your service, truly, the real life is the life of the hereafter" (O: and if one sees the like while not in ihram, one says, "O Allah, truly, the real life is the life of the hereafter," without saying "Labbayk."

@J3.5: THINGS UNLAWFUL WHILE IN IHRAM
Five things are unlawful (dis:j12.6) when one has entered ihram. (n: Namely:
-1- Sewn garments on men (dis: j3.6);
-2- using perfume (j3.7);
-3- removing hair or nails (j3.8);
-4- sexual intercourse or foreplay (j3.13);
-5- and hunting (j3.21).)

@J3.6: SEWN GARMENTS ON MEN
The first thing unlawful in ihram is wearing sewn clothing such as shirts, trousers, moccasins (khuff, def: e6), anything else sewn (N: sewn meaning that which is for wearing, not just any sewaring, as a patched mantle or wraparound are permissible), and anything that encircles the body as sewn garments do, such as (N: those seamed) by being woven or felted together and the like.It is unlawful to cover the head with anything, sewn or unsewn, that is generally considered a headcover (O: such as a hat, cloth, bandage (N: or blanket while sleeping)).
It is permissible while in ihram to carry a (N: sewn) bag or the like, or to tote a basket (O: on one's head, though it is unlawful if one intends it as a headcover). (A: It is permissible to carry an umberella held in the hand for protection against the sun.)
It is not permissible of fasten one's mantle by tucking part of it through a hole, tying it together, passing a string though one end and then the other, or by tying a string to each of the two ends (N: though it is permissible to fasten it together with safety pins).
It is permissible to tie one's wraparound (O: one end to the other) or tie a string over it (O: so that it holds it fast, like a drawstring, and one may likewise use a waistband) (N: the reason for the permissibility (n: of tying the wraparound but not the mantle) being that if the wraparound but not the mantle) being that if the wraparound were to fall it wound reveal one's nakedness, unlike the mentle). (n: Safety pins are permissible to fasten the wraparound, and are useful to make pleats at the waistline by safety-pinning two or three tucks of cloth there to gather the wraparound at the waist and leave more freedom of movement for the legs below.) (A: A belt may also be used to hold one's wraparound at the waist.)

@J3.7: PERFUME
The second thing that is unlawful after enterinmg ihram is using perfume, such as musk, camphor, or saffron on one's clothing, body, or bedding. It is also unlawful to smell roses, or bedding. It is also unlwaful to smell roses, violets, lilies, or anything fragrant; to sprinkle rose water or flowr water about; or to use scented oils (N: or scented bar soap), whether to smell them or to apply them to any part of the body.
It is also unlawful:
-1- to apply unscented oils like olive, sesame, and so on to the beard or scalp, unless one is bald (A: in which case it can be used on the skin of the head), though it is permissible to smell them or apply them to any of the body (O: except the hair of the head and face);
-2- to eat food in which the use of a cosmetic is manifest, whether in taste, color, or scent, such as the scent of rose water, the color of saffron or its taste, or the taste of ambergris in cooked grain and the like;
-3- or to use scented perspiration deodorant or eyeliner.

@J3.8: REMOVING HAIR OR NAILS
The third thing that is unlawful while in ihram (O: for both men and women, but only if one does so deliberately, knowing that it is unlawful, voluntarily, and remembering that one is in ihram) is:
-1- cutting or plucking hair (O: i.e. removing it by any means whatever), even if only

part of a single hair (by shorterning it), and whether from the head, underarms, pubes, mustache, or any other part of the body (A: the obligatory expiation for one hair is to give 0.51 liters of food to the poor in Mecca, and for two hairs, twice that amount. For three or more, a full expiation (def: j12.6(ii)) is obligatory);
-2-
or clipping fingernails or toenails, even if only part of one (A: my above remark on expiations also applies to nails).
@J3.9: THE EXPIATION FOR VIOLATING THE CONDITIONS OF IHRAM
It is necessary to slaughter a shah (def: h2.5) (n: or perform one of the other alternatives mentioned below at j12.6(II)) when one is in ihram and one:
-1- uses perfume;
-2- wears a prohibited garment (def: j3.6) :
-3- removes three or more hairs, fingernails, or toenails (def: j12.6(II(1-2)));
-4- touches another person with desire in a nongential area;
-5- or applies unscented oil to one's hair (dis:j3.7).
@J3.10A person obliged to perform such an expiation may fulfill it (A: any time thereafter) in any of the following ways:
-1- by slaughtering a shah (def: h2.5) (O: and distributing its meat to the poor and those short of money is the Sacred Precinct);
-2- by distributing 6.09 liters of food (def: h7.6) to the poor in charity, giving 1.015 liters to each person;
-3- or by fasting three days (O: even if unconsecutive).

@J3.11: ACCIDENTALLY REMOVING A HAIR
It is unlawful during ihram to comb one's beard (N: or hair) or run one's fingers through it if one knows that hair will be pulled out. When one runs the fingers through one's beard or washes the face and then notices hair in one's hand, then if one knows one pulled it out while doing this, and expiation (def:j12.6(II)) must be paid, though if one knows that it came out by itself, or does not know whether it did or not, then one is not obliged to expiate.

@J3.12The following things necessitate the expiation (def: j12.6(II)), but when done out of need, are not unlawful:
-1- having to cut one's hair because of illness, heat, or lice;
-2- having to wear something sewn because of intense heat or cold;
-3- or having to cover one's head.
@J3.13: SEXUAL INTERCOURSE OR FOREPLAY
The fourth thing unlawful while in ihram is sexual intercourse or touching a nongenital area with sexual desire, such as kissing, hugging, or touching lustfully.

@J3.14If one intentionally has sexual intercouse before finishing one's 'umra, or while on hajj before partial release from ihram (def: j9.13), then:
(a) this nullifies the hajj or 'umra;
(b) it is nonetheless obligatory to complete the hajj or 'umra from the point at which it was spoiled to the end;
(c) it is obligatory to make it up as soon as possible, even if the spoiled hajj or 'umra was merely supererogatory;
(d) and it is obligatory to pay the expiation (def:below)
(O: for the male, not the female, who need not do any thing, though it is a sin if she participated willingly) (A: the more reliable position is that if the woman was unwilling, none of the above ((a), (b), (c), or (d)) apply to her, though if willing, (a), (b), and (c) apply to her but not (d)).

@J3.15The expiation for the above (j3.14) is to slaughter (A: and distribute to the poor of the Sacred
Precinct, immediately) :
-1- a camel (O: i.e. a male or female that meets slaughter specifications (def: j14.2)), but if this is not possible (N: within the days of that hajj), then one must slaughter:
-2- a cow, but if not possible, then:
-3- seven shahs (def: h2.5), but if not possible, then:

-4- one estimates the cost of a camel and how must food (def: h76) this would buy, and then gives that much food (N: to the poor in Mecca), but if not possible, then:
-5- one fasts one day for every 0.51 liters of food, that would have been given had (4) been done (N: One may fast anywhere, but it is not permissible to delay it without an excuse.)

@J3.16 A person making up a hajj or 'umra nullified by sexual intercourse must enter ihram for the makeup hajj or 'umra at the same ihram site as the original (n: nullified) hajj or 'umra, though if one entered ihram for it at a location closer to Mecca (N: than the ihram site (dis: j2.5)), one must enter ihram for the makeup at the (O: prescribed) site (N: for those of one's country).

@J3.17 When someone (O: in ihram who intends to make up a nullified hajj) is accompanied on the makeup hajj by the wife he made love to, he is recommended to separate himself from her while they are at the place where they had intercourse. (N: Such a makeup counts as the original hajj or 'umra would have counted: if it was obligatory, it counts as the obligatory one; if supererogatory, as supererogatory; and if vowed, as vowed.)

@J3.18If a man has sexual intercourse after partial release from ihram (def: j9.13), it does not nullify his hajj (n: i.e does not entail j3.14 (a,b,c,d)), though he must pay an expiation (O: of the type discussed at J12.6(II)).

@J3.19If one has sexual intercourse absentmindedly (O: forgetting one is in ihram or out of ignorance of its prohibition or because of being forced), then one is not obliged to do anything (A: i.e. none of J3.14(a,b,c,d)).

@J3.20: THE PROHIBITION OF MARRYING WHILE IN IHRAM
It is unlawful while in ihram to marry, or to marry someone to another (zawwaja, def: m3.2(a)) (O: whether one does so oneself or through an agent). If one does so, the marriage contract is invalid. It is offensive while in ihram to get engaged to marry, or to serve as a witness for a marriage contract.

@J3.21: HUNTING
The fifth thing that is unlawful while in ihram is:
-1- to kill any wild game that may be eaten by Muslims;
-2- or to kill the offspring of matings between game animals that may be eaten by Muslims and game animals that may not be eaten by Muslims.
Someone in ihram is obliged to pay the expiation (def:below) whenever such an animal dies at his hands, is destroyed by an act of his, or is injured, in which case one must expiate in proportion to the part damaged.

@J3.22: THE EXPIATION FOR HUNTING
If the animal killed has a domestic counterpart, one may fulfill the expiation in any of the following ways:
-1- to slaughter a head of domestic livestock that is like the wild animal which was killed (O: like meaning an approximation, not actual resemblance. The criteration is the condition of the animal, not its value. One expiates a game animal that was, for example, large, small, healthy, diseased, fat, thin, or defective, with a head of livestock of the same descripation, heeding the correspondences. It is a necessary condition that the wild animal and the head of livestock share, if the animal was defective, the same type of defect, such as blindness (N: though it is permissible, indeed superior, to pay a healthy one for a defective one or a whole one for one that is lacking some part));
-2- to estimate the value of the like head of livestock, and distribute an equal value of food (def: G7.6) to the poor;
-3- or to fast one day for every 0.51 liters of food (N: that would have been bought had (2) been done).

@J3.23If the animal killed does not have a domestic counterpart, then one may fulfill the expiation in any of the following ways:

-1- to distribute funds to the poor which equal the value of the game animal, although if the animal was a pigeon, one is obliged to slaughter a shah (def: h2.5) (O: which is obligatory for killing even a single pigeon);
-2- to buy food equal to the animal's value and distribute it as charity;
-3- or to fast one day for each 0.51 liters of food (N: that would have been bought had (2) been done).

@J3.24The prohibition of all things unlawful while in ihram applies to both men and women, except for not wearing sewn clothing (def: j3.6) and not covering the head, which are restricted to men. A woman, however, may not veil her face in ihram (dis: (j12.6(II(3))). If she wants to conceal it from people, she may drape something in front provided it does not touch her face (N: such as a veil worn over a cap's visor), though if it touches it without her intention, it is of no consequence.

@J3.25It is permissible when in ihram to scratch one's head or body with one's fingernails as long as this does not remove any hair. It is also permissible in ihram to kill lice (N: or other insects harmful to humans), though if one kills a louse, it is recommended to expiate its death by giving charity, even if only a single bite of food.

***2*Chapter J4.0: Entering Mecca**

@J4.1 It is recommended when one wants to enter Mecca:
-1- to perform the purificatory bath (ghusl) outside of the city with the intention of entering Mecca;
-2- to enter in the daytime, and from the Mu'alla gate of Thaniyyat Kada' (N: a pass from the direction of Jedda);
-3- to walk barefoot, provided one does not apprehend something unclean (najasa);
-4- not to annoy anyone by jostling;
-5- and after entering, to proceed to al-Masjid al-Haram.

@J4.2: WHEN ON FIRST SEES THE KAABA
When one first sees the Kaaba, it is recommended to lift the hands and say: "O Allah, increase this house in nobility, honor, reverence, and dignity. Increase those going on hajj or 'umra who honor and reverence it in honor, reverence, and piety. O Allah, You are Peace, the Source of Peace: O Lord, raise us after death in peace." And then one asks Allah for whatever one wishes of religious matters or those of this world.

*2*Chapter J5.0: Circumambulating the Kaaba (Tawaf)

@J5.1 Then one enters al-Masjid al-Haram from the Bani Shayba door (O: even if it is out of one's way, as it is sunna) prior to getting one's luggage down or finding a place to stay and so forth (O: such as deciding to rest or to eat; all this should be put off until after circumambulating the Kaaba). Rather (n: by turns), some of one's party should stay with the luggage while others go to the mosque (O: to circumambulate), and after they finish, they return to watch the luggage so the rest can go. (O: The arrival circumambulation (tawaf alqudum) is desirable for anyone who enters al-Masjid al-Haram, whether in ihram or not.)

@J5.2: HOW TO CIRCUMAMBULATE THE KAABA
Prior to circumambulating the Kaaba one proceeds to the Black Stone (diagram: 1) (O: next to the Kaaba's door, on the east corner), drawing near to it, if one can do so without hurting others by justling. One faces the Black Stone, places the hand on it, and without a word, kisses the stone thrice and touches the forehead upon it thrice. (O: Touching, kissing, and placing the forehead on the stone are only sunna for women when the circumambulation area is vacant, whether in the night or day.)

@J5.3One cease to chant "Labbayk" at this point, not to resume until after having finished both circumambulating the Kaaba and going between Safa and Marwa (def: j6). One puts the center (N: of the top edge) of one's mantle under the right arm and its two ends over the left shoulder so that the right shoulder is left bare (dis: j5.13,

second par.).
One begins circumambulating by first standing facing the Kaaba with the Black Stock on one's right and the Yamani corner (diagram: 8) on one's left, standing back from the stone a little towards the Yamani corner (n: i.e. behind the black stripe in the marble pavement, extending out from the stone, that marks the beginning of one's circumambulation). One should intend performing the circumambulation for Allah Most High (O: though this intention is only necessary for a supererogatory or a departure circumambulation, not for an obligatory or an arrival circumambulation, since the intention to perform the rites of hajj or 'umra (def: j3.3) includes the intention for the latter two types of circumambulation).
Then one:
-1- places the hand on the Black Stone, and then kisses it and places the forehead one it thrice, as mentioned above (A: i.e. it is done again here to begin the circumambulation, just as it was done before circumambulation (j5.2));
-2- says "Allahu akbar" three times;
-3- and adds, "O Allah, out of faith in You and to affirm Your book, fulfill Your covenant, and follow the sunna of Your prophet Muhammad (Allah bless him and give him peace). "

@J5.4Then one moves sideways (A: as is recommended) to the right, passing in front of all of the Black Stone with all of the body, while facing it. When past the stone, one turns (O: from facing it) so that the Kaaba is on one's left and then proceeds to circumambulate it. (O: If one did this (N: kept the Kaaba on one's let while passing the stone) from the beginning and neglected to face the stone, it would likewise be permissible.)

@J5.5At the Kaaba's door (diagram: 2) one says, "O Allah, verily this house is Your house, the sanctuary Your sanctuary, the safety Your safety, and this is the station of him who took refuge in You from fire" (N: i.e. the Station of Ibrahim (diagram: 3), though some hold the words mean "him who takes refuge," alluding to oneself).

@J5.6When one reaches the corner (diagram: 4) by the opening of the Hijr (n: a semicircular wall that stands apart from the Kaaba (diagram: 5)), one says, "O Allah, I take refuge in You from doubt, from ascribing partners to You, from discord, hypocrisy, evil traits, and from bad turns of fortune in money, spouse, and children."

@J5.7When even with the rainspout (N: called the Spout of Mercy (Mizab al-Rahma), at the top of the Kaaba (diagram: 6)), one says: "O Allah, shade me in Your shade on a day when there is no shade but Yours, Give me to drink from the cup of Your prophet Muhammad (Allah bless him and give him peace), a wholesome drink after which I will never thirst."

@J5.8Between the third corner (diagram:7) and the Yamani corner (diagram:8), one should say, "O Allah, make this a pious hajj, a rewarded effort, an accepted work, and a transaction that will never perish, O All-powerful and Oft forgiving one."

@J5.9When one reaches the Yamani corner, one does not kiss it, but touches it and then kisses one's hand.

@J5.10One does not kiss any of the Kaaba (O: meaning that it is not required, though if one kisses any of its parts, it is not offensive, but rather is good) except the Black Stone. Nor does one touch any of it except the Yamani corner, which is the one before the Black Stone.

@J5.11When one reaches the Black Stone, one has completed a single round (O: provided its conditions (def: j5.16) have been met).

@J5.12One goes around the Kaaba seven times (O: the seventh ending where one began, at the Black Stone. One's circumambulation is incomplete as long as even a span remains between oneself and the place even with the stone).

@J5.13: Trotting for the First Three Rounds
It is sunna in the first three rounds of circumambulation to hasten one's gait (N: if one can do so without harming others) (O: taking close steps, without running) which is termed trotting (ramal) (O: and which is desirable for men only, not women).
Both trotting and baring the right shoulder (def:j5.3) are only called for in circumambulations that are followed by going between Safa and Marwa (def:j6). If one wishes to go between Safa and Marwa after one's arrive circumambulation, then one does the two sunnas (O: both trotting and baring the shoulder at this point, but when one later performs one's going-forth circumambulation (tawaf al-ifada, def: j9.10), one does not do these two sunnas because that circumambulation is not followed by going between Safa and Marwa (N: if one has already gone between them before)).
But if one wishes to go between Safa and Marwa after the going-forth circumambulation (O:which is superior), one postpones the two (O: sunnas of trotting and baring the shoulder) until then.
While trotting, one says, "O Allah, make this a pious hajj, a rewarded effort, and forgive my sins."
In the last four rounds of one's circumambulation, it is sunna to proceed at one's normal pace, while saying: "My Lord, forgive me, show me mercy, and pardon that which You know. Verily You are the All-powerful and the Most Generous. Our Lord, give us what is good in this world and the next, and keep us from the torment of hell." This supplication is particularly recommended in the odd-numbered rounds of the circumambulation (O: as they are superior. Reciting the Koran while circumambulating is better than making supplications that have not reached us through prophetic hadith, though supplications from hadith are superior to reciting the Koran during it).

@J5.14It is recommended to kiss the Black Stone in each round (O: and to place the forehead on it, each three times) and to touch the Yamani corner, particularly in the odd-numbered rounds.
If it is not possible to kiss the Black Stone because of crowds or because one fears to hurt people (O: or be hurt) by jostling, one may touch it with one's hand and then kiss the hand. If this is not possible, one may touch it with a stick (O: or the like, such as a scarf) and kiss the stick. If this too is impossible, then one points to it (O: or the Yamani corner) with the hand (O: and it is sunna to kiss one's hand).

@J5.15A noteworthy detail here is that there is a buttress at the base of the Kaaba that resembles a ledge and slide. It is part of the Kaaba, and when one kisses the stone, one's head is in the space above the buttress. So one is obliged to keep one's feet motionless until one finishes kissing the stone and straightens up, after which one continues circumambulating. (N: One may not move one's feet as part of the circumambulation while one's head is within the space above the buttress, as it nullifices that particular round because of the condition (dis: j5.16(j)) that circumambulation be done around the Kaaba, and not within its confines.) If, when leaning over to kiss the stone, one's feet move even a finger's width towards the Kaaba's door, and after this, one continues circumambulating, then that particular round does not count (O: nor do the others that come after it, if one limits oneself to just those seven, considering the spoiled one as a valid round. But if one adds an extra round (N: to make up for the invalid one), then one's circumambulation is valid).
It is more precautionary when one has straightened up from kissing the stone, to step back to the left towards the Yamani corner (j5.2 diagram: 8) enough to ensure that one is where one was before kissing the stone. (N: The same is true of touching the Yamani corner with one's hand.)

@J5.16: The Conditions of a Valid Circumambulation
The conditions of a valid circumambulation (O: of any kind, obligatory or nonobligatory) are:
(a) that one's nakedness (def: f5.3) be clothed, because the round is invalid whenever any of one's nakedness shows, even a single hair of a woman's head (O: meaning that the particular round in which it showed is invalid, provided it was done intentionally. If it happened inadvertently and the woman immediately covered it (A immediately meaning after no more than the time required to say "Subhan Allah"), then it does not invalidate that round, though if she does not cover it until after it is showing, the

subsequent round takes the place of the above-mentioned invalid one);
(b) ritual purity (O: from minor (hadath) and major (janaba) impurity) (n: though for Hanafis, touching a marriageable member of the opposite sex (N: despite being unlawful) does not nullify one's ablution (Maraqi al-falqh sharh Nural-idah (y126), 17), and considering the difficulty of avoiding it at a contemporary hajj, taking the dispensation seems a virtual necessity);
(c) to be free from impure substances (najasa) on one's person, clothing, and the place of walking while circumambulating;
(d) that it take place within al-Masjid al-Haram;
(e) that one's circumambulation comprise seven full rounds;
(f) that it begin from the Black Stone, as described above, and that one pass by all of the stone with all of one's body, for ifone begins from another part of the Kaaba, then the round does not count until one reaches the stone, from whence it begins;
(g) that one keep the Kaaba on one's left and move towards the door (j5.2 diagram: 1-2);
(h) that each round be outside of the Hijr (diagram: 5) such that one does not enter the opening between the Hijr and the Kaaba and then exit though the other opening;
(i) and that all of the body of the person circumambulating be exterior to all parts of the Kaaba, such that while walking around it, one does not put one's hand in the space above the buttress previously mentioned (j5.15), which violates the condition of being wholly outside all of the Kaaba while making one's rounds.

@J5.17Everything besides the above conditions is sunna (N: not obligatory), such as trotting in the first three rounds, the various supplications, and the other things previously mentioned.

@J5.18: Two Rak`as after Circumambulation
When one has finished circumambulating, and after putting one's mantle over both shoulders, it is recommended to pray two rak'as for the sunna of circumambulation (O: and it is best to perform them) behind the Station of Ibrahim (j5.2 diagram: 3), In the first rak'a, one recites al-Kafirun (Koran 109), and in the second, al-Ikhals (Koran 112).
After this, one supplicates Allah from behind the station (O: if one prays there. Otherwise, one may perform the two rak'as (N: in order of superiority) in the Hijr (diagram: 5), al-Masjid al-Haram, the Sacred Precint, or whenever and whereever one wishes to pray them, and they remain a current performance until the day one dies. It is sunna to recite the suras aloud in these two rak'as if performed at night, and to recite them to oneself if performed during the day. It is desirable to make the supplication related by Jabir, who said that the Prophet (Allah bless him and give him peace) prayed two rak'as behind the station (N: of Ibrahim) and then said:
"O Allah, this is Your city, and al-Masjid al-Haram, and Your inviolable house, and I am Your slave, the son of Your slave and bondwoman. It have come to You with many sins, mistakes, and wicked acts, and this is the station of him who took refuge in You from the fire; so forgive me, verily You are the All-forgiving and Compassionate. O Allah, You have called Your servants to Your inviolable house, and I have come, asking for Your mercy and seeking what pleases You, and You are the Rewarder, so forgive me and have mercy on me, verily You have power over everything").
Then one returns to the Black Stone and touches it (O: kisses it, and bows one's head upon it).

*2*Chapter J6.0: Going Between Safa and Marwa (Sa`y)

@J6.1Then it is recommended to exit through the Safa door of al-Masjid al-Haram if one wishes to go between Safa and Marwa immediately. (O: It is necessary for the validity of going between Safa and Marwa (N: for hajj) prior to the Day of 'Arafa that one do so after one's arrival cicumambulation (tawaf al-qudum) (N: though one may not do so on an 'umra first (tamattu') hajj, for which the initial circumambulation and going between Safa and Marwa are part of one's 'umra (dis: j12.2(c))), nor do so after a supererogatory or farewell circumambulation.) One may postpone it until after the going-forth circumambulation (tawaf al-ifada, def: j9.10) (O: which is superior).

@J6.2: How To Go Between Safa and Marwa
One begins from Safa. It is recommended:
-1- for men (O: not women) to climb upon Safa the height of a person, so that one can see the Kaaba through the mosque's door, and to face the Kaaba;
-2- to say: "La ilaha illa Llah, Allahu akbar," and "There is no god but Allah alone, without partner. His is the dominion, His the praise, He gives life and causes to die, all good is in His hand, and He has power over everything. There is no god but Allah alone, without partner. He kept His promise, give His slave the victory, and routed the Confederates alone. There is no god but Allah. We worship none but Him making our religion sincerely for Him, though unbelievers be averse";
-3- to supplicate for whatever one wishes (O: which is called for here because it is one of the places where prayers are answered. 'Umar (Allah be well pleased with him) used to supplicate lengthily here);
-4- and to repeat (2) and (3) a second and third time.

@J6.3Then one descends from Safa and walks (O: towards Marwa) at one's normal pace until within three meters of the first green marker suspended from the left wall. Here one runs (N: women walk) until midway to the second green marker, at which midpoint one resumes one's usual pace until one reaches Marwa. One claims Marwa and says the same invocation as was said at Safa. This is once.
Then one descends from Marwa and returns, walking and running at the proper places, until one reaches Safa. This is twice.
At Safa one says the same invocation and supplication, and then goes back to Marwa, which is three times.
One repeats the process until one has completed seven times, finishing at Marwa.

@J6.4: The Obligatory Elements of Going Between Safa and Marwa
The obligatory elements (O: i.e. conditions for the validity) of going between Safa and Marwa are four:
(a) to begin at Safa. If one begins at Marwa and walks to Safa, this does not count and one's going between them is not considered to have begun until one reaches Safa;
(b) to traverse the entire distance. It would be invalid if one neglected even a single span or less of the distance. One must begin by putting one's heel against the wall at Safa, and finish at Marwa by putting the toes against the wall there (N: the course has now been enlarged and paved so that one's going between them is complete without having to reach the walls that are currently there. Rather, between the two sides of the paved track (n: the lanes for going and coming) there is a smaller track for wheelchair patients, and the ends of this smaller track currently represent the minimal distance);
(c) to complete seven times: from Safa to Marwa equals one, from Marwa to Safa is another one, and so on, as mentinoed above. If doubts arise while going between them as to how many times it has been-or while circumambulating the Kaaba, how many rounds have been done-then one assumes one has done the least number one is sure of and completes the rest (O: though if the doubts arise after finishing, one need not do anything);
(d) and that going bewteen Safa and Marwa take place after the going-forth circumambulation (tawaf al-ifada, def: j9.10) or else after one's arrival circumambulation, provided that standing at 'Arafa does not intervene between the arrival circumambulation and going between Safa and Marwa (dis: j6.1).

@J6.5: The Sunnas of Going Between Safa and Marwa
The sunnas of going between Safa and Marwa are those previously mentioned (j6.2-3), to have ablution (wudu), that one's nakedness (def: f5.3) be clothed, and to say while between Safa and Marwa:
"My Lord, forgive, show mercy, and overlook that which Your know. Virify Your are the Most Powerful and Generous. O Allah, our Lord, give us what is good in this world and the next, and protect us from the torment of hell."
If one recites the Koran (A: while going between them) it is better (O: than anything besides the invocations that have reached us in hadith (A: i.e. the above), which are better here than reciting the Koran).

@J6.6It is not recommended to repeat going between Safa and Marwa.

*2*Chapter J7.0: The Way to `Arfa

@J7.1On 7 Dhul Hijja it is recommended for the imam (A:i.e. the caliph or his representative) to give a sermon after the noon prayer (zuhr) in Mecca (O: at the Kaaba), instructing the pilgrims about the rites they will soon perform, and ordering them to go forth on the following day (O: the morning of the eighth) to Mina.

@J7.2The imam goes forth with them after the dawn prayer (subh) on 8 Dhul Hijja.
He prays the noon, midafternoon, sunset, and nightfall prayers with them at Mina, and they spend the night and pray the following dawn prayer there. When the sun rises over the mountain at Mina that is called Thabir, they proceed to 'Arafa.
Spending the night and staying at Mina during this time are a sunna (O: and not part of the hajj rites.
If one does not spend the night at Mina at all, or go there, it does not entail any consequences) that many people no longer do, but come to 'Arafa at the end of the night with lighted candles. The lighting of candles is a disgraceful innovation (O: as is their coming there a day or two before of Dhul Hijja, a mistake that contravenes the sunna, and through which they miss many other sunnas).

@J7.3It is sunna on the way to 'Arafa to say: "O Allah, to You I betake myself, seeking Your noble countenance. Forgive me my sins, make my hajj a pious one, show me mercy, and do not disappoint me"; and to do much of chanting "Labbayk," invocation (dhikr), supplication, and Blessings on the Prophet (Allah bless him and give him peace).

@J7.4When the pilgrims reach a place called Namira (N: the site of a large mosque) just before 'Arafa, they stop, and do not immediately enter 'Arafa. When the time for the noon prayer comes, it is sunna for the imam to give two sermons before the prayer, and then they pray, joining the noon and midafternoon prayers together. This too is a sunna that few follow.

*2*Chapter J8.0: Standing At`arafa

@J8.1Then they enter 'Arafa after the sunna bath (ghusl) for standing at 'Afra, chanting "LabbayK" in lowliness and humility.

@J8.2: The Sunnas of Standing to `Arafa
It is recommended to stand exposed to the sun (O: and not take shade beneath a tent, umberella, or other, unless there is an excuse such as harm from exposure) facing the direction of prayer (qibla) with one's heart fully attentive and not occupied with this-Worldly matters, and to do much of chanting "Labbayk," reciting the Blessings on the Prophet (Allah bless him and give him peace), asking Allah's forgiveness, supplicating, and weeping, for here tears are shed and mistakes annulled.
The greater part of one's words would be: "There is no god but Allah alone, without partner. His is the dominion, His the praise, and He has power over everything." And one should pray for one's family, friends, and all Muslims.

@J8.3It is recommended to stand (O: if possible without hurting anyone) by the large round boulders that lie at base of the hill called Jabal al-Rahma (lit... "Mount of Mercy"). As for climbing Jabal al-Rahma, which lies in the middle of 'Arafa, there is no merit in doing so (O: above the merit of standing in other parts of 'Arafa).
Standing is valid any where in the whole expansive plain, and this bluff is merely a part of it, the same as any other, though standing by the boulders below is better (A: as the Prophet (Allah bless him and give him peace) did so).
It is better to be mounted, and not fasting.
It is best for women to sit at the edge of the crowd (O: not in the middle of if, because men should not randomly mix with women).

@J8.4: The Oblugatory Elements of Standing at `Arafa
The obligatory elements of standing at 'Arafa are:
(a) to be present (O: while in ihram) in some portion of 'Arafa;
(b) while sane and in full possession of one's faculties;

(c) at some point between the noon prayer (zuhr) on 9 Dhul Hijja and dawn of the following day.
(O: It is sunna to remain at 'Arafa until sunset so as to include both night and day.)
Anyone who is present and sane during any of this time, even if merely passing though for a moment, has accomplished the hajj (O: as the Prophet (Allah bless him and give him peace) said, "The pilgrimage is 'Arafa," meaning that most of it is 'Arafa).
Someone who misses standing at 'Arafa or who spends it unconscious has missed the hajj and he releases himself from ihram by performing the rites of 'umra; that is, by circumambulating, going between Safa and Marwa, and cutting his hair, and he is thus released from his ihram.
Such a person is obliged to make up the hajj and to slaughter as do those who perform an'umra first (tamattu') hajj def: j12.6(I)).

*2*Chapter J9.0: Muzdelifa, Mina, and the Going-Forth Circumambulation

@J9.1: MuzdelifaWhen the sun sets on 9 Dhul Hijja, those on hajj go forth to Muzdelifa, occupied with invocation (dhikr), chanting "Labbayk," proceeding with tranquility and dignity, not jostling or injuring others (though if the way is clear it is desirable to hurry), and they join the sunset and nightfall prayers in the time of the nightfall prayer ('isha) at Muzdelifa. (O: It is necessary to have made the intention to join the prayers while in the time of the sunset prayer.)
When they reach Muzdelifa, they stop, pray, and spend the night their (O: which is best, and optimal.
If one cannot spend the night, then the obligation to be present to Muzdelifa can be met by coming there, even for a brief moment, during the second half of the night, for spending the night merely means to be present there during the second half of the night, not actually staying overnight, as opposed to spending the night at Mina (dis:

j10.4), which must be for the greater part of the night. If someone misses spending the night at Muzdelifa in the above-mentioned sense, does not return there before dawn, and has no excuse (N: of those given below), then he is obliged to slaughter as one does for an 'umra first (tamattu') hajja (def:L j12.6(I)). But if he misses spending the night there for one of the same reasons which justify not spending the night at Mina (def: j10.10), then he is not obliged to slaughter.
Other valid excuses for not spending the night at Muzdelifa include:
-1- being occupied with standing at 'Arafa because of not having arrived there until after sunset, since it is more important than Muzdelifa;
-2- or going forth from 'Arafa after the middle of the night to Mecca in order to perform the (A: obligatory) going-forth circumambulation (tawaf al-ifada), missing Muzdelifa because of being occupied with it, since it too is more important than Muzdelifa.
In either of these two cases, one does not have to slaughter (A: for having missed Muzdelifa)).
In the morning, the pilgrims pray the dawn prayer at the first of its time.
The also pick up seven pebbles not one stone broken into seven (O: which is offensive), to throw at the stoning site (Ar. jamra, the enclosed round space with a pillar in the middle of it) at Mina, and it is best that these be the size of a broadbean (N: i.e. about the size of a thumbprint).

@J9.2: Stopping at Al-Mash`ar Al-Haram
After the dawn prayer, it is sunna to stop by a hill at the last of Muzdelifa (O: in the direction of Mina) called al-Mash'ar al-Haram (lit. "the Sanctuary Landmark"), which it is recommended to climb if possible. (A: Others hold that al-Mash'ar al-Haram refers to all of Muzdelifa.) It is desirable to face the direction of prayer (qibla), to do much of chanting "Labbayk," supplication, and invocation (dhikr), and to say, "O Allah, as You have brought us to stand in it and shown us to it, so too, give us success in Your remembrance, as You have guided us. Forgive us, and show us the mercy You have promised us by saying (and Your word is the truth) :
"'And when you move on from 'Arafa, remember Allah at al-Mash'ar al-Haram. Remember Him, for He has guided you though you were astray. And then go forth from where the people go forth, and seek Allah's forgiveness. Truely Allah is Oft-relenting and Most

Compassionate' (Koran 2:198-99).
"Our Lord, give us what is good in this world and the next, and keep us from the torment of hell."

@J9.3When the day lightens considerably, the pilgrims proceed to Mina with gravity and tranquility before the sun rises.

@J9.4: Release from Ihram: The Initial Stoning at Mina
When the pilgrims, reach the valley of Muhassir near Mina, it is sunna to quicken their step for a distance of a stone's throw. Then they take the middle way which leads to (N: one of the three stoning sites called) Jamrat al-'Aqaba. They stone it as they are when they arrive (O: i.e. if mounted, they stone it mounted, and if on foot, they stone it on foot) with the seven stones picked up from Muzdelifa. These may be picked up from anywhere, not necessarily Muzdelifa, though it is offensive to take them from the stoning sites themselves, laterines (O: or other unclean places), or around mosques (O: which is not merely offensive but rather unlawful if they are taken from grounds included in the endowment (waqf, def: k30) for the mosque).

@J9.5When one begins to stone Jamrat al-'Aqaba, one ceases chanting "Labbayk," and does not resume it thereafter (O: as its time is over, which was the period, of ihram, and stoning Jamrat al-'Aqaba is the first step to release from ihram).
The (O: optimal way to stone Jamrat al-'Aqaba is to stand in the middle of the valley after the sun is up so that 'Arafa lies to the right, Mecca to the left, and the stoning-site before one, and to throw the pebbles, one by one (O: as throwing them two at a time or all at once counts as having thrown one pebble) with the right hand, saying "Allahu akbar" with each pebble, lifting the arms high enough when throwing (O: if male, though not if female) that the underarm shows, and to actually throw the pebbles (O: meaning hard enough to be considered throwing), not merely flick them off the thumb with the forefinger. (n: The minimal conditions for the validity of stoning are given at j10.8)

@J9.6When finished stoning (N: Jamrat al-'Aqaba), one slaughters a voluntary sacrifice animal (hady) driven to hajj or one due by reason of hajj (dis: j12.6); or other sacrifice animal (udhiya, def: j12).

@J9.7: Release from Ihram: Cutting the Hair
Then men have their entire head shaved, which is optimal, though one may confine oneself to (O: removing (A: by any means)) three hairs thereof (O:i.e. from the head, not something else such as the beard or mustache), or many merely shorten it, for which the optimal is to clip a little less than two centimeters from all the hair.
As for women, it is optimal for them to shorten their hair in the latter way (O: it being offensive for a woman to shave her head).

@J9.8While having one's hair cut it is best:
-1- to face the direction of prayer (qibla);
-2- to say "Allahu Akbar" (O: that is, "Allahu akbar, Allahu akbar, Allahu akbar, walillahil-hamd");
-3- for the person shaving to start from the right;
-4- and to bury the hair afterwards (O: a measure recommended for any parts separated from a living being).

@J9.9Cutting the hair is an integral without which the hajj remains unfinished (O: and which may not be compensated for by merely slaughtering), and a person remains in ihram until it is done. Someone without hair can simply pass a razor over his head (O: which is recommended, not obligatory, because it is a rite whose condition is the existence of a particular site, as it also the case with washing a hand (n: for ablution) when the hand has been amputated (A:i.e. it need not be done if the site does not exist).
After one's hair, has been cut, it is sunna to say, "O Allah, for each hair reckon for me a good deed, annul a bad one, and raise me a degree. Forgive me, those who shave their hair, those who shorten it, and all the Muslims").

@J9.10: Release from Ihram: The Going-Forth Circumambulation (Tawaf Al-Ifada)
On the same day (A: 10 Dhul Hijja) one enters Mecca and performs the going-forth circumambulation (tawaf al-ifada), which is an integral without which the hajj remains unfinished (O: the author's expression "without which the hajj remains unfinished" meaning that it may not be compensated for by merely slaughtering, though the time it may be performed is anytime thereafter, according to our school. The Hanafis hold it must be done by sunset on 12 Dhul Hijja, and if the sun
sets and one has not performed it, this obliges one to slaughter), and one remains in ihram until one does it. Its obligatory features are as described above (dis: j5.16). After it, one prays two rak'as (O: intending the sunna of circumambulation (def: j5.18)).

@J9.11Then, if one has already gone between Safa and Marwa after the arrival circumambulation (dis: J6.1), one does not repeat it, though it he has not yet done it, one must do so, since going between Safa and Marwa is also an integral without which the hajj is unfinished, and one remains in ihram (O: legally, regarding one's relations with women (dis: j9.13)) until it is performed.

@J9.12: Release From Ihram: General Provisions
The best order in which to perform:
-1- stoning Jamrat al-'Aqaba;
-2- cutting the hair;
-3- and the going-forth circumambulation (tawaf al-ifada); is (1), (2) and (3) (O: and the sunna is to do all three on this day), though it is valid to do them in some other order.
The time for these three begins at the middle of the night (A: between sunset of 9 Dhul Hijja and dawn of the tenth) on 'Eid al-Adha (O: though it is best for the stoning to take place after sunrise). The (O: preferred) time for stoning Jamrat al-'Aqaba ends at the end of the day of the 'Eid (O: at sunset. As for the permissible time, it lasts until the end of the three days after the 'Eid. The best time to stone on 'Eid al-Adha finishes at noon. Thus, the stoning has three times: the best, the preferred, and the merely permissible), while the time for cutting one's hair and the going-forth circumambulation lasts indefinately, even if years.

@J9.13The release from ihram in hajj is in two stages, partial (lit. "first") and full ("second").
Partial release from ihram occurs when any two of the three rites of stoning, cutting the hair, and the going-forth circumambulation are performed, whether cutting the hair and stoning, cutting the hair and circumambulation, or stoning and circumambulation. Doing any two of them accomplishes partial release from ihram, rendering permissible all the things that were made unlawful by ihram (def: j3.5) except those relating to women, such as sexual intercourse, getting married, or touching with desire.
Full release from ihram occurs when all three rites have been performed, and it renders permissible everything made unlawful by ihram (O: though one still has to stone at the three stoning sites and stay overnight at Mina during the days following the 'Eid (Ayam al-Tashriq)).

*2*Chapter J10.0: Encampment and Stoing at Mina on the Days after `Eid

@J10.1When finished with the going-forth circumambulation (tawaf al-ifada) and going between Safa and Marwa (O:i.e. doing the latter if one had not previously performed it after the arrival circumambulation (dis: j6.1)), one is obliged to return to Mina (O: to stay overnight there and stone on the days following the 'Eid (Ayam al-Tashriq). It is desirable to arrive before noon to perform the noon prayer there as the Prophet did (Allah bless him and give him peace)), and one spends the night there.
One picks up twenty-one pebbles from Mina on the days after the 'Eid (the first of which is the second day of the 'Eid), taking care to shun the three places mentioned above (dis:j9.4 (end)).

@J10.2After the time for the noon prayer has come (O: on 11 Dhul Hijja, the first day after the 'Eid) one stones with the pebbles before performing the noon prayer.

(N: It is well to mention some ruling about stoning that enable one to avoid the crowding at Mina on a contemporary hajj. The time for stoning on each of the three days that follow the 'Eid (Ayam al- Tashriq) begins at noon of that day and all of one's stoning until the afternoon of the third day, having remained to Mina until then. But in such a case, the correct order is still Obligatory: one must begin by stoning with the intention of performing it for the first day, standing at the first the third (Jamrat al-'Kubra). then the second site (Jamrat al-Wusta), and then the third (Jamrat al-Aqaba) Then one stones with the intention of performing it for the second day, the first stoning site first, then the second, then the third. And then one stones for the third day, observing the same order.)

@J10.3: The Proper Sequence for Stoning
The first site one stones (O: called Jamrat al-Kubra) is the one closest to al-Khayf mosque. One (A: optimally) walks up to it, keeping it on one's left and facing the direction of prayer (qibla), stones it pebble by pebble as mentioned above (j9.5), and turns from the direction of prayer to avoid others' pebbles, after which one puts the stoning site behind one and again turns to the direction of prayer, to supplicate and invoke Allah humbly and imploringly for as much time as it takes to recite al-Baqara (Koran 2) (N: about an hour).
One then proceeds to the second site (O: called Jamrat al-Wusta), repeats the stoning procedure, and when finished, supplicates (O: and invokes Allah Most High) for as long as it takes to recite al-Baqara.
Then one goes to the third site, which is Jamrat al- `Aqaba that was previously stoned with seven pebbles on `Eid al-Adha, and stones it as one did at that time (dis: j9.5), facing it with the direction of prayer (qibla) to the left, though when finished, one does not stand there.

@J10.4: The Second Day After the `Eid
One is obliged to spend the night at Mina (A: that evening, after sunset on 11 Dhul Hijja).
The following day, the second day after the `Eid (A: i.e. 12 Dhul Hijja), one picks up twenty-one pebbles, and after the noon prayer's time has come, one stones the three stoning sites as described above, seven pebbles at each site. It is not permissible to stone for each of the days after the `Eid until after the noon prayer's time arrives. The correct sequence of stoning the sites is obligatory: the one closest to al-Khayf mosque first, the middle one second, and Jamrat al-`Aqaba third.

@J10.5It is recommended to take a bath (ghusl) each day for stoning.

@J10.6: The Permissibility of Leaving Mina on the Second Day
After stoning on the second day after the `Eid, it is recommended for the imam to give a sermon informing people about the permissibility of leaving early (A: on the second day rather than the third) (O: which is permissible provided:
(a) that one's departure takes place after the noon prayer's time has come;
(b) after having stoned the three stoning sites;
(c) that one 's departure is from Mina itself,
as it is not permissible to leave directly from Jamrat al-`Aqaba, in view of the position that it is not part of Mina;
(d) that one intends leaving while within the boundaries of Mina;
(e) and that one leaves before sunset).
Then the imam bids them farewell.

@J10.7One then has a choice between leaving early on the second day after the `Eid, or waiting (A: until having stoned on the third day). If one wishes to leave early, one may do so, provided the departure from Mina occurs before sunset. If the sun sets and one is still at Mina, it is not permissible to leave early, and one is obliged to spend the night there and stone the sites the next day.
If one does not wish to leave early, one stays overnight at Mina, picking up twenty-one pebbles and stoning the sites on the following day after the time of the noon prayer has begun, as previously mentioned.

@J10.8: Conditions for the Validity of Stoning
(O: Having mentioned the conditions for stoning in various rulings above, it is well enumerate all seven together:
(a) that seven pebbles be used;
(b) that they be thrown one by one;
(c) that one's action may be termed throwing, not merely putting the pebbles into the throwing place;
(d) that what is thrown be some form of stone;
(e) that it be done with the hand, as a bow or foot would be inadequate;
(f) that one aim at the throwing place;
(g) that one be certain that the pebble reaches it, even if it falls out again, for if one doubts that the stone reached it, then that stone does not count;
(the above seven conditions hold for both `Eid al-Adha (dis: j9.5) and for the days following the `Eid, though the days following the `Eid require two additional conditions:)
(h) that the stoning be done after the time for the noon prayer arrives;
(i) and that one stone the three sites in the proper sequence (dis: j10.3).)

@J10.9Then one (O: who has (n: remained at Mina and) stoned on the third day after the `Eid) leaves (O: after stoning. None of the conditions for leaving early (def: j10.6) are necessary to leave at this point).
@J10.10: Valid Excuses for Not Spending the Night at Mina
(O: If there is an acceptable excuse for not spending the night at Mina, then not doing so does not entail any consequences. Excuses include:
-1- having property one fears to lose were one to stay overnight;
-2- fearing for one's person or the funds with one;
-3- having a sick person with one who requires care;
-4- having an illness that makes spending the night a hardship;
-5- or a similar excuse.
People in such circumstances do not have to spend the night, and may leave on the second day after the `Eid, even after sunset.
These excuses, which permit one to not spend the night at Mina, likewise permit not spending the night at Muzdelifa, in connection with which some other excuses have been previously mentioned (dis: J9.1(1-2)).)

@J10.11It is recommended (N: after leaving Mina) to spend the night at al-Muhassab, which is by the mountain near the cemetery of Mecca, one's hajj now being finished.

*2*Chapter J11.0: The Farewell Circumambulation and Final Measures

@J11.1If one wishes to perform the `umra, one may do so (O: i.e. enter ihram for it) from any point outside of the Sacred Precinct (Haram), as mentioned below in the description of `umra (def: j12).

@J11.2: The Farewell Circumambulation
When one wants to return home, one comes to Mecca and performs the farewell circumambulation (tawaf al-wada`) (O: as is obligatory. It is disobedience to Allah to leave without the farewell circumambulation, and one must return to Mecca to perform it if still within 81 km./ 50mi. of it.
If farther than this, one is not obliged to return, but must slaughter (def: j12.6(I) (N: i.e. if one goes by the position that the farewell circumambulation is obligatory,though slaughtering is sunna if one goes by the position (A: the weaker position in the Shafi`i school) that the farewell circumambulation is merely sunna).
The integrals and conditions of the farewell circumambulation are the same as the obligatory circumambulation (def: j5.16).
The farewell circumambulation is not only for those performing hajj or `umra, but is required from (A: i.e. obligatory for) anyone leaving Mecca a considerable distance, no matter whether intending to return or not).

@J11.3After the farewell circumambulation, one prays two rak`as (O: a sunna in our school) and stands at the place between the Black Stone and the door of the Kaaba, and

supplicates: "O Allah, the house is Your house, the servant Your servant and son of Your two servants. You have carried me on a creature You have made submissive to me, bringing me to Your city and showing me Your grace that I might fulfill Your rites. If You are pleased with me then be the more so, and if not, then bless me now before my residence and the place where I am visited grow far from Your house. Now is the time I depart if You permit me, who seek none but You and no other than Your house, and am not averse to You or Your house. O Allah, give me good health in body and protect me in my religion. Make my affairs turn out well and give me the sustenance of obedience to You as long as You let me live. Give me the best of this world and the next, for truly, You have power over everything. "One blesses the Prophet (Allah bless him and give him peace), and then walks away normally (O: turning one's back on the Kaaba) without backing away from it (O: while facing it, as many people do, which is offensive because it is a reprehensible innovation (bid'a, def: w29.3)).

@J11.4 One then immediately prepares for departure. If one stops to stand (O: lengthily), or becomes involved in something unconnected with travel (O: like shopping, paying a debt, visiting a friend or sick person, and so forth), then one's farewell circumambulation is invalid (A: though such things do not nullify it in the Hanafi school) and it is obligatory to repeat it. But if one's activity concerns travelling, such as making one's baggage fast or buying travel provisions and the like (O: such as a rope with which to tie up one's baggage) then it is permissible.

@J11.5 A woman in her monthly period may depart without a farewell circumambulation, and need not slaughter in expiation (O: though it is sunna for her to come to the door of the mosque and say the supplication mentioned above (j11.3)).

@J11.6: Recommended Measures for Those Staying in Mecca
It is recommended to do much of:
-1- performing `umra (O: the whole time one is in Mecca, especially in Ramadan);
-2- looking at the Kaaba (O: as it is said that Allah Most High sends down one hundred and twenty mercies day and night upon the Noble House, sixty for those circumambulation, forty for those praying there, and twenty for those looking at it);
-3- drinking the water of the Well of Zamzam for whatever intention one wishes, religious or this-Worldly (O: as the Prophet (Allah bless him and give him peace) said, "The water of Zamzam is for whatever it is drunk for."
It is sunna to face the Kaaba while drinking, to breathe three times, and say "al-Hamdu lillah" and "Bismillah" each time one drinks), drinking one's fill of it;
-4- and visiting the noble places of Mecca (O: which are many, such as the birthplace of the Prophet (Allah bless him and give him peace) and that of `Ali (Allah be well pleased with him).

@J11.7It is unlawful to take the slightest bit of the earth of the Sacred Precinct or its stones, or take cups or jugs made from the clay of the Sacred Precinct of Medina.

*2*Chapter J12.0: The Obligatory Features of Hajj and `Umra

@J12.1: A Description of `Umra
The `umra consists of entering ihram as one does for hajj (def:j3) (o: resembling the hajj in the Obligatoriness of the intention when one enters ihram, in the sunna of bathing (ghusl) for it, and in the necessity of divesting oneself of sewn clothing before or after the intention). If one is a Meccan (N: or a temporary resident (dis: j2.2)), one must go to (n: enter ihram from at least as far as) the nearest place outside of the Sacred Precinct. If one is from outside (O: meaning a stranger travelling towards Mecca), then one enters ihram at the ihram site (O: which one passes, meaning the hajj ihram sites (def: j2.1)), as previously mentioned. All of the things unlawful while in ihram for hajj (def: j3.5) are unlawful while in ihram for `umra.
Then one enters Mecca and performs the circumambulation (def: j5.16) of 'umra, though the arrival circumambulation (tawaf al-qudum) is not called for by Sacred Law (O: at all, since one is performing an Obligatory circumambulation).
One then goes between Safa and Marwa (j6), and finally shaves the head or shortens the

hair (def: J9.7) (O: the former being preferable for men and the latter for women). When this has been done, one is released from the ihram of 'umra.

@J12.2: The Integrals of Hajj and `Umra
The integrals of 'umra are:
(a) ihram (def: j3);
(b) circumambulation (def: j5.16);
(c) going between Safa and Marwa (def: j6.4);
(d) shaving or shortening the hair (def:j9.7);
(O: and performing them in the order given which is a fifth Integral).

@J12.3The integrals of hajj are these four (n: (a), (b), (c), and (d) above) plus standing at 'Arafa (def: J8.4).
The hajj's other requisites (wajibat, dis: c2.1(A:)) are:
(a) that one enter ihram at the proper site (def: j2.1-2);
(b) stoning the stoning sites at Mina (def: j9.4,j10);
(c) staying the nightt at Muzdelifa (def:j9.1) (N:another position is that this is sunna and not obligatory);
(d) staying the nights following the 'Eid at Mina (def:j10.1,4,7);
(e) and the farewell circumambulation (def:j11.2).
Everything besides the above is sunna.

@J12.4: The Nonperformance of an Obligatory Feature of Hajj or `Umra
Someone who does not perform an integral (N: of hajj or 'umra) remains in ihram until he performs it.
Someone who does not perform some other obligatory feature of them must slaughter in expiation (def:j12.6(I)) (O:if he does not return and perform it before its time is finished, as in such cases as:
-1- returning to enter ihram at the proper site before one starts circumambulating (dis: j2.5), though if one returns after having begun circumambulating, it does not lift the obligation to slaughter;
-2- not spending the night at Muzdelifa (j9.1), which necessitates slaughtering if one does not return before sunrise, though to do so after sunrise does not lift the obligation to slaughter;
-3- or not spending most of the night at Mina, if one does not return to it before most of the time has passed, though if one does (n:return while most of it remains), then one need not slaugther.
And similarly for the other requisites). Someone who does not perform a sunna is not obliged to do anything.

@J12.5: Being Prevented By Others From Completing the Integrals of Hajj or `Umra after Having Entered Ihram
Someone prevented by an enemy (O: nonMuslim or Muslim) from entering Mecca (O: and fulfilling the integrals (A: of hajj or 'umra, including being barred from performing the obligatory circumambulation (tawaf al-ifada) or going between Safa and Marwa) when there is no alternative route, releases himself from ihram by intending release from it, shaving his head, and slaughtering a sacrifice animal at the place he has been prevented, if an animal is available. If not (O: such as when unable to find an animal at all, or finding one for more than the going price of similar animals at that place and time), one gives the animal's value in food (A: wheat) (O: as charity to the poor and those short of money is the Sacred Precint (N: or place one is prevented)); or if unable (O: to give food), one fasts a single day for each 0.51 liters of food (A: wheat) that would have been given had the latter been done (O: fasting the days wherever one wishes. When fasting is the only option possible, one is immediately released from ihram after shaving one's head with the intention of releasing oneself). If such a hajj or 'umra was to have been supererogatory, one is not obliged to make it up.

@J12.6: A Full Summary of the Expiations Connected with Hajj and `Umra
(n: Muhammad 'Abdullah Jurdani distinguishes between four categories of expiations relating to hajj and 'umra.

(I) The first category consists of alternatives in a fixed precedence order and predetermined amount (dam tartib wa taqdir), meaning that one must either slaughter a shah (def: h2.5) meeting sacrifice specifications (def: j14.2), distributiing its meat to the poor and those short of money (def: h8.11) in the Sacred Precinct; or if unable to slaughter (N: from lack of money (def: j1.17(2)) while on the hajj, even if one has enough money back home), then one must fast three days during the hajj and seven more at home, making ten days. (N: If this expiation is for something that should have been performed after standing at 'Arafa (n: (4), (5), (6) or (9) below), the three days "during the hajj" may be fasted after one's release from ihram while still in Mecca, or if one fails to do so while three (A: as is obligatory), they become a makeup fast that must be performed before the other seven fasted at home (A: by an interval equal to the days of one's journey home).)

There are nine things which necessitate this type of expiation:

-1- performing an 'umra first (tamattu') hajj (def: j1.15,17);

-2- performing hajj and 'umra simultaneously (qiran, def: j1.16,17);

-3- not standing at 'Arafa (def: j8.4);

-4- to miss stoning (def: j10.8) at the stoning sites of Mina on the three days after the 'Eid, the time for which ends at sunset on the third day (dis: j10.2 (N:)) if one does not leave early (def: j10.6);

-5- to miss all three nights at Mina after the 'Eid (def: j10.1,4,7), though if one only misses a single night, one distributes 0.51 liters of wheat to the poor of the Sacred Precinct, and if two nights, then double this amount;

-6- to miss spending the night at Muzdelifa (def: j9.1, second par.);

-7- not entering ihram at the proper site (dis: j2.5);

-8- breaking one's vow (def: j18.5);

-9- or not performing the farewell circumambulation (tawaf al-wada', def: j11.2).

(II) The second category consists of expiations in which one is free to choose one of three predetermined alternatives (dam takhyir wa taqdir), namely: to slaughter and distribute a shah as described above (I); to fast three days, even if unconsecutive, wherever one wishes; or to give 1.015 liters of wheat to each of six of the poor or those short of money at the Sacred Precinct.

There are eight things which necessitate this type of expiation:

-1- removal of three hairs (dis: j3.8) at one time and place, meaning that the interval between removing each is not considered long (dis: f4.5), and one has remained at the same place, though if their removal does not occur at a single time and place, one must pay 0.51 liters of wheat to the poor or fast one day for each hair, even if their number exceeds three;

-2- trimming three nails at one time and place, with the same rules and restrictions as just mentioned;

-3- men wearing sewn garments or covering their head (dis: j3.6), or women covering their faces (dis: j3.24);

-4- using oil (def: j3.7(1));

-5- using scent (j3.7);

-6- sexual foreplay (n: other than intercourse) (dis: j3.13);

-7- having sexual intercourse a second time after having spoiled one's hajj (dis: j3.14) by an initial sexual intercourse;

-8- or having sexual intercourse between partial and full release (def: j9.13) from ihram.

(III) The third category consists of expiations in a fixed precedence order of alternatives involving estimate-based substitutes (dam tartib wa ta'dil). It is necessitated by two things.

-1- The first is being prevented by another from completing all the integrals of the hajj or 'umra (def: J12.5), in which case one must release oneself from ihram by slaughtering and distributing a shah as described above (I); or if unable to slaughter, one estimates its value, buys food for that amount, and distributes it to the poor of the Sacred Precinct (N: or place one is prevented); or if unable to give food, one fasts one day for each 0.51 liters of wheat that would have been given if one had been able to.

-2- The second is having spoiled one's hajj or 'umra by sexual intercourse (def: j3.14), in which case one must slaughter a camel, or if unable to, one must perform the alternative one is capable of, of those mentioned at j3.15.

(IV) The fourth category involves choosing between alternatives consisting of estimate-based substitutes (dam takhyir wa ta'dil). It is necessitated by two things.
-1- The first is killing a game animal while in ihram, where if there is a domestic animal of similar value (lit. "like"), one has a choice between the alternatives mentioned at j3.22, though if there is not, then those mentioned at j3.23.
-2- The second is destroying a tree of the Sacred Precinct, where, if it is large in relation to other trees of its kind, one slaughters and distributes a cow, and if small, one slaughters a sheep. In either case,one has a choice between slaughtering it and distributing its meat to the poor of the Sacred Precinct, estimating its cost and buying wheat to distribute to the poor of the Sacred Precinct, or fasting a day for each 0.51 liters of wheat that would have been bought had the latter been done. (Mufid' awam al-Muslimin ma yajibu' alayhim min ahkam al-din (y67), 230-38))
(N: Throughout the above, whenever one is obliged to slaughter an animal, it is permissible to commission (wakala, def: k17) another person to do so by means of the written contracts readily available at a modern hajj, simply paying an amount of money and signing the agreement. They then slaughter for one is the early morning of the 'Eid and distribute the meat to deserving recipients.
Secondly, giving food or wheat to the poor, whereever it is mentioned in connection with expiations, means giving them the type of food that is valid for the zakat of 'Eid al-Fitr (def: h7.6), and the remarks made in that section about the Hanafi school permitting other than wheat apply equally here.) (n: In the Hanafi school, slaughtering must take place in the Sacred Precinct, though one may distribute both the meat and other expiations anywhere (al-Lubab fi sharh al-Kitab (y88), 1.212, 1.224).)

*2*Chapter J13.0: Visiting the Tomb of the Prophet (Allah Bless Him and Give Him Peace)

@J13.1It is recommended when one has finished the hajj to visit the tomb of the Prophet (Allah bless him and give him peace) (n: in Medina). (O: One should enter his mosque with the right foot first, as in any mosque, and say the well-known supplication: "It the name of Allah, praise be to Allah. O Allah, bless our liegelord Muhammad, his folk and his Companions, and give them peace. O Allah, open unto me the gates of Your mercy.")

@J13.2: How To Visit the Prophet's Tomb
It is recommended to pray two rak'as to greet his mosque, and then approach the noble and honored tombe and stand at the head of it with one's back to the direction of prayer (qibla). One bows one's head and summons to mind reverent awe and humility, then greets the Prophet (Allah bless him and give him peace) and blesses him in a normal voice (O: saying: "Peace beupon you, O Messenger of Allah. Peace be upon you, O Prophet of Allah. Peace be upon you, O Chosen One of Allah. Peace be upon you, O Best of Allah's Creation. Peace be upon you, O Beloved of Allah"), after which one supplicates Allah for whatever one wishes. The one steps half a meter to the right to greet Abu Bakr, and again to the right to greet' Umar (Allah be well pleased with them). Then it is recommended to return to one's original place and do much of supplicating Allah, turning to Allah through the Prophet (tawassul, def: w40) (O: concerning one's aims and goals, since he is the greatest intermediary, in intercession and other things), and invoking blessings upon him (Allah bless him and give him peace), after which one supplicates beside the pulpit (minbar) and in the Rawda (N: which is the space designated by the white pillars between the chamber containing the noble tomb and the pulpit).

@J13.3It is unlawful to circumambulate the tomb.
It is offensive to nudge the wall around the tomb with one's back or front, to kiss it, or touch it (O: with one's hand. Proper conduct here is to stand back from it as one would if present during his life (Allah bless him and give him peace). This is what is right, and what scholars have said and are agreed upon. One should not be deceived by what some common people do in their ignorance of proper manners, for it is reprehensible innovation (bid'a, def: w29.3)).
One of the most disgraceful innovations is the entering of dates in the Rawda.

@J13.4It is recommended to visit al-Baqi' (O: the cementery of Medina. It is desirable

to go to it every day, for buried their are the wives of the Prophet (Allah bless him and give him peace), some of his children, his father's brother 'Abbas, ur liegelord 'Uthman ibn 'Affan the successor of the Messenger of Allah (Allah bless him and give him peace), a number of his Companions (Sahaba), and Imam Malik, founder of the Maliki school of jurisprudence, the bliss and benefaction of Allah be upon them all).

@J13.5When one desires to travel, one bids farewell to the mosque by praying two rak'as, and to the noble tomb with a visit and supplication. And Allah knows best.

*2*Chapter J14.0: Sacrifices on `Eid Al-Adha
@(O: Sacrifices are the livestock slaughtered in worship of Allah Most High between 'Eid al-Adha and the last of the three days that follow it. They are a general hospitality from Allah to believers (A: to whom the meat is distributed. It is unlawful to give any of it to non-Muslims).)

@J14.1'Eid al-Adha sacrifices are a confirmed sunna (def: c4.1) (N: which is considered Obligatory in the Hanafi school) (O: being sunna for those able to slaughter, though uncalled-for from the poor person who is unable).
It is recommended for someone who intends to sacrifice not to cut his hair or trim his nails on 10 Dhul Hijja until he slaughters (O: these being offensive until he does).
The times for slaughtering begins when it is long enough after sunrise to have performed the 'Eid prayer (def: f19) with its two sermons (A:i.e. about forty minutes) (O: even if one does not attend it) and it ends at (A: sunset on) the last of the three days following the 'Eid.

@J14.2: Sacrifice Animal Specifications
Only camels, cattle, sheep, or goats may be slaughtered. At the youngest, camels must be over five full years, cattle and goats over two full years, and sheep over one full year.
A single camel or cow fulfills the sunna for seven (A: men and their families), though a shah (def: G2.5) only fulfills it for one. It is superior to slaughter a single shah than to have a share in slaughtering a camel.
The best animal to sacrifice is a camel, then a cow, then a sheep, and then a goat. The best kind of shah (h2.5) to slaughter is white, then tawnycolored, then black and white, and then a black one.
It is a necessary condition that a sacrifice animal be free of defects that diminish (A: the quality of) its meat. It is invalid to slaughter:
-1- a lame animal (O: that has an obvious walking problem that hinders its going to pasture and thus weakness it);
-2- a blind or one-eyed animal (O: whose defect is manifest, as this diminishes its ability to graze);
-3- a sick animal (O: whose infirmity is plain);
(though if these defects are slight, the animal will suffice. It is likewise invalid to sacrifice an animal that is:)
-4- deranged by malnutrition or insane:
-5- mangy or scabrous (O: even when it is not obvious);
-6- with an ear that has been cut off of a piece of its separated, even if not much (O: or one born without an ear);
-7- or missing a considerable part of the haunch or similar meat-bearing portion (O: though not if it is a slight amount).
It is permissible to sacrifice an animal with a slit in its ear (O: a measure for identification that does not diminish the meat) or open with part or all of a horn broken off.

@J14.3: Having Another Slaughter for One
It is best to slaughter (def:j17.4) the animal oneself (O: if one can slaughter well. If not, then it is obligatory to have someone who can slaughter properly do it for one). If unable to slaughter well, it is recommended to be present when it is done.

@J14.4: The Intention
The intention to sacrifice must be made at the time of slaughtering. (O: It suffices

the person who is having another slaughter for him to make the intention when he authorizes the other to do so.)

@J14.5: Distributing the Meat
It is recommended that a third of the animal sacrificed be eaten, a third be given away (O: even if to wealthy Muslims, and a third be given as charity (O: raw, not cooked).
It is obligatory to give away some of the (O: raw) meat as charity, even if it is not much (O: it suffices to give it to one Muslim), and the hide is given in charity or used at home.
It is not permissible to sell the hide or meat (O: all of the above applying to sunna or voluntary sacrifices). It is not permissible for a person who has vowed (def:j18) a sacrifice to eat any of the animal slaughtered.

*2*Chapter J15.0: Sacrifice for a Newborn (`Aqiqa) and Name Giving

@(O: Lexically, 'aqiqa means the hair on a baby's head at birth. In Sacred Law, it means the animal sacrificed when the baby's hair is cut, which is a confirmed sunna (def: c4.1).)

@J15.1: Sunnahs After Birth
It is recommended for anyone to whom a child is born to shave its hair on the seventh day thereafter (O: meaning any newborn, whether male or female; a baby girl should also have her hair shaved) and give away in charity gold or silver equal to the weight of the hair.
It is also recommended (N: when the baby is first born) to give the call to prayer (adhan, def: f3.6) in its right ear and the call to commence (iqama) in its left.

@J15.2: The Sacrifice
If the baby is male, it is recommended to slaughter two shahs (def:h2.5) that meet 'Eid Sacrifice specifications (def:j14.2), while if the baby is female, it is recommended to slaughter one.
(O: The person called-upon to slaughter for a newborn is the one obliged to support the child (dis: M12.1).)
After slaughtering, the shah is cooked (O: as at any feast) in sweet sauce, but none of its bones are broken (A: it is cut at the joints), and it is recommended to distribute the meat to the poor.

@J15.3: Name-Giving
It is sunna to give the child a good name such as Muhammad or 'Abd al-Rahman. (O: It is desirable to name a child even if it dies before being named.) (A: It is sunna for a new Muslim to take a good name like the above, or one of the names of the prophets (def:u3.5) (Allah bless them and give them peace).)

*2*Chapter J16.0: Foods

@(O: This section is an explanation of what is lawful (halal) and unlawful (haram), the knowledge of which is among the most important concerns of the religion, since knowing it is personally obligatory for every Muslim.)

@J16.1: Avoiding Doubtful Foods
(n: The following hadith and its commentary have been added here by the translator.)
Anas (Allah be well pleased with him) relates that the Prophet (Allah bless him and give him peace) found a date in his path, and said,
"But for fear that it was charity, I would have eaten it." (Riyad al-salihin (Y107), 277)
(Muhammad ibn al ?? Bakri:) The hadith shows that when a person doubts that something is permissible, he should not do it. The question arises, Is refraining from it in such a case obligatory or recommended?- to which our Imams explicitly reply that it is the latter, because a thing is initially assumed to be permissible and fundamentally not blameworthy, as long as some prior reason for considering it unlawful is not known about it that one doubts has been removed. For example, when one doubts that one of the

conditions for valid slaughtering (def: j17.2-4) has been met, conditions which make (N: a particular piece of meat) lawful, the assumption is that it remains unlawful (N: since initially the animal was alive, a state in which it is unlawful to eat, while it only becomes lawful by a specific procedure, i.e. Islamic slaughtering), so that the meat does not become lawful except through certainty (A: that it has been slaughtered. The case of meats is exceptional in this, since most other foods are initially permissible, and one assumes they remain so unless one is certain something has occurred which has made them unlawful).
In cases of doubt, only likely possibilities are taken into consideration, since it appears probable (n: in the above hadith) that dates for charity were present at the time. As for remote possibilities, taking them into consideration only leads to a blameworthy extremism and departure from how the early Muslims were, for the Prophet (Allah bless him and give him peace) was given some cheese and a cloak (A: by members of a non-Muslim Arab tribe) and he ate the one and wore the other without considering whether they might have mixed the former with pork, or whether the wool came from a slaughtered or unslaughtered animal. Were one to take such possibilities into consideration, one would not find anything lawful on the face of the earth. This is why our colleagues say, "Complete certainty that something is lawful is only conceivable about rainwater falling from the sky into one's hand: (Dalil al-falihin li turuq Riyad al-salihin (y25), 5.37-38).

@J16.2: Animals Lawful and Unlawful to Eat
It is permissible to eat the oryx, zebra, hyena, fox, rabbet, porcupine, daman (n: a Syrian rock badger), deer, ostrich, or horse.

@J16.3 It is unlawful to eat:
-1- (N: any form of pork products);
-2- cats or disgusting small animals that creep or walk on the ground such as ants, flies, and the like
(O: disgusting being used here to exclude inoffensive ones such as the jerboa, locust, and hedgehog, which are small creeping animals, but are recognized as wholesome, and are pure);
-3- predatory animals that prey with fangs or tusks, such as the lion, lynx, leopard, wolf, bear, simians, and so forth (O: including the elephant and weasal);
-4- those which hunt with talons, such as the falcon, hawok, kite, or crow, except for the barnyard crow, which may be eaten;
-5- or the offspring of an animal permissible to eat and one not permissible to eat, such as a mule
(O: which is a cross between one eaten, the horse, and one not eaten, the donkey).

@J16.4It is permissible to eat any aquatic game (sayd al-bahr) except frogs and crocodiles.
@J16.5: Other Substances Unlawful to Eat
It is unlawful to eat anything harmful, such as poison, glass, or earth. (A: If something has been proven harmful, it is unlawful to consume, while if suspected to be harmful, it is offensive to.) (n: w41 discusses cigarette smoking.)

@J16.6It is unlawful to eat anything impure (najasa, def: e14.1) (O: whether impure in itself, or because of being affected with something impure, as is the case with (N: befouled) milk, vinegar, or honey).
It is also unlawful to eat substances which are pure, but generally considered repulsive, such as saliva or sperm.

@J16.7If forced to eat from a unslaughtered dead animal (O: out of fear of losing one's life or fear of an illness growing worse), then one may eat enough (O: the necessary minimum) to avert destruction (O: meaning enough to keep life from ending. One may not eat to repletion from a dead animal unless one believes that confining oneself to the survival minimum entails dangerous consequences, in which case it is obligatory to take the edge off one's hunger). If circumstances force one to choose between a dead animal and some permissible food belonging to someone else (O: who is not present), one is obliged to eat of the dead animal.

*2*Chapter J17.0: Hunting and Slaughtering

@J17.1It is not permissible to eat any animal (O: that Muslims are permitted to eat) until it has been properly slaughtered, the only exceptions to which are fish (def: j16.4) and locusts, which are permissible to eat even when they die unslaughtered.

@J17.2It is unlawful to eat meat slaughtered by a Zoroastrian, someone who has left Islam (murtadd, def:08), or an idol worshipper, (O: included with whom are those (zanadiqa) with corrupt convictions about tenets of faith that are well-known as essential parts of Islam (def: books u and v),) or a Christian of the desert Arab tribes (O: the upshort of which is that it is a necessary condition that the slaughterer be of a people whose women we are permitted to marry, whether Muslims, Jews, or Christians).

@J17.3It is permissible to slaughter with anything that has a cutting edge; but not a tooth, bone, or claw, whether human or otherwise, attached to the body or not.

@J17.4The necessary condition for slaughtering any animal which is within one's capacity to slaughter (O: domesticated or wild) is to cut both the windpipe and the gullet (O: windpipe meaning the channel of breath, and gullet meaning the channel of food and drink which lies beneath the windpipe.
It is not necessary for the validity of slaughtering to cut the carotid arteries, which are two blood vessels on the sides of the neck encompassing the windpipe.
If the slaughterer neglects to cut any part of either the windpipe or gullet and the animal dies, it is considered an unslaughtered dead animal, as is an animal with nothing but purely reflexive movement left when one finishes cutting a part of the windpipe or gullet previously missed. If the slaughterer cuts from the back of the neck until he severs the windpipe and gullet, it is a sin because of the excess pain caused (A: though it is valid as slaughtering. Chopping off heads of chickens with a hatchet is offensive, though the meat is lawful).
The slaughterer should cut swiftly and not take his time such that he has to cut two or more times. If he does, ad there is no life remaining in the animal on the second swipe, then the animal (A: has died unslaughtered and) is impermissible to eat. The determining factor is whether life remains in the animal when the knife is applied at the beginning of the last stroke (A: the one which successfully severs both the windpipe and gullet), no matter whether this is the second or third).

@J17.5It is recommended when slaughtering:
-1- to turn the animal towards the direction of prayer (qibla);
-2- to sharpen the knife;
-3- to cut rapidly (O: even faster than is obligatory, such that it does not take two or more swipes, as mentioned above);
-4- to mention Allah's name (O: for the spiritual grace therein, saying "Bismillah," as is sunna) (A:this is obligatory in the Hanafi school);
-5- to bless the Prophet (Allah bless him and give him peace);
-6- and to cut the large blood vessels (O: on either side of the neck).

@J17.6It is recommended to slaughter camels by thrusting the knife (O: into the hollow at the base of the neck (A: between the two collarbones) above the chest so that one severs them (A: the windpipe and gullet) in this concavity, since it is easier than cutting the throat, for it seeds the exit of the spirit from the body by bypassing the length of the neck, being the preferable way to slaughter any animal with a long neck, such as a duck, goose, ostrich, or giraffe), with the camel left standing, one foreleg bound up.

@J17.7It is recommended to slaughter other than camels (O: such as cattle, sheep, goats, or horses (A: by drawing the knife) across the throat at the top of neck) after laying them on their left side. (O: Slaughtering them this way is only called for to easily enable the slaughterer to hold the knife in his right hand and the animal head with is left. It is also sunna for the animal's legs to be bound, except the right hind

leg, so the animal will not jerk during slaughtering and cause the slaughterer to miss his mark. The right hind leg is left free in order to pacify the animal by giving it something to move).

@J17.8It is a necessary condition that the slaughterer not raise his knife-hand while slaughtering (O: while drawing it across the neck). It if lefts it before completely severing both the windpipe and gullect,t and then returns to cut them, the animal is not lawful to eat.

@J17.9: Hunting As for hunting, a game animal is lawful to eat whenever on hits it with an arrow (A: or according to the Maliki school, shoots it with a rifle or shotgun) or brings it down with a trained hunting animal (A: such as a falcon or dog) (O: but only if trained), and it dies before one can slaughter it (O: that is, provided that one did not reach it when there was any life let in it besides reflexive motion. If one reaches it while it is alive or any life remains, then one must properly slaughter it), provided that the hunter is not blind, is of a people whose slaughtered food Muslims may eat (def: j17.2), and provided that the animal does not die from being struck by the mere weighting of the arrow, but rather dies by its edge weighting that it hits the animal point-first, wounding it).
If the game was brought down by a trained hunting animal, it is a necessary condition that the animal ate nothing of the game.
If the game animal dies from being struck by the weight of the trained hunting animal (A: as in falconing), then the game is lawful to eat.

@J17.10A game animal is not lawful to eat if:
-1- an arrow hits it and it then drips into water (O: because of the likelihood that it died from drawing (N: if that is probable) rather than from being short);
-2- it is brought down on a peak which it then falls from (O: because of the likelihood that it died from the fall);
-3- or if it disappears after having been wounded and is found dead (O: because it might have died for some other reason than being wounded (N: though if it is obvious that it dies from the wound, it is lawful to eat)).

@J17.11A camel or other (O: domestic animal such as a cow, sheep, goat, or horse) that strays and cannot be retrieved, or that falls into a well and cannot be gotten out may be made lawful to eat by shooting it (O: because of the impossibility of slaughtering it), no matter where one hits its body (N: provided one mortally wounds it).
And Allah knows best.

*2*Chapter J18.0: Vows (Nadhar)

@(O: Lexically, the word vow means any promise. It is legally defined as making obligatory some act of worship that was not originally obligatory in Sacred Law, such as a supererogatary or fast, and like.
There is a difference of opinion among scholars whether a vow in itself is an act of worship or whether it is offensive. The strongest position is that it is an act of worship when made to perform a pious act (A: since Allah Most High describes the pious as "fulfilling their vows" (Koran 76:7)), for it is an intimate discourse with Allah Most High; though it is offensive in the head of an argument.)
(A: The advantage of a vow is that one may obtain the reward of an obligatory act by fulfilling it. Its drawback is that unlike broken oaths, which may be expiated (dis: o20), there is no way to lift the vowed action: it remains obligatory unless one is physically unable (N: in which case one performs an alternative (n:e.g. giving food in place of fasting if there is one in Sacred Law). For this reason. many pious and learned Muslims avoid making vows.)

@J18.1: The Conditions for the Legal Validity of a Vow
A vow (O: to perform some pious act) is only valid:
(a) if made by a Muslim who is legally responsible (mukallaf, def: c8.1);
(b) when it concerns some act of worship (A: meaning, for the Shafi'is, any recommended act, though for the Hanafi school it can only be an act that is similar in kind to an

obligatory form of worship (n: such as prayer, fasting, or hajj));
(c) and is stated in words such as "I hereby owe Allah to perform such and such," or "I am hereby obliged to do such and such."
(O: A vow to do something that is merely permissible, such as standing, sitting, eating, or sleeping, is not legally valid because these are not acts of worship; the reason being the hadith related by Bukhari that the Prophet (Allah bless him and give him peace) passed a man standing in the sun without seeking shade, whom he inquired about and was told that it was Abu Isra'il, who had vowed to stand while fasting without sitting, taking shade, or speaking; to which he replied,
"Pass by him and have him sit in the shade and speak, but let him finish fasting."
By act of worship, our author means acts that are supererogatory and not obligatory, since an oath to undertake an obligatory act is invalid whether it involves performance of something, such as an obligatory prayer or fast, or nonperformance of something, such as vowing to abstain from wine or fornication and the like. Such vows are not valid to begin with, as Allah has made these obligatory and "obligating oneself to do them" is meaningless.
The obligatory acts which are not valid to vow are restricted to the personally obligatory. As for the communally obligatory (def: c3.2), a vow to do such an act obliges one to fulfill it, because it is an act of worship not originally obligatory in the law, meaning not initially called for from any particular person.)

@J18.2: General Provisions Regarding Vows
A valid vow to do an act of worship makes the act obligatory.

@J18.3 One must fulfill a vow that one has made conditional upon the occurrence of some event, such as by saying, "If Allah heals my sick friend, I am obliged to do such and such" (O: of fasting, praying, or charity), which becomes obligatory if the sick person regains his heath.

@J18.4 If someone makes a vow by way of argument and in anger, saying, for example, "If I speak to Zayd, I am obliged to do such and such," then if he speaks to Zayd, he has a choice between doing what he has vowed, or else paying the expiation form a broken oath (def: 020).

@J18.5 If one vows to perform the hajj riding but instead does so on foot, or vows to perform it on foot but then does so riding, this accomplishes the vow, though one is obliged to slaughter (O: as one does for an 'umra first (tamattu') hajj (def: j12.6(I)).
(N: Because the vowed walking or riding has become one of the obligatory elements of one's hajj, the expiation for its nonperformance is as other unperformed obligatory acts of hajj, and if such a person lacks a shah (def: h2.5) or lacks the money for it, he may fast. As for a person who vows to do something unconnected with the hajj and finds he cannot fulfill it, he performs a valid alternative if one exists in Sacred Law (dis:J18.0 (A:)). If there is no valid alternative in Sacred Law, he remains responsible for performing the vowed act.)
(O: If one does not fulfill a vow because of being unable to or because of forgetfulness, it is not a sin, but one must slaughter, an obligation that incapacity or forgetfulness does not lift. To summarize, the sin (A: of not fulfilling one's vow) only exists when one is capable of fulfilling it, not when one is incapable, though someone who does not fulfill a vow because of incapacity must slaughter a shah meeting sacrifice specifications (def: j14.2).)

@J18.6 If one vows to go to the Kaaba, Masjid alMedina, or al-Masjid al-Aqsa (n: in Jerusalem), then one is obliged to. If one vows to go to the Kaaba, then one must perform hajj or 'umra (O: because hajj and 'umra are what is fundamentally intended in Sacred Law by going to the Sacred Precinct, and the vow is interpreted according to this convention of the Law as a vow to perform either hajj or 'umra). If one vows to go to Masjid al-Medina or al-Masjid al-Aqsa, then one must either perform the prayer or else spend a period of spiritual retreat (i'tikaf, def:i3) in the mosque (O: i.e. one is entitled to choose between prayer or spiritual retreat).
If one vows to go to some other mosque, the vow does not oblige one to do so (dis:

i3.4(end)) (O: since travelling to other mosques is not an act of worship (N: that is, if intended for itself, though if one intends it in order to perform the prayer or (for spritual retreat there in, it is an act of worship)).

@J18.7 If one vows to fast for the whole of a particular year, one does not have to make up days not fasted on the two 'Eids or the three days following 'Eid al-Adha (dis:i2.3), or the days fasted during Ramadan, or the days a woman misses during her monthly period or postnatal bleeding.

@J18.8 Someone who vows to perform the prayer (A: but does not specify how much) must pray two rak'as.

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*2*Chapter K1.0: Sale

@(O:The legal basis for sale, prior to scholarly consensus (ijma'), is such Koranic verses as the word of Allah Most High,
"Allah has made sale lawful..." (Koran 2:275)
The more reliable of the two positions reported from our Imam (Allah Most High be well pleased with him) is that this verse is general in meaning, excluded by other evidence. For the Prophet (referring to all sales except those specifically). (Allah bless him and give him peace) forbade various sales butdid not explain the permissible ones, his not doing so proving that the initial presumption for the validity of a sale is that it is lawful. This is also borne out by hadiths such as the one is which the Prophet (Allah bless him and give him peace) was asked what type of earning was best, and he answered.
"The work of a man's own hand, and every pious sale."
Meaning sales free of cheating and deceit. Hakim related this hadith, which he classified as rigorously authenticated (sahih).
Lexically, sale means to transact something for something else. In Sacred Law it means to exchange an article of property for other property in a particular way. Its integrals are six:
(a) the seller;
(b) the buyer;
(c) the price;
(d) the article purchased;
(e) the spoken offer;
(f) and the spoken acceptance.)
(N: Sale (bay'), whereever it is used in the ruling below, refers to both exchanging goods for money and exchanging them for other goods (n: i.e. barter).)

@K1.1: The Spoken Offer and Acceptance
A sale is not valid unless there is a spoken offer (O: by the seller) and spoken acceptance (O: by the buyer(. Offer means the statement of the seller or his agent (wakil, def: k17) "I sell it to you" or "I make it yours." Acceptance means the statement of the buyer or his agent "I buy it" or "I take possession of it" or "I accept,"
(A: Regarding mujatah, which is giving the seller the price and taking the merchandise without speaking, as when buying something whose cost is well known, Bajuri notes, "Nawawi and a group of scholars have adopted the position that sales conducted by it (A: mu'atah) are valid for all transactions that people consider sales, since the

determining factor therein is that acceptance of both parties, and there is no decisivelly authenticated primary text stipulating that it be spoken, so common acknowledgement ('urf, def: f4.5) is the final criterion (A: as to what legally constitutes acceptance) "
(Hashiya al-Shaykh Ibrahim al-Bajuri (y5), 1.355).)
(N: The category of mu'atah also includes sales conducted by means of vending machines (A: provided it is clear what one is buying before one puts the money in the machine).)
It is permissible for the buyer's acceptance to precede the offer, such as his saying, "I buy it for so-and-so much," and for the seller to reply, "I sell it to you," It is also permissible to say, "Sell it to me for so-and-so much," and for the seller to reply, "I sell it to you." All of these are unequivocal expressions.
Sales can likewise be effected, if the intention exists, by equivocal expressions such as "Take it for so-and-so much," or "I consider it yours for so-and-so much," thereby intending a transaction with the buyer,who then accepts. If one does not intend a transaction by such expressions, then the sale is nothing (O:but empty words, and the buys is obliged to return the merchandise to its owner if it still exists, or replace it if used up while in his possession).
It is obligatory (O: for the validity or the sale agreement that other conditions be met, among them) :
(a) that the interval between the offer and its acceptance not be longer than what is customary (O: the criterion being whether it gives the impression that one is averse to accepting, not merely a brief interval. Other conditions include:
(b) that conversation extraneous to the agreement by either of the two parties not intervene between the offer and acceptance, even if inconsiderable, since, it gives the impression of nonacceptance;
(c) that the offer and its acceptance correspond, for if the offered price is one thousand, and the buyer "accepts" for five hundred, the transaction is invalid;
(d) that neither the offer nor acceptance be made conditional (ta'liq) upon an event extraneous to the agreement, such as saying, "I sell it to you, should my father die";
(e) and that the sale not be subject to time stipulations (ta'qit) such as saying, "I sell it to you for a period of one month";
-because both (d) and (e) vitiate the necessary intention).
A mute's gesture is as binding as a speaker's words.

@K1.2: The Buyer and Seller
The conditions that must exist in the buyer and seller are:
(a) having reached puberty (A: Imam Ahmad permits the buying and selling of minor items by children, even before they have reached the age of discrimination (def:f1.2) and without their guardian's permission);
(b) sanity:
(c) that one's disposal over one's property not be suspended (def:k13);
(d) and that one not be unjustly forced to make the sale. (O: The agreement of someone unjustly forced to sell his property is invalid because of lack of consent, though it is valid if he is justly forced, as when he is ordered to sell his property to repay a debt.)
(e) If a Koran is being purchased for someone, it is obligatory that the person be Muslim. (O: The same is true of books of hadith and books containing the words and deeds of the early Muslim, "Koran" in this context means any aork that contains some of the Koran, even a slight amount.) (A: This ruling holds for any religious books, even the Tabaqat of Sha'rani (n: a collection of biographical sketches of Muslims), though the Hanafi school permits non-Muslims to buy or be given the Koran and other Islamic books.)
(f) It is a condition that someone buying weapons be of a people who are not at war with Muslims.

@K1.3: The Option to Cancel a Sale at the Time of the Agreement
When a sale is effected, both buyer and seller have the option to cancel at the time of the agreement (khiyar al-majlis), meaning the right to nullify the agreement at any time before they (O: physically) part company, or both waive the right to cancel, or until one of them cancels the sale.

(O: The option to cancel at the time of the agreement exists at every sale, and for its duration, the ownership of the articles exchanged is suspended (def:k1.5)

@K1.4: Stipulating an Option to Cancel Period
Both the buyer and seller have the right to stipulate an option to cancel period, an interval during which either party may cancel the agreement, of up to three days (O: provided the days are consecutive.
The option to cancel period is not period, is not valid if the two parties stipulate an indeterminate period or leave it open-ended by merely stipulating "an option to cancel" (A: though the buyer has the right to return the article because of defects (dis:k5) regardless of what they stipulate), or when the period is determinately known, but exceeds three days). The option to cancel may be given (A: depending on what the buyer and seller agree upon) to both parties, or just one of them (O: and not the other, or they may give the option to a third party, since the need for this might arise. In any case, both buyer and seller must agree t the conditions). But such a period may not be stipulated for transactions in which it is unlawful to part company before taking possession of the commodities exchanged (O: by one or both parties) as is the case in exchanging the kinds of foodstuffs and moneys in which usurious gain (riba, dis: K3.1-2) is present, or in buying in advance (salam, dis:k9.2(a)).

@K1.5 If the option to cancel is given to the seller alone, then the merchandise is considered his property during this period (O: meaning that he owns the proceeds earned by the property, and its increments such as its milk, eggs, or fruit, and he is obliged to cover its maintenance and other expenses).
If the option to cancel is given to the buyer alone, then the merchandise is considered his property during this period (O: and the above increments and expenses are his).
If the option to cancel is gives to both buyer and seller, then the ownership of the merchandise during this period is suspended, meaning that if the transaction is finalized, it is established that it belonged to the buyer (O: from the time the agreement was first made, together with its increments and expenses), but if the transaction is cancelled, it is established that it belonged to the seller (O: meaning that it never left his ownership).

*2*Chapter K2.0: The Things Exchanged in a Transaction

@(N: Things here refers to both the merchandise and its price.)

@K2.1 Five conditions must exist in any article transacted. It must:
(a) be pure (O: in itself, or if affected with filth, it must be capable of being purified by washing);
(b) be useful;
(c) be deliverable (O: by the seller to the buyer, meaning that the buyer is able to take possession of it);
(d) be the property of the seller or the person whom the seller has been authorized to represent;
(e) and be determinately known (ma'lum) (O: to the buyer and seller, as to which particular thing it is, how much it is, and what kind it is, in order to protect against chance or risk (gharar), because of the hadith related by Muslim that the Prophet (Allah bless him and give him peace) forbade the transaction of whatever involves chance or risk) (n: w42 discusses buying and selling insurence policies.)

@K2.2: Purity
It is invalid to transact something that is impure in itself (najasa, def: e14.1) such as a dog, or something affected with filth that cannot be purified (O: by washing), like milk or shortening, though it it can be, like a garment, then it may be transacted.

@K2.3: Usefulness
It is invalid to transact something which is not useful (O: whether the reason for invalidity is the article's baseness or the smallness of the amount being dealt with,) such as vermin, a single grain of wheat, or unlawful musical instruments (dis: r40) (O:

such as the mandolin or flute, since there is no lawful benefit in them).

@K2.4: Deliverability
It is invalid to transact something undeliverable, such as a bird on the wing or something that a third party has wrongfully taken from one, though if one sells the latter to a buyer who is able to take it back from the third party, the sale is valid; while if the buyer is unable to take it from him, then the buyer has the option to either declare the sale binding or cancel it.
It is invalid to transact a particular half of a whole object such as a vessel, sword, or garment (O: since the buyer cannot take possession of that part without breaking or cutting the article, involving the lessening and loss of property), or part of anything whose value is diminished by cutting or breaking, though if it does not diminish its value, as with a bolt of heavy cloth, such portions may be sold.

@K2.5: Lawful Disposal Over the Property
It is not valid for the owner of an article that has been put up as collateral (def:k11) to sell it without the permission of the person to whom the collateral has been given.
Nor is it valid to sell property belonging to another, unless the seller is the owner's guardian (def: K13.2) or authorized representative (def: k17).

@K2.6: Being Determinately Known
It is not valid to sell property not determinately identified such as "one of these two garments" (O: since "one of them" is not an identification. Likewise with saying, "I sell you one of these sheep." It makes no difference whether all the objects are of equal or unequal value).
It is not valid to transact a particular thing that is not in view (O: meaning that it has not been seen by both buyer and seller or by one of them) such as saying, "I sell you the Mervian robe I have up my sleeve," or "the black horse that is in my stable." But if the buyer has seen it before and the article is something that does not generally change within the time that has elapsed since it was last seen, then such sales are valid.
It is permissible to sell something like a pile of wheat that is in plain view when its weight is unknown, or to sell something for a heap of silver that is visible when the silver's weight is unknown, for seeing is sufficient.
The selling and buying of a blind person are not valid. He must commission another to buy and sell for him (A: though the Hanafi, Maliki, and Hanabali schools permit him to buy and sell for himself). It is valid for a blind person to buy in advance (def:k9) or for another to buy in advance from him, provided the payment is forwarded to and held by the person being bought from in advance.

*2*Chapter K3.0: Usurious Gain (Riba)

@(O: The word riba lexically means increment. In Sacred Law it is (N: of two types, the first being usurious gain (riba) in selling, which is) an agreement for a specific recompense whose equivalence to the merchandise is unknown (def: k3.1 (a)) according to the standards of the Law at the time of the transaction, or in which the exchange of the two properties transacted is delayed, or one of them is delayed. (N: The second type concerns loans, and consists of any loan by which the lender obtains some benefit (dis: k10.5).) The basis for its unlawfulness, prior to scholarly consensus (ijma', def:b7), is such Koranic verses as: "Allah permits trade but forbids usurious gain:" (Koran 2:275), and, "Fear Allah and relinquish what remains of usury, if you are believers" (Koran 2:278), and such hadiths as that related by Muslim, "The Messenger of Allah (Allah bless him and give him peace) cursed whoever eats of usurious gain (riba), feeds another with it, writes an agreement involving it, or acts as a witness to it." Another hadith, in al-Mustadrak (n:by Hakim), relates that the Prophet (Allah bless him and give him peace) said, "Usurious gain is of seventy kinds, the least of which is as bad as a man marrying his mother.")
(n:w43 discusses taking interest in enemy lands (dar al-harb).)

@K3.1: Usurious Gain in Sales of Foodstuffs, Gold and Silver

Gain is not unlawful except in certain exchanges involving (O:human) foodstuffs, gold, and silver (A: or other money) (N: which is the ruling for usurious gain in sales. As for usurious gain or interest from loans, it is unlawful for any type of property whatever). The determining factor in the prohibition of usurious gain in foodstuffs is their being edible, and in gold and silver, their being the value of things.
When a foodstuff is sold for a foodstuff of the same kind, such as wheat exchanged for wheat (O: or the gold is traded for gold). three conditions are obligatory:
(a) exact equivalence in amount (def: k3.5) (O: which must be made certain of, this stipulation precluding exchanges of foodstuffs, gold, or silver in which the amounts are not known, for such sales are not valid even if the two quantities transacted subsequently turn out to be equal, because of the ignorance of their equivalence at the time of the transaction, since ignorance of it is the same as actual nonequivalence);
(b) that the properties transacted be in the respective possession of buyer and seller before they part company;
(c) and immediacy (N: such that the agreement does not mention any delay in the exchange, even if brief).

@K3.2 When foodstuffs are sold for foodstuffs of a different kind, such as wheat for barely (O: or when gold is sold for silver), only two conditions are obligatory:
(a) that the exchange be immediate;
(b) and that the properties exchanged be in the respective possession of buyer and seller before they part company.
If these two conditions are met, the two commodities exchanged may differ in amount.

@K3.3: Tramsacting Gold and Silver
When gold is exchanged for gold, or silver for silver, conditions k3.1 (a,b,c) are obligatory. If gold is exchanged for silver, their amounts may differ, but conditions k3.2(a.b) are obligatory.

@K3.4 When foodstuffs are sold for gold or silver, the transaction is unconditionally valid (O: meaning none of the above conditions are necessary).

@K3.5 Equivalence in amount for commodities customarily sold by volume is reckoned according to volume (O: even if weights differ), and for articles customarily sold by weight according to weight.
Thus, it is invalid to sell a pound of wheat for a pound of wheat when there is a difference between the two's volume, though it is valid to sell a bushel of wheat for a bushel of wheat even when their weights differ.
Customarily transacted by weight or volume means according to the prevalent custom in the Hijaz during the time of the Messenger of Allah (Allah bless him and give him peace). If this is unknown, then according to the custom of the town where the transaction takes place. If the foodstuff is of a kind not customarily exchanged by either weight or volume, and it has no dried strong state, such as cucumbers, quinces, or citrons, then it may not be traded for its own sort.
Equivalence in amount is not applicable to foodstuffs until they are completed, meaning, for fruits, in the dried storage state. It is invalid to trade fresh dates for fresh dates for dried dates, fresh grapes for fresh dates, fresh dates for dried or fresh grapes for raisins. Types of dates and grapes not sold as dried dates and raisins may not be exchanged for their own sort. it is also invalid A: because of ignorance of their equivalence) to exchange:
-1- flour for flour (O: when they are of the same type);
-2- flour for wheat;
-3- bread for bread (O: when of the same type);
-4- a pure foodstuff for a mixed one;
-5- cooked food for uncooked, or cooked food for other cooked food, unless the cooking is very slight, such as separating honey (O: from the comb) or milkfat (O: from milk).
It is not permissible to exchange (N: for example) a measure of dates plus one dirham for two dirhams, or for two measures of dates, or for a measure of dates and a dirham. Nor is it permissible to exchange a measure of dates and a garment for two measures, nor a dirham and a garment for two dirhams.
It is invalid to transact meat for a live animal (O: even when the two are not of the

same kind of animal).

*2*Chapter K4.0: Some Prohibited Kinds of Transactions
@(O: Prohibited transactions may be invalid, as is usually the case with the prohibited, for prohibition generally entails invalidity; or not, such that the transaction is valid despite being prohibited (dis:c5.2).)

@K4.1: Selling the Offspring of Expected Offspring
It is invalid to sell the offspring of (A: expected) offspring, such as saying, "When my she-camel gives birth, and her offspring in turn gives birth to a camel, I hereby sell you that camel" (O: i.e. the offspring of the offspring. The reason for invalidity is that it is a transaction of an article that is not owned, known, or deliverable). Nor is it valid to sell something for a price whose payment is deferred to a time similar to the above (O: that is, till the time the offspring of an offspring is born, because the date of payment is not known).

@K4.2: Either-Or Sales It is invalid to make a transaction whose terms include two different possible deals (A: without specifying which has been agreed upon) such as saying, "I sell you this for either one thousand in case or two thousand in deferred payment" (O: which is invalid because the price is not known), or such as saying, "I sell you my robe for a thousand, provided you sell me your sword for five hundred" (O: which is invalid because of the invalid stipulation (dis: below)).

@K4.3: Sales with Extraneous Stipulations
It is not valid to make a transaction that includes an invalid stipulation (A: such as a condition that is extraneous to the original agreement which adds to its price) (O: because the Prophet (Allah bless him and give him peace) forbade transactions with such conditions, like stipulating a loan or a second transaction), saying for example, "I hereby sell it to you (n: for a thousand) provided you loan me a hundred" (O: or "provided you sell me your house for such and such a price" (A: or "Provided you do not sell it to So-and-so"). It invalidity is due to considering both as the price. Stipulating this invalidates the transaction, and paying this "price" is void, it not being determinately known (def: K2.1(e))). (A: The invalidating factor is stipulating a second transaction, not the mere fact that it accompanies the first transaction, for it is permissible to join two transactions, as discussed at k4.12 below.)

SALES WITH VALID STIPULATIONS

@K4.4: Sales with Valid Stipulations
The following types of conditions do not invalidate transactions that stipulate them:
-1- a condition to postpone payment, though this requires that the date of payment be specified;
-2- a condition that collateral (def: k11) be put up as security (N: for payment of the price or for delivery of the merchandise);
-3- a condition that a particular individual will guarantee (def: k15) payment;
-4- or other conditions (O: from the seller, the buyer, or both) that the deal requires, such as an option to return the merchandise if defective, and so forth.
It is valid for the seller to stipulate that he is free of responsibility for defects in the merchandise. By doing so, he is not held responsible for an animal's internal defects which he does not know of, though he remains responsible for all other kinds of defects. (O: The conditions for this ruling are that the defect be internal, be found in an animal, be unknown to the seller, and that it exist at the time of the agreement.)

@K4.5: Paying Nonrefundable Deposits
It is not valid to pay a nonrefundable deposit towards the price of an article, such as paying a dirham for piece of merchandise on the basis that if the buyer decides to keep it, the dirham is part of the price, but if he does not, then the seller keeps the dirham for free.
(A: The school of Imam Ahmad permits non refundable deposits.)

@K4.7: Undercutting Another's Deal
It is unlawful to undercut a brother's deal (A: or a non-Muslim's, since there is no difference between Muslims and non-Muslims in rulings concerning commercial dealings) that he has made with a customer, after they have settled on the price excludes someone going around taking bids from those who are increasing them, as auctioneers do, which is not unlawful).
It is also unlawful to undercut a brother's price (O: that is, during the option to cancel at the time of the agreement (def: k1.3), or during a stipulated option to cancel period (def: k1.4)) by telling the buyer, "Cancel the deal and I'll sell you one cheaper." (O: This also hols for other contracts, such as renting or lending the use of something.)

@K4.8: Bidding Up Merchandise
It is unlawful to bid up the price of a piece of merchandise that one is not really interested in, to fool another bidder.

@K4.9: Selling Grapes to a Winemaker
It is unlawful to sell grapes to someone who will make wine from them. (O: Like grapes in this is the sale of dates, bread, wheat, or barley, whenever one knows that this (A: i.e. alcoholic drink) will result, or thinks it will. If there is doubt or if one merely imagines it, then the transaction is merely offensive. (N: Think (zann) means to believe it probable, doubt (shakk) means one is undecided, and imagine (wahm) means to merely consider it possible.) Selling in such cases is unlawful or offensive because it is a means to disobedience, whether certain or suspected (A: means meaning an instrumental cause, as opposed to something which is not instrumental, such as renting a house to a drunkard, which is not unlawful because it is not a cause, though it is unlawful to rent a building to someone who intends to open a bar, for example). Tirmidhi relates that the Prophet (Allah bless him and give him peace) cursed whoever drinks wine, gives it to others to drink, sells it, buys it, presses it for another, transports it, receives it, or eats its price.)

@K4.10 If one makes any of the above unlawful transactions (k4.6-9), the agreement is valid (dis: c5.2)

@K4.11: A Valid Sale Combined with an Invalid Sale
If one combines something valid to sell with something invalid to sell in one transaction, such as selling one's own garment together with someone else's without his permission, or such as selling wine and vinegar, then the transaction is valid for the portion of the price that covers the valid sale (O: no matter whether the person knew what the case was, or whether he did not and believed the sale permissible, thinking at the time, e.g. that the wine was vinegar) and is invalid for the portion of the price that was not valid (A: and the portion must be refunded to the buyer). The buyer has the option to cancel the whole agreement if, at the time the deal was made, he did not know it included something inpermissible.

@K4.12: Joining Two Types of Transactions in One Contract
It is valid to join two contracts of different kinds (O: for example, a sale with a rent agreement) such as saying, "I sell you my horse and rent you my house for a year for such and such an amount" (O: though it is not necessary that they be different kinds, for the ruling also applies to two contracts of the same type, such as a partnership (def: k16) linked with financing a profitsharing venture (qirad, def: K22)), or such as saying, "I marry you my daughter and sell you her house (N: as her proxy, the proceeds being hers) for so-and-so much," and the price is considered as proportionately distributed
over the two transactions.

*2*Chapter K5.0: The Return of Merchandise Because of a Defect

@(O: The criterion for defect is based on something that is expected to exist (n in merchandise), whether this expectation results from:

-1- stipulations agreed upon (dis: k4.4(4));
-2- the customary level of quality (dis: f4.5) for merchandise of its type;
-3- or outright deception by the seller.
The author does not mention (1) in this section, but confines himself to (2) and (3).)

@K5.1: Informing a Prospective Buyer of Defects in Merchandise
Whoever knows of a defect in the article (O: he is selling) is obliged to disclose it. If he does not, he has cheated (O: the buyer, which is prohibited by the Prophet's statement (Allah bless him and give him peace), He who cheats us is not one of us"), though the transaction is valid (A: provided the buyer accepts it, as discussed below).

@K5.2: Returning Defective Merchandise
When a buyer notices a defect in the merchandise that existed when the seller had it, he is entitled to return it (O: though if he is content to accept the defect, he does not have to return it. He may also return it when the defect occurred after the sale but before the merchandise was delivered, since the merchandise is the seller's responsibility during this period).

@K5.3 The criterion (O: of defectiveness) is:
(a) any flaw that diminishes the article or its value to a degree that hinders a valid purpose;
(b) provided that such an imperfection does not usually exist in similar merchandise.
(O: The former restriction excludes such things as amputation of a surplus digit or a minor nick from the animal's thigh or hock that is inconsequential and does not obviate its purpose, in which case there is not option to return it. The latter restriction excludes defects not generally absent in similar merchandise, such as missing teeth in older animals. There is no option to return such merchandise, even if the value is diminished.)

@K5.4 If the buyer notices a defect in the merchandise after it has been destroyed (O: whether physically, such as an animal being killed, a garment worn out, or food eaten; or whether legally finished, by being no longer permissible to transfer from person to person, as when a site has been made an endowment (waqf, def: k30)) - then a compensation (A: from the seller to the buyer) is obligatory. (O: The buyer is entitled to it because of the impossibility of returning the article due to its no longer exiting.
Compensation means a part of the article's price whose relation to the whole price is the same as the relation of the value which the defect diminished to the full value of the article if it had been without defect. (N: The difference between price and value is that the value is how much money an article is worth in the marketplace, while the price is whatever the sale agreement specifies, whether this be more or less than the value.) The value in such a case is fixed at the lowest value (A: for articles of its type current in the marketplace) between the time the deal was made and the time the buyer took possession of it.)
The buyer is no longer entitled to seek compensation for such a defect it (O: he notices the defect after) he no longer owns the article because of having sold it or otherwise disposed of it. But if such an article returns to the buyer's possesion after this (O: i.e. after having left his ownership, whether as a gift, or returned (A: from a subsequent buyer) because it was defective, or because of a cancelled deal, or he buys it back), then he is entitled to return it (A: to the person who originally sold it to him).

@K5.5 If an additional defect occurs in an article (O: other than the above-mentioned defect (A: that existed before the buyer received the article)) while it is in the buyer's possession, then the buyer is only entitled to take a compensation (O: from the seller, to compensator for the original defect) and is not entitled to (A: insist that the seller accept) return (A: of the article for a full refund).
But if the original seller is willing to accept it back with the (O: new) defect, (A: refunding the original price,) then the buyers is not entitled to (A: keep the article and) demand compensation (O: for the original defect. Rather, the buyer is told, "Either return it, or else be content with it as it is and you get nothing,"; for the

harm to the original seller which is what prevents (A: it being obligatory for him to accept) its return no longer exists if the seller is content to take it back, and the merchandise is as if the additional defect never occurred.
Their agreement is implemented if buyer and seller agree upon:
-1- the seller taking it back with (A: the seller refunding the original price, and the buyer giving him) compensation for the new additional defect;
-2- or the buyer keeping the merchandise, and the seller paying him compensation for the original defect;
since either of these options might satisfy the interests of the two parties. If the buyer and seller disagree about which of these two options should be implemented, the decision goes to whichever of them requests option (2), whether this person is the buyer or the seller, since it confirms the original contract).
@K5.6 If the new defect which occurs while the article is in the buyer's possession is the sole means of disclosing the old defect, such as breaking open a (A: spoiled) watermelon or eggs, and so forth, then the new defect does not prevent (A: the obligation of the seller to accept) its return. But if the new damage exceeds the extent that was necessary to reveal the original defect, then the seller is no longer compelled to accept it back.

@K5.7 It is a necessary condition for (A: cases where the buyer seeks a refund for something he is) returning (O: because of a defect) that the buyer return it immediately upon noticing the defect (O: and his option to return it is cancelled if he delays without an excuse). On his way back to the seller, he should have two witnesses affirm that he is cancelling the agreement (A: so if the seller is unavailable at the time, the buyer is nevertheless able to prove that he went to return it immediately). If the defect is noticed while one is praying, eating, using the lavatory, or at night (A: if the night presents a problem in returning it), then one is entitled to delay returning it until the hindrance preventing one from doing so is no longer present, provided one stops using and benefiting from it. If the buyer delays returning it when capable of doing so, then the seller is no longer obliged to accept the article back for a refund, or no longer obliged (A: in cases like k5.5 above) to compensate the buyer for the original defect (O: because the delay gives the impression that the buyer is satisfied with the defect).

@K5.9 (A: The term murabaha applies to sales where the seller states the price in terms of "the original price plus such and such an amount as profit," whether by original price he means the amount he originally paid for the whole lot, or whether he means the proportion of that price represented by the percentage of the lot which he is now selling.)
The seller in murabaha (O: meaning an agreement where the price consists of the original price plus increment) is obliged to inform the buyer of any defect that occurred in the merchandise while in his possession, such as by saying, "I bought it for ten (O: or "bought it for one hundred and sell it to you at what I bought it for, plus one dirham's profit on every ten") but such and such a defect happened to it while I had it." (O: He is likewise obliged to say, for example, "Such and such a defect appeared in it that was from the previous owner, and I accepted this.")
The seller in murabaha is also obliged to explain how much time he was given to pay the original price (A: since deferring payment generally raises the price, and merely stating such a raised price without mentioning that it was deferred would give the new buyer a false impression).
(O: The author should have mentioned (A: that telling the prospective buyer the above information is also obligatory in sales of) discount (A: on a lot of goods or portion thereof), as when the seller tells someone, "I sell it to you for what I bought it for, minus one from every eleven." These relings likewise apply to agreements stated in terms of, "I sell you it at the same price the original deal was made for.")

*2*Chapter K6.0: Selling Fruits and Crops

@K6.1 It is not permissible (O: or valid) to sell the fruit alone from a tree (A: without the tree, while still on it) before it is ripe, unless the agreement stipulates immediate picking of the fruit. But such a sale is valid without restriction if made

after the fruit is ripe, meaning, for fruits that do not change color, to become fit to eat; and for fruits whose color changes, to start to turn the color of ripeness.
If both the tree and the fruit are sold together, the sale is permissible without stipulating that the fruit be picked.

@K6.2 Grain, when green, is subject to the same rulings as fruit before it is ripe: it may not be sold (O: nor would the sale be valid) unless the agreement stipulates immediate harvest, though there are no restrictions on sales made after the grain is sold and firm.

@K6.3 It is not permissible to sell grain when still in the husk, or to sell unripe nuts, almonds, or broadeans when these are in the shell. (A: When the latter three are dried, they may be sold in the shell.)

*2*Chapter K7.0: Merchandise Before the Buyer Takes Possession of It

@K7.1 Merchandise is the responsibility of the seller before the buyer has taken possession (def: k7.3) of it. If such merchandise is destroyed (Ar. talifa, to be finished off or used up) by itself or through an act of the seller, then the agreement is cancelled and no payment is due for it. If the buyer destroyes such merchandise, he must pay it sprice, and his destroying it is considered as having taken possession of it.
If a third party destroyes such merchandise, the deal is not cancelled but rather the buyer is given a choice to either:
-1- cancel the agreement and make the value (def: k5.4(N:)) (O: of what the third party destroyed) a debt that the third party owes to the seller;
-2- or effect the deal, paying the seller the price (O: if he agrees to effect the deal) and making the third party liable to pay the value (O: to the buyer).

@K7.2 When one buys something, it is not permissible (O: or valid) to sell it until one has taken possession of it. (O: The invalidity of selling it likewise applies to all transactions disposing of it (A: such as renting it, giving it away, and so forth).
It is also invalid for the seller to dispose of the price in any way before it has been received from the buyer, unless the new transaction is with the same buyer and involves the very same (A: article that is the) price.)
But if the price is a financial obligation (N: that is, an amount of money, unspecified as to which particular pieces of money it is), the seller may ask for a different sort of payment, provided he has not already accepted the payment, as when he sells something for dirhams, but then accepts gold, a garment, or something else instead of them.

@K7.3 Taking possession means:
-1- for transportable things such as wheat or barley, that they be transported (N: by the buyer or his representative) (O: that is, when he moves the merchandise to a place not belonging to the seller, such as the street or the buyer's house);
-2- for things dealt with by hand, such as a garment or book, that they be taken in hand;
-3- and for other things, such as a house or land, that they be given over (O: i.e. the seller give the buyer control over them, such as by handing the key to him or moving others' belongings off the property).

*2*Chapter K8.0: Disputes Over What the Terms of a Transaction Were

@K8.1 When two parties agree on the validity of a transaction but disagree on its terms, and there is no proof, then they each swear an oath (dis: k8.2) affirming their side of the story. Such a disagreement could be:
-1- the seller saying that he sold it for immediate payment, while the buyer asserts that payment was to be deferred;
-2- the seller stating that he sold for ten, while the buyer maintains it was five;
-3- the seller saying he sold it to the buyer on condition that there be an option to cancel period (def:K1.4), while the buyer asserts that no such option was stipulated:

or similar disputes.

@K8.2 (N: Swearing an oath (def:o18) is a means for urging one's case when there is no proof, meaning no witnesses. When rulings mention, for example, that "So-and-so's word is believed," or "So-and-so's word is accepted," it means that his word is accepted when he swears an oath in cases where there is no proof presented by either of the two pairs. If there is proof, whether from the plaintiff or defendant, it is given precedence over an oath.)

@K8.3 In the oath for such cases, the seller swears first, saying, for example, "By Allah, I did not sell it to you for such and such an amount, but rather for such and such an amount." Then the buyer swears, "By Allah, I did not buy it for such and such, but rather bought it for such and such." It consists of one oath (A: from each party) which joins the denial of the other's claim with the affirmation of one's own claim, and in which the dential is recommended to precede the affirmation.

@K8.4 When the buyer and seller have sworn, but subsequently reach a solution that both accept, the agreement is not cancelled. But if they cannot reach an accord, they cancel the agreement, or one of them cancels, it, or the Islamic magistrate does (O: to end the trouble between them. When the agreement is cancelled, each returns whatever he has accepted from the other).

@K8.5 If either the buyer or seller testifies that a particular agreement is invalid, but the other party says it is valid, then the word of whichever of them asserts it is valid is accepted if he swears an oath (dis: K8.2).
It the buyer comes to the seller with a piece of merchandise, that he wants to return because of a defect, but the seller says that it is not the one he sold him, then the seller's word is accepted (O: when he swears).
If the buyers and seller disagree about a defect in an article that could have occurred while it was in the buyer's possession, but each party asserts that the defect occurred while in the other's possession, then the seller's word is accepted (O: when he swears).

*2*Chapter K9.0: Buying in Advance

@K9.1 Buying in advance means the sale of described merchandise which is under (A: the seller's) obligation (A: to deliver to the buyer at a certain time).

@K9.2: The Conditions for the Vilidity of Buying in Advance
In addition to the conditions for valid sales (def: k1.1-2, k2.1), other conditions (O: seven of them) must be met for buying in advance to be valid:
(a) that the price of the merchandise be received when the agreement is first made. It is sufficient to merely see the price that is being accepted, even when its exact amount is unknown;
(b) that the merchandise bought in advance be a financial obligation (dayn) (O: owed by the seller (N: meaning that buying in advance is not valid for particular individual articles ('ayn) (A: i.e "this one" and no other)) which the seller will deliver when its time comes). Its delivery may be due from the present onwards, or may be due later through deferment (O: by clearly stating whether it is to be due immediately or deferred) to a specific date (O: which specificity is a necessary condition for the validity of differing payment). It is not permissible to say, "I advance you these dirhams for that particular horse" (O: which is invalid because of the condition that the merchandise bought in advance be a financial obligation (dayn), which the above-mentioned horse is not, but is rather a particular individual article ('ayn));
(c) that the location to which the merchandise is to be delivered be clearly stipulated (A: though this is only a condition) in cases in which the buyer pays for it at a place where it cannot be delivered, such as the wilderness; or to which the merchandise can be delivered, but transporting it there involves considerable difficulty;
(d) that the merchandise bought in advance be determinately known by volume, weight, quantity, or yardage in terms of a familiar measure. It is not valid for someone to say "the weight of this stone," or "the capacity of this basket," if the (O: stone's)

weight or basket's capacity is not known;
(e) that the merchandise be within the seller's power to deliver (def: k2.4) when the time for delivery arrives;
(f) that the merchandise not be generally subject to unavailability. If it is something rare (O: such as a great quantity of the season's first fruits of a particular kind of produce) or something not typically safe from unavailability, such as "the fruit of this particular date palm," then its sale in advance is not permissible;
(g) that those characteristics of the merchandise over which the buyer and seller might be at cross-purposes be expressly delineated by clear specifications. It is not permissible (O: to buy things in advance which cannot be defined by clear criteria, such as) for jewels or composites like meat pastry (O: composed of wheat, meat, and water, all of which are expected but not delineable in terms of minimal or maximal amounts), ghaliya perfume (O: composed of musk, ambergris, aloes, and comphor), or slippers
(O: composed of outer and inner layers and padding), nor articles whose top randomly differs from their bottom, like a lamp or pitcher (O: the top of which is sometimes wider than the bottom, or vice versa)
(N: though the Hanafi school permits such agreements, calling them made to order (istisna'), which they hold includes whatever is customarily bought in this way. They affirm the buyer's option to cancel the agreement when he see the merchandise, and it is obligatory that the article be described very precisely), nor something substantially processed and altered by fire (A: meaning heart), such as bread or roast meat, since describing it (A: i.e how much cooking it takes) is impossible in a precise way.

@K9.3 It is not permissible for the buyer to sell something he has bought in advance until he has received it.

@K9.4 It is not permissible to take some other type of merchandise in place of the article bought in advance (A: that is, when the buyer demands the substitute before the delivery of the original is due, though they may agree on it after that).
If the seller delivers the merchandise specified, or better (O: than what was specified), the buyer must accept it (O: since it is apparent that the seller could not find a way to fulfill his obligation save through this means. If the seller delivers merchandise that is inferior to what was specified, then the buyer may accept it, as this is voluntarily refraining from demanding his due, but he is not obliged to, because of the loss therein).

*2*Chapter K10.0: Personal Loans (Qard)

@(A: A Loan means repayable financial aid. It does not refer to lending a particular article ('ayn) for someone to use and then return after use, which is termed an 'ariyya (def: k19).)

@K10.1 Loaning (O: meaning to give something to the borrower on the basis that he will return its equal) is recommended.

@K10.2 A loan is effected through a spoken offer and acceptance (def:k1.1), such as saying, "I loan you this," or, "I advance you it."

@K10.3 It is permissible to give as a personal loan any article that may be brought in advance (def: k9.2 (b,d,e,f,g)) and nothing else (A: though this restriction does not apply to lending for use ('ariyya, dis: K10.0 (A:))).

@K10.4 It is not permissible for the lender to impose as a condition that the loan be repaid on a certain date (N: though for the Maliki school, to stipulate that repayment is obligatory on a certain date is valid and legally binding).

@K10.5It is not permissible for the lender to impose some condition that will enable him to benefit from the loan, such as a condition that the borrower must return superior to what was loaned, or such as saying, "on condition that you sell me your

horse for such and such an amount," for these are usurious gain (riba). But it is permissible for the borrowers to return superior to what was loaned without this having been stipulated.

@K10.6 It is permissible for the loan agreement to include the condition of collateral (O: meaning for the recipient to give the lender something as collateral (def: k11) for what he borrows) or the condition of a guarantor (O: such that the recipient brings someone to guarantee that the loan will be repaid (def: K15)).

@K10.7The recipient of a loan is obliged to repay the equal of what was lent, though it is permissible for the lender to accept something other than the (A: type of) thing loaned. If the lender gives the recipient a loan and later meets him in another town and asks for it back, the recipient must repay it if it was gold or silver and the like, though if the loaned commodity was something troublesome to carry, such as wheat or barley, then the recipient is not obliged to pay it back (A: in kind) but is merely obliged to pay back its value.

*2*Chapter K11.0: Putting Up Collateral (Rahn)
@(O: In Sacred Law collateral is a piece of saleable property put up as security for a financial obligation to cover the amount if it should prove impossible to repay.)

@K11.1: Conditions for the Validity of Putting Up Collateral
Putting up collateral is only valid when done by someone with full disposal over his own property, as security for a financial obligation (dayn, dis: k9.2(b)) that is currently due, such as the price (O: due for merchandise after its delivery), or a personal loan, or for a financial obligation that is currently becoming due (N: such as something's price) during the option to cancel period (def: k1.4). (O: The collateral's being security for a financial obligation is one restriction on its validity, and for one that is currently due is another. It is not valid to put up collateral for a particular individual article ('ayn) or the use of an article, since (A: the obligation to deliver) a particular article is not a financial obligation (dayn), as the selfsame article cannot be obtained by selling the collateral.)
Putting up collateral is not valid in cases in which the financial obligation is not yet due, such as collateral accepted (O: by a lender) as security for a loan that he will make (O: in the further).
It is necessary (O: for the validity of putting up collateral) that there be a spoken offer (O: by the person putting up the collateral) and spoken acceptance (O: from the person accepting it, just as it is necessary for sales, the conditions mentioned in connection with sales (k1.1) applying equally here).
The agreement is not legally binding until the collateral has been taken possession of with the permission of the person putting it up, who is entitled to cancel the agreement (A: at any point) before the collateral has been taken possession of (def: k7.3).
When the agreement has been effected, if the two parties (A: the collateral's giver and receiver) agree that the collateral should be dept with either of them, or with a third party, this is done. If not (O: if they do not agree), the Islamic magistrate has it kept with an upright person (def: o24.4) (O: to end the disagreement. But the magistrate is not entitled to place it with either of the two parties without the other's permission).

@K11.2: General Provisions Concerning Collateral
The collateral must be an article that is permissible to sell (def: k2.1).
None of the collateral may be separated from the rest of it until the financial obligation has been entirely paid off.
The person who put up the collateral is not entitled to dispose of it in any way which infringes upon the right of the person who has received it as collateral (O: such as transferring its ownership to another) by selling it or giving it away (O: or putting it up as collateral for another person), or to dispose of it in any way that diminishes its value, such as wearing (O: a garment put up that would depreciate by being worn), though he may use it in ways that do not harm (O: the interests of the person who has received it) such as riding it, or living (O: in a house that has been put up as

collateral).

@K11.3An article put up as collateral for a financial obligation may not (A: at the same time) be put up as collateral for a second financial obligation, even when the second obligation is with the same person who has accepted the article (A: for the first one).

@K11.4The expenses for maintaining an article put up as collateral (O: such as fodder for livestock, or the wages of a person watering trees) are the responsibility of the person who put it up, and he may be compelled to pay them to protect the rights of the person receiving it (O: lest it be destroyed). The person who put it up is entitled to the increments produced by it (O: that are separable from it) such as milk or fruit.

@K11.5If the article is destroyed while in the possession of the person who received it as collateral without negligence on his part (A: meaning he took the precautions normal for similar articles), then he is not obliged to pay anything for its loss. But if destroyed because of his negligence, then he is obliged to pay the article's value to the person who put it up though its destruction does not eliminate any of the original financial obligation for which the destroyed collateral was put up. (O: When the collateral has been destroyed and the two parties are at a disagreement,) the final word as to how much the article was worth (A: when there is no proof (dis; k8.2)) belongs to the person who received it as collateral (O: provided he swears an oath as to how uchit was). But the final word as to whether the collateral has been returned (A: to its owner after his financial obligation has been paid) belongs to the person who put it up (A: when there is no proof, and he swears).

@K11.6The benefit of collateral is that the article is sold (A: by the person who put it up) when there is need to pay the amount which is due. If the person who put it up refuses (O: to sell the article when the person who has received it as collateral asks him to), then the Islamic magistrate has him either pay the original obligation or else sell the article. (O: He is given a choice between the two alternatives.) If he continues to refuse (O: to sell), then the Islamic magistrate sells it for him. (O: If the person who put it up is absent, then this is established by proof to the magistrate, who sells it for him and gives the person who accepted the collateral his due. If there is no Islamic magistrate and no proof (A: that there is a financial obligation for which the collateral has been put up), then the person who accepted it as collateral is entitled to sell it himself.)

*2*Chapter K12.0: Bankruptcy (Taflis)

@(O: Bankruptcy occurs when the Islamic magistrate makes a debtor bankrupt by (N: declaring him so and) forbidding him to dispose of his property (N: such that if he disposes of is, his disposition is not effected).)

@K12.1When someone obliged to pay a current debt is being asked to pay it, and he claims that he is unable to (O: while his creditors deny this), then if it is known that he has saleable property, he is kept under arrest until he provides evidence that he cannot pay. If no (O: i.e if it is not known that he has saleable property), then he swears an oath (O: that there is no property), and (O: when it is established that he is unable to pay, whether through evidence, or though his oath) he is released (O: and given time) until his circumstances allow him to pay (O: and his creditors may not keep after him, because of Allah's word,
"If there be someone in difficulties, let him have respote until things are easier" (Koran 2:280)).

@K12.2But if he has saleable property (O: such as real estate, home furnishings, or livestock) and refuses to pay his debt, then the Islamic magistrate sells it for him and pays his debt. If the proceeds of the sale are insufficeient to cover the debt, and he or his creditor asks the magistrate that he be suspended from dealing in his property, then this is done (O: obligatorily, if requested). When the person is suspended, his disposal over his own saleable property is not legally binding or

effective, and the magistrate pays the person's expenses and those of his family (O: whom he is obliged to support (def: m12.1)) out of this (O: suspended) property if he is unable to earn enough to pay his expenses.
Then (O: after the person has been suspended) the magistrate sells the property in the most profitable manner and divides the proceeds according to the percentage of the total debt which is owed to each creditor.

@K12.3If one of the creditors is owed money on a debt which is not yet due, he is not entitled to be paid from the proceeds. (N: Rather, if the bankrupt does not agree to pay the person immediately, the magistrate keeps this person's share until the debt is due (A: and then pays him).)

@K12.4 If one of the creditors has accepted an article of the bankrupt's property as collateral from him for a debt, he is paid the amount owed to him from the sale of the collateral (O: and if there is money from its sale in excess of what was owed to him, it is distributed among the other creditors).

@K12.5 If one of the creditors finds the very piece of merchandise he sold to the bankrupt person, he may choose between selling it and dividing the profits with the other creditors, or cancelling the deal and taking back the piece of merchandise, provided there is nothing to prevent taking it back such as it being subject to preemption by a part owner (shuf'a, def: k21), or the bankrupt person having made it collateral to another person, or the merchandise's being mixed with merchandise better than it, or some similar objection.

@K12.6 The bankrupt person is permitted to keep a suitable set of clothes and enough food for himself and his dependents to suffice for the day on which his saleable property is divided up. (N: If the bankrupt is then earning enough to suffice himself and his dependents, he is left as is. If not, then he is supported by the Muslim common fund (bayt al-mal), like all poor people. If there is no common fund, he must be supported by all the Muslims.)

*2*Chapter K13.0: The Suspension of Children and the Insane from Dealings

@(O: Suspension is of two types:
-1- The first has been established in Sacred Law for the interests of others, such as the suspension of a bankrupt person in the interests of his creditors, or the suspension of the person putting up collateral from dealing in it, in the interests of the person who has accepted it.
-2- The second has been established in Sacred Law in the interests of the suspended person, which is the type of suspension our author refers to in the following.)

@K13.1 It is not permissible for a child or insane person to dispose of their own property (N: and their doing so is considered legally invalid) (O: to protect them from loss. The fact that a person is a child, male or female, even if at the age of discrimination (def:f1.2), negates the legal efficacy of whatever he says, as well as his legal authority over others, both in respect to transactions such as sale, and in respect to religion, such as Islam. His Islam is not valid, since it requires full capacity for legal responsibility (taklif, dis: c8.1). And this state continues until he reaches puberty. Insanity similarly negates the legal efficacy of whatever the insane person says, as well as his legal authority over others. His Islam is not valid, nor his leaving Islam (def: o8), nor are his dealings, as previously mentioned).
(A: Also suspended from commercial dealings is the foolhardy person (safih), meaning a spendthrift who is chronically careless with his money. In the schools of Shafi'i and Ahmad, this class also includes those who are careless about their religious obligations, as they too are considered too foolish to deal in their own property.)

@K13.2 A guardian conducts such a charge's affairs, the guardian being:
-1- the charge's father;
-2- the father's father, if the father is deceased;
(O: it is a necessary condition that they be upright (def: o24.4), at least outwardly,

though they need not be Muslim unless the child is Muslim)
-3- if neither of them is alive, then the person designated by the guardian's will (wasiyya, def: L3) to take custody of the charge;
-4- or if no one has been designated by the will. then the Islamic magistrate or his representative.

@K13.3: The Guardian's Disposal of His Charge's Property
The guardian deals with the charge's property to the charge's best financial advantage (O: and is entitled to sell it for needs that arise, such as when he does not have enough to cover his charge's expenses and clothing).

@K13.4 If the guardian claims to have spent his charge's property to cover the charge's expenses, or claims that the property has been destroyed (O: by an act of God (A: and not through his negligence)), then his word is accepted (O: about it without having to swear an oath). But if the guardian claims to have given the property to the charge (O: i.e. to the child who has reached maturity or the insane person who has regained his sanity), then his word is not accepted (O: because of the ease with which he could have legally established that he gave the property to his charge at the time of doing so. if he did not obtain witnesses to observe the property being handed over, he is guilty of remissness for neglecting to have it witnessed).

@K13.5 Suspension from dealings ends (O: without a ruling from the judge) when a child reaches puberty and mental maturity, meaning that he:
(a) is physically mature;
(b) shows religious sincerity;
(c) and is competent to handle his own property.
(O: For an insane person, suspension ends when he regains his sanity, shows religious sincerity, and displays competence in handling his property. Religious sincerity means that a person performs acts of obedience and avoids disobedience and the unlawful. Competence in handling one's property means that one does not waste it by losing it, for example, in buying something outrageously overpriced. Both of these traits ((b) and (c)) are the criteria for maturity according to Imam Shafi'i, as opposed at Abu Hanifa and Malik, who hold that competence in handling property is sufficient.)

@K13.6 A charge is not give his property until his competence in handling it has been tested before puberty in a manner appropriate to him. (O: Thus a merchant's son is tried at striking a bargain in dealings, having been given money to do this, though not actually concluding the deal, which is done by the guardian. A farmer's son is tested at agriculture and managing the expenditures connected with it.
An examination is also made of the charge's religion, by observing whether he performs acts of worship, avoids acts of disobedience, shuns the unlawful, and is wary of things that are doubtful (dis: j16.1).
It is necessary that this testing be repeated one or more times.)

@K13.7 It the suspended person reaches puberty or regains his sanity but is corrupt in his religion or incompetent in financial dealings, then his suspension continues and he is not permitted to deal in his property by selling or anything else, with or without his guardian's permission, though if the guardian permits him to marry, the marriage is valid.
If the suspended person reaches puberty with religious sincerity and financial competence, but subsequently squanders his wealth, then he is resuspended by the Islamic magistrate not the guardian.
But if the person becomes morally corrupt (A: after having reached puberty), he is not resuspended (N: provided his corruption does not involve spending money on what is unlawful, though if it does, he is suspended from dealing).

@K13.8 Puberty applies to a person after the first wet dream, or upon becoming fifteen (O: lunar) years old, or when a girl has her first menstrual period or pregnancy.

*2*Chapter K14.0: Transferring the Right to Collect a Debt (Hawala)

@(O: In Sacred Law, a transfer is an agreement that moves a debt from one person's responsibility to another's.)
(n: Given three persons, X (al-muhtal), Y (al-Muhil), and Z (al-muhal `alayhi) (A: where X loans Y a dirham, and Z already owes Y a dirham, so Y transfers the right to collect the old debt (that Z owes him) to X, instead of repaying X for the new debt. Such transfers have six integrals:
(a) Y;
(b) X;
(c) Z;
(d) Y's debt to X;
(e) Z's debt to Y;
(f) Y's spoken offer and X's spoken acceptance).)

@K14.1 It is a necessary condition for the validity of transferring a debt that Y wishes to do so, and that X accepts. It is not necessary that Z wishes it.
(O: The agreement also requires a form, which is the spoken offer and acceptance (def:k1.1), meaning Y's offer and X's acceptance.)

@K14.2 Such a transfer is not valid unless z owes Y a debt and Y owes X a debt.
A transfer is valid respecting a legally binding debt(O: owed to X) for another legally binding debt (O: Z owes to Y), provided:
(a) that X and Y know what is being transferred (A:gold, silver, or wheat, for example) for what;
(b) that X and Y know that the two debts are homogeneous in type (A: such as money for money, or wheat for wheat) and in amount (O: though if Y owes X five, and Z owes Y ten, and Y transfers (A: the right to collect) five of it to X, then this is valid);
(c) and that X and Y know whether the debts are currently due or payable in the future (A: the two debts may differ in this respect if both parties agree).

@K14.3 (O: The validity of a transfer is not affected by the existence of collateral (def: k11) or of a guarantor (def;k15) as security for one of the debts, but the occurence of the transfer eliminates (A: either form of) security, the guarantor being relieved of any responsibility and the collateral no longer being collateral.)

@K14.4 Through a valid transfer, Y no longer owes X a debt, Z no longer owes Y a debt, and the debt owed to X becomes the responsibility of Z. If X is unable to collect the debt from Z because Z is bankrupt or denies the existence of the debt or for some other reason (O: such as Z's death), then X is not entitled to go back to Y (A: to collect it) (N: but rather it is as though X has accepted for the debt a remuneration which was subsequently destroyed in his possession).

*2*Chapter K15.0: Guaranteeing Payment (Daman)

@(O: Guarantee lexically means ensuring implementation, and in Sacred Law means to ensure a financial obligation which is another's or ensure the appearance of a particular person whose presence is required.)
(n: Given three persons, P (al-madmunlahu), Q (al-madmum 'anhu), and R (al-damin) (A: where P loans Q a dirham, and R guarantees to P that either Q will repay it or else he, R, will repay it. Such guarantees have five integrals:
(a) R;
(b) P;
(c) Q;
(d) the debt covered;
(e) and the form of the agreement).)

@K15.1: Guaranteeing Another's Financial Obligation
It is necessary condition for the validity of guaranteeing payment that R have full right to manage his own property. It is not valid from a child, someone insane, or a foolhardy person (def: k13.1(A:)), though it is valid from someone suspended for bankruptcy.

@K15.2 It is a condition for the validity of a guarantee that R know P, though it is not necessary that P agree to it.
It is not necessary that Q agree, or that R know Q.

@K15.3 It is necessary that the guaranteed debt be a financial obligation (dayn, dis: k9.2(b)) that is existent (O: since it is not valid to guarantee a debt before it exists, such as "tomorrow's expenses") and is determinately known (O: in terms of amount, type, and description).

@K15.4 It is necessary that R make the guarantee in words (O: or their written equivalent, with the intention) that imply he is effecting it, such as "I guarantee your debt [O: that So-and-so owes you], "I will cover it," or the like. (O: These are explicit expressions in that they mention the guaranteed financial obligation. When it is not mentioned, the expression is allusive, which is valid provided the financial obligation is what is intended, and the speaker knows how much it is Otherwise, allusive expressions are not valid.)
It is not valid to base the implementation of a guarantee on a condition, such as saying, "When Ramadan comes, I hereby guarantee it." (O: Nor is it valid to make it subject to time stipulations, such as saying, "I guarantee what So-and-so owes for one month, after which I no longer guarantee it.")

@K15.5 When a seller has accepted the price of something, it is valid (O: for someone) to guarantee the buyer his money back if the merchandise should prove to belong to another or to be defective. (O: It is likewise valid for someone to guarantee to the seller that the merchandise will be returned if the price paid for it should turn out to belong to someone other than the buyer.)

@K15.6 P is entitled to collect the guaranteed debt from R and Q (O: by asking both of them or either for the full amount, or one of them for part of it and the other for the rest of it).
If another guarantor guarantees the debt for R (O: by saying (A: to P), "I guarantee Q's debt [A: to you] for R"), then P is entitled to collect it from all (A: from Q,R, and the new guarantor).

@K15.7 If P asks for payment from R, then R is entitled to ask Q to pay the debt, provided that Q had given his permission to R before R guaranteed it.

@K15.8 If P cancels the debt Q owes him, then R is also free of the obligation to pay P. But if P cancels R's obligation to cover Q's debt, then Q is not thereby free of the debt he owes P.

@K15.9If R pays Q's debt to P, then R can collect it from Q, provided that q had given his permission to R before R guaranteed it. But if Q had not (O: given his permission to R to guarantee), then R is not now entitled to collect it from Q, no matter whether R paid if off with Q's leave or without it.

@K15.10It is not valid to guarantee delivery of particular articles (`ayn) (A: as they are not financial obligations (dis: k9.2(b)), such as something wrongfully taken, or articles loaned for use (O: i.e. "guaranteeing" they will be returned to their owner).

@K15.11: Guaranteeing Another's Appearance
It is permissible for R to guarantee that Q will appear in person (O: in court) provided:
(a) that Q owes someone something or is liable to punishment for a crime against another person, such as when the other is entitled to retaliate (def: O1-03) against Q, or when Q has charged someone with adultery without evidence (def:o13);
(b) and that Q gives R permission to guarantee his appearance.
It is not valid to gurantee Q's appearance if (non-(a) above) Q's crime is against Allah Most High (O: such as drinking,adultery, or theft).

@K15.12 If R guarantees Q's appearance but does not specify when, he is required to

produce Q at once. But if R stipules a certain time, then he is required to do so at that time.
If Q disappears and his where abouts is unknown, R is not required to produce Q until he knows where Q is.
(A: When R knows where Q is, then) R is given time to travel to where Q is and return. If R does not bring Q, then R is under arrest, though he is not responsible for Q's (A:unfulfilled) financial obligations.
If Q dies, the guarantee is nullified, though if R is asked to produce Q's body before burial to verify its identity, he is obliged to if able.

*2*Chapter K16.0: Partnerships (Sharika)

@K16.1Partnership is valid with anyone having full right to dispose of his own property.

@K16.2: Cooperative Partnership
There are four kind of partnership (dis:k16.9) of which one alone, cooperative partnership, is valid. It consists of each of the two (A: or more) partners putting up capital, which must be either money or a fungible commodity typically transacted measure for measure (mithli, def:k20.3(1)) (O: as opposed to goods appraised and sold as particular pieces of merchandise (mutaqawwim), which cannot form the basis of a partnership because it is impossible to mix each partner's share with the other's (dis:below)).

@K16.3It is a condition for the validity of a cooperative partnership that the two shares of capital put up by the partners be inter mixed such that it is impossible to tell them apart.

@K16.5It is a necessary condition that each partner give the other his permission to handle the capital (O: that they have put in common).
Each partner must deal in a a way that realizes their common capital's best advantage and maximal safety. Thus, neither partner may travel with it (O: i.e. the shared capital, because of the danger in travelling) or sell for postponed payment (N: unless the other partner gives him permission, in which case (A:either of) these are permissible).

@K16.6 It is not necessary that the two shares of capital put up by the partners be equal in amount.
Both profits and losses are divided between the two partners in proportion to the percentage of the shared capital each of them put up (O: even if there is a difference in the amount of work that each does). If they stipulate otherwise, the partner who put up one hundred, for example gets two-thirds, while the partner who put up two hundred gets one-third; or stipulating that each gets an equal share, despite having put up unequal amounts). (N: This is in the Shafi'i school. The Hanafis and Hanbalis hold that it is permissible for the distribution of profits to be disproportionate (A: to the amount of capital each invests0, corresponding to the disproportionate amount of work each puts into the venture (A: or any other division of the profits which they both agree upon).)

@K16.7 If partner A forbids partner B handle the shared capital, then B is not entitled to handle it, though A is still entitled to (O: handle both shares, one of which is his by ownership, and the other by permission of his partner) until B forbids him to handle it.

@K16.8 Each partner is entitled to cancel the partnership whenever he wants (O: and it is also cancelled by the death or instanity of either or both partners).

@K16.9 The following types of partnerships are not valid:
-1- manual partnership (sharika al-abdan), such as the partnership of two porters or other workers agreeing to divide their earnings between them (N: though this type of partnership is valid in the Maliki, Hanbali schools);

-2- well-known partner partnership (sharika al-wujuh) (n: such as of two individuals who put up no capital, but have good reputations among people which create confidence and enable them to purchase trade goods for deferred payment, the profits from the sale of which they agree to divide between them (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 2.212)).
-3- and comprehensive partnership (sharika al-mufawada) (n: an agreement by which the partners share whatever they each earn from their respective (A: separate) funds and labor, mutually covering the financial liabilities incurred by either (ibid.,2.212)).

*2*Chapter K17.0: Commissioning Another To Do Something (Wakala)

@(n: Given persons X (al-muwakkil) and Y (al-wakil) (A: where X and Y article to sell for him. This section deals with commissioning others to carry out such requests, which have four integrals:
(a) X;
(b) Y;
(c) the act that is being commissioned (al-muwakkal fihi);
(d) and the words by which X commissions Y to do it).)

@K17.1 It is a necessary condition that both X and Y have full right to perform the act being commissioned, though it is permissible to commission a child to let people into one's house or take a gift to someone.

@K17.2: Things One May Commission Others To Do
X may commission Y:
-1- to conclude contracts on X's behalf (O: such as a sale, gift, putting up collateral, conducting a marriage contract, guaranteeing payment, or transferring a debt);
-2- to cancel contracts on X's behalf (O: such as cancelling a sale or returning defective merchandise);
-3- to conduct X's divorce;
-4- to make claims (A: by lawsuit against others, as lawyers do);
-5- to ensure fulfillment of established claims (O: from whoever owes them to X, after they have been established by proof);
-6- or to take possession of something that is free to take, such as wild game, pasturage, or water
(O: by Y conveying it from land which X is permitted to take it from, since this is a way of gaining property just as sale is).

@K17.3 It is not permissible for Y to undertake obligations of worship that X owes Allah Most High, except for:
-1- distributing zakat to deserving recipients (O: or giving food or alms as an expiation, or voluntary charity);
-2- performing hajj (O: or 'umra, which another may perform on the behalf of an invalid or a deceased person);
-3- and slaughtering sacrifices (dis: j12.6 (end), j14.3).

@K17.4 It is permissible to commission Y to perform an obligation (O: to Allah) that consists of inflicting a prescribed legal penalty (hadd) (O: such as the penalties for the crimes of accusing another of adultery without proof (def:o13), adultery, or drinking), but is not permissible to commission Y to establish that such an obligation exists (O: such as by X telling Y, "I commission you to affirm [A: in court, by Y submitting X's testimony] that So-and-so has committed adultery," or "that So-and-so has drunk wine").

@K17.5It is a necessary condition for the validity of X's commissioning Y that there be:
(a) a spoken proposal (O: indicating X's wish for Y to handle some matter for him) that does not restrict the (A fact of there being a) commission by giving conditions under which the commission takes effect (O such as saying, "If So-and-so come, I hereby commission must be) such as saying, "I commission you, " or "Sell this garment for me";

(b) and an acceptance (O:by Y, whether this be) in word or deed, i.e. by Y simply doing what he has been asked to, it is not necessary that his acceptance take place immediately.

@K17.6 When X validity commissions Y to do something, X may include stipulations about how it is to be carried out, such as saying, "I commission you, but don't sell it sell it till after a month." (A: The previous ruling prohibits stipulations restricting the fact of Y being commissioned Y and his stipulations merely govern how Y is to do it.) (O: A temporary commission, such as saying, "I commission you for one month," is also valid.)

@K17.7 Y may not commission another to perform what X has commissioned Y to do unless X either gives Y permission to commission another, or Y cannot undertake the task (O: because he is unable to, or it doe not befit him) or it incapable of it because it is too much (A: for a single person to perform).

@K17.8 : The Agents Discretionay Powers
Y is not entitled to sell an article (A: he has been commissioned to sell) to himself or his underage son, nor (O: is it valid) to sell it:
-1- for less than the current price of similar articles;
-2- for deferred payment;
-3- or for other than the type of money used locally;
though Y may do these (O: (1), (2), or (3) if X grants him permission to.

@K17.9Y's sale of the commissioned article is not valid when X specifies the type of funds he wants as its price, but Y sells it for a different type, such a when X says, "Sell it for a thousand dirhams," but Y sells it for a thousand dinars. But Y's selling it is valid if X specifies the amount he wants and Y sells it for more, provided the type of funds is the same, as when X says," Sell it for a thousand, "but Y sells it for two thousand-unless X has specifically prohibited this (O: in which case the sale would not be valid, as it contravenes X's commission).

@K17.10If X commissions Y to "buy such and such a thing for a hundred, "but Y buys one worth a hundred for less than a hundred, then the purchase is valid. But if Y buys one for two hundred that is worth two hundred (A: when X has commissioned him to buy one for a hundred), then the purchase is not valid. If X tells Y, "Buy a sheep with this dinar, "(O: and describes it in type and so forth, since without such a description, the commission would not be valid), but Y buys two sheep (A: with that dinar) of which each one is worth a dinar, then the purchase is valid and both sheep belong to X,though if the sheep are not each worth a dinar, then the purchase is not valid.

@K17.11 When X commissions Y to sell something to a particular person, it is not permissible (O: or valid) for Y to sell it to another.

@K17.12 When X tells Y, "Buy this [A: particular] garment,"and y buys it and X finds it is defective, then Y may return it for a refund (O: and so may X, since he is its owner). But when X merely tells Y to "buy a garment" (O: without further restriction), then it is not permissible for Y to buy a defective one (O: because the lack of further restrictions is understood to mean being free of defects, and if Y buys a defective one, the purchase is invalid).

@K17.13 It is a necessary condition that the thing Y is being commissioned to do is determinately known
(O: to X and Y) in some respects. Thus, if X says, "I commission you to sell my property and conduct the divorce of my wives," his commission is valid, though if he merely commission Y to "handle everything large or small," or " all of my affairs, " it is not valid.

@K17.14 Y's responsibility in a commission is that of someone who has been given a trust (O: since he represents X, and his possession of the article is like X's). meaning that if (O: X's) property is destroyed without negligence while in Y's

possession, Y does not have to pay for it. (O: But when Y is to blame and negligent, a when he uses the article himself or keeps it in a place lacking the normal precautions for safeguarding similar articles, then he must pay for its loss, as with any trust.)

@K17.15 Y's word (dis: k8.2) is accepted over X's when there is a dispute:
-1- concerning the commissioned article's destruction;
-2- as to whether the article was or was not returned to X;
-3- or whether Y betrayed his trust.

@K17.16 Either X and Y may cancel the commission at any time. If X relieves Y of his commission, but Y does not learn of this and performs it, then what he has done is not legally binding or effective (O: because he did not have the right to handle the matter).

@K17.17 The commission is cancelled when X and Y dies, loses his sanity, or loses consciousness (Ar. ughmiya 'alayhi, i.e. through other than falling asleep).

*2*Chapter K18.0: Deposits for Safekeeping (Wadi`a)

@(n: Given persons P (al-mudi') and Q (al-wadi') (A: where P deposits an article with Q for safekeeping until such time as P should want it back. Such deposits have four integrals:
(a) the article (al-wadi'a);
(b) the verbal agreement;
(c) P;
(d) and Q).)
(O: The appropriateness of mentioning deposits for safekeeping after having discussed commissioning others is plain, namely that both the person commissioned and the person with whom something is deposited are bearers of a trust, and do not pay for the loss or destruction is the result of their wrongdoing (A: or remissness in taking normal precautions).)

@K18.1Deposits for safekeeping are only valid when both P and Q full right to handle their own property.
Thus, if a child or a foolhardy person (def: k13.1 (A:)) deposits something for safekeeping with an adult, he should not accept it. If he does, then he is responsible for it (O: and must cover the cost if it destroyed) and is not free of the responsibility until he returns it to the child's guardian. He is not free of the responsibility if he merely returns it to the child.
If an adult deposits something for safekeeping with a child (A: or other person without full disposal over their affairs), then the child is not responsible if the article is destroyed through negligence or otherwise (O: as when an act of God befalls it), though if the child destroys the article, he is financially responsible for it.

@K18.2 It is unlawful for Q to accept a deposit for safekeeping when he is not able to protect it. It is offensive for him to accept it if he is able to protect it but cannot trust himself and fears he may betray the responsibility> But if he can trust himself, it is desirable and praiseworthy for him to accept it.

@K18.3If Q accepts a deposit for safekeeping, he is obliged to keep it in a place meeting the normal specifications for safeguarding similar articles (A: for his town and times) (O: which varies according to the nature of the article deposited, as each thing has precautions proper to safeguarding it (dis:o14.3)).

@K18.4If Q plans to travel or fears he may die, he must return the deposited article to P. If Q cannot find P or someone commissioned by P (A: to manage P's affairs), then he must deliver it to the Islamic magistrate (A: to keep for P). If there is none, Q leaves it with a trustworthy person (O: and he is not obliged to delay his trip), though if he deposits the article with a trustworthy person when there is an Islamic magistrate, he is still financially responsible for it.
If Q fails to take the above measures (A: of returning it to the owner or next most

appropriate person available) and he dies without having provided in his will for returning the article, or he travels with it, then he is financially responsible for it, unless he dies suddenly, or looting or fire breaks out in the city, and he travels with it because of being unable to give it to any of the above persons.

@K18.5Whenever P asks for the deposited article, Q is obliged to return it by allowing P to take it (O: i.e. by relinquishing possession of it, though this does not mean he has to transport it to P).

@K18.6Q is financially responsible for the deposited article if:
-1- without excuse, he delays allowing P to take it;
-2- he deposits the article or safekeeping with a third party, without having had to travel and when there was no need;
-3- he mixes the deposited property with his own property or with some of P's other property such that the deposited property is no longer distinguishable from what it has been mixed with (O: as opposed to when the deposited property can be easily distinguished and has not depreciated as a result of being mixed);
-4- he takes the article out of the place of safekeeping to use, even if he did not use it (O: because merely taking it out with such an intention is a betrayal of his trust);
-5- he does not keep it in a place meeting the normal specifications for safeguarding similar articles;
-6- or if P has told him, "Keep it in such and such a particular place for safeguarding, "but he instead puts it in a different place less protected (O: than the one P indicated), even when this second place meets the normal specifications for safeguarding similar articles (O: though if Q puts it in a different place with protection equal or superior to the place P has indicated, Q is not responsible for it).

@K18.7Either party may cancel the deposit for safekeeping agreement at any time. The agreement is also annulled when either party dies, loses his sanity, or loses consciousness (Ar. ughmiya `alayhi, i.e. through other than falling asleep).

@K18.8pQ's responsibility in accepting a deposit for safekeeping is that of someone who has been given a trust (O: meaning that his claims when he swears an oath (N: and neither side has proof (dis:k8.2)) are accepted, a he is a trustee). His word is accepted over P's when there are disputes about:
-1- whether the deposit for safekeeping was actually made (O: When P claims that it was);
-2- whether the article was returned to P;
-3- or whether and how the article was destroyed (O: when Q claims it was).
Thus if Q says, "You did not deposit anything with me," or "I returned it to you," or :It was destroyed without negligence on my part," then his word is accepted when he swears.

@K18.9 It is a necessary condition for the validity of a deposit for safekeeping that P states it in words such as "I entrust it to you to keep," or "I entrust it to you to protect." It is not necessary that Q give a spoken reply to this, but is sufficient for him to simply accept the article.

*2*Chapter K19.0: Lending Something for Use (`Ariyya)

@(n: Given persons A (al-mu'ir) and B (al-musta'ir) (A: where A lends B an article to use and return after use. This section discusses such loans, which have four integrals:
(a) the article (al-`ariyya);
(b) the verbal agreement;
(c) A;
(d) and B).)

@K19.1A's lending an article for B to use is valid if A possesses full disposal over his own property and has the lawful right to the article's use, even if he is only renting (n: though not if someone else has lent him the article without giving him

permission to relend it, as at k19.8).

@K19.2It is permissible to lend anything that can be benefited from while the article itself still remains
(O: such that B gets some use out the article, as is usually the case, or else he materially gains from it, as when he borrows a sheep for its milk or its expected offspring, or borrows a tree for its fruit. It is not valid to lend something of no lawful benefit such as a musical instrument (dis: r40), or such things as edibles, which do not themselves exist after use, since their use consists solely in their consumption).
(A: The latter would be a loan (qard, def:k10) repayable in kind, and hence not included in lending for use.)

@K19.3It is necessary for the validity of lending something for use that either A or B state the agreement in words. (O: The loan is not valid except by either A or B stating it, such as by B telling A, "Loan me such and such." and then A giving it to him. The action alone, between A and B, is insufficient.)

@K19.4B may then use the article according to the permission given. He may:
-1- do what A has given him permission to;
-2- or do the equivalent (O: in respect to the wear and tear on the article involved) or something less, though not if A has forbidden B to do other than what he has specifically given him permission to do.
If A tells B, "Plant wheat,"(A: on land lent), then it is permissible for B to plant barley, though not vice versa (O: since wheat is harder on the soil than barley), while if A merely permits B to plant, without further restriction, then B may plant whatever he wishes.

@K19.5 When A permits B to plant an orchard or build buildings on property he lends B, but later wants the land back, then:
-1- if A had stipulated that B would have to remove the trees or buildings, then B removes them (O: obligatorily, performing what was stipulated, for if B will not, then A may remove them);
-2- but if A had not stipulated this, then if B whether, he may remove them, though if B does not (O: but rather chooses to keep them there), then A has a choice between leaving them on the land for rent (O: from B for the land), or else removing them (O: the trees or buildings) and being obliged to pay B a compensation for the loss of value (O: to the trees (A: or buildings)) caused by removal.
A is entitled to take back the article lent at any time he wishes.

@K19.6B is financially liable for the article lent (N: even if it is destroyed by an act of God). If it is destroyed while B is using it for other than what A gave him permission to do with it, even if not through B's negligence, then B is responsible to A for the article's value (A: at the market price current for similar articles on) the day of its destruction (O: and he may either replace it or pay A for it).
But if the loaned article wears out through being used in the way that A gave permission to use it; then B is not financially responsible for it (N: as when B borrows a garment to wear which becomes worn out through use alone).

@K19.7 B is responsible for the measures entailed in returning the article to A.

@K19.8 B may not loan (O: the article lent to him) to a third party (O: without permission).

*2*Chapter K20.0: The Return of Wrongfully Taken Property (Ghasb)
@(O: Taking another's property is an enormaity (dis:p20), the scriptural basis for its prohibition being Koranic verses such as the word of Allah Most High,
"Do not consume each other's property through falsehood"(KOran 2:188).)
(n: Given persons X and Y (A: where X takes an article belonging to Y. This section presents the details of X's obligation (dis: p77.3) to restore Y his property).)

@K20.1Wrongfully taking (ghasb) means to appropriate what is another's right (O: even if this consists of the right to use something, such as forcing someone sitting in a mosque or marketplace to get up from his place) unjustly.

@K20.2When X wrongfully takes anything of value from Y, even if the value is inconsiderable, he is obliged to return it unless this involves destruction to life or lawful property, as when X takes a plant and nails it over a leak in the hull of a ship at sea that is bearing others' property or worthy people or animals (N: meaning those not obligatory to kill (def:e12.8(O:))).

@K20.3If the article taken is destroyed while in X's possession or X himself destroys it, then:
-1- if it was fungible (mithli, a homogeneous commodity transacted by weight or measure, an equal amount of which precisely supplies the place of another), then X is financially responsible for replacing it with an equal amount, fungible meaning that which is measured by volume or weight, and which can be validly sold in advance (def; k9.2 (b,d,f,g)) such as grain, gold or silver, and so forth, while nonfungible (mutaqawwim, commodities appraised and transacted as particular pieces of merchandise) means everything else, such as livestock and articles of heterogeneous composition, like meat pastry, and so forth;
-2- if the article was fungible (mithli) but it is no longer possible for X to obtain an equal amount to return to Y, then X owes Y its value, which is reckoned at its highest market value between the time X seized it and the time of its subsequent unavailability;
-3- but if the article was nonfungible (mutaqawwim), X owes Y its highest market value during the interval between X's taking it and the time of its destruction.
(N: The foregoing apply to when X has appropriated a physical article or commodity (`ayn). As for when he has wrongfully appropriated the use of something, the obligation consists of repaying Y the cost of renting a similar article for a similar amount of time.)

@K20.4X's word (O: provided he swears an oath (N: and neither side has proof (dis:k8.2))) is accepted over Y's when there is a dispute about the destroyed article's value (O: when both agree that it has been destroyed) or about its destruction (A: as to when it occurred, for example). But Y's word is accepted over X's when there is a dispute about whether or not X returned the article to Y.

@K20.5If the property returned by X is materially diminished or has depreciated in value because of some new defect, or both, then X is obliged to pay Y compensation for the loss of value (O: while still being obliged to return the rest).
But if the article has diminished in value solely because its market price is now less, then X is not required to pay anything.
@K20.6If the article possesses a utility (O: meaning a rentable utility, as a house does), then X owes Y its rent for the period that X had it, no matter whether he used it or not.

@K20.7Anyone who obtains the wrongfully appropriated article from X, or subsequently obtains it from the person who got it from X, and so forth, on down, is financially responsible (def: k20.2-6) to Y for it, no matter whether such a person knows of its having been wrongfully appropriated or not.

@K20.8 (N: Given persons X,Y, and Z, where X has wrongfully taken something from Y, and then Z obtains it from X. This ruling describes the compensation due to Y when the article has been damaged or destroyed in Z's possession.)
Y is entitled to demand restoration or payment for the loss or depreciation of the article from either X or Z. The obligation to cover this becomes Z's own financial liability-meaning that if Y asks Z for compensation, Z may not in turn demand it from X; though if Y asks X for it, X may it turn demand it from Z-in the following cases:
-1- when Z obtained it knowing that it had been wrongfully appropriated;
-2- when Z obtained it not knowing that it had been wrongfully appropriated, but the means by which Z obtained it would have made him financially responsible for its

destruction anyway, as when Z himself wrongfully appropriated it or borrowed it for use (def: k19) from X. (O: Z is also financially liable if he bought it from X);
-3- or when Z obtained it not knowing it had been wrongfully taken, and the means by which he got it from X would not otherwise have made him responsible for its destruction except for the fact that he himself precipitated its destruction (A: as when X deposits it with Z for safekeeping and Z destroys it).

*2*Chapter K21.0: Pre-Empting the Sale of a Co-Owner's Share to Another (Shuf`a)

@(n: Given P, Q, and R (A: where P and Q each own part of some dividable piece of real estate, and P sells his part to R, a third party. In such a case, Q can legally force R to sell the part to him by right of pre-emption (N: whose purpose is to prevent the harm to Q that would result if R were to subsequently go to the Islamic magistrate and demand that the property be divided to distinguish his property from Q's)).)

@K21.1 Preemption is only legally binding:
(a) on a portion of real estate (A: that belonged to P and Q) which can be divided without loss of value;
(b) when P has sold his part (A: to R) for recompense.
In such a case, Q may preempt its being sold to R by buying R's share for the price that P and R agreed on. If there are several co-owners in place of Q, they each buy a part of the share proportionate to the percentage of the whole property they respectively own.
(A: If there is disagreement between the parties as to how much P sold it to R for, and there is no proof, then) R is the one to say (A: when he swears(def:k8.2)) how much the price of the part was.

@K21.2It is a necessary condition for the pre-emptive sale that Q effect it with words such as "I hereby appropriate this property by preemption."
It is also necessary that Q give R the price, that R agree to let Q pay it later, or that the Islamic magistrate rule that Q may buy the property by preemption; in any of which cases Q takes possession of it.
If R paid P with something fungible (mithli, def: k20.3(1)), then Q must pay R an equal amount. If R paid with something nonfungible, then Q must pay its value (A: in the marketplace on) the day of the sale.

@K21.3There is no preemption if:
-1- the property is divided (N: already, by boundary markers or similar);
-2- the building and trees on the land are sold separately from it;
-3- the property cannot be divided without eliminating its usefulness (non-k21.1(a)), such as a cistern or a narrow walkway;
-4- R acquired it without paying a price for it, as when it has been given to him as a gift;
-5- or if R bought it with a price whose amount was not known(A: such as "for this pile of silver you see").

@K21.4 It the building and trees have been sold with the land (A: for one price), then Q also takes them as part of the land he preempts.

@K21.5 Preemption must occur immediately (A:upon Q's learning of P's having sold the property to R). When Q learns of it, he must preempt at once (def:f4.5). If he delays without excuse, he no longer has the right to preempt, unless R bought the property from P for postponed payment, in which case Q has a choice between buying it at once, or waiting until payment is due and then buying it.
If Q learns of the sale while ill, or being denied, he must commission someone (def:k17) to preempt for him. If he does not, he loses the right to preempt, unless he was unable to commission someone, or the person who informed him of the sale was a child or someone unreliable, or he was informed of it while travelling and then started returning in order to preempt; in all of which cases he may still preempt.

@K21.6If R has built, or planted trees (A: before Q could preempt), then Q has a choice

between paying R the value of the new buildings (A: or trees) and taking possession of them, or else removing them and paying R for the loss of value (A: to them as a result of being removed).
If R has given away the part of the property (A: that he bought from P), made it a charitable endowment (waqf,def;k30), sold it, or returned it to P because of a defect, then Q may annul any of these transactions that R has effected.
Q also has the right to take the property from the person who bought it from R, by paying this person who bought it from R, by paying this person the amount for which he bought it.

@K21.7 If Q dies (A: before he is able to preempt), his heirs can preempt. If some of them decline to do so, the rest of the heirs may still preempt the entire portion, or may relinquish the right to preempt any of it.

*2*Chapter K22.0: Financial a Profit Sharing Venture (Qirad)

@(n: Given persons X (al-malik) and y (al-`amil) (A: where X and Y a sum of money for Y to do business with, on the basis that X will take a percentage of the profits. Such ventures have six integrals:
(a) X;
(b) Y;
(c) the work performed by Y;
(d) the profit (n: divided between them at a given percentage);
(e) the spoken form;
(f) and the venture's capital (n: which is put up by X)).)

@K22.1Financing a profit-sharing venture (qirad) means for X to give Y money with which to trade, the profits to be shared between them. (O: It is not valid to finance such a venture on the basis that a third party gets any of the profit.)
It is only valid when both parties have full right to manage their own property. It also requires that there be:
(a) a spoken proposal (O: by X, such as "I finance you," or "I engage you, "or "Take these dirhams [N: as a trade loan]");
(b) an acceptance (O: by Y in words. It is insufficient for him to begin working without saying anything);
and that the invested capital be:
(c) money (lit. "gold or silver" (A: money taking their place in these rulings));
(d) of known amount;
(e) physically existent (A: i.e. it can be seen and handled, not merely a debt or financial obligation to be collected);
(f) delivered to Y (O: it is not valid to finance a profit-sharing venture on condition that the funds be held by someone other than Y, such as X holding them and paying for what Y buys, since y might not find X he needs him);
(g) (A: and that Y be given the funds) in return for (A: X's receiving) a known fraction of the entire profit, such as a half or a third.
Financing a profit-sharing venture is not valid when:
-1- (non-(c) above) the capital put up consists of commodities;
-2- (non-(f)) X holds the funds;
-3- (non-(g)) it is stipulated that either X or y be specifically entitled to the profits from a certain part of the business (O: such as saying, "You get the profits from the clothing, and I get the profits from the livestock");
-4- (non-(g)) either X or Y is guaranteed (N: for example) ten dirhams of the profit (O: since they might not make more than ten, in which case the second partner would get nothing) (A: rather, they must specify the percentage that each will take);
-5- (non-(g)) it is stipulated that one of them be entitled to all of the profit;
-6- or (non-(f)) it is stipulated that X work with Y in the business.

@K22.2 Y's role is to conduct business and related matters with consideration for their best financial advantage and with circumspection. Y may not sell at a loss, sell for deferred payment, or travel with the capital, and so forth, without X's permission.

@K22.3 The agreement between X and Y is nullified whenever X stipulates (O: something that is not obligatory for Y in such ventures, such as) that Y buy wheat, mill it, and bake it; that Y buy yarn, weave it, and sell it; that Y not deal except in such and such a rare commmodity; or that Y deal exclusively with So-and-so.

@K22.4 When such an agreement is invalid, the transactions Y has conducted are valid, and Y is paid the wages that are usual for such work, unless X had stipulated, "I get all the profits, "in which case he takes all of it and Y gets nothing (O: since he worked without expecting anything).

@K22.5 When either X or Y cancels the agreement, loses his sanity, or loses consciousness (Ar. ughmiya `alayhi, i.e. through other than falling asleep), then the agreement is annulled and Y is obliged to liquidate the holdings (A: by changing them back into funds).

@K22.6(A: When neither party has proof,) Y's word (O: if he swears (dis:k8.2)) is accepted over X's when there are disputes:
-1- concerning the amount of capital originally put up;
-2- as to whether or not the capital was restored to X;
-3- concerning the destruction of the holdings;
-4- or as to whether Y betrayed his trust.

@K22.7If X and Y dispute as to how much of the profit was stipulated half for me," and X replies, "To the contrary, it was onethird"), then each party swears an oath supporting his own claim (O: and when they have sworn, X gets all the profit, and Y receives the wages customary for the work he did).

@K22.8 Y does not own his share of the profit until the venture's final division. (O: His possession of it is only finalized by dividing the profits when the holdings ae liquidated and the agreement is terminated.)
*2*Chapter K23.0: Watering Grapes or Dates for Part of the Crop
*2*Chapter K24.0: Sharecropping (Muzara`a)
@(n: Sharecropping means to farm someone's land for a share of the harvest. In the Shafi'i school, it is not permissible or valid except on strips of land between date groves under certain conditions, such as:
(a) that the landowner provide the seed;
(b) that it be unfeasible to separate working the trees from working the ground;
(c) and that the sharecropper be currently working the trees also, under the above 9k23) arrangement.
This section has been left in Arabic below, and rulings from the Hanafi school, which permits sharecropping, have been added by the translator.)

@K24.2(Ahmad Quduri:) Abu Hanifa (Allah have mercy on him) holds that sharecropping, for one-third or one-fourth of the harvest (or anything less or more), is invalid, though Abu Yusuf and Muhammad (A: the colleagues of Abu Hanifa) hold it to be valid. Sharecropping, in the view of the latter two, is of four types (A: three of them valid and one invalid).
(n: Given persons X and Y, and the four agricultural variables: land, seed, labor, and oxen (i.e. the means of plowing) :)
-1- X provides the land and seed, and y provides the labor and oxen; and seed; which is permissible;
-2- X provides the land, and Y provides the labor, oxen, and seed; which is permissible;
-3- X provides the land, oxen, and seed and Y provides the labor, which is permissible;
-4- or X provides the land and oxen, and Y provides the seed and labor; which is not valid.
A sharecropping agreement is only valid if the period of the agreemtnt is determinately specified (lit. "known"), and it requires that the total produce be divided between the partners (A: not a specific number of bushels to one, for example, or on condition that the produce from ne part of the land belong to one of them and the produce from another part belong to the other) (al-Lubab fi sharh al-kitab (y88), 2.228-30).

*2*Chapter K25.0: Renting Things and Hiring People's Services (Ijara)

@(n: Given persons P and Q, where Q rents a pack animal from P, or hires P as a guide. The title of this section, Ijara, has the dual significance of renting an article and hiring a person's services.)
(O: Lexically,rent is a name for the rental fee. In Sacred Law it means to take possession of a utility or service for payment under certain conditions, It has four integrals:
(a) the spoken form;
(b) the fee;
(c) the utility or service;
(d) and the persons making the agreement.)

@K25.1A rental agreement is only valid between two persons entitled to conduct sales (def; k1.2) It requires both a spoken offer, such as "I rent this to you." or "the use of it"; and a spoken acceptance. (O: The agreement must also specify how much the rental fee is.)

@K25.2There are two types of rental agreements:
-1- renting anticipated utilities or services described in advance and under obligation to deliver (ijara dhimma);
-2- or renting the use or services of an identified thing or individual who is present (ijara 'ayn).
Rental of something anticipated (ijara dhimma) consists of Q saying, for example, "I am renting from you a pack animal of such and such a description," or "I am hiring you to tailor a garment for me,"or "to provide me with transportation to Mecca."
Rental of something identified and present (ijra'ayn) consists of Q saying, for example, "I rent this animal from you," or I hire you to sew this particular garment for me."

@K25.3It is a necessary condition for a valid rental of something anticipated (ijara dhimma) that P accepts the fee for it at the time the agreement is made.

@K25.4The necessary conditions for a valid rental of something identified and present (ijara 'ayn) are:
(a) that the article (or person whose services are) being rented be a particular individual (O: meaning visible to the eye, as in sales);
(b) that the article (or person's service) be within P's power to deliver such that Q can utilize it as intended (O: within one's power to deliver including both the actual ownership of an article and the possession of the right to use it, such that if Q is renting it from P, Q may in turn rent it out to a third party);
(c) that Q have the right to utilize the article (or services of the person hired) as soon as the deal is made;
(d) that the utility for which the article is being rented not entail the article's destruction;
(e) and that the agreement specify a rental period that the rented article will probably outlast, even if it be a hundred years, as in the case of land.
Thus, rental of something identified and present (ijara'ayn) is invalid when it consists of:
-1- (non-(a) above) hiring the services of "one of these two servants";
-2- (non-(a)) hiring someone absent (A: from the place where the agreement is made);
-3- (non-(b)) renting land for agricultural use when the land is without water and the area's rainfall is insufficient for crops;
-4- (non-(c)) P renting out something (A: that he is already renting to Q) to a third party for the year following the current one, though Q may rent it for the following year (O: since his rental period is unexpired and the two periods are contiguous);
-5- (non-(d)) wax for fuel;
-6- (non-(e)) or renting out an article unlikely to last, for example, more than a year, for a period longer than that.
@K25.5

(O: Additional) conditions for rental of something identified and present (ijara 'ayn) (O: relating to its use or service) are that its utility be:
(a) permissible in Sacred Law;
(b) of some value;
(c) determinately known (O: as to which one it is, its amount, and its utility, meaning that both P and Q know these things), such as saying, "I rent you this land to raise crops on," or "[A: I rent you this pack animal] to carry such and such a quantity of iron,"or" of cotton";
(d) for a period known (O: to both P and Q);
(e) and for a fee known 9o; to both P and Q, in type and amount), even when it is merely seen in bulk, or when it consists of the use of some other utility or service.
Thus, rental of something identified and present (ijara'ayn) is not valid when the utility for which it is being hired or rented consists of:
-1- (non-(a) above) playing a flute;
-2- (non-(a)) transporting wine, other than to pour it out;
-3- (non-(b)) a hawker's cry that does not require any effort,even if it increases the demand for the merchandise;
-4- (non-(c)) carrying such and such a quantity (O: on a pack animal) when the nature of the load is unspecified;
-5- (non-(d)) being rented for "one dirham per month" when the total period (A: of occupancy, for example) is unspecified (A: though one may renew a valid rent agreement each month, and in such a case the landlord has the right to ask for it in advance);
-6- or (non-(e)) hiring someone for the "fee" of providing him with food and clothing.

@K25.6The particulars of the utility (N: such as its precise duration) might not become determinately known except through the passage of time, as when renting a house or hiring a wet nurse in such cases the time must be preestimated (A; when the agreement is made, as a condition for its validity).
Similarly, the utility or service might not become determinately known except through the work itself, such as when hiring someone to perform hajj in one's place (dis: j1.10) or the like, in which case the amount of work involved must be preestimated.
If the utility requires both time and work to become determinately known, as is the case with tailoring, building, or teaching someone the Koran, then the utility is preestimated (A: i.e. stated in the rental agreement) with regard to one of these two variables alone. It is not valid to estimate the utility with regard to both, such as Q saying, "[O: I hire you to] tailor this garment for today's daylight hours" (O: since the work involved might take more or less time than that).

@K25.7The necessary things required by Q in order to utilize, such as the key (A: to a house), or the reins, girth, or saddle(A: of a mount), are P's responsibility to provide. Things that merely enhance or improve the utility for which Q has rented the article are Q's responsibility.

@K25.8Q is entitled to normal use of the article in obtaining the utility for which he has rented it of an equivalent utility (A: riding it in a different direction, for example, the same distance as the agreed upon and under the same conditions). If Q travels farther than the agreed upon destination, then he is obligated to pay the rental fee agreed upon, plus the amount customarily paid for a distance comparable to the excess.

@K25.9 It is permissible (O: only when renting something identified and present (ijara 'ayn)) for Q to pay in advance or to defer payment to the future. If neither party states whether it is to be paid in advance or whether in the future, then it is payable in advance.
When renting anticipated utilities or services (ijara dimma), it is permissible to let Q use the utility prior to the agreed upon period, or to delay use until after the period.

@K25.10 (O: When renting something identified and present (ijara 'ayn)), if the article being rented is destroyed, the agreement is thereafter cancelled (O: with respect to the future, since the article to be utilized is no longer available then, as

opposed to the period that has transpired after the article's delivery, for which Q must pay an appropriate proportion of the agreed upon fee, based on the current market value of similar utilities or services).
(O: When renting an identified and present utility or service (ijara 'ayn),) if a defect occurs (O: in the article being rented, and the defect obviously entails a discrepancy in the rental fee), then Q has the option to cancel the agreement (O: unless P immediately undertakes to correct or repair the defect, for if he does, Q is not entitled to cancel it). But if the rental agreement concerns an anticipated utility or service (ijara dhimma0 (O: and the rented article has been destroyed after its delivery), then the agreement is not nullified and Q may not cancel it, but is only entitled to ask P to replace the article so that Q can obtain the utility anticipated.

@K25.11 If the material Q has hired P to work on (A: e.g. when Q hires P to tailor a garment from material Q has given him) is destroyed in P's possession without his negligence, then P is not obliged to pay for its loss.
If Q has rented an article from P and it is ruined in Q's possession without his negligence, then Q is not obliged to pay for its loss.

@K25.12 If P and Q dies while the rental agreement is in effect, it is not cancelled. (O: Rather, if P has died, Q finishes using the article, while if Q has died, then Q's heirs finish utilizing it. Neither party has the right to cancel the agreement in such a case when the article itself still exists.) (A; The death of either party is considered by the Hanafi school to nullify the agreement.)

@K25.13When the rental period is over, Q must return the article rented and is responsible for the measures (A: and the expenses) entailed in returning it.

@K25.14When P or Q stipulates a particular rental period or a specific use for the article, then when P has delivered the article to Q and the period stipulated elapses, or a period elapses that is sufficient for the utility stipulated to have been obtained from the article (O: even if it has not in fact been obtained), then the rental fee is due (O: from Q, who rented the article under such stipulations), and the article must be returned. (O: This ruling holds for both renting something identified and present (ijara 'ayn) and renting something anticipated (ijara dhimma).)

@K25.15In an invalid agreement, Q owes P the amount typically paid for renting similar utilities, due whenever he would have owed P the fee agreed upon had the agreement been valid.

*2*Chapter K26.0: Job Wages (Ja`ala)

@(n: Given persons X and Y,where X offers Y a dirham to do a certain job.)

@K26.1When X says, "I owe whoever builds me a wall a dirham" (A: or makes a similar offer), this is termed job wages. It is permissible that (A: the particulars of) such a job be unknown, though not the amount of the wage. Whoever then builds the wall for X is entitled to the amount stated, even if they are a group of people.

@K26.2Whoever works when no wage has been stipulated does not deserve anything. If X and Y a garment to clean, saying "Wash it, "but does not mention a wage, and Y washes it, then Y deserves nothing (N: unless it is a well known customary usage that Y should receive a fee, as when Y is a barber or presses clothes and the like). If Y says, "You stipulated a wage for me, "but X denies it, then X's word is accepted (A: when there is no proof (dis:k8.2)) (O: if he swears an oath).

@K26.3Both X and y are entitled to cancel their agreement (O: before the job is finished), but if X cancels it after Y has begun work, then X is obliged to pay Y an appropriate portion of the wage agreed upon (O: such that if the job is half done, then X owes Y half the amount, and so forth).
Otherwise (O: if X cancels it before Y has begun, or if Y cancels it himself after having begun), Y gets nothing.

*2*Chapter K27.0: Lost and Found (Luqta)

@(n: Given Z, who finds an article lying on the ground and picks it up.)

@K27.1When a responsible adult finds a lost and found article it is permissible for him to take (O: or leave) it.

@K27.2If he can trust himself to take the proper measures for such articles (dis:below), it is recommended that he pick it up, though if he cannot depend on himself not to betray the trust (A: by simply appropriating the article without telling anyone), then it is offensive for him to take it.

@K27.3It is recommended that the finder determine the type, description, and amount of the article he has found, its container, and the string with which it was tied (O: it being preferable that he record this in writing so as not to forget), and for him to have witnesses attest to his having found it.

@K27.4The following two kinds of articles are permissible to pick up for safekeeping (def:k27.5) but unlawful to pick up as lost and found (A: to be advertised and then appropriated (def:k27.6)). and should he do the latter, Z is financially responsible for the article:
-1- something lost and found within the Meccan Sacred Precinct (Haram);
-2- or an animal unmenaced by small predators, such as a camel or a horse lost and found on open range.
In other than these two cases it is permissible for Z to pick up the article, either for safekeeping or to be advertised and then appropriated.

@K27.5If Z picks up the article for safekeeping, he is not obliged to advertise having found it, and it remains in his care as a trust (def:k17.14) which he is never entitled to dispose of in any way until he finds its owner, in which case he gives it to him. If Z wishes to deliver it to the Islamic magistrate, the latter must accept it.
If Z picks up the article within the Meccan Sacred Precinct (Haram) for safekeeping, he is obliged to advertise his having found it (n: as below).

@K27.6If Z picks up an article intending to appropriate it if he cannot find the owner, then he is obliged to advertise its having been found for a (O: full) year on the doors of mosques, in the marketplaces, and the vicinity where he found it, in the manner customary for advertising such things. At the first of the period he should publicize it morning and evening, then subsequently once a day, then once a week, then once a month, such that the first advertisement is not forgotten and that it is realized that the subsequent notices are repetitions of it (O: and this is what is meant by the customary matter mentioned above). Z should mention some of the article's characteristics in the advertisement, but not all of them (A: so that a would-be claimant is able to prove ownership by describing it in detail) (O: for if Z divulges them all (A: and a pretender takes it), then Z is financially responsible for its loss (A: if the real owner should appear and the pretender cannot be found)).
If the lost and found item is not something major, meaning something unlikely to cause much regret and which will probably be unsought after its loss, then it is not obligatory to advertise it for a whole year, though one must advertise it long enough that its owner will probably have ceased to be concerned about it (N: and this latter is the criterion for advertising most lost and found things, which need not be advertised for a whole year).

@K27.7When Z advertises a lost and found article for a year, it does not enter his possession until he chooses to appropriate it with a formal statement to that effect (O: and not by the mere intention. The statement consists of saying, "I take possession of it," or the like). Z takes possession of it when he chooses to do so (O: by uttering the above words). If it is destroyed before he chooses to appropriate it, Z is not financially responsible for its loss.

@K27.8If Z has appropriated the article (N: which thus enters his financial liability), and the owner one day appears, then the owners is entitled to take:
-1- the article itself, if it still exists;
-2- an equal quantity (O: if it was fungible (Mithli, def:k20.3(1)));
-3- its market value (O: if it was nonfungible (mutaqawwim), where market value refers to the going price for similar articles on the day Z formally appropriated it);
-4- or, if the article still exists but some defect has occurred in it, then the owner takes it back with an appropriate compensation (def:k5.4) (O: for the new defect that occurred while Z had it).

@K27.9It is offensive for a corrupt person (def: o24.3) to pick up a lost and found article. If he does, the article is taken from him and deposited with someone trustworthy, and a reliable person is dispatched to oversee the corrupt person's advertising (def:k27.6) of the find, after which the corrupt person may appropriate it.

@K27.10In cases where safekeeping the article is not practicable as when it is a watermelon or similar Z may choose to either eat it or sell it (A: in either case covering the cost if the owner subsequently appears), after which he advertises finding it for a year (O: if it something major, or less than a year (dis:k27.6 second par.) if minor).
If it is possible to preserve the article, as when it consists of dates (A: which are conserved by drying), then if it is to the owner's advantage to sell it, Z sells it, while if it is to the owner's advantage to dry it, then Z dries it. (O: In such a case, if Z wants to simply donate the cost of drying it to the owner, he does so, Otherwise, he sells part of the lot to cover the cost of drying the rest, in the owner's interests. The difference between this and an animal found, of which all is sold, is that an animal's maintenance requires repeated expenditures that may add up to more than it is worth).

*2*Chapter K28.0: A Foundling Child (Laqit)

@(O: Meaning a child found abandoned without anyone to care for it. The scriptural basis for these rulings is Allah's word: "And do what is good" (Koran 22:77).
and, "Cooperate with one another in [works of] piety and godfearingness" (Koran 5:2.)

@K28.1To pick up a foundling is a communal obligation (def: c3.2). A child that is found (N: in a Muslim town) is considered a Muslim, and likewise if found in a non-Muslim town if there is a single Muslim therein, even if he denies the child is his (N: because the religion of someone whose religion is unknown is considered to be that of the people of his own city, and in this case there are two religions, with Islam given precedence, as it always surpasses and is never surpassed. Moreover, considering the child a Muslim is a cause for his own happiness and salvation, as he will be raised in Islam).

@K28.2If money is found with the child or under his head, it belongs to him.

@K28.3If the finder is a resident, trustworthy, and Muslim, then the child remains with him, and he is obliged to have witnesses attest to his having found the child and whatever was found with him (O: such as clothing or money).
The finder spends the money found with the child for its own expenses with the permission of the Islamic magistrate. If there is no Islamic magistrate, then the finder spends it anyway, but has witnesses attest to the amount of the expenditures. If no money was found with the child, then its expenses are paid for by the Muslim common fund. If there is no money in the Muslim common fund (N: or no Muslim common fund), then the finder may borrow money to cover its expenses as a financial obligation to be later repaid by the child.
If the finder is a corrupt person (def: o24.3 (A:)) or a non-Muslim, then if the child is considered a Muslim (dis:k28.1), he is taken from the finder.
If two people find the child and disagree about whom the child should remain with, then the one who is a resident and wealthy is given preference.

@K28.4(A: Adoption is unlawful in Islam when it means giving a child one's own name, a share of one's estate division (irth,def:L1.0), and so on. But when it merely means giving the child a home and other advantages provided by family life until it grows up, then it is a charitable act rewarded by Allah. And Allah knows best.)

*2*Chapter K29.0: Games, Contests and Prizes

@(O: The scriptural basis for competitions and races entailing prize money is the word of Allah Most High.
"And make ready against them whatever force and lines of horses you can" (Koran 8:60).
Muslim relates from 'Uqba ibn 'Amir that the Prophet (Allah bless him and give him peace) said,
"Force means marksmanship,"
repeating this three times.)

@K29.1: Races for Prize Money
Races with prize money for the winner are permissible between horses, mules, donkeys, camels, or elephants, provided that the animals competing are of the same species, though it is not, for example, permissible to have such a race between a camel and a horse.
It is a necessary condition for such a race that the participants know which animals will be ridden, the amount of the prize, and the distance to be run.

@K29.2 The prize money may be put up by both contestants, either one, or by a third party. If the prize money is put up by either contestant or by a third party, then the race is unconditionally permissible, and the winner takes all (N: regardless whether he was the one who put up the money or whether it was the other person).
But if the prize money is put up by both contestants, then it is a necessary condition that a third rider enter the contest with a mount equal to theirs (A: in speed, stamina, and so forth.) who puts up no money (N: so that it may be distinguished from gambling. If all three put up the money, then it is necessary that there be a fourth contestant with them who does not pay, and so on). (A: Similarly, bets from one side alone, such as saying, "I will give you ten dinars if what you have said proves to be correct," are lawful when the other party bets nothing.)
Here, the winner takes all. If two riders finish together, they divide the prize.

@K29.3: Competitions in Marksmanship for Prize Money
It is also permissible to compete for prize money in competitions of skill at archery, spear throwing, or other military weaponry, when the prize is put up by both contestants, either one, or a third party, though if put up by both, it is necessary that a third marksman enter the contest, as mentioned above (A: meaning one comparable to the others in marksmanship, who puts up nothing).
It is a necessary condition for the validity of such a competition that the following details be specified before the contest:
(a) who will be shooting;
(b) the number of shots per bout, how many shots are needed to win, and the criterion for a hit (A: that is, in archery, whether the arrow must stick or whether it need merely leave a mark);
(c) the distance to the target;
(d) and which of the contestants is to begin.

@K29.4It is not permissible to conduct contests for prize money that involve birds, footracing, or wrestling (O: since they are not military weaponry or equipment).

@K29.5: Ruling Concerning Games
(N: As for games:
-1- every game played by two or more people that relies on luck, conjecture, and guessing is unlawful, no matter whether money is stipulated or not;
-2- paying prize money in every game that encourages and assists fighting for Allah (jihad, def:o9) is permissible if the terms of the competition conform to the rulings discussed above in this section (k29.1-4);

-3- every game not of the preceding two types is permissible if no money is paid therein;
-4- and any of the above mentioned things which are permissible become unlawful if they prevent one from performing a religious or this worldly duty.)

*2*Chapter K30.0: Establishing an Endowment (Waqf)

@(O: Lexically, waqf means to be retained. In Sacred Law, it refers to the retention of any property that can be benefited from while the property itself still remains, by suspending disposal of it; with the financial proceeds of it going to some permissible expenditure. The scriptural basis for it is the hadith related by Muslim that the Prophet (Allah bless him and give him peace) said.
"When a human being dies, his work comes to an end, except for three things: ongoing charity, knowledge benefited from, or a pious son who prays for him,"
from which scholars understand ongoing charity as meaning an endowment (waqf).)
(n: Given persons P (al-waqif) and Q (almawquf `alayhi) (A:where P owns, for example, an apartment building that he makes an endowment (waqf), the rent of which will henceforth go to Q, and P stipulates that Q must supervise the upkeep of the building. This section deals with such endowments).)

@K30.1Establishing an endowment is an act of worship.

@K30.2Establishing an endowment is not valid unless the following conditions are met:
(a) that P have full right to manager his own property (O: full right to manage his own property including the non-Muslim, whose endowment is legally valid, even if it is for a mosque);
(b) that the endowment concern a particular identified article (`ayn) (O: it being invalid to make the mere "right to use something" an endowment, because it is not a particular article);
(c) that the article have a (O: lawful) use;
(d) that it remain existent (O: for a period in which it would be feasible to rent or hire it out), such as real estate or an animal (O: or clothing, weapons, Korans, or books. It is not permissible to make an endowment of something that cannot be utilized except by using it up, such as food);
(e) that the beneficiary be some particular party (O:such as the poor, for example) besides P himself, whether the endowment is an act of worship, as when the beneficiary is mosques (O: or Islamic schools), one's relatives, or the general good; or whether it is merely permissible, such as an endowment that benefits the wealthy, or Jewish and Christian subjects of the Islamic state;
(f) and that the endowment be formally established by words that effect it such as "I make it an endowment," or "I restrict [O: such and such a thing to benefit So-and-so]," or "I give [A:such and such] as nonsaleable charity."

@K30.3When the endowment has been made, the ownership of the article belongs to Allah Most High (O: not P or Q) (N: meaning that even though everything is the property of Allah, the article is now dissevered from its metaphorical human ownership), while Q owns the proceeds from it and its utilities (O: and all the benefits that come from it after the endowment has been made, such as rent, the fruit of trees, or offspring, Q may dispose of these as an owner would, as this is the purpose of the endowment. He may utilize the endowment either personally, or through another by loaning it for use or renting it
out).

@K30.4The interests of the endowment (O: i.e. its concerns, condition, upkeep (N: and supervision)) are looked after by whoever P stipulates, whether himself or Q or a third party. If P does not stipulate (O: that anyone in particular look after it), then the responsibility belongs to the Islamic authority (N: by himself, or though the person he appoints to do so).

@K30.5The proceeds of the endowment (O: such as the produce of an acreage endowment, or the rent of a property endowment, are disposed of as P stipulates, in terms of (A: for

example) :
-1- proportionality of shares (O: between recipients as to the amount each receives, such as having stipulated twice as much for males as females, or vice versa, or equal shares for each);
-2- precedence (O: in some receiving the proceeds before others when they are a group, through a condition that determines who deserves to receive it);
-3- inclusiveness (O: of (A:all) recipients, as by saying, "I make this an endowment for my children and their children,"where the word and implies that each person must be given a share);
-4- priority (O: such as saying, "I make this an endowment for the benefit of Islamic scholars, without restriction, and after that [A:if there are no more to be given a share] to the poor," or "I make this an endowment for the benefit of Zayd, and then `Amr,"where if one dies, the next one receives his share);
-5- or other conditions (O: such as the proceeds going to those most closely related to P (N: of his offspring), and then the less closely related).
@K30.6
(n: The following are examples of invalidity of establishing an endowment due to lack of one of the conditions mentioned at k30.2 above.) An endowment is not valid when it consists of:
-1- (non-k30.2(b)) a debt (N: that someone owes to P);
-2- (non-(b)) "One of these two houses";
-3- (non-(d)) food;
-4- (non-(d)) sweet basil (A: which used to be spread on floors as an air freshener) (O: since it quickly deteriorates) (N:i.e. if it is uprooted, though if it is growing, it is valid to make it an endowment);
-5- (non-(e)) when its beneficiary is unidentified by P, or unknown (O: since the endowment cannot be implemented. It is thus invalid if P stipulates "whoever Zayd says" as the beneficiary), or is P himself (O: including P stipulating that the proceeds of the endowment be used to pay off his debts, or when P eats of its produce, or utilizes the endowment for his own benefit, any of which invalidates the endowment);
-6- (non-(c)) when the proceeds are directed to an unlawful use, such as building a church (dis:o11.5(7)) (O: or purchasing lamps for a church, or building walls around it, since this assists disobedience to Allah. Rafi'i says, "The same is true of an endowment for printing the Torah or New Testament, which is invalid because the Jews and Christians have altered the texts and interpolated spurious material, it not being permissible to occupy oneself with printing their scriptures because doing so is to participate in their disobedience to Allah");
-7- (non-(f)) when the beginning or end of the endowment's being in effect are subject to conditions such as saying, "I make it an endowment starting from the first of next month, "or 'for one year, " or "provided that I am entitled to sell it" (O: or "condition that I may take it back whenever I wish");
-8- or (non-(e)) when (n: I stipulates, as a priority order of beneficiaries, "Q, then R, "and) Q is not an eligible recipient - such as P stipulating himself as the first beneficiary but R is an eligible recipient, as when P stipulates (A: after himself) "and then the poor."

@K30.7If P designates a particular recipient (O: or group of recipients), it is a necessary condition for the validly of the endowment that the recipient accept it. If he refuses it,this invalidates the endowment.

@K30.8If P designates a particular person (lit. "Zayd") as an endowment's beneficiary, but does not stipulate anyone after him, then the endowment is valid, and after the particular person is gone, its beneficiaries are the poor of P's relatives.

*2*Chapter K31.0: Gift Giving (Hiba)

@(n: As when X gives Y a gift.)

@K31.1Gift giving is recommended, It is superior to give gifts to one's relatives than to nonrelatives. When giving gifts to one's children, it is recommended to give each child the equal of what the others are given.

@K31.2Gift giving is only valid under the following conditions:
(a) that X have full right to manage his own property;
(b) that the gift be something permissible to sell (def:k2.1);
(c) that X give it with spoken words that effect it;
(d) and that Y accept it with a spoken reply.
@K31.3
Y does not own the gift until he takes possession(def:k7.3) of it, before which X may take it back. It is not valid for Y to take possession of the gift without X's permission. In cases where X gives Y an article that is already being kept with Y (O: as when Y has it as a trust for safekeeping, or has borrowed it), or X has put up the article as collateral for Y, and now simply gives Y the article, then it is necessary that Y obtain X's permission to take possession of the gift, and that enough time elapse for Y to reach the gift, (O: if it is distant) and take possession of it. Once Y has taken possession of the gift, X is no longer entitled to take it back. An exception to this is when one gives a gift to one's child, or their descendant, in which case one may take the gift back, unless such a receiver has sold it in the meantime, and the article has subsequently returned to him (O: by sale or gift), in which case one may no longer take it back.
@K31.4
If X and Y something and stipulates that Y give him something determinately known in return, this is valid, but is a sale (A: not a gift). If X stipulates that Y give him something in return that is not determinately known, then the gift is invalid. If X does not stipulate that anything be given him in return, then Y is under no obligation to him.
*2*Chapter K32.0: Manumission (`Itq)
@(n: This section, which begins, "To free a slave is an act of worship, "deals with a system of ownership that Islam did not invent but found fully established and not possible to instantly abolish, so it rather encouraged its elimination in steps, with incentives. It closed all avenues for obtaining new slaves except the capture of war prisoners, the soldiers of whom the caliph had the option to enslave or not; it encouraged the freeing of slaves by the tremendous reward from Allah Most High; and it materially helped slaves to purchase their freedom by providing them the money to do so from zakat funds (dis:
@K32.1-32.5
Like previous references to slaves, the following four sections have been left untranslated because the issue is no longer current, unlike the times of our author Ibn Naqib, whose rulers, the Mamelukes of Egypt, were themselves slaves who legally belonged to the Islamic state, a fact sufficient to show the fallacy of understanding slavery in the Islamic milieu in terms of the institution that existed in nineteenth-century America and elsewhere in the West (dis: w13).)
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*2*Chapter L1.0: Bequests (Wasiyya)

@(n: Sections L1, L2, and L3 have been moved here from their original place at the end of last book. They deal with bequests, meaning testamentary disposition of one's property (wasiyya) such as to say,"I bequeath such and such to So-and-so", while sections L4 through L10 form the original content of book L, and deal with estate division (irth).)
(A: The difference between bequests (wasiyya) and estate division (irth) is that a bequest is the act of a living person disposing of his own property, even if it is to be implemented after his death, while estate division occurs after his death according to the Koranic rules of inheritance. Because a bequest is the act of a living person with his own money, it is legally valid for a Muslim to bequeath up to a third of his property to a non-Muslim (dis:l3.13(1)) and similarly valid for a non-Muslim to bequeath his property to a Muslim, Nawawi says:
"A bequest is legally valid from any legally responsible free person, even if non-Muslim (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 3.39).
But it is invalid and unlawful for a non-Muslim to inherit property through estate division from a Muslim (dis: L5.2), or vice versa. The determining factor in the permissibiity of a Muslim and non-Muslim inheriting from each other is whether the property comes by way of a bequest (wasiyya) made by the deceased before his death, in which case it is permissible, or whether it comes by way of estate division (irth) made after the deceased's death according to the Koranic rules of inheritance, in which case the difference between their respective religions prevents it.)
(O: Our author only mentions bequests at this point (n:at the end of book k, as mentioned above) before estate division because of the fact that a person first makes bequests, then dies, and then the estate is divided. The scriptural basis for the validity of bequests, prior to the consensus of scholars is the word of Allah Most High,
"....after any bequest which has been made, and after any debts" (Koran 4:12).)
(n: Given persons X (al-musi), Y (al-wasiyy), and Z (al-musa lahu) (A:where X has made provision in his will for Z to receive a bequest (wasiyya) of a sum of money, and X appoint Y as his executor to make sure this is done).)

@L1.1A bequest made by X is valid if he is legally responsible (mukallaf,def:c8.1), even if he is a spendthrift.

@L1.2The discussion is in two parts (n: namely, section L2, on X's appointing Y as the executor, and Section L3, on the bequest itself).

*2*Chapter L2.0: The Bequests Executor

@(O: Appointing an executor means for X to put Y in charge of his property and young children, bequests, paying his debts, or collecting his property from others. The verbal form is, "I appoint So-and-so to execute such and such a bequest.")

@L2.1The necessary conditions for the validity of X appointing Y as the executor of his bequest are that Y be:
(a) legally responsible (mukallaf, def:c8.1);
(b) upright (def: o24.4) (O: meaning the uprightness of Islam, as it is not valid under any circumstances for Y to be a non-Muslim if X us a Muslim);
(c) and that Y have the knowledge and capacity to properly undertake the bequest.

@L2.2The following examples of X appointing Y as the executor of his bequest are legally valid:
-1- when X appoints Y as his executor at a time when Y is not legally eligible to be it, but by the time of X's death, Y is eligible (O: by fulfilling all the above (L2.1) conditions);
-2- when X appoints a group of two or more people as his executors (O: and if he does so, then if he does not stipulate that each of them must manager their respective role, but rather says that they are to manage the legacy collectively, or does not say anything, then they must cooperate and not manager the work, maintenance, and dealings as separate individuals. Cooperate in such a case means that their acts proceed from the decision of the group, and does not mean, for example, that when they buy something they must all conduct the transaction together. Rather, if all agree to permit something, it is sufficient for one of them to take the matter in hand and carry it out);
-3- when X appoints (n: for example,) W, and then after him, Y(N: or vice versa) (O: saying, "I appoint W as executor until Y comes, but when Y arrives, he is the executor,"or "I make W executor for one year, and when it has passed, then Y is the executor");
-4- or when X appoints Y as executor, authorizing him to appoint in turn whomever he chooses as executor of the bequest (O: if the person fulfills the conditions (L2.1)).

@L2.3X's appointing Y as the executor of his bequest is not legally effective until Y accepts this responsibility after X's death, even if this acceptance is not immediately thereafter.
Both X and Y are entitled to cancel the appointment of Y as executor of the bequest whenever they wish (O: unless (A: after X's death) Y feels it almost certain that the property will be lost through a wrongdoer appropriating it, in which case Y may not withdraw as executor, meaning it is unlawful for him to do so. In such a case, if Y withdraws of his own choice, he is not thereby free of having to execute the bequest, though he is not obliged to continue therein without remuneration, but does so for a fee).

@L2.4It is not legally valid to appoint an executor unless the bequest consists of some good work or pious act such as paying off a debt, making up a hajj (dis:j1.9), looking after the welfare of one's children, and so forth (O: excluding actions that are not dispositions of property, such as marrying off the children) (A: and excluding acts of disobedience such as those mentioned above at k30.6(6)).

@L2.5 When X's father is still alive and fit for guardianship (def:m13.2), X may not appoint y to look after the welfare of his children.

*2*Chapter L3.0: The Bequest

@L3.1X may devote one-third or less of his financial resources to bequests, but not more than this, one-third meaning a third of his property as it stands at the time of his death (O: not before or afterwards).
(A: If there are no Muslim heirs, or if the existent Muslim heirs do not deserve the whole estate, such as when the sole eligible estate division heir is a husband or wife (dis:L6.3-4), then the Hanafi school permits disposing of more than a third of one's property in bequests (dis:w44), more than a third meaning everything in excess what one's eligible heirs deserve by estate division (irth).) (n: The ruling in the Shafi'i school is that such an excess may not be disposed of in bequests, but rather is given to the Muslim common fund (Bayt al-mal) if it exists, as mentioned below (L3.3(O:) and L9.1).)

@L3.2If X's heirs (def: L4.4 are not poor, it is recommended for X to devote a full one-third to bequests, but if not (O: i.e. if his heirs are not well off, as when they do not have any money at all, or have some, but not enough for their expenses, and the other two-thirds (A: of the estate that constitutes their obligatory shares) which they deserve is insufficient), then it is not recommended for X to devote a full one-third

to bequests.

@L3.3If X wills more than one-third in bequests, then his dispositions are not valid regarding the portion in excess of one-third when he has no one (O: in particular) to lawfully inherit the rest (A: who, if they existed, could give permission for the excess, as discussed below). (O: In cases where there are no heirs, the Muslim people have better right to X's property, and no one may waive this right.)
Nor are X's bequests in excess of one-third valid when he has an heir, but the heir refuses to authorize the excess,though if the heir (N: or group of heirs unanimously) permits it, such a bequest is valid. It is not valid for the heir to authorize the excess or refuse to do so until after X's death.

@L3.4Charitable expenditures made by X in his will (O: such as an endowment (waqf, def:k30), gift, and so forth) are considered as part of the bequeathable one-third.

@L3.5Bequests concerning obligatory expenditures are also considered from the bequeathable one-third, provided that X has stipulated that they come from it. (O: Though if the bequeathable third does not cover these (A: despite X having stipulated that they come from it), then the excess is paid from the remaining two-thirds. Obligatory expenditures include such things as paying debts making up the hajj(dis:j1.9), paying zakat (A: for any year that the deceased neglected to pay it), expiations, and the fulfillment of vows that would have been binding had X been well.)
But if X did not stipulate (O: that these obligatory expenditures come from the bequeathable one-third), then they come directly from the other two-thirds.

@L3.6Current charitable dispositions of property made by X during his life, such as establishing an endowment (waqf, k30), giving a gift or others, are considered as personal expenditures of his own money (O: and he could spend it all without any objection) if made while he was in sound health. But if X makes such current dispositions under any of the following circumstances, when these are linked with his death,then the dispositions are considered as having come from the bequeathable one-third:
-1- in the final illness which brought about X's death:
-2- in military combat;
-3- while travelling on rough seas in a storm;
-4- as a final request before being killed;
-5- or (O: if female) X dies while giving birth, or afterwards before separation of the placenta.
If otherwise, (O: meaning if the current charitable disposition was not made under any of the above circumstances, or was, but the circumstance was not linked with X's death) then the disposition is not taken from the bequeathable one-third.

@L3.7(N: We distinguish between the above-mentioned current dispositions (n: such as gifts, endowments, and donations), and between bequests by noting that current dispositions are effective before X's death, while bequests are effective after. Current dispositions are normally implemented even if X uses up all his money, while bequests-unless X's heirs unanimously agree to allow otherwise-are restricted to one-third of the estate. An exception to permitting current dispositions to amount to as much of X's property as he wishes is when they are effected during his death illness (n: or other L3.6 circumstance), in which case they are limited to one-third of the estate, just as bequests are.)
If one-third of the estate does not cover the cost of the (N: current) dispositions which X made during his (N: final) illness, then (O: if these have been given in some order) they are implemented first thing first, then second, then third, and so on.
(N: Thus, if during his death illness, X said to his three friends P, Q, and R, "I give P a gift of 100 dinars, Q 100 dinars, and R 100 dinars, "but it turns that X's total estate is only 600 dinars, then his gifts to P and Q are valid, but we take back his gift to R, which is not valid because it exceeds the 200 dinars that is a third of the 600 dinars constituting the whole estate. This is what is meant by implementing them in order.)

@L3.8The bequeathable one-third of the estate is divided (O: proportionally (N: if shares vary)) between all the recipients X designates when:
-1- (N: in cases of death illness current dispositions such as gifts) X did not state them in any particular order (N: such as by saying (n: in a situation like the above example) to P,Q, and R, "I give you each a hundred dinars," in which case the bequeathable one-third is divided between them) :
-2- or (N: in cases where X has explicity made bequests) the bequeathable one-third will not cover all the bequests, whether they were made separately or not.
(N: All of the above (L3.6-8) only holds if the heirs do not agree to permit more than one-third of the estate for bequests or current dispositions, since if they unanimously agree, it may exceed a third, even if it takes the whole estate.)

@L3.9Bequests made to nonspecific individuals such as the poor are effective when X dies. (O: They own the property without the fact of ownership depending on their accepting it.)

@L3.10When X bequeaths something to Z, a particular individual, the ownership of the article bequeathed is suspended, meaning that if Z accepts it after X's death, even if after some time has passed, then Z has owned it from the moment X died; but if Z declines to accept it, then X's heirs own it. If Z accepts it, but then refuses it before having taken possession of it (def:k7.3) this cancels his ownership of it, though if he refuses after having taken possession of it, it does not cancel his ownership (O: as his refusal is meaningless in such a case).

@L3.11It is permissible to make the implementation of a bequest subject to a condition, whether the condition is something occuring before X's death (O: such as his saying, "If Z enters So-and-so's house, I bequeath to him such and such of my property,") or after (O: such as his saying, "If Z enters So-and-so's house after my death, I bequeath to him such and such of my property").

@L3.12: Things Which May Be Bequeathed
It is permissible to bequeath any of the following:
-1- the right to utilize something (O: while not bequeathing the actual thing);
-2- particular things;
-3- something not yet existent, such as "what this tree will bear";
-4- something not determinately known (O: whether it be an unknown thing (A: such as "the contents of this box"), or something unknown in amount);
-5- something undeliverable (non-k2.4);
-6- something not currently owned (O:at the time the bequest is made, but which X owns at the time of his death);
-7- or something impure (najasa, def:e14.1) that has a lawful use, such as a (O: trained hunting) dog, or oil contaminated with impurity; though not something impure that is without lawful use, such as wine or pigs.

@L3.13: Those to Whom Bequests Are Valid
It is permissible for X to bequeath something to Z even if Z is:
-1- a non-Muslim at war with Muslims (A: and with still better right when Z is an ordinary non-Muslim);
-2- a Jewish or Christian subject of the Islamic state;
-3- an apostate from Islam;
-4- the person who kills X;
-5- X's heir (def: L4.4), provided X's other heirs permit him to receive it (O: though if they do not, then the bequest is not carried out);
-6- or to a person yet unborn, in which case the bequest is paid to the person (O: i.e. guardian) who knows of the unborn's existence at the time X makes the bequest, provided that the child is either born alive within six months of the time the bequest is made, or is born alive more than six months and less than four years after the bequest is made, during which time the mother has had no husband (O: from whom the pregnancy could have resulted).

@L3.14: Cancelling One's Bequests

If X makes some article a bequest but then changes his mind, his taking it back is valid, annulling his bequest. X's doing any of the following is also considered taking it back (A: and cancels the bequest) :
-1- X's loss of ownership (O: of the bequeathed article) such as by sale or gift;
-2- X's subjecting the article to loss of ownership by putting it up as collateral, offering it for sale, or making another bequest that stipulates that it be sold;
-3- or when the name of the article changes, such as wheat being ground into flour, flour made into dough, yarn woven into fabric, or when X mixes a particular article with other goods.

@L3.15 If Z dies before X, the X's bequest to him is invalid. If Z dies after X but before Z accepts the bequest, then Z's heirs may accept or reject it.

*2*Chapter L4.0: Estate Division (Irth)

@(O: Estate division refers to the share allotted to each heir by Sacred Law. The scriptural basis for estate division, prior to the consensus of scholars, consists of the Koranic verses on inheritance (Koran 4;11-2,4:176) and hadiths such as the one related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said,
"Give the obligatory shares of the estate to those who deserve them, and the rest belongs to the closest male to the deceased."
Encouragement to master the knowledge of estate division comes from such hadiths as the one from Ibn Mas'ud (Allah be well pleased with him) that the Prophet (Allah bless him and give him peace) said,
"Learn estate division and teach it to people, for I am someone who will be taken from you, and this knowledge will be taken from you and calamities will ensure, until two men will one day disagree about the obligatory apportionment and will not find anyone to judge between them.")

@L4.1: How to Work an Estate Division Problem
(n: To work an estate division problem, one should:
(a) determine the amount of the deceased's estate after deducting the L4.2-3 expenses;
(b) make a list showing which of the deceased's heirs mentioned at L4.4 exist;
(c) eliminate from the list any heirs with preventives L5.1-4;
(d) on a sheet of paper, copy the parenthesized introductory paragraph ("N: summary of - 's share,") for every heir that exists, such as the deceased's:
-1- husband (dis: L6.3);
-2- wife (L6.4);
-3- father (L6.5);
-4- mother (L6.6);
-5- daughter (L6.7);
(as mentioned at L6.8, the shares of the above-named family members are not eliminated by anyone,though the shares of those named below may be eliminated by the existence of certain other heirs)
-6- son's daughter (L6.9);
-7- full sister (L6.10);
-8- half sister from the same father (L6.11);
-9- grandfather (father's father only) (L6.13);
-10- grandmother (L6.18)
-11- half brother or half sister from the same mother (L6.20);
-12- and then the others (sons and so forth) mentioned at L6.22;
(e) read section L7 and cross off the list of heirs those whose shares are eliminated by the other existent heirs;
(f) if any universal heirs (def: L10.5) exist, see which of them eliminates the shares of the other universal heirs, as at L10.6;
(g) make a table of the heirs remaining (after (e) and (f) above) like the tables shown at L6.6, where one writes the type of heir, the fraction each deserves (with the universal heir receiving the remainder, if any), and then at the top writes the total shares (this being the common denominator of the fractions), after which one calculates the shares that go to each;

(h) if the fractions (of those besides the universal heir) add up to more than one(i.e.the total estate), then one must adjust for this as shown at L8.2;
(i) but if the fractions add up to less than the total estate and there is no universal heir to inherit the rest, then one must redistribute the shares as described at L9.1-2.
One may practice and test one's skill at estate division by reading through the present section and doing the problems depicted in the tables, though to do all the problems one must have (or memorize) a full worksheet that contains all the information mentioned in (d), (h), and (i), above, plus the rules concerning universal heirs discussed at L10.1-4. Finally, it is best to check one's answers with an Islamic scholar, preferably a teacher from whom to take instruction, since this is a subject that is easier to acquilre from its masters than from books.)

@L4.2: Expenses Deducted From the Estate Prior to Estate Division
The first thing (O: obligatorily) taken from X's property is the expense of preparing his body (O: such as the cost of the water to wash him, the washer's fee, cost of the shroud and perfume placed therein, pallbearers'fees, and so forth) and of burying him. These expenses are deducted before X's debts are paid, his bequests fulfilled, or his estate divided, unless there is a financial obligation due on the property itself, such as:
-1- when there is zakat (A: due from any year X neglected to pay it before his death);
-2- when some of the property has been put up as collateral (dis: k11.2);
-3- or when X dies bankrupt with unpaid-for merchandise among his property (A: which must be returned to the seller before paying other expenses from X's property).

@L4.3After the above are paid, the following measures are taken (A: and the sequence given is obligatory) :
-1- X's debts are paid (N: though if a government takes non-Islamic estate taxes, these are deducted from the main part of the estate (A: before debts or bequests, as any other loss would be));
-2- then X's bequests (def: L1-3) are carried out (O: from a third of what remains after debts);
-3- and then X's remaining property is divided between his estate division heirs.

@L4.4: Heirs
X's male heirs consist of:
-1- X's son;
-2- X's son's son, son's son, and on down;
-3- X's father;
-4- X's father's father (A: the term grandfather throughout the book of inheritance refers only to this paternal grandfather), father's father's father, and on up;
-5- X's full brother, or half brother from X's father or mother;
-6- the son of X's full brother, or son of X's half brother from the same father;
-7- X's father's full brother, or son of X's half brother from the same father;
-8- the son of X's father's full brother or father's half brother from the same father;
-9- and X's husband.
X's female heirs are:
-1- X's daughter;
-2- X's son's daughter, son's son's daughter, son's son's daughter, and on down;
-3- X's mother;
-4- X's grandmother (whether she is the mother of X's father or mother), great-grand-mother, and on up;
-5- X's full sister, or half sister from the same father or mother;
-6- and X's wife.

@L4.5: Extended Family Members Who do not Normally Inherit
The following extended family members may no inherit from X's estate (except under the conditions discussed at L10.8) :
-1- X's daughter's children (O: male or female);
-2- X's mother's brother's sons;
-3- X's sister's children, the sons or daughters of X's daughter's children, or the sons or daughters of

X's sister's children;
-4- X's brother's (O: whether full brother's from the same father) daughters;
-5- X's father's brother's (O: whether full brother's or half brother's from the same father) daughters;
-6- X's father's half brother from the same mother;
-7- X's mother's father;
-8- X's mother's brother or sister;
-9- X's father's sister;
-10- or anyone related to X through one of the above.

*2*Chapter L5.0: The Four Preventives of Inheriting an Estate Division Share

@(O: Preventive means that if someone is an estate division heir (def:L4.4) but one of the following characteristics exists in him, then he may not inherit.) (A: In calculating the estate division, an heir who is made ineligible by a preventive is considered nonexistent. Such a person is nonheir, and as such is eligible for a bequest (def: L1.0) if X wills him one.)

@L5.1 The first preventive is killing. Whoever kills X may not inherit from him, no matter whether the killing was:
-1- lawful, as in retaliation (def: o3) or imposing a criminal penalty;
-2- without lawful right;
-3- accidental;
-4- intentional;
-5- direct (O: such as Z shooting while hunting,and the shot hitting X);
-6- or when Z is a causal factor in X's death, such as testifying to an act of X's that calls for retaliation against X, or such as digging a well into which X falls.
To summarize, whoever has a hand in X's death, no matter how, cannot inherit from him.

@L5.2The second preventive is being non-Muslim: a Muslim may not inherit from a non-Muslim, and a non-Muslim may not inherit from a Muslim (dis:L1.0).
@L5.3
The third preventive is slavery.
@L5.4
The fourth is uncertainty as to who died first,such as when X and Z both drown or both die in the collapse of a building, and it is not known who died before the other. In such a case neither may inherit from the other.

*2*Chapter L6.0: The Estate Division Shares

@L6.1The six obligatory shares mentioned in the Koran (Koran 4:11-12) are one-half, one-fourth, one-eighth, two-thirds, one-third and one-sixth.
@L6.2 They go to ten categories:
-1- X's husband;
-2- X's wife;
-3- X's father;
-4- X's mother;
-5- X's daughters;
-6- X's son's daughters or the daughters of X's son's son, son's son, and on down;
-7- X's sister;
-8- X's father's father;
-9- X's mother's or father's mother;
-10- X's half brothers or half sisters from the same mother.

@L6.3(N: A summary of X's husband's share:
-1/2 if there is no inheriting descendant.
-1/4 if there is an inheriting descendant.
-The husband's share is not eliminated by anyone.)
X's husband:
-1- receives one-half the estate when X has no child who may inherit (O: even if the child is from a different husband) (N: the word child (Ar. walad) including both males

and females (A: of all ages)), and X's son has no child who may inherit;
-2- but receives one-fourth the estate when X has a child who may inherit (O: whether from X by this husband or a different husband,and whether male or female), or when X's son has a child who may inherit.

@L6.4(N:A summary of X's wife's share:
-1/4 if there is no inheriting descendant.
-1/8 if there is an inheriting descendant.
-The wife's share is not eliminated by anyone.)
X's wife:
-1- recieves one-fourth the estate when X has no child to inherit (O:even if by a different wife) and X's son has no child to inherit;
-2- but receives one-eighth the estate when X has a child to inherit, or X's son has a child to inherit
(O:whether X's son is from her or from another wife).
If there are two, three, or four wives, they jointly receive the one-fourth or one -eighth (O:meaning that the share apportioned to one wife is given to two or more (A: to divide up between them)).

@L6.5(N:A summary of X's father's share:
-1/6 if there is an inheriting descendant.
Universal heir (def: L10.5) if there is no male inheriting descendant.
-The father's share is not eliminated by anyone.)
X's father:
-1- receives one-sixth of the estate when X has a son to inherit, or when X's son has a son to inherit(O:or when X has a daughter or X's son has a daughter, who may inherit (N:though in such a case, the father takes (A:the sixth plus) the remainderr of the estate as universal heir (n:as discussed next))
-2- but is universal heir (O: by himself,meaning he takes the whole estate if there are no others who have an obligatory share coming; or if there are such others, he receives the remainder of the estate after tehy have received their shares) when X has no son to inherit and X's son has no son to inherit

@L6.6(N: A summary of X's mother's share:
-1/6 if there is an inheriting descendant, or if there are two or more of X's brothers or sisters.
-1/3 of the remainder after deducting the share of X's husband or wife in cases where the heirs include both X's father and the husband ir wife but no inheriting descendant.
-1/3 of the estate when none of the above mentioned heirs exists.
The mother's share is not eliminated by anyone.)
X's mother:
-1- receives one-third of the estate when all three of the following are the case:
(a) X has no child (male or female) who may inherit, nor does X's son;
(b) X does not have two or more brothers or sisters, whether full brothers or sisters or half brothers or sisters from either parent:
(c) and the heirs do not include X's husband and X's two parents, or X's wife and two parents (A: of which X's mother is one);
-2- she receives one-sixth of the estate when (non-(a) above) X has a child who may inherit, or when (non-(b)) X has two or more brothers or sisters;
-3- and she receives one-third of the remainder after deducting the share of X's husband or wife when:
-(non-(c) above) the heirs include X's husband and two parents, in which case she receives one-third of the remainder after X's husband receives his share of one-half, meaning she receives a sixth of the estate, as that is a third of the remainder, and X's father receives the rest:
Shares *6

husband	1/2	3
mother	1/6	1

father universal heir 2

(* common denominator of 1/2 and 1/6)
-or (non-(c) above) when the heirs include X's wife and two parents in which case the receives one-third of the remainder after X's wife receive her share of one-fourth, meaning that the mother receives one-fourth of the estate, as that is a third of the remainder, and the father receives the rest:
Shares 4

wife	1/4	1
mother	1/4	1
father	universal heir	2

@L6.7(N: A summary of X's daughter's share:
-1/2 if there are no other of X's sons or daughters (n: whether full or half brothers of sisters to her).
-2/3 for her to share equally (if there are no sons) with other daughters, if any.
-She is co-universal heir (def:L10.3) with X's sons(s) if existent, meaning that they jointly constitute the universal heir, dividing this share so that each male receives twice the amount of each female (A: since men are obliged to support women in Islam (dis:m11) and not vice versa).
-The daughter's share is not eliminated by anyone.)
-1- X's sole daughter (O: who is without a co-universal heir such as her brother, and without someone else on her own level, such as her sister) receives half of the estate.
-2- Two or more daughters jointly receive two-thirds.
@L6.8
(N: It is important to remember for the persons named in the following rulings that the share of any of them who is related to X through an inheriting heir is eliminated by the existence of that heir (dis:L7.4-6), except for X's half brother from the same mother, whose share is not eliminated by the mother's existence.)

@L6.9(N: A summary of the share of X's son's daughter:
-Her share is eliminated if X's son exist (n: an example of the above rule).
-1/2 if X has no daughter son's son or any other daughter of a son.
-2/3 for her to share equally with the other daughters of X's son(s), if X has no daughter(s) or son's son(s).
-1/6 when there is a sole daughter (def:L6.7(1)).
-She is co-universal heir (def:L10.3) with X's son's son(s) (A: in the absence of X's daughter, dividing this share of each male receives twice the share of each female).
-Her share is eliminated when X has two or more daughters.)
When X's sole daughter (def:L6.7(1)) exists, X's son's daughter(s) (A: if there are more than one, they share) receives one-sixth of the estate, which with the sole daughter's share of one-half, makes two-thirds (N:which is the maximum that may go to the category of daughters).

@L6.10(N: A summary of the share of X's full sister:
-1/2 if there are no other full brothers or sisters.
-2/3 for her to share equally with other full sisters.
-She is co-universal heir (def:L10.3) with full brother(s) if any, each male receiving twice the share of each female.
-She is universal heir through X's daughter(s) (def: L0.4)
-Her share is eliminated if X's father or X's son exists.)
-1- X's sole full sister (N: meaning no other full brothers or sisters exist) receives one-half of the estate.
-2- Two or more such sisters (N: when there are no full brothers) jointly receive two-thirds.
(n: L6.12 discusses X's full sister(s) with X's daughters.)

@L6.11(N: A summary of the share of X's half sister from the same father:

-1/2 in the absence of X's full brother, full sister, other half sister from the same father, and half brother from the same father.
-2/3 for her to share equally with other half sister(s) from the same father, when there are no full brothers or sisters,and no half brothers from the same father.
-1/6 when there is X's sole full sister.
-She is universal heir through X's daughters or X's son's daughters (def:L10.4) provided there are no full brothers or sisters, or half brothers from the same father.
-She is co-universal heir (def:L10.3) with X's half brother(s) from the same father, the male receiving twice the share of each female.
-Her share is eliminated if X's father or son exists.)
-1- X's sole half sister from the same father receives one-half of the estate.
-2- Two or more such paternal half sisters jointly receive two-thirds.
-3- When such a half sister, or two or more, exists with X's sole full sister, then the half sister(s) (A: jointly, if more than one) receives one-sixth, which with the half that goes to the full sister, makes two-thirds.

@L6.12X's full sister(s) is universal heir through X's daughter(s) (def:L10.4). If X has no full sisters, X's half sisters by the same father are the estate's universal heirs through X's daughter(s) (L10.4).
An example of the former is when the heirs are X's daughter and full sister. The daughter receives one-half (dis:L6.7(1)), and the sister receives the rest (A: as universal heir) :
shares: 2

daughter	1/2	1
full sister	universal heir	1

Another example is when there are X's two daughters, a full sister, and a paternal half sister, in which case the two daughters jointly receive two-thirds (dis: L6.7(2)), and the full sister receives the rest (A: as universal heir), while the paternal half sister's share is eliminated (A: by the full sister's universal heirship) :
shares 3

2 daughters	2/3	2
full sister	universal heir	1
half sister	eliminated	0

@L6.13(N: summary of X's grandfather's (father's father's) share:
-His share is eliminated if X's father exists.
-1/6 if X has an inheriting male descendant.
-He is universal heir in the absence of both X's father and any inheriting male descendant.
-If X's brother(s) or sister(s) exists, then
-1- when there is no other heir who has an obligatory share coming, then the grandfather receives whichever of the following two alternatives yields the maximum:
-1/3 of the estate;
-or dividing the estate with X's brother(s) or sister(s) as if he were one of them, the male receiving twice the share of the female. If only X's sister(s) exists, then she becomes co-universal heir (def:L10.3) with him;
-2- but when there are one or more other heirs who have no obligatory share coming besides the brother(s) or sister(s), then the grandfather receives whichever of the following three alternatives yields the maximum:
-1/6 of the estate;
-1/3 of the remainder after the (non-brother/sister) heir(s) receives their share; Or dividing the estate with X's brother(s) or sister(s) as if he were one of them, the male receiving twice the share of the female. If only X's sister(s) exists, then she becomes co-universal heir (L10.3) with him.)
As for the grandfather, sometimes X's brothers or sisters exist with him and sometimes

they do not.
When they do not, then the grandfather receives one-sixth of the estate of X's son or son's son (O: or X's daughters or son's daughters) exist (N: but in such a case he takes the sixth plus the rest as universal heir); while the grandfather is the universal heir (def: L10.5) in the absence of X's son or son's son (N: or daughter or son's daughter).
When X's (full or paternal half) brothers or sisters exist, then sometimes there are other inheriting heirs (dis:L6.15) and sometimes not (L6.14).

@L6.14When (Besides X's brother(s) or sister(s)) the grandfather's consurvivors do not include other inheriting heirs, the grandfather divides the estate with the brothers (A: and sisters) as if he were one of them, and (if there are only sisters) is co-universal heir (def: L10.3) with the sisters.
But such a division is only effected when it does not result in less than one-third of the estate going to the grandfather. If it would result in less than a third for him, then his obligatory share is one-third of the estate, and the brothers or sisters divide the rest between them, the males receiving the share of two females. This is illustrated by the following examples (A: in each of which the grandfather receives at least a third) :
-1- X's grandfather and one sister:
shares: 3

grandfather	2
sister	1

-2- grandfather and two sisters:
shares: 4

grandfather	2
sister	1
sister	1

-3- grandfather and three sisters:
shares: 5

grandfather	2
sister	1
sister	1
sister	1

-4- grandfather and four sisters:
shares: 6

grandfather	2
sister	1
sister	1
sister	1
sister	1

-5- grandfather and one brother:
shares: 2

_____
grandfather 1
_____
brother 1
_____
-6- grandfather and two brothers:
shares: 3
grandfather 1
_____
brother 1
_____
brother 1
_____
-7- grandfather, brother, and sister:
shares: 5
_____
grandfather 2
_____
brother 2
_____
sister 1
_____
-8- grandfather, brother, and two sisters:
shares: 6
_____
grandfather 2
_____
brother 2
_____
sister 1
_____
sister 1
_____
In each of the above examples, the grandfather divides the estate with them, the male receiving the share of two females.

@L6.15When (besides X's brothers or sisters) the grandfather's cosurvivors include another inheriting heir, then the heir is given his share, and the grandfather receives the maximal amount of three possibilities:
(a) division (A: meaning to divide it with the brothers or sisters as in the above examples);
(b) a third of the remainder (A: taking a third of what remains after the (non-brother/sister) heir has taken his share);
(c) or one-sixth of the estate (A: as the estate stands before the above-mentioned heir has received his share).
This ruling may be illustrated by (n: the following four examples) :
-1- X's husband, grandfather, and brother, where division is better for the grandfather. (n: To show why division ((a) above) is better, we may compare the three possibilities ((a), (b) and (c)) for this example:
(a) division:
shares : 4
_____
husband 1/2 (dis: L6.3(1)) 2
grandfather 1
brother division 1
(b) third of remainder (after the husband's share);
shares: 6
---
husband 1/2 3
grandfather 1/3 remainder 1
brother universal 2

(c) sixth of estate:
shares: 6
---
husband 1/2 3
grandfather 1/6 estate 1
brother universal 2
The comparison reveals that division, giving the grandfather 1/4, is better than the other alternatives, which only give him 1/6, and so division is the alternative that must be implemented.)
-2- X's two daughters, two brothers, and grandfather, where a sixth of the estate is better for him.
(n: Comparison:
(a) division:
shares: 9
---
daughter 3
daughter 2/3 (dis: L6.7(2)) 3
grandfather 1
brother division 1
brother 1
(b) third of remainder (after the daughters share) :
shares: 9
---
daughter 3
daughter 2/3 3
grandfather 1/3 remainder 1
brother Universal 1
brother 1
(c) sixth of estate:
shares: 12
---
daughter 4
daughter 4
grandfather 1/6 estate 2
brother universal 1
brother 1
The comparison reveals that a sixth of the estate is better than the other alternatives,which only give him 1/9, and so the former is the alternative that must be implemented.)
-3- X's wife, three brothers, and grandfather, where a third of the remainder is better for him. (n: Comparison:
(a) division:
shares: 16
---
wife 1/4 (dis: L6.4(1)) 4
grandfather 3
brother 3
brother division 3
brother 3
(b) third of remainder (after the wife's share) :
shares: 12
---
wife 1/4 3
grandfather 1/3 remainder 3
brother 2
brother 2
brother 2
(c) sixth of estate:
shares: 36
---
wife 1/4 9

grandfather 1/6 estate 6
brother 7
brother universal 7
brother 7
The comparison reveals that a third of the remainder, which gives the grandfather 1/4, is better for him than division with the brothers (which gives him 3/16), or a sixth of the estate, so he must receive a third of the remainder.)
-4- X's two daughters, mother, grandfather, and brothers, where a sixth of the estate is better for him. (n: Comparison:
(a) division:
shares: 6
---
daughter 2
daughter 2/3 (dis: L6.7(2)) 2
mother 1/6 (dis: L6.6(2)) 1
grandfather
brothers division 1
(b) third of remainder (after the shares of the daughters and mother) :
shares: 18
---
daughter 6
daughter 2/3 (dis:L6.7(2)) 6
mother 1/6 (dis:L6.6(2)) 3
grandfather 1/3 remainder 1
brothers universal 2
(c) sixth of estate:
shares: 6
---
daughter 2
daughter 2/3 2
mother 1/6 1
grandfather 1/6 1
(In this case, there is no one who can eliminate the shares of the inheriting heirs above, who have used up the estate so that there is nothing left for the universal heir (the brothers) to inherit (dis: L10.5) :)
brothers eliminated 0
The comparison shows that a sixth of the estate is better for the grandfather than a third of the remainder, which would give him 1/16, or division with the brothers, which would give him 1/12 or less, and so he must receive a sixth of the estate.)

@L6.16If both X's brothers and half brothers from the same father exist with the grandfather, the brothers add the number of the half brothers shares with their own shares in calculating their own versus the grandfather's, but then the brothers receive both their own shares and the half brothers' shares. (A: The latter are eliminated (dis: L7.3) by the brothers, but are initially reckoned in as a dispensation for the brothers.)
This may by illustrated by the following example, in which there is X's grandfather, brother, and half brother from the same father.
(initial division) shares: 3
---
grandfather 1
brother division 1
half brother 1
but then, because the brother eliminates the hal brother's share,
shares: 3
---
grandfather 1
brother 2
half brother eliminated 0
and this is the actual division.
In a second, similar case, if there is a sister, half brother from the same father, and

grandfather, then (A: the half brother's share is reckoned with the sister's share versus that of the grandfather, and) her portion of the estate is brought up to one-half (A: which is the maximum she may receive as at @L6.10(1)) from the (n:additive) amount, and the rest goes to the half brother (A:since the grandfather already has his share and she may receive more than her obligatory share of one-half). (n: To illustrate, first we make a plain division, the males receiving the share of two females:

shares: 5

---

grandfather 2
sister division 1
half brother 2

Then, as in the previous case, we give the half brother's share to the sister, since there is none to eliminate her full share of one-half (dis: L6.10(1)).

shares: 5

---

grandfather 2
sister 3
half brother 0

But since this gives the sister more than her maximal share of one-half, the surplus is returned to the half brother, and this is the final division. Here, for convenient redivision, we multiply the case's shares by two:

(2 x 5=) shares: 10
grandfather 4
sister 5
half brother 1

which is the actual division.)

@L6.17When there is a sister (O: full sister or half sister from the same father) and grandfather, the sister does not normally receive a particular obligatory share (O: since she is co-universal heir (def: L10.3) with the grandfather), except in the following case (Ar.al-akdariyya lit "the murkiest") in which there is X's husband, mother, grandfather, and sister.

shares: 6
husband 1/2 (dis: L6.3(1)) 3
mother 1/3 (dis: L6.6(1)) 2
grandfather 1/6 (dis: L6.15(c)) 1

But at this point, the estate has been used up, despite the fact that the sister deserves her share of one-half, and no one can eliminate it:

sister 1/2 (dis: L6.10(1)) 3

so we redivide the estate by adding the three shares that the sister deserves to the initial division's six shares, which become nine (A: this procedure being an adjustment (`awl, def; L8.1) for not being able to give everyone full shares, one which proportionately distributes the deficit to all recipients).

(6 + 3 =) shares: 9
husband 3
mother 2
grandfather 1
sister 3

But this results in the grandfather receiving less than if he were to divide the remaining estate with the sister (n: which is impermissible because of ruling L6.15), and so the grandfather and sister add their shares to together (equalling four) and divide them, the male receiving the portion of two females (n: Here, for convenient redivision, we multiply the case's shares by three:

(3 x 9 =) shares : 27
husband 9
mother 6
grandfather 8
sister division 4

and this is the actual division.)

@L6.18(N: A summary of the share of X's grandmother (whether she is X's father's mother or mother's mother, or, if both exist, they share the portion) :
-1/6 if X's mother does not exist.
-Her share is eliminated if X's mother exists.
-Her share is eliminated by the existence of X's
father if X is descended from her through the father.)

```
+   +     +   +
E O O F O  O  (III) G O O H O O
\ + / \ +  /    \ + / \ + /
\ / \  /    \ /  \ /
\/  \ /     \/  \ /
+        +
A O  B O   (II)  C O  D O
\ +  /      \+  /
\  /       \ /
\ /        \ /
O        +
+     (I)   O
\        /
\       /
\      /
\     /
\    /
\   /
\  /
\ /
X
-------------------------------------------------------------
O  #  mother
+
+
O  #  father
-------------------------------------------------------------
```

-1- X's grandmother (or great-grandmother) gets one-sixth of the estate when:
- she is A, E, and so on, up that line (n: on the chart above);
- she is C, G and so on, up that line;
- or when she is H, and so on, up that line.
-2- If there are two grandmothers/great-grandmothers on the same level (A: level II, for example), they jointly get one-sixth to share between them, such as when both C and A exist, or when both G and H exist.
-3- If one of two surviving grandmothers/great-grandmothers is closer (A: on a closer level) to X, then:
(a) if the closer of the two is on X's mother's side (n: the left of the chart) then she eliminates the share of the farther of the two. For example, the existence of A eliminates G's share;
(b) but if the closer of the two is on the father's side (n: the right of the chart), she does not eliminate the share of the one on the mother's side who is farther from X. Rather, both jointly receive the sixth to divide between them. For example, C does not eliminate E.

@L6.19As for great-grandmother F, she does not inherit, as she is an extended family member who may not inherit (A: being related to X through B, who may not inherit (dis: L4.5(7, 10))).

@L6.20(N: A summary of the share of X's half brother or sister from the same mother:
-1/6 if there is just one of them, when none of X's inheriting male ancestors (A: father on up) exists, nor any inheriting descendants.
-1/3 if there are two or more of them, to share between them, but which is divided so that males and females receive equal shares.
- Their share is eliminated by the existence of any of X's inheriting male ancestors or inheriting descendants.)

-1- X's half brother or sister from the same mother receives one-sixth if alone.
-2- When there are two or more of them, they jointly receive one-third. This amount is divided with equal shares going to male and female alike.

@L6.21To summarize all of the foregoing:
-1- One-half of the estate is the obligatory share of five types of heir;
-X's husband, under certain circumstances (dis : L6:3(1))
-X's (sole) daughter (L6.7(1));
-X's son's daughter (L6.9 (N:));
-X's (sole) full sister (L6.10(1));
-and X's (sole) half sister from the same father (L6.11(1)).
-2- One-fourth of the estate is the obligatory share of two types of heir;
-X's husband, under certain circumstances (L6.3(2));
-and X's wife (L6.4(1)).
-3- One-eighth of the estate is the obligatory share of X's wife, under certain circumstances (L6.4(2)).
-4- Two-thirds of the estate is the obligatory share of four types of heir;
-two or more of X's daughters (L6.7(2));
-two or more of X's son's daughters (L6.9(N));
-two or more of X's full sisters (L6.10(2));
-and two or more or X's half sisters from the same father (L6.11(2)).
-5- One-third of the estate is the obligatory share of:
-X's mother, under certain circumstances (L6.6(1));
-two or more of X's half brothers or sisters from the same mother (L6.20(2));
-and it may be the share of the grandfather when X's brothers exist (L6.14, second par).
-6- One-sixth of the estate is the obligatory share of seven types of heir;
- X's father (L6.5(1));
- X's grandfather (L6.13(N:) and L6.15(c));
- X's mother (L6.6(N:));
- X's grandmother (L6.18 (1));
- one or more daughters of X's son when X's daughter also exists (L6.9);
- one or more of X's half sisters from the same father when X's sole full sister also exists (L6.11(3));
- and X's sole half brother from the same mother (L6.20(1)).

@L6.22(N: A summary of the other heirs'shares:
-1- X's son is universal heir.
-2- X's son's son;
- is eliminated by X's son;
- and is universal heir in the absence of X's son.
-3- X's full brother;
- is eliminated by the existence of an inheriting male descendant;
- is eliminated by X's father;
- and is universal heir in the absence of both an inheriting male descendant and father.
-4- X's half brother by the same father:
- is eliminated by any inheriting male descendant;
- is eliminated by X's father;
- is eliminated by X's full brother;
- and is universal heir in the absence of all these.
-5- The son of X's full brother is the same as X's full brother ((3) above), but eliminated by him.
-6- The son of X's half brother by the same father is the same as (5) above, but eliminated by him.
-7- The brother of X's father:
- is eliminated by any of the following: X's father, grandfather, brothers, and their sons;
- and is universal heir in the absence of all of these.
-8- The son of the brother of X's father is the same as (7) above, but eliminated by him.)

*2*Chapter L7.0: Those Whose Shares are Eliminated by Others (Hajj)

@L7.1The share of X's half brother from the same mother is eliminated by the existence of four types of heir;
- X's inheriting descendant (male or female);
- the descendant (male or female) of X's son;
- X's father;
or X's grandfather

@L7.2The share of X's full brother is eliminated by three:
- X's son;
- X's son's son;
- or X's father

@L7.3The share of X's half brother from the same father is eliminated by four:
- X's son;
- X's son's son;
- X's father;
- or X's full brother

@L7.4The share of the son of X's son is eliminated by X's son, and likewise the son of the son of X's son, and on down: each is eliminated by the existence of a son closer to X (A: meaning fewer generations from X, even if the one who is closer is from a different one of X's sons).

@L7.5X's grandmother or great-grandmother does not inherit if X's mother exists.

@L7.6Neither X's grandfather (A: i.e. father's father) not grandmother or great-grandmother on the father's side may inherit when X's father exists.

@L7.7When X's daughters receive a full two thirds of the estate (dis: L6.7(2)), then the daughters of X's son do not inherit,unless they are made co-universal heirs (def: L10.3) by the existence of a male who is at the same distance (A: number of generations) from X as they are or by one who is farther from X than they when they are co-universal heirs, the male receives the share of two females.
For example, if there are two daughters and a daughter of X's son, the two daughters take two thirds and the son's daughter receives nothing. But if there also exists with her X's son's son, or son's son, then she (A: as co-universal heir 9def; L10.3) with him) gets the rest of the estate with him, the male receiving the share of two females (N: and such a male is nicknamed her blessed brother (akh mubarak)).

@L7.8Similarly, when X's full sisters receive two-thirds of the estate (dis:L6.10(2)), then X's half sisters from the same father do not inherit, unless they have a brother to make them co-universal heirs, the male receiving the share of two females.

@L7.9Someone who does not inherit to begin with (N: due to the existence of a preventive (def: L5)) cannot eliminate the share of anyone (A: such a person being as if nonexistent in figuring the estate division).

@L7.10Someone who may inherit, but whose share has been eliminated by another, cannot eliminate the share of anyone, although such a person's existence may diminish the share of someone, as when there exist X's half brothers from the same mother, and X's father and mother. In such a case, the half brothers do not inherit (dis: L6.20(N:)), but their existence diminishes the mother's share from a third to a sixth (dis:L6.6(2)).

*2*Chapter L8.0: Adjustment When the Shares Exceed the Total Estate (`Awl)

@L8.1(A: Adjustment (`awl) is used in cases where the estate is not enough to give everyone their full shares, and proportionately distributes the deficit to all the

heirs in an equitable way.)

@L8.2Whenever the shares deserved by heirs exceed the number of available shares, the number of shares is additively increased to the number needed.
An example is the case (al-mubahala) in which there are X's husband, mother, and full sister:
shares: 6
husband 1/2 (dis: L6.3(1)) 3
sister 1/2 (dis: L6.10(1)) 3
but at this point, the estate has been used up despite the fact that the mother deserves her share of one-third, and no one can eliminate it:
mother 1/3 (dis: L6.6(1)) 2
so we redivide the estate by adding the mother's portion (n: two shares) as an adjustment:
(6 + 2 =) shares: 8
husband 3
sister 3
mother 2
and this is the actual division. (n: L6.17 furnishes another example of adjustment.)

*2*Chapter L9.0: Redistribution When the Shares are Less than the Estate (Radd)

@(n: This section has been moved here from its original place after L10.7 below.)

@L9.1 If X has no (A: universal heir) relatives (def; L10.5) then (A: the remainder of) his estate goes to the Muslim common fund (bayt al-mal) as an inheritance to the Muslims, provided the Islamic ruler is just.
If the Islamic ruler is not just (A: or not existent), then it (A: the excess) is redistributed among the inheriting heirs in proportion to their relative shares, except for X's husband or wife, who may not receive any of the redistributed amount.

@L9.2(N: Three illustrations of redistribution follow:
-1- X's sister and grandmother:
shares: 6
sister 1/2 (dis: L6.10(1)) 3
grandmother 1/6 (dis: L6.18(1)) 1
But at this point, the obligatory shares are less than the estate,so we redistribute the excess estate in proportion to the heirs' respective shares by reducing the shares of the case to four,which is the number of the existing heirs' shares:
(3 + 1 =) shares: 4
sister 3
grandmother 1
and this is the solution, and is how we redistribute in cases that require it, when there is neither a husband nor wife among the heirs. As for when there is a husband or wife, the examples below furnish illustrations of the division.
-2- X's wife, half brother from the same mother, and grandmother:
shares: 12
wife 1/4 (dis: L6.4(1)) 3
half brother 1/6 (dis: L6.20(1)) 2
grandmother 1/6 (dis: L6.18(1)) 2
But here, the obligatory shares are still less than the estate, in which there are five remaining shares:
excess 5
So, excluding the wife as mentioned above (L9.1(end)), we divide the excess between the half brother and grandmother in proportion to their respective shares, namely two-to-two, which means a half-and-half division of the excess five shares. For convenient division of these five shares, we first multiply the case's total
(12 x 2 =) shares: 24
wife 6
half brother 4
grandmother 4

excess 10
and then we divide the ten excess shares between the half brother and grandmother, while the wife gets only her original share (dis:l9.1 (end)) :
shares: 24
wife 6
half brother (5 + 4 =) 9
grandmother (5 + 4 =) 9
and this is the solution.
-3- X's wife, mother, and half brother from the same mother;
shares: 12
wife 1/4 (dis: L6.4(1)) 3
mother 1/3 (dis: L6.6(1)) 4
half brother 1/6 (dis: L6.20(1)) 2
But the obligatory shares are still less than the estate, in which there are three remaining shares:
excess 3
So, excluding the wife, as before, we divide the excess between the mother and half brother in proportion to their respective shares, namely four-to-two, which means a two-to-one division of the three excess shares:
shares: 12
wife 3
mother (2 + 4 =) 6
half brother (1 + 2 =) 3
and this is the solution.)

*2*Chapter L10.0: Universal Heir (`Asaba)

@L10.1(A: A universal heir (`asaba) is someone who takes the remaining estate, if any, after heirs deserving obligatory shares have taken them. When there are no such heirs, the universal heir takes all.
There are three types of universal heir:
-1- universal heir by oneself (`asaba bi nafsihi) :
-2- co-universal heir (`asaba bi ghayrithi);
-3- and universal heir through the existence of another (`asaba ma'a ghayrithi).)
(n: The following three definitional entries have been added to this section by the translator.)

@L10.2: Universal Heir By Oneself
(Hasanaya Muhammad Makhluf:) The universal heir by oneself is X's male relative who is not related to X through a female, whether this be because:
-1- there is no one between him and X, as is the case with X's father or son;
-2- or whether because there is someone between him and X, but not a female, such as X's grandfather (the father of X's father) X's son's son, X's full brother, or X's half brother from the same father.

@L10.3: Co-Universal Heir
The co-universal heir is any female deserving an obligatory share who requires someone else in order to become a universal heir, and with whom she participates in this universal share.
It is a class confined to four type of women, those whose share if alone is one-half, and if there are more than one is two thirds. They are;
-1- X's daughter;
-2- X's son's daughter;
-3- X's full sister;
-4- and X's half sister from the same father.
Whenever a male exists with one of these four who is universal heir by himself (def; L10.2) of the same generation as her and of the same strength (N:ie both we full or half siblings). she becomes co-universal heir with him and inherits by the universal share, not her obligatory share. They divide the universal share so the male receives the portion of two females.
@L10.4: Universal Heir Through the Existence of Another

The universal heir through the existence of another is any female deserving an obligatory share who requires someone else to become a universal heir, but with whom she does not share this universal share.
These are only two people from among those who deserve obligatory shares:
-1- X's full sister;
-2- and X's half sister from the same father;
provided that X's brother who would form a co-universal heir (def: L10.3) with them (A: in which case they would not be a universal heir through another) does not exist, and provided that either of the above two females exists with X's daughter(s) or son's daughter(s), and on down (A: these being the someone else needed to make them a universal heir through another) (al-Mawarith fi al-shari'a al-Islamiyya (y80), 99, 102, 103).

@L10.5The universal heir is a person who takes the whole estate if there is no other heir, or takes any of it that is in excess of the obligatory portions which are given to heirs, when they also exist. If there is nothing in excess of the heirs' obligatory shares, then the universal heir does not receive anything.

@L10.6Their order (A: these being the universal heirs by themselves (def: L10.2)) in closeness to X (A: such that the existence of someone at the first of the list eliminates the universal heirship of anyone following him) is:
-1- X's son;
-2- X's son's son;
-3- X's son's son's son, and on down, no matter how many generations;
-4- X's father;
-5- X's father's father;
-6- X's father's father, and on up,no matter how many generations;
-7- X's full brother;
-8- X's half brother from the same father;
-9- the son of X's full brother;
-10- the son of X's half brother from the same father;
-11- the brother of X's father;
-12- the son of the brother of X's father this son's son, and on down;
-13- the brother of X's father's father;
-14- and then (13) 's son, this son's son, and on down.

@L10.8When there is no universal heir, and no heir inheriting an obligatory portion that the excess estate could be redistributed to (dis: L9.1), then the estate is divided between the extended family members (def:L4.5) such that each of them takes the place of the person through whom they are related to X For example:
-1- X's daughter's child takes the share of X's daughter;
-2- X's sister's child takes the share of X's sister;
-3- X's brothers' daughters take the share of the brothers;
-4- the daughters of X's father's brother take the latter's share;
-5- X's mother's father takes her share;
-6- X's mother's brother or sister takes her share;
-7- and X's father's half brother or sister from the same mother takes the father's share.

@L10.9No universal heir may inherit (A: a universal share) when there is a universal heir who is closer to X than he is.

@L10.10No one constitutes a co-universal heir (def: L10.3) with his sister except:
-1- X's son (N: with X's daughter);
-2- X's son's son (N: with X's son's daughter);
-3- and X's brother (A: with X's sister)
Each of them constitutes a co-universal heir with his sister, the male receiving the portion of two females.

@L10.11 (N: In addition to being co-universal heir with X's son's daughter ((2) above),) X's son's son (N: or son's son's son, and on down) is (n: also) co-universal heir

with the daughters of his father's brother who are of the same generation as he, and those of his father's sisters and the daughters of his father's father's brother(s) who are above him (N: of a closer generations to X), provided they (A: those closer to X than he) have no obligatory shares coming. (N: Because if they do, then they take their share and are not co-universal heirs with him. This may be illustrated by the following example:
-1- X's husband, daughter, son's daughter, son's daughter, son's son's daughter,and son's son's son:
Shares: 12
husband 1/4 (dis: L6.3(2)) 3
daughter 1/2 (dis:L6.7(1)) 6
son's daughter 1/6 (dis: L6.9) 2
son's son's daughter
son's son's son universal 1
But if there were two of X's daughters in the above case, we would have to divide the estate as follows:
shares: 12
husband 3
2 daughters 2/3 (dis: L6.7(2)) 8
Here, the son's daughter does not have an obligatory share coming, since the two daughters have taken the full two-thirds, and so the son's daughter (dis: text above) is co-universal heir with the son's son's daughter and son's son's son:
son's daughter
son's son's daughter universal 1
son's son's son

@L10.12 A person who is a universal heir does not participate in the share of someone who has an obligatory share coming, except in the following case (al-musharraka) :
Given X's husband, mother (or grandmother, for the result is the same), two half brothers from the same mother, and a full brother:
shares: 6
husband 1/2 (dis: L6.3(1)) 3
mother 1/6 (dis: L6.6(2)) 1
2 half brothers 1/3 (dis: L6.20(2)) 2
in which case the estate has been used up and nothing remains for the brother:
(N: But the full brother is closer to X than the half brothers, and should not be eliminated by their share, so an exception is made and the half brothers and full brother are made co-universal heirs:)
shares: 6
husband 3
mother 1
2 half brothers
full brother universal 2
(N: It is important to remember in such cases that the universal share is divided so the males and females receive equal shares (dis: L6.20(2)).)

@L10.13 When a person both deserves an obligatory share and is a universal heir, then he inherits both of these.
An example is when the son of X's father's brother (A: who is universal heir (dis: L6.22 (8))) is also X's husband (A: deserving a husband's share (dis: L6.3)); or when the son of X's father's brother is also X's half brother from the same mother.

*1*BOOK M: MARRIAGE

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*2*Chapter M1.0: Who Should Marry

@(O: The legal basis for marriage,prior to scholarly consensus (ijma') is such Koranic

verses as.
"Marry such women as seen good to you" (Koran 4:3),
and hadiths such as,
"Marry one another, that you may increase,"
which was related by Shafi'i.)

@M1.1A man who needs to marry (O: because of desire for sexual intercourse) and has enough money (O: for the bride's marriage payment (mahr def;m8), for clothing for the season of the year in which he marries, and the expenditures of one day) is recommended to do so (O: to protect his religion, no matter whether he is occupied with religious devotions or not). One who needs to marry but does not have enough to pay for these expenses is recommended not to marry. but rather to suppress his sexual desire by fasting (O: and if it is not suppressed by fasting, then he should marry, borrowing the money to pay the bride's marriage payment if she will not accept his owing it to her).

@M1.2It is offensive for someone who does not need marriage (O: being undesirous of it because of a physical defect or other reason) to marry when he does not have enough money to cover the expenses. Marriage is not offensive for a man who has enough money, even when there is something that might prevent him from doing so such as old age or a chronic illness, though it is superior for him to devote himself to worship instead (O: being occupied with enjoyments and not thinking of worship at all) then marriage is better (O: since someone whose lack of sexual desire is not due to a physical defect may later have such desire, as opposed to someone whose lack of desire is because of such a defect, to whom this will not happen).

@M1.3As for a woman, if she needs to marry, it is recommended for her to do so, though if she does not, (O: not feeling any sexual desire within herself, and she is engaged in worship,) then it is offensive for her to do so. (N: Though such a woman needs a husband or unmarriageable relative to travel and so forth (dis:m10.3).)

@M1.4: Desirable Characteristics in a Bride
It is recommended for a man to marry a virgin (O: unless there is a reason not to, such as sexual incapacity or needing someone to take care of his children) (A: though it is permissible to marry a nonvirgin even if she has not previously married (dis: p12.1(3(n:)))) who is fertile (O: which in a virgin is inferable from her relatives), attractive, intelligent, religious, of a good family, and not a close relative.
(O: In Sharh al-Minhaj, Ibn Hajar notes that when one must choose between the above characteristics, the order of preference should be:
-1- religiousness, which takes precedence over anything else;
-2- intelligence;
-3- a good character and disposition;
-4- fertility;
-5- a good family;
-6- virginity;
-7- beauty;
-8- and then that which fulfills some other relevant interest.)

*2*Chapter M2.0: Engagement and Looking at the Opposite Sex

@M2.1: Sunnas of Engagement
(O: It is recommended for a guardian to offer his marriageable female charges in marriage to righteous men. It is sunna:
-1- to intend by one's marriage to fulfill the sunna and protect one's religion, since one is only rewarded for it if one intends some form of obedience to Allah, such as remaining chaste or having a pious son;
-2- for the marriage contract to be made in a mosque;
-3- and for it to take place on Friday, at the first of the day, and in the month of Shawwal.)

@M2.2: Looking at One's Prospective Bride

The sunna when one wants to marry a woman is to look at her face and hands (O: as the face indicates her beauty, and the hands her robustness of body. Tirmidhi reports from al-Mughira that when he got engaged to a woman, the Prophet (Allah bless him and give him peace) said.
"Look at her, for it is likelier to last between you."
meaning that love is likelier to last, and tenderness) before getting engaged to her, even if the woman does not give her permission to do so (O: since the Lawgiver's permission is sufficient). Such a person is entitled to repeat looking at her (A: as many times as he wishes) (O: when he needs to make sure of how she looks, so he does not come to have regrets after getting married. And she is entitled to do the same) but he may not look at other than her face and hands. (O: If unable to go see her, he should send a reliable woman to go see he for him, as such a woman would be likely to notice more than he, and she may describe her to him, this being an exception to the unlawfulness of describing a woman to a man who is not one of her unmarriageable kin.)

@M2.3: Looking at Members of the Opposite Sex
It is unlawful for a man to look at a woman who is not his wife or one of his unmarriageable kin (def: m6.1) (O: there being no difference in this between the face and hands or some other part of a woman (N: if it is uncovered), though part excludes her voice, which is not unlawful to listen to as long as temptation is unlikely. Allah Most High says,
"Tell believers to lower their gaze'' (Koran 24:30).
A majority of scholars (n: with the exception of some Hanafis, as at m2.8 below) have been recorded as holding that it is unlawful for women to leave the house with faces unveiled, whether or not there is likelihood of temptation. When there is likelihood of temptation, scholars unanimously concur that it is unlawful, temptation meaning anything that leads to sexual intercourse or its usual preliminaries. As for when there is real need (dis: m2.11), looking is not unlawful, provided temptation is unlikely). (A: Being alone with a woman who is not one's wife or unmarriageable kin is absolutely unlawful, though if there are two women and a man, the man and the woman are no longer considered alone.)

@M2.4A man may look at his wife (N: or vice versa) including her nakedness (def: f5.3), though it is offensive for either husband or wife to look at the other's genitals.

@M2.5 A man may look at his unmarriageable female relatives (def: m6.1), and a woman look at her unmarriageable male relatives (m6.2), viewing any part of the body (n: that shows e.g. while they are working) except what is between the naval and knees.

@M2.6 As for a woman looking at (O: a man) other than her husband or unmarriageable male relatives, it is unlawful, just as a man's looking at her is.

@M2.7 It is unlawful for a woman to show any part of her body to an adolescent boy or a non-Muslim woman (n: unless the latter is her kinswoman (def: m6.1 (1-12)), in which case it is permissible (Mughni al-muhtaj ila ma`rifa ma`ani alfazal-Minhaj (y73), 3.132)).

@M2.8(n: The following rulings from the Hanafi school have been added here as a dispensation (dis: C6.3).)
(Ahmad Quduri:)
-1- It is not permissible for a man to look at a woman who is not his wife or unmarriageable relative except for her face and hands ((Maydani:) because of the necessity of her need to deal with men in giving and taking and the like). If a man is not safe from lust, he may not look at her face except when it is demanded by necessity.
-2- A man may look at the whole body of another man except for what is between the navel and (A: including) the knees (A: as the knees are considered nakedness by Hanafis, though not by Shafi`is).
-3- A woman may look at the parts of a man that another man is permitted to look at.
-4- A woman may look at the parts of another woman that a man is permitted to look at of another man.

(al-Lubab fi sharh al_kitab (y88), 4.162-63)

@M2.9Whenever looking is unlawful, so is touching (O:whenever meaning the part; i.e. whatever is unlawful to look at is also unlawful to touch). (N: And any permissible looking that leads to temptation is unlawful.) (A: Ordinary people sometimes mistakenly assume that the Hanafi position that touching a woman does not nullify one's ablution (wudu) means they permit men shaking hands with women who are not wives or unmarriageable relatives, something which is unlawful, and which neither the Hanafi school nor any other holds to be permissible.)

@M2.10: Doctors Treating Patients of the Opposite Sex
Both (O: looking and touching) are permissible for medicinal bloodletting, cupping, and medical treatment (N: when there is real need. A Muslim woman needing medical attention must be treated by a Muslim woman doctor, or if there is none, then by a non-Muslim woman doctor. If there is none, then a male Muslim doctor may treat her, while if non of the above are available, then a male non-Muslim doctor. If the doctor is of the opposite sex, her husband or an unmarriageable male relative (def: m6.2) must be present. It is obligatory to observe this order in selecting a doctor). (A: The same rules apply to Muslim men with regard to having a doctor of the same sex and religion: the same sex takes precedence over the same religion.)
(O:Necessary treatment of her face or hands permits looking at either. As for other parts of the body, the criterion for permissibility is the severity of the need for treatment, meaning that there must be an ailment as severe as those permitting dry ablution (def: e12.9), and if the part concerned is the genitals, the need must be even more acute (N: though it includes gynecological examinations for women with fertility problems, which are permissible).
@M2.11: Permissible Looking at a Marriageable Member of the Opposite Sex
Looking at a woman is permissible for testimony in court, for commercial dealings (O: with a marriageable man, or noncommercial dealings, as when he wishes to marry her), and so forth (O: such as obligatory or recommended learning (def: a4, a6)), in which cases looking is permissible to the degree required. (O: It is not permissible to exceed the degree required, as when looking at part of the face is sufficient, in which case looking at the rest of it is not permissible, as it exceeds the amount required.)

@M2.12: Rules for Proposing Marriage or Accepting a Proposal
It is unlawful to propose marriage, openly or allusively, to another's wife when she is in the waiting period of an unfinalized (A: i.e. less than threefold (dis: n9.0 (N:))) divorce (O: because she is still considered as a wife is).

@M.2.13As for a woman who is in any of the following types of waiting period (def: n9), it is unlawful for a suitor to propose openly to her, though not for him to hint at it:
-1- the waiting period of a finalized (threefold) divorce;
-2- the waiting period after having had her husband release her for payment (def: n5);
-3- or the waiting period to remarry after her husband's death (def: n9.11).
(O: Proposing allusively is only permissible in such cases because of the husband's lack of authority over her. To propose openly means to decisively indicate one's desire to wed, such as by saying, "I want to marry you,'' while to propose allusively means to employ words that could indicate a desire to marry or something else, such as "I am desirous of you,'' or "Your are beautiful,'' for these do not necessarily imply a desire for marriage.)

@M2.14(O: The rulings regarding the lawfulness or unlawfulness of a woman's accepting a marriage proposal are the same as those for proposing to her (def: m2.12-13).)

@M2.15It is unlawful to propose marriage to a woman to whom another has already done so, if the first proposal has been openly accepted, unless the first suitor gives his permission. (O: And like his permission in the legality of another proposing to her is when the first suitor has shown himself disinclined, such as by having given up, or when enough time has elapsed to give others the impression that he no longer wants to marry, or when the woman's guardian (def: m3.4) becomes averse to him.)
But if the first suitor's proposal was not openly accepted, then a second suitor may

propose to her. (O: It is also permissible for one to take the initiative and propose to a woman when one does not know whether or not she is engaged, or whether the first proposal was plainly accepted or not.)

@M2.16Whoever is asked about what kind of person a prospective groom is should truthfully mention his failings (O: meaning his defects and mistakes. This is obligatory (N: but only to the degree necessary (A: to protect the person who is asking)), as Nawawi has stated in al-Adhkar (dis: r2120(2))).

@M2.17It is recommended to give a short address when (O: i.e. before) making a marriage proposal (O: address meaning words begun by praising Allah and concluded with a supplication and moral exhortation. If one wants to be brief, one may simply say, "Praise be to Allah, and blessings and peace upon the Messenger of Allah (Allah bless him and give him peace). I enjoin you to fear Allah. I have come to you to engage your noblest [A: mentioning her name].'' Then her guardian gives a similar address).

@M2.17It is also recommended to give another brief address when (O: i.e. just before) the marriage contract is made, saying (O: i.e. it is recommended for the guardian to say, before the contract is formally effect), "I marry her to your according to the command of Allah Most High, to kindly retain or graciously release.''

*2*Chapter M3.0: The Integrals of a Marriage Agreement

@M3.1Marriage has integrals (A: which are five in number:
(a) the spoken form;
(b) the witnesses;
(c) the bride's guardian;
(d) the groom;
(e) and the bride).

@M3.2: The Spoken Form
The first integral is the explicitly stated spoken form (O: comprising a spoken offer by the guardian and its acceptance by the groom, like other, nonmarital transactions. Its necessary conditions are the same as those of valid sale (def: k1.1(a,b,c,d,e))), the form being valid in languages other than Arabic even when one is able to speak Arabic.
The spoken form is not valid if allusive. Nor is it valid without:
(a) a statement (N: from the guardian) that effects it, namely "I marry you'' (n: i.e. to her, the Arabic zawwaja meaning to marry someone to another);
(b) and an immediate spoken acceptance (A: by the groom), namely "I marry her,'' or "I accept her marriage.''
(N: The spoken form, when the other integrals exist, is what is meant by the term marriage contract, not an actual written document, though it is sunna to write it. Extraneous conditions added to the marriage contract, such as that the husband observe monogamy or the like, are not binding, being meaningless, though they do not invalidate the marriage agreement, which remains effective.)
@M3.3: The Witness
The second integral is that the marriage have witnesses, it not being valid unless two witnesses are present who are:
(a) male (O: since a marriage witnessed by a man and two women would not be valid (A: though it would be valid in the Hanafi school));
(b) sound of hearing
(c) sound of eyesight
(d) familiar with the language of the two contracting parties;
(e) Muslims;
(f) and upright (def:o24.4) witnesses, even if their uprightness is merely apparent (O: since marriages take place among average, common people, and if they were made responsible to know the inward uprightness of witnesses, it would cause delays and difficulties. Apparent uprightness means the person is outwardly known to be upright, even if he is inwardly unknown).

@M3.4: The Bride's Guardian
The third integral is the (A: bride's guardian (O: since a woman may not conduct her own marriage. Ibn Majah relates that the Prophet (Allah bless him and give him peace) said.
"Let no woman marry a woman to another or marry herself to another.''
Daraqutni related this hadith with a chain of transmission meeting the standards of Bukhari and Muslim).
The marriage agreement is not valid without a guardian who is:
(a) male;
(b) legally responsible (mukallaf, def: c8.1);
(c) Muslim;
(d) upright (def: o24.4);
(e) and of sound judgement.
The following may not be a bride's guardian:
-1- (non-(a) above) a woman;
-2- (non-(b)) a child or insane person;
-3- (non-(c)) a non-Muslim;
-4- (non-(d)) a corrupt person (def: o24.3) (O: though the opinion of most later scholars is that a corrupt person may be a guardian);
-5- or (non-(e)) someone whose judgement is unsound because of old age or weakmindedness (O: whether innate or acquired. Old age includes someone with severe pain or illnesses which distract him from realizing what is most advantageous for his charge and her interests, since such a person would be incapable of learning how suitors really are and whether they are an appropriate match (def: m4) for the bride).
It is of no consequence if the guardian is blind.
A non-Muslim responsible for a non-Muslim bride may be her guardian (O: provided he does not violate the rules of his own religion), though a Muslim may not.

@M3.6(n: If the bride has no Muslim guardian and there is no Islamic magistrate to act as one, she may authorize a male Muslim who has the qualifications of an Islamic judge (def: o22.1) -or if there is none, then a male Muslim who is legally upright (def: o24.4) -to act as her guardian in marrying her to the groom (Mughni al-muhtaj ila ma`rifa ma`ani alfaz al-Minhaj (y73), 3.147).)

@M3.7: The Order of Lawful Guardianship Among the Bride's Relatives
The male relatives of a free woman are the ones who may marry her to another, and the order (O: as to who has the right to be her guardian) is her:
-1- father;
-2- father's father (O: and on up);
-3- brother;
-4- brother's son;
-5- father's brother;
-6- her father's brother's son (O: and so on, in the same order as the universal heirs in estate division (def: l10.6(12-14));
-7- and then the Islamic magistrate (A: i.e. the judge (qadi)).
None of the above may marry her to someone when a family member higher on the list exists. If there are two of equal standing (A: two brothers, for example) and one is related to her through two parents while the other is related to her through the father alone, then the one related to her through both parents is the guardian. If both are equal in this respect, precedence is given to the oldest, most learned in Sacred Law, and most god-fearing. But if the other (A: less deserving of two would-be guardians who are of equal affiliation to her) marries her to the groom, the marriage is valid. If both insist on being the one, they draw lots to see who will do it, though if the loser marries her to the groom, the marriage is also legally valid.

@M3.8If a guardian does not have the right to be a guardian because of the existence of one of the above-mentioned preventives (dis: m3.4 (1-5)), the guardianship devolves to the next family member in the

@M3.7order of lawful guardians

@M3.9: The Bride's Right to Marry a Suitable Match of Her Choice
Whenever a free woman asks to marry a suitor who is a suitable match (def m4) (O: by telling her guardian, ``Marry me to him''), the guardian must marry her to him (O: whether she is a virgin or nonvirgin, and whether prepubescent or not). The Islamic magistrate (A: i.e. judge marries her to such a groom if the guardian:
-1- in the presence of the magistrate refuses to marry her to the groom;
-2- is on a journey farther than 81 km./50 mi. from home;
-3- or is in a state of pilgrim sanctity (ihram) (O: for hajj, `umra', or both) (dis: j3.20).
In such cases, the guardianship does not devolve to the next most eligible in the m3.7 order of lawful guardians, If (non-(2) above) the guardian is on a journey of less than 81 km./50 mi, from home, the bride may not be married to someone without the guardian's leave.

@M3.10: Commissioning Another to Effect the Marriage Agreement
The guardian may commission another (def: k17.5-6) to marry his charge to someone, though it is not permissible to commission someone who himself lacks the requisite conditions (m3.4(a,b,c,d,e)) to be a guardian.
The groom too may commission someone to accept the marriage agreement on his behalf, provided the person commissioned is someone who would be legally entitled to accept such a marriage for himself. (O: A child, for example, may not accept a marriage for himself, let alone someone else, nor may a woman be commissioned for this, nor someone in a state of pilgrim sanctity (ihram).)

@M3.11Neither the guardian of the bride nor his agent may state the marriage offer (def: m3.2(a)) for the guardian's own marriage (A:to her). If her guardian wants to marry her, as when, for example, he is the son of her father's brother, then he lets a different son of the father's brother stand in as guardian. If there is no one in his own degree (A: of relation to her), then the Islamic judge stands in as guardian.

@M3.12No one may state both the proposal and its acceptance (def: M3.2(a,b)) for one marriage, except the bride's grandfather when marrying his son's daughter to his (A: other) son's son.
@M3.13: Guardians Who May Marry a Virgin to a Man Without Her Consent
Guardians are of two types, those who may compel their female charges to marry someone, and those who may not.
-1- The only guardians who may compel their charge to marry are a virgin bride's father or father's father, compel meaning to marry her to a suitable match (def: m4) without her consent.
-2- Those who may not compel her are not entitled to marry her to someone unless she accepts and gives her permission.
Whenever the bride is a virgin, the father or father's father may marry her to someone without her permission, though it is recommended to ask her permission if she has reached puberty. A virgin's silence is considered as permission.
As for the nonvirgin of sound mind, no one may marry her to another after she has reached puberty without her express permission, no matter whether the guardian is the father, father's father, or someone else.

@M3.15No guardian may marry a woman to someone who is not a suitable match (def: m4) without her acceptance and the acceptance of all who can be guardians (def: m3.7). If the Islamic magistrate is her guardian, he may not under any circumstances marry her to someone who is not a suitable match for her.
If the bride selects a suitor who is not a suitable match for her, the guardian is not obliged to marry her to him. If she selects a suitable match but her guardian chooses a different suitor who is also a suitable match, then the man chosen by the guardian takes precedence if the guardian is one who may lawfully compel her to marry (def: m3.13(1)), while the one she selects takes precedence when the guardian may not lawfully compel her to marry (m3.13(2)).

*2*Chapter M4.0: A Suitable Match (Kafa`a)

@(N: The definition of a suitable match should not be misunderstood as a recommendation for whom to marry. It is merely a legal restriction to protect a woman's interests when the father or grandfather of a virgin marry her to someone without her consent (dis: m3.13, 15). As for when she wishes to marry someone who is not a suitable match, and her guardian has no objection, there is nothing wrong or offensive in her doing so.)

@M4.1Suitability concerns lineage, religiousness, profession, and being free of defects that permit annulling the marriage contract (def: m7). (N: As for color, it is of no consideration in suitability.) @M4.2 The following are not suitable matches for one another:
-1- a non-Arab man for an Arab woman (O: because of the hadith that the Prophet (Allah bless him and give him peace) said,
"Allah has chosen the Arabs above others'');
-2- a corrupt man (def: o24.3) for a virtuous woman (O: though it is sufficient for the would-be husband to have given up his wrongdoing);
-3- a man of a lowly profession for the daughter of someone with a higher profession, such as a tailor wanting to marry a merchant's daughter (A: though an Islamic scholar is a suitable match for any level whatever);
-4- or someone with a defect that permits annulling the marriage (def: m7) for someone without such defects.
Being wealthy has nothing to do with suitability (O: for money comes and goes, and those with self-respect and intelligence do not take pride in it), nor does being elderly.

@M4.3The marriage agreement is invalid whenever a guardian marries his charge to someone who is not a suitable match for her, if done without both her acceptance and the acceptance of all who are eligible as guardians (def: m3.7) and are on the guardian's level of relation to her (A: such as his brothers). But if both these parties agree, then the bride's relatives further from her than the guardian may not object.

@M4.4When the father or father's father see that the best advantage is to be served by marrying a young boy (or girl) to someone, they may do so, though they are not entitled to marry the child to someone with a physical defect (dis: m7) that legally permits annulment of the marriage.

@M4.5If a person is foolhardy (safih, def: k13.1(A)) or continuously insane, but needs to marry, then his father, grandfather, or the Islamic magistrate may marry him to someone. If they grant permission to the foolhardy person to marry himself, his marriage is valid, though if he does so without their leave, it is invalid.

*2*Chapter M5.0: Conjugal Rights

@M5.1: The Wife's Marital Obligations
It is obligatory for a woman to let her husband have sex with her immediately when:
(a) he asks her;
(b) at home (O: home meaning the place in which he is currently staying, even if being lent to him or rented);
(c) and she can physically endure it.
(d) (O: Another condition that should be added is that her marriage payment (mahr, def: m8) has been received or deferred to a term not yet expired
As for when sex with her is not possible, such that having it would entail manifest harm to her, then she is not obliged to comply.)
If she asks him to wait, she is awaited, to a maximum of three days (O: She does not ask to wait because of not having finished her period or postnatal bleeding, for there is not physical harm entailed in her complying as she is, though if she fears that such foreplay with him will lead to actual copulation (A: which is unlawful under such circumstances), then she may refuse, as that is not obligatory). (n: w45 discusses wives' other duties to husbands.)

@M5.2: The Wife's Right to Intercourse

(Imam Ghazali:) One should make love to one's wife every four nights, as is fairest, since the number of wives one may have is four, and one may wait this long to do so, though one should make love to her more or less than this, according to the amount she needs to remain chaste and free of want for it (N: if one is able), since it is obligatory for a husband to enable her to keep chaste (Ihya' `ulum al-din (y39), 2.46).

@M5.3: The Wedding Night
The first time they sleep together, it is recommended for the husband to grasp his bride's forelock and supplicate Allah for an increase in blessings (baraka) (O: such as by saying, "May Allah bless each of us in their partner'').

@M5.4: The Husband's Rights
A husband possesses full right to enjoy his wife's person (A: from the top of her head to the bottoms of her feet, though anal intercourse (dis:p75.20) is absolutely unlawful) in what does not physically harm her.
He is entitled to take her with him when he travels.

@M5.5: Contraception
The husband is permitted to practice coitus interruptus (n: w46 discusses the relation of this to other methods of contraception) in lovemaking with his wife (O: meaning to make love to her until he feels an impending orgasm, when he withdraws to ejaculate outside the vagina) though it is better not to (O: it being considered offensive in our school (dis: w46.2) because it is a means to prevent reproduction).

@M5.6The husband is entitled to insist that his wife undertake both the measures necessary for having sex with her such as the purificatory bath (ghusl) after her monthly period, and those necessary to full enjoyment of her such as the purificatory bath after major ritual impurity (janaba), shaving her private parts, and removing filth.

*2*Chapter M6.0: Unmarriageable Kin (Mahram)

@(N: It is unlawful for one to marry one's ancestors, descendants, parents' descendants, or the first generation of one's grandparent's offspring, meaning one's paternal or maternal aunts (n: or uncles, if one is female). One's unmarriageable kin (mahram) are those one is forbidden to marry forever.)

@M6.1It is unlawful (O: meaning both sinful and legally invalid) for a man to marry his:
-1- mother;
-2- grandmothers (O: from his mother's or father's side) and on up;
-3- daughters;
-4- daughters of his children, children's children, and on down;
-5- sisters;
-6- daughters of brothers or sisters, their children's daughters, and on down;
-7- mother's sisters, grandmother's sisters, and on up;
-8- father's sisters, father's father's sisters, and on up;
-9- wife's mother;
-10- wife's grandmother;
-11- the wives of his father, father's father, and on up;
-12- the wives of his children, children's children, and on down;
(all of whom ((9) through (12)) are unlawful for him to marry by the mere fact of marriage. As for a man's wife's daughter (N: from a different husband), she is not unlawful for him to marry until he has had sexual intercourse with her mother. Were he to divorce the mother before intercourse, it would be permissible for him to marry the daughter)
-13- (n: and all those considered as unmarriageable kin to him through his having been breast-fed by a particular wet nurse in infancy, as at n12.2).

@M6.2(N: It is unlawful and invalid for a woman to marry her:
-1- father, grandfather, and on up;

-2- son, son's son, daughter's son, and on down;
-3- brother;
-4- father's brother, meaning the brother of any male ancestor;
-5- mother's brother, meaning the brother of any female ancestor;
-6- brother's son, sister's son, or any other descendants of brothers or sisters;
-7- the husband of her mother, grandmother, and on up;
-8- the husband of her daughter or other female descendant;
-9- her husband's father, grandfather, and on up, and husband's son and descendants;
-10- (n: and unmarriageable kin to her through her having been breast-fed by a particular wet nurse in infancy, as at n12.2).

@M6.3It is unlawful for a man to marry both:
-1- a woman and her sister;
-2- a woman and her father's sister;
-3- or a woman and her mother's sister.
(N: but if a man is no longer married to one of the above and the waiting period (def: n9) has expired, then he may marry the other.)

@M6.5The same categories of relatives who are unlawful for one to marry because of one's kinship relation to them are also unlawful to one by ``foster relationship,'' through having been breast-fed by a particular wet nurse in infancy (dis: n12.2) (N: since someone nursed in infancy by a woman is prohibited to marry those whom her offspring and her husband's offspring are prohibited to marry).

@M6.7It is unlawful for a Muslim man to marry:
-1- a Zoroastrian woman;
-2- an idol worshipper;
-3- an apostate from Islam (murtadd, def: o8);
-4- or a woman with one parent who is Jewish or Christian, while the other is Zoroastrian.
-5- (N: It is not lawful or valid for a Muslim man to be married to any woman who is not either a Muslim, Christian, or Jew; nor is it lawful or valid for a Muslim woman to be married to anyone besides a Muslim.)

@M6.8It is unlawful for a man who has divorced his wife by public imprecation (def:n11) to remarry her (N: though she is not considered his unmarriageable kin (mahram), and he may not look at or be alone with her).

@M6.9It is unlawful to marry a woman who is in a state of pilgrim sanctity (ihram, def: j3) (N: for hajj or `umra), or in her waiting period (def: n9) after marriage to another.

@M6.10It is unlawful for a free man to marry more than four women. It is fitter to confine oneself to just one.

@M6.12The following types of marriage are legally invalid:
-1- to marry by "trading daughters [or sisters]'' (A: such that the marriage of each by the guardian of the other supposedly takes the place of the woman's marriage payment (mahr));
-2- to have a "temporary marriage'' (mut`a), meaning to marry a woman for a stipulated period (O: whether specified, such as a month, or unknown, such as "until So-and-so comes'');
-3- or to marry a woman after her threefold divorce solely to cohabit and thus permit her (dis: n7.7) to remarry her previous husband (A: which is an enormity (dis: p29)), though if the marriage agreement is made for this reason but does not expressly stipulate it, then it is legally valid (dis: c5.2).

*2*Chapter M7.0: Defects in the Spouse Permitting Annulment of Marriage

@M7.1
In any of the following circumstances, the husband or wife has the option to annul the

marriage agreement immediately, if this is done in the presence of the Islamic magistrate (O: or a third party chosen to judge between them (dis: o21.4), provided that he is a mujtahid (def: o22.1(d)) and there is no Islamic judge), even when the partner annulling the marriage has the same defect whose existence in the spouse has motivated him or her to annul it (O: as when, for example, both are insane) :
-1- one finds that the spouse is not sane, or has elephantiasis or leprosy;
-2- the husband finds that the wife's vagina is closed or nearly so because of an abnormal growth of flesh or bone;
-3- or the wife finds that the husband is impotent, or that his penis has been dissevered.
The agreement may also be annulled when the defect occurs after making the marriage agreement, except when a husband's impotence occurs after he has had sexual intercourse with his wife, in which case annulment is no longer possible. When a husband (N: impotent from the beginning) acknowledges his impotence, the magistrate postpones action on the case for one year from the day it is first submitted to his consideration. If the husband has intercourse with her during the year, then she is not entitled to annul the marriage, though if he does not, then she may annul it. In cases of impotence, her above-mentioned prerogative of annulling the marriage ``immediately'' means after this period of one year.

@M7.2When a marriage is annulled before sexual intercourse, the woman does not receive her marriage payment (mahr) (N: no matter whether the defect is in her or in him (A: as opposed to divorce before sexual intercourse, as discussed at m8.7)).
When a marriage is annulled after intercourse because of a defect that occurred after it, the full marriage payment stipulated by their agreement must be paid to her.
When a marriage is annulled (N: after sexual intercourse) because of a defect that occurred before intercourse (O: whether simultaneously with the marriage agreement or after it but before intercourse), then the bride is only given the amount typically received as marriage payment by similar brides (def: M8.8).

@M7.4If any of the following occurs before intercourse has taken place, then the marriage is immediately annulled:
-1- one of a couple who are idolators becomes a Muslim;
-2- one of a Zoroastrian couple becomes Muslim;
-3- the wife of a Jew or Christian becomes a Muslim;
-4- both husband and wife leave Islam;
-5- or one of them does.
But when one of the above things happens after intercourse, then a waiting period (def: n9) must intervene before the marriage is annulled. If both husband and wife (A: are, or) become Muslim before the waiting period finishes, then their marriage continues. And if not, then the marriage is considered to have been over since the change of religion first took place.

@M7.5When a (A: non-Muslim) man who has more than four wives becomes Muslim, he is obliged to choose just four of them (A: and the others' marriages are annulled).

*2*Chapter M8.0: The Bride's Marriage Payment (Mahr)

@(O: The marriage payment is the money or property a husband must pay a woman to marry her.)
@M8.1It is sunna to name the amount of the marriage payment in the marriage agreement (O: to prevent discord). If it is not mentioned, it does not hurt (O: the validity of the marriage, though if unmentioned in the agreement, it is considered to be the amount typically received as marriage payment by similar brides (def: m8.8). There is complete scholarly consensus on the validity of a contract that does not mention it, though it is offensive not to).

@M8.2A guardian may not marry his prepubescent daughter to someone for less than the amount typically received as marriage payment by similar brides, nor marry his prepubescent son to a female who is given more than the amount typically received. If he does either of these, the amount stipulated is void and the amount typically

received is paid instead (O: in both these cases, as a necessary condition for the validity of the marriage contract).

@M8.3Nor may a foolhardy man (def: k13.1(A:)) marry a woman for more than the amount typically received as marriage payment by similar brides.

@M8.4Anything that may be lawfully used as a price (def: k2) may be given as marriage payment. It may be paid immediately or deferred, and may be an individual article (`ayn), a financial obligation (dayn), or the use or benefit of something.

@M8.5The bride possesses the marriage payment when it has been expressly stipulated (O: in the marriage agreement, whether validly stipulated or invalidly. If valid, she owns the amount stated, while if invalid, she owns the amount typically received as marriage payment by similar brides (def: m8.8). She may dispose of it when she accepts it, and her ownership of it is finalized when her husband has sexual intercourse with her (O: after which none of it is refundable), or when one of them dies before they have had intercourse.

@M8.6If payable immediately, the bride may refuse to have sexual intercourse until her husband gives her the marriage payment, though if she allows him to have intercourse with her before she accepts the amount, she may no longer refuse to have intercourse (N: but may demand the amount).

@M8.7 If the couple is separated (A: by having annulled the marriage (dis: m7.4)), before intercourse because of an act on the bride's part, as when she becomes a Muslim (O: and the husband remains non_Muslim), or she leaves Islam (O: and the husband remains Muslim), then she is not entitled to any of the marriage payment. But if it is because of an act on the husband's part, as when he becomes Muslim, leaves Islam, or divorces her, then she receives only half of the marriage payment; or the husband may ask for half of it back (O: if she already accepted it), provided the article given as payment still exists. If it does not, he receives half of the lowest market value of similar articles between the time of the marriage agreement and when the article ceased to exist. If the article was diminished while in the bride's possession, the husband has a choice between taking it back in its defective condition, or accepting half of its value.

@M8.8: The Amount Typically Received as Marriage Payment by Similar Brides
The amount typically received as marriage payment by similar brides (mahr al-mithl) means that which would be desirable to a woman like her (O: a woman like the bride, under normal circumstances), like her meaning a woman of her relatives resembling her in such characteristics as age, intelligence, beauty, wealth, being virgin or nonvirgin, and in having the same hometown. (O: her relatives living therein are taken as the standard, and not those living elsewhere, since the amount typically received varies in different towns. Rafi'i holds that if all of them live in another town, they are nevertheless more suitable to be taken as the standard than nonfamily women from the same town.) If the bride is superior to them (O: respecting the above characteristics) or inferior, then this is taken into consideration (O: meaning she deserves a marriage payment that suits how she is). If she has no female relatives related to her through her father, then those like her refers to he maternal relatives (O: i.e. the mother's relatives, such as the bride's grandmother or mother's sister). If none of the above exist, then the standard for comparison is the marriage payment of those women of the same town who resemble the bride.

@M8.9: When a Husband is Unable to Pay the Marriage Payment
When a husband proves financially unable to give his wife the marriage payment (A: if it has not been deferred) before the first time they have sexual intercourse, then the bride may annul the marriage, though if he proves unable afterwards, she may not. If husband and wife disagree (A: in court, when neither side has proof|) as to whether he has given her (O: all, or part of) the marriage payment, then the wife's word is accepted over the husband's (dis: k8.2). But if they disagree as to whether they have had sexual intercourse, the husband's word is accepted over the wife's.

@M8.10A man is obliged to pay a woman the amount typically received as marriage payment by similar brides (def m8.8) when the marriage was (N: consummated, but) invalid, or when a man forces a woman to fornicate with him. When a woman voluntarily fornicates with a man, she does not receive any marriage payment.

@M8.11: Amenity Payment
Whenever a woman is divorced (O: before having had intercourse) and the marriage payment is reduced to one-half (dis: m8.7), she does not receive an amenity payment (def: below). But she is entitled to one when the marriage payment is not reduced to one-half, such as when:
-1- she receives no marriage payment because of having allowed her guardian to choose a spouse for her and then having been divorced before intercourse and before any payment was stipulated;
-2- or when she receives the full marriage payment, as when she is divorced after intercourse.
An amenity payment is an amount (N: paid by the husband) determined by the Islamic judge through his own personal reasoning (O: it being obligatory that both the husband and wife agree to it, and sunna that it not be less than thirty dirhams (n: 88.94 grams of silver) or something worth that much, and that it amount to less than half the marriage payment), in view of the circumstances of both parties (O: such as how rich or poor the husband is, and the wife's lineage and other characteristics previously discussed).

*2*Chapter M9.0: The Wedding Feast

@M9.1The wedding feast is a sunna (A: whose time never expires, though it is recommended to be after intercourse). The sunna is for the meal to consist of a sheep or goat (shah, def: h2.5), though it is permissible to serve whatever food is readily available.

@M9.2: The Obligation to Attend
It is obligatory for whoever is invited to attend (O: and whoever does not respond to the invitation has disobeyed Allah and His messenger (Allah bless him and give him peace)), whether fasting or not. If one attends, it is recommended to eat, though not obligatory. If one is performing a voluntary fast and attends, and it is not burdensome for the host, then it is best to complete one's fast, though if this would weigh on the host, it is better for one to eat. It is only obligatory to respond to such an invitation if the following conditions are met:
(a) that the host not have invited the rich to the exclusion of the poor;
(b) that the invitation be for the first day of the wedding feast, for if the host celebrates if for three days, it is not obligatory to respond if invited on the second day, and offensive to do so on the third;
(c) that the motive for attending not be fear of the host or desire for the prestige of having attended;
(d) that no one will be there who will hurt one, or whose company is unsuitable (O: because of their vileness, for example, such as people devoid of morals or character;
(e) and that there will be nothing blameworthy there such as flutes, wine, silk-covered sitting mats, or pictures of animate life (dis: p44) on the ceiling, walls, upright pillows (O: not those lying flat (dis: below)), or draperies; or clothing inscribed with something blameworthy, and so forth (O: since a person who attends in the presence of such things is as though accepting and acquiescing to what is condemnable). But if the blameworthy thing will be removed through one's attending, or if the above-mentioned pictures are on the ground, a carpet, or pillows people lean upon (N: or other humiliated deployment, which is lawful), or if the living figures are decapitated, or there are pictures of (n: Vegetative life such as) trees, then one must attend.

@M9.3Strewing sweets and the like around at marriage agreements or picking them up is not offensive, but it is better not to.

*2*Chapter M10.0: Relations Between a Husband and Wives

@M10.1It is obligatory for both husband and wife to treat each other well (O: since Allah Most High says,
"Women deserve the like of what they are obliged to give, in kindness'' (Koran 2:228)), and for each to give the other what they must (O: meaning that both spouses are required to, the husband giving her the expenditures he is obliged to (def: m11), and the wife giving herself to him and obeying him concerning his rights therein) without intentional delays or displaying resentment.

@M10.2It is unlawful for a man to house two wives in the same lodgings unless they both agree.

@M10.3: Permitting One's Wife to Leave the House
(A: A husband may permit his wife to leave the house for a lesson in Sacred Law, for invocation of Allah (dhikr), to see her female friends, or to go to any place in the town. A woman may not leave the city without her husband or a member of her unmarriageable kin (def: m6.2) accompanying her, unless the journey is obligatory, like the hajj. It is unlawful for her to travel otherwise, and unlawful for her husband to allow her to.) (n: In the Hanafi school, it is not unlawful for her to travel beyond city limits without a husband or member of her unmarriageable kin unless the distance to her intended destination exceeds ca. 77 km./48mi. (al-Lubab fi sharh al-Kitab (y88), 1.105).)

@M10.4The husband may forbid his wife to leave the home (O: because of the hadith related by Bayhaqi that the Prophet (Allah bless him and give him peace) said.
"It is not permissible for a woman who believes in Allah and the Last Day to allow someone into her husband's house if he is opposed, or to go out if he is averse''). But if one of her relatives dies, it is preferable to let her leave to visit them.
@M10.5: Taking Turns with Wives
A husband with more than one wife is not obliged to spend his nights with them in turns but may keep away from them (A: all) without sin. But he may not begin spending the night with one of them unless he chooses her by drawing lots. Whenever he spends the night with one wife, he is obliged to spend nights with the others, giving equal time to each one. When a husband intends to begin staying with his wives (A: after an intermission or absence), the wife whose lot is drawn is the first with whom he spends the night. All are included in taking turns, whether a wife in her period or postnatal bleeding, one who is ill, or one who cannot have intercourse because of a vaginal birth defect.
The minimal amount of time for one turn is a night and day, whether the day comes before or after the night; while the maximum is three days (A: and nights. The minimal turn for the Hanafi and Maliki schools is whatever all can agree upon). It may not be more than three days (A: except by their leave).
The basic turn of someone who makes their living by day is the night, with the day being an adjunct, while for someone who makes their living at night, such as a watchman, the basic turn is the day.In staying the night, the husband is not obliged to have sexual intercourse with the wife, though it is recommended to have intercourse (and share all other marital enjoyments) with all one's wives on an equal basis.

@M10.6If the husband wants to take one of his wives on a journey with him, he may not do so unless he draws lots to see who it will be. If he draws lots (A: and takes the winner with him), then when he returns, he does not need to make up the turns which the other wives missed while he was on the journey. If he did not draw lots but just chose a wife to travel with him, this is a sin, and on his return he must give equal time to the other wives for the time they missed.

@M10.7It is permissible for one of the wives to give her turn to another wife, if the husband agrees. If one of them gives him her turn, then he may give it to whomever he wants. If the wife later chooses to take her turn back, she returns to her usual place in the order of taking turns as it stand on the day she takes it back.

@M10.8It is not permissible for a husband to enter the quarters of a wife during another wife's turn without business there, though if he stops in during the day because of something he needs, or during the night because of something absolutely necessary (A: such as bringing her supper), then he may enter. Otherwise he may not. If he prolongs such a visit, then he is obliged to make up the turn of the wife whose turn it originally was.

@M10.9If a man marries a new wife when he already has another, he interrupts the succession of turns to spend time with the new wife. If she is a virgin, then he stays with her seven days and need not make them up with the other wives. If she is a nonvirgin, then he may choose to either spend seven days with her and make up (O: to the others the number in excess of three days), or spend three days with her and not make up the time with the others. In such cases it is recommended to let the new wife choose the alternative she prefers. If the husband stays with her for seven days at her request, he must make up all seven days with the others, though if he stays seven days without her having requested it, he need only make up four with the others.

@M10.10The husband is entitled to leave home during the day to fulfill his needs and obligations.

@M10.11: Dealing with a Rebellious Wife
When a husband notices signs of rebelliousness in his wife (nushuz, dis: p42) (O: whether in words, as when she answers him coldly when she used to do so politely, or he asks her to come to bed and she refuses, contrary to her usual habit; or whether in acts, as when he finds her averse to him when she was previously kind and cheerful), he warns her in words (O: without keeping from her or hitting her, for it may be that she has an excuse. The warning could be to tell her, ``Fear Allah concerning the rights you owe to me,'' or it could be to explain that rebelliousness nullifies his obligation to support her and give her a turn amongst other wives, or it could be to inform her, "Your obeying me [def: (3) below] is religiously obligatory''). If she commits rebelliousness, he keeps from sleeping (O: and having sex) with her without words, and may hit her, but not in a way that injures her, meaning he may not (A: bruise her,) break bones, wound her, or cause blood to flow. (O: It is unlawful to strike another's face).
He may hit her wether she is rebellious only once or whether more than once, though a weaker opinion holds that he may not hit her unless there is repeated rebelliousness.
(N: To clarify this paragraph, we mention the following rulings:
-1- Both man and wife are obliged to treat each other kindly and graciously.
-2- It is not lawful for a wife to leave the house except by the permission of her husband, though she may do so without permission when there is a pressing necessity. Nor may a wife permit anyone to enter her husband's home unless he agrees, even their unmarriageable kin. Nor may she be alone with a nonfamily-member male, under any circumstances.
-3- It is obligatory for a wife to obey her husband as is customary in allowing him full lawful sexual enjoyment of her person. It is obligatory for the husband to enable her to remain chaste and free of want for sex if he is able. It is not obligatory for the wife to serve her husband (dis: w45.1); if she does so, it is voluntary charity.
-4- If the wife does not fulfill one of the above-mentioned obligations, she is termed "rebellious'' (nashiz), and the husband takes the following steps to correct matters:
(a) admonition and advice, by explaining the unlawfulness of rebellion, its harmful effect on married life, and by listening to her viewpoint on the matter;
(b) if admonition is ineffectual, he keeps from her by not sleeping in bed with her, by which both learn the degree to which they need each other;
(c) if keeping from her is ineffectual, it is permissible for him to hit her he believes that hitting her will bring her back to the right path, though if he does not think so, it is not permissible. His hitting her may not be in a way that injures her, and is his last recourse to save the family;
(d) if the disagreement does not end after all this, each partner chooses an arbitrator to solve the dispute by settlement, or divorce.)

*2*Chapter M11.0: The Wife's Financial Support

@(O: Support means the financial rights of a wife.)

@M11.1
(A: The rulings of this section are not recommendations for how much to spend, but rather define the minimum permissible, which a stingy husband may not lawfully spend less than. Extra spending on one's wife is charity.)

@M11.2: Food
The husband is obliged to provide his wife's sustenance day by day. If affluent, he must daily furnish her with one liter of the grain that is the staple food of the town in which they live. (O: By the grain that is the staple food of the town, the author means if people eat it. If not, then whatever they eat, even if it is hardened, dried white cheese. If the wife asks for something other than the staple food of the town, the husband does not have to provide it for her, and if he gives her something besides the staple, she need not accept it. The staple food is what is obligatory.) If he is not affluent, then he is obliged to provide 0.51 liters of grain a day for his wife; while if between affluence and nonaffluence, he must provide 0.77 liters per day.
He is also obliged to cover the expenses of grinding it into flour and baking it into bread (O: even when she is used to doing it herself, as there would otherwise be need for this expenditure), and to buy the foods that normally accompany bread to make it savory and agreeable, as much as is customary in the town of meat, oil, and so forth (O: such as dates, vinegar, and cheese. The obligatory measures differ with the seasons, it being necessary in each season to provide that which is proper to it. Fruits might predominate in one season, and thus be obligatory. As for the obligatory amount of meat, one sees how much is customarily consumed in town per week).
If husband and wife agree that he give her compensation in place of the above-mentioned (O: grain and other things she is entitled to, the compensation being in money or clothing), this is permissible.

@M11.3: Articles for Personal Hygiene
The wife in entitled to what she needs of oil for her hair, shampoo (lit. "sidr''), and a comb (O: to keep her hair clean, of the kind and amount that is customary in town, in order to prevent harm to herself. If oil scented with rose or violet is the custom of the town, it must be provided, though not things which are merely cosmetic and not for cleanliness, such as eyeliner or henna, which need not be provided, though the husband may provide them if he wishes. It is also obligatory for him to provide deodorant (lit. ``litharge'') or the like to stop underarm odor if water and soap will not suffice), and the price of water for her purificatory bath (ghusl) when the reason for it is sexual intercourse or the end of postnatal bleeding, though not if the reason is the end of her monthly period or something else (dis:m11.1).

@M11.4: Cosmetics and Medicine
The husband is not obliged (N: but rather is recommended) to pay for his wife's cosmetics, doctor's fees, the purchase of medicine for her, and similar expenses (A: though he must pay for expenditures connected with childbirth).

@M11.5: Clothing
A wife is entitled to the kind of clothing that is customary in town for dressing oneself (O: and not just anything termed clothing will suffice. What is obligatory is the amount necessary for the woman, which varies according to whether she is tall or short, thin or fat, and with the hot or cold climate of various towns. In the summertime, it is obligatory to provide her with a head covering, shift, underdrawers, shoes, and a shawl, because of her need to go out; and the same in the wintertime, plus a cloak quilted with cotton to protect her against the cold. If she needs tow cloaks because of the extreme cold, it is obligatory to provide them. If she needs fuel because of the severity of the winter, it is obligatory to buy the necessary wood and coal) and (O: he must also provide the amount customary in town of the) bedding, blankets, and pillows that are suitable for someone of his income. (O: She also deserves cooking implements, and utensils for eating and drinking).

@M11.6It is obligatory for the husband to give his wife the expenditures for her support at the first of each day, and to provide her clothing at the first of each season (O: meaning the beginning of winter and summer).
@M11.7If he gives her clothing for a season, and it wears out before the end of the season, he is not obliged to furnish new clothing, though if it lasts beyond the season, he is nevertheless obliged to provided new clothing for each new season. The wife is entitled to dispose of the clothing as she wishes, whether by selling it or other (O: means of disposal, such as giving it away, the reason being that it is her own property).
@M11.8: Housing and Servants
The wife is entitled to housing of the same quality as that of similar women. (O: The standard of housing depends on the wife herself, while the standard for her clothing and support takes the state of the husband into consideration. The difference is because the expenditures for her support and clothing become her own property and are not merely for her use, while housing is solely for use (N: meaning that while she can take compensation in place of food or clothing and buy some other kind, she cannot rent a different house). In any case, she is obliged to stay in the lodgings her husband arranges for her.)
If she had servants in her father's house, the husband is obliged to provide servants for her.

@M11.9: The Conditions that Entitle a Wife to Support
The husband is only obliged to support his wife when she gives herself to him or offers to, meaning she allows him full enjoyment of her person and does not refuse him sex at any time of the night or day. She is not entitled to support from her husband when:
-1- she is rebellious (nashiz, def: m10.12(N:)) (O: meaning when she does not obey him) even if for a moment;
-2- she travels without his permission, or with his permission but for one of her own needs;
-3- she assumes ihram for hajj of `umra (def: j3);
-4- or when she performs a voluntary fast without her husband's permission (O: though if he allows her to fast and does not ask her to break it, he must provide her support)
>

@M11.10: Support for a Woman in Her Postmarital Waiting Period
As for a woman in her postmarital waiting period (def: n9), she is entitled to housing during it no matter if it is because of her husband's death, a divorce in which the husband may take her back, or a threefold, finalized divorce. As for her support (A: in terms of food) and clothing:
-1- it is not obligatory to provide her with it during the waiting period after (N: a threefold divorce, a release for payment (def: n5), or) her husband's death;;
-2- it must be provided in the waiting period of a (A: not yet threefold) divorce in which her husband may take her back;
-3- and if a woman in the waiting period of a threefold divorce is pregnant, she is given support each day (A: until the child is born, after which she is entitled to support and wages for taking care of it), but of not pregnant, she is not entitled to support.

@M11.11If the husband and wife disagree (A: in court, when neither has proof (dis: k8.2)) about whether she received her support from him, her word is accepted over his. If they disagree as to whether she allowed him full enjoyment of her person, then his word is accepted over hers unless he admits that she first made herself available to him, but claims she then refuses, in which case her word is accepted over his.

@M11.2Whenever the husband neglects to provide his wife's support for a period of time, the amount he should have paid remains a debt he owes to her.

@M11.3The wife is entitled to annul their marriage whenever the husband is unable to provide her with the support obligatory for a nonaffluent person to pay (def: m11.2) and provide clothing or housing for her.
If she wishes, she may choose to bear with him (O: supporting herself with her own

money), and it (O: the amount the husband is unable to pay) remains a financial obligation that he owes her (O: If she does not wish to tolerate his financial incapacity, she cannot annul the marriage by herself, but must establish her husband's inability to support her before the Islamic judge, who annuls the marriage or allows her to do so, since he is the one who judges the matter (A: and if there is no judge, she has two persons (Def: o21.4) decide)).)

@M11.14The wife is not entitled to annul the marriage when the husband is unable to provide foods besides the staple food, support her servant, or provide the support that must be provided by an affluent person or person between affluence and nonaffluence (def: m11.2).

*2*Chapter M12.0: Support of One's Parents and Children

@M12.1It is obligatory for one to support the persons listed below, whether one is male or female, when one has money in excess of one's own living expenses and (n: if male,) those of one's wife (O: meaning enough for a day and night, oneself taking priority over others, followed by one's wife, who takes precedence over other family members) :
-1- one's father, father's father, and on up;
-2- one's mother, grandmothers (from either parent's side) and on up (O: it making no difference what their religion is (A: since the religion of the family members is of no consequence in any of the rulings of this section)) :
-3- and one's children, male and female, their children, and on down.
(O: Money in excess of one's own living expenses and those of one's wife means one is obliged to sell (A: if necessary to fulfill the obligation to support the above-mentioned persons) whatever must be sold when one has to pay debts, including real estate and other property.)
But supporting the above-mentioned persons is only obligatory when:
(a) there is poverty (O: a restriction applicable to both support of one's ancestors and one's descendants, meaning that it is necessary in order for it to be obligatory to support one's ancestor that the ancestor be poor, since if he has enough money, one need not support him);
(b) an incapacity (O: to earn a living) due to chronic illness, being a child, or to mental illness. (O: This condition is only applicable to support of one's offspring, not of one's ancestors. If an (A: impoverished) ancestor (A: such as one's father) were able to earn a living from a job suitable to him, it would nevertheless be obligatory for one to support him, and he would not be called upon to gain livelihood, because of the extreme respect due to him, as opposed to one's descendant, whom one need not support if the descendant is able to earn his own living, but who rather is called upon to do so
himself.
The upshot is that the support of whoever has enough money for their own support is not obligatory upon another family member, no matter whether the former is mentally ill or sane, a child or adult, chronically ill or well; because he does not deserve charity in such a condition-while a descendant able to earn an adequate living does not deserve support from his ancestors.)

@M12.2A child is obliged to support his father's wife (A: if the father cannot).

@M12.3When a person has both ancestors and children (A: deserving support) but does not have enough for all, then (O: after himself and then his wife) he gives precedence (A: in order) to :
-1- his mother
-2- his father
-3- his young son (O: or daughter)
-4- and then to his adult children (A: if they are unable to earn).

@M12.4The amount of such support must be enough to suffice, though (N: if this much is not paid) it does not become a debt owed by the person who should have given it. (O: It is no longer obligatory after its time has passed (A: but if the deserving person borrows money to support himself during this period, the person who should have

supported him is obliged to pay the debt), even though the person who was obliged to give it has committed a sin by thus allowing the time to pass.

@M12.5When a father who is poor needs to marry, then a son who is financially able must provide him with the means to keep chaste by finding him a wife (O: i.e by giving her the marriage payment (mahr, def: m8). It is not permissible to marry him to a deformed or aged women).

@M12.6Whoever owns an animal is obliged to pay for its maintenance.
(O: The restoration and maintenance of property without a living spirit, such as a canal or house, is not obligatory for its owner. Mutawalli explains this by the fact that such maintenance is an augmentation to the property and as such is not mandatory, as opposed to livestock, whose owner must feed them, since to neglect to do so would entail harm for them. Other scholars explain the difference in terms of the sacredness of animate life, which the author of al-Istiqsa' (n: `Uthman ibn `Isa Marani) says is the reason that it is wrong for someone to prevent living things from drinking surplus water (dis: p69), while it is not a sin to neglect watering crops.)

*2*Chapter M13.0: Child Care and Custody

@(O: The meaning of child care in Sacred Law is the protection of someone who does not possess discernment and cannot manage for himself, whether a child or a mentally ill adult, by seeing to his interests through such things as bathing him, washing his clothes, or grooming him; or securing an infant in the cradle, turning him over to sleep, and protecting him from death or harm. It entails a kind of authority and control and may be possessed by either men or women, though women have a better right to it, since they are tenderer towards children, more patient in carrying out the demands of the task, more discerning in raising children, and more steadfast in staying with them. The following discussion first centers on who best deserves the custody of a child, in order of precedence, and then treats the characteristics of the guardian and ward.)

@M13.1The person with best right to custody of a child (A: in order) (O: when there is a dispute concerning who should have it) is:
-1- the mother;
-2- the mother's mother, mother's mother's mother, and on up, such that the one of the generation closest to the child takes precedence;
-3- the father;
-4- the father's mother, father's mother's mother, and on up, where again, the one of the generation closest to the child takes precedence;
-5- the father's father;
-6- the father's father's mother, her mother, and on up, where the one of the generation that is closest takes precedence;
-7- full sister;
-8- full brother (O: though when the siblings are all male or all female and there is a disagreement over who should have custody, they draw lots to see who will get it. When both males and females exist, females take precedence);
-9- the child's half brothers or sisters from the same father;
-10- the half brothers or sisters from the same mother;
-11- the mother's sister;
-12- the daughters of the full brothers;
-13- the sons of the full brothers;
-14- the daughters of the half brothers from the same father;
-15- the sons of the half brothers from the same father;
-16- the daughters of the half brothers from the same mother;
-17- the sons of the half brothers from the same mother;
-18- the father's sister;
-19- the father's brother;
-20- the daughters of the mother's sister;
-21- the daughters of the father's brother:
-22- and then the son of the father's brother.

@M13.2
The necessary conditions for a person to have custody of a child are:
(a) uprightness (def: o24.4) (O: a corrupt person may not be a guardian, because child care is a position of authority, and the corrupt are unqualified for it. Mawardi and Ruyani hold that outward uprightness (def: m3.3(f)) is sufficient unless there is open wrongdoing. If the corruptness of a child's mother consists of her not performing the prayer (salat), she has no right to custody of the child, who might grow up to be like her, ending up in the same vile condition of not praying, for keeping another's company has its effects);
(b) sanity (O: since a mother uninterruptedly insane has no right to custody, though if her insanity is slight, such as a single day per year, her right to custody is not vitiated by it);
(c) and if the child is Muslim, it is a necessary condition that the person with custody be a Muslim
(O: because it is a position of authority, and a non-Muslim has no right to authority and hence no right to raise a Muslim. If a non-Muslim were given charge of the custody and upbringing of the child, the child might acquire the character traits of unbelief (kufr)).

@M13.3(A: It is offensive to send one's children to a day-care center run by non-Muslims. It is unlawful to send Muslim children to Christian schools, or those which are designedly atheist, though it is not unlawful to send them to public schools in which religion is not mentioned (N: in a way that threatens the students' belief is Islam).

@M13.4A woman has no right to custody (A: of her child from a previous marriage) when she remarries (O: because married life will occupy her with fulfilling the rights of her husband and prevent her from tending the child. It makes no difference in such cases if the (A: new) husband agrees or not (N: since the child's custody in such a case automatically devolves to the next most eligible on the list (dis: M13.1)), unless the person she marries is someone (A: on the list) who is entitled to the child's custody anyway (O: as opposed to someone unrelated to the child, since such a person, even if willing, does not deserve custody because he lacks the tenderness for the child that a relative would have).

@M13.5When a child reaches the age of discrimination (O: which generally occurs around seven or eight years of age) he is given a choice as to which of his parents he wants to stay with (O: since the Prophet (Allah bless him and give him peace) gave a young boy the choice between his father and his mother.
The child is only given such a choice when the necessary conditions for child custody (def: m13.2) exist in both parents. If one of them lacks a single condition, then the child is not given a choice, because someone lacking one of the conditions is as though nonexistent).
If the child chooses one of the parents, he is given to the care of that lone, though if a son chooses his mother, he is left with his father during the day so the father can teach him and train him. (O: Other possible outcomes of such a choice are when the child chooses both parents, in which case they draw lots to see who receives custody of him; or when he chooses neither, in which case the mother takes precedence since the custody is hers, and the child has not chosen someone else.) If the child subsequently chooses the other parent, he is given to the care of them (O: for he might want to stay with one of them at one time and with the other at another, just as one desires food at one time but not another. Or the child's intention might be to maintain good relations with both sides. The author restricts the permissibility of such cases of transferring the child's custody from one to another by saying:) unless it is apparent that the child is merely enamored with going back and forth or is weakminded (O: indicating his lack of discernment. In such cases his choice is not followed, and he remains with whomever he was with before reaching the age of discernment).

*1*BOOK N: DIVORCE

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*2*Chapter N1.0: Who May Effect a Divorce

@(O: The legal basis for the permissibility of divorce is the Koran, sunna, and consensus of Muslims. As for the Koran, Allah Most High says,
"Divorce is two times...'' (Koran 2:229).
And as for the sunna, there is the rigorously authenticated (sahih) hadith.
"No permissible thing is more detested by Allah than divorce.''
Our sheikh, Bajuri, says the meaning of permissible in the hadith is offensive, since it is permissible, meaning lawful, though detested by Allah.
Its integrals are five:
(a) the spoken form;
(b) the wife;
(c) the authority to effect it;
(d) the intention:
(e) and the person who effects it (A: i.e. the husband).)

@N1.1Divorce is valid from any:
(a) husband;
(b) who is sane;
(c) has reached puberty;
(d) and who voluntarily effects it.
A divorce is not valid from:
-1- (non-(c) above) a child;
-2- (non-(b)) someone insane;
-3- or (non-(d)) someone who is wrongfully coerced to do it, as when one is threatened with death, dismemberment, being severely beaten, or even mere verbal abuse or a slight beating if the person being coerced is someone whose public image is important and would thereby suffer. (O: Someone being forced should use words that give a misleading impression (def: r10.2) for his ostensible "divorce.'')

@N1.2A statement of divorce is legally effective when pronounced by a person whose mental faculties are lacking because of something inexcusable such as having become intoxicated or having needlessly taken some mind-altering drug (O: though someone who takes such a drug out of need for medical treatment is considered as an insane person,

in that this statement of divorce is not legally effective).

@N1.3The person conducting the divorce may effect it himself or commission another (def: k17.5-6) to do so, even if the person commissioned is a woman.
The person commissioned may effect the divorce at any time (O: provided the one who commissions him does not cancel the commission before the divorce takes place (disk: k17.16)), though when a husband tells his wife, "Divorce yourself,'' then if she immediately says, "I divorce myself,'' she is divorced, but if she delays, she is not divorced unless the husband has said, "Divorce yourself whenever you wish.''

*2*Chapter N2.0: General Provisions Concerning Divorce

@N2.1A free man has three pronouncements of divorce (O: because of the word of Allah Most High,
"Divorce is two times, then retain with kindness or graciously release'' (Koran 2:229), and when the Prophet (Allah bless him and give him peace) was asked about the third time, he said.
"It is Allah's having said, or graciously release''').

@N2.2It is offensive to make a pronouncement of divorce when there is no need (O: need including when the wife has displeasing qualities of morals), to make three pronouncements (N: even if separate) being more offensive, and combining them in one interval of purity between menstruations even more offensive.

@N2.3There are various categories of divorce: sunna, unlawful innovation, and that which is neither sunna nor unlawful innovation.
The sunna is to make a pronouncement of divorce in an interval between menstruations in which no sexual intercourse with the wife has taken place.
Unlawful innovation consists of either making a pronouncement of divorce during the woman's menstrual period when this is not for payment (O: from the wife in exchange for the husband's releasing her from marriage (def: n5), though if the divorce is in exchange for a sum paid by the wife, it is not unlawful innovation because it implies that she accepts that the waiting period should be thus prolonged (dis: n9.7)) -or else making the pronouncement during an interval between menstruations in which they have had sexual intercourse. If one effects such a divorce, it is recommended to take the wife back (O: if one did not pronounce it the full number of (n: three) times).
Neither sunna nor unlawful innovation means the divorce of a wife who is prepubescent, postmenopausal, pregnant, or one with whom one has not yet had sexual intercourse.

*2*Chapter N3.0: The Words that Effect a Divorce

@N3.1The words that effect a divorce may be plain or allusive. Plain words effect the divorce whether one intends divorce by them or not, while allusive words do not effect it unless one intends divorce by them.

@N3.2 Using plain words to effect a divorce means expressly pronouncing the word divorce (O: or words
derived from it). When the husband says' "I divorce you,'' or "You are divorced,'' the wife is divorced
whether he has made the intention or not.
(A: Here and in the rulings below, expressions such as "The wife is divorced,'' or "The divorce is effected,'' mean just one of the three times (def: n9.0(N:)) necessary to finalize it, unless the husband thereby intends a two-or threefold divorce (dis: n3.5) or repeats the words three times.)

@N3.3Using allusive words to effect a divorce includes:
-1- the husband's saying, "You are now alone,'' "You are free,'' "You are separated,'' "You are parted,'' "You are no longer lawful to me,'' "Rejoin your kin,'' "You are footloose,'' and the like;
-2- his saying, "I am divorced from you'';
-3- or when he commissions the wife to pronounce the divorce, and she says, "You are

divorced'';
-4- when someone asks. "Do you have a wife?'' and he says "No''.
-5- or when the husband writes words that effect the divorce (O: no matter whether able or unable to speak at the time of writing, or whether he is present or absent, or whether he writes in plain or allusive words).
When one intends divorce by any of the above, the words effect it, but if one does not, they do not.

@N3.4When a husband is asked, "Have you divorced your wife?'' and he says "Yes,'' then she is divorced (O: even if he does not intend).

@N3.5If the husband says, "You are divorced,'' and thereby intends a two-or threefold pronouncement, then whatever number he intends is effected, this rule holding for all words that effect divorce, whether plain or allusive. (O: The proof that a single pronouncement can validly effect a threefold divorce is the hadith classified as rigorously authenticated (sahih) by Ibn Hibban that the Prophet (Allah bless him and give him peace), when Rukana divorced his wife and then said, ``I did not intend it except as one time,'' made him swear an oath to that effect, and then returned her to him. If a single pronouncement could not effect a threefold divorce, there would not have been any point in the Prophet's making him swear the oath (Allah bless him and give him peace).)

@N3.7If a husband tells his wife, "You are divorced in sha' Allah [if Allah wills],'' or "if Allah does not will,'' or "unless Allah wills,'' then the divorce is not effected.

*2*Chapter N4.0: Conditional Expressions that Effect Divorce

@N4.1It is permissible to make the efficacy of a divorce conditional. If the husband makes the divorce conditional on something, and the event occurs, then the wife is divorced. If he says, "If your monthly period begins, you are divorced,'' then she is divorced when her menstrual flow appears.

@N4.3If the husband says, "If you leave the house without my permission, you are divorced,'' then gives her permission to go out, and she does but then goes out a second time without permission, she is not divorced.
If he says, "Anytime you go out without my permission you are divorced,'' then if she leaves at anytime without permission, she is divorced.

@N4.5When a husband makes a divorce conditional on one of his own acts but then does the act not remembering that he made it a condition, or does the act because he is forced to, the wife is not divorced.

@N4.6When the husband makes a divorce conditional on another person's act, such as by saying. ``If So-and-so enters the house, you are divorced,'' and the person enters before or after he knows it is a condition, whether remembering it or not, then if the person named is not someone who would mind if they were divorced (O: meaning it is no problem for him if it happens, and the would not be saddened if it did, because of lack of friendship for them). then the wife is divorced. But if the person knows it is a condition and enters forgetfully, then if he is someone who would mind if they were divorced, the wife not divorced.
If the husband, tells his wife, `` If you enter that house, you are divorced,'' and she is subsequently divorced,'' and she is subsequently divorced from him with a finalized divorce, after which he remarries her, and she then enters the house, then she is not divorced.

*2*Chapter N5.0: A Release for Payment from the Wife (Khul`)

@(O: A release for payment means a separation in return for remuneration given to the husband (A: which is a finalized cancellation of the marriage agreement, differing from a threefold divorce by the fact that they may remarry in such a case without her

marrying another husband first (dis: n7.7)).)
@N5.1
A release for payment is valid from any person whose divorce is valid (def: n1.1).

@N5.2Release is offensive except when:
-1- the husband or wife fear they will not be able to keep within Allah's limits (O: i.e. those that Allah Most High has made obligatory upon them (dis: m10.1)) while the marriage lasts;
-2- or when the husband swears that a threefold divorce is incumbent upon him if he performs some action, but then finds he needs to do it (O: since he cannot clear himself from the oath without giving her a release), so he releases her, marries her (O: with a new agreement, a new marriage payment (mahr), and upright witnesses), and then does the act on which the divorce was conditional (O: though it is fitter to do it before the new marriage, as the oath is nullified as soon as they are unmarried), for then its performance does not necessitate a threefold divorce.

@N5.3If the husband is foolhardy (A: meaning suspended by the court from dealing in his own money because of chronic carelessness (dis: k13.1(A:))), his granting a release is valid, though his guardian accepts the compensation.
A release for compensation is no: legally valid from a wife who is foolhardy.
@N5.4A release is validly effected by both the words for divorce and the words for release, such as ``You are divorced for a thousand,'' or ``I release you for a thousand,'' and if the wife says ``I accept,'' then she is separated from him and she owes him the thousand. She is also released when the husband says, ``If you give me a thousand, you are divorced,'' and then she gives him it, or when she says, ``Divorce me for a thousand,''and he says, ``You are divorced,'' in which case she is released and owes him the thousand.

@N5.5Anything that may be used as a marriage payment (def: m8.4) may be used as recompense for a release. If a husband releases his wife for something not determinately known (non-k2.1(e)) or without lawful value (non-k2.3) such as wine, then she is released in exchange for the amount typically received as marriage payment by women like her (def: m8.8).

@N5.6A release enacted by words that effect it is a divorce in plain words (A: in not needing the intention (dis: n3.2), (N: in having a waiting period (def: n9), and in being a finalized cancellation of the marriage, though as previously mentioned (n5.0(A:)), the partners may remarry each other (N: even if before the end of the waiting period) without the wife first having to marry another).

*2*Chapter N6.0: Doubts About the Fact of Having Divorced

@(A: Doubt means that one does not remember exactly what one said or did. As for when one is ignorant of rulings about divorce or the consequences of one's actions, it is not an excuse, and one must ask those who know.)

@N6.1Whoever does not know whether he has divorced his wife or not has not divorced her. It is more godfearing in such a case to take the wife back.

@N6.2If one does not know whether one has divorced one's wife once or whether more than once, then one has divorced her the least number one is certain of.

@N6.3When a husband divorces his wife with a threefold divorce during his deathbed illness (def: L3.6(1-4), she does not inherit (A: a wife' estate division share (def: L6.4)) from the division of his estate (A: though if it is less than a threefold divorce, she inherits).

*2*Chapter N7.0: Taking Back a Divorced Wife (Raj`a)

@(O: Lexically, to take back means returning, and in Sacred Law it means the return of a woman who is in her waiting period (def: n9) from an unfinalized, non-threefold

divorce to the state of marriage).

@N7.1When a free man pronounces divorce upon his wife once or twice after previously having had sexual intercourse with her, then if the divorce is not (A: a release) for compensation (def:n5), he may take her back at any time before the end of her waiting period (def: n9), whether she wishes to return or not. Or he may finalize the divorce during this period (A: by pronouncing it a third time).

@N7.2If the husband or wife dies (A: during the waiting period (N: of an unfinalized, nonthreefold divorce)), then the spouse inherits his or her obligatory share from the deceased's estate division (dis: L6), though it is not permissible for the husband to have sexual intercourse with, look at, or physically enjoy the wife before he takes her back.

@N7.3When a divorce occurs before the husband has made love to the wife, or afterwards (A: in a release) for compensation from her, then he may not take her back (A: without remarrying her) >

@N7.4Returning the wife to marriage is only valid by explicitly stating it, such as by saying, ``I return her,'' ``I take her back,'' or, ``I retain her.'' (N: The Hanafis consider the husband's touching her with desire, such as kissing her, to be a valid return to marriage.)

@N7.5It is not a necessary condition (O: but is sunna) to have the return attested to by witnesses.

@N7.6When a husband takes a wife back, she returns with whatever number (A: of times of saying ``I divorce you'') remains to complete a threefold divorce. (A: If, for example, he has said it twice, then she only has one time left.)

@N7.7When a free man has pronounced a threefold divorce, the divorced wife is unlawful for him to remarry until she has married another husband in a valid marriage and the new husband has copulated (dis: p29) with her, which at minimum means that the head of his erect penis fully enters her vagina.

*2*Chapter N8.0: Forswearing One's Wife More than Four Months

@(O: In Sacred Law, forswearing means that the husband swears he will not have sexual intercourse with his wife, either for an unrestricted period or for more than four months.)

@N8.1Forswearing one's wife is unlawful. It consists in the husband swearing an oath by Allah (def: o18) that for more that four months (O: more than four months including oaths in which no time period is stipulated) he will not have sexual intercourse with his wife, or swears that if he does, then he is obliged to divorce her, fast, pray, or something else.

@N8.3A husband is not considered to have forsworn his wife (A: in the above unlawful sense) when he forswears sexual intercourse for four months or less, or when he is impotent.

*2*Chapter N9.0: A Woman's Postmarital Waiting Period (`Idda)

@(O: Meaning the period in which a woman waits (N: before she may remarry) to verify that she is not pregnant, or out of mourning for her deceased husband.)
(N: If the waiting period finishes after a once-or twice-pronounced divorce, the wife is free to marry another man or to remarry the husband with a new contract-returning to the latter with the number of times left (one or two) needed to enact a threefold, finalized divorce (dis: n7.7); while if the waiting period of a less-than-thrice-pronounced divorce has not yet expired, the husband may take her back (def: n7) without a new contract.)

(n: The husband's obligation to support her during the waiting period is discussed at m11.10 above.)

@N9.1There is no waiting period for a woman divorced before having had sexual intercourse with her husband.

@N9.2A waiting period is obligatory for a woman divorced after intercourse, whether the husband and wife are prepubescent, have reached puberty, or one has and the other has not.
Intercourse means copulation (def: n7.7). If the husband was alone with her but did not copulate with her, and then divorced her, there is no waiting period.

@N9.3When a waiting period is obligatory (O: upon a woman, cause of divorce or annulment of marriage), then if she is pregnant, the waiting period ends when she gives birth, provided tow conditions are met:
(a) The first is that she has given birth to all she was carrying, If carrying two or more children, it is necessary that she have given birth to all, whether live or stillborn, and whether fully developed or an undeveloped fetus which midwives (O: two or more) swear is the beginning of a human form.
Whenever there is less than six months between two births, the babies are considered twins. There is no maximal number that may be born, as it is possible for a woman to give birth to four or more babies from one pregnancy.
(b) The second condition is that the child is from the husband whom the waiting period is for. If the woman is pregnant from committing adultery (def: n11.2(O:)) (O: or from a marriage which was invalid, after which the husband divorced her), the waiting period does not end when she gives birth, but rather (N: after giving birth), she completes the waiting period of a woman who has been divorced (def: n9.6).

@N9.5The minimal duration of a pregnancy (A: from which a live child is born) is six months, while the maximum is four years).

@N9.6If a woman is not pregnant and has menstrual periods, her waiting period ends when three intervals between menstruations have finished. A part of an interval between menstruations is considered the same as a whole interval. Thus, if the woman's husband divorced her and her menses began an instant later, her waiting period would end after two more intervals between menstruations had finished and a third menstruation begun.

@N9.7If a woman is divorced during her menstrual period, she must wait until the end of three intervals between menstruations. When her fourth menstruation begins, her waiting period is over.

@N9.8There is no difference in respect to the above rulings (n9.6-7) whether a woman's menstrual periods are close together or far apart, close together, for example, meaning a woman whose period lasts a single day and night, and who has fifteen days between periods. Were such a woman divorced just before the end of an interval between menses (A: by a single moment), then her waiting period would finish in thirty-two days and two moments (O: one of which would be part of the waiting period, i.e. the one in which the divorce occurred, and the second of which would not be part of it, namely, that in which it became evident that the waiting period was over by the onset of a subsequent menstruation).
If such a woman were divorced at the end of a menstrual period, her waiting period would be forty-seven days plus a moment. These are the shortest possible waiting periods.
An example of a woman whose periods are far apart is one whose menstruation lasts fifteen days, and whose intervals between menses last, for example, a year or more. Such a woman must wait for three intervals between menstruations, even if it takes years (N: though medicine may be taken to induce or regulate menstruations).

@N9.9The waiting period for a woman who does not menstruate, whether prepubescent or postmenopausal, is three months.
If a woman normally menstruates, but her periods have stopped for some reason such as

breastfeeding or the like, or without apparent reason, then she must wait until the age of menopause, after which her waiting period is three months. (N: In the Maliki school, such a woman must wait nine months, and if neither pregnancy nor menses appear, she is considered to be as if menopausal, and her waiting period is three more months, making a total of one entire year in which there is no menstrual flow.)

@N9.10All of the above rulings apply to the waiting period for divorce (N: or release (def: n5)).

@N9.11: The Waiting Period for a Deceased Husband
If a woman's husband dies, even if during the waiting period of a nonfinalized divorce, then if she is pregnant, her waiting period ends when she gives birth, as previously mentioned (n9.3). But if not (O: i.e. if the deceased's wife is not pregnant from him), her waiting period is four months and ten days, no matter whether she normally menstruates or not (N: and no matter whether the husband has had sexual intercourse with her or not).

@N9.13: The Lodgings of a Woman in Her Waiting Period
A woman in her waiting period is obliged to remain in the home (O: and neither the husband nor his family may force her out; nor may she leave. If the husband agrees to allow her to leave when there is no necessity, it is still not permissible).
A woman in the waiting period of an unfinalized, less than threefold divorce is under the husband's authority and may not leave without his permission. If in the waiting period of a finalized divorce (N: or release (def: n5)) (O: or annulment,) or after her husband's death, a woman may leave home during the day to fulfill her needs (N: including work, if she has no means of support) and obligations.

@N9.14The waiting period must take place in the same lodgings where the divorce occurred, and the woman may not be moved to other quarters unless there is a real necessity, such as fear (O: for her person or property), or when the landlord objects (O: such as when the house in question was on loan to the husband and its time has expires), or because of considerable annoyance to the woman from neighbors or the husband's relatives, or annoyance to them from her-in all of which cases she may move to the nearest available housing.

@N9.15It is unlawful for the husband of a woman in her waiting period to be alone with her or share the same housing (N: i.e. he must move out) unless she is in a (O: separate) wing of the house (O: with its own kitchen, restroom, cistern, and stairs to the roof, in which case it is permissible to share the housing, which is as if it were two neighboring houses).

@N9.16: Avoiding Adornment After a Husband's Death or a Finalized Divorce
It is obligatory for a woman whose husband had dies (N: while she was his wife, or died while she was in the waiting period of an unfinalized divorce form him) to avoid adornment during the subsequent waiting period. It is recommended for a woman to do so during the waiting period of a finalized divorce. It is unlawful for a woman to avoid adornment longer than three days for the death of anyone besides her husband. Avoiding adornment means not to enhance her beauty, wear jewelry or cosmetics, and so forth. A woman avoiding adornment should not wear solid colors (N: if intended to beautify) such as blues, greens, reds, or yellows; or style her hair or use cosmetics for body, clothes, or food (A: such as saffron in rice). She may wear silk, wash her hair (N: or comb it, or bathe) for cleanliness, or pare her nails during this period.

@N9.17: The End of the Waiting Period
If the husband of a woman in her waiting period takes her back but divorces her again before having had sexual intercourse with her, then a new waiting period starts over from the beginning (N: though it is unlawful for him to do this merely to prolong her waiting period).
If a husband releases his wife for payment (def: n5), remarries her during the release's waiting period, but divorces her before having had sexual intercourse, then she merely finishes the remainder of the release's waiting period.

@N9.18When a woman claims that her waiting period has expired (O: if it does not comprise a particular number of months, but rather consists of a number of intervals between menstruations, or of giving birth) within an amount of time in which it could have possibly ended, then her word is accepted (dis: K8.2).

@N9.19If news of a husband's death reaches a woman after his death by four months and ten days, her waiting period is already over (O: since her knowledge of his death is not a condition for the waiting period).

*2*Chapter N10.0: Establishing Paternity

@N10.2The husband of a woman who bears a child (O: no matter whether his marriage to her is valid or invalid) is considered to be the child's father whenever it is (N: legally) possible that the child could be his, meaning that:
(a) the woman gave birth to the child six months plus a moment after the marriage agreement;
(b) she gave birth to it less than four years from when she and her husband could last have possibly met and had sexual intercourse, even if they were living at a distance from one another, and even if the husband does not know whether he had sexual intercourse with her. (A: These conditions are for the child's protection against being disowned, and only concern what can be established in court. Hence, if the husband and wife were living apart at a distance at which they could possibly have travelled and met, for the child's sake the court presumes the child to be the husband's) '
(c) and the husband is at least nine and a half years old.

@N10.3The husband is not legally considered the child's father when the child could not possibly be his, such as when:
-1- (non-(a) and (b) above) the wife gave birth to the child in less than six months or more than four years since intercourse;
-2- (non-(b)) the husband is absolutely certain he did not have sexual intercourse with her;
-3- (non-(c)) the husband is under the above-mentioned age;
-4- or the husband's genitals have been dissevered.

@N10.4Whenever a husband is absolutely certain that a child which is legally considered his (def: n10.2) is not his, by knowing that he never had intercourse with the wife at all (O: or did, but less than six months or more than four years before the birth), then he is obliged to deny paternity by public imprecation (i`an, def: n11.3) (O: immediately, because denying paternity of a child immediately is like the return of defective merchandise (dis: k5.7). He does so by going to the Islamic judge and saying, "This child is not mine.'' If he delays, his denial is no longer valid. As for the public imprecation itself, he may perform it at any time thereafter. If he claims that he was ignorant of the necessity of denying paternity, or the obligatory character of its immediacy, and he is someone who might well be ignorant of it, then his claim (A: of ignorance) is accepted when he swears an oath to that effect. Denial of paternity likewise entails charging the wife with adultery, and this too is obligatory immediately).

@N10.5If a husband is not absolutely sure that the child is from someone else, it is unlawful for him to deny paternity (O: as mere doubts that have arisen in his mind are of no consequence) and unlawful to charge his wife with adultery. (O: It is also unlawful for him to publicly imprecate (def: n11.3) against her in such a case, even when he knows she has committed adultery, because the child would suffer harm through his mother being charged with adultery and its being established against her by public imprecation, the child being disgraced by this and gossip circulated about him. The child need not endure this harm merely to satisfy the husband's revenge, who may separate from her by divorce).

@N10.6When a child is legally considered (def: n10.2) to be from a husband who is entitled to deny paternity but delays doing so without excuse and subsequently wants to

deny it by public imprecation, we (O: i.e. the judge) do not allow him to do so (O: because denial of paternity must take place immediately, as mentioned above (n10.4), and his delay obviates the possibility of denial). But if the husband intends to deny paternity immediately, we implement his intention.

*2*Chapter N11.0: Charging One's Wife with Adultery

@N11.1Anyone who charges his wife with adultery (O: in plain words, as when he says, ``you adulteress,'' or allusively, as when he says, ``I did not find you a virgin,'') and who is thereby liable to be punished for accusing another of adultery without witnesses (dis: o13.1), may prevent the punishment by public imprecation against her (li`an, def: n11.2), provided he:
(a) has reached puberty;
(b) is sane;
(c) does so voluntarily;
and provided his wife:
(d) is legally innocent of adultery (A: meaning there is neither a confession from her nor four eyewitnesses (dis: n11.2(O:)));
(e) and that she is capable of sexual intercourse.

@N11.2 A husband who accuses his wife of adultery is disciplined (ta`zir, def:o17) by the magistrate and not allowed to imprecate against her when her adultery is already legally established (O: whether by her own admission, or by proof, meaning that four upright witnesses (o24.4) have looked at her when she was copulating and seen the adulterer's penis in her vagina), or when (N: adultery is impossible, such as when) the person accused is a mere infant.

@N11.3: Public Imprecation (Li`an)
Public imprecation consists of the Islamic magistrate (O: or his equivalent) telling the husband to repeat four times, ``I testify by Allah that I am truthful in charging her with adultery'' (O: and it is necessary to identify her by her first and family name, though if she is present he says, ``this wife of mine,'' and points to her); and if there is a child, ``and that this child [O: or if absent, ``the child she gave birth to from adultery''] is not from me.'' The fifth time, after the magistrate warns him, enjoins him to fear Allah (O: reminding him that the punishment of the hereafter is worse than punishment in the present life), and after he has put his hand in from of the husband's mouth, the husband adds, ``And may the curse of Allah be upon me if I am lying.''

@N11.4When the husband has done this, he is no longer liable to be punished for accusing another of adultery without witnesses, he has denied paternity of the child, and his wife is divorced from him and unlawful for him to marry, be alone with, or look at, forever. She is now liable to be punished for adultery.

@N11.5The wife in such a case may avoid being punished for adultery by public imprecation against the husband. Upon being ordered by the magistrate, she says four times, `` I testify by Allah that he is lying about what he has charged me with.'' The fifth time, after being warned by the magistrate of the severity of the consequences, as described above, she says, ``And may the wrath of Allah be upon me if he is telling the truth.'' When she has done this, she is no longer liable to be punished for adultery.
@N11.6
(O: Public imprecation is legally valid in a non-Arabic language even when the speaker knows Arabic, because the imprecation is a kind of oath or attestation, either of which may be given in any language.)

*2*Chapter N12.10: Becoming Unmarriageable Kin By Suckling (Rida`)

@N12.1An infant becomes the ``child'' of the female who breast-feeds him (A: in respect to being unable to marry her, to the permissibility of looking at her and being alone with her, and in his ablution (wudu) not being nullified by touching her) when:

(a) the milk comes from a female at least nine years old, whether it is occasioned by sexual intercourse or something else;
(b) and she breast-feeds a child who is less than two full years old;
(c) in at least five separate breast-feedings (O: a restriction that excludes anything less than five, which is of no consequence. Separate breast-feedings means whatever is commonly acknowledged (def: F4.5) to be separate).

@N12.2In such a case:
-1- it is unlawful for the wet nurse to marry the child and its subsequent descendants (O: by familial relation or by suckling) exclusively (O: exclusively meaning that only the child's descendants become unlawful for her to marry, not the child's ancestors (N: or brothers));
-2- she becomes the child's ``mother,'' and it is unlawful for the child to marry her, her ancestors (O: by familial relation or by suckling), her descendants (O: who become as if they were the child's brothers and sisters), or her brothers and sisters (O: though the child is not forbidden to marry the latters' children).

@N12.3If the wet nurse's milk was occasioned by a pregnancy from her husband, then:
-1- the child she nurses becomes the husband's ``child,'' and the husband may not marry the child or its descendants (O: by familial relation or by suckling, since they are now as if his grandchildren) exclusively;
-2- and the husband becomes the child's ``father,'' and it is unlawful for the child to marry him, his ancestors, his descendants, or his brothers and sisters.

@N12.4Upon becoming unmarriageable kin through suckling, marriage between the above-mentioned persons is prohibited, and it is permissible for the respective members of the opposite sex to look at each other as they do with their familial unmarriageable relatives (dis: m2.5), and to be alone with them (O: though other kinds of rulings applicable to natural relatives, such as inheritance (def: L4-6) or having to support them (m12) are not applicable to unmarriageable kin by suckling).

*1*BOOK O: JUSTICE

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*2*Chapter O1.0: Who is Subject to Subject to Retaliation for Injurious Crimes

@(O: Injurious crimes includes not only those committed with injurious weapons, but those inflicted otherwise as well, such as with sorcery (def: x136). Killing without right is, after unbelief, one of the very worst enormities, as Shafi`i explicitly states in (n: Muzani's) The Epitome. The Prophet (Allah bless him and give him peace) said:
``The blood of a Muslim man who testifies that there is no god but Allah and that I am the Messenger of Allah is not lawful to shed unless he be one of three: a married adulterer, someone killed in retaliation for killing another, or some-one who abandons his religion and the Muslim community,''
and in another hadith,
``The killing of a believer is more heinous in Allah's sight that doing away with all of this world.''
Allah Most High says:
``... and not to slay the soul that Allah has forbidden, except with right'' (Koran 6:151),and,``O you who believe, retaliation is prescribed for you regarding the slain...'' (Koran 2:178).)

@O1.1Retaliation is obligatory (A: if the person entitled wishes to take it (dis: o3.8)) against anyone who kills a human being purely intentionally and without right. (O: Intentionally is a first restriction and excludes killing someone through an honest mistake, while purely excludes a mistake made in a deliberate injury (def: o2.3), and without right excludes cases of justifiable homicide such as lawful retaliation.)
@O1.2
The following are not subject to retaliation:
-1- a child or insane person, under any circumstances (O: whether Muslim or non-Muslim. The ruling for a person intermitently insane is that he is considered as a sane person when in his right mind, and as if someone continously insane when in an interval of insanity. If someone against whom retaliation is obligatory subsequently becomes insane, the full penalty is nevertheless exacted. A homicide committed by someone who is drunk is (A: considered the same as that of a sane person,) like his pronouncing divorce (dis: n1.2));
-2- a Muslim for killing a non-Muslim;
-3- a Jewish or Christian subject of the Islamic state for killing an apostate from Islam (O: because a subject of the state is under its protection, while killing an apostate from Islam is without consequences);
-4- a father or mother (or their fathers of mothers) fir killing their offspring, or offspring's offspring;
-5- nor is retaliation permissible to a descendant for (A: his ancestor's) killing someone whose death would otherwise entitle the descendant to retaliate, such as when his father kills his mother.

*2*Chapter O2.0: Internationality in Injurious Crimes

@O2.1Injurious crimes (O: of all types, whether killing or something less) are of three types:
-1- an honest mistake;
-2- a mistake made in a deliberate injury;
-3- or purely intentional.

@O2.2An honest mistake is an act such as shooting an arrow at a wall and hitting a person (O: or shooting at a person and hitting someone else), or slipping from a height and falling on someone. The criterion for it is that the act is intended but not the person, or neither the act nor the person is intended.

@O2.3A mistake made in a deliberate injury is when one intends an injury that is not generally fatal, such as hitting someone with a light stick in a nonvital spot (A: from which the person dies) and the like.

@O2.4Purely intentional means to intend and injury of the type that is generally fatal, whether with a blunt instrument or a sharp one.

*2*Chapter O3.0: Retaliation for Bodily Injury or Death (Qisas)

@O3.1Retaliation is obligatory (A: if those entitled wish to take it (dis: o3.8)) when there is a (N: purely) intentional injury (def: o2.4) against life or limb.

@O3.2Retaliation is obligatory in return for injuries (A: part for commensurate part) whenever the retaliatory injury can be (O: fully) inflicted without exceeding the extent of the original injury, such as (A: when the retaliatory injury is on) an eye, eyelid, the soft part of the nose, the ear, tooth, lip, hand, foot, finger, fingertip, penis, testicles, vulva, and the like; provided that the retaliatory injury is like the origina, meaning that a right member is not taken for a left, an upper one for a lower, nor a functional member for a paralyzed one. (N: Nor is there retaliation for nonfatal bullet wounds in the stomach or chest, for example, because such injuries cannot be reproduced without risk of greater damage than the original, for which reason they call for an indemnity (dis: o4.15) alone.) There is no retaliation for (O: breaking) a bone (A: though payment is due to cover the cost of treatment and so forth).

@O3.3Females are entitled to retaliate against males, children against adults, and lower class people against upper class; whether the retaliation is a life for a life, or limb for a limb.

@O3.4It is not permissible to exact retaliation against someone without the presence of the caliph (def: O25) or his representative (O: meaning that it is necessary to have the permission of one of them because of the danger and lack of knowledge involved in exacting retaliation oneself, as it requires the judgement and personal reasoning of a ruler. If someone takes retaliation without the caliph's permission, then it is valid (A: i.e. suffices the demand for it) but the person who took it is disciplined (def: o17) for arrogating the caliph's prerogative, since administering retaliation is one of his functions, and to encroach upon it is wrong).
If a person who is entitled to retaliate is able to do so proficiently (O: being a strong man who knows how to do it), he is allowed to. If not, he is ordered (N: by the rules or his representative) to have another do it.

@O3.5If two (O: or more) people are entitled to exact retaliation against the offender, it is not permissible for just one of them to insist on doing so (O: though if they choose one of themselves to exact it, this is permissible, and the one chosen is considered as the other's commissioned agent. The two may not take retaliation together, as this amounts to torturing the person being retaliated against). If each insists that he be the one, they draw lots to see who will do it.

@O3.6There is no retaliation against a pregnant woman until she has given birth and the infant is able to suffice with another's milk.

@O3.8Whenever someone who is entitled to exact retaliation decides instead to forgive the offender and take an indemnity (def: o4) from him, then retaliation is no longer called for, and the deserving person is entitled to the indemnity. If some of a group of people who are entitled to retaliation agree to forgo it, as when a murder victim has children and one of them forgives the murderer, then retaliation is no longer

obligatory, and the group deserves an indemnity from the offender. (A: Or the indemnity may also be waived.)

@O3.9 When someone kills a group of people or maims them one after another, retaliation is exacted for the first individual attacked, and the other deserving parties receive an indemnity. If the offender injures them all at one, then those entitled to retaliate against him draw lots to determine who will do so.

@O3.10 When a group of people together murder a single person, they are all killed in retaliation, no matter whether the amount of injury inflicted by each upon the victim is the same or whether it differs.

@O3.12There is no retaliation against anyone for an injury or death caused by someone who did so intentionally but in conjunction with someone who did so by mistake.
When an injurious crime is caused by a nonfamily member in cooperation with the victim's father, retaliation is only taken against the nonfamily member (dis:o1.2(4)).

@O3.13

Retaliation is also obligatory (dis: o3.8) for every wound that cuts to the bone, such as a cut on the head or face that reaches the skull, or a cut to the bone in the upper arm lower leg, or thigh. To the bone means that it is known that a knife or a needle, for example, has reached the bone, not that the wound actually exposes the bone to view.

*2*Chapter O4.0: Indemnity (Diya)

@(A: The rulings below concern the maximum that the victim or victim's family may demand. If both sides agree on an indemnity of lesser amount, or nothing at all, this is legally valid and binding.)

@O4.1An indemnity is obligatory (N: though it may by waived by deserving recipients, like retaliation) in cases of death caused:
-1- by an honest mistake (def: o2.2) '
-2- by a mistake made in a deliberate injury (o2.3);
-3- or intentionally, if those entitled to retaliate agree to forgo retaliation (dis: o3.8).

@O4.2The indemnity for killing a male Muslim is 100 camels.
(N: Shafi`i scholars early converted the pastoral equivalents to gold dinars (n: one dinar equalling 4.235 grams of gold (dis: w15)), the amount due in the rulings below being the weight of the gold, regardless of its current market value.) (A: The stronger position in the Shafi's school is that indemnities should be reckoned in camels, after which both parties may agree on a lesser amount or another form of payment.)

@O4.3: The Indemnity for a Purely Intentional Killing
The indemnity for cases of purely intentional homicide (def: o2.4) is made severe in three ways:
(a) it must be paid immediately;
(b) it is due from the offender himself;
(c) and the amount paid is (N: 1.333.3 gold dinars (n: 5,646.6 grams of gold) or else:) 30 she-camels in their fourth year, 30 she-camels in their fifth year, and 40 pregnant she-camels.
@O4.4: The Indemnity for Death by Mistake in a Deliberate Injury
When the killing is a mistake made in a deliberate injury (def:o2.3), the indemnity is only made severe in one respect, namely that the payment consists of the three types of camel mentioned above (n: or 5,646.6 grams of gold), while it is less severe in that:
(a) payment is deferred (def: o4.11);
(b) and is due (N: not from the offender, but) from those of the offender's extended family who are required to pay (`aqila, def: o4.10).
@O4.5: The Indemnity for a Death Caused by an Honest Mistake

When the killing occurred through an honest mistake (def: o2.2), the indemnity is less severe in three ways:
(a) payment is deferred;
(b) it is due from those of the offender's extended family who are required to pay (def: o4.10);
(c) and the amount paid is (N: 1,000 gold dinars (n: 4,235.0 grams of gold) or: 20 she-camels in their second year, 20 she-camels and 20 he-camels in their third year, 20, she-camels in their fourth year, and 20 she-camels in their fifth year.
@O4.6
But no matter whether the killing was a mistake or intentional, the three-types-of-camel-indemnity (def: o4.3(c)) must be paid if the person killed was:
-1- an unmarriageable kin by birth relative of the killer (def: m6.1(1-8) and m6.2(1-6)) :
-2- slain in the Sacred Precinct in Mecca:
-3- or killed during one of the sacrosanct months of Dhul Qa`da, Dhul Hijja, Muharram, or Rajab.

@O4.7Defective animals may not constitute payment.

@O4.8It is permissible for deserving recipients to accept payment other than camels if both parties agree.

@O4.9(A: For the rulings below, one multiplies the fraction named by the indemnity appropriate to the death or injury's type of intentionality and other relevant circumstances that determine the amount of a male Muslim's indemnity (def: o4.2-6 and o4.13).)
The indemnity for the death or injury of a woman is one-half the indemnity paid for a man.
The indemnity paid for a Jew or Christian is one-third of the indemnity paid for a Muslim. The indemnity paid of a Zoroastrian is one-fifteenth of that a Muslim.
When a miscarriage results from someone having struck the stomach of a pregnant woman (O: or other part of her, or when someone frightens her, resulting in a miscarriage), the indemnity for the fetus is a male or female slave worth one-twentieth of the indemnity payable for killing the fetus's father, or one-tenth that of its mother. (A: The indemnity is whatever they agree upon.)

@O4.10The members of the offender's extended family who are liable for certain kinds of indemnities consist of the offender's universal heirs, excluding his father, father's father (O: and on up), his son, son's son (O: and on down). (A: Meaning that they consist of those mentioned at L10.6(7-14).) Those of the extended family who are poor (A: poor meaning someone who has enough for himself but no more), prepubescent, or insane are not obliged to pay (N: anything in conjunction with the other members). If the offender is Muslim, then his non-Muslim relatives are not obliged to pay, as is also the case if the
offender is non-Muslim and his relatives are Muslim.

@O4.11
When the extended family is obliged to, they must pay the entire indemnity of 100 camels (N: or the gold equivalents) within three years. Every required extended family member who is well-off is obliged to pay one-half dinar (n:2.1175 grams of gold) at the end of each year, while every member who is between affluence and poverty is obliged to pay a quarter dinar (n; 1.05875 grams of gold). If any of the indemnity remains to be paid after three years (N: or if the offender has no family to pay it), it is paid by the Muslim common fund (bayt al-mal). If there is none, the offender himself must pay.

@O4.12When the indemnity due is less than a full indemnity (A: full meaning that which is due for a Muslim male (def: o4.2-6)), as when it is for a wound, miscarriage, female, or a Jewish or Christian subject of the Islamic state, then:
-1- if it consists of one-third or less of a full indemnity, it must be paid within one year;
-2- if it consists of two-thirds or less of a full indemnity, then one of the thirds

must be paid in the first year, and the rest in the second year;
-3- and if it amounts to more than two-thirds of a full indemnity, then the two-thirds must be paid within two years and the rest in the third year.

@O4.13: The Indemnity for Bodily Injuries
If a nonpaired body part of aesthetic value and utility (A: a tongue, for example) is dissevered, then a full indemnity is paid, meaning the indemnity due if the member's owner were killed (def: o4.2-6, O4.9).
The same is due for each pair of limbs: if both are cut off, a full indemnity is paid, while if only one is cut off, then half the full indemnity. The same is true for the faculties of sense (A: such as hearing) : for each faculty the injury eliminates, there is a full indemnity. Thus, a full indemnity is paid for cutting off two ears, and a half indemnity for one. This also holds for a pair of eyes, lips, jaws, hands, feet, buttocks, testicles, eyelids, the nipples of a female, vulval labia, the soft part of the nose, the tongue, head of the penis, or whole penis. A full indemnity is also paid for injuries which paralyze these members, or for injuring the peritioneal wall between vagina and rectum so they become one aperture, or for flaying a person, breaking his back, or eliminating the use of his mind, hearing, vision, speech, sense of smell, or taste.

@O4.14The indemnity for each finger is ten camels, and five for each tooth (N: or 10 and 5 percent respectively of the equivalent gold values (def: o4.3-5), depending on the relevant circumstances (dis: O4.9(A:))).

@O4.15As for wounds on the body, their indemnity consists of a fraction of the full indemnity proportionate (A: by the calculation of the Islamic magistrate) to the extent of the damage.

@O4.16The indemnity for wounds on the head or face, when not to the bone, is also such a proportionate fraction, though if such wounds are to the bone, as mentioned above (o3.13), the indemnity is five camels (dis: o4.14(N:)).
There are other injuries which I prefer to omit for the sake of brevity.

@O4.17There is no indemnity obligatory for killing a non-Muslim at war with Muslims (harbi), someone who has left Islam, someone sentenced to death by stoning (A: for adultery (def: o12)) by virtue of having been convicted in court, or those it is obligatory to kill by military action (N: such as a band of highwaymen).

*2*Chapter O5.0: The Expiation to Allah for Taking a Human Life

@O5.1An expiation is due to Allah Most High from anyone who kills someone unlawful to kill, whether the killing is through a mistake or is intentional, and no matter whether retaliation (def: o3) or an indemnity (o4) is obligatory or not.

@O5.2The expiation consists of freeing a slave (def: k32), or if one cannot, then two consecutive months of fasting. (O: There is no difference in this precedence order whether the killer is legally accountable or not, as when he is a child or insane, in which case the guardian must free a slave on his behalf. (A: Though if a child fasts, it fulfills the expiation.))

@O5.4(O: There is no expiation for killing someone who has left Islam, a highwayman (def: o15). or a convicted married adulterer, even when someone besides the caliph kills him.)

*2*Chapter O6.0: Fighting those Who Rebel Against the Caliph

@O6.1When a group of Muslims rebel against the caliph (khalifa, def: o25) and want to overthrow him, or refuse to fulfill an obligation imposed by Sacred Law such as zakat, and rise in armed insurrection, he sends someone to them and redresses their grievances if possible.
If they obdurately refuse to obey him (O: no matter whether he is just or unjust, as

Nawawi mentions in his commentary on Sahih Muslim, citing the consensus of Muslims (ijma`, def: b7) that it is unlawful to revolt against caliphs and fight them, even if they are corrupt), he fights them with (O: military) weaponry that does not cause general destruction, as do fire and mangonel (O: for the aim is to suppress them, not destroy them), and does not pursue those who retreat, or kill the wounded

@O6.2There is no financial responsibility for what they destroy of ours nor what we destroy of theirs in such military action.

@O6.3They are subject to Islamic laws (O: because they have not committed an act that puts them outside of Islam that they should be considered non-Muslims. Nor are they considered morally corrupt, for rebels is not a pejorative term, but rather they merely have a mistaken understanding), and the decisions of their Islamic judge are considered legally effective (O: provided he does not declare the lives of upright Muslims (def: o24.4) to be justly forfeitable) if they are such as would be effective if made by our own judge.

@O6.4If they do not rebel by war, the caliph may not fight them.

*2*Chapter O7.0: Warding Off Aggressors

@O7.1Someone whom a Muslim is trying to kill is entitled to kill the Muslim, though it is not obligatory to. Someone whom a non-Muslim or animal is trying to kill is obliged to defend himself.

@O7.2If an aggressor is trying to take one's money or property, it is permissible to defend it but not obligatory. If the aggressor intends one's womenfolk (O: such as one's wife or son's wife), it is obligatory to defend them.

@O7.3To defend means to use the minimum amount of force required. If one knows that shouting will repel the aggressor, one may not strike him. If a hand is enough, a stick may not be employed. If a stick will do, a sword may not be used. If cutting the other's hand will suffice, one may not kill him. (O: Mawardi states that this precedence order is for crimes that are not indecencies. As for when an aggressor is raping someone whom it is unlawful for him to have sexual intercourse with, it is permissible to kill him forthwith.) Someone who knows (O: i.e. believes) that an aggressor cannot be dissuaded by anything short of killing him may kill him and is not accountable for it.

@O7.4When one has warded off an aggressor, it is unlawful to take further measures against him.

*2*Chapter O8.0: Apostasy from Islam (Ridda)

@(O: Leaving Islam is the ugliest form of unbelief (kufr) and the worst. It may come about through sarcasm, as when someone is told, ``Trim your nails, it is sunna,'' and he replies, ``I would not do it even if it were,'' as opposed to when some circumstance exists which exonerates him of having committed apostasy, such as when his tongue runs away with him, or when he is quoting someone, or says it out of fear.)
@O8.1When a person who has reached puberty and is sane voluntarily apostatizes from Islam, he deserves to be killed.

@O8.2In such a case, it is obligatory for the caliph (A: or his representive) to ask him to repent and return to Islam. If he does, it is accepted from him, but if he refuses, he is immediately killed.

@O8.3If he is a freeman, no one besides the caliph or his representative may kill him. If someone else kills him, the killer is disciplined (def: o17) (O: for arrogating the caliph's prerogative and encroaching upon his rights, as this is one of his duties).
@O8.4There is no indemnity for killing an apostate (O: or any expiation, since it is killing someone who deserves to die).

@O8.5If he apostatizes from Islam and returns several times, it (O: i.e. his return to Islam, which occurs when he states the two Testifications of Faith (def: o8.7(12))) is accepted from him, though he is disciplined (o17).

@O8.6(A: If a spouse in a consummated marriage apostatizes from Islam, the couple are separated for a waiting period consisting of three intervals between menstruations. If the spouse returns to Islam before the waiting period ends, the marriage is not annulled but is considered to have continued the whole time (dis: m7.4).)

@O8.7: Acts that Entail Leaving Islam
(O: Among the things that entail apostasy from Islam (may Allah protect us from them) are:
-1- to prostrate to an idol, whether sarcastically, out of mere contrariness, or in actual conviction, like that of someone who believes the Creator to be something that has originated in time. Like idols in this respect are the sun or moon, and like prostration is bowing to other than Allah, if one intends reverence towards it like the reverence due to Allah;
-2- to intend to commit unbelief, even if in the future. And like this intention is hesitating whether to do so or not: one thereby immediately commits unbelief;
-3- to speak words that imply unbelief such as ``Allah is the third of three,'' or ``I am Allah''-unless one's tongue has run away with one, or one is quoting another, or is one of the friends of Allah Most High (wali, def: w33) in a spiritually intoxicated state of total oblivion (A: friend of Allah or not, someone totally oblivious is as if insane, and is not held legally responsible (dis: k13.1(O:))), for these latter do not entail unbelief;
-4- to revile Allah or His messenger (Allah bless him and give him peace);
-5- to deny the existence of Allah, His beginingless eternality, His endless eternality, or to deny any of His attributes which the consensus of Muslims ascribes to Him (dis: v1);
-6- to be sarcastic about Allah's name, His command, His interdiction, His promise, or His threat;
-7- to deny any verse of the Koran or anything which by scholarly consensus (def: b7) belongs to it, or to add a verse that does belong to it;
-8- to mockingly say, ``I don't know what faith is'';
-9- to reply to someone who says, ``There is no power or strength save through Allah''; ``Your saying `There's no power or strength, etc,' won't save you from hunger'';
-10- for a tyrant, after an oppressed person says, ``This is through the decree of Allah,'' to reply, ``I act without the decree of Allah'';
-11- to say that a Muslim is an unbeliever (kafir) (dis: w47) in words that are uninterpretable as merely meaning he is an ingrate towards Allah for divinely given blessings (n: in Arabic, also ``kafir'');
-12- when someone asks to be taught the Testification of Faith (Ar. Shahada, the words, ``La ilaha ill Allahu Muhammadun rasulu Llah'' (There is no god but Allah, Muhammad is the Messenger of Allah)), and a Muslim refuses to teach him it;
-13- to describe a Muslim or someone who wants to become a Muslim in terms of unbelief (kufr);
-14- to deny the obligatory character of something which by the consensus of Muslims (ijma`, def: B7) is part of Islam, when it is well known as such, like the prayer (salat) or even one rak'a from one of the five obligatory prayers, if there is no excuse (def: u2.4);
-15- to hold that any of Allah's messengers or prophets are liars, or to deny their being sent;
(n: `Ala' al-din' Abidin adds the following:
-16- to revile the religion of Islam;
-17- to believe that things in themselves or by their own nature have any causal influence independent of the will of Allah;
-18- to deny the existence of angels or jinn (def: w22), or the heavens;
-19- to be sarcastic about any ruling of the Sacred Law;
-20- or to deny that Allah intended the Prophet's message (Allah bless him and give him peace) to be the religion followed by the entire world (dis: w4.3-4) (al-Hadiyya al-

`Ala'iyya (y4), 423-24).)
There are others, for the subject is nearly limitless. May Allah Most High save us and all Muslims from it.)

*2*Chapter O9.0: Jihad

@(O: Jihad means to war against non-Muslims, and is etymologically derived from the word mujahada signifying warfare to establish the religion. And it is the lesser jihad. As for the greater jihad, it is spiritual warfare against the lower self (nafs), which is why the Prophet (Allah bless him and give him peace) said as he was returning from jihad.
``We have returned from the lesser jihad to the greater jihad.''
The scriptural basis for jihad, prior to scholarly consensus (def: b7) is such Koranic verses as:
-1- ``Fighting is prescribed for you'' (Koran 2:216);
-2- ``Slay them wherever you find them'' (Koran 4:89);
-3- ``Fight the idolators utterly'' (Koran 9:36);
and such hadiths as the one related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said:
``I have been commanded to fight people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, and perform the prayer, and pay zakat. If they say it, they have saved their blood and possessions from me, except for the rights of Islam over them. And their final reckoning is with Allah'';
and the hadith reported by Muslim,
``To go forth in the morning or evening to fight in the path of Allah is better than the whole world and everything in it.''Details concerning jihad are found in the accounts of the military expeditions of the Prophet (Allah bless him and give him peace), including his own martial forays and those on which he dispatched others. The former consist of the ones he personally attended, some twenty-seven (others say twenty-nine) of them. He fought in eight of them, and killed only one person with his noble hand, Ubayy ibn Khalaf, at the battle of Uhud. On the latter expeditions he sent others to fight, himself remaining at Medina, and these were forty-seven in number.)

@O9.1: The Obligatory Character of Jihad
Jihad is a communal obligation (def: c3.2). When enough people perform it to successfully accomplish it, it is no longer obligatory upon others (O: the evidence for which is the Prophet's saying (Allah bless him and give him peace),
"He who provides the equipment for a soldier in jihad has himself performed jihad,"
and Allah Most High having said:
"Those of the believers who are unhurt but sit behind are not equal to those who fight in Allah's path with their property and lives. Allah has preferred those who fight with their property and lives a whole degree above those who sit behind. And to each, Allah has promised great good" (Koran 4:95).
If none of those concerned perform jihad, and it does not happen at all, then everyone who is aware that it is obligatory is guilty of sin, if there was a possibility of having performed it. In the time of the Prophet (Allah bless him and give him peace) jihad was a communal obligation after his emigration (hijra) to Medina. As for subsequent times, there are two possible states in respect to non-Muslims.
The first is when they are in their own countries, in which case jihad (def: o9.8) is a communal obligation, and this is what our author is speaking of when he says, "Jihad is a communal obligation," meaning upon the Muslims each year.
The second state is when non-Muslims invade a Muslim country or near to one, in which case jihad is personally obligatory (def: c3.2) upon the inhabitants of that country, who must repel the non-Muslims with whatever they can).

@O9.2Jihad is personally obligatory upon all those present in the battle lines (A: and to flee is an enormity (dis: p11)) (O: provided one is able to fight. If unable, because of illness or the death of one's mount when not able to fight on foot, or because one no longer has a weapon, then one may leave. One may also leave if the opposing non-Muslim army is more than twice the size of the Muslim force).

@O9.3Jihad is also (O: personally) obligatory for everyone (O: able to perform it, male or female, old or young) when the enemy has surrounded the Muslims (O: on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means. All of which is if conditions permit gathering (A: the above-mentioned) people, provisioning them, and readying them for war. If conditions do not permit this, as when the enemy has overrun the Muslims such that they are unable to provision or prepare themselves for war, then whoever is found by non-Muslim and knows he will be killed if captured is obliged to defend himself in whatever way possible. But if not certain that he will be killed, meaning that he might or might not be, as when he might merely be taken captive, and he knows he will be killed if he does not surrender, then he may either surrender or fight. A woman too has a choice between fighting or surrendering if she is certain that she will not be subjected to an indecent act if captured. If uncertain that she will be safe from such an act, she is obliged to fight, and surrender is not permissible).

@O9.4: Who is Obligated to Fight in Jihad
Those called upon (O: to perform jihad when it is a communal obligation are every able bodied man who has reached puberty and is sane.

@O9.5The following may not fight in jihad:
-1- Someone in debt, unless his creditor gives him leave;
-2- or someone with at least one Muslim parent, until they give their permission; unless the Muslims are surrounded by the enemy, in which case it is permissible for them to fight without permission.

@O9.6It is offensive to conduct a military expedition against hostile non-Muslims without the caliph's permission (A: though if there is no caliph (def: o25), no permission is required).

@O9.7Muslims may not seek help from non-Muslims allies unless the Muslims are considerably outnumbered and the allies are of goodwill towards the Muslims.

@O9.8: The Objectives of Jihad
The caliph (o25) makes war upon Jews, Christians, and Zoroastrians (N: provided he has first invited them to enter Islam in faith and practice, and if they will not, then invited them to enter the social order of Islam by paying the non-Muslim poll tax (jizya, def: o11.4) -which is the significance of their paying it, not the money itself-while remaining in their ancestral religions) (O: and the war continues) until they become Muslim or else pay the non-Muslim poll tax (O: in accordance with the word of Allah Most High,
"Fight those who do not believe in Allah and the Last Day and who forbid not what Allah and His messenger have forbidden-who do not practice the religion of truth, being of those who have been given the Book-until they pay the poll tax out of hand and are humbled" (Koran 9.29),
the time and place for which is before the final descent of Jesus (upon whom be peace). After his final coming, nothing but Islam will be accepted from them, for taking the poll tax is only effective until Jesus' descent (upon him and our Prophet be peace), which is the divinely revealed law of Muhammad. The coming of Jesus does not entail a separate divinely revealed law, for he will rule by the law of Muhammad. As for the Prophet's saying (Allah bless him and give him peace),
"I am the last, there will be no prophet after me,"
this does not contradict the final coming of Jesus (upon whom be peace), since he will not rule according to the Evangel, but as a follower of our Prophet (Allah bless him and give him peace)).

@O9.9The caliph fights all other peoples until they become Muslim (O: because they are not a people with a Book, nor honored as such, and are not permitted to settle with paying the poll tax (jizya)) (n: though according to the Hanafi school, peoples of all other religions, even idol worshippers, are permitted to live under the protection of

the Islamic state if they either become Muslim or agree to pay the poll tax, the sole exceptions to which are apostates from Islam and idol worshippers who are Arabs, neither of whom has any choice but becoming Muslim (al-Hidaya sharh Bidaya al-mubtadi' (y21), 6.48-49)).

@O9.10: The Rules of Warfare
It is not permissible (A: in jihad) to kill women or children unless they are fighting against the Muslims. Nor is it permissible to kill animals, unless they are being ridden into battle against the Muslims, or if killing them will help defeat the enemy. It is permissible to kill old men (O: old man (shaykh meaning someone more than forty years of age) and monks.

@O9.11It is unlawful to kill a non-Muslim to whom a Muslim has given his guarantee of protection (O: whether the non-Muslim is one or more than one, provided the number is limited, and the Muslim's protecting them does not harm the Muslims, as when they are spies) provided the protecting Muslim has reached puberty, is sane, and does so voluntarily (O: and is not a prisoner of them or a spy).

@O9.12Whoever enters Islam before being captured may not be killed or his property confiscated, or his young children taken captive.

@O9.13When a child or a woman is taken captive, they become slaves by the fact of capture, and the woman's previous marriage is immediately annulled.
@O9.14
When an adult male is taken captive, the caliph (def: o25) considers the interests (O: of Islam and the Muslims) and decides between the prisoner's death, slavery, release without paying anything, or ransoming himself in exchange for money or for a Muslim captive held by the enemy.
If the prisoner becomes a Muslim (O: before the caliph chooses any of the four alternatives) then he may not be killed, and one of the other three alternatives is chosen.

@O9.15It is permissible in jihad to cut down the enemy's trees and destroy their dwellings.

@O9.16: Truces
(O: As for truces, the author does not mention them. In Sacred Law truce means a peace treaty with those hostile to Islam, involving a cessation of fighting for a specified period, whether for payment or something else. The scriptural basis for them includes such Koranic verses as:
-1- "An acquittal from Allah and His messenger..." (Koran 9:1);
-2- "If they incline towards peace, then incline towards it also" (Koran 8.61);
as well as the truce which the Prophet (Allah bless him and give him peace) made Quraysh in the year of Hudaybiya, as related by Bukhari and Muslim.
Truces are permissible, not obligatory. The only one who may effect a truce is the Muslim ruler of a region (or his representative) with a segment of the non-Muslims of the region, or the caliph (o25) (or his representative). When made with other than a portion of the non-Muslims, or when made with all of them, or with all in a particular region such as India or Asia Minor, then only the caliph (or his representative) may effect it, for it is a matter of the gravest consequence whether globally or in a given locality, and our interests must be looked after therein, which is why it is best left to the caliph under any circumstances, or to someone he delegates to see to the interests of the various regions.
There must be some interest served in making a truce other than mere preservation of the status quo.
Allah Most High says,
"So do not be faint-hearted and call for peace, when it is you who are the uppermost" (Koran 47:35).
Interests that justify making a truce are such things as Muslim weakness because of lack of members or materiel, or the hope of an enemy becoming Muslim, for the Prophet (Allah bless him and give him peace) made a truce in the year Mecca was liberated with

Safwan ibn Umayya for four months in hope that he would become Muslim, and he entered Islam before its time was up. If the Muslims are weak, a truce may be made for ten years if necessary, for the Prophet (Allah bless him and give him peace) made a truce with Quraysh for that long, as is related by Abu Dawud. It is not permissible to stipulate longer than that, save by means of new truces, each of which does not exceed ten years.
The rulings of such a truce are inferable from those of the non-Muslim poll tax (def: o11); namely, that when a valid truce has been effected, no harm may be done to non-Muslims until it expires.)
*2*Chapter O10.0: The Spoils of Battle

@O10.1A free male Muslim who has reached puberty and is sane is entitled to the spoils of battle when he has participated in a battle to the end of it.
After personal booty (def: o10.2), the collective spoils of the battle are divided into five parts. The first fifth is set aside (dis: o10.3), and the remaining four are distributed, one share to each infantryman and three shares to each cavalryman. From these latter four fifths also, a token payment is given at the leader's discretion to women, children, and non-Muslim participants on the Muslim side.A combatant only takes possession of his share of the spoils at the official division. (A: Or he may choose to waive his right to it.)

@O10.2As for personal booty, anyone who, despite resistance, kills one of the enemy or effectively incapacitates him, risking his own life thereby, is entitled to whatever he can take from the enemy, meaning as much as he can take away with him in the battle, such as a mount, clothes, weaponry, money, or other.

@O10.3As for the first fifth that is taken from the spoils, it is divided in turn into five parts, a share each going to:
-1- the Prophet (Allah bless him and give him peace), and after his death, to such Islamic interests as fortifying defenses on the frontiers, salaries for Islamic judges, muezzins, and the like;
-2- relatives of the Prophet (Allah bless him and give him peace) of the Bani Hashim and Bani Muttalib clans, each male receiving the share of two females;
-3- orphans who are poor;
-4- those short of money (def: h8.11);
-5- and travellers needing money (h8.18).

*2*Chapter O11.0: Non-Muslim Subjects of the Islamic State (Ahl Al-Dhimma)

@O11.1A formal agreement of protection is made with citizens who are:
-1- Jews;
-2- Christians;
-3- Zoroastrians;
-4- Samarians and Sabians, if their religions do not respectively contradict the fundamental bases of Judaism and Christianity;
-5- and those who adhere to the religion of Abraham or one of the other prophets (upon whom be blessings and peace).

@O11.2Such an agreement may not be effected with those who are idol worshippers (dis: o9.9 (n:)), or those who do not have a Sacred Book or something that could have been a Book.
(A: Something that could have been a Book refers to those like the Zoroastrians, who have remnants resembling an ancient Book. As for the psuedoscriptures of cults that have appeared since Islam (n: such as the Sikhs, Baha' is, Mormons, Qadianis, etc.), they neither are nor could be a Book, since the Koran is the final revelation (dis: w4).)

@O11.3Such an agreement is only valid when the subject peoples:
(a) follow the rules of Islam (A: those mentioned below (o11.5) and those involving public behavior and dress, though in acts of worship and their private lives, the subject communities have their own laws, judges, and courts, enforcing the rules of

their own religion among themselves);
(b) and pay the non-Muslim poll tax (jizya).

@O11.4: The Non-Muslim Poll Tax
The minimum non-Muslim poll tax is one dinar (n: 4.235 grams of gold) per person (A: per year). The maximum is whatever both sides agree upon.
It is collected with leniency and politeness, as are all debts, and is not levied on women, children, or the insane.

@O11.5Such non-Muslim subjects are obliged to comply with Islamic rules that pertain to the safety and indemnity of life, reputation, and property. In addition, they:
-1- are penalized for committing adultery or theft, thought not for drunkenness;
-2- are distinguished from Muslims in dress, wearing a wide cloth belt (zunnar);
-3- are not greeted with "as-Salamu 'alaykum";
-4- must keep to the side of the street;
-5- may not build higher than or as high as the Muslims' buildings, though if they acquire a tall house, it is not razed;
-6- are forbidden to openly display wine or pork, (A: to ring church bells or display crosses,) recite the Torah or Evangel aloud, or make public display of their funerals and feastdays;
-7- and are forbidden to build new churches.

@O11.6They are forbidden to reside in the Hijaz, meaning the area and towns around Mecca, Medina, and Yamama, for more than three days when the caliph allows them to enter there for something they need).

@O11.7A non-Muslim may not enter the Meccan Sacred Precinct (Haram) under any circumstances, or enter any other mosque without permission (A: nor may Muslims enter churches without their permission).

@O11.8It is obligatory for the caliph (def: o25) to protect those of them who are in Muslim lands just as he would Muslims, and to seek the release of those of them who are captured.

@O11.9If non-Muslim subjects of the Islamic state refuse to conform to the rules of Islam, or to pay the non-Muslim poll tax, then their agreement with the state has been violated (dis: o11.11) (A: though if only one of them disobeys, it concerns him alone).

@O11.10The agreement is also violated (A: with respect to the offender alone) if the state has stipulated that any of the following things break it, and one of the subjects does so anyway, though if the state has not stipulated that these break the agreement, then they do not; namely, if one of the subject people:
-1- commits adultery with a Muslim woman or marries her;
-2- conceals spies of hostile forces;
-3- leads a Muslim away from Islam;
-4- kills a Muslim;
-5- or mentions something impermissible about Allah, the Prophet (Allah bless him and give him peace), or Islam.

@O11.11When a subject's agreement with the state has been violated, the caliph chooses between the four alternatives mentioned above in connection with prisoners of war (o9.14).

*2*Chapter O12.0: The Penalty for Fornication or Sodomy

@O12.1The legal penalty is obligatorily imposed upon anyone who fornicates or commits sodomy (A: provided it is legally established (def: n11.2 (O:))) when they:
(a) have reached puberty;
(b) are sane;
(c) and commit the act voluntarily;
no matter whether the person is a Muslim, non-Muslim subject of the Islamic state, or

someone who has left Islam.

@O12.2If the offender is someone with the capacity to remain chaste, then he or she is stoned to death (def: o12.6), someone with the capacity to remain chaste meaning anyone who has had sexual intercourse (A: at least once) with their spouse in a valid marriage, and is free, of age, and sane. A person is not considered to have the capacity to remain chaste if he or she has only had intercourse in a marriage that is invalid, or is prepubescent at the time of material intercourse, or is someone insane at the time of marital intercourse who subsequently regains their sanity prior to committing adultery.
If the offender is not someone with the capacity to remain chaste, then the penalty consists of being scourged (def: o12.5) one hundred stripes and banished to a distance of at least 81 km./50 mi. for one year.

@O12.4Someone who commits fornication is not punished if he says that he did not know it was unlawful, provided he is a new Muslim or grew up in a remote (O: from Islamic scholars) wilderness, though if neither of these is the case, such a person is punished.

@O12.5An offender is not scourged in intense heat or bitter cold, or when he is ill and recovery is expected (until he recovers), or in a mosque, or when the offender is a woman who is pregnant, until she gives birth and has recovered from childbed pains. The whip used should be neither new nor old and worn-out, but something in between. The offender is not stretched out when scourged, or bound (O: as his hands are left loose to fend off blows), or undressed (O: but rather an ankle-length shirt is left upon him or her), and the scourger does not lay the stripes on hard (O: by raising his arm, such that he draws blood). The scourger distributes the blows over various parts of the body, avoiding the vital points and the face. A man is scourged standing; a woman, sitting and covered (O: by a garment wrapped around her). If the offender is emaciated, or sick from an illness not expected to improve, then he or she is scourged with a single date palm frond (O: upon which there are a hundred strips, or fifty. If a hundred, such an offender is struck once with it, and if fifty, then twice), or with the edge of a garment.

@O12.6If the penalty is stoning, the offender is stoned even in severe heat or cold, and even if he has an illness from which he is expected to recover. A pregnant woman is not stoned until she gives birth and the child can suffice with the milk of another.

*2*Chapter O13.0: The Penalty for Accusing a Person of Adultery Without Proof

@O13.1When a person (who has reached puberty and is sane) voluntarily:
(a) accuses another person of adultery or
sodomy, whether the accusation is in plain words or allusive words intended as an accusation;
(b) and the accused is someone who could be chaste (def:o13.2) and is not the offspring of the accuser;
then the accuser is subject to the penalty for accusing a person of adultery without four witnesses (A: which, if it concerns his spouse, he may obviate by public imprecation (dis: n11.1)), no matter whether he is a Muslim, non-Muslim subject of the Islamic state, someone who has left Islam, or is of a group that has a truce with Muslims.

@O13.2Someone who could be chaste in this context means someone who has reached puberty, is sane, free, Muslim, and has not committed an act of fornication (O: that is punishable) (A: meaning it has not been legally established (def: r.11.2(O:))).

@O13.3The penalty for making such an accusation without witnesses is to be scourged (def: o12.5) eighty lashes.

@O13.4Accusations in plain words include such expressions as "You have committed fornication," and the like, while allusive words means such expressions as "You

lecher," or "You wretch," If the latter terms are accompanied by the intention to accuse, they amount to an accusation, though if not, they do not. The accuser is the one whose word is accepted (A: when there is no proof, if he swears an oath) as to what he intended by such allusive words.

@O13.5If someone accuses a whole group of people of adultery who could not possibly all be guilty, such as saying, "All the people in Egypt are adulters, he is disciplined (def: o17). But when his accusation is not impossible, such as saying, "The So-and-so clan are adulterers," then he must bear a separate penalty for every single person in the group.

@O13.6Someone who twice accuses someone of adultery without witnesses is punished only once.
Someone who accuses a person of adultery and is punished for the accusation, but then again accuses the person of the same act of fornication is merely disciplined (def: o17).

@O13.7When someone accuses a person who could possibly be chaste (def: o13.2) of adultery, but the accuser has not yet been punished at the time the accused subsequently commits an act of fonication, then the accuser is not punished.

@O13.8The penalty for accusing a person of adultery without witnesses is only carried out when the Islamic magistrate is present, and the accused requests that it be carried out. If the accused forgives the offender, there is no punishment.

@O13.9When an accusation has been made, if the accused dies (A: before the accuser has been punished), then his right (A: to demand that the punishment be carried out) is given to his heirs.

*2*Chapter O14.0: The Penalty for Theft

@O14.1
A person's right hand is amputated, whether he is a Muslim, non-Muslim subject of the Islamic state, or someone who has left Islam, when he:
(a) has reached puberty;
(b) is sane;
(c) is acting voluntarily;
(d) and steals at least a quarter of a dinar (n: 1.058 grams of gold) or goods worth that much (A: at the market price current) at the time of the theft:
(e) from a place meeting the security requirements normal (A: in that locality and time for safeguarding similar articles (def: o14.3);
(f) provided there is no possible confusion (dis: o14.2(3)) as to whether he took it by way of theft or for some other reason.
If a person steals a second time, his left foot is amputated; if a third time, then his left hand; and if he steals again, then his right foot. If he steals a fifth time, he is disciplined (def: o17). If he does not have a right hand (N: at the first offense), then his left foot is amputated. If he has a right hand but loses it after the theft (O: by an act of God) but before he has been punished for it, then nothing is amputated. After amputation, the limb is cauterized with hot oil (A: which in previous times was the means to stop the bleeding and save the criminal's life).

@O14.2A person's hand is not amputated when:
-1- (non-(d) above) he steals less than the equivalent of 1.058 grams of gold;
-2- (non-(e)) he steals the article from a place the does not meet normal requirements for safeguarding similar articles (dis: below);
-3- or (non-(f)) when there is a possible confusion as to why he took it, as when it was taken from the Muslim common fund (bayt al-mal) (O: provided the person is Muslim, since he might have intended to use it to build mosques, bridges, or hospices), or when it belongs to his son or father.

@O14.3A place that meets normal security requirements for safeguarding similar articles

means a place appropriate for keeping the thing, this varying with the type of article, the different countries, and with the justness of the ruler or lace of it, as well as the ruler's relative strength or weakness. A suitable place for safeguarding fine clothes, money, jewels, and jewelry, for example, is a locked box; the place for trade goods, a locked warehouse with guards; the place for livestock, a stable; the place for pallets and bedding, a shelf in the house; and the place for a shroud, the grave.

@O14.4If two persons jointly steal the equivalent of 1.058 grams of gold, then neither's hand is amputated.

@O14.5A freeman's hand may not be amputated by anyone besides the caliph or his representative (def: O25).

@O14.6There is no amputation for forcible seizure (O: meaning someone relying on force (N: to take people's money, who has a gang nearby to bet him in this)), snatching (O: meaning someone who depends on running away and is unarmed), or betraying a trust (O: of something entrusted to him, such as a deposit for safekeeping), or appropriating something by disavowal (A: i.e. denying that the victim loaned or entrusted him with such and such a thing), (O: because of the Prophet's (Allah bless him and give him peace) saying,
"There is no amputation for someone who seizes by force, snatches and runs, or betrays a trust,:"
a hadith Tirmidhi classified as rigorously authenticated (Sahih)). (A: But if one of the abovementioned persons is a repeated offender whom it is in the interests of society to kill, the caliph may kill him.)

*2*Chapter O15.0: The Penalty for Highway Robbery

@O15.1The caliph is obliged to summon whoever uses a weapon (O: though force suffices to be considered a weapon, or taking money by dint of one's fists) and makes people afraid to use the road (O: no matter whether in the wilderness, a village, or in the country; meaning he frightens those who pass along the way by means of his strength or weapons). If the highwayman responds to the summons before he has injured anyone, then he is only disciplined (def: o17).
If he steals the equivalent of 1.058 grams of gold under the previously mentioned conditions (o14.1), both his right hand and left foot are amputated.
(A: The difference between a highwayman and someone who takes by forcible seizure (dis: o14.6) is that the latter does so within earshot of help, while the offense of the highwayman is far greater because he menaces the lifeline of the community, its trade routes.)

@O15.2If a highwayman kills someone, he must be executed, even when the person entitled to retaliation (def: o3) agrees to forgo it. If the highwayman robs and kills, he is killed and then left crucified for three days. If he wounds or maims someone, retaliation is taken against him, though it may be waived by those entitled to take it.

@O15.3(N: The penalty for highway robbery, such as mandatory execution, crucifixion, and amputating the hand and foot, is cancelled if the highwayman repents (A: desists, and gives himself up) before he has been apprehended, though he is still liable to retaliation (def: o3) by parties entitled to it (A: for injuries or deaths he caused to victims) and is financially responsible for restoring the money he has taken.)

*2*Chapter O16.0: The Penalty for Drinking

@O16.1
Any beverage that intoxicates when taken in large quantities is unlawful both in small and large quantities, is unlawful both is small and large quantities.whether it is wine, (A: fermented) raisin drink, or something else.
@O16.2
The penalty for drinking is obligatorily enforced against anyone who:
(a) drinks;

(b) has reached puberty;
(c) is sane;
(d) is Muslim;
(e) does so voluntarily;
(f) and knows it is unlawful (A: the restrictions mentioned above (o12.4) about the ignorance of the prohibition of adultery also applying here).

@O16.3The penalty for drinking is to be scourged forty stripes, with hands, sandals, and ends of clothes. It may be administered with a whip, but if the offender dies, an indemnity (def: o4.4) is due (A: from the scourger) for his death. If the caliph (def: o25) increases the penalty to eighty stripes, it is legally valid, but if the offender dies from the increase, the caliph must pay an adjusted indemnity, such that if he is given forty-one stripes and dies, the caliph must pay 1/41 of a full indemnity.

@O16.4Someone who commits adultery several times (O: or drinks several times, or steals several times) before being punished is only punished once for each type of crime.

@O16.5 The penalty for a crime is not obviated by the offender's having repented for it, with the sole exception of the highwayman, who is not penalized at all (dis: o15.3) if he repents before he is caught.

@O16.6It is not permissible to drink an intoxicant under any circumstances, whether for medicine (O: or in bread, or to cook meat with it), or out of extreme thirst, with the sole exception of when one is choking on a piece of food and there is no other means of clearing it from one's throat save by drinking the intoxicant, in which case it is obligatory. (O: Sheikh al-Islam (A: Zakariyya Ansari) states, "It may not be used for medicine or extreme thirst, though there is no prescribed penalty for doing so, even when something besides it is available." The prohibition of using it for medicine or extreme thirst refers to when it is unadmixed, as opposed to when it is compounded with something else that renders it completely indistinguishable, such that no taste, color, or odor of it remains, in which case it is permissible.)
@O16.7: Nonalcoholic Intoxicants
(Muhammad Shirbini Khatib:) The term beverage (dis: o16.1) excludes plants, such as hashish, which hashish users eat. The two sheikhs (A: Rafi'i and Nawawi) report in their section on foods the position of ruyani that eating it is unlawful, though no legal penalty is fixed for it (Mughni al-muhtaj ila ma`rifa ma`ani alfaz al-Minhaj (y73), 4.187).
(al-Mawsu`a al-fiqhiyya:) Just as any beverage that intoxicates when taken in large quantities is also unlawful in small quantities, so too it is absolutely unlawful to use any solid substance detrimental to mind or body which produces languor or has a narcotic effect, this prohibition applying to the amount that is deleterious of it, not to the minute, beneficial amounts prescribed to treat illnesses, for such substances are not unlawful in themselves, but unlawful because they are deleterious (mawdu' al-ashriba.
Tab`a tamhidiyya li mawdu `at al-Mawsu`a al-fiqhiyya, no. 1(y134), 49).

*2*Chapter O17.0: Disciplinary Action (Ta`zir)

@O17.1Someone who commits an act of disobedience to Allah Most High that entails neither a prescribed legal penalty nor expiation, such as bearing false witness, is disciplined to the extent the caliph (def: o25) deems appropriate. (O: He exercises his own legal reasoning (ijtihad) and does what he thinks should be done, whether imprisonment and beating, either one separately, or mere verbal reprimand. He may not administer a more severe degree of punishment than what he feels is strictly necessary.)

@O17.2Disciplinary action may not reach the amount of the least prescribed legal penalty. For example, a freeman (o: if scourged) may not receive forty stripes.

@O17.3 If the caliph sees fit not to take any disciplinary action, this is also permissible (O: when it concerns a right owed to Allah Most High, for the ruler is

entrusted with using his own legal reasoning. But if it concerns a right owed to a fellow human being who has demanded that it be fulfilled (A: such as when someone has been cheated) it is impermissible to do nothing. If a person is entitled to have another disciplined, but instead forgives him, the ruler may nevertheless discipline him).

@O17.4(O: A father or grandfather (and on up) is entitled to discipline those under his care when they commit an act that is unbecoming. And so may a mother with her child. a husband is entitled to discipline his wife for not giving him his rights (def: m5.1). A teacher may discipline a student. (A: Spanking a student, for example, is permissible if there is a valid lawful purpose to be served thereby, and the student's guardian has given the teacher permission.))

*2*Chapter O18.0: Oaths (Yamin)

@(A: An oath is a solemn statement to do or refrain from something, or that something is true, such that if things turn out otherwise, the swearer must make an expiation (def: o20.2).)

@O18.1
An oath is only valid from a person (O: whether Muslim or non-Muslim) who:
(a) has reached puberty;
(b) is sane;
(c) makes the oath voluntarily;
(d) and intends an oath thereby.

@O18.2The oath of someone whose tongue runs away with him and who unthinkingly swears an oath, or someone who intends a particular oath but unintentionally swears something else, does not count and is an unintentional oath (A: which is mentioned in the Holy Koran (n: at 5:89)).
@O18.3
An oath is only validly effected if sworn by a name of Allah Most High, or an attribute of His entity (dhat).
(N: It is offensive to swear an oath by other than Allah if one merely intends it as an asseveration of one's statement, though it is unlawful to do so if one intends reverance to the thing sworn by.)

@O18.4There are some names of Allah Most High that are applied to no one but Him, such as Allah, the All-merciful, the All-vigilant, and Knower of the Unseen. An oath sworn by any of these is valid without restriction.

@O18.5Other names of Allah may be conditionally applied to other than Him, such as Lord (Rabb) (n: rabb bayt meaning, for example, home owner), the All-compassionate (al-Rahim) (n: rahim al-qalb meaning softhearted), or the Omnipotent (al-Qadir) (n:qadir 'alayhi meaning capabale of it; the second term of each of these examples indicating that Allah is not meant). An oath sworn by such names is validly effected unless the swearer specifically intends something else.

@O18.6Other of Allah's names are applied to both Him and His creatures, such as the Living (al-Hayy), the Existent (al-Mawjud), or the Seeing (al-Basir). An oath sworn by such names is not validly effected unless the swearer specifically intends it as an oath.

@O18.7An oath sworn by the attributes of Allah that are inapplicable to creatures, such as Allah's glory, His exaltedness, His endless eternality, or the Koran, is validly effected without restriction.

@O18.8An oath sworn by divine attributes that are sometimes used to allude to creatures, such as Allah's knowledge, His power, of His right, is validly effected unless the swearer intends something else by them, such as meaning by knowledge the things known, by power the things under its sway, or by right (n: the) acts of worship

(n: that are His right), in which cases an oath has not been validly effected.

@O18.9An oath is validly effected when a person says, "I swear by Allah that...," or "I've sworn by Allah that...," unless the person merely intends to inform.

@O18.10Unless one particularly intends it as an oath, an oath is not validly effected when the following expressions are used: "I will not do such and such, by the life of Allah," or "I resolve by Allah," or "by the covenant of Allah," "His guarantee," "His trust," "His sufficiency," or "I ask you by Allah," or "I swear by Allah that you must do such and such."

*2*Chapter O19.0: Examples of Breaking and Not Breaking Oaths

@O19.1If one swears, "I will not eat this wheat," but then makes in into flour or bread (A: and eats it), one has not broken one's oath.
If one swears, "I will not drink from this river," but then drinks its water from a jug, one has broken one's oath.
If one swears, "I will not eat meat," but then eats fat, kidneys, tripe, liver, heart, spleen, fish, or locusts, one has broken one's oath.

@O19.3If one swears, "I will not enter the house," but then does so absentmindedly, in ignorance of its being the house, under compulsion, or by being carried in, then one's oath is not broken and is still in effect.

@O19.5When a person swearing an oath about something (O: in the future, affirming or denying that it will occur) includes the expression in sha' Allah ("if Allah will") before finishing the oath, then the oath is not broken in any event if he thereby intends to provide for exceptions. But if he merely says it out of habit, not intending to make an exception to his oath, or if he says it after having finished swearing the oath, then the exception is not valid (O: because when an oath has been completed, its efficacy is established and not eradicable by a statement of exception).

*2*Chapter O20.0: The Expiation for a Broken Oath

@O20.1An expiation is obligatory for someone who swears and breaks an oath. If the swearer is entitled to expiate by the expenditure of property (def: o20.2(1-3)), it is permissible for him to do so before or after breaking the oath. But if it consists of fasting, then he may only do so after breaking the oath.

@O20.2The expiation consists of (N: a choice of any) one of the following:
-1- to free a sound Muslim slave;
-2- to feed ten people who are (N: poor or) short of money (def: h8.8-11) each (0.51 liters of grain
(O: though it is not a condition that it be grain, but rather the type of food payable for the zakat of 'Eid al-Fitr (def: h7.6), even if not grain (A: and the Hanafi school permits giving its value in money)) :
-3- or to provide clothing of any kind for ten such persons, even if it consists of a wraparound or clothing previously washed, though not if ragged.
If one is unable to do any of the above, one must fast for three days. It is better to fast them consecutively, though permissible to do so nonconsecutively.

@O20.4(O: Someone eligible to receive zakat funds or expiations because of being poor (def: h8.8) or short of (def:h811) may expiate broken oaths by fasting.)

*2*Chapter O21.0: The Judgeship

@O21.1To undertake the Islamic judgeship is a communal obligation (def: c3.2) (O: for those capable of performing it in a particular area). If only one competent person exists who can perform it, then it is personally obligatory for him to do so. If he refuses, he is compelled to accept (O: though he is only obliged to accept the judgeship when it is in his own home area, not when it is elsewhere, for this would be like a punishment, involving as it does wholly leaving one's home). Such an individual person may not take a salary for it- (N: because in respect to him it has become personally obligatory, and it is not permissible to take a wage for something

personally obligatory, as opposed to something that is a communal obligation (A: for which accepting a wage is permissible)) - unless he is needy (O: in which case the Muslim common fund gives him enough to cover his expenses and those of his dependents, without wastefulness or penury. But if he agrees to judge without being paid (N: i.e. in expection of the reward from Allah), it is better for him).

@O21.2It is permissible to have two or more judges in the same town.

@O21.3It is not valid for anyone besides the caliph (def: o25) or his representative to appoint someone as judge.
@O21.4It is permissible for two parties to select a third party to judge between them if he is competent for the judgeship (def: o22.1) (O: provided the case does not concern Allah's prescribed penalties, (A: and they may select such a person) even when a judge exists), It is obligatory for them to accept his decision on their case, though if either litigant withdraws his nomination before the third party gives his judgement, the latter may not judge.

*2*Chapter O22.0: The Judge and the Court

@O22.1The necessary qualifications for being an Islamic judge (qadi) are:
(a) to be a male freeman;
(b) to have full capacity for moral answerability (taklif, def: c8.1);
(c) to be upright (o24.4) :
(d) to possess knowledge (O: of the rulings of Sacred Law, meaning by way of personal legal reasoning (ijtihad) (A: from primary texts), not merely by following a particular qualified scholar (taqlid) (A: i.e if he follows qualified scholarship, he must know and agree with how the rulings are derived, not merely report them). Being qualified to perform legal reasoning (ijtihad) requires knowledge of the rules and principles of the Koran, the sunna (A: is this context meaning the hadith, not the sunna as apposed to the obligatory), (N: as well as knowledge of scholarly consensus (ijma', def: b7)), and analogy (def: III below), together with knowing the types of each of these. (A: The knowledge of each "type" below implies familiarity with subtypes and kinds, but the commentator has deemed the mention of the category as a whole sufficient to give readers as general idea.)
(I) The types of Koranic rules include, for example:
-1- those ('amm) of general applicability to different types of legal rulings;
-2- those (khass) applicable to only one particular ruling or type or type or ruling;
-3- those (mujmal) which require details and explanation in order to be properly understood;
-4- those (mubayyan) which are plain with out added details;
-5- those (mutlaq) applicable without restriction;
-6- those (muqayyad) which have restrictions;
-7- those (nass) which unequivocally decide a particular legal question;
-8- those (zahir) with a probable legal signification, but which may also bear an alternative interpretation;
-9- those (nasikh) which supersede previsouly revealed Koranic verses;
-10-. and those (mansukh) which are superseded by later verses.
(II) The types of sunna (A: i.e. hadith) include:
-1- hadiths (mutawatir) related by whole groups of individuals from whole groups, in multiple contiguous channels of transmission leading back to the Prophet himself (Allah bless him and give him peace), such that the sheer number of separate channels at each stage of transmission is too many for it to be possible for all to have conspired to fabricate the hadith (A: which is thereby obligatory to believe in, and denial of which is unbelief (kufr));
-2- hadiths (ahad) related by fewer than the above-mentioned group at one or more stages of the transmission, though traced though contiguous successive narrators back to the Prophet (Allah bless him and give him peace). (n: If a hadith is transmitted through just one individual at any point in the history of its transmission, the hadith is termed singular (gharib). If it is transmitted through just two people at any stage of its transmission, it is termed rare ('aziz). If its channels of transmission, come through only three people at any point of its history, it is termed wellknown

(mashhur). These designations do not directly influence the authenticity rating of the hadith, since a singular hadith, for example, might be rigorously authenticated (sahih), well authenticated (hasan) (N: hadiths of both types being obligatory for a Muslim to believe in, though someone who denies them is merely considered corrupt (fasiq), not an unbeliever (kafir)), or not well authenticated (da'if), depending on the reliability ratings of the narrators and other factors weighed and judged by hadith specialists);
-3- and other kinds. (n: Yusuf Ardabili mentions the following in his list of qualifications for performing legal reasoning (ijtihad) :)
-4- hadiths (mursal) from one of those (tabi'i) who had personally met (N: not only met, but actually studied under) one or more of the prophetic Companions (Sahaba) but not the Prophet himself (Allah bless him and give him peace) (n: hadiths reported in the form, "The Prophet said (or did) such and such," without mentioning the Companion who related it directly from the Prophet);
-5- hadiths (musnad) related though a contiguous series of transmitters back to the Prophet (Allah bless him and give him peace);
-6- hadiths (muttasil) related though a contiguous series of transmitters (n: either from the Prophet (Allah bless him and give him peace). such a hadith being termed ascribed (marfu'), or else only from one of the Companions, such a hadith being termed arrested (mawquf));
-7- hadiths (munqata') related through a chain of transmitters of whom one is unknown (n: though if two or more are unknown, it is not considered merely incontiguous (munqata'), but rather problematic (mu'dal));
-8- the positive and negative personal factors (jarh wa ta'dil) determining the reliability ratings of the individual narrators of a hadith's channel of transmission:
-9- the positions held by the most learned of the Companions (Sahaba) on legal questions, and those of the scholars who came after them;
-10- and on which of these positions there is scholarly consensus (def: b7), and which are differed upon (Kitab al-anwar lia'mal al-abrar fi fiqh al-Imam al-Shafi'i (yll), 2.391).
(n: The English glosses and remarks on the meanings of the above hadith terminology are from notes taken by the translator at a lesson with hadith specialist Sheikh Shu'ayb Arna'ut.)
(III) Types of analogical reasoning (qiyas) include:
-1- making an a fortiori analogy between acts p and q, where if p takes a ruling, q is even likelier to take the same ruling. For example, if saying "Uff!" to one's parents is unlawful (n: as at Koran 17:23), one may analogically infer that beating them must also be unlawful;
-2- making an analogy between acts p and q, where if p takes a ruling, one may infer that q is equally likely to take the same ruling. For example, if it is unlawful to wrongfully consume an orphan's property, then it must also be unlawful to destroy his property by burning it up;
-3- and making an analogy between acts p and q, where if p takes a ruling, one may infer that it is likely, though less certain, that q takes the same ruling (A: because of a common feature in the two acts which functions as the basis ('illa) for the analogy). For example, if usurious gain (riba) is unlawful in selling wheat (dis: k3.1(, then it is also unlawful in selling apples, the basis for the analogy being that both are food.
The meaning of knowledge of the above matters is (A: for a judge) to know part of what is connected with the Koran, sunna (A: i.e. hadith), and analogy, not complete knowledge of the Book of Allah, total familiarity with the rules of the sunna, or comprehensive mastery of the rules of analogical reasoning, but rather that which is pertinent to giving judgements in court (A: though an absolute giving judgements in court (A: though an absolute expert in Islamic legal reasoning (mujtahid mutlaq) such as Abu Hanifa. Malik; Shafi'i, or Ahmad, is obliged to know what relates to every subject matter inSarced Law). He must know the reliability ratings of hadith narrators in strength and weakness. When two primary texts seems to contend, he gives precedence to:
-1- those of particular applicability (Khass) over those of general applicability ('amm);
-2- those that take restrictions (muqayyad) over those that do not (mutlaq);

-3- those which unequivocally settle a particular question (nass) over those of merely probabilistic legal significance (zahir);
-4- whose which are literal (muhkam) over those which are figurative (mutashabih);
-5- and those which supersede previous rulings, those with a contiguous channel of transmission, and those with a well-authenticated channel of transmission, over their respective opposites.
He must likewise know the positions of the scholars of Sacred Law regarding their consensus and differences and not contradict their consensus (A: which is unlawful (dis: b7.2)) with his own reasoning. If no one possesses the above-mentioned qualifications, and a strong ruler appoints an unfit Muslim to the bench, such as someone who is immoral, or who (A: is incapable of independent legal reasoning (ijtihad) and) merely follows other qualified scholars (taqlid), or a child, or a woman, then the appointee's decisions are implemented because of necessity, so as not to vitiate people's concerns and interests (A: and this is what exists in our day, when the conditions for an Islamic judge are seldom met with));
(e) sound hearing;
(f) sound eyesight;
(g) and the faculty of speech.
(O: The author did not mention the necessary condition of being a Muslim, evidently feeling that uprightness ((c) above) was sufficient to imply it.)

@O.22.2 It is recommended that the judge be stern without harshness, and flexible without weakness (O: so the litigants do not despise or disdain him for otherwise, people entitled to rights would not be able to obtain them).

@O22.3 If the judge needs to appoint another person to handle a part of his caseload because it is too heavy for him, then be may assign someone to deal with the extra cases if the person himself is qualified to be a judge. If the judge does not need to, he may not appoint such a person without special permission (A: from the regional ruler).

@O22.4 If the judge needs a court secretary, he must be Muslim, upright (def: o24.4), sane, and learned (O: meaning familiar with writing up plaintiffs' cases, recording what is done in each case and the judge's decisions, and must be able to distinguish between writing it correctly and incorrectly. The above four conditions are obligatory, there only remaining to be mentioned that the secretary must be male and free).

@O22.5 The judge should not have a doorkeeper (O: if there is no crowd), though if he needs one, the doorkeeper must be sane, reliable, and unbribable.

@O22.6 When not in the area of his jurisdiction, the judge may not give legal decisions, appoint others, or hear evidence (O: or claims).

@O22.7 He may not accept gifts except from someone who customarily gave him gifts before he became judge, who is not a plaintiff, and whose gifts are not more lavish than those given before the judge's appointment. (O: The same is true for entertaining the judge as a guest, as well as lending articles to him which are of rentable value, such as lending him lodgings.) It is better for a judge not to accept any gifts. (O: And whenever gifts are not lawful to accept, he does not legally own them but must return them.)

@O22.8He should not decide cases when angry, hungry, thirsty, overwrought, exultant, ill, tired, flatulent, annoyed, or when the weather is irritatingly hot or cold (O: it being offensive for a judge to decide a case in any state that affects his temperament for the worse), though if he does, his decision is implemented.

@O22.10 The judge should not sit in a mosque to decide cases (O: lest voices be raised therein, and because he might need to bring in the insane, children, a woman in her period, or non-Muslims;' for which reasons sitting in a mosque to decide cases is offensive). But if his sitting in the mosque (O: in prayer, spiritual retreat (i'tikaf), or awaiting group prayer) happens to coincide with the coming of two

litigants, then he may judge between them (O: without it being offensive).

@O22.11The judge should sit with tranquility and gravity (O: as it creates greater respect for him and makes it likelier that he will be obeyed). He should have witnesses present and scholars of jurisprudence to consult with on points of difficulty. If a case is not clear, he should postpone giving a decision on it. He may not merely imitate another's decision on a case (A: but must be capable of expert legal reasoning (ijtihad) himself).

@O22.12The judge handles the cases on a firstcome-first served basis, one case per turn. If two arrive at the same time, they draw lots to see whose case will be heard first.
The judge (O: obligatorily) treats two litigants impartially, seating both in places of equal honor, attending to each, and so forth, unless one is a non-Muslim, in which case he gives the Muslim a better seat. He may not treat either litigant rudely, nor prompt one (O: as to how to state his case).

@O22.13The judge may intercede with one of them on behalf of the other (O: meaning to ask the two parties to settle their differences, which is what a judge's "intercession" is. It does not take place until after the truth has been established, which obviates his unfairly inclining to either one) and he may also pay one litigant what the other owes him.

@O22.14(N: When assigned to a new jurisdiction,) the judge first looks into the cases of the imprisoned, then orphans, and then of lost and found items.

*2*Chapter O23.0: Court Claims

@O23.1If a plaintiff makes a claim that is not true, the judge considers it as if he had notheard it (O: and need not ask the defendant about it).
When a claim is true, the judge asks the defendant, "What do you say?" If the defendant admits the claim is true, the judge does not give a decision on the case (A: there being no need to) unless the plaintiff asks him to. But if the defendant denies the claim, then if the plaintiff has no proof, the defendant's word is accepted if he swears an oath to that effect. (O: This is when the claim does not involve blood (A: i.e. retaliation (def: o3) or indemnity (04)). If it does, then if there is obscurity in the matter, the plaintiff's word is accepted (N: provided fifty separate oaths are sworn by and distributed over all those entitled to take retaliation).) The judge does not have the defendant swear an oath unless the plaintiff: requests it. If the defendant refuses to swear, then the judge has the plaintiff swear (A: that his claim is true), and when he does, he is entitled (O: to what he has claimed (A: from the defendant).
But if the plaintiff also refuses to swear, the judge, dismisses both of them (O:from his presence). If the defendantis silent(O: not responding to the claim against him) then the judge should say, "Would that your would answer, for unless you do. I'll give the plaintiff the opportunity to swear an oath." If the defendant does not, then the plaintiff may swear an oath, and if he does, he is entitled to his claim.

@O23.2If the judge knows the truth of the claim (O: against the defendant), and it concerns one of the prescribed penalties of Allah Most High, meaning for fornication, theft, rebellion, or drinking, then he may not sentence the defendant, on that basis alone (O: on the basis of his knowledge of one of the above crimes. It is related of Abu Bakr Siddiq (Allah be well pleased with him) that he said,"Where I to see someone who deserved a prescribed legal penalty, I would not punish him unless two witnesses attested to his deserving it in front of me.")
But when the judge knows the truth about something other than prescribed legal penalties, he must judge accordingly (O: the necessary condition for which is that he plainly state that he knows, such as by saying, "I know what he claims against you to be true, and have judged you according to my knowledge").

@O23.3When the judge does not know the language of the litigants, then he refers to

upright (def: o24.4) persons familiar with it, provided they are a number (O: two or more) sufficient to substantiate the claim (def: o24.7-10).

@O23.4If a judge gives a decision on a case but then learns of an unequivocal text relating to it (O: from the Koran or mutawatir hadith (def: o22.1 (d(II))), a consensus of scholars, or an a fortiori analogy (o22.1(dIII))), that controverts his decision, then he reverses it.

@O23.5A court claim is not valid except from a plaintiff possessing full right to deal with his own property.

@O23.6It is not valid to litigate over something that is not determinately known (def: k2.1 (e)), though some exceptions to this exist, such as claiming a bequest.
If the plaintiff is claiming a financial obligation (dayn), he must mention its type, amount, and description.
If he is claiming some particular article ('ayn) (O: such as a house), he must identify it. If he is unable to (O: as when the article is protable, and out of town), then he must describe it (O: with a description that would be valid for buying in advance (def: k9.2(d,g))).

@O23.7If a defendant denies a claim against him (A: and the plaintiff has no proof) then his denial is accepted (A: provided he swears on oath), as also when he says, "I owe him nothing."

@O23.8If the claim is for a particular article that is currently in the possession of one of the litigants, then the word of the person who has it is accepted when he swears an oath that it is his. If the article is in the possession of both litigants (O: together, and there is no proof as to whose it is; or when it is in the possession of neither, such as when a third party has it), then each swears an oath (O: that it does not belong to the other) and half the article is given to each of them.

@O23.9When another person owes one something, but denies it, then one may take it from his property without his leave (O: whether one has proof of it or not). But if the person acknowledges that he owes it to one, one may not simply take it from him (O: because a debtor may pay back a debt from whatever part of his property he wishes).

*2*Chapter O24.0: Witnessing and Testying

@O24.1 It is a communal obligation (def: e3.2) to both witness (A: i.e observe) legal events and to testify to have witnessed them. If there is only one person to do so, then it is personally obligatory upon him, in which case he may not accept payment for it, though if it is n ot personally obligatory, he may accept a fee.

@O24.2 Legal testimony is only acceptable from a witness who:
(a) is free;
(b) is fully legally responsible (mukallaf, def: c8.1) (O: as testimony is not accepted from a child or insane person, even when the child's testimony regards injuries among children that occurred at play);
(c) is able to speak;
(d) it mentally awake;
(e) is religious (O: meaning upright (o24.4) (A: and Muslim), for Allah Most High says, "Let those of rectitude among you testify" (Koran 65:2),
and unbelief is the vilest form of corruption, as goes without saying);
(f) and who is outwardly respectable (O: respectability (muru'a) meaning to have the positive traits which one's peers possess in one's particular time and place. Sheikh al-Islam (A: Zakariyya Ansari) says, "Respectability is refraining from conduct that is unseemly according to standards commonly acknowledged among those who observe the precepts and rules of the Sacred Law." It is according to standards commonly acknowledged (def: f4.5) because there are no absolute standards for it, but rather it varies with different persons, conditions, and places, Such things as eating and drinking (A: in the marketplace or wearing nothing on one's head may vitiate it (A:

though the latter is of no consequence in our times), as may a religious scholar's wearing a robe or cap in places where it is not customary for him to do so).
The testimony of an absentminded person (O: meaning someone who often makes mistakes and forgets) is not acceptable (O: because he is unreliable).

@O24.5 Nor is testimony acceptable from someone who:
-1- has committed an enormity (O: meaning something severely threatened against in an unequivocal text fro the Koran or hadith (dis: book p) N: though if someone who commits such an act then repents (def: p77) and is felt to be sincere in this, he regains his legal uprightness and his testimony is accepted, provided he is tested after his repentance long enough to believe in its genuineness);
-2- persists in a lesser sin (O: because it then becomes an enormity, as opposed to when one does not persist therin. A lesser sin in one that has not been severely threatened against in an unequivocal text);
-3- or is without respectability (def: o24.2(f)), such as a street-sweeper, bathhouse attendant, and the like.
(A: A legally corrupt or immoral person (fasiq) is someone guilty of (1) or (2) above.)

@O24.4 (A: Normal uprightness ('adala) for purpose other than giving testimony in court means that one avoids (1) and (2) above, while (3) concerns court testimony alone (N: i.e. uprightness for testimony in court means a person is none of the above).)

@O24.5 The testimony of a blind person is accepted about events witnessed before he became blind, though not events witnessed after, unless they are public events that are discussed among people, or when someone says something the blind person hears (O: such as a divorce, for example), and he takes the speaker by the hand and conducts him to the judge and testifies as to what he has said.

@O24.6 The testimony of any of the following is unacceptable:
-1- a person testifying for his son (O: son's son, and on down) or his father (O: father's father, and on up);
-2- a person who stands to benefit (O: by his own testimony);
-3- a person who stands to avoid loss to himself though his testimony;
-4- a person testifying about his enemy;
-5- or a person testifying about his own act.

@O24.7The testimony of the following is legally acceptable when it concerns cases involving property, or transactions dealing with property, such as sales:
-1- two men;
-2- two women and a man;
-3- or a male witness together with the oath of the plaintiff.

@O24.8If testimony does not concern property, such as a marriage or prescribed legal penalties, then only two male witnesses may testify (A: though the Hanafi school holds that two women and a man may testify for marriage).

@O24.9If testimony concerns fornication or sodomy, then it requires four male witnesses (O: who testify, in the case of fornication, that they have seen the offender insert the head of his penis into her vagina).

@O24.10If testimony concerns things which men do not typically see (O: but women do), such as childbirth, then it is sufficient to have two male witnesses, a man and two women, or four women.

*1*Translator's additions

*2*Chapter O25.0: The Caliphate

@(n: This section has been added here by the translator because the caliphate is both Obligatory in itself and the necessary precondition for hundreds of rulings (books k through o) established by Allah Most High to govern and guide Islamic community life.

What follows has been edited from al-Ahkam al-sultaniyya wa al-wilayat ad-diniyya by Imam Abul Hasan Mawardi, together with three principal commentaries on Imam Nawawi's Minhaj al-talibin, extracts from which are indicated by parentheses and the initial of the commentator. Ibn Hajar Haytami (H:) Muhammad Shirbini Khatib (K:), or 'Abd al-Hamid Sharwani (S:).)

@O25.1: The Obligatory Character of the Caliphate
(Mawardi:) The reason the office of supreme leadership has been established in Sacred Law is to fulfill the caliphal successorship to prophethood in preserving the religion and managing this-worldly affairs. The investiture of someone from the Islamic Community (Umma) able to fulfill the duties of the caliphate is obligatory by scholarly consensus (def: b7), though scholars differ as to whether its obligatory character is established through reason or through Revealed Law. Some say that it is obligatory by human reason, because of the agreement of rational individuals to have a leader to prevent them from wronging one another and to come between them when conflict and arguments arise.
Without authorities, there would be a chaos of neglected people and a disorderly mob. Others hold that it is obligatory not through reason, but rather through Sacred Law, for the caliph performs functions that human reason might not otherwise deem ethically imperative, and which are not entailed by reason alone, for reason are not entailed by reason alone, for reason merely requires that rational beings refrain from reciprocal oppression and strife, such that each individual conform with the demands of fairness in behaving towards others with justice and social cohesion, each evaluating their course with their own mind, not anyone else's, whereas Sacred Law stipulates that human concerns be consigned to the person religiously responsible for them. Allah Mighty and Majestic says.
"You who believe, obey Allah and obey the Propeht and those of authority among you" (Koran 4>59).
thereby obliging us to obey those in command, namely the leader with authority over us. Abu Hurayra relates that the Propeht (Allah bless him and give him peace) said.
"Leaders shall rule you after me, the godfearing of them ruling you with godfearingness and the profligate ruling you with wickedness. So listen to them and obey them in everything that is right; for if they do well, it will count for you and for them, and if they do badly, it will count for you and against them."
(al-Ahkam al-sultaniyya wa al-wilayat al-diniyya (y87), (5-6)

@O25.2(H: The caliphate is a communal obligation (def: c3.2) just as the judgeship is (S: because the Islamic community needs a ruler to uphold the religion, defend the sunna, succor the oppressed from oppressors, fulfill rights, and restore them to whom they belong).)

@O25.3: The Qualifications of a Caliph
(Nawawi:) among the qualifications of the caliph are that he be:
(a) Muslim (H: so that he may see to the best interests of Islam and the Muslims (K: it being invalid to appoint a non-Muslims (K: it being invalid to appoint a non-Muslim (kafir) to authority, even to rule non-Muslim.) (S: Qadi 'lyad states that there is scholarly consensus (def: b7) that it is not legally valid to invest a non-Muslim as caliph, and that if a caliph becomes a non-Muslim (dis: 08.7) he is not longer caliph, as also when he does not maintain the prescribed prayers (A: meaning to both perform them himself and order Muslim to) and summon the people to them, and likewise (according to the majority of scholars) if he makes reprehensible innovations (bid'a, def: w29.3) (A: by imposing an innovation on people that is Offensive or unlawful). If the caliph becomes a non-Muslim, alters the Sacred Law- (N: such alteration being of two types, one of which consists of his changing the Law by legislating something which contravenes it while believing in the validity of the provisions of the Sacred Law, this being an injustice that does not permit rebellion against him, while the other consists of imposing rules that contravenes the provisions of the religion while believing in the validity of the rules he has imposed, this being unbelief (kufr) (A: it is questionable whether anyone would impose much rules without believing in their validity)) - or imposes reprehensible innovations while in office, then he loses his authority and need no longer be obeyed, and it is obligatory for Muslims to rise

against him if possible, remove him from office, and install an upright leader in his place. If only some are able, they are obliged to rise up and remove the unbeliever (A: whether they believe they will succeed or fail), through it is not obligatory to try to remove a leader who imposes reprehensible innovations unless they believe it possible. If they are certain that they are unable to (A: remove an innovator), they are notobliged to rise against him. Rather, a Muslim in such a case should emigrate from his country (N: if he can find a better one), fleeing with his religion (A: which is obligatory if he is prevented in his home country from openly performing acts of worship)));
(b) possessd to legal responsibility (def: c8.1) (K: so as to command the people, it being invalid for a child or insane-person to lead) :
(c) free (K: so that others may consider him competent and worthy or respect) :
(d) male (K: to be able to devote himself fulltime to the task, and to mix with men, the leadership of a woman being invalid because of the rigorously authenticated (sahih) hadith.
"A people that leave its leadership to a woman will never succeed") :
(e) of the Quraysh tribe (K: because of the (H: well-authenticated (hasan)) hadith related by Nasa'i.
"The Imams are of the Quraysh."
a hadith adhered to by the Companions of the Prophet (Allah bless him and give him peace) and those after them, this qualification being obligatory when there is a member of Quraysh available who meets the other conditions) (H: though when there is not, then the next most eligible is a qualified member of the Kinana tribe, then of the Arabs, then of the non-Arabs);
(f) capable of expert legal reasoning (ijtihad) (H: as a judge must be (def: o22). 1(d)) and with even greater need (K: so as to know the rulings of Sacred Law, teach people, and not need to seek the legal opinion of others concerning uprecedented events), scholarly consensus (def: b7) having been related concerning this condition, which is not contradicted by the statement of the Qadi (A: 'Iyad) that "an ignorant upright person is fitter than a knowledgeable corrupt one," since the former would be able to refer matters requiring expert legal reasoning to qualified scholars, and moreover the remark applies to when the available leaders are not capable of legal reasoning (S: while possessing the other qualifications for leadership));
(g) courageous (K: meaning undaunted by danger, that he may stand alone, direct troops, and vanquish foes);
(h) possessed of discernment (H: in order to lead followers and see to their best interests, religious or this-worldly discernment meaning at minimum to know the various capacities of people), sound hearing and eyesight, and the faculty of speech (K: so as to decisively arbitrate matters);
(i) (H: and be upright (def: o24.4) as a judge must be, and with even greater need. But it is valid, if forced to, to resor to the leadership of a corrupt person, which is why Ibn 'Abd al-Salam says, "If there are no upright leaders or rules available, then the least corrupt is given precedence").
@O25.4: The Three Ways a Caliph May Be Invested with Office
The caliphate may legally be effected (K: through three means, the first of which is) :
-1- by an oath of fealty (H: like the one sworn by the prophetic Companions to Abu Bakr (Allah be well pleased with them)) which, according to the soundest position, is (H: legally binding if it is) the oath of those with discretionary power to enact or disolve a pact (ahl al-hall wa al-'aqd) of the scholars, leaders, and notables able to attend (K: since the matter is accomplished through them, and all the people follow them. It is not a condition that all those with discretionary power to enact or dissolve a pact be present from every remote region, or that there be a particular number present, as the author's words seem to imply, but rather, if discretionary power to enact or dissolve a pact exists in a single individual who is obeyed, his oath of fealty is sufficient.) (H: As for an oath of fealty from common people without discretionary power to enact or dissolve a pact, it is of no consequence) and they (H: those pledging fealty) must possess the qualifications necessary to be a witness (K: such as uprightness and so forth (def: 024.2)) (Mughni al-muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 4.129-31, and Hawashi al-Shaykh 'Abd al-Hamid al-Sharwani wa al-Shaykh Ahmad ibn Qasim al-'Abbadi'ala Tuhfa al-muhtaj bi sharh al-Minhaj (y2), 9.74-76).

(Mawardi:) When those with power to enact or dissolve a pact meet to select the caliph, they examine the state of the available qualified candidates, giving precedence to the best of them and most fully qualified, whose leadership the public will readily accept and whose investiture people will not hesitate to recognise. When there is only one person whom the examiners' reasoning leads them to select, they offer him the position. If he accepts, they swear an oath of fealty to him and the supreme leadership is thereby invested in him, the entire Islamic Community (Ummma) being compelled to acknowledge fealty to him and submit in obedience to him. But if he refuses the caliphal office, not responding to their offer, he is not forced to comply-as investiture comes of acceptance and free choice, not compulsion and constraint-and they turn to another qualified candidate (al-Ahkam al-sultaniyya wa al-0wilayat al-diniyya (y87), 7-8);
-2- (Nawawi:) and (H: the second means (K: through which it may be effected is)) by the caliph appointing a successor (H: meaning someone after him, even if it be his descendant or ancestor, for Abu Bakr appointed 'Umar (Allah be well pleased with them) as his successor, and scholarly consensus (def: B7) was effected in recognizing its legal validity. This type of investiture consists of the caliph appointing a sucessor while still alive, to succeed him after death. Though actually his successor during his life, the successor's disposal of affairs is suspended until the caliph dies).
If the caliph appoints a group to select a successor from among themselves, it is as if he had appointed a successor (K: though the successor is not yet identified) (H: resembling an appointment in it being legally binding and obligatory to accept the outcome of their choice) and they choose one of their number (K: after the caliph's death, investing the person they select with the caliphate) (H: because 'Umar appointed a committee of six to choose his successor from among themselves: 'Ali, 'Uthman, Zubayr, 'Abd al-Rahman ibn 'Awf, Sa'd ibn Abi Waqqas, and Talha, and after his death they agreed upon 'Uthman, (Allah be well pleased with them));
-3- an (H: the third means is) through seizure of power b a individual possessing the qualifications of a caliph (H: meaning by force, since the interests of the whole might be realized through such a takeover, this being if the caliph has died, or has himself obtained office through seizure of power, i.e. when he lacks some of the necessary qualifications.) (S: As for when the office is wrested from a living caliph, then if he himself became caliph through seizure of power, the caliphate of his deposer is legally valid. But if he became caliph through an oath of fealty (def: o25.4(1)) or having been appointed as the previous caliph's successor (def: o25.4(2)), then the deposer's caliphate is not legally valid). A takeover is also legally valid, according to the soundest position, by someone lacking moral rectitude (dis: O25.3(i)) or knowledge of Sacred Law (o25.3(f)) (K: meaning the caliphate of a person lacking either condition is legally valid when the other conditions exist) (H: as is the takeover of someone lacking other qualifications, even if he does not possess any of them (S: besides Islam, for if a non-Muslim seizes the caliphate, it is not legally binding, and so too, according to most scholars, with someone who makes reprehensible innovations, as previously mentioned (dis: o25.3(a))). The caliphate of someone who seizes power is considered valid, even though his act of usurpation is disobedience, in view of the danger from the anarchy and strife that would otherwise ensue).

@O25.5: The Obligatory Character of Obedience to the Caliph
(K: It is obligatory to obey the commands and interdictions of the caliph (N: or his representative (def: o25.7-10)) in everything that is lawful (A: meaning it is obligatory to obey him in everything that is not unlawful, offensive, or merely in his own personal interests), even if he is unjust, because of the hadith,
"Hear and obey, even if the ruler placed over you is an Ethiopian slave with amputated extremities,"
and because the purpose of his authority is Islamic unity, which could not be realized if obeying him were not obligatory. It is also obligatory for him to give sincere counsel to those under him to the extent that it is possible.)

@O25.6: The Invalidity of a Plurality of Caliphs
(K: It is not permissible for two or more individuals to be invested with the caliphate (H: at one time), even when the are in different regions, or remote from one another, because of the disunity of purpose and political dissolution it entails. If two are

simultaneously invested as caliph, neither's caliphate is valid. If invested serially, the caliphate of the first of them is legally valid and the second is disciplined (def: o17) for committing an unlawful act, together with those who swear fealty to him, if the are aware of the first's investiture as caliph) (Mughni al0muhtaj ila ma'rifa ma'ani alfaz al-Minhaj (y73), 4.132, and Hawashi al-Shaykh 'Abd al-Hamid al-'Abbadi 'ala Tuhfa al-muhtaj bisharh al-Minhaj (y2), 9.77-78).

@O25.7: Delegating Authority to Those Under the Caliph
(Mawardi:) The authority deligated to a minister of state may be of two kinds, full or limitary.
-1- Full ministerial authority is when the caliph appoints as minister an individual who is entrusted with independently managing matters through his own judgement and implementing them according to his own personal reasoning (ijtihad).
Appointing such an individual is not legally invalid, for Allah Most High says, quoting His prophet Moses (Allah bless him and give him peace),
"And appoint for me a minister from any family. Aaron my brother; fortify me through him and have himshare my task" (Koran 20:29-32),
and if valid respecting the task of prophethood, it is valid a fortiori regarding the function of the caliphate. Another reason is that the direction of the Islamic Community (Umma), which is the caliph's duty, cannot be fully conducted alone without delegating responsibility; for him to appoint a minister to participate therin is sounder than attempting to manage everything himself, a minister to help keep him from following mere personal caprice, that he may thus be further from error and safer from mistakes.
The conditions necessary for such a minister are the same as those for a'caliph, excepting lineage alone (dis: o25.3) e)), for the minister must implement his views and execute his judgements, and must accordingly be capable of expert legal reasoning (ijtihad). He must also possess an additional qualification to those required for the caliphate, namely, by being specially qualified to perform the function he is appointed to.
-2- Limitary ministerial authority is a lesser responsibility and has fewer conditions, since the role of personal judgement therein is confined to the views of the caliph and their implementation, this minister being, as it were, an intermediary between the caliph, his subjects, and their appointed rulers; delivering orders, performing directives, implementing judgements, informing of official appointments, mustering armies, and informing the caliph in turn of important events, that the minister may deal with them as the caliph orders. He is an assistant in carrying out matters and is not appointed to command them or have authority over them. Such a ministry does not require an appointment but only the caliph's permission.

@O25.8When the caliph appoints a ruler over a region or city, the ruler's the ruler's authority may be of two kinds, general or specific. The general may in turn be of two types, authority in view of merit, which is invested voluntarily; and authority in view of siezure of power, invested out of necessity.

@O25.9Authority in view of merit is that which is freely invested by the caliph through his own choice, and entails delegating a given limitary function and the use of judgement within a range of familiar alternatives. This investiture consists of the caliph appointing an individual to independently govern a city or region with authority over all its inhabitants and discretion in familiar affairs for allmatters of government, including seven functions:
-1- raising and deploying armies on the frontiers and fixing their salaries, if the caliph has not already done so;
-2- reviewing laws and appointing judges and magistrates;
-3- collecting the annual rate (khiraj) from those allowed to remain on land taken b Islamic conquests, gathering zakat from those obliged to pay, appointing workers to handle it, and distributing it to eligible recipients;
-4- protecting the religion and the sacrosanct, preserving the religion from alteration and substitution;
-5- enforcing the prescribed legal measures connected with the rights of Allah and men;
-6- leading Muslims at group and Friday prayers, whether personally or by

representative;
-7- facilitating travel to the hajj for both pilgrims from the regian itself and those passing through from elsewhere, that they may proceed to the pilgrimage with all necessary help,
-8- and if the area has a border adjacent to enemy lands, an eighth duty arises, namely to undertake jihad against enemies, dividing the spoils of battle among combatants, and setting aside fifth (def: o10.3) for deserving recipients.

@O25.10Authority in view of seizure of power, invested out of necessity, is when a leader forcibly takes power in an area over which the caliph subsequently confirms his authority and invests him with its management and rule. Such a leader attains political authority and managementby takeover, while the caliph, by giving him authorization, is enable to enforce the rules of the religion so that the matter may brought from invalidity to validity and from unlawfulness to legitimacy. And if this process is beyond what is normally recognized as true investiture of authority with its conditions and rules, it yet preserves the ordinances of the Sacred Law and rules of the religion that may not be left vitiated and compromised (al-Ahkam al-sultaniyya wa al-wilayat al-diniyya (y87), 25-39).

*2*Chapter O26.0: The Conclusion of `Umdat Al-Salik

@O26.1And Allah Most High and Glorious knows best what is correct
(O: meaning that He knows best what actually 1" corresponds to the truth, in word and deed, the author thereby denying the claim to know better. There is scholarly disagreement as to whether the truth (A: about the rule of Allah for a particular ruling) is really one or multiple (A: many scholars holding that all positions of qualified mujtahids on a question are correct). In fact, it is one, the Imam who is right about it (Allah be well pleased with them all) receiving two rewards, one for his attempt and one for being correct, while the one who is not is mistaken, receiving a reward for his effort and being excused for his mistake. All of which applies to particular rulings of Sacred Law (furu'), as opposed to fundamentals of Islamic faith (usul, def: books u and v), in which the person wrong about them is guilty of serious sin, as is anyone who contradicts the tenets of the orthodox Sunni Community (Ahl al-Sunna wa al-Jama'a)).

*1*BOOK P: ENORMITIES (Al Kabaa'ir, by Imaam al Zhahabi)

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*2*Chapter P0.0: The Author's Introduction

@(n: The first of the books translated as appendices to our basic text 'Umdat al-salik concerns the enormities alluded to above in the context of court testimony (dis: 024.3), and has been edited from the Kitab al-kaba'ir (Book of enormities) of Imam Dhahabi, who defines an enormity as any sin entailing either a threat of punishment in the hereafter explicitly mentioned by the Koran or hadith, a prescribed legal penalty (hadd), or being accursed by Allah or His messenger (Allah bless him and give him peace).)

@P0.1 In the name of Allah, Most Merciful and Compassionate.
O Lord, facilitate and help. The sheikh, Imam, and hadith master (hafiz, def: w48.2 (end) Shams al-Din Muhammad ibn Ahmad ibn 'Uthman Dhahabi (may Allah forgive him) said: Praise be to Allah for true faith in Him, His books, messengers angels, and decrees. Allah bless our prophet Muhammad, his folk, and those who support him, with a lasting blessing that will grant us the Abode of Permanences near to Him.
This is a book useful in knowing the enormities, both in general and in detail. May Allah by His mercy enable us to avoid them. Allah Most High says, "If you avoid the enormities of what you have been forbidden, We shall acquit you of your wrongdoings and admit you to a generous place to enter" (Koran 4:31).

In this text, Allah Most High promises whoever avoids the enormities to admit him to paradise. The Prophet (Allah bless him and give him peace) said,"The five prescribed prayers, and from one Friday prayer to another entail forgiveness for what is between them as long as you do not commit the enormities."
So we are obliged to learn what they are, that the Muslim may avoid them.

*2*Chapter P1.0: Ascribing Associates to Allah Most High (Shirk)

@P1.1Ascribing associates to Allah Most High means to hold that Allah has an equal, whereas He has created you, and to worship another with Him, whether it be a stone, human, sun, moon, prophet, sheikh, jinn, star, angel, or other.

@P1.2Allah Most High says:
-1- "Allah does not forgive that any should be associated with Him, but forgives what is other than that to whomever He wills" (Koran 4:48).
-2- "Surely, whoever ascribes associates to Allah, Allah has forbidden him paradise, and his refuge is hell" (Koran 5:72).
-3- "Of a certainty, worshipping others with Allah is a tremendous injustice" (Koran 31:13).

@P1.3The Koranic verses concerning this are very numerous, it being absolutely certain that whoever ascribes associates to Allah and dies in such a state is one of hell's inhabitants, just as whoever believes in Allah and dies as a believer is one of the inhabitants of paradise, even if he should be punished first.
*2*Chapter P2.0: Killing a Human Being

@P2.1Allah Most High says:
-1- "Whoever intentionally kills a believer, his recompense shallbe hell, abiding therein forever, and Allah shall be wroth with him, damn him, and ready for him a painful torment" (Koran 4:93).
-2- "Whoever takes a life other than to retaliate for a killing or for corruption in the land is as if he had slain all mankind" (Koran 5:32).
@P2.2
The Prophet (Allah bless him and give him peace) said:
"When two Muslims meet with drawn swords, both the slayer and the slain go to hell." Someone said, "O Messenger of Allah, that is for the slayer. But why the slain?" And he replied, "Because he meant to kill the other."

*2*Chapter P3.0: Sorcery

@P3.1Sorcery is an enormity because the sorcerer must necessarily disbelieve (dis: x136), and the accursed Devil has no other motive for teaching a person witchcraft than that he might thereby ascribe associates to Allah (shirk).

@P3.2Allah Most High says:
-1- "A sorcerer will never prosper wherever he goes" (Koran 20:69).
-2- "... But the devils disbelieved, teaching people sorcery" (Koran 2:102).
And Allah Most High says, concerning Harut and Marut.
-3- "The two do not teach anyone before telling them, 'We are only a temptation, so be not unbelievers,' but they learn from these two that which the use to separate a man from his wife" (Koran 2:102).

*2*Chapter P4.0: Not Performing the Prayer

@P4.0Allah Most High says:
-1- But a generation followed them who dissipated the prayer and pursued (their) lusts, and they shall find Ghayy (n: a"valley in hell" (Tafsir al-Jalalayn (y77), 402), save he who repents..." (Koran 19:59-60).
-2- "Woe to those who pray, unmindful of their prayers" (Koran 107:4-5).
-3- "'What has brought you to hell?' And they shall say, 'We were not of those who prayed'" (Koran 74:42-43).

@P4.2The Prophet (Allah bless him and give him peace) said,
"The agreement that is between us and them is the prayer: whoever leaves it has disbelieved (dis: w18.2-5). "

*2*Chapter P5.0: Not Paying Zakat

@P5.1Allah Most High says:
-1- "Woe unto polytheists, who do not pay zakat and are disbelieves in the hereafter" (Koran 41:6-7).
-2- "Those who hoard gold and silver, spending it not in the way of Allah, give them glad tidings of a painful torment, the day they are roasted upon it in the fire of hell" (Koran 9:34-35).

*2*Chapter P6.0: Showing Disrespect to One's Parents

@P6.1Allah Most High says:
-1- "Your Lord decrees that you shall worship none but Him and treat your parents well, and if one or both of them each old age with you, say not 'Uff!' to them nor upbraid them, but speak noble words and lower the wing of humility to them out of mercy" (Koran 17:230-24).
-2- "And We enjoin man to be good to his parents" (Koran 29:8).

@P6.2The Prophet (Allah bless him and give him peace) said,
"Shall I not tell you of the worst of the enormities?..."
and one of those he mentioned was undutiful behavior to one's parents.

*2*Chapter P7.0: Accepting Usurious Gain (Riba) (def:k3)

@P7.1Allah Most High says:
"O you who believe: fear Allah and forgo what remains of usurious gain if you are believers. If you will not, then know of a declaration of war (against you) from allah and His messenger" (Koran 2:278-79).

@P7.2the Prophet (Allah bless him and give him peace) said,
"May Allah curse him who eats of usurious gain (riba) or feeds it to another (A: curse (la'n) meaning to put someone far from the divine mercy). "

*2*Chapter P8.0: Wrongfully Consuming an Orphan's Property

@P8.1Allah Most High says:
-1- "Verily, those who wrongfully eat the property of orphans but fill their belles with fire, and shall roast in a blaze" (Koran 4:10).
-2- "Approach not the orphan's property, save in exchange for that which is better" (Koran 6:152).

@P8.2
If the orphan's guardian is poor and consumes some of his charge's property without exceeding what is permissible, there is no harm in it (A: no haram (la ba's) being a technical term in Sacred Law meaning that it is better not to). What is in excess of the permissible is absolutely unlawful. (N: Scholars say that the guardian may lawfully only take whichever is less: the amount he needs, or else the wage typically received for work comparable to that performed for the orphan.) The criterion of the permissible is what is customary among people who are true believers free from base, ulterior motives.

*2*Chapter P9.0: Lying About the Prophet (Allah Bless Him and Give Him Peace)

@P9.1Some scholars hold that lying about the Prophet (Allah bless him and give him peace) is unbelief (kufr) that puts one beyond the pale of Islam. There is no doubt that a premeditated lie against Allah and His messenger that declares something which

is unlawful to be permissible or something permissible to be unlawful is pure unbelief. The question (A: as to when it is an enormity rather than outright unbelief) only concerns lies about other than that.

@P9.2The Prophet (Allah bless him and give him peace) said:
-1- "A lie about me is not the same as a lie about someone else: whoever intentionally lies about me shall take a place for himself in hell."
-2- "Whoever relates words purportedly from me, thinking it is a lie, is a liar."

@P9.3It is clear from this that narrating a forged (mawdu') hadith is not permissible.

@P9.4(Ibn Kathir:) As for detecting forged hadiths, there are many signs that enable one to do so, such as internal evidence of forgery in wording or content, including poor grammar, corrpt meaning, the mention of incredible rewards for inconsiderable efforts, or inconsistency with what is established in the Koran and rigorously authenticated (sahih) hadith. It is not permissible for anyone to relate such a hadith except by way of condemning it, to warn one of the ignorant public or common people who might be deceived by it. there are many types of individuals who forge hadiths, including those with corrupt convictions about basic tenets of Islamic faith, as well as devotees who believe they are doing good by making up hadith-like stores that encourage others to do good, avoid bad, or perform meritorious acts, that such stories may be acted upon (al-Bahith al-hathith sharh Ikhtisar 'ulum al-hadith (y61), 78).

@P9.5(n: Having discussed lies and forgeries, we must strictly distinguish them from the hadith category called not well authenticated (da'if, lit. "weak"), sotermed because of such factors as having a channel of transmission containing a narrator whose memory was poor, one who was unreliable, unidentified by name, or for other reasons. Such hadiths legally differ from forgeries in the permissibility of ascribing them to the Prophet (Allah bless him and give him peace) and in other ways discussed at w48 below.)

*2*Chapter P10.0: Breaking One's Fast During Ramadan
@P10.1The Prophet (Allah bless him and give him peace) said:
-1- "Whoever breaks a fast-day of Ramadan without an excuse or dispensation could not requite it by fasting a lifetime, were he to do so (A: meaning that making up that day, while obligatory, does not remove the sin, though repentance does). "
The above hadith is not well authenticated.
-2- "The five prescribed prayers, and from one Friday prayer to another or from Ramadan to Ramadan, expiate the sins between them as long as the enormities are avoided."
-3- "Islam is based on five things: testifying that there is no god but Allah and that Muhammad is the Messenger of Allah, performing the prayer, giving zakat, fasting Ramadan, and the pilgrimage to the House (kaaba). "

*2*Chapter P11.0: Fleeing From Combat in Jihad

@P11.1Allah Most High says,
"On that day, whoever turns his back to them, unless pretending flight in order to reattack, or separating to join another unit, will bear the wrath of Allah and his refuge will be hell, a ter rible end" (Koran 8:16).

*2*Chapter P12.0: Fornications

@P12.1Allah Most High says:
-1- "Approach not fornication, it is surely an indecency and evil as a way" (Koran 17:32).
-2- "The fornicator and Fornicatress, scourge them each a hundred stripes and let not pity for them take you" (Koran 24:2).
-3- "The fornicator shall not wed other than a fornicatress or idolatress. The fornicatress, none shall wed her but a fornicator or idolator. That is unlawful for believers" (Koran 24:3).
(n: The latter verse "was revealed when some poor Muslim emigrants in Medina were

considering marrying the polytheists' prostitutes, who were wealthy, so that the prostitutes could provide for them. One opinion is that the Koranic prohibition concerned these people alone. A a second position is that it was a general prohibition, but was superseded by the revelation of the subsequent verse,
'And marry those of you who are without spouses' (Koran 24:32). " (Tafsir al-Jalalayn (y77), 457))

@P12.2The Propeht (Allah bless him and give him peace) said,
''Whoever fornicates or drinks wine. Allah takes his faith from him as a man takes a shirt off over his head."

*2*Chapter P13.0: The Leader Who Misleads His Following, the Tyrant and Oppressor

@P13.1Allah Most High says:
-1- "The dispute (lit. "way against") is only with those who oppress people and wrongfully commit aggression in the land: these will have a painful torment" (Koran 42:42).
-2- "They did not forbid each other the evil that they did, and how wicked was what they would do' (Koran 5:79).
@P13.2
The Prophet (Allah bless him and give him peace) said:
-1- "All of y ou are trustees, and each is responsible for those entrusted to his care."
-2- "Any superior who misrules his followers shall go to hell."
-3- "There will come corrupt, tyrannous rulers: whoever confirms their lies and assists them in their oppression is not of me, nor I of him, and shall not meet me at my watering place in paradise."
-4- "He who shows no mercy will no be shown any."
-5- "the worst of your rulers shall be those whom you detest and who detest you, whom you curse and who curse you." They said, "O Messenger of Allah, can we not throw, them out?" And he replied, "No, not as long as they maintain the prescribed prayer (dis: o25.3(a(A:))) among you."
-6- "You'll be anxious to lead, and this will be a source of remorse to you on the Day of Judgement."
*2*Chapter P14.0: Drinking

@P14.1Allah Most High says:
-1- "They will ask you about wine and gambling. Say: 'There is great sin therein'" (Koran 2:219).
-2- "O you believe: wine, gambling, idols, and fortune-telling arrows are but filth of the Devil's handiwork, so shun them..." (Koran 5:90).

@P1.2The Prophet (Allah bless him and give him peace) said:
-1- "Scourge whoever drinks wine. If he drinks it again, scourge him again. If he drinks it again, scourge him again. If he drinks it a fourth time, kill him." (N: The ruling of this hadith was later superseded, for the Propeht (Allah bless him and give him peace) was brought a drunkard for a forth time, but did not kill him, showing that execution had been superseded, though the hadith remains a proof that the crime of drunkenness is an enormity.)
-2- "Allah has cursed wine, and whoever drinks it, pours it, sells it, buys it, presses it for another, presses if for himself, carries it, accepts its delivery, or eats its price."
-3- "Whoever drinks wine in this world shall be forbidden it in the next.

*2*Chapter P15.0: Arrogance, Pride, Conceit, Vanity and Haughtiness

@P15.1
Allah Most high says:
-1- "Moses said, 'I surely seek refuge in my Lord and yours from every arrogant person who disbelievers in the Day of Reckoning'" (Koran 40:27).
-2- "Assuredly, Allah loves not those who hold aloof out of pride" (Koran 16:23).

-3- "Such is the Final Abode. We grant it to those who seek not exaltation in the land, nor corruption" (Koran 28:83).
-4- "Turn not your cheek from people out of pride, not walk haughtily through the land, for Allah loves no one who is conceited and boastful" (Koran 31:18).

@P15.2The Prophet (Allah bless him and give him peace) said:
-1- "Tyrants and the arrogant will be raised on the Last Day as grain strewn underfoot that people will walk upon."
-2- "No one with the slightest particle of arrogance in his heart will enter paradise." A man remarked, "But a man likes his clothes to be nice and his sandals good." The Propeht (Allah bless him and give him peace) said, "verily, Allah is beautiful and loves beauty. Arrogance is refusing to acknowledge what is right and considering others beneath one."
-3- Allah Most High says, "Greatness is My garment and haughtiness My mantle: whoever vies with Me for them I will throw into hell."
-4- Salama ibn al-Akwa' recounts that a man was eating with his left hand in the presence of the Propeht (allah blesshim and give him peace). The Propeht told him, "Eat with your right," to which the man replied, "I cannot," though nothing stopped him but arrogance. The Propeht said, "May you not be able to." And the man could never left his right hand to his mouth again.

@P15.3The wickedest arrogance is that of someone who exalts himself over people because of is learning and gloats to himself about his superiority. The knowledge of such a person is of absolutely no benefit to him. Whoever learns Sacred Knowledge for the sake of the next world is unsettled by his learning, his heart is humbled and his ego lowered. Such a person lies in wait for his selfishness and never gives it free rain. He constantly takes his ego to task and corrects it. Were he to neglect it, it would diverge from the right path and destroy him. the person who seeks knowledge to take pride in it or to gain a position of leadership, looking disdainfully at other Muslims, thinking them fools and making light of them- all this is the most enormous arrogance, and "no one with the slightest particle of arrogance in his heart will enter paradise."
*2*Chapter P16.0: Bearing False Witness

@P16.1Allah Most High says.
"Shun the abomination of idols, and shun false testimony" (Koran 22:30).

@P16.2The Prophet (Allah bless him and give him peace) said:
-1- "On the Day of Judgement, the feet of the person who bore false witness will not stir from their place before their own is condemned to hell."
-2- "Shall I tell you of the worst enormities?- worshipping others with Allah, showing disrespect to parents, giving a false statement, and testifying to the truth of a falsehood." And he kept repeating it until we were telling ourselves (N: out of sympathy for him because of the strain of repeating it), "If only he would be silent."

*2*Chapter P17.0: Sodomy and Lesbianism

@P17.1In more than one place in the Holy Koran, Allah recounts to us the story of Lot's people, and how He destroyed them for their wicked practice. There is consensus among both Muslims and the followers of all other religions that sodomy is an enormity. It is even viler and uglier than adultery.

@P17.2Allah Most High says:
"Do you approach the males of humanity, leaving the wives Allah has created for you? But you are a people who transgress" (Koran 26:165-66).

@P17.3The Prophet (Allah bless him and give him peace) said:
-1- "Kill the one who sodomizes and the one who lets it be done to him."
-2- "May Allah curse him who does what Lot's people did."
-3- "Lesbianism by women is adultery between them."

*2*Chapter P18.0: Charging a Woman Who Could Be Chaste (def: o13.2) With Adultery

@P18.1Allah Most High says:
-1- "Those who accuse believing women, unmindful though innocent, are cursed in this world and the next and shall receive a painful torment" (Koran 24:23).
-2- "Those who accuse innocent women without producing four witnesses, scoruge them eighty stripes" (Koran 24:4).

@P18.2The Prophet (Allah bless him and give him peace) said,
"Avoid the seven heinous sins..."
and he mentioned charging believing women, unmindful though innocent, with adultery.

@P18.3As for someone who accuses the Mother of the Faithful 'A'isha of adultery after the revelation from heaven of her innocence (Koran 24:11-12), such a person is an unbeliever (kafir) denying the Koran and must be killed.

*2*Chapter P19.0: Misappropriating Spoils of War, Muslim Funds, or Zakat

@P19.1Allah Most High says:
"No prophet has been given to misappropriate wealth. Whoever does so shall bring what they have taken on the Day of Judgement" (Koran 3:161).

@P19.2The Prophet (Allah bless him and give him peace) said:
"... By Allah, none of you shall wrongfully take something save that he will meet Allah carrying it on Judgement Day, and I swear I will not recognize any of you who is carrying a grunting camel, lowing cow, or bleating sheep when you meet Allah." Then he lifted his hands and said, "O Allah, have I told them?"

*2*Chapter P20.0: Taking People's Property Through Falsehood

@P20.1Allah Most High says,
"Consume not one another's property though falsehood, nor proffer it to those who judge (between you). .." (Koran 2:188).

@P20.2The category of taking others' property through faleshood includes such people as those who impose non-Islamic taxes (def: p32), the highwayman who blocks the road, the thief, the idler, the betrayer of a trust, the cheater or adulterator of trade goods, the borrower who denies having borrowed something, the person who stints when Weighing or measuring out goods, the person who picks up lost and found property and does not give notice of having found it, the person who sells merchandise with a hidden defect, the gambler, and the merchant who tells the buyer that the merchandise cost more than it did.

@P20.3The Prophet (Allah bless him and give him peace) said:
-1- "whoever appropriates a hadsbreadth of land through falsehood shall be made to carry it, as thick as seven earths, around his neck on judgement Day."
-2- "For someone to put off repayment of a debt when able to pay is an injustice."
-3- A man said, "O Messenger of Allah, will my mistakes be forgiven me if I am killed, in steadfastness and anticipating Allah's reward, advancing and not retreating?" He replied, "Yes, except for debts."
-4- "Flesh nurtured on ill-gotten wealth will not enter paradise. The hellfire has a better right to it."
-5- "There is a record that Allah will not ignore the slightest bit of. It is the oppression of Allah's servants."

@P20.4Oppression is of three types. The first is consuming property through falsehood; the second, oppressing Allah's servants by killing, hitting, breaking bones or causing wounds; and the third, oppressing them through spoken abuse, cursing, reviling, or accusing them of adultery or sodomy without proof. The Prophet (Allah bless him and give him peace) said in an address to the people at Mina,
"Verily, your blood, property, and reputations are as inviolable to one another as the inviolability of this day, this month, and this city of yours."

*2*Chapter P21.0: Theft

@P21.1Allah Most High says:
"Thieves, male or female-cut off their hands in retribution for what they have earned, as an exemplary punishment from Allah. Allah is Almighty and Wise" (Koran 5:38).
@P21.2
The Prophet (Allah bless him and give him peace) said:
-1- "Allah curse the thief whose hand is cut for stealing a rope."
-2- "If Muhammad's daughter Fatima stole, I would cut off her hand."

@P21.3A thief's repentance is of no benefit to him until he returns whatever he stole (dis: p77.3). If moneyless, he must have the victim absolve him of financial responsibility.

*2*Chapter P22.0: Highwaymen who Menace the Road

@(A: The amount of money they ask makes no difference, and like this, in being money taken through falsehood, are all measures imposed upon travellers without their free choice, such as tariffs, mandatory currency exchange, visa fees, and so forth.)

@P22.1Allah Most High says:
"The recompense of those at war with Allah and His messenger and who strive for corruption in the land is that they be killed or crucified, or a hand and foot cut off from opposite sides, or banished from the land. That is their humiliation in this world, and an immense torment awaits them in the next" (koran 5:33).

@P22.2Merely making people feel that the way is unsafe is to commit an enormity, so how then if such a person should take money?

*2*Chapter P23.0: The Engulfing Oath

@P23.1An engulfing oath is one in which there is premeditated lying. It is termed engulfing because it whelms its swearer in sin.

@P23.2The Propeht (Allah bless him and give him peace) said:
-1- "the enormities are worshipping others with Allah, showing disrespect to parents, killing a human being, and the engulfing oath."
-2- "A man once said, 'By Allah, Allah will not forgive So-and-so.' Allah said, 'Who is it that swears I must not forgive So-and-so? I forgive him and annul all your works.'"
*2*Chapter P24.0: The Inveterate Liar

@P24.1Allah Most High says:
-1- Allah guides not the profligate liar" (Koran 40:28).
-2- "May liars perish" (Koran 51:10).

@P24.2The Prophet (Allah bless him and give him peace) said:
-1- "Lying leads one to wickedness and wickedness leads one to hell. A man keeps lying until Allah records that he is an inveterate liar."
-2- "The marks of a hypocrite are three: when he speaks he lies, when he makes a promise he breaks it, and when entrusted with something he betrays the trust."
-3- "A believer's natural disposition might comprise any trait other than treachery and untruthfulness."

*2*Chapter P25.0: Suicide

@P25.1Allah Most High says:
"Do not kill yourselves, for Allah is compassionate toward you. WHoever does so, intransgression and wrongfully, We shall roast in a fire, and that is an easy matter for Allah" (Koran 4:29-30).

@P25.2The Prophet (Allah bless him and give him peace) said:
-1- "Of those before you, there was once a wounded man who could not bear it, so he took a knife and cut h is arm, and bled until he died. Allah Most High said, 'My slave has taken his life before I have, so I forbid him paradise.'"
-2- "Whoever kills himself with a knife will abide forever in the fire of hell, perpetually stabbing his belly with it. Whoever kills himself with position will abide forever in the fire of hell, poison in hand, perpetually drinking of it."

*2*Chapter P26.0: The Bad Judge
@P26.1Allah Most High says:
-1- "Whoso does not judge by what Allah has revealed, those are the Unbelievers" (Koran 5:44).
-2- "Those who conceal the clear explanations and guidance We have revealed, after We have explained it in the Book to people, are cursed by Allah and those who curse" (Koran 2:159).

@P26.2The Propeht (Allah bless him and give him peace) said:
-1- "One judge shall go to paradise, and two to hell. The judge who knows what is right and judges accordingly shall be in paradise. the one who knows what is right but intentionally judges unjustly will go to hell, and so will the judge who judges without knowledge."
Anyone who judges without knowledge or evidence from Allah and His messenger regarding the matter he gives an opinion on is subject to this threat.
-2- "whoever is appointed to judge between people is as though slaughtered without a knife."

@P26.3It is unlawful for a judge to rule on a cause when angry, especially at a litigant. When a judge's qualities combine an insufficiency of Sacred Knowledge, unworthy intention, bad disposition, and lack of godfearingness, then his destruction is complete and he must resign and hasten to save himself from hell.

*2*Chapter P27.0: Permitting One's Wife to Fornicate

@P27.1Allah Most High says:
"None shall wed a fornicatress but a fornicator or idolator. That is unlawful for believers" (Koran 24:3).

@P27.2The Prophet (Allah bless him and give him peace) said,
"Three will not enter paradise: he who is disrespectful to his parents, he who lets his wife fornicate with another, and women who affect masculinity."

@P27.3Someone who suspects his wife of indecency but pretends not to know because he loves her is not as bad as someone who actually pimps for her. There is no good in a man without jealousy for his rights.

*2*Chapter P28.0: Masculine Women and Effeminate Men
@P28.1The Prophet (Allah bless him and give him peace) said.
-1- "Men are already destroyed when they obey women."
-2- The Propeht (Allah bless him and give him peace) cursed effeminate men and masculine women.
-3- The Prophet (Allah bless him and give him peace) cursed men who wear women's clothing and women who wear men's.

*2*Chapter P29.0: Marrying Solely to Return to the Previous Husband

@P29.1The Prophet (Allah bless him and give him peace) cursed to man who marries a women after her divorce solely to permit her first husband to remarry her (dis: n7.7) and cursed the first husband.

*2*Chapter P30.0: Eating Unslaughtered Meat, Blood or Pork

@P30.1Allah Most High Says,
"Say: 'I find nothing in what has been revealed to me that is unlawful for a person to eat except Unslaughtered meat, blood outpoured, or the flesh of swine, for all this is filth'" (Koran 6:45).
@P30.2
Whoever premeditatedly eats these when not forced by necessity is a criminal.

*2*Chapter P31.0: Not Freeing Oneself of All Traces of Urine

@P31.1Allah Most High says,
"And your raiment purify" (Koran 74:4).

@P31.2The Prophet (Allah bless him and give him peace) :
-1- passed by two graves and said, "The two are being tormented, and not from anything excessive: one of them did not free himself of traces of urine, while the other was a talebearer (def: r3). "
-2- And he said, "Take care to remove all vestiges of urine from your persons, because it is the main reason for torment in one's grave."
Moreover, the prayer of someone who does not protect his person and clothing from urine is not acceptable (A: which is how scholars interpret the above hadiths, as applying to those who are negligent in removing all traces of urine before they pray).

*2*Chapter P32.0: Collecting Taxes

@(A: Meaning to take revenues other than those which are countenanced by Sacred Law such as zakat, the non-Muslim poll tax (jizya, def: o11.4), or the spoils or war (o10).)

@P32.1Such people are among those meant by the words of Allah Most High,
"The dispute is only with those who oppress people, and wrongfully exceed proper bounds in the land: these will have a painful torment" (Koran42:42).

@P32.2And in the hadith of the adulteress who purified herself by voluntarily being stoned to death, there is the Prophet's remark (Allah bless him and give him peace).
"She has made a repentance so sincere that if even a tax taker repented with the like of it, he would be forgiven."

@P32.3He who imposes taxes resembles a highwaymen, and is worse than a thief. But one who burdens the people, imposing over new levies on them, is more tyrannous and oppressive than someone more equitable therein who treats those under him more kindly. Those who gather taxes, who do the clerical work, or who accept the proceeds, such as a soldier, sheikh, or head of a Suficenter (zawiya) -all bear the sin, and are eating of ill-gotten wealth (dis:w49).

*2*Chapter P33.0: Showing Off in Good Works

@P33.1Allah Most High says:
-1- "The hypocrites are trying to fool Allah, while it is He who is outwitting them. And when they stand to pray they do so lazily, showing off to people, remembering Allah but little" (Koran 4:142).
-2- "O you who believe: do not nullify your charity by reminding recipients of having given it and by offending them, like someone who spends his money as a show for people" (Koran 2:264).

@P33.2The Prophet (Allah bless him and give him peace) said:
-1- "The first person judged on Resurrection Day will be a man martyred in battle. "He will be brought forth, Allah will reacquaint him with His blessings upon him and the man will acknowledge them, whereupon Allah will say, 'What have you done with them?' to which the man will respond, 'I fought to the death for you.'
"Allah will reply, 'You lie. You fought in order to be called a hero, and it has already been said,'

Then he will be sentenced and dragged away on his face to be flung into the fire.
"Then a man will be brought forward who learned Sacred Knowledge, taught it to others, and who recited the Koran. Allah will remind him of His gifts to him and the man will acknowledge them, and then Allah will say, 'What have you done with them?' The man will answer, 'I acquired Sacred Knowledge, taught it, and recited the Koran, for Your sake.'
"Allah will say, "You lie. You learned so as to be called a scholar, and read the Koran so as to be called a reciter, and it has already been said.' Then the man will be sentenced and dragged away on his face to be flung into the fire.
"Then a man will be brought forward whom Allah expansively provided for, lavishing varieties or property upon him, and Allah will recall to him the benefits bestowed, and the man will acknowledge them, to which Allah will say, 'And what have you done with them?' The man will answer. 'I have not left a single kind of expenditure You love to see made in Your cause, save that I have spent on it for your sake.'
"Allah will say, 'You lie. You did it so as to be called generous, and it has already been said.' Then he will be sentenced and dragged away on his face to be flung into the fire."
-2- "The slightest bit of showing off in good works is as if worshipping others with Allah."

@P33.3(A: When there is an act of obedience the servant intends to conceal but Allah reveals, then it is merely gratitude for His blessings to admit it to others and thank Him for it. When asked if one is fasting, for example, and one is, then one should say "Praise be to Allah" (al-Hamdu lillah).)

*2*Chapter P34.0: Breach of Faith

@P34.1Allah Most High says.
"Do not betray Allah and His messenger, nor knowingly betray your trusts" (Koran 8:27).

@P34.2The Prophet (Allah bless him and give him peace) said:
"Someone who cannot keep a trust is devoid of faith. Someone who cannot keep an agreement is devoid of religion."

@P34.3A breach of faith in anything is very ugly, but in some matters is worse than others. A person who cheats one for a pittance is not like a person who betrays one concerning one's wife and money, perpetrating outrages.

*2*Chapter P35.0: Learning Sacred Knowledge for the Sake of this World, or Concealing It

@(A: Learning Sacred Knowledge for the sake of this world means that if not for this-worldly reasons, a person would not have bothered to learn (dis: a3.1).)

@P35.1Allah Most High says:
-1- "Only the knowledgeable of His slaves fear Allah" (Koran 35:28).
-2- "Those who conceal what Allah has revealed of the Book and purchase a trifling price thereby, these but fill their bellies with hellfire" (Koran 2:174).
-3- "And Allah made a covenant with those given the Book to explain it to people and not keep it from them. But they flung it behind their backs" (Koran 3:187).

@P35.2The Prophet (Allah bless him and give him peace) said,
"Anyone who seeks Sacred Knowledge to vie with scholars, argue with fools, or win people's hearts will go to hell."
@P35.3Hilal ibn al-'Ala' said, "Seeking Sacred Knowledge is arduous, learning it is harder than seeking it, applying it is harder than learning it, and remaining safe from it is even harder than applying it."

*2*Chapter P36.0: Reminding Recipients of One's Charity to Them

@P36.1Allah Most High says.
"O you believe: do not nullify your charity by reminding recipients of having given it

and by offending them" (Koran 2:264).

@P36.2The Prophet (Allah bless him and give him peace) said,
"There are three people whom Allah will not speak to, look at, or exonerate on the Day of Judgement, and who will have a painful torment: he who wears the hem of his garment low (A: out of pride). he who reminds recipients of his charity to them, and he who sells merchandise swearing that he paid more for it than he actually did."
*2*Chapter P37.0: Disbelieving in Destiny (Qadr)

@P37.1Allah Most High says:
-1- "Verily, We have created everything in a determined measure" (Koran 54:49).
-2- "Allah has created you and what you do" (Koran 37:96).
-3- "Whomever Allah leads astray has no guide" (Koran 7:186).
-4- "And Allah knowingly led him astray" (Koran 45:23).
-5- "But you will not want to unless Allah wants" (Koran 76:30).
-6- "And He inspired it (A: the human soul) its evil and its godfearingness" (Koran 91:8).

@P37.2The Prophet (Allah bless him and give him peace) :
-1- "O Messenger of Allah, what is faith?" And he replied, "To believe in Allah, His angles, His messengers, the resurrection after death, and in destiny (qadr, def: u3.7-8). its good and evil."
-2- "There are six whom I curse, Allah curse, and who are cursed by every prophet whose supplications are answered: he who denies Allah's destiny, he who adds anything to Allah's book, he who rules arrogantly, he who considers what Allah has prohibited to be lawful, he who deems it permissible to treat my family in ways Allah has forbidden (A: such as insulting or reviling them), and he who abandons my sunna (A: out of disdain for it). "

*2*Chapter P38.0: Listening to People's Private Conversations

@P38.1
Allah Most High says.
"Do not spy" (Koran 49:12).

@P38.2The Prophet (Allah bless him and give him peace) said,
"Whoever listens to people who are averse to his listening shall have molten lead poured into his ears on the Day of Judgement."

@P38.3This may not be an enormity (A: in some cases (dis:r6.4)).

*2*Chapter P39.0: Cursing Others (dis:r38)

@P39.1The Prophet (Allah bless him and give him peace) said:
-1- "Cursing a believer is like killing him."
-2- "When a servant curses something, the curse rises up to the sky, where the doors of the sky shut it out, and then it falls back to earth, where the doors of the earth shut it out. then it searches right and left and when it does not find anywhere to go it comes back to the thing which was cursed, should it deserve it. It not, it returns upon the person who uttered it."
-3- While the Prophet (Allah bless him and give him peace) was on a journey, they was a woman of the Medinan Helpers (Ansar) riding a camel which annoyed her, whereupon, she cursed it. The Prophet heard this and said, "Take off what is on its back and release it, for it has been curse." And it is as if I can still see it now, walking along among the people, no one stopping it.

*2*Chapter P40.0: Leaving One's Leader
@P40.1Allah Most High says.
"Fulfill covenants, for surely convenants will be asked about" (Koran 17:34).

@P40.2The Prophet (Allah bless him and give him peace) said:

"He who obeys me obeys Allah, and he who disobeys me disobeys Allah. He who obeys the leader obeys me, and he who disobeys the leader disobeys me."
(A: The leader referred to in the hadith is the caliph of the Muslims or his authorized representative (dis: O25.5). Whenever there is a group of three or more Muslims, it is sunna for a leader (amir) to be chosen. It is sunna to obey such a leader, and leaving him or not obeying him contravenes what is recommended, but is not unlawful.)

*2*Chapter P41.0: Believing in Fortune-Tellers or Astrologers

@P41.1Allah Most High says:
-1- "Pursue not that which you have no knowledge of' (Koran 17:36).
-2- "(He is) the Knower of the Unseen, and discloses not His unseen to anyone (dis: w60.1), except to a messenger with whom He is pleased" (Koran 72:26-27).

@P41.2The Prophet (Allah bless him and give him peace) said:
-1- "Whoever goes to a 'psychic' ('arraf) or fortune-teller and believes what he says has disbelieved in what has been revealed to Muhammad."
-2- "Allah Most High says, 'One of My servants reaches daybreak a believer, another an unbeliever. He who says, "We have received rain by Allah's grace," is a believer in Me and a disbeliever in the planets. But he who says, "We have received rain by the effects of such and such a mansion of the moon," is an unbeliever in Me and a believer in planets (A: if he thinks they have a causal influence independent of the will of Allah (dis: 08.7(17))). '"
-3- "Whoever goes to a 'psychic,' asks him about something, and believes him, will not have his prayer accepted for forty days."

*2*Chapter P42.0: A Wife's Rebelling Against Her Husband (def: m10.12)

@P42.1Allah Most High says:
"Men are the guardians of women, since Allah has been more generous to one than the other, and because of what they (men) spend from their wealth. So righteous women will be obedient, and in absence watchful, for Allah is watchful. And if you fear their intractability, warn them, desert them in bed(1), or hit them. But if they obey you, seek no way to blame them" (Koran 4:34).
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(1) Keller's selected translation was: "send them from bed" which is very remote from the arabic meaning. Al Muhaddith project has chosen "and desert them in bed" instead (whereby the husband must still remain in bed!!!, as Shaikh Mahmood Rankoosi explained in his lessons at Dar el Hadeeth).

@P42.2 The Prophet (Allah bless him and give him peace) said:
-1- "Allah will not look at a woman who is ungrateful to her husband, while unable to do without him."
-2- "When a man calls his wife to his bed and she will not come, and he spends the night angry with her, the angels, curse her until morning."
-3- "It is not lawful for a woman to fast when her husband is present, save by his leave. Nor to permit anyone into his house except with his permission."
-4- "Whoever leaves her husband's house (A: without his permission), the angels curse her until she returns or repents."
(Khalil Nahlawi:) It is a condition for the permissibility of her going out (dis: m 10.3-4) that she take no measures to enhance her beauty, and that her figure is concealed or altered to a form unlikely to draw looks from men or attract them., Allah Most High says,
"Remain in your homes and do not display your beauty as women did in the pre-Islamic period of ignorance" (Koran 33.33). (al-Durar al-mubaha (y99), 160)

*2*Chapter P43.0: Severing Ties of Kinship
@(A: The opposite, maintaining the bons of kinship (silat al-rahim), means politeness, kind treament, and concern for all one's relatives, even if distantly related, corrupt, non-Muslim, or unappreciative.)

@P43.1Allah Most High says:
"If you turn back, would you then cause corruption is the land, severing your family ties? Those are the ones whom Allah has cursed and deafened, and blinded their sight" (Koran 47:22-23).

@P43.2The Prophet (Allah bless him and give him peace) said:
-1- "He who severs his family ties will not enter paradise."
-2- "Whoever believes in Allah and the Last Day, let him maintain the bonds of kinship."
*2*Chapter P44.0: Making Pictures

@P44.1The Prophet (Allah bless-him and give him peace) said:
-1- 'Every maker of pictures will go to the fire, where a being will be set upon him for each picture he made, to torment him in hell."
-2- "Whoever makes an image shall be required (on the Last Day) to breathe a spirit into it, but will never be able to do so."
(n: Other hadith evidence appears at w50, which discusses legal questions relating to the artistic, photographic, and televisual depiction of animate life.)

*2*Chapter P45.0: The Talebearer Who Stirs Up Enmity Between People (dis:r3)

@P45.1Allah Most High says,
"Obey not every wretched swearer; slanderer, going about with tales" (Koran 68:10-11).

@P45.2The Prophet (Allah bless him and give him peace) said:
-1- "He who stirs up enmity among people by quoting their words to each other will not enter paradise."
-2- "You find that among the worst people is someone who is two-faced, showing one face to some and another face to others."
-3- "Do not tell me anything about my Companions, for I want to meet them without disquiet in my heart."

*2*Chapter P46.0: Loudly Lamenting the Dead

@P46.1The Prophet (Allah bless him and give him peace) said,
"He who slaps his cheeks, ripe his pockets, or calls out the cries of the pre-Islamic period of ignorance is not of us."

*2*Chapter P47.0: Attacking Another's Ancestry

@P47.1The Prophet (Allah bless him and give him peace) said,
"Two qualities in people are unbelief: attacking another's ancestry, and wailing over the dead."
(N: The hadith does not mean that these things put one beyond the pale of Islam, but that they are the actions of the Unbelievers.)

*2*Chapter P48.0: Excesses Against Others

@P48.1Allah Most High says,
"The dispute is only with those who oppress people and wrongfully commit aggression in the land: these will have a painful torment" (Koran 42:42).

@P48.2The Prophet (Allah bless him and give him peace) said,
-1- "Allah has inspired to me that you are all to be humble towards each other, such that no one transgresses against or exalts himself above another."
-2- Malik Rahawi said: "O Messenger of Allah, I have been given of beauty that which you see, and I do not like anyone to wear better sandals than I. Is this of presumptuous pride?" He answered, "This is not of presumptuousness, which rather consists of refusing to admit the truth and considering people inferior."
-3- "A woman was tortured for a cat she imprisoned until it died. She went to hell

because of it, having neither fed nor watered it, for she confined it; not yet having let it go to forage on the small creatures of the earth."
-4- "Allah will certainly torture those who torture people in this world."

*2*Chapter P49.0: Armed Insurrection and Considering Muslims Unbelievers

@(A: The early Kharijite sect committed these transgreesions.)

@P49.1
Allah Most High says:
-1- "Do not commit transgreesions: surely Allah loves not the transgressors" (Koran 2:190).
-2- "Whoever disobeys Allah and His messenger has gone manifestly astray" (Koran 33:36).

@P49.2The Prophet (Allah bless him and give him peace) said,
"If someone says to his Muslim brother,' You unbeliever,' one of them deserves the name."

*2*Chapter P50.0: Hurting or Reviling Muslims

@P50.1Allah Most High says:
-1- "Those who hurt believing men and women who have done nothing to deserve it shall bear the burden of calumny and open sin" (Koran 33:58).
-2- "Do not spy do not splender one another "(Koran 49:12).
-3- "Woe to whoever disparages others behind their back or to their face" (Koran: 104:1).
-4- "Those who love that scandal should be spread concerning the believers shall have a painful torment in this world and the next" (Koran 24:19).

@P50.2The Prophet (Allah bless him and give him peace) said:
-1- "The Muslim is the brother of the Muslim. He does not oppress him, hang back from coming to his aid, or belittle him. It is sufficiently wicked for someone to demean his fellow Muslim."
-2- "By Allah, he does not believe. By Allah, he does not believe. By Allah, he does not believe, "Someone asked, "Who, O Messenger of Allah?" And he said, "He whose neighbor is not safe from his evil conduct."
-3- Someone said, "O Messenger of Allah, So-and-so spends her nights praying and her days fasting, but there is something in her tongue that maliciously injures her neighbors." He replied, "There is no good in her, she will go to hell."
-4- "When I was taken up in the Ascent (Mi`raj), I passed by people with fingernails of copper who were raking their faces and chests with them. I asked, `Who are they, Gabriel?' and he said, `They are those who slandered others (lit. "ate people's flesh") and attacked their reputations.'"
-5- "No man charges another with corruption or unbelief, save that the charge returns against himself if the other is not as he said."
-6- "Do not revile the dead, for they have gone on to what they have sent ahead."

*2*Chapter P51.0 Harming the Friends (Awliya`) of Allah Most High

@P51.1Allah Most High says,
"Verily, those who offend Allah and His messenger are cursed by Allah in this world and the next, and He has prepared for them a humiliating torment" (Koran 33:57).

@P51.2The Prophet (Allah bless him and give him peace) said:
-1- "Abu Bakr, if you anger them [some of the poorer Emigrants], you anger your Lord."
-2- "Allah Most High says: `He who is hostile to a friend (wali) of Mine I declare war against. My slave approaches Me with nothing more beloved to Me than what I have made obligatory for him, and My slave keeps drawing nearer to Me with voluntary works until I love him. An when I love him, I am his hearing with which he hears, his sight with which he sees, his hand with which he seizes, and his foot with which he walks. If he

asks Me, I will surely give to him, and if he seeks refuge in Me, I will surely protect him.'"
(n: This hadith is explained in detail at w33, which discusses the friends (awliya') of Allah Most High.)
*2*Chapter P52.0: Dragging the Hem of One's Garment Out of Conceit

@P52.1
Allah Most High says,
"... Nor walk haughtily through the land"(Koran 31:18) _.

@P52.2The Prophet (Allah bless him and give him peace) said:
-1- "The caftan of the Muslim comes down to midcalf, there being no harm in what is between this and the anklebones, though any of it below the anklebones is in hell. Whoever lets the helm of his garment drag on the ground out of pride, Allah will not look at him."
-2- "While a man was walking along in a new set of clothes, with a swagger to his step, pleased with himself, and his hair combed down, Allah caused the earth to swallow him, and he will keep sinking until the Last Day."

*2*Chapter P53.0: Men Wearing Silk or Gold

@P53.1Allah Most High says,
"And the raiment of godfearingness is better" (Koran 7:26).

@P53.2The Prophet (Allah bless him and give him peace) said:
-1- "Only those with no share in the next world wear silk in this one."
-2- "Wearing gold and silk has been made unlawful for the men of my Community but permissible for its women."

*2*Chapter P54.0: Slaughtering in Other than Allah's Name

@P54.1Allah Most High says,
"Eat not of what the name of Allah has not been mentioned over; verily it is disobedience" (Koran 6:121).

@P54.2The Prophet (Allah bless him and give him peace) said,
"May Allah curse whoever slaughters in other than Allah's name."

*2*Chapter P55.0: Suppertitiously Changing Propery-Line Markers

@P55.1The Prophet (Allah bless him and give him peace) said,
"May Allah curse whoever changes the land's property-line markers."

*2*Chapter P56.0: Disparaging the Prophetic Companions (Sahaba)
@P56.1The Prophet (Allah bless him and give him peace) said,
"The curse of Allah is upon whoever reviles my Companions."

@P56.2'Ali ibn Abi Talib (Allah be well pleased with him) said,
"By Him who cleaves the seed and creates the soul, it is the solemn word of the Illiterate Prophet to me that none shall love me except a believer, and none hate me except a hypocrite."

*2*Chapter P57.0: Disparaging the Medinan Helpers (Ansar)

@P57.1The Prophet (Allah bless him and give him peace) said,
"The sign of faith is love of the Helpers (Ansar), and the sign of hypocrisy is hatred of the Helpers."

*2*Chapter P58.0: He Who Inaugurates a Reprehensible Innovation (Bid`a) (def:w29.3)

@P58.1The Prophet (Allah bless him and give him peace) said:

-1- "He who calls others to misguidance is guilty of a sin equal to the sins of all who follow him therein without this diminishing their own sins in the slightest."
-2- "He who inaugurates a good sunna [custom] in Islam earns the reward of it and of all who perform it after him without diminishing their own rewards in the slightest. And he who introduces a bad sunna is guilty of the sin of it and of all who perform it after him without diminishing their own sins in the slightest."

*2*Chapter P59.0: Women Wearing False Hair and the Like

@P59.1The Prophet (Allah bless him and give him peace) said,
"Allah curse women who wear false hair or arrange it for others, who tattoo or have themselves tattooed, who pluck facial hair or eyebrows or have them plucked, and women who separate their front teeth for beauty, altering what Allah has created." (n: w51 discusses women removing facial hair.)

*2*Chapter P60.0: Pointing a Blade at One's Brother

@P60.1The Prophet (Allah bless him and give him peace) said:
"The angels curse whoever points a blade [A: or other weapon} at his brother [until he ceases], even if it be his brother from his mother and father."

*2*Chapter P61.0: Falsely Claiming Someone is One's Father

@P61.1The Prophet (Allah bless him and give him peace) said:
-1- "Paradise is forbidden to whoever falsely claims someone is his father, knowing he is not."
-2- "Do not wish for fathers other than your own. For someone to wish for a different father is unbelief."

*2*Chapter P62.0: Believing that Something Portends Bad Luck

@P62.1 The Prophet (Allah bless him and give him peace) said,
"belief in a bad omen ins polytheism (shirk). "

*2*Chapter P63.0: Drinking from Gold or Silver Vessels

@P63.1The Prophet (Allah bless him and give him peace) said:
-1- "Do not wear silk or brocade. Do not drink from vessels of gold or silver or eat from dishes made of them: these are for others [A: i.e. non-Muslims] in this world, and for you in the next."
-2- "He who eats or drinks from vessels of gold or silver but swallows hellfire into his belly."

*2*Chapter P64.0: Arguing, Picking Apart Another's Words, and Quarrelling

@P64.1Allah Most High says:
-1- "They did not mention him [Jesus] to you as an example except for argument. Rather, they are quarrelsome people" (Koran 43:58).
-2- "Those who argue about the signs of Allah without authority having been given to them have nothing in their hearts but pride, to which they will never attain" (Koran 40:56).

@P64.2The Prophet (Allah bless him and give him peace) said:
-1- "The man most hated by Allah is the obstinate arguer."
-2- "No people went astray after having been guided save that they were afflicted with arguing."
-3- "Arguing over the Koran is unbelief."
-4- "He who presses for something he knows is false remains under the hatred of Allah until he gives it up."
-5- "The thing I fear most for my Community is the eloquent hypocrite."
-6- "Modesty and being at a loss for words are two components of true faith, while

vulgarity and long-windedness are two components of hypocrisy."

*2*Chapter P65.0: Stinging When Weighing or Measuring Out Goods

@P65.1Allah Most High says:
"Woe to stinters who take their full share when measuring goods from people but skimp when measuring or weighing out for them. Do these not believe they will be raised to a momentous day, a day when people will stand before the Lord of the Worlds?" (Koran 83:1-6).

@P65.2This is a type of theft, a breach of faith, and consuming others property through falsehood.

*2*Chapter P66.0: Feeling Secure From Allah's Devising

@P66.1Allah Most High says:
-1- "None feels safe from Allah's devising except people who are ruined" (Koran 7:99).
-2- "...until, when they were exulting in what they had been given, We suddenly seized them" (Koran 6:44).
-3- "Verily, those who do not hope to meet Us, who enjoy this world and feel at ease with it, and those who are oblivious to Our sings: their refuge is hell for what they have earned" (Koran 10:7-8).

*2*Chapter P67.0: Despairing of the Mercy of Allah and Loss of Hope

@P67.1Allah Most High says:
-1- "None despairs of the mercy of Allah except people who disbelieve" (Koran 12:87).
-2- "It is He who sends down the rain after they have lost hope" (Koran 42:28).
-3- "Say: `O My slaves who have been prodigal against yourselves, do not despair of the mercy of Allah'" (Koran 39:53).

@P67.2The Prophet (Allah bless him and give him peace) said,
"Let none of you die except thinking he best of Allah."

*2*Chapter P68.0: Ingratitude to Someone Who Does One A Kindness

@P68.1Allah Most High says:
"...to show thanks to Me, and to your parents..." (Koran 31:14).

@P68.2The Prophet (Allah bless him and give him peace) said,
"He who does not thank people is unthankful to Allah,"

@P68.3One of the early Muslims said: "Ingratitude for a kindness is one of the enormities. Gratitude consists of reciprocating it or supplicating for the person."

@P69.0: WITHHOLDING EXCESS WATER FROM OTHERS

@P69.1
The Prophet (Allah bless him and give him peace) said:
-1- "Whoever denies others his surplus water or pasturage, Allah shall deny him His blessing on the Day of Judgement."
-2- "Do not sell surplus water."

*2*Chapter P70.0: Branding an Animal's Face

@P70.1The Prophet (Allah bless him and give him peace) passed by a donkey whose face had been branded and said,
"Haven't you heard that I have cursed whoever brands or strikes the faces of livestock?"
-and he forbade it.

@P70.2The words of the Prophet (Allah bless him and give him peace) "Haven't you heard that I have cursed..." imply that he who has not heard the warning against an act is not guilty of sin by committing it, though whoever has heard and knows is included in the curse. we hold that it is likewise with all these enormities, except those which are necessarily known as being of the religion (def: f1.3(N:)).

*2*Chapter P71.0: Gambling

@P71.1Allah Most High says:
"Wine, gambling, idols, and fortune-telling arrows are but filth of the Devil's handiwork, so shun it, that you may succeed. The Devil only wants to create enmity and hatred between you over wine and gambling, and to prevent you from remembering Allah and from prayer. Will you not then desist?" (Koran 5:90-91).

@P71.2The Prophet (Allah bless him and give him peace) said,
"Whoever says to his companion, "Come, I will play you for stakes, must expiate by giving charity," If merely saying this is a sin that calls for charity in expiation, what must one suppose about actually doing it? It is a form of consuming others' wealth through falsehood.

*2*Chapter P72.0: Violating the Meccan Sacred Precinct (Haram)

@P72.1Allah Most High says:
"...and al-Masjid al-Haram which We have appointed equally for all people, he who stays therein as well as the desert dweller. Whoever intends to violate it out of wrongdoing, We shall make him taste a painful torment" (Koran 22:25).
(n: The words out of wrongdoing in the above verse mean "by reason of doing wrong through committing an act that is forbidden therein, even if it merely consists of reviling one of the caretakers" (Tafsir al-Jalalayn (y77), 436).)
@P72.2
The Prophet (Allah bless him and give him peace) said,
"Of all people, the greatest in outrage against Allah is he who kills in the Meccan Sacred Precinct, who kills someone who is not trying to kill him, or who kills because of the feuds of pre Islamic times."

*2*Chapter P73.0: FORGOING THE FRIDAY PRAYER TO PRAY ALONE

@P73.1The Prophet (Allah bless him and give him peace) said:
-1- "I've considered having a man lead people at prayer and going myself to those who hang back from attending the Friday prayer to burn their houses down upon them."
-2- "Going to the Friday prayer is obligatory for every male who has reached puberty."

*2*Chapter P74.0: SPYING ON THE MUSLIMS AND REVEALING THEIR WEAKNESSES

@P74.1Included in this subject is the hadith of Hatib ibn Abi Balta`a (A: Who sent a secret letter telling of the Muslims' military plans to his relatives in Mecca in hopes that they would not get hurt) whom `Umar (Allah be well pleased with him) wanted to kill for what he had done, but the Prophet (Allah bless him and give him peace) forbade `Umar to, as Hatib had fought at Badr (A: and by accepting Hatib's excuse, left nothing for any Muslim to criticize (dis: p75.3)).
If someone's spying entails undermining Islam and its people, or the killing, captivity, enslavement, or plundering of the Muslims, or anything of the like, then he is one of those who strive for corruption in the land, destroying village and offspring, and his subject to death, and deserves the torment (A: of hellfire), may Allah save us from it. Anyone who spies necessarily knows that if ordinary talebearing is an enormity (dis: p45), a spy's carrying information is far more abominable and heinous.

*2*Chapter P75.0: PROBABLE ENORMITIES

@(n: Commentaries by Imam Nawawi and 'Abd al-Ra'uf Munawi have been added by the

translator to some of the following hadiths.)

@P75.1: Envy The Prophet (Allah bless him and give him peace) said:
-1- "Beware of envy, for envy consumes good works as fire consumes wood."
-2- "None of you believes until he loves for his brother what he loves for himself."
(Nawawi:) It is fitter to interpret this hadith as referring to universal brotherhood, including both Muslims and non-Muslims, such that one loves for one's non-Muslim brother what one loves for oneself, i.e. to enter Islam, just as one loves one's Muslim brother to remain in Islam, this being why it is desirable (mustahabb) to pray for the guidance of non-Muslims. The hadith is understood as denying that someone who does not love for his brother what he loves for himself has perfect faith, love meaning to want what is good and advantageous for him, referring to religious love, not individual human love.
For one's human nature might well dislike another's attaining the good, or surpassing oneself therin, though it is obligatory for one to resist this human tendency and pray for one's brother and desire for him what one desires for oneself. Someone who does not love for his brother what he loves for himself is envious, and envy, as Ghazali notes, is of three types (A: all of them unlawful). The first is to wish that another person cease to have something good in order to obtain it oneself. The second is to wish that another lose something good, even if one does not obtain it, as when one already has another like it, or does not want it, this being worse than the previous type. The third is when one does not wish that the other cease to have something good, but resents his having surpassed one in attainment or position, accepting his parity with one but not his superiority. And this is unlawful as well, because one thereby objects to Allah's division of His favor among His servants. Allah Most High says:
"Are they the ones who apportion the mercy of your Lord? It is We who have divided their livelihoods between them in this life, and raised some of them in degrees above others" (Koran 43:32).
So whoever does not accept this division opposes Allah Most High in His apportionment and His wisdom. One must remedy one's human nature, make it accept destiny, and resist it by praying that one's enemy be given what one's self-interest might prefer him not to have (al-Arba'un al-Nawawiyya wa sharhuha (y103), 40).

@P75.2: Not Loving the Prophet (Allah Bless Him and Give Him Peace) More Than All People
The Prophet (Allah bless him and give him peace) said,
"None of you believes until I am more beloved to him that his wife, child, self, and all people."
(Munawi:) Kirmani says, "Love of the Prophet (Allah bless him and give him peace) means the will to obey him and disobey him, this being one of the obligations of Islam" (Fayd al-Qadir sharh al-Jami' al-saghir (y91), 6.441).

@P75.3: Contending with What the Prophet (Allah Bless Him and Give Him Peace) Has Brought
The Prophet (Allah bless him and give him peace) said,
"None of you believes until his inclinations conform to what I have brought."
(Nawawi:) This means a person must examine his acts in light of the Koran and sunna, suspending his own inclinations and following what the Prophet (Allah bless him and give him peace) has brought. The hadith resembles the word of Allah Most High,
"When Allah and His messenger have decided a matter, no believer, male or female, has a choice in their affair" (Koran 33:36). (al-Arba'un al-Nawawiyya wa sharhuha (y103), 74).

@P75.4: Acquiescing to Disobedience
The Prophet (Allah bless him and give him peace) said:
-1- "Whoever of you sees something wrong, let him change it with his hand (dis: book q). If unable, then let him change it with his tongue. If unable, then with his heart. And that is the weakest degree of faith."
And in the hadith related by Muslim concerning oppressors:
-2- "Whoever fights them with his hand is a believer, whoever fights them with his tongue is a believer, whoever fights them in his heart is a believer, Beyond that,

there is not a mustard grain of faith."
This hadith proves that whoever does not condemn acts of disobedience in his heart or wish they would cease is devoid of faith. Fighting with the heart includes asking Allah Most High to annihitate the falsehood and its prepetrators, or improve them.
-3- "Leaders will be placed over you that some of you will accept and some of you condemn. Whoever dislikes what they do is innocent. Whoever condemns what they do is secure. But not whoever accepts and follows them." Someone said, "Shouldn't we fight them?" And he replied, "No, not as long as the maintain the prayer (dis: o25.3) (a(A:))) among you."

@P75.5: Helping Another to Wrongfully Dispute
The Prophet (Allah bless him and give him peace) said,
"He who helps another to argue without right remains under the hatred of Allah until he gives up."

@P75.6: Underhandedness
The Prophet (Allah bless him and give him peace) said,
"Plotting and duplicity are in the hellfire."

@P75.7: Disaffecting a Person's Spouse or Servant From Him
The Prophet (Allah bless him and give him peace) said,
"He who disaffects a person's wife or servant from him is not of us."

@P75.8: Vulgarity
The Prophet (Allah bless him and give him peace) said:
-1- "Modesty is of faith, and faith is in paradise. Vulgarity is of rudeness, and rudeness is in hell."
-2- "Allah detests the foulmouthed, vulgar person."

@P75.9: Being Leaderless
The Prophet (Allah bless him and give him peace) said,
"The death of someone who dies without the leader of a group over him is as if he had died in the pre-Islamic period of ignorance (A: leader meaning the caliph (def: 025) or his representative, if the exist (dis: p40.2(A:)), "

@P75.10: Benefiting at a Muslim's Expense
The Prophet (Allah bless him and give him peace) said:
"Whoever eats food obtained at the expense of a Muslim, Allah will feed him hellfire on Judgement Day. He who gains a prestigious reputation at the expense of a Muslim, Allah will reduce him to the position of the show-offs and boasters (def: p33.2) on Judgement Day. He who wears a garment acquired at the expense of a Muslim, Allah will dress him in a garment of fire on Judgement Day."

@P75.11: Shunning a Muslim Without Right
The Prophet (Allah bless him and give him peace) said,
"Whoever shuns his brother for a year is as though he had spilled his blood."
(Munawi:) This means that avoiding him for a year deserves punishment in the hereafter just as spilling his blood does, and that both the person who shuns someone and he who kills someone are involved in sin, though not on the same level, for the use of a simile does not imply the parity of the simile's subject to the thing with which it has been compared. Shafi'i holds it is unlawful to shun a Muslim for three days unless there is a valid reason such as the religious improvement of the person avoiding the other or person being avoided, or when the latter is morally corrupt or involved in reprehensible innovation (bid'a, def: w29.3) (Fayd al-Qadir shah al-Jami' al-saghir (y91), 6.234).

@P75.12: Interceding for the Guilty
The Prophet (Allah bless him and give him peace) said,
"He whose intercession comes between a criminal and one of Allah's prescribed penalties has defied Allah in His command."

@P75.13: Saying Something that Allah Detests
The Prophet (Allah bless him and give him peace) said:
-1- "A man says something" Allah detests that he does not think twice about, for which he plunges into hell (dis:r1). "
-2- "A man says something pleasing to Allah, not imagining it amounts to what it does, for which Allah records His pleasure in him until Judgement Day. And a man say something that angers Allah, not imagining it amounts to what it does, for which Allah records His wrath against him until the day he meets Him."

@P75.14: Saying "Master" (Sayyid) to a Hypocrite
The Prophet (Allah bless him and give him peace) said,
"Do not say "master" to a hypocrite, for if he is a master, you have angered your Lord Mighty and Majestic."

@P75.15: Breaking a Promise
The Prophet (Allah bless him and give him peace) said,
"The signs of a hypocrite are three: when he speaks he lies, when he promises he breaks it, and when entrusted he betray his trust."
(A: If one makes an ordinary promise to another person, it is sunna to keep the promise, though it is strictly unlawful to make a promise that one has no intention to keep, this being how scholars interpret the above hadith.)
Lying and betraying a trust have been mentioned before, while here we are discussing promise breaking. Allah Most High says
"Of them, there is one who promised Allah, "If He bestows of His generosity on us, we shall certainly give charity and be of the righteous'" (Koran 9:75).
(n: Suyuti notes that the person referred to above "is Tha'laba ibn Hatib, who asked the Prophet (Allah bless him and give him peace) to pray that Allah would enrich him, so that he might give everyone their just due. So the Prophet supplicated for him and he became wealthy, but then he stopped coming to the Friday prayer, withdrew from the community, and refused to pay zakat, as Allah Most High says:
"'But when He gave to them of His generosity, they hoarded it and turned away in aversion. So He punished them by putting hypocrisy into their hearts until the day they meet Him, because they broke their promise to Allah and lied' (Koran 9:76-77).
Some time after this, he brought the Prophet (Allah bless him and give him peace) his zakat, but the Prophet told him, 'Allah forbides me to accept it from you, 'at which Tha'laba threw handfuls of dust upon his own head. He later (A: in the time of the subsequent caliphate) took his zakat to Abu Bakr, but he would not accept it. Then to 'Umar, but he would not accept it. Then he took it to 'Uthman, but he would not accept it either, and he died in the reign of 'Uthman" (Tafsir al-Jalalayn (y77), 253).)

@P75.16: Not Trimming One's Mustache
The Prophet (Allah bless him and give him peace) said:
-1- "He who does not trim his mustache (def: e4.1(2)) is not one of us."
-2- "Be different from the Zoroastrians: grow your beards and trim your mustaches."

@P75.17: Not Performing the Hajj When Able To
'Umar ibn Khattab (Allah be well pleased with him) said:
"I've considered sending men to these cities to see who has not made the pilgrimage, and collect the non-Muslim poll tax (jizya, def: o11.4) from everyone possessing the means who has not performed it (def:j1.5-10). They are not Muslims. They are not Muslims."

@P75.18: Keeping an Inheritance from an Heir
The Prophet (Allah bless him and give him peace) said,
"Whoever prevents his heirs from receiving their inheritance (dis: w52.1(234-36)), Allah will prevent his inheriting paradise."

@P75.19: Talking About How One's Wife Makes Love
The Prophet (Allah bless him and give him peace) said,
"Among the worst people in Allah's sight on Judgement Day will be the man who makes love to his wife and she to him, and he divulges her secret."

@P75.20: Sodomizing One's Wife
The Prophet (Allah Bless him and give him peace) said,
"He who sodomizes a woman is accursed."

@P75.21: Intercourse with One's Wife During Menstruation
The Prophet (Allah bless him and give him peace) said,
"Whoever has intercourse with a woman during her period, or sodomizes a woman, or who goes to a fortune-teller and believes him, has committed unbelief (A: if he considers an of these permissible). "

@P75.22: Looking into Another's House Without Leave
The Prophet (Allah bless him and give him peace) said:
-1- "Were a man to look at you without permission and you threw a rock at him and knocked out his eye, you would not have committed any offense."
-2- "Whoever peeps into a house without its people's leave, they may put out his eye."

@P75.23: Exessiveness In Religion
Allah Most High says,
"Say 'O people of the Book, do not be excessive in your religion'" (Koran 4:171).
(Qurtubi:) According to exegetes, this refers to the extremism of the Jews concerning Jesus in accusing Mary of fornication, and the extremism of the Christians in considering him a god. For both excessiveness and remissness are evil, and both may be unbelief (al-Jami' li ahkam al-Qur'an (y117), 6.21).
The Prophet (Allah bless him and give him peace) said,
"Beware of going to extremes (in religion), for those before you were only destroyed through excessiveness."
(Munawi:) Ibn Taymiya says, "His saying 'Beware of going to extremes in religion' is a general prohibition applying to all types of extremes, whether in belief or works" (Fayd al-Qadir sharh al-Jami' al-saghir (y91), 3.126).

@P74.24: Not Accepting a Sworn Statement
The Prophet (Allah bless him and give him peace) said,
"Whoever is sworn to in Allah's name, let him accept it, for whoever does not has nothing to do with Allah in anything."

@P75.25: Stinginess
Allah Most High says:
-1- "Whoever is watchful against the stinginess of his own soul, those are the successful" (Koran 59:9).
-2- "Here you are, called upon to spend in the Way of Allah, and some of you are being stingy, while whoever is stingy is only ungenerous towards himself. It is Allah who is rich and you who are the poor" (Koran 47:38).
The Prophet (Allah bless him and give him peace) said:
-1- "What disease is worse than stinginess?"
-2- "Three things are deadly: avarice obeyed, caprice yielded to, and opinionated people's pride in their opinions."
@P75.26: Sitting in the Center of a Circle
The Prophet (Allah bless him and give him peace) cursed whoever sits in the middle of a circle of
people (A: because such a person sees himself as better than they are).

@P75.27: Passing in Front of Someone Performing the Prayer
The Prophet (Allah bless him and give him peace) said
"If someone passing in front of a person performing the prayer knew of the penalty for it, it would be better for him to wait for forty (n: a variant has, "a hundred years"). "
(A: In front means within the length of the person's prostration, or the distance to the barrier he is using (def; f7) if it is not far.)
(Munawi:) Ibn Daqiq al-'Eid says: "A Maliki scholar has distinguished four situations respecting the sin of the person praying and the person who passes in front of him (n:

given P, the person praying, and Q, the person passing in front of him) :
-1- Q sins but not P when P is praying behind a barrier in a place that is not a commonly used walkway and Q passes in front of him when there is another alternative (A: meaning another route, since to stop and wait is not considered an alternative, though it is superior);
-2- P sins but not Q when P is praying in a commonly used walkway without a barrier, or at a considerable distance from one, and Q has no other alternative but to pass in front of him;
-3- both P and Q sin when P is praying in circumstances like (2) above, if Q has an alternative route but passes in front of P anyway;
-4- and neither P nor Q sin when P is praying in circumstances like (1) above, if Q has no alternative and passes in front of P." (Fayd al-Qadir sharh al-Jami' al-saghir (y91), 5.338)

@P75.28: Not Loving One's Felloe Muslims
The Prophet (Allah bless him and give him peace) said:
"By Him in whose hand is m soul, none of you will enter paradise until you believe, and none of you will believe until you love each other. Shall I not tell you of something which if you do it will create love among? Increase the custom of greeting each other with 'as-Salamu 'alaykum.'" (Kitab al-Kaba'ir wa tabyin al-maharim (y36), 35-181)

*2*Chapter P76.0

@(n: Most of the above enormities are agreed upon by all four schools of jurisprudence. A more comprehensive list by Ibn Hajar Haytami is given below at w52.)

*2*Chapter P77.0: THE CONDITIONS OF A VALID REPENTANCE

@P77.1(Nawawi: (n: with commentary by Muhammad ibn 'Allah Bakri (B:))) Scholars state that repentance is obligatory for every sin (B: there being scholarly consensus (def: b7) that it is Obligatory for both lessor sins and enormities, and for both outward acts and inward ones such as malice or envy).

@P77.2When a person's disobedience is solely between him and Allah Most High, unconnected with another human being's rights, his repentance has three conditions:
(a) to desist from the sin;
(b) to regret having done it (B: because of its being disobedience, since regretting it for some other reason is of no consequence);
(c) and to resolve never to commit it again.
(B: Some hold that after having repented of it, it is also a condition that one abandon the company of whoever committed the act with one, and also that one's repentance be purely for the sake of Allah, a restriction that Ibn HajarHaytami embeds in the first condition above by saying, "to desist from the sin solely for the sake of Allah, since abandoning it out of fear, ostentation, or other motive besides Allah Most High is not considered desisting.") If any of these conditions is lacking, one's repentance is not valid.

@P77.3If the act of disobedience is connected with the rights of another human being, repentance for it has four conditions; the three mentioned above, plus clearing oneself of the obligation owed to the other person. If this obligation is property or the like, one must return it (A: by any means, secretly, or openly, even as an ostensible gift) to him (B: i.e to its owner, meaning to return the article itself if it still exists, or if it does not, then a substitute, whether this be its value or an equal amount of it). (N: Becoming a Muslim eliminates all previous sins except those involving rights or property owed to other people. Allah does not pardon these until they are restored or forgiven.)
If the right in question is the penalty for charging someone with adultery when there are not four witnesses (def:o13) or the like (B: such as a victim's right to retaliate (o3) for a homicide or injury) then one must give oneself up to him (B: to permit him to inflict the penalty due) or else ask him to forgive it.
(B: The author's words seem to imply that the validity of repentance depends on

performing the above, of returning the property or giving oneself up-i.e. when possible, for otherwise one intends to do so when possible, or asks he victim for amnesty-but the position of the Imam (A: Juwayni), which 'Izz ibn 'Abd al Salam and our author (n: Nawawi) also follow, is that one's repentance is valid regarding the rights of Allah Most High (N: through merely repenting), while the other person's right is an obligation that remains upon one (dis:w53), as does the sin of not discharging it). If the wrong done to another consists of slander (def: r2), the one must have him pardon it (B: by informing him so he can forgive one, though informing him is only a necessary condition when doing so will not cause even greater harm, though if it will as when one fears the other will kill one, informing him is not obligatory. Both asking for the person's forgiveness and informing him of what one said are only obligatory when he has heard that he has been slandered. If he has not, then asking Allah's forgiveness is sufficient) (Riyad al-salihin (y107), 10-11, and Dalil alfalihin li turuq Riyad al-salihin (y25), 1.88-91).

*1*BOOK Q: [Imaam Ghazali's] COMMANDING THE RIGHT AND FORBIDDING THE WRONG

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*2*Chapter Q0.0: INTRODUCTION

@Q0.1(n: The discussion and analysis that follow are Imam Ghazali's, edited by the Hanbali scholar Ibn Qudama Maqdisi from an earlier abridgement of Ghazali's Ihya' `ulum al-din by `Abd al-Rahman ibn Jawzi, which Maqdisi shortened to a single volume whose conciseness, if less vivid than the Ihya', better lends itself to the purpose of the present section, which is to discuss the practical implications of an important aspect of Scared Law.)

@Q0.2(Ibn Qudama Maqdisi:) One should know that commanding the right and forbidding the

wrong is the most important fundamental of the religion, and is the mission that Allah sent the prophets to fulfill. If it were folded up and put away, religion itself would vanish, dissolution appear, and whole lands come to ruin.

*2*Chapter Q1.0: THE OBLIGATION TO COMMAND THE RIGHT

@Q1.1Allah Most High says,
"Let there be a group of you who call to good, commanding the right and forbidding the wrong, for those are the successful'' (Koran 3:104).
This verse explains that commanding the right and forbidding the wrong re a communal rather than a personal obligation (dis: c3.2), for He says, ``Let there be a group of you...''and not, ``All of you command the right.'' So if enough people do it (A: meaning that whenever a wrong is seen, one of those who see it corrects it), the responsibility is lifted from the rest, those who perform it being expressly mentioned as the successful. There are many verses in the Holy Koran about commanding the right and forbidding the wrong.

@Q1.2The Prophet (Allah bless him and give him peace) said:
-1- "Those who keep within Allah's limits and those who transgress them or allow them to be compromised may be compared to people on a ship, some of whom must stay below deck in the hardest and worst place, while others get passage above. When those below need water, they pass through those on the upper deck, injuring and annoying them until those below reflect, 'If we were to stave a hole in the hull we could get water without troubling those above. 'Were those above deck to leave those below to themselves, all would be destroyed, while if they were to help them, all would be saved."
-2- "Whoever of you sees something wrong, let him change it with his hand. If unable to, then let him change it with his tongue. If unable, then with his heart. And that is the weakest degree of faith."
-3- "The best jihad is speaking the truth to an unjust ruler."
-4- "When you see my Community too intimidated by an oppressor to tell him, 'You are a tyrant,' then you may as well say good by to them."
-5- "Command the right and forbid the wrong, or Allah will put the worst of you in charge of the best of you, and the best will supplicate Allah and be left unanswered."

@Q1.3Abu Bakr (Allah be well pleased with him) rose from his place, and after having praised Allah Most High, said, "O people: you recite the verse,
"'O you who believe: you are responsible for yourselves; those who go astray will not harm you if you are guided' (Koran 5:105),
"while we have heard the Messenger of Allah (Allah bless him and give him peace) say,
"'People who do not change something wrong when they see it are on the verge of a sweeping punishment from Allah.'"
*2*Chapter Q2.0: WHO MAY COMMAND THE RIGHT AND FORBID THE WRONG LEGAL RESPONSIBILITY

@Q2.1There are four integrals (def: q2-5) in commanding the right and forbidding the wrong, the first of which is that the person doing so be legally responsible (def: c8.1), Muslim, and able to, these being the conditions for it to be obligatory, though a child of the age of discrimination (def: f1.2) who condemns something dishonorable is rewarded for doing so, even if it is not obligatory for him to.

@Q2.2: Moral Rectitude is Not a Condition
As for requirements of moral rectitude in the person giving the reprimand, some scholars take this into consideration and say that a corrupt person is not entitled to censure, a position for which they adduce the word of Allah Most High,
"Do you enjoin piety to others and forget yourselves?" (Koran 2:44),
but there are no grounds in the verse for such and inference.

@Q2.3: Having the Caliph's Permission
Some scholars stipulate that the person delivering the censure must have permission to do so from the caliph (def: o25) or his regional appointee, and do not grant that private individuals may censure others. This is untrue, for the Koranic verses and hadiths all indicate that whoever sees something wrong and does nothing has sinned.

Stipulating that there must be permission from the caliph is mere arbitrary opinion. One should realize that there are five levels of censure: explaining the wrong nature of the act, admonishing the person politely, reviling him and harshness, forcibly stopping the act (such as by breaking musical instruments or pouring out wine), and finally, intimidation and threatening to strike the person or actually hitting him to stop what he is doing. It is the latter level, not the first four, that requires the caliph, because it may lead to civil disorder. The early Muslims' invariable practice of reprimanding those in authority decisively proves by their consensus (def: b7) that there is no need for a superior's authorization. If it be wondered whether a child is entitled to reprove his father, or a wife her husband, or for private citizens to reprove their ruler, the answer is that all are fundamentally entitled to.
We have distinguished the five levels: the child is entitled to explain the nature of the act, to admonish and advise his parents politely, and finally may censure at the fourth level by such things as breaking a lute, pouring out wine, and so forth. This is also the sequence that should be observed by a wife. As for private citizens with their ruler, the matter is much graver than a child's reproving his father, and citizens are only entitled to explain the matter and advise.

@Q2.4: Being Able To Censure
It is a necessary condition that the person condemning something wrong be able to do so. Someone who is unable is not obliged to condemn it except in his heart. The obligation is not only lifted when physically unable, but also when one fears that problems (def: q2.7) will result for one, which also comes under the heading of inability. The obligation to censure the wrong is likewise lifted when one knows that the reproach will be ineffective. Four situations may be distinguished with respect to this.
-1- When one knows (def: q2.6) the wrong will be eliminated by speaking or acting without this entailing problems for oneself, one is obliged to censure it.
-2- When one knows that speaking will be ineffective and one will be beaten if one does, one is not obliged to.
-3- When one knows that one's censure will be ineffective but it does not entail problems for one, it is not obligatory, because of its ineffectiveness, though one is still recommended to censure the act is order to manifest the standards of Islam and remind people of their religion.
(A: Hadiths that seem to show the nonobligatoriness of commanding the right and forbidding the wrong are understood by Islamic scholars as referring to specific situations in which censure is ineffectual, and are not global statements about this obligation's inapplicability to a certain era of history, such as our own or some future time. Commanding the right and forbidding the wrong will be obligatory until the Day of Judgement.)
-4- And when one knows that it will cause problems for one but the wrong will be eliminated by censuring it, such as with breaking a lute or dumping out wine when one knows one will be beaten for it, then one is not obliged but rather recommended to, as is evident from the hadith,
"The best jihad is speaking the truth to an unjust ruler"
There is no disagreement among scholars that it is permissible for a single Muslim to attack battlelines of unbelievers headlong and fight them even if he knows he will be killed. But if oneknows it will not hurt them at all, such as if a blind man were to hurl himself against them, then it is unlawful. Likewise, if someone who is alone sees a corrupt person with a bottle of wine beside him and a sword in his hand, and he knows that the person will chop his neck if he censures him for drinking, it is not permissible for him to do so, as it would not entail any religious advantage worth giving one's life for. Such censure is only praiseworthy when one is able to eliminate the wrong and one's action will produce some benefit.

@Q2.5If one wants to censure something but knows it will result in one's companions also being beaten with one, it is not permissible for one to do so, because one is incapable of removing one blameworthy thing without its leading to another.
(N: It is not lawful to censure anything reprehensible when doing so will lead to a thing or state that is more reprehensible.)

@Q2.6Know only means what one believes will probably result. Someone who thinks that it will create problems for him is not obligated to censure, though someone who does not believe that problems will result is obliged to. Cowardice does not enter into consideration here, not foolhardy courage, but rather the normal temperament of someone with a sound disposition.

@Q2.7Problems means being beaten, killed, robbed, or acquiring a bad name in town. As for being reviled and disparaged, it is not an excuse to remain silent, for someone who commands what is right generally meets with it.

*2*Chapter Q3.0: WHAT MAY BE CENSURED

@Q3.1
The second integral of commanding the right and forbidding the wrong is that the thing censured is something blameworthy that exists at present and is apparent.
Blameworthy means that its occurrence is prohibited by Sacred Law, this being of wider scope than mere disobedience, for someone who sees a child or insane person drinking wine (A: which is not a sin in relation to them) is obliged to pour it out and forbid them.
That exists at present excludes someone who has drunk wine and is now finished, and so forth. It also excludes something which will take place later, as when there is evidence that a person intends to go drinking that night. There is no censure in such cases other than to appeal to the person's conscience.Apparent excludes someone who conceals his disobedience at home and locks his door. It is not permissible to spy on him. An exception is if something is manifest to another outside the house, such as the sound of pipes and lutes. Someone who hears them may enter and break the instruments. If one smells the odor of wine outside the house, the sounder opinion is that it is permissible to enter and condemn it.

@Q3.2: One May Not Condemn Another for Questions Involving Differences Among Schools of Jurisprudence
It is a necessary condition that the thing censured be something whose blameworthiness is not merely established by ijtihad (n: the independent legal reasoning of a particular Imam). Any question in which there is ijtihad may not be a cause for censure. A Hanafi, for example, may not condemn a Shafi'i for eating something slaughtered without the Basmala (dis: j17.5(4)), nor a Shafi'i condemn a Hanafi for drinking some nonintoxicating raisin drunk (N: nor a Muslim condemn a non-Muslim for drinking wine (dis: o11.5(1))). (A: But if two individuals follow the same school of Sacred Law and one commits an act that is unlawful or offensive in that school or in each of the two's respective schools, it is obligatory for the other person to condemn the act even when it involves the ijtihad of their Imam. And the Shafi'i must condemn the Hanafi for eating something slaughtered without the Basmala, as the Hanafi is doing something he believes to be wrong.)

*2*Chapter Q4.0: THE PERSON DOING THE WRONG

@Q4.1The third integral of commanding the right and forbidding the wrong is the person being reprimanded. It is sufficient that he be a person, and is not necessary that he be legally responsible, as we have previously mentioned (q3.1) in respect to censuring a child or insane person.

*2*Chapter Q5.0: THE ACT OF CENSURING

@Q5.1The fourth integral is the censure itself, which has various degrees of severity and has rules.

@Q5.2: Knowledge of the Wrong Act
The first degree consists of knowing the wrong act. One should not eavesdrop at another's house in order to hear the sounds of musical instruments, or try to catch the scent of wine, or feel for an object concealed beneath someone's shirt to see if it is a flute, or ask a person's neighbors to see what he is doing. But if two upright

witnesses (def: o24.4) come and inform one that someone is drinking, one may enter his house and take him to task.

@Q5.3: Explaining that Something is Wrong
The second degree consists of explaining that an act is wrong, since an ignorant person will often do something he does not know is blameworthy, but will stop when he finds out. So one must explain it politely, saying, for example: "People are not born scholars; we were unfamiliar with many things in Sacred Law until scholars mentioned them to us. Perhaps there are not many in your hometown," and thus lead up to it diplomatically so the person understands without being offended. To avoid the evil of remaining silent when there is something wrong, only to commit the evil of offending a Muslim when able not to, it like washing away blood with urine.

@Q5.4: Forbidding the Acte Verbally
The third degree of severity is to prohibit the act by admonition, advice, and making the other fear Allah, mentioning the hadiths of divine punishment for it and reminding the person how the early Muslims behaved, all of which should be done with sympathy and kindness, not harshness or anger. The great danger here which one must beware of is that a learned person explaining that something is wrong may be proud of his knowledge and gloat over the lowliness of the other's ignorance, which is like saving someone from a fire by casting oneself into it. It is ignorant in the extreme, a deep disgrace, and a delusion from the Devil. The touchstone and test for this is to ask oneself whether one would prefer the censured person to stop at his own or another's behest, or whether one would prefer to forbid him oneself. If reproving him is difficult and weighs upon one, and one would prefer that someone else do it, then one should proceed, for religion is the motive. But if it is otherwise, then one is following mere personal caprice and using the censuring of others as a means to display one's merit, and one should fear Allah and censure oneself first.

@Q5.5: Cencuring with Harsh Words
The fourth degree of severity consists of reviling the person and bearing down on him with sharp, harsh words. One does not resort to this degree unless one is unable to prevent the person by politeness, and he shows he wants to persist or mocks one's admonitions and advice. Reviling him does not mean vulgarity and lies, but rather saying "You degenerate," "You idiot "You ignoramus," "Do you not fear Allah?" and so forth. Allah Most high quotes Ibrahim (upon whom be peace) saying:
"Fie on you and what you worship apart from Allah! Can you not think?" (Koran 21.67).

@Q5.6: Fighting the Wrong By Hand
The fifth degree consists of changing the blameworthy thing with one's hand, such as by breaking musical instruments, pouring out wine, or turning someone out of a house wrongfully appropriated.
There are two rules for this degree:
-1- not to do so when one can get the person to do it himself, i.e. if one can get someone to leave the land he has unjustly taken, one should not drag or push him from it;
-2- and to break the instruments, for example, just enough to obviate their being used for disobedience and no more, or to be careful not to break the bottles when pouring out wine. If one cannot manage except by throwing rocks at the bottles or the like, then one may do so and is not obliged to cover the damages.
If it be wondered whether one may break the bottles or drag someone by the foot out of a wrongfully appropriated house to create fear, as an object lesson to others, the answer is that this is for leaders alone and is not permissible for private individuals because of the obscurity of the decision-making criteria in the matter..

@Q5.7: Intimidation
The sixth degree is threatening and intimidation, such as by saying, "Stop this or I'll- "; and when possible this should precede actually hitting the person. The rule for this level is not to make a threat that one cannot carry out, such as saying "or I'll seize your house," or "take you wife hostage," because if one says this seriously, it is unlawful, and if not serious, then one is lying.

@Q5.8: Assault
The seventh degree is to directly hit or kick the person, or similar measures that do not involve weapons. This is permissible for private individuals provided it is necessary, and that one confines oneself to the minimum needed to stop the reprehensible action and nothing more. When the action has been stopped, one refrains from doing anything further.

@Q5.9: Force of Arms
The eighth degree is when one is unable to censure the act by oneself and requires the armed assistance of others. Sometimes the person being reproved may also get people to assist him, and a skirmish may ensue, so the soundest legal opinion is that this degree requires authorization from the caliph (def : o25). since it leads to strife and the outbreak of civil discord. Another view is that there is no need for caliph's permission.

*2*Chapter Q6.0: THE ATTRIBUTES OF THE PERSON CENSURING

@Q6.1Having presented in detail the rules for someone condemning the wrong, they may be summarized in three traits needed by the person giving the reprimand:
-1- knowledge of the (A: above-mentioned) appropriate circumstances for censure and their definitions, so as to keep within lawful bounds;
-2- godfearingness, without which one might know something but not apply it because of some personal interest;
-3- and good character, the prime prerequisite for being able to control oneself, for when anger is aroused,; mere knowledge and piousness are seldom sufficient to suppress it if character is lacking.

@Q6.2: Reducing One's Dependence on Others
Among the rules for commanding the right and forbidding the wrong is to depend less on others and eliminate desire for what they have, so as not to have to compromise one's principles. A story is told about one of the early Muslims who used to get offal each day from the neighborhood butcher for his cat. He noticed something blameworthy about the butcher, so he returned home and turned out the cat before returning to reprimand the man, who retorted, "From now on. I'm not giving you a thing for your cat," to which he replied, "I did not censure you till I gave up both the cat and any desire for what you have." And this is the fact of the matter. One cannot reprimand others as long as one is anxious for two things: the things people give one, and their approval and praise of one.

@Q6.3As for politeness in commanding the right and forbidding the wrong, it is obligatory. Allah Most High says,
"Speak unto him gentle words" (Koran 20:44)
(A: this being to Pharaoh, the enemy of Allah, so how then with one's fellow Muslims?)
(Mukhtasar Minhaj al-qasidin (y62), 123-30).

*1*BOOK R: [Al Nawawi's] HOLDING ONE'S TONGUE

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*2*Chapter R0.0: INTRODUCTION

@R0.1(n: Book r has been edited from Nawawi's al-Adhkar al-muntakhaba minkalam Sayyid al-Abrar and from al-Durar al-mubaha fi al-hazr wa al-ibaha, a work on the lawful and unlawful by the Hanafi scholar Khalil Nahlawi.)

@R0.2(Nawawi:) Having previously discussed what Allah Most Glorious and Exalted has facilitated of recommended invocation (dhikr) and the like, I wish to add here the expressions which are offensive or unlawful, that the book; might fully encompass the rulings on words and explain their categories, mentioning the objects thereof that every religious person needs to know (al-Adhkar (y102), 450).

*2*Chapter R1.0: THE IMPORTANCE OF HOLDING ONE'S TONGUE

@R1.1(Nawawi:) Every legally responsible person should refrain from saying anything except when there is a clear advantage to speaking. Whenever speaking and not speaking are of equal benefit, it is sunna to remain silent, for permissible speech easily leads to that which is unlawful or offensive, as actually happens much or even most of the time - and there is no substitute for safety. The Prophet (Allah) bless him and give him peace) said,
"Whoever believes in Allah and the Last Day, let him say what is good or remain silent."
This hadith, whose authenticity Bukhari and Muslim concur upon, is an explicit; legal text indicating that a person should not speak unless what he intends to say is good, meaning that the benefit of it is apparent to him. Whenever one doubts that there is a clear advantage, one should not speak. Imam Shafi'i (Allah have mercy on him) said,

"when one wishes to speak, one must first reflect, and if there is a clear interest to be served by speaking, one speaks, while if one doubts it, one remains silent until the advantage becomes apparent."

@R1.2The Prophet (Allah bless him and give him peace) :
-1- "O Messenger of Allah, which of the Muslims is best?" And he said, "He who the Muslims are safe from his tongue and his hand."
-2- "A servant unthinkingly says something pleasing to Allah Most High for which Allah raises him whole degrees. And a servant unthinkingly says something detested by Allah Most High for which he plunges into hell,"
-3- "The excellence of a person's Islam includes leaving what does not concern him [def: w54]."
-4- "Do not speak much without mentioning Allah (dhikr), for too much speech without mentioning Allah hardens the heart, and the hard-hearted are the farthest of all people from Allah Most High."
-5- "All of a human being's words count against him and not for him, except commanding the right, forbidding the wrong, and the mention of Allah Most High (dhikr). "

@R1.3 The Master Abul Qasim Qushayri (Allah have mercy of him) said, "Safety lies in remaining silent, which should be one's basis. Silence at the appropriate time is the mark of men, just as speech at the appropriate time is one of the finest qualities. I have heard Abu 'Ali Daqqaq(Allah be well pleased with him) say, 'He who is silent when something should be said is a tongueless villain'"(ibid., 450-55).

*2*Chapter R2.0: SLANDER (GHIBA)

@R2.1(Nawawi:) Slander and talebearing are two of the ugliest and most frequently met with qualities among men, few people being safe from them. I have begun with them because of the widespread need to warn people of them.

@R2.2: Slander
Slander (ghiba) means to mention anything concerning a person that he would dislike, whether about his body, religion, everyday life, self, disposition, property, son, father, wife, servant, turban, garment, gait, movements, smiling, dissoluteness, frowning, cheerfulness, or anything else connected with him.
Mention means by word, writing, sign, or indicating him with one's eye, hand, head, and so forth.Body refers to saying such things as that someone is blind, lame, bleary-eyed, bald, short, tall, dark, or pale.
Religion includes saying that he is corrupt, a thief, cannot be trusted, is a tyrant, does not care about the prayer, does not watch to avoid filth, does not honor his father, does not spend zakat on what it should be spent on, or does not avoid slandering others.
Everyday life includes saying that his manners are poor; he does not care about others; does not think he owes anyone anything; that he talks, eats, or sleeps too much; or sleeps or sits when he should not.
Father refers to saying such things as that his father is corrupt, his father is an Indian, Nabatean, African, cobbler, draper, carpenter, blacksmith, or weaver (n: if mentioned derogatorily).
Disposition includes saying that he has bad character, is arrogant, a show-off, overhasty, domineering, incapable, fainthearted, irresponsible, gloomy, dissolute, and so forth.
Clothing means saying such things as that his sleeves are too loose, his garment hangs too low, is dirty, or the like. Other remarks can be judged by the above examples. The determining factor is; mentioning about a person what he would not like.

@R2.3As for talebearing (namima), it consists of quoting someone's words to another in a way that worsens relations between them.

@R2.4: The Evidence that Slander and TaleBearing are Unlawful
The above define slander and talebearing. As for the ruling on them, it is that they are unlawful, by the consensus (def:b7) of Muslims. There is much explicit and

intersubstantiative evidence that they are unlawful from the Koran, sunna, and consensus of the Muslim Community.

@R2.5 Allah Most High says:
-1- "Do not slander one another" (Koran 49.12).
-2- "Woe to whomever disparages others behind their back or to their face" (Koran 104:1)
-3- "... slanderer, going about with tales" (Koran 68.11)

@R2.6 The Prophet (Allah bless him and give him peace) said:
-1- "The talebearer will not enter paradise."
-2- "Do you know what slander is?" They answered, "Allah and His messenger know best." He said, "It is to mention of your brother that which he would dislike." Someone asked, "what if he is as I say?" And he replied, "If he is as you say, you have slandered him, and if not, you have calumniated him."
-3- The Muslim is the brother of the Muslim. He does not betray him, lie to him, or hang back from coming to his aid. All of the Muslim is inviolable to his fellow Muslim: his reputation, his property, his blood. Godfearingness is here[N: pointing to his heart]. It is sufficiently wicked for someone to belittle his fellow Muslim."

@R2.7: Mimicking Another's Idiosyncracies
We have mentioned above that slander is saying anything about a person that he would dislike, whether aloud, in writing, by a sign, or a gesture. Anything by which one conveys a Muslim's (A: or non-Muslim's) shortcomings to another is slander, and unlawful. It includes doing imitations of someone, such as by walking with a limp, with a stoop, or similar posture, intending to mimic the person with such a deficiency. Anything of this sort is unquestionably unlawful.

@R2.8: Slander in Published Works
Slander also includes the author of a book mentioning a specific person in his work by saying, "So-and-so says such and such," which is unlawful if he thereby intends to demean him. But if he wants to clarify the person's mistake so that others will not follow him, or expose the weakness of his scholarship so others will not be deceived and accept what he says, it is not slander, but rather advice that is obligatory, and is rewarded by Allah for the person who intends it as such.
Nor is it slander for a writer or other person to say, "There are those [or "a certain group"] who say such and such, which is a mistake, error, ignorance, and folly," and so forth, which is not slander because slander entails mentioning a particular person or a group of specific individuals.

@R2.9: Slander by Allusion and Innuendo
When the person being spoken to understands whom one is referring to, it is slander and unlawful to say, for example, "A certain person did such and such," or "A certain scholar," "Someone with pretensions to knowledge," "A certain Mufti certain person regarded as good," "Someone who claims to be an ascetic," "One of those who passed by us today," or "One of the people we saw." This includes the slander of some would-be scholars and devotees, who make slanderous innuendoes that are as clearly understood as if they were plainly stated. When one of them is asked, for example, how So-and-so is, he replies, "May Allah improve us," "May Allah forgive us," "May Allah improve him," "We ask Allah's forbearance," "Praise be to Allah who has not afflicted us with visiting oppressors," "We take refuge in Allah from evil," "May Allah forgive us for lack of modesty," "May Allah relent towards us," and the like, from which the listener understands the person's shortcomings. All of this is slander and is unlawful, just as when one says, "So-and-so is afflicted with what we all are," or "There's no way he can manage this," or "We all do it."

@R2.10 The above are but examples. Otherwise, as previously mentioned, the criterion for slander is that one gives the person being addressed to understand another's faults.

@R2.11: Listening to Slander

Just as slander is unlawful for the one who says it, it is also unlawful for the person hearing it to listen and acquiesce to. It is obligatory whenever one hears some one begin to slander another to tell him to stop if this does not entail manifest harm to one. If it does, then one is obliged to condemn it in one's heart and to leave the company if able. When the person who hears it is able to condemn it in words or change the subject, then he must. It is a sin for him not to. But if the hearer tells the slanderer to be silent while desiring him in his heart to continue, this, as Ghazali notes. is hypocrisy that does not lift the sin from him, for one must dislike it in one's heart.

@R2.12 Whenever one is forced to remain at a gathering where there is slander and one is unable to condemn it, or one's condemnation goes unheeded and one cannot leave, it is nevertheless unlawful to listen or pay attention to. What one should do is invoke Allah(dhikr) with the tongue and heart or heart alone, or think about something else to distract one from listening to it. When this is done, whatever one hears under such circumstances does not harm one as long as one does not listen to or heed the conversation. And if afterwards one is able to leave the assembly and the people are persisting in slander and the like, then one must leave. Allah Most High says: "When you see those engaged in idle discussion about Our signs, keep apart from them until they speak of other things. And if the Devil makes you forget, then do not sit with wrong-doing people after being reminded" (Koran 6.68).

@R2.13 Ibrahim ibn Adham (Allah be well pleased with him) answered an invitation to come to a wedding feast, where some of those present mentioned that a certain person who did not attend was "unpleasant." Ibrahim said, "I myself have done this by coming to a place where others are slandered," and he left and would not eat for three days.

@R2.14: Slandering Another In One's Heart
Entertaining bad thoughts about others (su' al-zann) is as unlawful as expressing them. Just as it is unlawful to tell another of the failings of a person, so too it is unlawful to speak to oneself of them and think badly of him. Allah Most High says, "Shun much of surmise" (Koran 49:12).
The Prophet (Allah bless him and give him peace said, "Beware of suspicions, for they are the most lying of words," There are many hadiths which say the same, and they refer to an established conviction or judgement in the heart that another is bad. As for passing thoughts and fancies that do not last, when the person having them does not persist in them, scholars concur that they are excusable, since their occurrence is involuntary and there is no way to avoid them. The Prophet (Allah bless him and give him peace) said,"For those of my Community, Allah overlooks the thoughts that come to mind as long as they are not uttered or acted upon."
Scholars say this refers to passing thoughts that do not abide, whether of slander, unbelief (kufr), or something else. Whoever entertains a passing notion of unbelief that is a mere fancy whose occurrence is unintentional and immediately dismissed is not an unbeliever and is not to blame. The reason such things are excusable is that there is no way to take precaution against them. One can only avoid continuing therein, which is why persistence in them and the established conviction of them in one's heart is unlawful.
Whenever one has a passing thought of slander, one is obliged to reject it and summon to mind extenuating circumstances which explain away the appearances that seem to imply the bad opinion Imam Abu Hamid Ghazali says in the Ihya': "A bad thought about someone that occurs in one's heart is a notion suggested by the Devil, and one should dismiss it, for the Devil is the most corrupt of the corrupt, and Allah Most high says, "'If a corrupt person brings you news, verify it, lest you hurt others out of ignorance and then regret what you have done' (Koran 49.6).
It is not permissible to believe Satan, and if the appearance of wrongdoing can possibly be interpreted otherwise, it is not lawful to think badly of another. The Devil may enter the heart at the slightest impression of others' mistakes, suggesting that one only noticed it because of one's superior intelligence and discernment, and that "the believer sees with the light of Allah," which upon examination often amounts to nothing more than repeating the Devil's deceit and obscurities. If a reliable witness informs one of something bad about another, one should neither believe it nor

disbelieve it, in order to avoid thinking badly of either of them. And whenever one has a bad thought about a Muslim one should increase one's concern and respect for him, as this will madden the Devil and put him off, and he will not suggest the like of it to one again for fear that one will occupy oneself with prayer for the person.
"If one learns of a Muslim's mistake by undeniable proof, one should advise him about it in private and not let the Devil delude one into slandering him. And when admonishing him, one should not gloat over his shortcoming and the fact that he is regarding one with respect while one is regarding him with disdain, but one's intention should rather be to help him disengage from the act of disobedience, over which one is as sad as if one had committed it oneself. One should be happier if he desists from it without being admonished than if he desists because of one's admonishment." These are Ghazali's words.

@R2.15 We have mentioned that it is obligatory for a person with a passing ill thought of another to dispell it, this being when no interest recongnised by Sacred Law conduces one to reflect upon it, for if there is such an interest, it is permissible to weigh and consider the individual's deficiency and warn others of it, as when evaluating the reliability of court witnesses or hadith transmitters, and in other cases we will mention below in the section on permissible slander.

@R2.16: Permissible Slander
Slander, though unlawful, is sometimes permissible for a lawful purpose, the legitimating factor being that there is some aim countenanced by Sacred Law that is unattainable by other means. This may be for one of six reasons.

@R2.17: Redressing Grievances
The first is the redress of grievances. Someone wronged may seek redress from the Islamic ruler, judge, or others with the authority or power to help one against the person who has wronged one. One may say, "So-and-so has wronged me," "done such and such to me," "took such and such of mine," and similar remarks.

@R2.18: Eliminating Wrongdoing
The second is seeking aid in righting a wrong or correcting a wrongdoer, such as by saying to someone expected to be able to set things right, "So-and-so doing such and such, so warn him not to continue," and the like. The intention in such a case must be to take the measures necessary to eliminate the wrong, for if this is not one's purpose, it is unlawful.

@R2.19: Asking for a Legal Opinion
The third is asking for a; legal opinion, such as by saying to the mufti, "My father [or "brother," or "So-and-so,"] has wronged me by doing such and such. May he do so or not?" "How can I be rid of him," "get what is coming to me," "stop the injustice," and so forth. Or such as saying, "My wife does such and such to me," "My husband does such and such," and the like. This is permissible when necessary, but to be on the safe side it is best to say, "What do you think of a man whose case is such and such," or "A husband [or "wife'] who does such and such," and so on, since this accomplishes one's aim without referring to particular people. But it is nevertheless permissible to identify a particular person, as is attested to by the hadith in which Hind said,
"O Messenger of Allah, Abu Sufyan is a stingy man..."
and the Prophet (Allah bless him and give him peace) did not forbid her.

@R2.20: Warning Muslims of Evil
The fourth reason is to warn Muslims of evil and advise them, which may take several forms, including:
-1- Impugning unreliable hadith transmitters or court witnesses, which is permissible by consensus of all Muslims, even obligatory, because of the need for it.
-2- When a person seeks one's advice about marrying into a certain family, entering into a partnership with someone, depositing something for safekeeping with him, accepting such a deposit, or some other transaction with him, it is obligatory for one to tell the person asking what one knows about the other by way advising him. If one can accomplish this by merely saying, "Dealing with him is of no advantage to you,"

"Marrying into the family is not in your interests," "Do not do it," and similar expressions, then one may not elaborate on the individual's shortcomings. But if it cannot be accomplished without explicitly mentioning the individual, one may do so.
-3- When one notices a student of Sacred Law going to learn from a teacher who is guilty of reprehensible innovations in religious matters (bid'a, def: w29.3) or who is corrupt, and one apprehends harm to the student thereby, one apprehends harm to the student thereby, one must advise him and explain how the teacher really is. It is necessary in such a case that one intend to give sincere counsel. Mistakes are sometimes made in this, as the person warning another may be motivated by envy, which the Devil has duped him into believing is heartfelt advice and compassion, so one must beware of this.
-4- And when there is someone in a position of responsibility who is not doing the job as it should be done, because of being unfit for it, corrupt, inattentive, or the; like, one must mention this to the person with authority over him so he can remove him and find another to do the job properly, or be aware of how he is so as to deal with him as he should be dealt with and not be deluded by him, to urge him to either improve or else be replaced.

@R2.21: Someone Unconcerned with Concealing their Disobedience
A fifth reason that permits slander is when the person is making no effort to conceal his corruption or involvement in reprehensible innovation (bid'a), such as someone who openly drinks wine, confiscates others, property, gathers taxes uncountenanced by Sacred Law, collects money wrongfully, or perpetrates other falsehoods, in which cases it is permissible to speak about what he is unconcerned to conceal, but unlawful to mention his other faults unless there is some other valid reason that permits it, of those we have discussed.
@R2.22: Identification
The sixth reason is to identify someone. When a person is known by a nickname such as "the Bleary-eyed," "the Lame," "the Deaf," "the Blind," "the Cross-eyed," or similar, it is permissible to refer to him by that name if one's intention is to identify him. It is unlawful to do so by way of pointing out his deficiencies. And if one can identify him by some other means, it is better.

@R2.23 These then, are six reasons Islamic scholars mention that permit slander in the above cases (as-Adhkar(y102), 455-69).

*2*Chapter R3.0: TALEBEARING (NAMIMA)

@R3.1(Nawawi:) Having summarily mentioned that talebearing (namima) is unlawful, with the evidence for this and a description of its nature, we now want to add a fuller explanation of it. Imam Abu Hamid Ghazali says, "Talebearing is a term that is usually applied only to someone who conveys to a person what another has said about him, such as by saying, 'So-and-so says such and such about you,' In fact, talebearing is not limited to that, but rather consists of revealing anything whose disclosure is resented, whether resented by the person who originally said it, the person to whom it is disclosed, or by a third party. It makes no difference whether the disclosure is in word, writing, a sign, nodding, or other; whether it concerns word or deed; or whether it concerns something bad or otherwise. The reality of talebearing lies in divulging a secret, in revealing something confidential whose disclosure is resented. A person should not speak of anything he notices about people besides that which benefits a Muslim to relate or prevents disobedience. Anyone approached with a story, who is told, 'So-and-so says such and such about you,' must do six things:
-1- disbelieve it, for talebearers are corrupt, and their information unacceptable;
-2- tell the talebearer to stop, admonish him about it, and condemn the shamefulness of what he has done;
-3- hate him for the sake of Allah Most High, for he is detestable in Allah's sight, and hating for the sake of Allah Most High obligatory;
-4- not think badly of the person whom the words are supposedly from, for Allah Most High says, 'Such much of surmise' (Koran 49.12);
-5- not let what has been said prompt him to spy or investigate whether it is true, for Allah Most High says, 'Do not spy' (Koran 49.12);

-6- and not to do himself what he has forbidden the talebearer to do, by relating it to others." (Ibid., 471-72)

*2*Chapter R4.0: SAYING "THE PEOPLE HAVE GONE TO RUIN"

@R4.1 The Prophet (Allah bless him and give him peace) said,
"When a man says, 'The people have gone to ruin,' he is the most ruined of all."

@R4.2(Nawawi:) Khattabi says the hadith means that a person who continually finds fault with people and mentions their failings is the most ruined of all, i.e. he becomes worse than they are because of the sin he commits in disparaging and attacking them, which may also lead to conceitedness and seeing himself as better than they.
Scholars concur that the condemnation only applies to someone who says the like of this out of contempt for people, considering them inferior and himself superior, despising the way they are because of his ignorance of the divine wisdom in Allah's creating them. But if one says it out of sadness at seeing one's own religious failings and those of others, there is no harm in it, just as there is no blame in saying,
"For all I know, every one of the Prophet's Community (Allah bless him and give him peace) performs the prayer." This is how Imam Malik explained the hadith, and others have followed him therein (sahih Muslim bi Sharh al-Nawawi(y93), 16.175-76).

*2*Chapter R5.0: INFORMING ON ANOTHER

@R5.1 The Prophet (Allah bless him and give him peace) said,
"Let none of my Companions inform me of anything another of them has said, for I wish to come out to you without disquiet in my heart." (al-Adhkar(y102), 473)

*2*Chapter R6.0: TWO PEOPLE CONVERSING SO A THIRD CANNOT HEAR

@R6.1 The Prophet (Allah bless him and give him peace) said,
"When there are only three of you, two of you may not speak together apart from the third unless you join a group of others, lest your doing so sadden him."

@R6.2(Nahlawi:) Nawawi (Allah have mercy on him) says this hadith prohibits two individuals conversing privately when a third is present, and likewise prohibits three or more people from doing so when there is a single person apart from them. The prohibition indicates its unlawfulness, it being impermissible for a group to converse apart from a single individual unless he gives his permission.
Imam Malik (Allah have mercy on him), our colleagues, and the majority of scholars hold that the prohibition is applicable at all times, whether one is at home or travelling, though some (A: Hanafi) scholars say that such converse is forbidden only while travelling, not when at home, for when travelling it may portend danger.

@R6.3 As for when there are four people and two of them speak privately in low tones apart from the other two, scholars agree that there is no harm in this.

@R6.4 The prohibition of listening to the conversation of people who are averse to one's listening likewise means it is unlawful, though only when the conversation does not entail harm to the listener, for if it does, one may listen to protect oneself from them (al-Durar-al-mubaha(y99), 159).

*2*Chapter R7.0: GIVING DIRECTIONS TO SOMEONE WHO WANTS TO DO WRONG

@R7.1 (Nahlawi:) It is not permissible to give directions and the like to someone intending to perpetrate a sin, because it is helping another to commit disobedience.
Allah Most High says,
"Do not assist one another in sin and aggression" (Koran 5:2).
Giving directions to wrongdoers includes:
-1- showing the way to policemen and tyrants when they are going to commit injustice and corruption;
-2- teaching questions of Sacred Law to those learning it in bad faith (N:i.e. who do

not want the knowledge to apply it in their lives, but for some unworthy purpose);
-3- teaching positions in Sacred Law that are rejected (A: meaning those that are not accepted by any of the four schools of jurisprudence (dis:b7.6)) or weak (dis:w12.2), or anything else that informs people of how to commit disobedience to Allah Most High:
-4- and permitting or authorizing a person to do something that entails disobedience, for acceptance of disobedience is disobedience. (bid., 159-60)

*2*Chapter R8.0: LYING

@R8.1(Nawawi:) Primary texts from the Koran and sunna that it is unlawful to lie (dis:p24) are both numerous and intersubstantiative, it being among the ugliest sins and most disgusting faults. Because of the scholarly consensus of the Community (Umma) that it is prohibited and the unanimity and amount of the primary textual evidence, there is little need to cite particular examples thereof, out only concern here being to explain the exceptions to what is considered lying, and apprise of the details.
@R8.2: Permissible Lying
The Prophet (Allah bless him and give him peace) said,
"He who settles disagreements between people to bring about good or says something commendable is not a liar.''
This much is related by both Bukhari and Muslim, with Muslim's version recording that Umm Kulthum added, "I did not hear him permit untruth in anything people say, except for three things: war, settling disagreements and a man talking with his wife or she with him (A:in smoothing over differences), '' This is an explicit statement that lying is sometimes permissible for a given interest, scholars having established criteria defining what types of it are lawful. The best analysis of it I have seen is by Imam Abu Hamid Ghazali, who says: "Speaking is a means to achieve objectives. If a praiseworthy aim is attainable through both telling the truth and lying, it is unlawful to accomplish through lying because there is no need for it. When it is possible to achieve such an aim by lying but not by telling the truth, it is permissible to lie if attaining the goal is permissible (N:i.e. when the purpose of lying is to circumvent someone who is preventing one from doing something permissible), and obligatory to lie if the goal is obligatory. When for example one is concealing a muslim from an oppressor who asks where he is, it is obligatory to lie about his being hidden. Or when a person deposits an article with one for safekeeping and an oppressor wanting to appropriate it inquires about it, it is obligatory to lie about having concealed it, for if one informs him about the article and he then siezes it, one is financially liable (A:to the owner) to cover the article's cost. Whether the purpose is war, settling a disagreement, or gaining the sympathy of a victim legally entitled to retaliate against one so that he will forbear to do so; it is not unlawful to; lie when any of these aims can only be attained through lying. But is religiously more precautionary (def:c6.5) in all such cases to employ words that give misleadng impression, meaning to intend by one's words something that is literally true, in respect to which one is not lying (def:r10.2) white the outward purport of the words deceives the hearer, though even if one does not have such an intention and merely lies without intending anything else, it is not unlawful in the above circumstances.
`This is true of every expression connected with a legitimating desired end, whether one's own or another's. An example of a legitimating end of one's own is when an oppressor intending to appropriate one's property inquires about it, in which case one may deny it. Or if a ruler asks one about a wicked act one has committed that is solely between oneself and Allah Most High (N: i.e. it does not concern the rights of another), in which case one is entitled to disclaim it, such as by saying, 'I did not commit fornication,'or'I did not drink.' There are many well known hadiths in which those who admitted they deserved punishment were given prompting (A: by the Prophet (Allah bless him and give him peace)) to retract their confessions. An example of a legitimating desired end of another is when one is asked about another's secret and one disacknowledges it. And so on. One should compare the bad consequences entailed by lying to those entailed by telling the truth, and if the consequences of telling the truth are more damaging, on is entitled to lie, though if the reverse is true or if one does not know which entails more damage, them lying is unlawful. Whenever lying is permissible, if the factor which permits it is desired end of one's own, it is recommended not to lie, but when the factor that permits it is the desired end of

another, it is not lawful to infringe upon his rights. Strictness (A: as opposed to the above dispensations (rukhsa, def:c6.2)) is to forgo lying in every case where it is not legally obligatory."

@R8.3The position of Ahl al-Sunna is that lying means to inform another that something is otherwise than it really is, whether intentionally or out of ignorance. One is not culpable if ignorant of it, but only if one lies intentionally, the evidence for which is that the Prophet (Allah bless him and give him peace) made intentionality a condition when he said,
"Whoever lies about me intentionally shall take a place for himself in hell.'' (al-Adhkar (y102), 510-12)

*2*Chapter R9.0: EXAGGERATION

@R9.1(Nawawi:) Gazali says: "Among the forms of lying that are unlawful but not serious enough to stigmatize their perpetrator as legally corrupt (dis:o24.3) is the customary exaggeration of saying, 'I've told you a hundred times,' or 'asked after you hundred times.' and so forth, since one does not thereby intend to inform the other how many times it has been, but only to indicate that it has been too many. In such cases, if the speaker in fact has only asked after the other but once, he is; lying, though is he has asked after him a number of times considerably more than what is generally accepted, he is not committing a sin by saying it, even if it has not been 'a hundred times.' There are intermediate degrees between these two at which the exaggerator becomes a liar."

@R9.2The proof that exaggeration is sometimes permissible and not considered lying is the hadith related by Bukhari and a Muslim that the Prophet (Allah bless him and give him peace) said,
``.. As for Abul Jahm, his stick never leaves his shoulder, while Mu'awiya does not own a thing,'' it being understood that the latter owned the garment he was wearing, and the former set his stick aside when he slept and at other times. And Allah alone gives success (ibid.,515-16).

*2*Chapter R10.0: GIVING A MISLEADING IMPRESSION

@R10.1(Nawawi:) Giving a misleading impression is among the most important topics, being frequently met with and often abused. It befits us to examine the matter closely, and whoever learns of it should reflect upon it and apply it. Having previously mentioned that lying is severely prohibited, and the danger that exists in saying something without any particular intention, what follows below shows a safe alternative to these.

@R10.2Giving a misleading impression means to utter an expression that ostensibly implies one meaning, while intending a different meaning the expression may also have, one that contradicts the ostensive purport. It is a kind of deception.
(A: It often takes the form of the speaker intending a specific referent while the hearer understands a more general one, as when a person asks a householder, ``Is So-and-so here?'' to which the householder, intending the space between himself and the questioner rather than the space inside the house, replies, "He is not here.")

@R10.3Scholars say that there is no harm (def: p8.2(A:)) in giving a misleading impression if required by an interest countenanced by Sacred Law that is more important than not misleading the person being addressed, or if there is a pressing need which could not otherwise be fulfilled except through lying.
When neither of these is the case, giving a misleading impression is offensive though not unlawful unless used as a means for wrongful gain or suppressing another's right, in which case it becomes unlawful. The above determine its permissibility. As for the hadith evidence, some of which permits it and some of which does not, it is to be interpreted in the light of the above criteria (al-Adhkar (y102), 514).

*2*Chapter R11.0: VERIFYING ONE'S WORDS BEFORE SPEAKING

@R11.1 Allah Most High says:
-1- ``Pursue not that of which you have no knowledge. The hearing, the eyesight, the heart: all will be asked about'' (Koran 17:36).
-2- ``He utters not a word save that an observer is present beside him'' (Koran 50:18).

@R11.2The Prophet (Allah bless him and give him peace) said,
``It is lying enough for a man to repeat everything he hears.'' (Ibid., 512-13)

*2*Chapter R12.0: SPEAKING OF TAXES AS "THE RULER'S RIGHT"

@R12.1(Nawawi:) One of the things most sternly prohibited and needful to warn people against is what the common people say about sales tax and the like (dis: p32), namely that ``this is the ruler's right,'' or ``you have to pay the ruler's due,'' and so forth, of references to ``right,'' ``obligation,'' and so on. This is one of the most objectionable practices and ugliest of reprehensible innovations. Some scholars even hold that anyone who calls these taxes a right thereby becomes an unbeliever, beyond the pale of Islam.
But in fact, such a person does not become an unbeliever unless he actually considers it right while knowing it is unjust. The proper way to mention these is to say ``the ruler's tax,''``revenue,'' or similar words. And Allah alone gives success (ibid., 499-500).

*2*Chapter R13.0: CONVERSING ABOUT WHAT IS USELESS OR IMMORAL

@R13.1(Nahlawi:) Conversing about what is useless or immoral means discussing acts of disobedience, such as stories about drinking sessions and fornicators when there is no legitimate purpose connected with the conversation, which is unlawful because it manifests one's own disobedience or another's without there being any need to. Ibn Mas'ud (Allah be well pleased with him) said, ``The greatest in sins on the Judgement Day will be the one most given to speaking about the useless and immoral.''

@R13.2: Speaking About What Does Not Concern One
As for speaking about what does not concern one, such as the story of one's travels, and the mountains, rivers, food, and clothes one saw while on them; when it does not contain lies, slander, ostentation, or other things that are unlawful, it is not in itself prohibited. Rather, it may be recommended, as when inspired by a good intention such as preventing others of accusing one of being arrogant or proud of not speaking, allaying another's timorousness, cheering up someone sad or ill, amusing or getting along well with the womenfolk, showing kindness to children, or similar motives.
With these intentions it is not considered to be what does not concern one.

@R13.3It is recommended and praiseworthy to leave anything that does not concern one (def: 254) because one squanders one's life by involvement in it and in mere amusement. The Prophet (Allah bless him and give him peace) said, ``The excellence of a person's Islam includes leaving what does not concern him,'' including excess verbiage, meaning to elaborate more than necessary about matters which do concern one, or to ask about things which are of no importance; though it does not include clarifying the details of difficult legal questions, especially to those of limited understanding, or the need to repeat an exhortation, reminder, instruction, or the like, since it might be necessary. But when it is unnecessary to add details, one should express oneself succinctly and with brevity. The Prophet (Allah bless him and give him peace said, ``Good tidings to him who avoids the excess in his speech and spends the excess of his money.''
`Ali (Allah ennoble his countenance) said, ``The best discourse is expressive, great, brief, and interesting.'' (al-Durar al-mubaha (y99), 135-36)

*2*Chapter R14.0: EXPLAINING THE KORAN BY PERSONAL OPINION

@R14.1The Prophet (Allah bless him and give him peace) said, "Whoever speaks of the Book of Allah from his own opinion is in error."

@R14.2(Nahlawi:) The jurist Abul Layth says in Bustan al-'arifin, "The [above] prohibition only applies to the allegorical parts of it (dis: w6), not to all of it, since Allah Most High says, "`As for those with deviance in their hearts, they pursue the allegorical of it' (Koran 3:7).
"The Koran came as a proof of moral answerability against all mankind and jinn, while if interpreting it were not permissible, it could not be a decisive proof. Since it is decisive, it is permissible for someone acquainted with the dialects of the Arabs and the circumstances under which various verses were revealed to interpret it. As for would-be exegetes who do not know the dimensions of Arabic, the figurative, literal, and the types of metaphor, it is not permissible for them to explain it beyond what they have heard, by way of reporting and not actual interpretation."
The generality of the prohibition also entails that whoever does not know which verses abrogate others and which are abrogated, the points upon which there is scholarly consensus (def: b7), and the tenets of faith of Ahl al-Sunna, is not safe from error if he interprets the Koran with nothing beyond the implications of the Arabic. Mere linguistic familiarity with the language is insufficient, and one must also know what we have just mentioned. When one knows both, one may interpret the Koran, and is not doing so by mere opinion (ibid., 158).

@R14.3(A: The above is equally true of hadith. Koran and hadith commentaries are of tremendous importance to teachers, speakers, writers, and translators who are preparing materials to present to Muslim audiences. The dictionary is not enough.)

*2*Chapter R15.0: ASKING ABOUT THE NATURE OF ALLAH MOST HIGH

@R15.1The Prophet (Allah bless him and give him peace) said:
"People will keep wondering and asking each other until it is said, 'This is Allah's creation, but who created Allah?' Whoever finds anything like this, let him say, 'I believe in Allah and His messengers.' " (Ibid., 140)

*2*Chapter R16.0: HYPOCRISY
@R16.1(Nahlawi:) Hypocrisy is when a person's outward does not correspond to his inward, or his words to his deeds. It is of two kinds, hypocrisy in belief and hypocrisy in acts. Hypocrisy in belief is another name for concealed unbelief while outwardly professing Islam. It is the very worst form of unbelief.
Allah Mighty and Majestic says, "Verily the hypocrites shall be in the lowest abyss of hell" (Koran 4:145).
And this type consigns its perpetrator to hell forever. As for hypocrisy in act, it is that which does not concern one's faith. It is also termed spoken hypocrisy, and consists of saying what contradicts one's true state. It is one of the greatest of sins. It includes being two-faced, like the person who, when two people are at odds, speaks words to each that confirm their respective sides, or tells each what the other has said, or endorses the enmity of each, praises each, and promises each to help against the other. This is hypocrisy and more. But its blameworthiness applies only to worsening relations between people, for if done to settle their differences, it is praiseworthy.
It is seldom that a person who visits leaders and important people is free of spoken hypocrisy. Someone told Ibn 'Umar (Allah be well pleased with father and son), "We visit our leaders and speak, but when we leave, we say something else." He replied, "In the days of the Messenger of Allah (Allah bless him and give him peace) we considered this hypocrisy."

@R16.2As for assuaging those from whom one apprehends harm (mudara), it is permissible, being done to obviate the damage and evil anticipated from certain people, whether it be a ruler or someone else one has reason to fear (al-Durar al-mubaha (y99), 116-18).

*2*Chapter R17.0: COMPROMISING ONE'S PRINCIPLES

@R17.1(Nahlawi:) Compromising one's principles means religious lassitude and weakness, such as by saying nothing upon seeing acts of disobedience or unlawful things when able to change them without suffering harm. Such silence is unlawful. Its opposite is

firmness in religion. Allah Most High says,
"They fight in the path of Allah and fear not the blame of whoever may blame them" (Koran 5:54).
And the Prophet (Allah bless him and give him peace) said, "Speak the truth, even if bitter."
But when one's silence is to prevent damage to oneself or others, it is a permissible form of assuaging those from whom one apprehends harm (mudara), and even recommended in some cases, as when it results in being saved from injustice, or is a means to fulfill a right recognized by Sacred Law (ibid., 112-13).

*2*Chapter R18.0: RIDICULE AND SARCASM

@R18.1(Nahlawi:) Ridicule entails showing disdain, sarcasm, or contempt for another in a way that causes laughter, whether by mimicking another's words or actions, by a gesture or by allusion. It is unlawful.
Allah Most High says:
-1- "Those who demean believers who voluntarily give charity-ridiculing those who find nothing to give but their own effort-it is Allah who is ridiculing them, and they shall suffer a painful torment" (Koran 9:79).
-2- ``O you who believe: let not some men deride others who might well be better than they; and let not some women ridicule others who might well be better than they. Do not belittle one another or insult one another with nicknames'' (Koran 49:11).
The Prophet (Allah bless him and give him peace) said:
``A gate in paradise will open to one of those who mock people and a cry will be heard, `Come here, come here,' and he will come forward in concern and anxiety, but when he reaches it, it will close in front of him. And this will happen again and again, until the gate will open and the cry `Come here, come here' will be heard as before, but he will not approach because he knows it will only close in front of him.''

@R18.2Ridicule is only unlawful when it hurts others' feelings. As for someone who purposely makes himself a laughingstock, perhaps such a person enjoys it, and jokes about him are considered mere humor. What is unlawful is the sarcasm that offends the person ridiculed, because of the insult and disdain involved, such as by laughing at his way of speaking, what he does, how he looks, or his physique because of a defect therein. To laugh at any of these is to commit ridicule that is unlawful (ibid., 126-27).

*2*Chapter R19.0: JOKING

@R19.1(Nahlawi:) The necessary condition for the permissibility of joking is that it does not contain lies or occasion fright to a Muslim or a non-Muslim citizen, because this hurts others, and we are forbidden to do so.

@R19.2Excessive joking is blameworthy and forbidden, since it eliminates one's dignity and reserve, and creates resentment in certain situations and people. It also causes immoderate laughter, which kills the heart. The prophet (Allah bless him and give him peace) said to this companions.
``Who will take these words and apply them, or knows someone who will?'' Abu Hurayra answered, ``I will, O Messenger of Allah,'' whereupon the Prophet (Allah bless him and give him peace) took his hand and enumerated five things saying: ``Avoid the unlawful and you will be the most religious of people.''
``Be satisfied with what Allah has allotted you and you will be the richest of people.''
``Threat your neighbor well and you will be a believer.''
``Love for others what you love for yourself and you will be a Muslim.''
``Avoid excessive laughter, for too much laughter kills the heart.'' (al-Durar al-mubaha (y99), 127-28)

*2*Chapter R20.0: PICKING APART ANOTHER'S WORDS

@R20.1(Nahlawi:) Picking apart another's words consists of attacking another's speech

by revealing the mistakes in it, whether its weak Arabic, meaning, or the intention of the speaker, as when one says, ``This is true, but you do not intend the truth by it,'' when such an attack involves no other motive than contempt for the other and displaying one's cleverness. It is unlawful. The Prophet (Allah bless him and give him peace) said:
``Whoever forgoes to cavil when he is in the wrong will have a home built for him on the edge of paradise. Whoever forgoes it when in the right will have a home built for him in the middle of paradise. And whoever improves his own character, a home will be built for him in the highest part of paradise.''
When a believer hears something true, it befits him to accept it. If it is not true, but is unconnected with religious matters, he should remain silent, though if connected with religious matters, he is obliged to show that it is false and to condemn it if there is a chance that anyone will believe him, because this is forbidding the wrong.

@R20.2: Giving a Positive Interpretation to Others' Seeming Mistakes
Nawawi (Allah Most High have mercy on him) mentions, in the section of the introduction of Sharh al-Muhadhdhab about the behavior of teacher and student, that ``it is obligatory for a student to give a positive interpretation to every utterance of his brothers that seems to be wrong until has exhausted seventy excuses. No one is incapable of this except a failure.''

@R20.3: Reading Works that are Beyond One's Understanding or Capacity
The Sheikh al-Akbar (A: Muhyiddin ibn al-`Arabi), Allah Most High sanctify his inmost being, writes in his letter about the spiritual station of annihilation in gnostic vision: ``When a book falls into a person's hands concerning a subject he knows nothing about [A: knows meaning through having studied in with sheikhs who are masters of it] and has not learned by engaging in it at first hand, he should do absolutely nothing with the book, but rather return it to those whom it concerns. He should not believe, disbelieve, or discuss it at all'' (ibid., 131-32).

*2*Chapter R21.0: LEARNED DISPUTATION

@R21.1(Nahlawi:) Disputation is what relates to clarifying various legal positions and making a case for them. When the intention behind this is to embarrass one's opponent or display one's superiority, it is unlawful or even unbelief according to some scholars. But when disputation is intended to reveal the truth, as is rare, then it is permissible or even recommended. Allah Most High says,
``Dispute with them with that which is better'' (Koran 16:125),
meaning, as Baydawi notes, by the best means of disputation, gently and affably, using the simplest approach and most familiar premises, since this more effectively cools opponents' vehemence and exposes their contentiousness (ibid., 132)

*2*Chapter R22.0: ARGUING

@R22.1(Nawawi:) Arguing is importunateness in speech to gain one's end, whether monetary or other. It may be intitiated by oneself or in response to another. If one objects that a person must argue to obtain his rights, the reply is that the stern condemnation of it applies to those who argue without right or knowledge, or someone who adds abuse to his speech that is not necessary to secure his rights, or is motivated to argue by nothing besides an obstinate desire to win and to finish his opponent. As for someone who has been wronged and makes his case in a way compatible with the Sacred Law, without belligerence, excessiveness, or importunateness, and not intending mere obstinacy and abuse, it is not unlawful, though it is better to avoid it if there is any way to do so, for keeping one's tongue within the limits of fair play during the course of an argument is virtually impossible. Moreover, arguing produces rancor in hearts and causes animosity that can lead to actual hatred between two people, until each comes to be pleased when harm befalls the other and to be displeased at the good, and unleashes his tongue against the other's reputation. Whoever argues runs the risk of these calamities. AT minimum, a quarrel comes to preoccupy one's heart so that during the prayer one's thoughts turn to debating and arguing, and one does not remain as one should.

@R22.2A certain person remarked, `` I have not seen anything that impairs one's religion, diminishes one's respectability, ends one's happiness, or preoccupies one's heart like arguing'' (al Adhkar (y102), 502-3).

*2*Chapter R23.0: ASKING ABOUT ANOTHER'S MISTAKES

@R23.1(Nahlawi:) It is forbidden to ask about another's errors and blunders in order to tell them they have made a mistake or to embarrass them, being unlawful because it entails injury to another and belittling him in front of people. But when one's asking about mistakes is to learn or teach, or to test or sharpen students' minds or make them reflect, then it is recommended and desirable, because it facilitates the comprehension of religious knowledge (al-Durar al-mubaha (y99), 140).

*2*Chapter R24.0: SEARCHING OUT A PERSON'S FAULTS

@R24.1(Nahlawi:) Asking about and searching out the faults of others is spying, which Allah Most High has forbidden by saying, ``Do not spy'' (Koran 49.12), meaning to look for the shameful points of Muslims. The Prophet (Allah bless him and give him peace) said:
-1- ``If you search for people's shameful points, you corrupt them...''
-2- ``O you have entered Islam with your tongues but whose hearts faith has not entered: do not slander people, and do not ferret out people's shameful points. Whoever searches out the shameful points of his brother, Allah will search out his own shameful points, and if Allah searches out a person's shameful points, be sure that He will disgrace him even if he should remain in the middle of his house.'' (Ibid., 145)

*2*Chapter R25.0: DISPLAYING SATISFACTION AT A MUSLIM'S TROUBLES

@R25.1The Prophet (Allah bless him and give him peace) said,
`` Do not show joy at the misfortune of your brother, lest Allah have mercy on him and afflict you with misfortune.''
(al-Adhkar (y102), 474)

*2*Chapter R26.0: OBSCENITY

@R26.1The Prophet (Allah bless him and give him peace) said:
-1- ``A believer is not given to reviling, cursing, obscenity, or vulgarity.''
-2- ``Whatever contains vulgarity is made ugly by it, and whatever contains modesty is made beautiful by it.''

@R26.2(Nawawi:) Obscenity and vulgarity are forbidden, as is attested to by many well-known and rigorously authenticated (sahih) hadiths, obscenity meaning to express ugly or vulgar matters, in plain words, even if they are true and the speaker is being honest. One should instead express such things by alluding to them in a polite way that nevertheless conveys what is meant, as is done by the Holy Koran and authentic noble hadiths. Allah Most High says:
-1- ``It is permitted to you on the nights of the fast to enter unto your wives'' (Koran 2:187).
-2- ``How can you take it [the marriage payment] back when you have entered unto one another?'' (Koran 4:21).
-3- ``But if you divorce them before you have touched them...'' (Koran 2:337).
There are many Koranic verses and authentic hadiths that employ similar words. Scholars say that comprehensible allusions should be used for these and other matters one is hesitant to mention by name. One alludes, for example, to sexual intercourse with a woman as ``going unto,'' ``lovemaking,'' ``sleeping with,'' and so forth, and does not use explicit words such as copulate or the like; and similarly alludes to urinating and voiding excrement as ``answering the call of nature, '' or ``going to the bathroom,'' and does not simply say ``defecate,'' ``urinate,'' and so forth. The same is true of mentioning personal blemishes such as leprosy, halitosis, underarm odor, and the like, which one should refer to by polite words that indicate what is meant. Other matters

should be dealt with as in the above mentioned examples-all of which applies to cases in which there is no need to plainly refer to these things by name.
When the need arises to explain or teach, and one fears that the listener may nor grasp one's allusion or may misunderstand the meaning, one should plainly say the thing's name so that the real meaning is understood. And this is how one should interpret the hadiths that have reached us which contain such straightforward expressions, as arising from the needs we have mentioned, for communicating clearly is more important than mere decorum. And Allah alone gives success (ibid., (y102), 508-9).

*2*Chapter R27.0

@R27.1: Severity in Speech and Harshness
(Nahlawi:) Severity in speech and harshness are blameworthy when out of place, their proper place being in forbidding the wrong, if gentleness and affability prove ineffective (dis: q5.5), as well as in imposing prescribed legal penalties, and in reprimanding or disciplining those who require it Allah Most High says:
-1- ``... And be harsh with them'' (Koran 9:73).
-2- ``Let them find severity in you'' (Koran 9:123).
-3- `` Let not pity for them seize you concerning the religion of Allah'' (Koran 24:)

@R27.2Other than in the above-mentioned cases, it is praiseworthy for one to use amiable words, have a cheerful expression, and to smile. The Prophet (Allah bless him and give him peace) said:
``There is a dwelling in paradise whose outside can be seen from inside [A: from its lucidness and purity].'' Abu Malik Ash `ari asked, ``Whose shall it be, O Messenger of Allah?'' And he said, `` He whose speech is fair, who feeds others, and who spends the night standing in prayer when people sleep.'' (al-Durar al-mubaha (y99) m 144-45)

*2*Chapter R28.0: FRIGHTENING OR COERCING A BELIEVER

@R28.1(Nahlawi:) To make a believer fear other than disobedience or coerce him to do something he is averse to, such as giving a gift, marrying, or selling something-all this is hurting him, and hurting a believer is unlawful. The Prophet (Allah bless him and give him peace) said,
``Whoever frightens a believer, it is incumbent that Allah not protect him from the terrors of Judgement Day as a fitting recompense.''
Najm al-Ghazzi says in Husn al-tanabbuh, ``Among the works of the Devil is frightening, annoying, or alarming a believer, all of which is unlawful'' (ibid., 157-58).

*2*Chapter R29.0: REJECTING A BROTHER'S EXCUSE

@R29.1The Prophet (Allah bless him and give him) said,
``When someone offers an excuse to his fellow Muslim and the latter does not accept it, his sin is like the crime of imposing taxes [dis: p32].'' (Ibid 157)

*2*Chapter R30.0: DRIVING AWAY THE POOR, THE WEAK, THE ORPHAN, OR THE BEGGAR

@R30.1Allah Most high says:
-1- ``As for the orphan, do not oppress him; and as for the beggar [dis: r39], turn him not away'' (Koran 93:9).
-2- ``Do not drive away those who call upon their Lord morning and evening, seeking His countenance: you are not responsible for anything of their account, nor they for anything of yours, that you should drive them away and thus become of the wrongdoers'' (Koran 6:52).
-3- ``Lower your wing unto the believers'' (Koran 15:88). (al-Adhkar (Y102), 481-82)

*2*Chapter R31.0: PUTTING OFF ONE'S FATHER OF MOTHER

@R31.1(Nawawi:) It is very sternly prohibited to putt off one's father or mother. Allah Most High says:
``Your Lord decrees that you shall worship none but Him and treat your parents well. If

one or both of them reach old age while with you, do not say `Uff' to them or put them off, but speak respectfully to them. Lower for them the wing of humbleness, out of mercy, and say, `O Lord, have mercy on them, as they raised me when I was young' '' (Koran 17.24-25). (Ibid.,509)

*2*Chapter R32.0: CIRCUMSTANCES IN WHICH CONVERSATION IS OFFENSIVE

@(N: Offensive, when used without further qualification by Hanafis (A: in their books on the lawful and unlawful (al-hazr wa al-ibaha)) means unlawfully offensive (makruh tahriman), and its ruling is the same as the unlawful (A: is in the Shafi`i school).)

@R32.1: Interrupting Oneself or Others
(Nahlawi:) It is offensive to interrupt someone else's words with one's own when the former consist of teaching Sacred Knowledge. Some scholars hold that to greet a group with ``as Salamu `alaykum'' when they are learning religious knowledge is a sin. It is also offensive to interrupt one's own words with speech of a different kind when reciting Koran, supplicating, explaining the Koran, teaching hadith, or addressing people, and while doing this, for example, one turns to someone and tells him to go buy some things needed at home.
Conversation is offensive for anyone seated listening to a pious exhortation, or instruction, or in the presence of someone above his own level. It is also offensive for such a person merely to turn to look at something else, or to stir when there is no need, all of which is poor manner,s levity, precipitateness, and thoughtlessness. Rather, the one speaking should set for the what he means to say without irrelevant asides until finished, and the person addressed should heed the speaker, paying attention to him and listening until he finishes, without looking around, stirring, or talking; especially if the speaker is explaining the words of Allah Most High or His messenger (Allah bless him and give him peace). But one is excused if a pressing physical or religious need arises that there is no alternative but to fulfill, since necessity excuses one from any rule whatever (A: but only to the degree demanded by necessity).

@R32.2: Disrespect to Those with Authority Over One
It is offensive to contend against the words of anyone with authority over one (A: countenanced by Sacred Law), or talk back, oppose, rebut, or disobey such a person in anything lawful (A: meaning not unlawful or offensive), the prohibition applying to such people as a follower with his leader, son with his parents, student with his teacher wife with her husband, or unlearned person with a scholar. All of this is very ugly behavior and deserves disciplinary action (def: o17), since each of these is obliged to obey the one over them.

@R32.3: This-Wordly Words in a Mosque
It is offensive to speak about this-worldly matters, meaning words that would otherwise be permissible, in a mosque when there is no excuse (A: if one makes a habit of it). (N: the more reliable position is that it is not offensive, but merely better not to (khilaf al-awla) >)

@R32.4: Speaking During the Sermon of the Friday Prayer
It is offensive to speak during the sermon on Friday, whether it be to say ``Subhan Allah,'' the Blessings on the Prophet (Allah bless him and give him peace), or to command the right or forbid the wrong, the reason for the prohibition being that listening to the Friday prayer sermon is obligatory, as it takes the place of two of the rak`as of the noon prayer, so that things offensive during the prayer are offensive while listening to the sermon. The Prophet (Allah bless him and give him peace), said, ``When the imam is giving the sermon on Friday, and you tell your companion, `Listen,' you have made an impertinent remark.''

@R32.5: Speaking When the Koran is Being Recited
It is offensive to speak when the Koran is being recited, for listening to it and heeding it are absolutely obligatory, whether one is performing the prayer or not, and whether one comprehends it or not (A: but only if its words are distinctly audible to

one). Allah Most High says,
``When the Koran is recited, listen and pay heed to it'' (Koran 7:204).

@R32.6: Speaking Without Need to a Member of the Opposite Sex
It is offensive for a male to speak without need to a young woman who is not a member of his unmarriageable kin (def: m6.1). He should not say ``Arhamkum Allah'' (Allah have mercy on you) if she sneezes, greet her with ``as-Salamu `alaykum'' (A: which is unlawful in the Shafi`i school) nor return her Salams if she says them (A: which is offensive for Shafi`is). He should not say these aloud, but to himself, all of which likewise holds for a young woman's speaking to a man who is not a member of her unmarriageable kin (m6.2). The prohibition of these is due to the Prophet's having said (Allah bless him and give him peace),
``The adultery of the tongue is speech.''

@R32.7: Speaking When Lovemaking or in the Lavatory
It is offensive to speak while lovemaking, or when in the lavatory or relieving oneself.
It is offensive to laugh in circumstances in which speaking is offensive.

@R32.8: Speaking After the Coming of Dawn Before Performing the Dawn Prayer
It is offensive to speak of this-worldly things between dawn and performing the dawn prayer (subh). Some hold this extends until sunrise (al-Durar al-mubaha (y99), 145-49).

@R32.9: Conversation after Performing the Nightfall Prayer (`Isha)
(Nawawi:) It is offensive for someone who has prayed the nightfall prayer (`isha) to converse about things permitted at other time,s meaning permissible words which would otherwise be the same to say or not to. Discourse that is unlawful or offensive at other times is even more sternly prohibited or offensive at this time. As for conversation about what is good, such as teaching Sacred Knowledge, relating the words of the pious, describing noble qualities, or speaking to one's guest, none of these is offensive, but rather they are commendable (al-Adhkar (y102), 504).

*2*Chapter R33.0: PEOPLE OFFENSIVE TO GREET WITH SALAMS

@R33.1(Nahlawi:) It is offensive (def: r32.0) to greet with ``as-Salamu `alaykum'' anyone who is:
-1- performing the prayer, reciting the Koran invoking Allah (dhikr), reading hadith to others, giving the Friday prayer sermon (khutba), or listening to any of these;
-2- a student of jurisprudence repeating a lesson over to himself to facilitate memorizing it, someone informing ordinary people of legal rulings, or anyone engaged in a lesson of Sacred Knowledge;
-3- giving the call to prayer or call to commence (iqama);
-4- teaching;
-5- seated waiting for the prayer, or saying ``Subhan Allah'';
-6- eating;
-7- a corrupt person who does not conceal his acts of disobedience;
-8- a young lady who is not a member of one's unmarriageable kin (dis: r32.6);
-9- someone who plays games that are not permissible (dis: k29.5), slanders others, sings, is an old wag, a chronic liar, addicted to profitless conversation, reviles others, or looks at women's faces, all of whom are offensive to greet unless their repentance from these things is known;
-10- someone who is enjoying his wife, whose nakedness is exposed, who is relieving himself, drowsy, asleep, or someone who is in a bathhouse.

@R33.2: Responding to Salams:
It is not obligatory to respond to someone's Salams in circumstances where greeting him is uncalled-for, except for a corrupt person ((7) above), whose Salams it is obligatory to return. It is not obligatory to answer the Salams of someone who is a child, intoxicated, or insane. Nawawi (Allah Most High have mercy on him) says in his commentary on Sahih Muslim, ``Scholars disagree about greeting non-Muslims with as-

Salamu `alaykum' or returning their Salams. We hold that it is unlawful to say it to the first, though is obligatory to return their greetings by saying `alaykum' (and upon you), or simply, ``Alaykum.' Other scholars hold it is permissible to greet them first with `as-Salamu `alaykum' '' (al-Durar al-mubaha (y99), 150151).

*2*Chapter R34.0: BOASTING

@R34.1Allah Most High says,
"Do not praise yourselves: He knows best who is godfearing'' (Koran 53:32)

@R34.2The Prophet (Allah bless him and give him peace) said,
"Allah has inspired to met that you are all to be humble towards each other such that no one transgresses against or exalts himself above another." (al-Adhkar (y102), 473-74)

*2*Chapter R35.0: REVEALING ONE'S SINS TO OTHERS

@R35.1The Prophet (Allah bless him and give him peace) said:
"All of my Community shall be pardoned, save those who commit sins openly. Committing them openly includes a man who does something shameful at night, and when morning comes, Allah having hidden his act, he says, ``O So-and-so, last night I did such and such'; his Lord having concealed it for him at night, while in the morning he pulls away the cover with which Allah had concealed it for him.''

@R35.2(Nawawi:) It is offensive for a person who has been afflicted with an act of disobedience or the like to inform another of it. Rather, one should repent to Allah Most High by desisting from it at once, regretting what one has done, and firmly resolving never to do the like of it again. These three things are the integrals of repentance, which is not valid without them. There is no harm in telling about a sin to one's sheikh or other person who may be expected to teach one how to desist from the act or refrain from similar acts, or appraise one of the causes that led to it, or pray for one, and so forth. If such is the case, informing him is commendable. It is only offensive to do so when no such interest can be served (ibid., 498).

*2*Chapter R36.0: REVEALING A SECRET

@R36.1The Prophet (Allah bless him and give him peace) said,
``When a man says something, then glances left or right, his words are a confidence to be kept.''(Ibid., 507)

@R36.2(Nahlawi:) Telling a secret means to inform others of a remark, action, or state which one learns of from someone who wants it to remain hidden, whether it be good or bad. This is hurting him, and hurting others is unlawful.
Whenever people meet, it is obligatory to keep secret any act that occurs, any words spoke, or any state attributable to someone, when these concern something one would normally wish to remain confidential, while not being unlawful. If unlawful, then:
-1- If it is against Allah Most High alone and does not involve legal measures such as prescribed legal penalties or disciplinary action (def: o17), then it must be kept secret.
-2- If it involves legal measures, as do fornication (dis: o12) and drinking (o16), then one has a choice between revealing it or not, though it is superior to conceal it.
-3- if it involves another person's rights, then if concealing it entails harm to anyone, or if it concerns prescribed legal measures such as retaliation for an injury or death (def: o3), or covering the cost of an article destroyed through negligence, then if the person whose rights have been infringed is ignorant of it, one is obliged to make the matter known, and must testify to it if asked to.
-4- If it involves another's rights, but concealing it does not entail harm to anyone and it does not concern prescribed legal measures, or it entails one of these two, but the person concerned already knows of it through another and one has not been asked to testify about it, then one is obliged to conceal the matter. (al-Durar al-mubaha (Y99), 134)

*2*Chapter R37.0: DISAFFECTING A PERSON'S FAMILY FROM HIM
@R37.1(Nawawi:) It is unlawful for a person to mention anything to another's servant, wife, son, and so forth that could disaffect them from him, unless one is commanding the right or forbidding the wrong. The Prophet (Allah bless him and give him peace) said,``He who disaffects a person's wife or servant from him is not of us.'' (al-Adhkar (Y102), 498)

*2*Chapter R38.0: CURSING

@R38.1: The Prohibition of Cursing Others
(Nawawi:) Cursing an upright Muslim is unlawful by unanimous consensus of all Muslims. The Prophet (Allah bless him and give him peace) said,
``Cursing a believer is like killing him.''
@R38.2: The Permissibility of Cursing Those Who Commit Disobedience When They are not Personally Identified or Known
It is permissible (A: but not rewarded by Allah) to curse those who possess blameworthy characteristics, such as by saying, ``Allah curse oppressors,'' ``Allah curse the corrupt,'' ``Allah curse picture makers,'' and so forth. Well-known and rigorously authenticated (sahih) hadiths verify that the Prophet (Allah bless him and give him peace) said:
-1- ``Allah curse her who wears false hair and her who arranges it for another'';
-2- ``Allah curse him who eats usurious gain (riba) '';
-3- ``Allah curse those who make pictures'';
-4- ``Allah curse him who surreptitiously changes property-line markers'';
all of these being found in Bukhari, Muslim, or both.
As for cursing a particular person who commits some act of disobedience, such as an oppressor, adulterer, maker of pictures, thief, or one who consumes usurious gain; the hadith evidence seems to suggest it is not unlawful, though Ghazali indicates (A: and it is the most reliable opinion) that it is unlawful unless the person cursed is someone we know has died in a state of unbelief, such as Abu Lahab, Abu Jahl, Pharaoh, Haman, and their likes. This, as Ghazali notes, is ``because to curse means to distance another from the mercy of Allah Most High, while we do not know how the particular corrupt person or non-Muslim will end his life. As for those the Prophet (Allah bless him and give him peace) personally cursed, perhaps it was because he knew they would die in unbelief. Praying that evil befalls a person is similar to cursing, even when against a tyrant, such as saying, `May Allah not heal him,' `May Allah not keep him safe,' and similar remarks, if of a Muslim]. And likewise for cursing any animals or inanimate objects whatever-all this is objection-able [A: meaning offensive]'' (al-Adhkar (Y102), 476-80).

*2*Chapter R39.0: BEGGING

@R39.1(Nahlawi:) It is unlawful to ask for money or other worldly advantage from someone one has no right to ask, unless there is a necessity to. The Prophet (Allah bless him and give him peace) said,
``One of you keeps begin until when he meets Allah Most High, there is not a piece of flesh left on his face,''
which is interpreted as referring to anyone who asks when it is not permissible to do so. The degree of necessity that permits begging is when one is unable to earn a living due to illness or weakness and does not have enough food to last one day (al-Durar al-mubaha (y99), 139).

*2*Chapter R40.0: MUSIC, SONG, AND DANCE

@R40.1: Musica Instruments
(Ibn Hajar Haytami:) As for the condemnation of musical instruments, flutes, strings, and the like by the Truthful and Trustworthy (Allah bless him and give him peace), who ``does not speak from personal caprice: it is nothing besides a revelation inspired'' (Koran 53:3-4),
let those who refuse to obey him beware lest calamity strike them, or a painful

torment. The Prophet (Allah bless him and give him peace) said:
-1- ``Allah Mighty and Majestic sent me as a guidance and mercy to believers and commanded me to do away with musical instruments, flutes, strings, crucifixes, and the affair of the pre-Islamic period of ignorance.''
-2- ``On the Day of Resurrection, Allah will pour molten lead into the ears of whoever sits listening to a songstress.''
-3- "Song makes hypocrisy grow in the heart as water does herbage
-4- ``This Community will experience the swallowing up of some people by the earth, metamorphosis of some into animals, and being rained upon with stones.'' Someone asked, ``When will this be, O messenger of Allah?'' and he said, ``When songstresses and musical instruments appear and wine is held to be lawful.''
-5- ``There will be peoples of my Community who will hold fornication, silk, wine, and musical instruments to be lawful....''
All of this is explicit and compelling textual evidence that musical instruments of all types are unlawful (Kaff al-ra`a' `an muharramat al-lahw wa al-sama` (y49), 2.269-70).

@R40.2(Nawawi:) It is unlawful to use musical instruments-such as those which drinkers are known for, like the mandolin, lute, cymbals and flute-or to listen to them. It is permissible to play the tambourine at weddings, circumcisions, and other times, even if it has bells on its sides. Beating the kuba, a long drum with a narrow middle, is unlawful (Mughni al-muhtaj ila ma`rifa ma`ani alfaz al-Minhaj (y73) m, 4.429-30).

@R40.3: Singing Unaccompanied By Musical Instruments
(Ibn Hajar Haytami:) As for listening to singing that is not accompanied by instruments, one should know that singing or listening to singing is offensive except under the circumstances to be mentioned in what follow. Some scholars hold that singing is sunna at weddings and the like, and of our Imams, Ghazali and `Izzi ibn `Abd al-Salam say that it is sunna if it moves one to a noble state of mind that makes one remember the hereafter. It is clear from this that all poetry which encourages good deeds, wisdom, noble qualities, abstinence from this-worldly things, or similar pious traits such as urging one to obey Allah, follow the sunna, or shun disobedience, is sunna to write, sing, or listen to, as more than one of our Imams have stated is obvious, since using a means to do good is itself doing good (kaff al-ra`a` ` an muhar-ramat al-lahw wa al-sama` (y49), 2.273).

@R40.4: Dance(Nawawi: (n: with commentary by Muhammad Shirbini Khatib)) It is not prohibited to dance ((Shirbini:) which is not unlawful because it is only motions made while standing or bowing. Furani and others have expressly stated that neither is it offensive, but rather is permissible, as is attested to by the hadith related in the sahihs of Bukhhari and Muslim that the Prophet (Allah bless him and give him peace) stood before `Ai'isha (Allah be well pleased with her) to screen her from view so that she could observe the Abyssinians sporting and dancing) -unless it is languid, like the movements of the effeminate (Mughni al-muhtaj ila ma`rifa ma`ani alfaz al Minhaj (y73), 4.430).

*1*BOOK S: [Ibn Qudaama's] DELUSIONS

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*2*Chapter S1.0: THOSE DELUDED BY THIS WORLD, ALLAH'S FORGIVENESS, OR THEIR OWN WORKS

@S1.1 (Ibn Qudama Maqdisi (dis: q0.1) :) There are people misled by this world, saying, ``Cash is better than credit: This world is cash while the next world is credit.'' And it is a point of deception, for cash cannot be better than credit unless the amount of each is equal. Now a person's life, when compared to the hereafter, obviously does not amount to even a thousandth part before he breathes his last, while someone who says that ``cash is better than credit'' means ``provided the credit equals the cash.'' And this is the delusion of unbelievers. As for those immersed by sin while their faith in eternal truths remains sound, they share this delusion with unbelievers, by preferring the present life to the hereafter, but their lot is easier than the unbelievers' in that their basic faith will keep them from unending punishment.

@S1.2: Those Deluded By Allah's Forgiveness
Other sinners delude themselves by saying, ``Allah is generous, we but rely on His forgiveness,'' while the learned tell us that if one longs for something one pursues it, and if one fears something one shuns it. Whoever hopes for forgiveness while persisting in wrongdoing is deluded. One must know that Allah Most High with His vast mercy, is terrible in retribution, having decreed that unbelievers shall abide in hell forever (dis: w55) even though their unbelief does not hurt Him in the slightest. He has made some of His servants prey to infirmities and trials in this world, though He, Glorious and Exalted, is quite able to eliminate them. Moreover, He has made us fear His punishment. How can we not be afraid? Fear and hope drive and arouse one to action. That which does not spur one to works is deception, as is clear from the fact that the ``hope'' of most people makes them do nothing at all or prefer disobedience. It is odd that early Muslims both worked and feared, while nowadays, though falling far short, people feel secure and tranquil as though they knew more about the generosity of Allah Most High than the prophets and the righteous. If it could be had by wishing, why did the latter fatigue themselves and weep so much? Does Allah condemn the Jews and Christians for anything besides being this way when He says, ``They grasp at the paltry things of this low life and say, ``We shall be forgiven,' '' (Koran 7:169).

This delusion resembles that of people who do both good and evil, but more of evil, while imagining their good to be greater. One might see them give a dirham as charity while having wrongfully appropriated many times that amount, or maybe even giving as charity something wrongfully acquired, relying on such a donation, which is like someone putting a dirham in one scalepan, a thousand in the other, and hoping the scale will balance. Or another of them who thinks his good acts are more than his evil ones, the reason for which is that he keeps track of the number of good deeds, but does not take himself to task for the bad one,s nor consider his sins. For example, he says, ``Astaghfir Allah'' (May Allah forgive me) and ``Subhan Allah'' (Glory be to Allah) a hundred times a day, but then spends the rest of his day slandering Muslims and making ugly remarks, seeing the virtue of saying ``Subhan Allah'' and ``Astighfir Allah,'' but not the punishment for slander forbidden speech.
@S1.3Delusions generally occur among four kinds of people: Islamic scholars, devotees, would-be Sufis, and the wealthy.

*2*Chapter S2.0: THE DELUSIONS OF ISLAMIC SCHOLARS

@S2.1: Those Remiss in Outward Conduct
As for religious scholars, some master the legal and rational sciences but neglect to examine their outward habits and practices, not keeping their external self from sin or making it faithful in obedience. They are deluded by their learning and feel sure they rate high with Allah. If they were to look with the eye of insight, they would see that the whole point of knowing about religious practice is to apply it.
Without works, it is useless. Allah Most High says, ``He who purifies it [the soul] has succeeded'' (Koran 91:9), not, ``He who knows how to purify it has succeeded.'' If the Devil reminds such a person of the virtues of learned people, let the person for his part remember what has reached us about corrupt scholars, such as Allah's saying, ``...like a donkey laden with books'' (Koran 62:5).

@S2.2: Those Who Neglect Their Inward Faults
Others master religious learning and its outward performance, but do not examine their hearts to eliminate the blameworthy traits therein such as pride, envy, ostentation, and seeking exaltation or fame. These have made their exterior seemly while neglecting their interior, forgetting the words of the Prophet (Allah bless him and give him peace), ``Allah does not look at your appearance or property, but only at your hearts and works.''
Such people apply themselves to works but do not apply themselves to hearts, though the heart is the real foundation, since no one is saved
``except he who comes to Allah with a pure heart'' (Koran 26:89).
They resemble someone who sows grain that comes up with weeds choking it out, but when ordered to weed it, merely trims away the weeds' twigs and stems, neglecting the roots, which take stronger hold.
Another segment of scholars know that these inner qualities are condemnable, but out of self satisfaction feel they are above them, and the they are too good as far as Allah is concerned for Him to afflict them with such traits, that only common people have them and not people at their own level of learning. When symptoms of arrogance or avidness for leadership appear is such people, one of them may say, ``This is not arrogance, but only seeking to exalt Islam, display the nobility of religious learning, and to spite those given to reprehensible innovations, Were I to wear clothes less fine or sit with a lower class of people, the enemies of religion would smirk, and gloat at my humiliation, which amounts to humiliating Islam.'' And he forgets about delusion, and that it is Satan Who has seduced him with this, which is plain from the fact that the Prophet (Allah bless him and give him peace) and his Companions were humble in manner and preferred the way of poverty and lowliness.
Still other scholars have acquired religious knowledge, purified their exterior actions, making them seemly with obedience, and examined their hearts, purifying them of ostentation, envy, pride, and the like, and yet there remain snares of the Devil and tricks of the ego hidden in the recesses of their hearts which they have failed to notice and this neglected. You might see one of them spending the night and day in learning various religious sciences, organizing them and polishing up their terminology, such a person thinking his motive is the desire to manifest the religion

of Allah Most High, while the real motive might be to make a name for himself and enhance his prestige. Perhaps too his published work is not entirely free of self-praise, whether overtly, by wide, sweeping claims, or covertly, by attacks on others, to show by attacking them that he is better than they are and more knowledgeable. Such kinds of behavior and similar ones are hidden faults which few discern but the wisest and strongest. Those as weak as we are have little hope of doing so, but at least a person should be aware of his own defects and wish they were corrected. There is hope for someone whose good acts make him happy and wicked ones make him sad, unlike someone who applauds himself and thinks himself the best of men.

@S2.3The above are the delusions of those who master important branches of Sacred Knowledge. How then for those who content themselves with studying fields not essential to them, neglecting the import ones?

@S2.4: Theological Polemicists
Among them are those who busy themselves with theological polemics against heretical beliefs, and refuting the unorthodox. Scholars engaged in this are of two types, those in the wrong and those in the right, the former advocating something other than the sunna, the latter advocating the sunna. Both are deluded. The misguidedness of those in the wrong is obvious (A: since they have left the Koran and sunna which are divinely protected). As for those in the right, their delusion is in believing that arguing is the most important activity and greatest spiritual work in the religion of Allah Most High. They maintain that one's religion is not complete until one has made lengthy investigations into one's beliefs, and that someone who simply believes in Allah and His messenger without preparing a case for it is deficient in faith. Because of this mistaken presumption, they spend their lives learning how to dispute, conducting in-depth studies of statements of theological controversies until their spiritual insight eventually goes blind. They do not pause to consider that the early Muslims, whom the Prophet (Allah bless him and give him peace) testified were the very best of mankind, and who lived to see many a reprehensible innovation (bid'a) and deviant belief, did not expose themselves and their religion to quarrels and disputation, or busy themselves therein at the expense of their hearts and works. They did not talk about it at all, except under necessity to refute misguidance. And if they saw someone persisting in blameworthy innovation, they had nothing more to do with him, without further debate or argument. The hadith has reached us,
``No people went astray after having been guided save that they were afflicted with arguing.''

@S2.5: Sermonizers
Others spend their time in homilies to people, the highest class of whom speak about traits of the self and qualities of the hear such as fear, hope, patience, gratitude, reliance on Allah, abstinence, certainty, and sincerity, thinking that by merely speaking of them, even of they do not have them, they acquire them. Such people call to Allah while they themselves flee from Him. They are among the most deluded. And some of them turn from the proper way of exhorting others to relating baseless tales, adding words that are neither acceptable to Sacred Law nor to human intelligence, in an attempt to say something novel.

@S2.6: Learning Hadith for the Sake of Making a Reputation
Others spend their time in listening to hadiths, gathering variants and rare chains of transmission or chains remarkable for having come through but few transmitters of advanced years. The concern of one of them is to go from city to city, seeing sheikhs in order to drop names, saying, ``I relate from So-and-so,''
``I've met So-and-so,'' or ``I know chains of transmission no one else does.''

@S2.7: Arabists
Others devote their time to advanced studies in Arabic grammar, lexicography, and poetry, claiming they are the scholars of the Islamic Community, dissipating their lives in subtleties of grammar and diction. If they stopped to think, they would realize that someone who wastes his lifetime in the knowledge of the language of the Arabs is like someone who wastes it in knowledge of the language of the Turks. Arabic

is only distinguished above the latter in that the Sacred Law has come in it. As for lexicology, there are only two areas in which it is necessary for one to gain an understanding of rare words: those of the Koran, and those of the hadith. As for grammar, one but needs enough to use the language properly.

@S2.8The really fortunate person is he who takes of each thing the amount that is critical to him and then goes on to apply it, putting his effort behind it and purifying if of imperfection. And this is the real aim.

*2*Chapter S3.0: THE DELUSIONS OF DEVOTEES

@S3.1Devotees are of various types, including those remiss about obligatory acts while engaging in extra devotions and supererogatory works.

@S3.2Sometimes they are so worried about using water for purification that it reaches the level of obsessive doubt (waswasa) about the validity of their ablution. You might see one of them unsatisfied with water the Sacred Law deems fit for ablution, imagining remote possibilities that it could be affected with something unclean, while not having such concern for the lawfulness of the source of the food he eats. Were he to reverse these two, applying the care he takes for the water instead to his food, he would be closer to the practice of the early Muslims. `Umar (Allah be well pleased with him) performed ablution from the water jar of a Christian despite signs that it might well be unclean, while he used to refrain from many kinds of permissible things for fear of falling into the unlawful.

@S3.3Others are so bedeviled by inner misgivings at their initial Allahu Akbar in the prayer that they may miss a rak`a with the imam. And like them are those with obsessive doubts about the proper pronunciation of the letters of the Fatiha and other spoken elements of the prayer. One of them may take precaution upon precaution in doubling the doubled letters, distinguishing from and so forth, beyond the necessary, until he is finally so concerned about it that he does not think about anything else, neglecting the meaning of the Koran and the lessons he should be taking from it. And this is among the ugliest forms of delusion, for people are not required to pronounce the letters when reciting the Koran with more precision than that with which classical Arabic is normally spoken. Such people are as if delivering a message to a ruler, the messenger fastidiously pronouncing each letter and repeating those he is unsatisfied with, having quite forgotten the purpose of the message and the dignity of the assembly before whom he is delivering it. How richly such a person deserves to be thrown out and taught a lesson.

@S3.4A third group is deluded by reciting the Koran, which they rush through, perhaps finishing twice a day, the tongue of one of them being occupied therein while his heart is wandering through the valleys of daydream, not reflecting on its meanings, heeding its exhortations, or obeying its ordinances and prohibitions. Such a person is misled, believing the Koran is only intended for reciting. He is like someone to whom his master has written a letter charging him with certain matters and forbidding him others, while the servant does no bother the understand it or carry it out but simply memorizes it and repeats it, thinking that this is the purport of it, while violating the master's commands and prohibitions.
Others relish the sound of their own voice in reciting the Koran, disregarding its significance. One should examine one's heart as to whether one is enjoying the meter, the sound, or the meaning (A: though it is not blame worthy to enjoy the meter or sound, unless one is unconcerned with the meaning).

@S3.5Others are deceived by fasting, and frequently practice it, but do not restrain their tongue from slander and useless words, keep their belly from ill-gotten or unlawful food with which to break their fast, or free their heart from ostentation.

@S3.6Others are deluded by going on pilgrimage, departing for it without restoring the rights of people they have wronged (dis: p77.3), meeting their financial obligations, asking the permission of their parents, or obtaining lawfully gotten provision. And

this may be after having fulfilled the obligatory hajj, while they neglect obligatory acts of worship enroute, are unable to purify their garments and person, and do not refrain from unpermitted sex or getting into arguments, despite which they think all is well with them, being self deceived.

@S3.7Others command the right and forbid the wrong, while forgetting themselves.

@S3.8Others include the imam who leads the group prayer at the mosque, but when someone more godfearing or knowledgeable is allowed to lead in his stead, it weighs heavily on him. Or the muezzin who calls to the prayer, believing he is doing it for the sake of Allah, but when someone else gives the call in his absence, it annoys him and he says, ``He has infringed on my position.''

@S3.9Others eschew material possessions, content with poor clothes and food and with living in mosques, thinking that they have reachedthe rank of the abstinent (zuhhad), while they are avoid for leadership and prestige. In fact, they have given up the lesser of two matters while getting involved in the more deadly.

@S3.10Still others enthusiastically perform supererogatory acts while not being concerned for the obligatory ones. You may see one of them savoring the midmorning or night vigil prayer, but finding no satisfaction in the prescribed prayer, but finding no satisfaction in the prescribed prayer nor hastening to pray it at the first of its time. Such a person has forgotten the Prophet's words (Allah bless him and give him peace) relating that Allah Mighty and Majestic said,
``Those near to Me do not approach Me with anything like that which I have made obligatory upon them.''

@S3.11There is no spiritual labor without its dangers, and those who do not know them fall prey to them. Whoever wishes to learn them should study the dangers of ostentation that exist in acts of worship, from fasting and prayer to all the rest, in the chapters set forth in this book (A: i.e. Ibn Qudama's source here, Ghazali's Ihya' `ulum aldin).

*2*Chapter S4.0: THE DELUSIONS OF WOULD-BE SUFIS

@S4.1The deluded among them are of various types. Some are deluded by the dress, terminology, or demeanor of the Sufis. They imitate the sincere Sufis (dis: w9) externally, but do not tax themselves with spiritual struggle or self-discipline. Rather, they pounce upon and quarrel over wealth that is unlawful, doubtful, or from rulers (dis: p32:3), rending each other's honor whenever they are at cross-purposes. The delusion of these is obvious. They are like an old woman who hears that the names of courageous, valiant soldiers are inscribed in the official roster and they are ceded whole tracts of land.
Feeling a longing within herself, she dons hauberk and helmet, learns a few heroic stanzas and the details of their apparel and characteristics, and then sets out for the camp. Her name is duly entered in the lists, but when she reports for inspection, she is ordered to take off the helmet and armor to see what is underneath, and to be tried in combat. When she complies, it turns out that she is a feeble old crone, and she is told, "you only came to mock the king and his court!-Take her away and throw her under the elephant's feet.'' And she is flung under it to be trampled.
Thus will be the state of pretenders to Sufism on the Day of Judgement, when they stand revealed and are brought before the Supreme Judge, who looks at hears, not patched clothes or Sufi dress.

@S4.2Others claim to have attained to gnosis and contemplative knowledge of the Divine, to have passed through spiritual stations and states, and to have reached nearness to Allah, while they know nothing of any of this except the words. You might see one of them reiterating these terms, thinking it above the combined learning of the first and last, and looking with condescension upon the scholars of Sacred Law, hadith, and other disciplines, to say nothing of ordinary Muslims. Sometimes a common person will keep their company for many days, picking up these artificial phrases and parroting them as if he were speaking divine revelation, with sneering contempt for scholars and

worshipers, saying that they are veiled from Allah (A: which could be true, though saying it by way of self-praise is very wrong) while he has attained to the Truth, and that he is one of those brought near to Allah-while Allah considers him a debauched hypocrite, and the transformed ones know him to be an ignorant fool who has not acquired sound knowledge, perfected his character, or kept watch over his heart, but merely pursued his own fancy and memorized a lot of gibberish.

@S4.3Others roll up and put away the carpet of the Sacred Law, rejecting its rulings and considering the unlawful and the lawful to be equal, saying, ``Allah does not need my works, so why should I bother?'' One of them may say, ``Outward devotions have no value, only hears mean anything. Our hearts are aflame with the love of Allah Most High, and we have attained to gnosis of Him. If we are bodily immersed in this word, yet our hearts are in worshipful seclusion in the presence of the Divine. Outwardly we may give in to our desires, but not in our hearts.'' they claim to have surpassed the rank of the common people, beyond the need to school the lower self with physical devotions, and that gratifying bodily lusts does not divert them from the path of Allah Most High because of their firmness therein. They exalt themselves above the level of the prophets (upon whom be peace) who used to weep for years over a single mistake.

@S4.4(n: As no age is without pretenders to Sufism, the following texts will hopefully be useful in letting some principal Sufis describe in their own words the delusions of those who consider themselves ``above the Sacred Law.'')

@S4.5(Ibn `Ajiba:) Someone said to Junayd, ``There is a group who claim they arrive to a state in which legal responsibility no longer applies to them.'' ``They have arrived,'' he replied, ``but to hell'' (Iqaz al-himam fi sharh al-Hikam (y54), 210).

@S4.6(Ghazali:) When anyone claims there is a state between him and Allah relieving him of the need to obey the Sacred Law such that the prayer, fasting, and so forth are no obligatory for him, or that drinking wine and taking other people's money are permissible form-as some pretenders to Sufism, namely those ``above the Sacred Law'' (ibahiyyun) have claimed-there is no doubt that the imam of the Musilms or his representative is obliged to kill him. Some hold that executing such a person is better in Allah's sight than killing a hundred unbelievers in the path of Allah Most High (Hashiya at-Shaykh Ibrahim at-Bajuri (y5), 2.267).

@S4.7(Muhyiddin ibn al-Arabi:) When we see someone in this Community who claims to be able to guide others to Allah, but is remiss in but one rule of the Sacred Law-even if he manifests miracles that stagger the mind-asserting that his shortcoming is a special dispensation for him, we do not even turn to look at him, for such a person is not a sheikh, nor is he speaking the truth, for no one is entrusted with the secrets of Allah Most High save one in whom the ordinances of the Sacred Law are preserved (Jami' karamat al-awliya' (y95), 1.3).

@S4.8(Sheikh Ahmad al-`Alawi:) The friend of Allah (wali) is not divinely protected from error, for which reason he is to be feared for and his word is not be relied upon when it exceeds what has been conveyed by the sunna concerning matters of the after life, because he is suspended from making any new provisions in the Sacred Law, and in respect to the prophets (upon whom be peace) he is not a guide. He is only entitled to believe what the Lawgiver has informed of.
``Today I have perfected you religion for you and completed My favor upon you, and I please that Islam be your religion'' (Koran 5:3).
The gnostic in the first of his states is strongly affected by the initial impact, and will sometimes try to take on a discussion of the affairs of the afterlife, as opposed to the final state, in which he may be so quiescent that an unknowing observer might assume its strength has waned, though this is rather the result of this perfection and firmness in his station. It has been said that they way begins in madness, proceeds to arts, and ends in quietude. So one is obliged, whenever one's rapture subsides, to return to what the Lawgiver has stated, without personal figurative interpretations. This is why our author says,
``Faith is incisive,'' meaning that one cuts the self short whenever it wants eminence

and elevation. The gnostic's spiritual will, exalted above all else, must carry him beyond what we have just mentioned. For he is outside our phenomenal frame of reference and all it contains, and whenever he wants to speak about things of the afterlife his words are high, unintelligible, and a source of trouble to both those who believe him and those who do not, which is why he is forbidden speech about it, and as much as he increasingly forgoes it, he increases in nearness to Allah and in safety. Sufis call this station subsistence (baqa'). Before a disciple is firmly established therein, it is to be feared that he will be overtaken by misfortune because of his lack of a foothold in the state of subsistence, a juncture that has been called ``from annihilation to subsistence, or annihilation to perdition'' (al-Minah al-quddusiyya fi sharh al-Murshid al-mu`in bi tariq al Sufiyya (y8), 67-68).

@S4.9(`Abd al-Karim Jili:) My brother, Allah have mercy on you, I have travelled to the remotest cities and dealt with all types of people, but never has my eye seen, nor ear heard of nor is there any uglier or farther from the presence of Allah Most High than a certain group who pretend they are accomplished Sufis, claiming for themselves a lineal spiritual tradition from the perfected ones and appearing in their guise, while they do not believe in Allah, His messengers, or the Last Day, and do not comply with the responsibilities of the Sacred Law, depicting the states of the prophets and their messages in a manner that no one with a particle of faith in his heartcan accept, let alone someone who has reached the level of thse to whom the unseen disclosed and who have gnostic insight. We have seen a great number of their luminaries in cities in Azerbaijan, Shirwan, Jilan, and Khurasan, may Allah curse them all (Idah al-maqsud min wahdat al-wujud (Y98), 17-18).

@S4.10The delusions of those ``above the Sacred Law'' are beyond number, all of it mistakes and inner suggestions with which the Devil has tricked them because of their having taken up spiritual struggle before they mastered the rules of the Sacred Law, and they did not connect themselves with a sheikh of learning and religion worthy of being followed (dis:w9.9-9).

@S4.11Other students of Sufism proceed on the right path, engage in spiritual struggle, begin to actually travel in the way, and the door of gnosis, contemplative knowledge of the Divine, opens to them. But when they sniff the first traces of this knowledge, it surprises them and they exult in it and are pleased by the strangeness of it, until their hearts become fettered with turning to it and thinking about it, and how it was disclosed to them but not others. And all of this is delusion, for the wonders met with in the path of Allah Glorious and Exalted are endless. If one stops with a particular marvel and becomes enamored with it, one's progress falters and one fails to reach the goal. Such a person is like someone going to see a king, who notices a garden at the palace gate with flowers in it, the like of which he has never seen, and who stops to look at them until there is no longer time to meet the king.

*2*Chapter S5.0: THE DELUSIONS OF THE WEALTHY

@S5.1The deluded among the wealthy are of various types. Some of them eagerly build mosques, schools, hospices, aqueducts, whatever people can see, and write their names upon them to perpetuate their memory and keep it alive after their death, while of one of them were called upon to spend a single dinar on something that did not have his name on it, it would be a burden for him. If not for the fact that this aim is other people and not Allah Himself, this would not be so hard for him, as Allah is looking at him whether he writes his name or not.
Others spend money embellishing mosques with ornamentation and bas-reliefs, which are prohibited by Sacred Law and distracting to the people praying in them. The aim in prayer is humble awe and an attentive heart, while this ornamentation spoils the hearts of those praying. And if the money spend on such things is from an unlawful source to begin with, so much greater the delusion. Malik ibn Dinar (Allah have mercy on him) said, ``A man came to a mosque, stopped at the entrance, and said, `someone like me does not enter a house of Allah'-for which he was accorded the rank of those with perfect faith (siddiq). '' And this is how we should revere mosques, by seeing them as defiled by our entering them with our self as bad as it is, an affront to them; not by

seeing to their defilement with the unlawful and with this-worldly embellishment, trying to outdo Allah Most High. The delusion of someone who does this is in thinking the wrong to be right.

@S5.2Others protect their money, holding fast to it with the tight fist of greed, and then occupy themselves with bodily works of worship that do not cost much, like fasting, prayer, or reciting the whole Koran. They are deluded, for stinginess is deadly (dis: p75.25) and has taken over their heart. They need to rid themselves of if by spending of their wealth, but are too busy with supererogatory works to do so. They are like someone who, when a snake has entered his clothes, sets about cooking up a syrup of vinegar and honey to reduce his bile.

@S5.3There are others whose selfishness will not let them give anything but zakat. One of them may pay out the worst property he has, or give it to those of the poor who are useful to him, vacillating between which of his ulterior motives can best be served, or as to whom he may have use for in the future or is ``good for something'' in particular. Another may deliver his zakat to a prominent public figure so he will consider him to be someone and later fulfill his needs. And all of this invalidates the intention, the person who does it being deluded by wanting recompense from others for worshiping Allah Most High.

@S5.4Some wealthy people and others are deluded by frequenting circles of dhikr (remembrance of Allah), thinking that merely attending them will take the place of works and of a sober look at the afterlife, though it is not so, for circles of dhikr are only' commendable in that they motivate one to do good. And anything that is a means to something else is pointless if it does no achieve it. When one of them hears something that creates fear of divine punishment, he says nothing more than. ``O Protector, keep us safe,'' or ``I take refuge in Allah,''thinking he has done all that is necessary. He is like a sick person who comes to a group of doctors to hear what is happening. Or a hungry person who visits someone who can describe delicious food to him, and then leaves. It does not do him much good. And likewise with hearing acts of obedience described without applying them: every admonition that does not change something within one that affects one's actions is a case against one.
*2*Chapter S6.0: REMEDYING DELUSIONS

@S6.1If it be objected that I have not mentioned a single action which is free of delusion, the replay is that the matter of the afterlife hinges upon one thing alone:" straightening out one's heart. And no one is incapable of it except someone whose intention is insincere. If a person were as concerned about the next world as this one, he would certainly achieve it. The early Muslims did so, and so have those who have followed them in excellence.
Three things can be used to help rid oneself of delusions:
-1- intelligence, the real light by which a person sees things as they are;
-2- knowledge, through which a person knows himself, his Lord, his this-worldly life, and the life to come;
-3- and learning, by which we mean learning how to travel the way to Allah Most High, the pitfall therein, and learning what will bring one nearer and guide one, all of which may be found in this books (dis: s3.11(A:)).
When a person has done all this, he should be wary lest the Devil beguile him and make him desirous for leadership, or lest he feel secure from Allah's devising (def: p66). Fear should never be absent from the hearts of the friends (awliya') of Allah. We ask Allah to protect us from delusion and that we may end our lives well. Truly, He is near and answers supplications (Mukhtasar Minhaj al-qasidin (y62), 237-50).

*1*BOOK T: A PURE HEART

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*2*Chapter T1.0: INTENTION, SINCERITY, AND BEING TRUE INTENTION

@T1.1 (Nawawi:) Allah Most High says,
``Whoever leaves home to emigrate to Allah and His messenger but whom death overtakes: paying his recompense falls to Allah'' (Koran 4:100).
The Prophet (Allah bless him and give him peace) said:
``Works are only according to intentions, and man only receives what he intends. Whoever's emigration was to Allah and His messenger has truly emigrated to Allah and His messenger; and whoever's emigration was for worldly gain or to wed a woman, his if for that to which he emigrated.''
This is a hadith whose authenticity Bukhari and Muslim agree upon, and there is complete scholarly consensus on the greatness of its rank and majesty. It is one of the cornerstones, fundamental supports, and most important integrals of faith. Imam Shafi`i (Allah have mercy on him) said it enters into seventy chapters of jurisprudence. He also said it constitutes one-third of Sacred Knowledge.

@T1.2: Sincerity (Ikhlas)
Allah Most High says:
-1- ``Nor were they commanded save to worship Him, sincere to Him in their religion'' (Koran 98:5).

-2- ``So worship Allah with sincerity'' (Koran 39:2).

@T1.3The Master Abul Qasim Qushayri (Allah have mercy on Him) said: ``Sincerity is to make Allah one's sole aim in acts of obedience, meaning to intend by one's obedience to draw nearer to Allah Most High and nothing else, whether hypocrisy before others, acquiring esteem in their eyes, love of their praise, or anything besides drawing nearer to Allah. One could say that sincerity is purifying the mind from paying attention to one's fellow creatures.''

@T1.4Abu `Uthman (Allah have mercy on Him) said, ``Sincerity it to forget to regard men by continuously regarding their Maker.'' He also said, ``The sincerity of ordinary people is that which is free of self-interest, while the sincerity of the elect is that which comes over them, not from them, for acts of worship appear in them from which they are at a remove, and neither observe nor consider'' (al-Majmu' (y108), 1.16-17).

@T1.5(Nawawi:) Abu Yazid (Allah Most High be well pleased with him) said:;
``For twelve years I was the blacksmith of my soul; for five, the mirror of my heart; for one year I observed what was between them, and lo, around my waist I found the girdle of unbelief (zunnar) in plain view. So I worked for five years at cutting it, seeking a way to dissever it, until at length this was revealed to me and looking at mankind, I saw them as dead and prayed a fourfold Allahu Akbar over them.''
Sufficient to show the subtlety of the hiddenness of ostentation is the difficulty with which this master recognized it, who had few equals in this path. As for his remark ``I saw them as dead,'' it is of the greatest worth and excellence, words that express this meaning being seldom met with outside those of the Prophet (Allah bless him and give him peace). What it signifies is that when he underwent this spiritual struggle and his lower self became trained and his heart enlightened, when he had mastered the self, subdued it, taken full possession of it, and made it submit in everything, he looked at all creatures and found them as if dead, without discoverable trait. They could not harm or benefit, bestow or keep back, give life or death, join or separate, bring close or make far, save or damn, give sustenance or withhold it; they possessed neither benefit nor harm to themselves, neither life nor death, nor resurrection. Now, the dead

are dealt with, regarding these things, as deceased, and they are not feared, nor are hopes placed in them, nor does desire arise for what they have. We do not do anything for their sake, refrain from anything for their sake, or forgo any act of obedience to Allah for their sake, any more than we would to win the praise of the dead. They are not shown-off in front of, their favor is not sought through flattery or compromise of principles, and they do not occupy one's attention. They are not held in contempt or disparaged; their defects are unmentioned, their shameful points unsought out, their mistakes uncriticized; though if penalties prescribed by Sacred Law are incurred, we enforce them.
In short, they are as though nonexistent in everything we have mentioned, the decisions of Allah Most High holding sway over them. Whoever deals with them accordingly has attained to the good of this world and the next. May Allah Most Generous give us success in realizing it (Bustan al-`afrifin (y104), 131-34).

@T1.6: Being True (Sidq)
(Nawawi:) As for being true, Allah Most High says,
``O you who believe, fear Allah, and be with those who are true'' (Koran 9:119).

@T1.7Sahl ibn `Abdullah Tustari said, ``The servant who compromises his principles, for himself or another, will never catch even a scent of being true.''

@T1.8It is related that Harith al-Muhasibi (Allah have mercy on him) said: ``A person who is true would not care if his whole value vanished from the hears of men for the sake of bettering his heart. He does not like people seeing the smallest bit of his good acts, and does not mind their noticing the worst of them, for to be otherwise would show he wants to be more in their eyes, and this is out of character for those of great faith (siddiqin). ''

@T1.9Dhul Nun al-Misri (Allah have mercy on him) said: ``Truth is the sword of Allah. Whatever it is put to, it cuts'' (al-Majmu` (y108), 1.17).

*2*Chapter T2.0: A LETTER TO ONE OF THE BRETHREN

@T2.1(Ibn `Ata' Illah:) I know of nothing more useful to you than four matters: surrender to Allah, to humbly entreat Him, to think the best of Him, and to perpetually renew your repentance to Him, even if you should repeat a sin seventy times in a day.

@T2.2: Surrender to Allah
Surrender to Him gives you relief in the present life from having to plan while He does, triumph in the next life through the supreme favor, and safety from the idolatry of contention, for how should you contend with Him for something you do not own with Him? Cast yourself amidst His kingdom, meager in its plentitude and insignificant in its vastness, and He will plan for you as He does for it. Do not leave the slavehood that is yours for claims to a lordship that you have no claim to. To plan and choose for oneself are enormities with respect to hearts and inmost souls, as you find it the Book of Allah Most High where Allah says:
``Your Lord creates whatever He wills and chooses, and they do not have a choice. Glory be to Allah above what they associate with Him'' (Koran 28:68).

@T2.3: Earnestly Entreating Allah
As for earnestly entreating Allah, in it lies the coming of increase, lifting of hardships, enwrapment in mantles of divine gifts, and safety from affliction. One is repaid for it in times of hardship by the Master's undertaking one's protection, and in times of ease by His seeing to one's gain. It is the greatest threshold and straightest way. It is effectual despite unbelief, so how could it be ineffectual with faith?
Have you not heard the words of Allah Most High:
``And when you are touched by affliction at sea, those to whom you pray besides Him are lost, but when He delivers you to shore, you turn away. Surely man is an ingrate'' (Koran 17:67)
-meaning that He answers you. Earnest entreaty is the door Allah Most High has placed between Himself and His servants. Gifts come to whomever betakes himself to it, and

spiritual favors unceasingly reach whoever stands before it. Whoever enters unto Him by it attains to the reality of divine assistance. And whenever He release unto you through it, He bestows of every good thin in the most lavish gift giving, as is found in the Book of Allah Most High where Allah says,
``If only they had earnestly entreated Us when Our vengeance reached them'' (Koran 6:43).

@T2.4: Thinking the Best of Allah
As for thinking best of Allah, how tremendous it is for whomever Allah has blessed with it.
Whoever has it does not lace the slightest bit of good, and whoever lacks it will never find any. You will never have a better excuse to Allah than it, or one more profitable. Nor anything that better leads you to Allah or is more guidance giving. It informs one what Allah will make of one and gives good tidings the like of whose words no eye has ever read nor tongue given utterance to. This is found in the sunna of the Prophet (Allah bless him and give him peace), where he says, quoting Allah, ``I am night to what My servant expects of Me.''

@T2.5: Continually Renewed Repentance
As for continually renewing one's repentance to Allah, it is the wellspring of every spiritual rank and station from first to last, inwardly and outwardly. There is no excellence in one who lacks it, and nothing lacking in one who has it. It is the key to every good, outwardly and inwardly, the very soul of stations of wisdom, and the reason men are made friends of Allah (awliya). If the repentance of the Axis of the World (Qutb) were like that of the ordinary righteous person because of equality in station, the higher of them would not surpass the other for his exaltedness of rank and tremendousness of spiritual certainty. Allah Most Glorious and Exalted has not made any rank below it except that of wrongdoing, as Allah Most High says,
``Whoever does not repent, they are the wrongdoers'' (Koran 49:11),
it being required from every messenger and prophet, every great-faithed one (siddiq) and friend of Allah (wali), every godfearing pious person, misguided profligate, and every doomed unbeliever. You may find this is the Book of Allah Most High where Allah Glorious and Exalted says,
``O people: fear you Lord'' (Koran 4;1),
Godfearingness being through repentance to Him and regret before Him. The repentance of those who do evil lies in abandoning it, while the repentance of those who do good lies in not halting with their good, whether it consists of spiritual effort or its rewards. The repentance of both is the same: not to stop at it.
``... the faith of your father Ibrahim. He has named you Muslims'' (Koran 22:78).
It was of Ibrahim's faith not to halt with what passes away, or fix his regard on existent things. In quoting him to us, Allah Most High says,
``I love not things which pass away'' (Koran 6:76).

@T2.6In general, someone's who cannot benefit from a little will not benefit from a lot (A: since a lot of work does not (A: since a lot of work does not avail without sincerity), and someone who cannot profit from a hint will not profit from a plain remark. When Allah gives you understanding, Your hearing will not cease nor you benefiting be restricted to a certain time. May Allah give us and you to understand Him, give us and you to hear Him, dissever us from everything besides Him, dissever us from everything besides Him, enter us into His shade and protection, and make us of those to whom He has given spiritual insight, guidance, and a yearning for His nearness. May He not scatter the intention of our hearts but rather center our purpose on Him, and remove our cares by bringing us to our destination. Ameen.
May there be safety for the whole group, and blessing and peace upon the Best of Messengers (al-Hikam al-Ata'iyya wa al-munajat al-ilahiyya (y56), 103-9).

*2*Chapter T3.0: COUNSELS AND MAXIMS

@T3.1(Muhammad Sa`id Burhani:) Do not limit yourself to deep words and profound spiritual allusions but make provision for the afterlife before death comes, when fine words will be lost and the rak`as you prayed by night or day will remain..

@T3.2
Give voluntary charity as much as possible, for you owe more than merely the zakat obligatory. Make provision for the afterlife by giving while you have health and want to cling to your money out of fear of poverty, seeing life before you. Allah Most High says, Whoever is watchful against the stinginess of his own soul, those shall be the successful'' (Koran 59:9), meaning they shall be saved.

@T3.3Never obey anyone of Allah's servants, even father or mother, in an act of disobedience to Allah, for there is no obedience to a creature in disobedience to the Creator.

@T3.4Do not wrong another person, for wrongs done to others are clouds of darkness on the Day of Judgement. Wronging others includes not doing what Allah has obliged you to do for them.

@T3.5Beware of enmity against anyone who has said, ``La ilaha ill Allah' (There is no god but Allah), for Allah has honored them with faith, and particularly the righteous of them, for Allah Most High says in a rigorously authenticated (sahih) hadith, ``He who makes an enemy of a friend of Mine, I declare war against,''

@T3.6Tell the truth when you speak. It is one of the worst betrayals to tell your brother something he thinks you are being honest about when the matter is otherwise.

@T3.7Be honest in your clothes and dress. It is an outrage against Allah to appear to His servants in the guise of the righteous while secretly contradicting it with the works of the wicked.

@T3.8Recite the Koran and contemplate its meanings. Reflect while reading it on the qualities Allah has praised, with which He describes the people He loves. Acquire these qualities yourself and shun those Allah has condemned. Do your utmost of memorize the Holy Koran by acts as you do by words.

@T3.9Never explain a verse of Holy Koran by your own opinion, but check as to how it has been understood by the scholars of Sacred Law and men of wisdom who came before you. If you comprehend something else by it and what you have understood contradicts the Sacred Law, forsake your wretched opinion and fling it against the wall.

@T3.10Beware lest you ever say anything that does not conform to the Sacred Law. Know that the highest stage of the perfected ones (rijal) is the Sacred Law of Muhammad (Allah bless him and give him peace). And know that the exoteric that contravenes the exoteric is a fraud.

@T3.11Take care to eat lawful food bought with a lawful income, for the entire body of someone who eats what is lawful, his hearing, eyesight, hands, and feet, are disposed to obey Allah whether he wishes to or not; while the whole body of someone who eats the unlawful is disposed to do wrong whether he wants to or not.

@T3.12Keep the thought of Allah Mighty and Majestic ever before you with respect to what He takes from you and what He gives. He takes away nothing except that you may show patience and win His love, for He loves the patient, and when He loves you, He will treat you as a lover does his beloved. And so too, when He gives to you, He bestows blessings upon you that you may give thanks, for He loves the thankful.

@T3.13Do not walk a step, take a bite, or make a move without intending thereby to draw nearer to Allah.

@T3.14Perform the remembrance of Allah (dhikr) silently and aloud, in a group and when alone, for Allah Most High says,
``Remember Me: I will remember you'' (Koran 2:152).
It is sufficient as to its worth that Allah is remembering you as long as you are remembering Him.

@T31.5Give frequent utterance to the axiom of Islam ``La ilaha ill Allah'' (There is no god but Allah), for it is the greatest invocation (dhikr), as is mentioned in the hadith,
``The best thins I or any of the prophets before me have said is `La ilaha ill Allah.'''
And in a hadith qudsi, ``Were the seven heavens and seven earths placed on one side of a balance scale and `La ilaha ill Allah' placed on the other, the latter would outweigh them all.''

@T3.16Train you children in points of Islamic behavior so they grow up to be Muslims who love Islam and respect the religion of Islam.

@T13.7Do not seek exaltation on earth, but have humility in whatever degree Allah has raised you to.
For Allah has brought you forth from the earth, you mother, and it is unseemly to exalt yourself above her. As a hadith says,
``Allah has charged Himself to raise nothing in this world, save that He will lower it again.''
So if you are such a thing, you may expect to be lowered by Allah.

@T3.18Always visit those who are ill, as it helps one reflect and take admonition, for someone ill is close to Allah. One has only to consider that the sick person has no one to call upon but Allah, nothing to reflect on but Allah, and his condition reminds one of the blessing of health (al-Hall al-sadid li ma astashkalahu al-murid (y46), 29-32).
*1*BOOK U: THE GABRIEL HADITH

@CONTENTS:
The Hadith Text u1.0
Islam u2.0
The Five Pillars of Islam u2.1
Islam Established by the Testification of Faith u2.2
No Muslim becomes an unbeliever through sin u2.3
Heretical sects of Muslims u2.3
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Belief in Allah u3.2
Belief in the Angels u3.3
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Belief in Allah's Messengers u3.5
Belief in the Last Day u3.6
Belief in Destiny, Its Good and Evil u3.7
Why people are responsible of Allah creates our acts u3.8
The Perfection of Faith (Ihsan) u4.0
Three Spiritual Stations in Worship u4.2

*2*Chapter U1.0: THE HADITH TEXT

@U1.1`Umar ibn Khattab (Allah be well pleased with him) said:
``As we sat one day with the Messenger of Allah (Allah bless him and give him peace), a man with pure white clothing and jet black hair came to us, without a trace of travelling upon him, though none of us knew him. He sat down before the Prophet (Allah bless him and give him peace) bracing his knees against his, and resting his hands on his legs, said: `Muhammad, tell me about Islam.' The Messenger of Allah (Allah bless him and give him peace) said: `Islam is to testify there is no god but Allah and that Muhammad is the Messenger of Allah, and to perform the prayer, give zakat, fast in Ramadan, and perform the pilgrimage to the House if you can find a way.' He said: `You have spoken the truth,' and we were surprised that he should ask and then confirm the answer. Then he said: `Tell me about true faith (iman), ' and the Prophet (Allah bless him and give him peace) answered: `It is to believe in Allah, His angels, His inspired

Books, His messengers, the Last Day, and in destiny, its good and evil.'' You have spoken the truth,' he said, `Now tell me about the perfection of faith (ihsan), ' and the Prophet (Allah bless him and give him peace) answered: `It is to adore Allah as if you see Him, and if you see Him not, He nevertheless sees you.' `Tell me of the Hour,' said the visitor, and he was told: `The one questioned knows no more about it than the questioner.' 'Then tell me of its portents,'he said, and the Prophet (Allah bless him and give him peace) replied:'That the slave woman shall give birth to her mistress, and that you shall see barefoot, naked, penniless shepherds vying in constructing high buildings.' Then the visitor left. I waited a while, and the Prophet (Allah bless him and give him peace) said to me, `Do you know, `Umar, who was the questioned?' and I replied, `Allah and His messenger know best.' He said, `It was Gabriel, who came to you to teach you your religion ' '' (Sahih Muslim (y92), 1.37-38).

*2*Chapter U2.0: ISLAM

@U2.1 Islam is to testify there is no god but Allah and that Muhammad is the Messenger of Allah, and to perform the prayer, give zakat, fast in Ramadan, and perform the pilgrimage to the House if you can find a way.''

@U2.2 (Nawawi:) The sheikh and Imam Ibn Salah (Allah have mercy on him) said: ``Being a Muslim is outwardly established by one's saying the two Testifications of Faith (Shahadatayn) (N: even if they are not spoken in Arabic). The Prophet (Allah bless him and give him peace) only added the prayer, zakat, the pilgrimage, and the fast because they are the most patent and greatest of Islamic observances. One's submission (istislam) is perfected through performing them, and neglecting them suggests that one has dissolved or vitiated the terms of one's compliance. Moreover the term faith (iman) encompasses all of the things by which Islam is explained in this hadith, and indeed, all acts of obedience, for they are the fruits of the inner conviction that is the underlying basis of faith, and are what strengthen, complete, and preserve it.''

@U2.3The position of Muslim orthodoxy is that no Muslim becomes a non-Muslim through sin. Muslims of heretical sectarian groups and those of reprehensible innovations (bid`a) are not thereby non-Muslims (dis: w47.2).

@U2.4 Any Muslim who denies something that is necessarily known (def: f1.3(N:)) to be of the religion of Islam is adjudged a renegade and an unbeliever unless he is a recent convert or was born and raised in the wilderness or for some similar reason has been unable to learn his religion properly. Muslims in such a condition should be informed about the truth, and if they then continue as before, they are adjudged non-Muslims, as is also the case with any Muslim who believes it permissible to commit adultery, drink wine, kill without right, or do other acts that are necessarily known to be unlawful (Sahih Muslim bi sharh al-Nawawi (Y93), 1.147-50).

*2*Chapter U3.0: TRUE FAITH (IMAN)

@U3.1 "[True faith] is to believe in Allah, His angels, His inspired Books, His messengers, the Last Day, and in destiny, its good and evil.''

@U3.2: Belief in Allah
(Muhammad Jurdani:) To believe in Allah means in His existence, His sole godhood (rububiyya, that no one else participates in His attribute of divinity or in the rights He has over His creatures), His oneness and uniqueness (wahdaniyya), and that He is characterized by every perfection and exalted above any imperfection or impossibility (dis:" v1).

@U3.3: Belief in Angels
To believe in His angels means in beings with bodies of light who are capable of changing form to assume various appearances. Believe means to be convinced that they exist, and are honored servants who do not disobey what Allah orders them to do, but do whatever they are commanded. Only Allah Most High knows how many there are, but a hadith relates that there is not a foot of space in the seven heavens that does not

contain an angel standing in prayer, bowing, or prostrating. We are obliged to know ten individual angels:
-1- Jibril (Gabriel);
-2- Mika'il;
-3- Israfil;
-4- `Azra'il;
-5- Munkar;
-6- Nakir;
-7- Ridwan;
-8- Malik;
-9- and -10- and the two scribes who record one's good and bad deeds, each of who, is called a ``present observer.''

@U3.4: Belief in Allah's Inspired Books
To believe in His inspired Books means those which He revealed to His messengers, believe meaning to be convinced that they are the word of Allah Most High, and all they contain is the truth.
(A: The obligation of belief applies to the original revelations, not the various scriptures in the hands of non-Muslims, which are textually corrupt in their present form.) Scholars differ as to how many Books there are. Some hold they number 104, and some say otherwise. One is obliged to know four particular Books:
-1- the Tawrah (Torah), revealed to our liegelord Musa (Moses);
-2- the Injil (Evangel), revealed to our liegelord `Isa (Jesus);
-3- the Zabur (Psalms), revealed to our liegelord Dawud (David);
-4- and the Qur'an (Koran), revealed to our liegelord Muhammad (Allah bless them all and give them peace).

@U3.5: Belief in Allah's Messengers
To believe in His messengers means to be convinced that Allah Most High sent them to men and jinn (khalq) to guide them to the path of the Truth, and that they have told the truth about everything they have told the truth about everything they have conveyed from Allah Most High. It is obligatory to know twenty-five particular messengers:
-1- Adam;
-2- Idris (Enoch);
-3- Nuh (Noah);
-4- Hud;
-5- Salih;
-6- Lut (Lot);
-7- Ibrahim (Abrahim);
-8- Isma'il (Ishmael)
-9- Ishaq (Isaac);
-10- Ya'qub (Jacob);
-11- Yusuf (Joseph);
-12- Shu'ayb;
-13- Harun (Aaron);
-14- Musa (Moses);
-15- Dawud (David);
-16- Sulayman (Soloman);
-17- Ayyub (Job);
-18- Dhul Kifl (Ezekiel);
-19- Yunus (Jonah);
-20- Ilyas (Elias);
-21- al-Yasa' (Elisha);
-22- Zakariyya (Zacharias);
-23- Yahya (John);
-24- 'Isa (Jesus);
-25- and Muhammad (Allah bless them all and give them peace).

@U3.6: Belief in the Last Day
To believe in the Last Day means the Day of Resurrection, called the last because it is not followed by night. Believe means to be convinced that it will come to pass with all

it implies, including the resurrection of the dead, their reckoning, the weighing of their good deeds against their bad ones, their passing over the high, narrow bridge that spans the hellfire (sirat), and that some will be put in hell out of justice, and some in paradise out of Allah's pure generosity. (n: The eternality of paradise and hell is discussed at w55.)

@U3.7: Belief in Destiny, Its Good and Evil
To believe in destiny, its good and evil means to be convinced that Allah Most High has ordained both good and evil before creating creation, and that all that has been and all that will be only exists through Allah's decree, foreordinance, and will. Early Muslims used to answer whoever asked about destiny by saying, 'It is knowing that what hits you was not going to miss, and what misses you was not going to hit" (al-Jawahir al-lu 'lu'iyya fi sharh al-Arba'in al-Nawawiyya (y68), 35-37).

@U3.8(N:) As for Allah's creating acts, we believe that the real doer or everything is Allah. He is the one who burns, not the fire or the person who lighted the fire; He is the one who cuts, nt the knife or the person holding the knife; He is the one who drowns a man, not the water or the person who threw him in, and so forth. Here, people always raise the question that if Allah Most High is the real doer, why are people held responsible? The answer is that Allah Most High does not hold people responsible for creating the act, but rather for choosing the act. One proof of this is that a person who cannot choose is not held responsible, such as someone asleep, insane, a child, forced, unremembering, or someone who makes an honet mistake. The legal responsibility of such people is lifted because they lack full voluntary choice. Another proof is that Nimrod sinned for choosing to burn Ibrahim (upon whom be peace) even though Ibrahim did not burn (koran 21:69); and that Ibrahim (Upon whom be peace) became the Friend of the All-merciful for choosing to sacrifice his son out of obedience to Allah,even though his knife did not cut and his son was not sacrificed (Koran 37:105), all of this showing that the servant is held responsible for his choice, which scholars of the divine unity (tawhid) term the servant's acquisition (kasb).
As for Allah's eternally preexistent knowledge, we believe that Allah knows everything before, during, and after it is, and knows how it is when it occurs. But does the servant have acess to this knowledge? Not at all. So the servant chooses to do acts on the basis of a desire within himself, not because he knows Allah's knowledge, and he is held responsible for his choice even though it corresponds with Allah's eternally preexistent knowledge.
It is clear from the above that belief in destiny means that Muslims believe Allah has destined and ordained matters in past eternity, and that nothing in existence lies outside of His eternal will, and He is the Creator of everything, while the servant is only held responsible for his own choice (Mudhakkirai fi al-tawhid (y113), 41-12).
*2*Chapter U4.0: THE PERFECTION OF FAITH (IHSAN)

@U4.1"(The perfection of faith) is to adore Allah as if you see Him, and if you see Him not, He nevertheless sees you."

@U4.2(Muhammad Jurdani:) To adore Allah as if you see Him means to obey Him while sincere in worship, humble, lowly, and fearful, as though one beholds, Him. And if you see Him not, He nevertheless sees you means that if one is not as if beholding Him in worship, but oblivious to this contemplation, one should nevertheless persist in excellence of performance and imagine oneself before Allah Most High and that He is looking at one's inmost being and outward self, to thereby attain to the basis of perfection. Scholars mention that there are three spiritual stations a servant may have in his worship:
-1- to worship in a way that fulfills its obligations, by observing all its conditions and integrals;
-2- to do this while immersed in the sea of gnostic inspiration (mukashafa) until it is as if the worshipper actually beholds Allah Most High, this being the statin of contemplative spiritual vision (mushahada);
-3- and to worship as mentioned above, though mainly aware that Allah sees one, this being the station of vigilance (muraqaba).
All three of these are of the perfection of faith (ihsan), but the perfection required

for the validity of worship is only the first, while perfection in the latter senses is the mark of the elect, and not possible for many (al-Jawahir al-lu'lu'iyya fi sharh al-Arba'in al-Nawawiyya (y68), 37-38).

*1*BOOK V The Bases of Beliefs [by Imaam Ghazaali, Rabbat's translation]

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IN THE NAME OF Allaah THE MOST MERCIFUL, THE MOST COMPASSIONATE
THE BASES OF BELIEFS
"QAWAA`ID AL `AQAA'ID"
BY HUJJATUL ISLAAM, AL IMAAM
ABU HAAMID AL GHAZAALI
Translated from the Arabic and commented
by Orfan Rabbat.
[The following translation was chosen by Al Muhaddith Project instead of Keller's translation. For the reader's benefit, the latter has also been included following this one.]

*2*FOREWORD

@Adapted (by the translator) from an Arabic text by
Al Muhaddith, Al `Aalim, Al Shaikh Mahmood Al Rankoosi.
Allaah Ta`aala(1) has described Himself with two Attributes derived from mercy (Rahmah), namely Rahmaan and Raheem. (These Attributes have several meanings familiar to all Muslims, explained or intended by the context of Qur'aan and Hadeeth, but knowledge of their lexical meaning enhances and molds our perception of the purposely dominant merciful tone of Allaah's Revelation, set by its opening, most repeated, and most famous Aayah or "verse", trans.)
RAHMAH (mercy) : Is normally a (disquieting) tenderness of heart that results in generosity and kindness. When this Attribute and all its derivatives refer to Allaah Ta`aala, it refers to the generosity and kindness that result from (disquieting) tenderness of the heart in the human being, and is characterized by additional gentleness with creatures, `atf (sympathy) towards them, and benevolence upon them. As for the disquieting tenderness of the heart itself, the Creator, Jalla Wa `Azz, is exalted from such a state; thus the expression "Mercy" is a metonymy in which the word is used, but the necessary accompanying meaning is intended, not the reality of its meaning, as is always the case in Arabic literature.
RAHMAAN: Is an attribute of the Arabic type "FA`LAAN" derived from the above attribute of mercy. It describes one who has an attribute (Mercy here) to its highest possible degree, beyond which this attribute can not exist any more.
RAHEEM: Is an attribute of the Arabic type "FA`EEL" derived from the same attribute of mercy. It describes one for whom the attribute is ever present and essential, the way instincts and characters are.
Thus Allaah Ta`aala has described Himself with these two Attributes in the Basmalah(2) and in many Aayahs of the Qur'aan, and has thus promised His subjects that they are indeed under a Mercy carried to its utmost, and accompanying Him, the way instincts and characters would, so it never leaves Him. (This Mercy is all the more appreciated by us when we remember the Attributes of Power and Absoluteness of Whom it is coming from, trans.)
So know this when you read the Qur'aan, and concentrate on its meaning whenever you are in distress or hardship, then you will know that you are under an infinite Grace from Allaah and a Mercy that no mind can describe to the fullest.
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(1) TA`AALA: Most Eminent, Most Elevated. Allaah is "Elevated", "High", "Aloft, "Above", etc. in the Attributes of Majesty, Power, etc., not in the physical meaning. Also, His "nearness" denotes Knowledge, Care and Mercy, not a physical nearness, Exalted is He.
(2) BASMALAH: i.e. "Bismillaah Al Rahmaan Al Raheem", in the name of Allaah, the most Merciful, the most Compassionate.
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*2*TRANSLATOR'S INTRODUCTION

@
IN THE NAME OF Allaah THE MOST MERCIFUL, THE MOST COMPASSIONATE
Imaam Abu Haamid Al Ghazaali is one of the most eminent Muslim thinkers, learned men, practitioners, mystics, and philosophers of all ages. He is unanimously accepted as the 5th Century Hijri Mujaddid (Centennial Renovator of Religion), and was the only Muslim to be called Hujjatul-Islaam (Islam's Foremost Authority, Proof, Decisive Argument), his most known surname.
Al Ghazaali's belief represents the pure, fundamental belief of People of the Sunnah. The following text only outlines this belief, which is based on his deep understanding of Islaam, his vast linguistic and textual knowledge, his devotion, and his total observance. In later chapters of the "Revival"(3), Al Ghazaali rationally expounds these Beliefs, and also indicates their textual sources from the Qur'aan and Hadeeth.
This translation is based on two Arabic sources:
I- Chapter 1 of The Bases Of Beliefs(4), from his most famous book: Ihyaa' `Uloom Al Deen, "The Revival of Religious Sciences"(3) printed by Daarul Ma`rifah, Beirut, Lebanon.
II- A text proofread with the knowledge of a committee of Ulamaas (learned Muslim scientists) under the direction of Al Shaikh Ahmad Sa`d `Ali (Cairo, June 1953), and printed within the book: Riyaad ul Jannah (by Yoosuf Al Nabahaani) by Mustafa Al Halabi, Cairo, 1953. A copy of this Arabic text has been included at the end of the translation.
The concept that must underline our thoughts, in this and in all Islamic readings about Allaah, is clearly spelled out in the Qur'aan in unequivocal terms: {Nothing is similar to Him} (42:11),
"There is no identity like His, no action like His, and no attribute (quality) like His, except for a concordance between words. And this statement groups all comprehensive subjects of Tawheed (Monotheism) "
(Al Waasity, as related by Al Imaam Al Qushayri in his Tahbeer Fil Tazhkeer.)
Thus, creatures' identities and His Identity (Zhaat) have only the name in common, and so on for actions and attributes. Exalted is he indeed.
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(3) "Revival of the Religious Sciences": Ihyaa' `Uluum al Deen: Al Ghazaali's most famous book, his magnum-opus.
(4)
- Chapter 2 of the "Bases" is about the levels for teaching the beliefs, and about levels of belief.
- Chapter 3 includes Islamic textual references and logical proofs about the Belief in Allaah and in the details of Muhammad's message (PBUH).
- Chapter 4, the last chapter of the "Bases", discusses relations between Belief and Islam ("submission"), and discusses "augmentation" and "reduction" of Belief.
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*2*NOTES ABOUT THE TRANSLATION

@Al Ghazaali's own explanations (Note 3: Chapter 3, page 2) are the backbones of both the translation and notes.
In this translation, form was sacrificed for the meaning, and words or expressions were frequently translated literally, at the expense of the English integrity, for three reasons:
-1- This text is intended to convey ideas to the English reader.
The richness of the Arabic language consists partly of the fact that the words individually act as figures and images of thought, helping to render the intended meaning. Limiting ourselves to the final meaning will eliminate the nuances that enrich the proficient Arabic reader's understanding. In such instances, if the English reader tries to visualize the scene, or understand the specific notion, based on the semi-literal translation, he will be able to approximate the intended meaning, even though a more suitable expression will naturally come to mind. This typically applies to discussions about Allaah's Attributes, and texts about the Hereafter.

Grammatical relations of subjects and verbs had to be respected at times, in order to convey the intended meanings, although other expressions would have been more familiar. A typical example is saying that believers will be brought out of Hell, instead of saying - in any language - come out of Hell, because the latter would erroneously insinuate coming out on their own.
Prepositions (at, by, in, for, ...) sometimes had to be translated literally. True, other prepositions produce a more familiar English text, but they may result in fundamental errors in belief.
Finally, Al Ghazaali's use of the present tense when discussing Allaah's Attributes and the Hereafter was generally adhered to: It helps convey, respectively, Allaah's non-limitation by time, and the certainty of belief in the Hereafter (equal to actual "Witnessing" of the fact, all so important for real Faith).
There were, of course, many instances where a literal translation would have been absolutely incorrect, and the most proper English expression was sought.
-2- The WHOLE original text is but ONE sentence (see: INDENTATION, below).
The original text abounds with recurring cadence and rhyme, themselves coinciding with the ordering of ideas: These ideas themselves flow in with a captivating rhythm and an intricately structured clarity which naturally permeated to the English translation. This feature would have been lost, had more attention been given to English grammar.
Rhyme and structure are not the main reasons for the text being only one sentence, as Al Ghazaali's lucid structuring of ideas can be noted in his other works: The sentence begins with "Praise be to Allaah ...". Thus Praise is the predominant idea in this sentence (showing Al Ghazaali's continuous remembrance (zhikr) of Allaah, so dear a goal to each believer). Preserving the wholeness of the sentence helps the reader feel this praise throughout the reading.
-3- The delicacy of the subject, Allaah's Attributes and the Unseen, increase the possibility of error if a word or preposition (e.g. at, for, etc.) is inadvertently misused.
Words usually referencing known facts and objects are the only tools available (in any language) to describe abstract relations, facts and objects, essentially different from the subjects of our current experience(5), (6) : "What no eye has ever seen, no ear has ever heard, nor occurred to any human's heart."
Still there are instances where no word or combination of words can adequately convey the meaning of the Arabic text (e.g. Zhaat). This is easily made up for by more readings about the same subject: Belief in Allaah is essentially a grant to those (and only those) nurtured by His Providence, whatever their language.
INDENTATION: Because the whole original text is but one sentence, indentation was extensively used to accentuate the structuring of ideas. Thus, when the reader begins a new line, noticing its level of indentation from the margin will remind him of its logical position in the train of thought.
(PARENTHESES) : Such text may be read as part of the English text. It was added to the translation in order to convey a meaning where no English phrase was found to convey the total meaning of the Arabic text, or to differentiate the translator's explanations from any translated texts.
Only Allaah Ta`aala's Mercy, help and guidance do I request. May His reward be to accept our better deeds, purify our intentions and grant us pure Devotion every instant of this life, according to His Mercy and Generosity as truly known by only Him.
---
(5) These words (Paradise, Hell-Fire, the Pond, the Balance, etc.) have been selected by Allaah's messengers to convey their revealed knowledge to us. Although these things, and Allaah's Attributes, have only the name in common with the objects of our present experience (see Al Wasity's words in the Translator's Introduction, refering to the Aayah {Nothing is similar to Him} (42:11)), it must be emphasized that after death, once the Hereafter becomes part of our experience, it will be realized that there could have been no other words to describe the Hereafter better.
The pious believer may get minor glimpses of this truth, as a grace from Allaah to strengthen his belief: One companion said "I am a true believer". The prophet Allaah asked him for the "truth" of this statement. He said: "It is as if I am seeing the Throne of my Lord, and as if I am seeing Paradise's people in paradise ... and Hell-Fire's people in Hell-Fire ...".
By the same token, the nature of felicities of the Hereafter, and their causes, are

essentially different from normal worldly felicities, as explained in the following note.
====
(6)
A) The Qur'aan is unequivocal about the hierarchy of felicities in the Hereafter: {Faces, that day, radiant in beauty: Looking at their Lord}. (75:23)
This aayah describes the ultimate reward promised to believers: {And greater (as a felicity) : Good-pleasure from Allaah} (9:72).
a- "Greater" (akbar) here (and in saying "Allaah is Greater") refers to intrinsic absolute superiority, denying even any possibility of comparison. This is different from "greater than" and from "greatest among" because these latter imply some similarity of features.
b- "Good Pleasure" (Ridwaan) from Allaah is His approval (consent), as a cognizable experience, with no disapproval ever after it. Besides other felicities ensuing from Allaah's consent, this unlimited Ridwaan will itself be experienced and felt by believers: no other pleasures will come even near in comparison with such spiritual experiences.
B) The Hadeeth is unequivocal about it too, in stating that, in Paradise: "They are not given anything more beloved than Looking at Allaah".
C) In this life, THERE IS NOTHING BUT EXALTS: PRAISING HIM, BUT YOU DO NOT UNDERSTAND THEIR EXALTING {17:44}.
In the Hereafter, this exalting (of objects and creatures) is perceivable by believers, to magnitudes now unimaginable by our minds: Several hadeeths state that if a creature from Paradise were to "look" upon this world, she would eclipse the light of the sun and moon.
Perceiving this exalting will be the Pleasure indeed, in addition to other pleasures, all accompanied by continuous remembrance (zhikr) of Allaah that will be "inspired to believers in the same manner you are being inspired breathing" (Authentic hadeeth, narrated by Jaabir in Saheeh Muslim, Ahmad and Abu Dawood).
Islam expounded to humanity the spirituality of the Hereafter's reward. No materialism is greater indeed than closing one's eye to the truth about this great religion.
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*2*The Bases Of Beliefs(7)

3[The Opening]

@
Praise be to Allaah,
The Originator (of all creation and) the Restorer (after the day of judgment),
Performer to what He wills,
Possessor of the Glorious Throne and Powerful Wrath,
Who guides the elite of subjects to the wise course and right conduct,
Who bestows upon them,
After (blessing them with) Bearing Witness(8) to Monotheism(9),
By guarding their beliefs from the obscurities of doubts and hesitation,
Who directs them towards following His selected messenger (PBUH),
And walking on the traces of his most noble Companions
(whom He) endowed with support and guidance,
---
(7) In order for a belief to be compulsory upon Muslims, it must have an unequivocal meaning and must have been related with unequivocal certitude (unequivocally established).
An additional requirement is Ijjmaa`, Unanimous Consensus (of qualified scholars), which also becomes a basis for compulsory belief.
A- Unequivocal Meaning: Any hadeeth or verse that does not have an obvious non-equivocal meaning, cannot be the foundation for a required belief.
B- Unequivocal certitude (unequivocally established) : All verses of the Quran are considered as such. As for any hadeeth, its narration must have been Mutawaatar (corroborated), such that multitudes of Companions related it to multitudes of narrators, etc.

In addition to about a couple of hundred hadeeths that are Mutawaatar in their wording, other hadeeths are considered mutawaatar concerning one of the meanings within them (such as the Prophet having a beard, for example, which is considered mutawaatar "by meaning" since it is confirmed by numerous but different hadeeths, although none of them needs to be corroborated).
"The Bases Of Beliefs" is based on such sources: Unequivocal meanings, unequivocally established.
Compliance with authentic narrations that are not corroborated is obligatory, and their rejection is an important sin. But, unlike the Qur'aan and the Hadeeth Mutawaatar whose rejection is considered as a rejection of Islam, the rejection of non-corroborated authentic hadeeth is not considered as a rejection of Islam.
(8) SHAHAADAH: Bearing witness, resulting from witnessing ("viewing") the fact.
(9) TAWHEED: Belief in the Unity of Allaah.

3[The Identity: Thaat]

@Who manifests His Identity (Zhaat) and actions to them
By His fine Attributes,
Which none can perceive
But {He who gives an ear while being a witness} (50:37),
Who informs them that, in His Identity, He is
One, no partner to Him,
Unique, no similar to Him,
Eternally-Besought (Samad(10)), no opposite to Him,
Peerless, no match to Him,
And that He is
One, Ancient, no beginning to Him,
Eternal, no start to Him,
Ceaseless, no end to Him,
Perpetual, no finish to Him,
Subsisting, no discontinuity to Him,
Continuous, no severance to Him,
Always had, and always will have all the Attributes of Majesty,
Cannot be decreed of terminating or severing
Due to the passing of aeons,
And the expiration of ages,
Nay, He is the First and the Last,
The Manifest and the Hidden,
And of everything All-Knowing,
---
(10) SAMAD: The only one ever to turn to for fulfilling all needs, wants and aspirations. Also, the Eternal, who always was.

3(EXALTING HIM - from unbecoming attributes)

@And that He is
Not a shaped body,
And not a limited or quantifiable substance,
And that He does not resemble bodies
In having quantities or accepting division,
And that He is
Not a substance, nor do substances locate in Him,
And not an accidental (transient) quality, nor do such qualities occur to Him,
Nay, He does not resemble anything that exists,
And nothing that exists resembles Him,
{There is nothing similar to Him(10A) } (42:11)
Nor is He similar to anything,
And that
Amount does not limit Him,

And territories do not contain Him,
Regions do not surround Him,
And the earths and heavens do not encompass Him,
And that He is set on the Throne,
The way He said, with the meaning He intended,
A setting exalted from touching, settling,
(physical) establishment, locating and transfer,
Not carried by the throne,
But the throne, and its (angel) carriers
Are carried by the subtlety of His Power,
And subdued in His grasp,
And He is
Above(11) the throne and the sky,
And above everything till the limits of the ground,
An elevation(12) that
Does not make Him nearer to the throne and the sky,
And does not make Him farther from the earth and the ground,
On the contrary,
His ranks are aloft(13) from the throne and the sky,
Just as His ranks are aloft from the earth and the ground,
And with that He is,
Near(14) to everything that exists,
And nearer to the subject than the jugular vein,
And of everything He is a witness,
For
His nearness is not resembled by the nearness of bodies,
Just as His Identity (Zhaat) is not resembled by the identity of bodies,
And that He
Does not locate(15) in anything,
And nothing locates in Him,
He is above being contained by a place,
As well as hallowed from being limited by time,
Nay, He Was, prior to when He created Time and Space,
And He Is now, as He then Was,
And that He is markedly unlike His creation in His Attributes,
No other than Him is in His Identity (Zhaat),
Nor is His Identity in anything else,
And that He is Hallowed from change or transfer,
Incidents do not occur in Him,
And accidental (transient) qualities do not happen to Him,
On the contrary, He perpetually remains
With the Attributes of His Majesty,
Exalted from vanishing,
And with the qualities of His perfection,
Not needing additional perfecting,
And that He is, in His Identity (Zhaat)
Known by intellects to exist,
His Identity visible to sights(16),
An endowment from Him and gentleness upon the righteous ones,
In the everlasting abode,
For completing happiness,
By looking at His Noble-And-Generous "Direction"(17),

(10A) See Al Wasity's words in the Translator's Introduction, refering to this Aayah.
(11) Allaah is "Above" in the Attributes of Majesty, Power, etc., not in the physical meaning. See note 1.
(12) See note 1.
(13) See note 1.
(14) Allaah is "near" concerning Knowledge, Care and Mercy, not in a physical sense, Exalted is He.
(15) Such as Incarnating, or being in any physical location or direction. Exalted is

He.
(16) Allaah's Identity is not visible to sights in this world, but will be for the righteous subjects in the Hereafter. Following is a summary of Al Ghazaali's explanations in the "Revival"(3) :
a) Had Prophet Moses known the impossibility of ever seeing Him, he would not have requested it. (He would have been criticized for such an unbecoming request like Noah was criticized for interceding for an unbeliever - his own son - trans.)
Being a prophet, Moses is definitely more qualified than non-prophets to know if His "sight" is possible or not. Thus Allaah only revealed to him {YOU WILL NOT SEE ME}. He "will not" see Allaah in this world, but Allaah may be seen in the hereafter.
b) {Faces, that day, radiant in beauty: Looking at their Lord} (75:23).
The reason for construing this Aayah according to the "outward" (literal) meaning (of faces ... looking) is that such interpretation does not imply any impossibility(*) (as long as one does not misunderstand it to require materiality of what will be seen, trans.) :
Visual knowledge (or "sight") is a type of unveiling and knowledge (perception) but it is more complete and clear than intellectual knowledge. (This is why SEEING HIM will be a completion of happiness, as mentioned in the following words of the Bases Of Beliefs, trans.)
Indeed, since (intellectual) knowledge may "refer" to Allaah (Who Is) not in any location, then (visual knowledge or "sight") may "refer" to Allaah (Who Is) not in any location.
And since it is logically acceptable that He "sees" His creatures with no (implication of) physical opposition, therefore creatures may have visual knowledge ("sight") of Him with no (implication of) physical opposition.
And, finally, since He may be (intellectually) known without (implication of materiality or) image, therefore he may also be visually known ("seen", without such implication).
====
(*) - Al Ghazaali is referring to an important rule for interpretation:
If, and only if, understanding any Aayah according to its outwardly apparent meaning results in a logical impossibility, then this Aayah must be interpreted as a metaphor or a metonymy.
But when the apparent meaning is logically acceptable, then this meaning must be upheld, unless an authenticated hadeeth explains it in a different meaning.
Extracting additional meanings from the same Aayah, by interpreting it as a metaphor or a metonymy, is still permissible provided the outward meaning is not denied nor contradicted.
Of course both types of decisions (upholding or interpreting the outward meaning) are to be done only by a competent Muslim scholar such that his elaboration is in perfect accordance with, and totally emanating from, the Qur'aan and Hadeeth. Otherwise the person is at His own risk of blasphemy, misleading himself and others.
(17) ILA WAJHIHI: The root word "W-j-h" means direction. "Wajh" also means "face", "what faces" the onlooker.
"Direction" or "Face" are used in the figurative sense here, referring to the "direction facing" our knowledge and spiritual perception, not a "physical" direction or face. Exalted is He from physically being in any location or direction. See Al Wasity's words in the Translator's Introduction, refering to the Aayah {Nothing is similar to Him} (42:11)

3(LIFE AND CAPABILITY)

@And that, All-Eminent(18), He is
Alive and Capable,
Compeller and Subduer,
No inadequacy occurs to Him nor incapacity,
No slumber overtakes Him nor sleep,
And no annihilation opposes Him nor death,
And that He has
The Material and Metaphysical Reigns,

The Inaccessible-Esteem(19) and Irresistibility(20),
To Him is
The Dominion and Subduing-Power,
Creation and Authority(21),
The heavens are "gathered in His right ("hand"(22)),
And the creatures subdued in His grasp(23),
And that He is
Sole in creating and inventing,
Unique in producing and originating(24),
He created all creatures and their actions,
And quantified(25) their livelihood and lifetimes,
Nothing quantifiable is beyond(26) His grasp,
And no affair(27) is beyond His power to arrange,
What He quantified cannot be tallied,
And what He knows is not limited,

---

(18) TA`AALA.
(19) `IZZAH: The state of being `Azeez.
`AZEEZ: Inaccessible (such as a King); and also endeared, and deeply valued (such as a child is to his parents, and such as belief is to a Muslim).
Both connotations are mentioned in Arabic dictionaries, and are even present in the English word "dear". But in actual usage, either meaning may be completely overshadowed by the other. Thus, even though a king may be needed by his subjects, yet this meaning is overshadowed by his normal inaccessibility. Similarly, even though begetting and raising a child is no simple feat, yet this meaning is overshadowed by the parents' normal affection.
As an Attribute of Allaah: `Azeez is Him who Has the Inaccessible-Glory, yet Is also Needed and Highly Valued.
Al Ghazaali brilliantly clarified it in "The Noblest Purpose Behind Knowing The Meanings Of The Fine Names Of Allaah" (Al Maqsad Al Asnaa Fi Ma`rifati Asmaa' Allaah Al Husnaa). His explanation can thus be summarized: An inaccessible object is not `Azeez if not also needed and valued; and a needed object is not `Azeez if not also hard to reach. Allaah is `Azeez in both meanings.
(20) JABAROOT: Irresistibility, absolute power to crush, instantaneously, any resistance.
(21) AMR: Here, the order, or the authority to order and prohibit, e.g. "The king has the Amr".
(22) In Arabic, the "right hand" is the symbol of power. It is understood that Allaah is exalted from resembling any of His creatures, such as having a hand.
(23) In Arabic, the "grasp" is the symbol of encompassing power.
(24) According to no previous example.
(25) He decreed: the quantities of the means of their livelihood, and the length of their lives.
(26) YASHUZZHU: To deviate from His grasp, be an exception. "Beyond" renders the intended meaning better.
(27) UMOOR, plural of AMR: Here, affair, matter, e.g. "decide or arrange an Amr", thus it refers to the affairs themselves, or to decisions about them.

3(KNOWLEDGE)

@And that
He knows all that may be known,
His knowledge encompassing
What happens in the borders of the earths
To the highest of the heavens,
No atom's amount on earth or in heaven is beyond His knowledge,
Indeed,
He knows The crawling of the black ant,
On the soundless rock,
In the tenebrous night,

And is conscious of the movement of dust in the air,
He knows the secret and what is concealed further,
And is acquainted with
Mind occurrences,
Thought changes,
And concealed secrets,
With an Ancient, Eternal Knowledge,
Which has always been an Attribute to Him
In the ever-existing eternities,
Not with a renewing knowledge
Resulting, within His Identity,
From "locating" or "transfer" (of knowledge),

3(WILL)

@And that, All-Eminent, He is
Willing all that exists,
Arranging all that happens,
Such that nothing occurs in the Material or Metaphysical Kingdoms,
Little or much,
Small or large,
Good or evil,
Benefit or harm,
Faith or disbelief,
Gratefulness or ingratitude,
Success or failure,
Augmentation or reduction,
Compliance or disobedience,
But by His decree and quantifying,
His Wisdom and Intent,
Thus what He intended, was,
And what He did not intend, was not,
No looker's glance,
Nor the "escapade" of a thought
Transgress His Intent,
Nay, He is the Originator (of all creation),
The Restorer (of all creation after the day of judgment),
The Performer to what He wills,
None can parry His decree,
Nor refute His judgment,
And no subject has
Any escape from disobeying Him,
But by His supportive Guidance and Mercy,
Nor any power to obey Him,
But according to His Intent and Will(28),
Thus if all
Humans and Jinns,
Angels and demons,
Gathered to move an atom in the world or immobilize it,
Without His Will and Intent,
They would have been unable to (do so),
And that His Will
Is (an Attribute) of His Identity (Zhaat),
Among His Attributes,
He has always been
As such qualified by it,
Willing, in His eternity,
The existence of things,
At the moments He destined(29),
So they became at their proper times,
As He Willed in His eternity,

Without advance nor delay,
But they happened according to His Knowledge and Will,
Without substitution nor change,
He arranged affairs
Not by ordering of thoughts,
Nor passage of time,
Thus no matter occupied Him from any other matter,
---
(28) This in no way denies our freedom of choice, except in the mind of the rebellious one, deceiving only himself: Any sound mind concedes to the truth that our actions or decisions are not against the Will of the All-Mighty, and thus are totally according to this Will.
More fundamental than that: the execution, and even the coming to existence, of our freedom of choice, have the absolute, total and continuous need for the sustenance of Al Qayyuum: the only Sustainer of creation.
(29) This eternal Plan and its execution have been referred to as: "Umoor (decisions about matters) that He "gradually" unveils, but not initiates".

3(HEARING AND SIGHT)

@And that, All-Eminent, He is
All-Hearing, All-Seeing,
He does see and hear,
Nothing audible escapes His hearing,
Even if concealed,
And nothing visible disappears from His view,
Even if minute,
No remoteness prevents His hearing,
And no darkness veils His sight,
He Sees without pupil and lids,
And hears without canals and ears,
Likewise He Knows without (need of) a heart,
Crushes without a limb,
And creates without a tool,
For His Attributes
Do not resemble those of creation,
Just as His Identity
Does not resemble those of creation,

3(SPEECH)

@And that, All-Eminent,
He is Speaking,
Ordering (and) Prohibiting,
Promising (and) Threatening,
With an Eternal Speech,
(An Attribute) (30) Of His Identity,
Not resembling creatures' speech,
Thus it is not a sound that occurs
From passage of air, or vibration of masses,
Nor a letter that ends
From closing of a lip, or movement of a tongue(31),
That the Qur'aan, the Tawraat(32),
The Ingeel(33), and Zaboor(34)
Are His Books revealed to His messengers, peace be upon them,
And that the Qur'aan is
Read with tongues,
Written in books (masaafih),
And memorized by hearts,
Yet, that it is Ancient, (an Attribute(35)) of Allaah Ta`aala's Identity,

And does not accept disjoining nor separation,
By transferring to the hearts and papers,
That Moosa (Moses), Peace be upon him,
Heard Allaah's Speech
Without a sound or letter,
Just as the righteous ones
See Allaah Ta`aala's Identity (Zhaat) in the Hereafter(36)
With no (physical) substance
Nor accidental quality (for this Identity),
And since He has those Attributes,
Thus He is Alive, All-Knowing(37), Capable, Willing,
All-Hearing, All-Seeing, Speaking,
With (Attributes of) Life, Knowledge, Capability, Will,
Hearing, Sight and Speech(38),
And not as a devoid Identity(39),

---

(30) ATTRIBUTES: Capability Life and Will are easier to understand as abstract and Eternal Attributes, than Speech, Hearing and Sight are.
Although creatures' speech is apparently an action accompanied by physical changes and sounds, it is in fact merely the expression of a meaning at a specific time. (This is why we do not say that the tape recorder "speaks" in the real meaning of the word.)
For Allaah Ta`aala, the expression about all that will "be", and of all that will be "revealed" (unveiled) at some time to Prophets, this expression, his Speech, is Eternal: not bound by time.
It must not be confused with the revelation of this expression at a specific time (whenever a Prophet cognizes, "hears", this expression, this Eternal Speech) and under specific circumstances.
Also, His Knowledge, Hearing and Sight, are distinct Eternal Attributes: Perfect cognizance of all that will ever become knowable, audible or visible to creatures at any time.
(31) See note 30 on Attributes
(32) TAWRAAT: "The Law", or original Revelations to Moses, Peace be upon him.
(33) INGEEL: The original "Gospel", or Revelations Jesus, Peace be upon him.
(34) ZABOOR: The original Psalms, or Revelations David, Peace be upon him.
(35) See note 30 on Attributes.
(36) See note 16.
(37) Omniscient.
(38) See note 30 on Attributes.
(39) This affirms: An Identity having Attributes, not devoid of them. As Al Ghazaali explains in the "Revival"(3).

3(ACTIONS)

@And that, Exalted and All-Eminent,
Other than Him, all that exists
Is but an occurrence of His doing,
And an overflow from His justice,
The best of ways, most perfect, complete, and just,
And that He is
Wise in His actions,
Just in His decrees,
His Justice not comparable to the justice of subjects,
Because injustice can be imagined from the subject
For dealing with others' ownership,
But injustice is not imagined from Allaah Ta`aala,
Since He does not encounter anyone else's ownership,
Dealing with which would be any injustice,
For all other than Him,
Human and Jinn, Demon and Angel,
Heaven and earth, Animal and plant,

Substance and accidental quality,
Cognizable and perceivable,
Is an occurrence that
He invented, by His ability,
From non-existence indeed,
And originated
After it was nothing,
For He existed in eternity alone,
And no other was with Him,
He then originated creation
Manifesting His Ability,
And actualizing
What preceded of His Will,
And was true in eternity of His Word,
Not of need nor necessity,
And that, All-Eminent,
He created, invented, and enjoined (duties),
By All-Obliging Generosity (Mutafaddil),
Not from necessity,
And He bestowed (bounties) and reformed,
By All-Extensive Charity (Mutatawwil),
Not from need,
(Indeed) He is
Most-Bounteous, Most-Charitable,
All-Bestowing, All-Obligating,
For He is capable of
Having poured on His subjects
All kinds of sufferances,
And having afflicted them
With all sorts of pains and permanent diseases,
And had He done that,
From Him it would have been justice,
And would have been neither ugly(40) nor unjust(41),
And that He rewards His servants for observances,
By rule of generosity and promise,
Not by rule of deserving and imposition,
For
No action is obligatory on Him,
No injustice is imaginable from Him,
And no one's right is imposed upon Him,
And that His prerogative for observances
Has been enjoined upon creatures,
By enjoining it through (the tongue of) His prophets,
Not only by reason,
For He sent messengers
And showed their truthfulness
By manifest miracles,
So they fully conveyed
His ordering and prohibiting,
His Promising and threatening,
Thus it was enjoined upon creatures
To believe them in what they came with,

---

(40) NOT UGLY: Following is adapted from Al Ghazaali's explanations in the "Revival"(3) : It is not obligatory upon Allaah to chose the alternatives best for His creatures, and this is not ugly:

I- Ugliness is what disagrees with a needed objective. (A picture is "ugly" only when it affects the spectator's psychological well-being, trans.) But Allaah is exalted from need, thus His decisions are not ugly to Him.

II- Ugliness is also relative. Ugly for some may be fair for others; and concerning all creation, Allaah's judgment absolutely preponderates ours: {He is not to be

questioned about what He does, and them, they are}. (21:23)
(41) NOT UNJUST: We accept our own freedom to behave with our possessions the way we wish, as long as we do not infringe on the rights of others. Thus in our library, we may place the books that we wish wherever we wish, and throw away the books that we wish, without being "unjust to the books". But Our bodies and feelings are created by Him. He is their true Owner, not us.
Any person doubting Allaah's absolute Justice and Mercy must deeply review his own sincerity. In his case, the only injustice and cruelty are self inflicted ones: killing his own conscience by attributing ownership to other than Allaah, and thus questioning His decrees. Indeed, had he acknowledged the truth, he would have realized Allaah's actual Mercy, and would have been gratefully indebted to Him, to the point of total subjection to His every command.

3(BEARING WITNESS TO THE MESSAGE)

@And that, All-Eminent, He sent Muhammad (PBUH), the Qurayshian Unlearned Prophet
With his(42) message to all Arabs and `Ajams (non-Arabs), Jinns and humans,
Thus He Canceled with his(43)
Law (All previous) laws, Except what he upheld,
Made him Leader of all mankind,
And revoked perfection of belief
(Resulting) by Bearing Witness to Monotheism,
Which is saying "There is no God but Allaah",
Unless it is accompanied
By Bearing Witness to the Messenger,
Which is saying "Muhammad is the Prophet of Allaah",
Consequently He imposed upon creatures
To believe him(44) in the totality of what he informed
About the world and the Hereafter,
And that no subject's belief is accepted
Until he is certain of what he informed about the "after death",
First of which is the questioning of Munkar and Nakeer(45),
Who are two formidable venerable creatures,
Who set the subject in his grave,
Upright with (consciousness of) soul and body(46),
Then ask him about Monotheism and the Message,
And say:
Who is your lord?
What is your religion?,
And who is your prophet?
And who are the grave's trial(47) (administrators),
Whose interrogation is the grave's first trial after death,
Until he believes in the grave's torment(48),
And that it is true,
And the judgment to inflict it,
Is just upon the body and the soul,
Any way (and degree) He intends (to inflict it),
Until he is certain of the Balance with two Plates and Indicator(49),
Whose quality in immensity is such that
It is "like covers for" the heavens and earths,
Where actions are weighed by Allaah Ta`aala's capability,
That day, weights are as dust specks and mustard seeds,
(Thus) actualizing perfect justice,
Records of good deeds
Are put in a fine image in the Pan of Light,
Thereby loading the Balance
According to their levels in the sight of Allaah,
By His Bountifulness,
And records of bad deeds
Are put in the Pan of Darkness

Thereby lightening the Balance,
By Allaah Ta`aala's Justice,
And until he believes that the Siraat (path) is true,
A bridge(50) extended over Hell,
Sharper than the sword,
And finer than hair,
Upon which slip unbelievers' feet by Allaah Ta`aala's decree,
Then it precipitates them down to Hell-Fire,
And upon which stand firm believers' feet,
Then they are led to the everlasting abode,
And until he believes in the Pond(51),
The Pond of Muhammad (PBUH),
From which believers drink
Before entering Paradise (Jannah)
And after passing the Path,
Whoever drinks from it once
Will never thirst again,
Its width is the sky,
And in it are two spouts
Pouring from Al Kawthar(52),
And until he believes in the day of Reckoning,
And (that) creatures differ then between
Those who are contested (about the account),
Those who are pardoned (about it),
And those who enter Paradise,
Without account(ing for anything),
Who are the neared ones (muqarraboon),
Thus He questions
Whichever Prophets He wills
About conveying the Message,
And whichever unbelievers He wills
About disbelieving the Messengers,
He questions those who "invented" in religion(53)
About the Sunnah,
And He questions Muslims
About (their) actions,
And until he believes
In the intercession of the Prophets,
Then (of) the learned,
Then (of) martyrs,
And then (of) the remainder of believers,
Each according to his (granted) honor(54),
And any believer who remains with no intercessor,
Is brought out by the Grace of Allaah Ta`aala,
No believer remaining for ever in Hell-Fire,
Indeed, he is brought out of it
Whoever had an atom's equivalent of belief in his heart,
In the Companions' eminence(55), and ranking,
And that the most eminent humans
After God's Messenger(s Peace be upon them(56)), are
Abu Bakr, then `Umar, then `Uthmaan, then `Ali,
May Allaah be pleased with all,
And until he has good faith(57) in all the Companions, and praises them
Like Allaah Ta`aala and His Messenger (PBUH)
Praised all of them,
For, all that (belief)
Was brought forth by the Sunnah,
And witnessed to by narrations(58),
Thus whoever believes all that with certitude(59),
Is among those in the right,
The group of Al Sunnah,

And apart from the flock of Straying (Dalaal)
And Inventing in religion (Bid`ah),
So we ask Allaah Ta`aala
Perfection of certainty (in belief),
And steadfastness in religion,
For us and for all Muslims,
He is the most Merciful of all merciful ones,
May Allaah have Mercy upon our Leader Muhammad
And upon every chosen subject.

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(42) This is referring to the Prophet (PBUH).
(43) Again, this is referring to the Prophet (PBUH).
(44) i.e. Prophet Muhammad (PBUH).
(45) MUNKAR and NAKEER: Names of two angels.
(46) The fact that we do not perceive this questioning does not make it impossible. Furthermore, the fragmentation of the body and its dispersion does not make it impossible for Allaah to create consciousness in its parts. Adapted from Al Ghazaali's explanations in the "Revival"(3).
(47) FITNAH: A hazardous test of belief, where any uncertainty may mislead the subject, and where steadfastness is sustained but by Allaah's Mercy.
Thus "fitnah" has connotations of seduction and temptation.
(48) See notes 40, 41 concerning Allaah's punishment and Justice.
(49) See note 5 concerning objects in the Hereafter.
(50) See note 5 concerning objects in the Hereafter.
(51) AL HAWD AL MAWROOD: Hawd: Pond (See note 5 concerning objects in the Hereafter.) Mawrood: That around which people gather in order to drink (see note 6 concerning the nature of felicities in the Hereafter).
(52) Al-Kawthar: A river in Paradise, "the river of abundance".
(53) Derived from the root: Bid`ah.
(54) JAAH: Honor, in the sight of Allaah, and consequently, the degree to which requests may be answered by Him.
(55) FADL: Distinction in honor, merit and advantage over others, again, in the sight of Allaah.
(56) The reader is presumed to know that All Prophets and Messengers have higher ranks than other humans. Such is the unequivocal belief of Muslims in general, and Al Ghazaali in particular, based on a multitude of related hadeeths. In Narrations (Aathaar) and in the Qur'aan, expressions such as "Most eminent humans", or "(best) in the world" (about Mary and the Children of Israel), always refer to the "most eminent persons of that specific period". For merit to be absolute, it must explicitly thus stated, such as the hadeeth: "I am the Master of Adam's children, and no pride (have I therefrom). "
(57) YUHSIN UL ZANN: Form a good opinion about people's intentions.
(58) AATHAAR: All historical narrations about the Sunnah, including the Prophet's Hadeeth and other people's accounts about him.
(59) See note 7 concerning textual sources of Beliefs.

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*2*Glossary

@AAYAH: Verse of the Holy Qur'aan.
ANCIENT (Qadeem) : Who always existed.
ETERNAL (Azali) : Having no start, who always WAS. Just like the English word "eternal", the word "azali" also means that which is not limited by time, having neither start nor finish.
HADEETH: Utterance, saying of the Prophet (PBUH).
IDENTITY (Zhaat) : The closest translations are:
- Identity: "the distinguishing character or personality of an individual: individuality" (Webster's New Collegiate Dictionary).
- Selfdom: "the essence of one's self" (Webster's New Collegiate Dictionary). Selfdom is not used because of the unbecoming connotations of self.
JALLA WA `AZZ:

LEADER (sayyid) : See Master.
MASTER: From the Arabic word "Sayyid". Any leader, head, master. Sayyidina: Our Leader.
Here: One worthy of this position by the grace of Allaah who selected, purified and guided him. The term Sayyidina (our leader) is usually used concerning any Prophet of Allaah.
The eminence of a Prophet is an endowment from Allaah. One of the outward manifestations of this eminence, is the universality and preservation of a prophet's message, and the number of people thus guided to Adore only the One true God (and not blaspheme Him, following an altered message).
MUTAWAATAR: Any narration related by multitudes of people who related it to multitudes of other people, and so on. Multitudes of chains of narrators are required so that any collective conspiracy to lie about this narration becomes unthinkable, and such that the weakness of an individual chain of narrators becomes irrelevant.
The Mutawaatar is different from the authentic narration. The validity of the Authentic narration must be established solely on the authenticity of its narrators, each of whom must have been known for their observance (following the Sunnah, esp. never lying or misleading) and perfect memory. Having a weak memory, having lied only once, having ever misled any listener about whom he heard any narration from, or just being unknown to compilers of hadeeths, "weakens" a narrator, and thus "weakens" the particular chain of narration for this hadeeth, disregarding the authenticity of other persons in this chain.
SUBJECT (`abd, plural `abeed) : Servant, bondsman, slave. All creatures are Allaah's subjects, willing or not. But the highest rank for a creature is perfect subjection to Allaah: When the love of Allaah transcends itself and becomes adoration, such that all incidents in life, all His decisions, and all His orders are accepted and adhered to with such devotion and love just as if they were one's own needs and desires, and such that His Mercy is acknowledged and appreciated to the highest degrees of obligation. Such are the ranks of prophets: higher than angels' because of the obstacles inherent to human nature that they overcame, with His help and Mercy.
SAYYID, SAYYIDINA: See Leader.
SUBSTANCE (Jawhar) : Physical substance - material - from which something is made.
SUNNAH: The Prophet's ordained Way (tradition) (PBUH), defined by his utterances, actions, acquiescences and qualities.
The expression "People of the Sunnah" refers to Sunnis (Sunnite Muslims), following the teachings of the Prophet (PBUH), as related by ANY of his companions.
TA`AALA: Most Eminent, most Elevated. Allaah is Elevated, High, Aloft, Above, etc. in the Attributes of Majesty, Power, etc., not in the physical meaning. Also, His nearness is not a "physical" nearness, Exalted is He.
ZHAAT: See identity.

*1*BOOK V: The Bases of Beliefs [by Imaam Ghazaali, Keller's translation]

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s*2*Chapter V1.0 ALLAH

@V1.1(Ghazali:) Praise be to Allah, who originates all and returns it, who does as He wills, He of the noble Throne and overwhelming force, the Guide of His elect servants to the wisest path and straightest way, who has blessed them, after having had them attest to His oneness, by preserving the tenets of their religion from the darknesses of doubt and misgivings, bringing them through His providence and guidance to follow His chosen Messenger and the example of his noble and honored Companions; He who manifests Himself and His acts to His servants through His sublime attributes, of which none possess knowledge save those who give heed with a present mind.

@V1.2: His Oneness
He is one is being without partner, unique without peer, ultimate without opposite, alone without equal. He is one, preeternal, beginninglessly uncreate, everlastingly abiding, unceasingly existent, eternally limitless, the ever selfsubsisting through whom all else subsists, ever enduring, without end. He is, was and ever will be possessed of all attributes of majesty, unannihilated by dissolutiom or separtion through the passage of eons or terminus of interims. He is the First and Last, the Outward and Inward, and He has knowledge of everything.

@V1.3: His Transcendence
He is not a body with a form, or a limitary, quantitative substance, not resembling bodies in quantifiability or divisibility, or in being a substance or equalified by substance, or being an accident or qualified by accidents. He does not resemble anything that exists, nor anything that exists resemble Him. There is nothing whatsoever like unto Him, nor is He like unto anything. He is not delimited by magnitude, contained by places, encompassed by directions, or bounded by heavens or earth. He is 'established on the Throne' (mustawin, Koran 20:5) in the way He says and the meaning He intends, 'established' in a manner transcending contact, settledness, fixity, indwelling, or movement. The Throne does not bear Him up, but is borne, up by the subtlety of His infinite power, as are the angels who carry it, and all are powerless in His grasp. He is above the Throne, the heavens, and all else to the farthest reaches of the stars, with an aboveness that does not increase His nearness to the Throne or heavens, or His distance from the earth and what lies beneath it. He is as exalted in degree above the Throne and the heavens as He is above the earth and its depths, though He is near to everything in existence, nearer to a servant than his own jugular vein, and is witness to everything. His nearness no more resembles the nearness of objects to one another than His entity resembles the entities of objects. He does not dwell in anything, nor anything indwell in 'Him. He is as exalted above containment in space as he is above confinement in time. He was, before creating time and space, and is not even as He was. He is distinguished from His creation by His attributes. There is nothing in His entity other that Him, nor is His entity in what is other than Him .He is beyond change and motion :events neither occurs with in Him
nor changes befall Him .of majestly exalted above change, and in the attributes of His perfection beyond needing any increase in perfection. The existence of His entity is known by human reason, and in the after life is beheld by the eyesight of the reghteous as a beatitude and favor, to consummate their perfect joy with the sight of His Noble Countenance.

@V1.4: His Life and Almighty Power
He Most High is living, almighty, overmastering, triumphant, unaffected by inability or weakness; unsusceptible to drowsiness, sleep, annihilatin, or death; possessed of absolute soverignty and might, of irresistible power and force. His is the majesty and sway, the creation and command. The heavens are enfolded in His right hand and all beings are powerless in His grasp. He alone creates, begins, gives existence, and

originates. He creates all beings and their acts, ordains their sustenance and terms. Nothing possible is out of His grasp, the disposal ofno matter is beyond His power. The number of things He can do is limitless, the amount He knows is infinite.

@V1.5: His Knowledge
He knows all things knowable, encompassing all that takes place from the depths of the earth to the highest heaven. He knows without an atom's weitht in the earth or heavens escaping His knowledge. He knows the creeping of a black ant across a great stone on a lightless night, and the motion in the air of a particle of dust on a windy day. He knows the concealed and the yet more hidden, the buried recesses of hearts, the movement of thought, and the opacities of the inmost soul; with preeternal, beginningless knowledge that He has always possessed from the limitless reaches of past eternity, not with awareness originating within Him through being imparted or conveyed.

@V1.6: His Will
He Most High wills all that exits and directs all events. Nothing occrus in the physical or spiritual world, be it meager or much, little or great, good or evil, of benefit or detriment, faith or unbelief, knowledge or ignorance, triumph or ruin, increase or decrease, obedience or sin; save through His ordinance, apportionment, wisdom, and decision. What He wills is, and what He does not will is not. Neither sidelong glance nor passing thought is beyond His design. He originates all and returns it, does what He wills, and none can repulse His command. There is no rescinding His destiny, no flight for a servant from disobeying Him except through divinely given success therein and mercy, and no strength to obey Him save through His choice and decree. If all mankind, jinn, angels, and devils combined their efforts to move or to still a single particle of the universe without His will and choice, they would be unable to. His will, like His other attributes, exists in His entity and He ever possesses it. He has willed from preeternity the existence of all things at the times He has chosen. They occur at the times which He has destined from beginningless eternity, occurring neither before nor after, but taking place in accordance with His knowledge and will, without substitution or alternation. He directs events without successive throughts or waiting for time to elapse, which is why nothing divers Him from anything else.

@V1.7: His Hearing and Sight
He Most High is all-hearing and allseeing. He hears and sees, no sound however slight eluding His hearing, and no sight however minute escaping His vision. Distance does not obscure His hearing nor darkness hinder His vision. He sees without pupil or eyelids, and hears without ear canal or ears, just as He knows without a heart, seizes without limb, and creates without implement. His attributes no more resemble the attributes of His creatures than His entity resembles the entity of His creatures.

@V1.8: His Speech
He Most High speaks, commands, forbids, promises, and warns, with beginninglessly eternal speech that is an attribute of His entity, not resembling the speech of creatures in being a sound generated by the passage of air or impact of bodies, nor in letters articulated by compressing the lips or moving the tongue. The Koran, Torah, Evangel, and Psalms are His Books, revealed to His messengers (upon whom be peace). The koran is recited with tongues, written in books, and memorized in hearts despite being beginninglessly eternal, an attribute of the entity of Allah Most High, unsubject to disseverance and separation by conveyance to hearts or pages. Moses (Allah bless him and give him peace) heard the speech of Allah without sound or letter, just as the righteous see the entity of Allah Most High in the afterlife without substance or accident.
Since Allah possesses all of the above attributes, He is living, knowing, omnipotent, willing, hearing, seeing, and seeking by virtue of His life, power, knowledge, will, hearing, sight, and speech, not merely by virtue of His entity.

@V1.9: His Acts
Everything besides Him Glorious and Exalted exists through His action, proceeding from His justice in the best, fullet, most perfect and equitable way. He is wise in His acts

and just in His decrees. His justice is not comparable to the justice of His servants, since injustice mey only be imagined from a servant through his disposal of what belongs to another, while this is inconceiveable from Allah Most High, since nothing belongs to anyone besides Him that He should unjustly disclose of 'it. Everything besides Him, be it human, jinn, angel, devil, heaven, earth, animal, vegetable, mineral, substance, accident, intelligible, or senosory, is contingent, and was brought into existence through His power after not being, created by Him after it was nothing. He alone existed in preeternity, and nothing else. He then originated creation, that His omnipotence might be mainfest, His prior decree effected, and His eternal word realized; not from needing or requiring anything in creation. Our origination, beginning, and responsibility are of Allah's generosity, not because of their being obligatory for Him, and His blessings and benefaction exist because of His favor, not because of being due from Him. Everything that exists is indebted to Him for His generosity and goodness, His blessings and benevolence; for He is well able to pour all manner of torments upon His servants and try them with tevery variety of suffering and illness, and were He to do so, it would be just on His part and not wicked or unfair. He Mighty and Majestic rewards His servants, the believers, for their acts of obedience because of His generosity and in fulfillment of His word, not because of their deserving it or His owing it to them. He is not obliged to anyone to do anything, nor is injustice on His part conveivable, for He does not owe any rights to anyone. The obligation of men an jinn to perform acts of obedience is established by His having informed them of it upon the gongues of the prophets (upon whom be peace), and not by unaided human reason. He sent the prophets and manifested the truth of their messages by unmistakable, inimitable miracles. They have communicated His commands, prohibitions, promises and warnings, and it is obligatory for mankind and jinn to believe in what they have conveyed.

*2*Chapter V2.0 HIS MESSENGER

@V2.1Allah Most High sent Muhammad (Allah bless him and give him peace), the Qurayshite unlettered prophet, to deliever His inspired message to the entire world, Arabs and non-Arabs, jinn and mankind, superseding and abrogatign all previous religious systems with the Prophet's Sacred Law, except for the provisions of them that the new revelation expicitly reconfirmed. Allah has favored him above all the other prophets and made him the hightest of mankind, rejecting anyone's attesting to the divine oneness by saying "There is no god but Allah," unless they also attest to the Prophet by saying "Muhammad is the Messenger of Allah." He has obliged men and jinn to believe everything the Prophet (Allah bless him and giver him peace) has informed us concerning this world and the next, and does not accept anyone's faith unless they believe in what he has told us will happen after death.

@V2.2: The Trial of the Grave
The first of these matters is the questioning of Mankar and Nakir, two tremendous, aweinspring personages who sit a servant upright in his grave, body and soul, and ask him about the unity of Allah and the messengerhood of the Prophet (Allah bless him and give him peace), saying, "Who is your Lord, what is y our religion, and who is your prophet?" It is they who try people in the grave, their questioning being the first ordal after death. It is also Obligatory to believe in the torment of the grave, that it is a fact, is just, and affects both body and soul, in the way Allah wills.

@V2.3: The Scale
It is obligatory to believe in the scale, which consists of two scalepans and a balance indicator between them and is as great in size as the thickness of the heavens and earth. It weighs a servant's deeds through the power of Allah Most High, and the weights placed on it are as fine as an atom or mustard seed, that justice may be perfectly done. The pages recording one's good deeds will be placed in a form pleasing to behold on the side of the scale for Light, weighing it down according to their rank with Allah through His generosity, while the pages recording one's bad deeds will be placed in an ugly form on the side of Darkness, diminishing the weight of the opposite side through Allah's justice.

@V2.4: The Bridge Over Hell
It is obligatory to believe in the bridge over hell (sirat), a bridge spanning the breadth of hell, sharper than a sword and finer than a hair, which unbelievers' feet shall slip from by Allah's decree and plunge them into hell, and the feet of believers shall be made fast upon by Allah's generosity, and from thence they shall be conducted to the Final Abode.

@V2.5: The Watering Place
It is Obligatory to believe in a watering place people will come to, the watering place of Muhammad (Allah bless him and give him peace), which believers will drink from before entering paradise, after having crossed the bridge over hell. Whoever drinks from it will never thirst again. Its width is month's journey across, its water whiter than milk and sweeter than honey, and there are as many pitchers around it as stars in the sky. Two aqueducts pour into t from Kawthar, a spring in
paradise.

@V2.6: The Final Reckoning
It is obligatory to believe in the Final Recokoing and the disparity in the way various people are dealt with therein, some made to answer, others pardoned, and some admitted to paradise without reckoning, being the intimaters of Allah (muqurrabun). Allah Most High shall ask whomever He wills of the Prophets if they have conveyed their message, ask unbelievers why they denied the messengers, ask those of reprehensible innovation (bid'a) about the sunna, and ask Muslims about their works.

@V2.7: Believers Shall Depart from Hell
It is obligatory to hold that true believes in the oneness of Allah (N: who follow the prophet of their age (dis: w4.4)) will be taken out of hell after having paid for their sins, through the generosity of Allah Mighty and Majestic. No one who is a true monotheist will abide in the fire forever.

@V2.8: The Intercession of the Prophets and Righteous
It is obligatory to believe in the interecesion of first the prophets, then religious scholars, then martyrs, then other believers, the intercession of each one commensurate with his rank and position with Allah Most High. Any believer remaining in hell without intercessor shall be taken out of it by the favor of Allah, no one who believers remaining in it forevor, and anyone with an atom's weight of faith in his heart will eventually depart from it.

@V2.9: The Excellence of the Prophetic Companions (Sahaba)
It is obligatory to believe in the excellence (dis: w56) of the prophetic Companions (Allah be well pleased with them). One must think the best of all of the Companions of the Prophet (Allah bless him and give him peace), and praise them just as Allah Mighty and Majestic (n: e.g., at Koran 3:110) and His messenger have praised them (Allah bless them all and give them peace).

*2*Chapter V3.0 CONCLUSION

@V3.1Allah of the foregoing has been conveyed by prophetic hadith and attested to by the words of the early Muslims. Whoever believes it with deep conviction belongs to those of the truth, who follow the sun, and distinguishes himself from the faction who have strayed, the sect adhering to repehensible innovation (bid'a). We ask Allah through His mercy for perfect certainty and steadfastness in religion, for ourselves and all Muslim; He is the Most Merciful of the Merciful. May Allah bless our ligelord Muhammad, and every chosen serant (Ihya' 'ulum al-din (y39), 79-83).

*BOOK*The Reliance of the Traveller. Version 1.04
*AUTHOR*Ahmad Ibn Naqib Al-Misri
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